OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION: MEDIA OWNERSHIP

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

DECEMBER 5, 2007

Serial No. 110–77

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SUBMITTED MATERIAL

OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION: MEDIA OWNERSHIP

WEDNESDAY, DECEMBER 5, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:35 a.m., in room 2322 of the Rayburn House Office Building, Hon. Edward J. Markey (chairman) presiding.

Members present: Representatives Doyle, Harman, Gonzalez, Inslee, Boucher, Stupak, Rush, Green, Capps, Solis, Dingell, Stearns, Upton, Shimkus, Pickering, Bono, Walden, Radanovich, Terry, and Barton.

Also present: Representative Blackburn.

Staff present: Amy Levine, Tim Powderly, David Vogel, Colin Crowell, Maureen Flood, Philip Murphy, Neil Fried, Courtney Reinhard, and Garrett Golding.

Mr. DOYLE [presiding]. Chairman Markey is on his way, but since this is going to be a long morning, we thought we would get started.

Mr. UPTON. Our box has been open for a little while.

Mr. DOYLE. So I intend to waive my opening statement, so we will go right over to our ranking member, Mr. Upton.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, my friend. I will give an opening statement. We have a Republican Conference that is going on as well, so I think we will have members coming in, as that won't be over until after 10 o'clock. I appreciate today's hearing.

Traditional media, including radio, TV, and newspaper, have been thrust into the world of new media. CBS has announced the creation of Inner Tube; Clear Channel now has a juiced-up online division; and ABC, NBC Universal, and FOX are all investing in Internet video streaming. This wave of new technology owes its very existence to a deregulatory environment that encourages innovation and investment. And, while all of this is quite exciting, we cannot forget about broadcasting, which remains a critical, free source for news, information, and public awareness for so many of our local communities. To ensure that broadcasting remains competitive and enjoys the benefits of investment and innovation, pol-

icymakers should look to the absence of regulation of new technologies as a guide.

I commend Chairman Martin for addressing the serious competitive and financial challenges facing local newspapers and the need to revisit the newspaper/broadcast cross-ownership ban. The effect of the ban is to limit how a newspaper, with its enormous investment in local newsgathering, can reach local citizens. This only diminishes the news and information available to Americans. I am puzzled, however, by the chairman's recent comments that he does not intend to propose relief for our Nation's local radio broadcasters, who face similar challenges and constraints. In fact, the parallels are striking.

Both newspapers and local radio have seen dramatic declines in their advertising revenues, threatening the economic model upon which their respective services depend. Free radio advertising revenue fell an average of 8 percent between September 2006 and 2007. Both compete with an unimaginably more diverse array of media outlets than existed in 1996, virtually all of whom are less regulated. Liability of both newspapers and broadcast radio is crucial to preserving localism, diversity of voices, and healthy competition in the American media landscape. Yet both are singled out among their competitors for archaic ownership restrictions that are limiting the ability of these companies to serve the needs of their local communities. Thus, I propose modest reforms of the ownership restrictions for local radio in very large markets.

Look at another tier. Specifically, I suggested that the Commission permit common ownership of 10 stations in the markets with 60 to 74 stations and permit common ownership of 12 stations in the markets with 75 or more stations, nothing radical or revolutionary. In fact, I would like to think that it is a very reasonable and evolutionary approach, especially if we would like to keep free radio as a medium in the future.

I look forward to hearing the views of the chairman and all the Commissioners on that matter. The challenge for Congress and the FCC is to take stock of the vast changes in the media marketplace. We must seize this opportunity to modernize the regulations governing ownership to enable all forms of media to have a fair chance of competing for the attention of our fellow Americans. Likewise, older forms of media will have to be more creative, more innovative, and more dynamic than ever to remain competitive. But the government has a responsibility to ensure that we do not throw on the shackles of outdated ownership rules.

Common sense and the Courts tell us that the explosion of media sources remove concerns over a lack of viewpoint diversity and competition in the marketplace, which have been the principal justifications for the ownership rules. And while there has been tremendous growth and advances made in the world of media over the years, the unfortunate reality is that our Nation's media ownership laws do not reflect or even acknowledge such great advancement.

I look forward to the testimony of the witnesses today, and I yield back the balance of my time.

Mr. DOYLE. Thank you, Mr. Upton. The Chair now recognizes my colleague from California, Ms. Harman.

OPENING STATEMENT OF HON. JANE HARMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. HARMAN. Thank you, Mr. Chairman, and I want to wish everyone a happy holiday from one dysfunctional body to another. Commissioner Tate was going to use that line, but I got here first.

What I hope in the new year is that dysfunction stops and that we proceed smartly with some issues in which we both have strong, mutual interest. I want to start with one that is even more important to me than media cross-ownership and that is the 700-megahertz band auction. That is critical to me not just because it can invite some new participants into this marvelous communication system that we have, but most important it can finally provide emergency spectrum for our first responders who are out trying to protect our communities against the next terrorist attack or natural disaster. We have had plenty of experience recently with natural disasters. I fear we may have experience soon with manmade terrorist incidents, and we have wasted a lot of time on this.

Last week I hosted a DTV transition briefing in Los Angeles. I want to thank Chairman Martin for sending FCC staff to give a presentation to local officials in my district. The standout turned out to be Mayor Kelly McDowell of the vaunted city of El Segundo, California, a brother to Commissioner Rob McDowell. And we are going to work hard to make sure that there is not one nanosecond delay in that transition and that the auction comes out right, so that the emergency sector has the tools that it needs, finally, in order to make sure that we have interoperable communications across our country.

On to the other subject, which is media cross-ownership. I would just like to say that the Commission, in my view, must allow the public adequate time to weigh in. I think the December 18th date is pushing it too fast. With the Tribune waivers put to rest, there is no need to rush on so critical an issue. All of us should want to get it right, and I believe all of us do want to get it right, and there is a lot to consider. Much of the content on TV and radio, music, sitcoms, and movies like Cool Hand Luke, comes from Southern California, my backyard. The FCC's media ownership rules should keep the airwaves open to new artists and the novel programming that buoys the Los Angeles and American economy. Acting hastily could alter the media landscape with disastrous fallout, so I urge caution and a fair, open process.

Let me just conclude by saying that many of us spent a very pleasant weekend in Washington—that is sometimes an oxymoron—at the Kennedy Center events. Many of you were there, and many of us were there. There was a showcase, the diversity and talent of the American artistic community. They are amazing. And it will remain to me very important to make sure that their diverse talent is able to be listened to and watched over our airwaves. So I hope we do this right, and I certainly offer my best efforts. Thank you very much, Mr. Chairman.

Mr. DOYLE. Thank the gentlelady. The Chair now recognizes Mr. Shimkus.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. Thank you, Mr. Chairman. A couple quick things, and I will try to move expeditiously. I appreciate my colleague from California talking about 9–1–1. You all know I am involved and heavily invested in that, and you all play an important role in public safety. And we want to make sure we move in that vein.

The presidential debates that they had on CNN/You Tube really identify the fact that the public, especially the younger generation, get their information from a lot of different places, and it is not the traditional media sources anymore. Having said that, that talks about the reason why we are having this hearing today. And, Chairman Martin, you are moving on the 20 largest markets. I am in support of that.

Opening statements help identify where members are in their thought process. I am one that thinks it is not far enough. The Telecommunications Act requires you all to look at the competitive marketplace and see if these restrictions are still needed. I don't think you can say the world has not changed significantly, to the point where people get information from such a diverse range of sources today that it is really hard to believe that you would roll back and say media ownership has to be tightened versus freed. And you all have had two rounds of ownership studies. I think they support that case, and I would encourage you to move rapidly to easing these restrictions for the benefit of the consumer and the individuals in our society who are trying to find information.

I have got good friends up on the dais there, and we have talked on many different issues on many different aspects of where you all are the experts, and I look forward to working with you. I am bringing at least the Midwest perspective of rural Illinois and the St. Louis media market and Springfield media market, not the major metropolitan areas. But it is still a very important aspect in our society, and I look forward to working with you.

With that, Mr. Chairman, I yield back.

Mr. DOYLE. Thank the gentleman. The Chair now recognizes the gentleman from Texas, Mr. Gonzalez.

Mr. GONZALEZ of Texas. I waive opening statement.

Mr. DOYLE. The Chair now recognizes Mr. Boucher.

OPENING STATEMENT OF HON. RICK BOUCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BOUCHER. Thank you very much, Mr. Chairman. I welcome the opportunity this morning to discuss the Commission's proposal for newspaper/television cross-ownership and to offer an idea in the alternative to the proposal that Chairman Martin has put forward. I share Chairman Martin's view that under certain circumstances newspaper/television cross-ownership in some markets should be permitted. But I differ with them on what those circumstances should be.

Since the original cross-ownership ban in 1975, the news and entertainment content available to the typical consumer has expanded dramatically. There is more choice today than there was in 1975. Unlike in 1975, when the local papers and local TV stations were for practical purposes the sole information available to most,

today's consumer has satellite services, independent cable channels, and, most importantly, Internet-delivered fare at his disposal. He is no longer dependent solely on local print and broadcast media for news and information.

The financial effect of this explosion of news and information alternatives on the newspaper industry has been profound. Advertising revenue declined by 9 percent in the third quarter of this year alone. For a decade, circulation numbers have been declining. The industry has responded in what I think is a highly creative way that, in my view, well serves the information consumer.

Legally permitted newspaper/television cross-ownership in one of the markets that serves my congressional district has, in my observation, resulted in a better news product, both for the newspaper and the TV station that are commonly owned. The collaborative pooling of the newsgathering and reporting talent of the print and the broadcast operations enables more in-depth reporting on major events and an increase in the number of local events that can be covered when TV contributes on the print side and when print contributes to television reporting. I have seen this collaboration in operation, and the improvement in the news product is real.

Under Chairman Martin's proposal to permit cross-ownership only in the 20 largest markets, the beneficial combination that I have described in my district would have to be disbanded. Either the television station or the newspaper would have to be sold by the entity that owns both. The news consumer would, in my opinion, suffer.

I agree with those who say that maintaining a diversity of voices in a community is important. That should be the basic test for whether a proposed combination should be legally permitted. I would ask that the Commission consider permitting a combination where, following the combination, there would be at least one independently-owned television station and one independently-owned newspaper of regular, general circulation remaining in the market. At most, the number of independent voices in such a situation would decline from four to three. Diversity would be preserved, and many more helpful combinations would be allowed than under the proposal that has been made to date.

I hope the Commission will consider that constructive alternative, and, Mr. Chairman, having exceeded my time, I am pleased to yield back.

Mr. DOYLE. I thank the gentleman. The Chair now recognizes Mr. Walden.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Thank you very much, Mr. Chairman. I appreciate the opportunity in having all the Commissioners here today, and for the first time in 20 years and 7 months, I am no longer a broadcast licensee, once we closed on the sale of our radio stations yesterday. So I feel somewhat free to talk about——

Mr. UPTON. Did the check clear?

Mr. WALDEN. Yes, the wire cleared it at 4:52 yesterday. And so it has been a great business. I have been in the radio business for 20 years, and I come to this hearing with some level of mixed emo-

tion, both in terms of leaving that behind but also having witnessed what happened out of the 1996 Act and the ability to pool together larger groups of radio stations. In my own situation, we went from two to five, having put one on the air ourselves and acquiring two others, two of which, frankly, weren't cash flowing. Those were the two we bought. They had no Associated Press newswire, which we added, and they had a full-time newsperson, but I am not sure how long that position would have lasted.

My point in telling you that is not from our own success but the notion prior to 1996, about half the radio stations in America ran in the red. The ability to group together made them more economical, viable units. And I agree with the gentleman from Virginia, who just spoke about the partnerships that are out there that could actually enhance the free flow of information in a community. And, in fact, some of the cross-ownership between newspaper and broadcast might actually benefit listeners and readers more in small communities where the economics are actually tougher than in the major markets. And you might actually have improved coverage and improved quality of coverage if the two were allowed to partner up, keeping in mind that you still need competition in a community. So we will argue about what is that level of cross-ownership that is appropriate and still provide for diversity in news and competition in news coverage. But some level would make sense in most markets, I believe.

I look at the extraordinary and rapid shift in how information is delivered and the competition that exists in the marketplace today. My father started in broadcasting in the 1930s. The radio stations we purchased in 1986 went through the full digital changeover, and I look today at the competition we get, when my wife is notified by text message on her cell phone that the schools may be running an hour late, is a long way from when we were the only carrier of that information every morning.

And so, as we try to compete in these various markets and try to compete with new media, whether that is satellite-delivered audio or in the broadcast TV case, satellite-delivered TV, there is no prohibition in my market from two entities and, if the Commission decides, one entity, from offering all satellite audio programming and still owning newspapers if they want it.

So I think we have to review this. I am glad the 1996 Act calls for that, and I appreciate the Commission's diligence in looking at the Act's requirements in providing us with some options to consider and for the people to consider as well.

Mr. Chairman, thank you for your time. I look forward to the testimony of the panel.

Mr. DOYLE. I thank my colleague. The Chair now recognizes the distinguished Chair of the whole committee, Mr. Dingell.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy to me, and I note that this is a very important hearing, and I commend you for holding it in a very timely fashion. I also want to welcome back to the committee my valued friend, Andy Levin, who

served so well on this committee as Democratic Counsel. While we may not see eye to eye on the matter of radio consolidation, I am happy that he is here today.

In recent months we have heard about many FCC agenda meetings postponed all day while closed negotiations on important public matters were conducted. We have witnessed too much sniping among the Commissioners, and we have heard too many tales of short-circuited decision-making processes. In sum, the FCC appears to be broken.

The victim in this breakdown is a fair, open, and transparent regulatory process, or is it perhaps that the transparent and open regulatory process is not available and that that is the cause of the events before us? The real loser, of course, is the public interest and the American consumer.

When the process breaks down, reasoned analysis and debate suffer. The public confidence in the agency is shaken. This committee is responsible for overseeing the Commission, and I think that it would be intolerable if this committee were to allow this situation to continue. This is why I have asked the Subcommittee on Oversight and Investigations of this committee to review how the agency is conducting its business.

Chairman Martin is ultimately responsible for the conduct of the FCC. But each Commissioner, including those on the Democratic side, is also responsible for ensuring that the agency works effectively for the American people. This means on the part of all that there be good-faith efforts to discuss differences and seek common ground, and it will require honest efforts to work together and to negotiate out the differences. I remind the Commissioners that they are appointed to faithfully interpret the laws. Agency proceedings should not be a forum to pursue personal agendas.

As Chairman Stupak commences his investigation into the FCC process, I encourage him, and I think he probably needs little encouragement in this matter, to take a broad view and to examine the role that all Commissioners play in ensuring that the agency serves the broad public interest. I hope that all of us here on this committee and this subcommittee can work together to remedy the problems that exist.

With respect to media ownership, Congress has for decades deliberately acted to protect localism, enhance diversity, and promote competition in local media markets. In 2003, then-FCC Chairman Powell issued an order that eviscerated several long-standing rules that protected the local media marketplace. The process employed by Chairman Powell was so poor and the results so legally untenable that the Third Circuit remanded the order back to the Commission.

Today we will hear about the Commission's latest proposal. I continue to have grave concerns about the lack of time to review comments on the proposed rule. If there is anyone who believes that one week provides sufficient time to review the thousands of pages of comment that will assuredly be received, then I have a bridge in Brooklyn that I'd like to sell to that unfortunate individual.

My initial reaction to any proposal designed to permit greater consolidation of the media is not positive. I am willing to consider Chairman Martin's arguments and those of his colleagues and to

give them all fair and proper consideration, and I do recognize that the marketplace has changed. But the question is, is the Commission properly responding on this matter?

I want to thank the members of the Commission for being here, and I look forward to their testimony. I thank you, Mr. Chairman.

Mr. DOYLE. I thank the chairman. The Chair now recognizes the gentleman from Florida, Mr. Stearns.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Thank you, Mr. Chairman, and let me thank you and Mr. Markey for having this hearing and thank our Commissioners for coming here. And I know how difficult your job is in some of the nuances here and the tough decisions you make, particularly in dealing with all the politics. But I think in light of what we see in the market with, you know, the consumers can choose from both satellite, radio, iPods, Internet radio, wireless phones, downloads, audio streams, many of us have even gone into the iTunes University that Apple has put together and got full courses from 28 various colleges. There is such a plethora of choices, so obviously the question becomes in media ownership who should own what, and should we relax the ability for these companies to do cross-ownership, and I sort of think so. I know it gets to be very controversial, and I really respect what you have to do here.

Today's hearing, as I understand, focuses on Chairman Martin's plans to relax rules with regard to cross-ownership for broadcast and print media properties within a single market. I think this proposal, frankly, Mr. Chairman, represents real progress. It is a good step forward. The repeal of that ban was justified and necessary to give newspapers the opportunity to survive. People say the Washington Post won't be around in 10 years as a delivered item to our doorstep, and so I think they need this to survive and compete against the Internet.

It also serves to further strengthen the local news operations of cross-owned broadcast stations. With a growing number of sources of news and information, and looking at a proper analysis of the media marketplace, leads to the appropriate conclusion that competition, rather than regulation, will best serve the consumers. As many of you know, I introduced H.R. 4167, the Broadcast Ownership for the 21st Century Act. My bill goes a little further than perhaps the Commission wants to consider, but it would eliminate the cross-ownership regulations based on the FCC's findings that the prohibition could not be justified for large markets in light of the abundant sources that citizens rely upon for news. So mine goes a little further than perhaps than the Commission would want to do.

On another note, Mr. Chairman, a year ago the Commission approved the merger of AT&T and Bell South in order to promote additional competition in the voice, wireless, video, and broadband marketplace. This decision was based on the philosophy that in a competitive marketplace consumers are best served by the light touch of regulation, where companies are allowed to grow, compete and innovate, and that is good. However, Mr. Chairman, you seem to have some concern that guided you to approve the AT&T/Bell

South merger and propose a relaxation of broadcast/newspaper cross-ownership rules by pushing for a rule to impose a 30-percent horizontal ownership cap on cable operators. So in light of what you have done, coming back with this 30-percent horizontal ownership cap on cable operators is something that perhaps during this hearing I hope you will give your justification, and how do you apparently make this decision based upon your other actions?

So with that, Mr. Chairman, I thank you for this hearing. I look forward to hearing the witnesses, and I appreciate their giving of their time to serve, because obviously many of these people could be doing something else, but we appreciate very much what they are doing.

Thank you, Mr. Chairman.

Mr. DOYLE. I thank the gentleman. The Chair now recognizes the gentlewoman from California, Ms. Solis.

OPENING STATEMENT OF HON. HILDA L. SOLIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. SOLIS. Thank you, Mr. Chairman, and welcome to the Commissioners for being here this morning. I am pleased that we are going to have a discussion today on FCC media ownership proposals and how they impact diversity and localism.

The number of women and minorities who own broadcast television and radio stations in the United States, as you know, is shamefully low. Women comprise over half of the U.S. population but just over five percent of full-power commercial television stations. Minorities compromise only 34 percent of the U.S. population but only three percent of all full-power commercial TV stations. Just 1.25 percent of all stations, as you know, are owned by Latinos or Hispanics, and, as you know, they are the fastest-growing minority in the country.

These numbers are declining even further, as minority-owned stations decreased by 8.5 percent from 2006 to 2007. And, unfortunately, as noted by the GAO, the FCC lacks accurate data on minority ownership information. So that is one question that I would hope that we could clarify today.

Furthermore, the FCC in my opinion has failed to make a good-faith effort to enact serious proposals that would increase diversity in broadcast ownership. To address the low numbers of women and minority owners of broadcast stations, I had joined with Commissioner Adelstein in September, calling for an independent task force on minority ownership. I would like to know what the status of that is and what the time frame and hearings, when they will be set. I also ask that the task force complete its work before the FCC put forth any proposals on media ownership. These calls were echoed also by some very substantial Latino organizations, including the National Council of La Raza, LULAC, and MALDEF.

I am still frustrated very much, so I have to say, Mr. Chairman, Chairman Martin, for you putting forward this proposal, which in my belief will not provide the broadest participation by all segments of our society. And I want to strongly encourage the Commission to take more time to review cross-ownership proposals and

instead of taking swift action to just try to remedy certain concerns for certain special interests.

In addition, I have a deep concern regarding your proposals to implement new regulations on the cable industry. Any proposals that include an a la carte cable or multicast must carry rules that will not negatively impact the potential for diversity, for minorities to also be able to have some of their flagship programs that are currently available to us now. So I would urge you to take these different points into consideration and hope to hear that you will be able to respond to some of my concerns.

Thank you. I yield back.

Mr. DOYLE. The Chair now recognizes my friend from Mississippi, Mr. Pickering.

Mr. PICKERING. Mr. Chairman, I yield back for right now. Is there another speaker?

Mr. DOYLE. OK. We will go back over to this side. The gentlewoman from California, Mrs. Capps.

OPENING STATEMENT OF HON. LOIS CAPPS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. CAPPS. Thank you, Mr. Chairman. I want to thank both you and Chairman Dingell for your work on this topic. This hearing is an example, and an excellent one, I believe, of responsible congressional oversight. The diversity and integrity of our speech, whether over the airwaves or in print, demands that we proceed cautiously with any proposal regarding media consolidation. The decisions we make today will seriously impact the level of diversity in our media, from ownership to news coverage to non-biased portrayals of minorities. My district is 42 percent Latino, yet there is only one minority-owned television station. Women own less than eight percent of radio stations and no television stations. In all, two firms control nearly two thirds of the market's audience.

Mr. Chairman, my district is dominated by a handful of media companies, and I am wary when further attempts at consolidation take place in a flurry of haphazard procedures and without actively addressing these particular needs for increased diversity and localism. Let me say just one word about localism. We had a brush and forest fire a couple of years ago that cut off access to our single transportation corridor down the central coast of California from all of the ranchers and farmers living in the back country, and there was panic literally about how to get in touch with some of these people. Now I know there is a possibility, with the explosion of Internet and other capabilities, but going back to the old-fashioned ways that people would find out about road closures and all kinds of other things that they need to know, I am concerned with the thrust of what is being proposed.

And I want to also join, although I know I am in danger of the euphemism the pot calling the kettle black, the alarming discord by which proceedings at the FCC are now characterized. Unfortunately, this characterization is not limited to the genesis of media-ownership proposals that we are reviewing today. More than one FCC proceeding frankly has been short-circuited by truncated or wholly foregone procedural norms. Chairman Dingell noted in his letter to Chairman Martin, reasoned analysis and debate have suf-

fered, especially of late, at the FCC. And I think we all want to take responsibility and look forward to restoring the FCC to a fair, open, and transparent agency that puts the public interest first.

So, Vice Chairman Doyle, I want to thank you for holding this hearing, and I look forward to the testimony of all of our witnesses. I yield back.

Mr. DOYLE. I thank my friend. The Chair now recognizes the gentlewoman from California, Ms. Bono.

OPENING STATEMENT OF HON. MARY BONO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFONRIA

Ms. BONO. I thank the Chair, and I would like to begin today by admitting that I share with other committee members the desire that localism and diversity be reflected in our media. However, I am also keenly aware that the traditional media are under intense pressure from the growth of new media, primarily due to the Internet, which not only contains a tremendous amount of information, but also possesses an ability to converge media platforms. In my view, the Internet is creating hyper-competition among media outlets. As such, we as policymakers need to allow traditional media to remain competitive and experience growth. We must do what we can to prevent the traditional media from being hamstrung by outdated or ill-advised rules. Let us face it. We no longer live in an era with three commercial television networks, no cable, no satellite, and no Internet.

With respect to radio, in June 2006, I joined 22 of my colleagues in writing to the FCC to encourage the Commission to allow common ownership of up to 10 radio stations in markets with 60 or more stations and ownership of up to 12 stations in markets with 75 or more stations. Today, I restate that request and ask that the FCC not overlook the need to modernize the local radio ownership structure. When I hear about rules' being modernized in one area but not in another I am disturbed, because it is foolish to think each medium operates in a vacuum. Often lost in the rhetoric of those that would like to prevent any market-based radio ownership rules is the fact that over a decade ago radio was also a struggling industry. More than half of the radio stations in the United States were operating in the red because the FCC's rules prevented rational economic behavior. Then in 1996 Congress stepped in and modestly relaxed the FCC's local radio ownership rules, a necessary move that enabled local radio to stop the bleeding and continue to provide local programming. Indeed, Congress rightfully recognized in 1996 that radio stations couldn't fulfill their public interest obligations if they couldn't even afford to stay on the air.

Despite the steps taken in 1996, we are all aware that over the last decade unimagined technology and the Internet have provided consumers with more choices from which to access news and audio entertainment. Traditional boundaries are being knocked down. Just yesterday I was listening to Marshall and Stone, a talk show in Palm Springs, while in my condo in Washington, DC. I am not alone in this practice. Wall Street understands this and continues to project little to no growth if all things remain the same. What we can expect if we continue on with an overregulated, inflexible marketplace is less money for radio stations to serve local commu-

nities, pay employees, and invest in new technologies and online and HD radio.

Increasing the radio ownership limits on markets with 60 or more stations would be a good start. In doing so, the Commission would be providing radio with greater regulatory parity in the already competitive audio marketplace.

Thank you, Mr. Chairman. I yield back my time.

Mr. MARKEY [presiding]. The gentlelady's time has expired. The Chair recognizes the gentleman from Michigan, Mr. Stupak.

Mr. STUPAK. Mr. Chairman, if I waive my opening, do I get 3 extra minutes of questions? I will waive, because I have many questions.

Mr. MARKEY. Are there any other members seeking recognition for the purpose of making an opening statement? Then the Chair will recognize himself for his opening statement, and then we will move to questions from the Federal Communications Commission.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MARKEY. Today, the subcommittee is holding an oversight hearing on the Federal Communication Commission and in particular the proposal recently put forward by Chairman Martin to relax the broadcast cross-ownership rule. Under the previous FCC Chairman, in response to pressure from special political and corporate interests, the Commission approved a drastic and indiscriminate elimination of mass media ownership rules across the board. Thankfully, that plan was thwarted from going into effect by the Court and remanded back to the Commission.

Chairman Martin's proposal wisely avoids further deregulation of radio and television ownership limits and seeks only to relax the broadcast/newspaper cross-ownership rule. After months of public and corporate input and several public hearings around the country on the general issues of media ownership, localism, and diversity, I believe Chairman Martin's specific proposal merits scrutiny and input from the public and the Congress. The process by which this proposal is considered and voted upon should reflect the importance of the subject which it addresses. Its consideration should also be informed by the public hearings conducted around the country. Postponing the planned vote from December 18 would remove clouds of procedural objections that currently obscure the specifics of the proposal and hamper efforts to directly discuss them. The chairman's plan would benefit from more time so that the public and the Congress can see clarification over several provisions that remain ambiguous or vague with respect to their intent or operational effect.

Our national media policy has long been characterized by efforts to promote the values of diversity and localism. Over time, the technologies utilized to deliver information to the public have changed. But these values remain immutable. As a matter of media policy, diversity of ownership remains our only proxy for diversity of viewpoints. Elimination of ownership limits therefore removes the best tool we have to help ensure that the public has access to a wide array of viewpoints and local news and information.

Because our system of democratic self-government relies on an informed citizenry, we must seek ways to strengthen such historic policy objectives. Excessive media concentration can represent a powerful toxin to democracy, and for this reason we are attaching great importance to the present policy undertaken at the Commission.

I again urge Chairman Martin to give the public and the Congress the time his serious proposal warrants for review and consideration. It is important to remember that the limits on mass media ownership that Chairman Martin proposes to relax were not created solely by liberals. On the contrary, both liberals and conservatives, Democrats and Republicans, have insisted on such rules and developed them in bi-partisan fashion over a number of decades. The broadcast/newspaper cross-ownership rule, for instance, was adopted by the Commission during the Nixon and Ford Administrations. The Commission chose to take action during that time due to what was occurring in communities around America.

On the local level, powerful conglomerates in the 1960s and the 1970s were amassing multiple ownership of media outlets. During that timeframe, in the top 50 television markets comprising 75 percent of the Nation's television homes, 30 of such markets had one of the local TV stations owned by a major newspaper in the same market. By 1967, some 76 communities possessed only one AM radio station and only one newspaper, and they had cross-ownership interest between the two. Fourteen small communities had one AM radio station, one television station, and only one daily newspaper, all commonly owned.

Finally, I firmly believe that the Commission must take concrete action as part of this overarching media ownership examination to improve our Nation's abysmal record with respect to minority and female ownership of broadcast licenses. Racial and ethnic minorities own a paltry three percent of full-power television licenses, even though they make up roughly one third of our population. Women, who represent half of the population, own only 5.8 percent of such licenses. The Commission is long overdue to make progress on this front.

So I want to thank our witnesses for being here today. We very much appreciate having the full Commission before us.

I am told before I introduce the Commission that the ranking member of the full committee, the gentleman from Texas, Mr. Barton, has arrived, and so I will recognize the gentleman from Texas at this time for an opening statement.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Thank you, Mr. Chairman. I am glad that you came a little late. It helped me. You probably didn't do it for that reason, but I do appreciate it.

It has been said that consistency is the hobgoblin of little minds. If that is the case, we could use a few hobgoblins at the FCC. The FCC is poised to eliminate the absolute ban on broadcast/newspaper cross-ownership at its December the 18th open meeting. That is a good thing, not a bad thing.

As Chairman Martin has rightfully pointed out, when the ban was created in the 1970s, cable served fewer than 15 percent of television households. Satellite television and the Internet did not even exist. Today, everyone except 13 percent of the television households subscribe to cable or satellite, and almost one third of Americans regularly get their news over the Internet. With all of these independent competing sources for news and information, the rationale for the ban preserving localism and diversity starts to collapse. In fact, newspapers are so strapped these days that the ban probably hinders localism and diversity. If you come from any of the big newspaper cities in America, you know what I mean. Circulation is down nearly everywhere, so they are laying off and cutting back. Big print is on a starvation diet and is not quite so big anymore. One of the real joys of the Internet age is that people decide where they get their information, not editors.

Once upon a time most people had three TV channels, one for each of the networks, and a choice perhaps of one or two newspapers. Now, they have got one local newspaper, hundreds of channels, and thousands, literally, of Internet sites. The cross-ownership ban is a relic of the past. Its time has gone, and it should be abolished. Yet it appears that at this same meeting, where Chairman Martin and the Commission apparently plans to honor the rise of vigorous media competition by eliminating a largely meaningless regulation, the FCC is not going to revise or eliminate other broadcast media ownership restrictions that the Courts have repeatedly said it has failed to justify.

Moreover, according to reports, the FCC even plans to reimpose the very cable ownership cap that a Federal Appeals Court has sent back to the FCC on first amendment grounds. It baffles me how the same FCC can appropriately eliminate regulations for some segments of industry because of increased competition and at the very same time refuse to deregulate or even impose more regulation on segments of industry that are creating that very competition.

The problem has not been lack of review or lack of information. The FCC's media ownership restrictions have seen an unprecedented amount of public scrutiny. Starting in late 2002, after two DC Circuit Court decisions ruled the FCC failed to justify its media ownership restrictions, the FCC has commissioned 12 media ownership studies, received thousands of pages of comment and nearly 2 million filings from the public, held a media ownership field hearing, and held four localism hearings. After the FCC imposed a new set of restrictions that the 3rd Circuit found unjustified in 2004, the FCC reviewed more than 130,000 new comments, released a second public notice to collect proposals for increasing minority and female broadcast ownership, conducted six field hearings on ownership, held two field hearings on localism, and received comment on more than 10 economic studies. I have a feeling that the Courts will once again conclude that the FCC has not justified imposition of the media ownership restrictions. Like I said, maybe the FCC needs a few hobgoblins just for consistency's sake.

With that, Mr. Chairman, thank you for the hearing, and I yield back.

Mr. MARKEY. I thank the gentleman very much. I note that the other gentleman from Texas, Mr. Green, has arrived. Would he want to be recognized for the purpose of making an opening statement?

OPENING STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GREEN. Just briefly, Mr. Chairman. And again, I thank you for holding this hearing. I want to welcome back our FCC Commissioners.

To start with, I share my many members' concerns about the process at the FCC, and I commend Chairman Dingell's leadership to look into the problem. The last several media ownership hearings were called on short notice, and the cable proceedings and the FCC meeting agenda has been less than open. It is not the way to keep the public's trust and certainly not the way to maintain a sense of openness in the Commission's proceedings.

But while there have been several problems recently with the current proceedings, such as short notice before the hearing in Seattle, over the years the Commission has compiled a significant record on cross-ownership. For over a decade now the FCC has been reviewing the broadcast/newspaper cross-ownership ban, and the current media ownership proceeding began nearly 18 months ago. The current proposal to lift the broadcast/newspaper cross-ownership cap would apply to only the 20 largest markets, so less than 10 percent of the designated media markets. Newspaper ad revenue and circulation has been declining for a number of years, and most data supports the fact that their own non-revenue growth is also slowing as well. I think lifting the cross-ownership cap could help traditional media outlets compete with the new competition in the marketplace while protecting diversity and localism in the market if necessary protections are included. The last major legislative attempt Congress had on media ownership was 1996 in the Telecom Act, which Congress authorized to help the financially-struggling radio industry and authorized an increase in the number of stations a single owner could acquire in the market. We saw after the 1996 Telecom Act, which lifted the cap on radio stations in our nation's largest cities to eight, an economic turnaround for many stations that had been struggling, as well as an increase in diversity of programming in many instances. Portable music players, cell phones, Internet radio, satellite radio all compete now with free over-the-air, local broadcast radio, which none of us could have expected in 1996. I have supported small increases in radio ownership in large markets because I believe the FCC's limits on radio ownership act as a cap on the number of formats that are available in a local market. The station owner can only own one station, and that owner will program the most popular and the most profitable format. If the owner can program two stations, then the owner will pick the top two formats. The limit on terrestrial radio even in the largest market is still eight stations, while satellite radio has hundreds of channels, and the Internet radio channels are basically infinite.

If we really want to get more format diversity and free over-the-air, the way to do it is allow for radio to compete on a playing field

that is less minimally leveled by allowing radio to own a few more stations in a larger market. This will give the owners in these markets the opportunity to come up with new formats to meet the needs of their listeners. Since our experience in 1996 demonstrates the way the market is operated, in 1995 there were only 32 radio formats, but after Congress relaxed the ownership restriction, that number is at 85 today. And I am interested in hearing from our Commissioners what their thoughts are in relaxing ownership rules in the largest markets. That is where there are significant underserved populations in need of radio stations in some areas, such as Spanish-language stations that are formatted to meet their needs.

Again, I thank the chairman of our subcommittee for holding the hearing. I look forward to our witnesses, and I yield back my time.

Mr. MARKEY. The gentleman's time has expired. The Chair notes that the gentleman from Nebraska, Mr. Terry, has arrived. Would the gentleman want to be recognized for the purpose of making an opening statement?

Mr. TERRY. Waive.

Mr. MARKEY. The gentleman does not. The Chair does not see any other members who seek recognition at this time. So we will turn to our panel. We thank the entire Federal Communications Commission for coming before this subcommittee today on such an important issue. We thank you, Mr. Chairman, for your work and the other members of the Commission on telecommunications issues on an ongoing basis. It has been a particularly hectic time at the Federal Communications Commission, and the next few weeks have the prospect of continuing that trend. And so we know you are all very busy, but of course, these issues are central to congressional policymaking as well.

So let me now recognize you, Mr. Chairman, and whenever you are ready, please begin.

Mr. MARTIN. Good morning, Chairman Markey, Ranking Member Upton, Ranking Member Barton——

Mr. MARKEY. Could you just hold for 1 second? I see the gentleman from Illinois, Mr. Rush, has arrived. Does the gentleman wish to make an opening statement?

Mr. RUSH. No, but I have one that I have submitted for the record.

Mr. MARKEY. We will have the gentleman from Illinois' statement inserted into the record at the appropriate point.

Mr. MARKEY. Again, we come back to you, Chairman Martin. Whenever you are ready, please begin.

STATEMENT OF KEVIN J. MARTIN, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. MARTIN. Thank you for the opportunity to be here today to discuss the Commission's review of the rules governing media ownership.

I have a brief opening statement, and I certainly look forward to answering any questions you might have.

A robust marketplace of ideas is by necessity one that reflects varied perspectives and viewpoints. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. To that

end, the FCC's media ownership rules are intended to further three core goals: competition, diversity, and localism.

Section 202(h) of the 1996 Telecommunications Act, as amended, requires the Commission to periodically review its broadcast ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." The statute then goes on to read, "The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

In 2003, the Commission conducted a comprehensive review of its media ownership rules, significantly reducing the restrictions on owning television, radio, and newspapers in the same market and nationally. Congress and the Courts overturned almost all of those changes. There was one exception. The Court specifically upheld the Commission's determination that the absolute ban on newspaper/broadcast cross-ownership was no longer necessary. The court agreed that "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."

It has been over 4 years since the Third Circuit stayed the Commission's previous rules and over 3 years since the Third Circuit instructed the Commission to respond to the Court with amended rules. It is against this backdrop that the FCC undertook a lengthy, spirited, and careful reconsideration of our media ownership rules, and I am pleased to have this opportunity to discuss the process and the proposed rule changes with you today.

In 2003, when we last conducted a review of the media ownership rules, many expressed concern about the process. Specifically, people complained that there were not enough hearings, not enough studies, and not enough opportunity for comments and public input. When we began 18 months ago, the Commission committed to conducting this proceeding in a manner that was more open and more transparent and allowed for public participation.

I believe that is what the Commission has done. First, we provided for a longer public comment period of over 120 days, which we subsequently extended, and we have held six hearings across the country at a cost of more than $200,000, and we held two additional hearings specifically focused on localism. The goal of these hearings was to more fully and directly involve the American people in the process. Public input is critical to our process and informs the Commission's thinking on these and other issues.

We listened to and recorded thousands of oral comments and allowed for extensions of time to file written comments on several occasions. To date, we have received over 166,000 written comments in this proceeding. We also spent $700,000 on 10 independent studies. I solicited and incorporated input from all of my colleagues on the Commission about the topics and authors of those studies, and we put those studies out for comment and made all the underlying data available to the public.

I also committed to completing the Notice of Inquiry on localism, something that was initiated but stopped under the previous Chairman. This included holding the two remaining hearings. In all told, the Commission devoted more than $160,000 to hear from expert witnesses and members of the public on broadcasters' service to their local communities.

I presented my colleagues with a final report containing specific recommendations and proposed rule changes reflective of the comments that were produced by the record of that inquiry.

Finally, although not required, I took the unusual step of publishing the actual text of the one rule I thought we should amend. Because of the intensely controversial nature of the media ownership proceedings and my desire for an open and transparent process, I wanted to ensure that members of Congress and the public had the opportunity to see and review the actual rule prior to any Commission action.

The media marketplace is considerably different than it was when the newspaper/broadcast cross-ownership rule was put in place more than 30 years ago. Back then, cable was a nascent service, satellite television did not exist, and there was no Internet. Consumers have benefited from the explosion of new sources of news and information, but according to almost every measure, newspapers are struggling. At least 300 daily papers have stopped publishing over the past 30 years, their circulation is down, and their advertising revenue is shrinking.

At the Boston Globe, revenue declined nine percent in 2006. The Minneapolis Star Tribune announced an ad and circulation decline of $64 million from 2004 to 2007, and the San Francisco Chronicle reported in 2006 that the paper was losing $1 million a day. Newspapers in financial difficulty oftentimes have little choice but to scale back their local newsgathering. In 2007 alone, 24 newsroom employees at the Boston Globe were fired, including two Pulitzer Prize-winning reporters. The Minneapolis Star Tribune fired 145 employees, including 50 from their newsroom. The Detroit Free Press and the Detroit News announced cuts totaling 110 employees, and the San Francisco Chronicle plans to cut 25 percent of its newsroom staff.

Without newspapers and their local newsgathering efforts, we would be worse off. We would be less informed about our communities and have fewer opportunities and outlets for the expression of independent thinking and a diversity of viewpoints.

If we believe that newspaper journalism plays a unique role in the functioning of our democracy, we cannot turn a blind eye to the financial condition in which these companies find themselves. Our challenge is to address the viability of newspapers and their local newsgathering efforts while preserving our core values of diversity of voices and a commitment to localism in the media marketplace.

Allowing cross-ownership may help to forestall the erosion of local news coverage by enabling companies to share their local newsgathering costs across multiple media platforms. Indeed, the newspaper/broadcast cross-ownership rule is the only one not to have been updated in three decades, despite that fact that FCC Chairmen, both Democrat and Republican, have advocated doing so.

As a result, I proposed that the Commission amend the 32-year-old absolute ban on newspaper/broadcast cross-ownership and allow a newspaper to purchase a broadcast station, but not one of the top four television stations and only in the largest 20 cities in the country, as long as eight independent voices remain. This relatively minor loosening of the ban on newspaper/broadcast cross-

ownership in markets where there are many voices and sufficient competition would help strike a balance between ensuring the quality of local newsgathering while guarding against too much concentration.

In contrast to the actions of the Commission 4 years ago, we would not loosen any other ownership rule. We would not permit companies to own any more radio or television stations either in a single market or nationally. Indeed, this proposed rule is notably more conservative in approach than the remanded newspaper/broadcast cross-ownership rule that the Commission adopted in 2003. I believe that the revised rule would balance the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity.

I see that my time has expired. Establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities is an extremely important goal for the Commission and one of the principles upon which our media ownership rules are built. Last week, the Commission also adopted an order requiring television broadcasters to better inform their communities about how the programming they air serves them.

In addition, I have circulated a Localism Report and NPRM that addresses other actions the Commission can and should take to ensure that broadcasters are responsive to their local communities. And in order to ensure that the American people have the benefit of a competitive and diverse media marketplace, we need to create more opportunities for different, new, and independent voices to be heard.

The Commission has recently taken steps to address the concern that there are too few local outlets available for minorities and new entrants. Last week, we significantly reformed our low-power FM rules in order to facilitate LPFM stations' access to limited radio spectrum. The Commission also took significant actions adopting an order that will facilitate the use of leased access channels for diverse viewpoints.

I have also circulated an order that proposes to adopt rules that are designed to promote diversity by increasing and expanding broadcast ownership opportunities for small businesses, including minority and women-owned businesses. The order adopts a significant number, a majority, of the recommendations made to the Commission by the Minority Media and Telecommunications Council and our advisory committee on diversity. The items I have circulated on localism and minority ownership are important steps to ensure that broadcasters fulfill their obligations to serve their local communities and to expand opportunities for entry into media ownership and media programming.

Regardless of whether the Commission acts on the newspaper cross-ownership rule, these are important actions that the Commission should address. It is my sincere belief that all of these proposals taken together will serve the public interest, providing for competition, localism, and diversity in the media. My proposed change to the newspaper/broadcast cross-ownership rule addresses the needs of the newspaper industry and helps preserve their local

newsgathering, while at the same time preserving our commitment to localism, diversity, and competition.

It is not an exaggeration to say that the media ownership rules are the most contentious and potentially divisive issue to come before the Commission. It certainly was in 2003, and many of the same concerns about consolidation and its impact on diversity and local news coverage are being voiced today. And it is no wonder. The decisions we make about our ownership rules are as critical as they are difficult, and the media touches almost every aspect of our lives. We are dependent upon it for our news, our information, and our entertainment. And indeed, the opportunity to express these diverse viewpoints does lie at the heart of our democracy.

So the Commission has no more important responsibility than to strike the right balance between ensuring our rules recognize the opportunities and challenges of today's media marketplace and prioritize the commitment to diversity and localism.

I look forward to working with my fellow Commissioners in the upcoming weeks to adopt rules consistent with these goals, and I certainly would be happy to answer any questions about the proposals I put forth. Thank you.

[The prepared statement of Mr. Martin follows:]

Written Statement

of

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission

Before the
Committee on Energy and Commerce,
Subcommittee on Telecommunications and the Internet
U.S. House of Representatives

December 5, 2007

Introduction

Good morning Chairman Markey, Chairman Dingell, Ranking Member Upton, Ranking Member Barton, and Members of the Committee. Thank you for the opportunity to be here with you today to discuss the Commission's review of the rules governing media ownership. I have a brief opening statement and then I look forward to answering any questions you may have.

A robust marketplace of ideas is by necessity one that reflects varied perspectives and viewpoints. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. To that end, the FCC's media ownership rules are intended to further three core goals: competition, diversity, and localism.

Section 202(h) of the 1996 Telecommunications Act, as amended, requires the Commission to periodically review its broadcast ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." It goes on to read, "The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

In 2003, the Commission conducted a comprehensive review of its media ownership rules, significantly reducing the restrictions on owning televisions, radio and newspapers in the same market and nationally. Congress and the court overturned almost all of those changes.

There was one exception. The court specifically upheld the Commission's determination that the absolute ban on newspaper/broadcast cross-ownership was no longer necessary. The court agreed that "...reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest." It has been over four years since the Third Circuit stayed the Commission's previous rules and over three years since the Third Circuit instructed the Commission to respond to the court with amended rules.

It is against this backdrop that the FCC undertook a lengthy, spirited, and careful reconsideration of our media ownership rules. I am pleased to have this opportunity to discuss the process and the proposed rule change with you today.

The Media Ownership Proceeding

In 2003, when we last conducted a review of the media ownership rules, many expressed concern about the process. Specifically, people complained that there were not enough hearings, not enough studies, and not enough opportunity for comments and public input.

When we began eighteen months ago, the Commission committed to conducting this proceeding in a manner that was more open and more transparent and allowed for public participation.

I believe that is what the Commission has done. First, we provided for a longer public comment period of 120 days, which we subsequently extended. We held six hearings across the country at a cost of more than $200,000: one each in Los Angeles, California, Nashville, Tennessee, Harrisburg, Pennsylvania, Tampa Bay, Florida, Chicago, Illinois, and Seattle, Washington. And, we held two additional hearings specifically focused on localism in Portland, Maine and in Washington, DC. The goal of these hearings was to more fully and directly involve the American people in the process. Public input is critical to our process and informs the Commission's thinking on these and other issues.

We listened to and recorded thousands of oral comments, and allowed for extensions of time to file written comments on several occasions. To date, we've received over 166,000 written comments in this proceeding.

We spent almost $700,000 on ten independent studies. I solicited and incorporated input from all of my colleagues on the Commission about the topics and authors of those studies. We have put those studies out for comment and made all the underlying data available to the public.

I also committed to completing the Notice of Inquiry on localism, something that was initiated but stopped under the previous Chairman. This included holding the two remaining hearings. All told, the Commission devoted more than $160,000 to hear from expert witnesses and members of the public on broadcasters' service to their local communities. In addition, the Commission hired Professor Simon Anderson of the University of Virginia to produce an academic paper on "Localism and Welfare", which was made available on our website last December. I have presented to my colleagues a final a report containing specific recommendations and proposed rule changes reflective of the comments and record produced by the inquiry.

Finally, although not required, I took the unusual step of publishing the actual text of the one rule I thought we should amend. Because of the intensely controversial nature of the media ownership proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review the actual rule prior to any Commission action.

The Media Market Place Today

The media marketplace is considerably different than it was when the newspaper/broadcast cross-ownership rule was put in place more than thirty years ago. Back then, cable was a nascent service, satellite television did not exist and there was no Internet. Consumers have benefited from the explosion of new sources of news and information. But according to almost every measure newspapers are struggling. At least 300 daily papers have stopped publishing over the past thirty years. Their circulation is down and their advertising revenue is shrinking.

At *The Boston Globe*, revenue declined 9% in 2006. The Minneapolis *Star Tribune* announced an ad and circulation revenue decline of $64 million from 2004 to 2007. *The Denver Post* saw a revenue decline of 15%. Tribune, owner of the *Los Angeles Times*, saw ad revenues decline 6% in the last year—a total loss of $47 million. At *USA Today*, the most-read paper in the nation, revenue declined 6.6% over the past year as the total number of paid advertising pages fell from 929 to 803. And the *San Francisco* Chronicle reported in 2006 that the paper was losing $1 million dollars—*a day*.

Newspapers in financial difficulty oftentimes have little choice but to scale back local news gathering to cut costs. *USA Today* recently announced it would be cutting 45 newsroom positions—nearly 10% of its total staff. In 2007 alone, 24 newsroom staff at *The Boston Globe* were fired, including 2 Pulitzer Prize-winning reporters; the Minneapolis *Star Tribune* fired 145 employees, including 50 from their newsroom; 20 were fired by the *Rocky Mountain News*; the *Detroit Free Press* and *The Detroit News* announced cuts totaling 110 employees; and the *San Francisco Chronicle* planned to cut 25% of its newsroom staff.

Without newspapers and their local newsgathering efforts, we would be worse off. We would be less informed about our communities and have fewer outlets for the expression of independent thinking and a diversity of viewpoints. I believe a vibrant print press is one of institutional pillars upon which our free society is built. In their role as watchdog and informer of the citizenry, newspapers often act as a check on the power of other institutions and are the voice of the people.

If we believe that newspaper journalism plays a unique role in the functioning of our democracy, we cannot turn a blind eye to the financial condition in which these companies find themselves. Our challenge is to address the viability of newspapers and their local news gathering efforts while preserving our core values of a diversity of voices and a commitment to localism in the media marketplace. Given the many concerns about the impact of consolidation, I recognize this is not an easy task. But I believe it is one that we can achieve.

Allowing cross-ownership may help to forestall the erosion in local news coverage by enabling companies to share these local news gathering costs across multiple media platforms. Indeed the newspaper/broadcast cross-ownership rule is the only one not to have been updated in 3 decades, despite that fact that FCC Chairmen – both Democrat and Republican—have advocated doing so. In fact, Chairman Reed Hundt argued for relaxation in 1996 noting, "the newspaper/broadcast cross ownership rule is right now impairing the future prospects of an important source of education and information: the newspaper industry." *Application of Capital Cities/ABC, Inc.*, Memorandum Op. & Order, 11 FCC Rcd 5841, 5906 (1996). And as I mentioned, in 2003 the Third Circuit recognized this fact when it upheld the Commission's elimination of the newspaper/broadcast cross-ownership ban, saying that it was "no longer in the public interest."

As a result, I proposed the Commission amend the 32-year-old absolute ban on newspaper/broadcast cross-ownership. This proposal would allow a newspaper to purchase a broadcast station—but not one of the top four television stations—in the largest 20 cities in the country as long as 8 independent voices remain. This relatively minor loosening of the ban on newspaper/broadcast cross-ownership in markets where there are many voices and sufficient competition would help strike a balance between ensuring the quality of local news while guarding against too much concentration.

In contrast to the FCC's actions 4 years ago, we would not loosen any other ownership rule. We would not permit companies to own any more radio or television stations either in a single market or nationally. Indeed this proposed rule change is notably more conservative in approach than the remanded newspaper/broadcast cross-ownership rule that the Commission adopted in 2003. That rule would have allowed transactions in the top 170 markets. The rule I propose would allow only a subset of transactions in only the top 20 markets, which would still be subject to an individualized determination that the transaction is in the public interest.

The revised rule would balance the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity.

Proposed Newspaper/Broadcast Cross-ownership Rule

Under the new approach, the Commission would presume a proposed newspaper/broadcast transaction is in the public interest if it meets the following test:

(1) The market at issue is one of the 20 largest Nielsen Designated Market Areas ("DMAs");

(2) The transaction involves the combination of a major daily newspaper and one television or radio station;

(3) If the transaction involves a television station, at least 8 independently owned and operating major media voices (defined to include major newspapers and full-power commercial TV stations) would remain in the DMA following the transaction; and

(4) If the transaction involves a television station, that station is not among the top four ranked stations in the DMA.

All other proposed newspaper/broadcast transactions would continue to be presumed *not* in the public interest. Moreover, notwithstanding the presumption under the new approach, the Commission would consider the following factors in evaluating whether a particular transaction was in the public interest:

(1) The level of concentration in the DMA;

(2) A showing that the combined entity will *increase* the amount of local news in the market;

(3) A commitment that both the newspaper and the broadcast outlet will continue to exercise its own independent news judgment; and

(4) The financial condition of the newspaper, and if the newspaper is in financial distress, the owner's commitment to invest significantly in newsroom operations.

Ensuring Localism

The Commission also needs to ensure that communities are served by local broadcasters who are responsive to their needs. Establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities is an extremely important goal for the Commission.

Last week, the Commission adopted an order requiring television broadcasters to better inform their communities about how the programming they air serves them. Specifically, television stations will file a standardized form on a quarterly basis that details the type of programming that they air and the manner in which they do it. This form will describe a host of programming information including the local civic affairs, local electoral affairs, public service announcements (whether sponsored or aired for free) and independently produced programming. With a standardized form and public Internet access to it, the public and government officials will now be able to engage them directly in a discussion about exactly what local commitments broadcasters are and/or should be fulfilling.

In addition, I have circulated a Localism Report and NPRM that addresses other actions the Commission can take to ensure that broadcasters are serving the interests and needs of their local communities. The rule changes that I propose are intended to promote localism by providing viewers and listeners greater access to locally responsive programming including, but not limited to, local news and other civic affairs programming.

Among other actions, the item tentatively concludes that:

- Qualified LPTV stations should be granted Class A status, which requires them to provide 3 hours of locally-produced programming;
- licensees should establish permanent advisory boards in each community (including representatives of underserved community segments) with which to consult periodically on community needs and issues; and
- the Commission should adopt processing guidelines that will ensure that all broadcasters provide a significant amount of locally-oriented programming.

Increasing Diversity

In order to ensure that the American people have the benefit of a competitive and diverse media marketplace, we need to create more opportunities for different, new and independent voices to be heard. The Commission has recently taken steps to address the concern that there are too few local outlets available to minorities and new entrants.

Last week, we significantly reformed our Low Power FM rules in order to facilitate LPFM stations' access to limited radio spectrum. The new order streamlines and clarifies the process by which LPFM stations can resolve potential interference issues with full-power stations and establishes a going-forward processing policy to help those LPFMs that have regularly provided eight hours of locally originated programming daily in order to preserve this local service. The new rules are designed to better promote entry and ensure local responsiveness without harming the interests of full-power FM stations or other Commission licensees.

I believe it is important for the Commission to foster the development of independent channels and voices. Again, last week, the Commission took significant action adopting an order that will facilitate the use of leased access channels. Specifically, the order made leasing channels more affordable and expedited the complaint process. These steps will make it easier for these independent programmers to reach local audiences.

I have also circulated an order that proposes to adopt rules that are designed to promote diversity by increasing and expanding broadcast ownership opportunities for small businesses, including minority and women-owned businesses.

This item proposes to give small businesses and new entrants that acquire expiring construction permits additional time to build out their broadcast facilities. It also proposes to revise the Commission's equity/debt attribution standard to facilitate investment in small businesses in order to promote diversity of ownership in broadcast facilities. In addition, among other things, the item would adopt a rule barring race or gender discrimination in broadcast transactions, adopt a "zero-tolerance" policy for ownership fraud, and commits to the Commission convening an "Access-to Capital" conference in the first have of 2008 in New York City. Finally, the item proposes to permit broadcasters to lease their unused spectrum to designated entities including minority and women entrepreneurs to put out their own additional programming stream. As with the localism item, I am hopeful that my colleagues will move forward on these proposals quickly.

The Commission is also working to ensure that new entrants are aware of emerging ownership opportunities in the communications industry. Recently, I sent a letter to our Advisory Committee on Diversity. I suggested that they help create educational conferences that will encourage communications companies that engage in transactions and license transfers to include small businesses, minorities, and women

entrepreneurs, and other designated entities during negotiations on assets and properties identified for divestiture.

Conclusion

It is my sincere belief that all of these proposals together will serve the public interest, providing for competition, localism, and diversity in the media. My proposed change to the newspaper/broadcast cross ownership rule addresses the needs of the newspaper industry and helps preserve their local news gathering, while at the same time preserving our commitment to localism, diversity, and competition.

It is not an exaggeration to say media ownership is the most contentious and potentially divisive issue to come before the Commission. It certainly was in 2003 and many of the same concerns about consolidation and its impact on diversity and local news coverage are being voiced today. And it is no wonder. The decisions we will make about our ownership rules are as critical as they are difficult. The media touches almost every aspect of our lives. We are dependent upon it for our news, our information and our entertainment. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. So the Commission has no more important responsibility than to strike the right balance between ensuring our rules recognize the opportunities and challenges of today's media market place and prioritizing the commitment to diversity and localism.

I look forward to working with my fellow Commissioners in the upcoming weeks to adopt rules consistent with these goals.

With that, I would be happy to answer any questions you may have.

Mr. MARKEY. Thank you, Mr. Chairman, very much. Now we will hear from the senior Democrat on the Federal Communications Commission, Commissioner Michael Copps. Welcome, sir.

STATEMENT OF MICHAEL J. COPPS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. COPPS. Thank you. Good morning Chairman Markey, Ranking Members Barton and Upton, members of the committee.

This oversight hearing could not have come at a better time. The FCC is lurching dangerously off course, and I fear that at this point only congressional oversight can put us back on track. The chairman is proposing that just 2 weeks from now the FCC open the door to newspaper/broadcast combinations in every market in the country. At the same time, we have given short shrift to pressing problems like the sad state of minority ownership of U.S. media properties, the obvious decline of localism in our broadcast programming, and a DTV transition that holds real potential for television outages and the consumer backlash the likes of which you and I haven't seen for a long, long time. My written statement discusses how we are flubbing up I believe the DTV transition.

The ownership proposal in front of the Commission has been portrayed as a moderate relaxation of the newspaper/broadcast cross-ownership ban in the 20 largest markets. But look carefully at the fine print. The proposal would actually apply the same test in every market in the country. That is right. Any station can merge with any newspaper in any market. The only difference is that in the top 20 markets you start with a presumption that you meet the test, while in the other markets you don't.

But here is the rub. The four factors proposed by the chairman are about as tough as a bowl of Jell-O. You don't even have to meet them all. It is just a list of things the FCC will consider. Given how the FCC has considered media regulation in recent years, I have about as much confidence that a proposed combination will be turned down as I do that the next Commission meeting will start on time.

The ownership process here has been no better than the proposed substantive outcome. The Commission conducted hearings reluctantly on ownership and localism, yet I cannot find anywhere in the pending item the citation of a single citizen's testimony. Was public comment without value? Is such comment extraneous to our decisionmaking? And why were some hearings called with such little notice that people often could not attend? There are other process breakdowns during this proceeding which time precludes my discussing, inadequate studies, items written and even circulated before the comment period closes, and so on. We need a process that allays distrust rather than one that creates it.

To me, this is just nuts. We are rushing in to encourage more consolidation without addressing the real damage consolidation has already caused. We haven't systematically addressed the fact that in a nation that is almost one-third minority, people of color own 3.26 percent of all full-power commercial television stations, women, five percent. And we wonder why minority issues and minority contributions to our culture gets such short shrift and why minorities are so often depicted in caricature. Is our response to

this really going to be to take the smaller stations where the few lucky minority owners happen to exist and put them now into a big media bazaar and to put such stations totally out of reach of aspiring women and minority broadcast entrepreneurs who still don't have the incentives that they require to become owners? Is the response to the decline of localism really going to be to encourage more one-media company towns often controlled from afar rather than instituting a real, honest-to-goodness licensing renewal system where the presence of localism and diversity determine whether a broadcaster gets to keep his license? And please don't tell me that a little localism tweak here or there can fix the problem, so go ahead and vote to loosen the rules now, and we will be back to do a better job later. I think we should all want a comprehensive localism package now such as we were told was coming when the localism proceeding was initiated rather than rushing ahead to encourage more of the consolidation that did so much to diminish localism in the first place.

What we have here is an unseemly rush to judgment, a stubborn insistence to finish the proceeding by December 18th, public and congressional opinion be damned. When overwhelming majorities of citizens oppose this, when members of Congress write to caution us every day, and when legislation to avoid a nine-car train wreck is being actively considered on Capitol Hill, I think the FCC has a responsibility to stop, look, and listen.

The stakes are enormous. I know a little bit about the history of this country, and I know how precious media is. The diversity and creativity of our culture can be encouraged or discouraged by media. Media can reflect and nourish these things or shove them aside, and there has been too much shoving aside in recent years. Our civic dialogue can be either expanded or dumbed down by media. Lately our policies have encouraged an erosion of the civic dialogue upon which the future of our democracy depends.

I hope the committee will act to save the Commission from itself. Thank you for the opportunity to testify, and I look forward to our discussion.

[The prepared statement of Mr. Copps follows:]

TESTIMONY OF FCC COMMISSIONER MICHAEL J. COPPS
U.S. HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
"OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION: MEDIA OWNERSHIP"
DECEMBER 5, 2007

Good morning Chairman Dingell, Chairman Markey, Ranking Members Barton and Upton and Members of the Committee.

This oversight hearing could not have come at a better time. The FCC is lurching dangerously off course, and I fear that at this point only Congressional oversight can put us back on track. The Chairman is proposing that, just two weeks from now, the FCC open the door to newspaper-broadcast combinations in every market in the country. At the same time, we have given short shrift to pressing problems like the sad state of minority ownership of U.S. media properties, the obvious decline of localism in our broadcast programming, and a DTV transition that holds real potential for television outages and a consumer backlash the likes of which you and I haven't seen for a long, long time.

Let me begin with media ownership. The proposal in front of the Commission has been portrayed as a "moderate" relaxation of the newspaper-broadcast cross-ownership ban in the 20 largest markets. But look carefully at the fine print. The proposal would actually apply the ***same test in every market in the country***. That's right—***any*** station can merge with ***any*** newspaper in ***any*** market in the country. The only difference is that in the top 20 markets you start with a presumption that you meet the test, while in the other markets you don't.

And that's the rub. The four factors proposed by the Chairman are about as tough as a bowl of Jell-O. You don't even have to meet them all—it's just a list of things the

FCC will "consider." Given how the FCC has "considered" media regulation in recent years, I have about as much confidence that a proposed combination will be turned down as I do that the next Commission meeting will start on time.

This is not the only example of media regulation that seems like a chapter from Alice in Wonderland. Just last week, an FCC majority ostensibly "denied" Tribune a waiver before turning around and granting a two-year waiver if and when Tribune files an appeal. The majority turned these unprecedented legal summersaults to push Tribune to challenge the newspaper-broadcast cross ownership ban in a court they think may be more sympathetic to their cause than the Third Circuit.

There's still more evidence of the real agenda at play. I've given Chairman Martin credit for holding six media hearings around the country. No one knows better than the American people whether they are being served by their local media. And at each stop, all of the Commissioners agreed—the public needs to be heard before the FCC acts on a subject as important as the American media.

Hundreds and hundreds of citizens came out at great inconvenience to themselves—and often waited for hours—to provide their testimony. Throughout the process, many openly questioned whether the hearings were real or just cover for a pre-determined outcome. Those questions gained credence last month when our last media ownership meeting was announced for Seattle with only one week's notice. Well, last week we may have gotten our answer. I went through the draft Order to see how it handled the hundreds of public statements at these hearings. While there is a passing reference to the public hearings, ***not a single citizen's testimony is specifically cited or discussed.*** I was flabbergasted. The whole point of these hearings was to gather

evidence from the American people—and the Order does not find a single comment worthy of mention?

So then I went through the draft to look for the public input from our six separate ***localism*** field hearings, which the *Further Notice* stated would be considered as part of the media ownership record. Again, ***not a single citizen's testimony is specifically cited or discussed.*** It's hard to reach any conclusion other than public comment is largely extraneous to the process. What else are we to think when a draft Order is circulated two weeks ***before*** public comment is due on the proposal?

I realize we are not taking a public opinion poll in this proceeding. But public comment deserves more consideration than this. As anyone who attended these hearings can tell you, calls for more media consolidation were few and far between. Indeed, a recent survey finds that 70 percent of Americans view media consolidation as a problem. And by an almost two-to-one margin, they believe newspapers should not own TV stations in the same market and they want laws to make sure that can't happen. Those poll numbers are consistent across the political spectrum. So this is no red state-blue state issue. It is an all-American grassroots issue.

I recognize that there is another possibility—that this is simply a rush job to be completed any way possible by December 18, so there just wasn't enough time to consider the full record. Whatever the reason, there is only one way to do this job and that is to do it right. The issues are too important to address in a slapdash manner.

No one on this Commission, even if some feel differently about the pros and cons of changing the ownership rules, should want to perpetuate those kinds of appearance

issues about the FCC. We need a process that allays fears rather than one that creates them.

In the meantime, I believe that there are two policy goals on which we need to make real progress—minority and female ownership is one, localism is the other. These issues have been languishing for years at the FCC. We always seem to be running a fast-break when it comes to more media consolidation, but it's the four-corner stall when it comes to minority and female ownership and ensuring that broadcasters serve their local communities.

Racial and ethnic minorities make up 33 percent of our population but they own only 3.26% of the full-power commercial TV stations. And that number is plummeting. Free Press just recently released a study showing that during the past year the number of minority-owned full-power commercial television stations declined by 8.5%, and the number of African American-owned stations decreased ***by nearly 60%***. It is almost inconceivable that this shameful state of affairs could be getting worse; yet here we are.

It may be difficult for you to believe, but the Commission doesn't even have an accurate count of minority and female ownership. That is indicative of the lack of priority the Commission has attached to minority ownership in recent years.

There are recommendations that have been presented to address the issue, both by outside commenters and our own Diversity Committee. These need to be put together in a comprehensive and systematic response to a problem that is a national disgrace. And it is a national disgrace to have a media environment that is so blatantly unreflective of how we look as a nation. I support Commissioner Adelstein's call, joined by many others, for an independent panel to review the dozens of proposals before us. We need to fix this

problem ***before*** voting on any proposals permitting big media to get even bigger. Why should we change the ownership rules now, putting into play the very stations that small, independent, minority broadcasters could have a shot at if they had the proper incentives? Why would we even consider that?

It's the same story on localism. A draft Notice of Proposed Rulemaking was recently circulated, apparently on the basis that asking questions is sufficient to "check the box" so a Commission majority can move forward to loosen the newspaper-broadcast cross-ownership ban. But localism must never be seen as a means to an end—it is an end in itself. It is at the heart of what the public interest is all about. All deliberate speed in getting some localism back? By all means. A rush to judgment to clear the way for more big media mergers? No way.

And in all this haste to give big media a nice present for the holidays, critical issues are being neglected. We are 14 short months from a massive DTV transition that will directly affect millions of American households. We have one chance to get this right. Unlike many countries that are taking a phased approach, we are turning off analog signals in every market in the country on a single date.

I recently traveled to the United Kingdom to witness the first stage of their DTV transition. I was concerned before going over there; I am thoroughly alarmed now. The UK is taking the transition seriously, and has put together the kind of well-funded and well-coordinated public-private partnership that I, and many of you, have been calling for over here.

There are two basic things that need to happen for a successful transition on February 17, 2009. Number one, we have to get consumers ready. We have a pending

consumer education proceeding that could help ensure that the message is getting out in a coordinated and effective way. But no vote has been scheduled to get it done.

The second thing that has to happen is broadcasters need to get ready. Hundreds of stations need to take significant action in the next 14 months. Things like new antennas and transmitters, new tower construction, and new transmission lines—all of which can require financing, zoning approvals, tower crews, or international coordination. But many broadcasters need to know what the technical rules of the road are going to be before they can move forward. Those issues are teed up in a proceeding called the "Third DTV Periodic Review." That proceeding also proposed to have every station in the country file a progress report—where they stand now, what more they need to do, and how they propose to get there. The record in the Third Periodic Review has been closed for months. No one but the FCC can make these decisions. Indeed, the original proposal called for the station reports to be filed by December 1 of this year so we could report to Congress about potential trouble spots with enough time to take action.

And yet—inexplicably—no draft Third Periodic Order has yet been circulated to the Commission for a vote. We need to address these issues ***now***. Already, I fear that many broadcasters simply aren't going to make it. If we don't start making the DTV transition a national priority, we will almost certainly have a 9-car train wreck on our hands. And the American people will be looking for someone to blame. Those of us who plan to be on duty in February 2009 are going to need some real good answers.

Thank you for the opportunity to testify and I look forward to your questions.

Mr. MARKEY. Thank you, Commissioner Copps, very much. Our next witness is Commissioner Deborah Tate, from the Commission as well. We welcome you back, Commissioner Tate. Whenever you are ready, please begin.

STATEMENT OF DEBORAH TAYLOR TATE, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Ms. TATE. Good morning, Mr. Chairman and ranking members. It is an honor to appear before you today and an honor to be a member of the Federal Communications Commission.

Since arriving in January 2006, there have been literally hundreds of issues before us, some ministerial that are important to parties who are affected, and others of national and international significance which foster competition, encourage innovation, and help ensure our global competitiveness for years to come. A few of the issues you all have noted this morning will have lasting impact on our country, from the remand of our media ownership rules to coordinating with the industry for a successful DTV transition, from our fiscal responsibility in managing spectrum to encouraging the nationwide deployment of broadband services, especially as it relates to the interoperability of public safety.

These have been at the top of our agenda since I arrived. They are among the most historically significant that the Commission will make and command your attention, ours, and the public's. We are here today to seek and listen to your input on one of these and that is media ownership.

Since October 2006, as has been noted, we have held six public hearings across the entire country, including my home town of Nashville. These lengthy hearings from sea to shining sea provided an opportunity for Americans to have unprecedented access to a governmental body about the role that media plays in their lives and their opinion regarding ownership of media outlets.

Over my 20-plus years of public service at all levels of government I cannot remember a single time that an agency expended this much institutional energy and investment on an issue or was this open and thorough regarding a matter of public interest. We invited comments not only of course from the general public but also from expert panels of economists, producers, musicians, directors, professors, students, small and large broadcasters, and of course many, many community organizations. During the roughly year and a half of on-going hearings, we also had 10 media studies by preeminent economists, academics, and researchers.

Never before, as many of you all have noted, has there been so much competition for the eyes and ears of American consumers of news and information, wherever, whenever, and however, on any device that they may choose. This competition is cross-platform, and it includes newspapers, broadcasters, cable, satellite, wireline networks and, increasingly, mobile networks. And as more platforms offer access to the Internet, those sources only expand.

Like many of you, I am an avid consumer of news, but my list of news sources pales in comparison to those that the younger generation use. So we need to not only structure our media ownership rules to account for the needs of today and our generation but of the next generation, the I-generation that lives in an online,

YouTube world, with access to local, national, and international news sources that we never dreamed of at their ages.

I share many of the concerns that commenters made regarding the negative impacts media can have, from extreme violence to exceedingly coarse language to the impact on childhood obesity. I also continue to be troubled, as many of you all have noted, with the alarmingly low rates of female and minority ownership, and I have tried to work with others to find solutions, both inside and outside the Commission, which can have a positive impact as we go forward, from the NAB's Education Foundation series for women and to the Hispanic Broadcasters Association Financing and Capitalization Seminar. And I have worked with the National Association of Black Owned Broadcasters at their outreach events.

I am very pleased that the Commission is presently considering a number of proposals put forward by the chairman to assist women and minorities, specifically with both capital and debt financing. In addition, I have offered to lend my support to an annual conference engaging partners and potential financiers. Another recommendation from the Commission is allowing women and minorities to purchase expiring construction permits. Finally, we continue to discuss changing our Equity-Debt Plus rule.

Let there be no doubt that women, many of whom are African-American, are succeeding in the industry. Look, for example, at Cathy Hughes of Radio One, Susan Davenport at Sheridan, Caroline Beasley, and Susan Patrick. But I hope that we will continue to employ every possible avenue to have a more positive impact on the diversity of both voices and ownership.

I look forward to hearing your thoughts today and working with you on these and many other important issues. Thank you, Mr. Chairman.

[The prepared statement of Ms. Tate follows:]

STATEMENT OF COMMISSIONER DEBORAH TAYLOR TATE

House Committee on Energy and Commerce
December 5, 2007

Mr. Chairman, Members of the Committee, it is an honor to appear before you today as a member of the Federal Communications Commission. Since arriving at the Commission in January 2006, there have been hundreds of issues before us – some ministerial, yet even though those are important to parties who are affected; others of national and even international significance – which foster competition, encourage innovation and help ensure our global competitiveness for years to come. A few of the issues before the Commission have received more attention than others, perhaps because of the public nature of the deliberative process surrounding them and their lasting impact. From the remand of our media ownership rules, to coordinating with the industry for a successful DTV Transition, from our fiscal responsibility in managing spectrum allocation for new and innovative services, to encouraging the nationwide deployment of broadband, especially as it relates to the interoperability of our public safety services, all of these have been at the top of our agenda since I arrived. These decisions will be among the most historically significant the Commission will make and therefore should command your attention as well as the public's. We are here today to seek and listen to your input on one of these in particular – media ownership.

Since October 2006, we have held open public hearings across the entire country: Los Angeles and El Segundo, California; Tampa, Florida; Harrisburg, Pennsylvania; Chicago, Illinois; Seattle, Washington and I was so glad to welcome my colleagues to Belmont University in my hometown of Nashville. These lengthy hearings – literally from sea to shining sea – provided an opportunity for thousands of American citizens to

have unprecedented access to a governmental body about the role media plays in their lives and their opinion regarding ownership of media outlets. Over my 20-plus years of public service – at all levels of government – I cannot remember a single time that an agency expended this much institutional energy and investment on an issue, or was this open and thorough regarding a matter of public interest. We invited comment not only from the general public, but also from expert panels of economists; TV, radio, and film producers; musicians; directors; professors; students; small and large TV and radio broadcasters, and community organizations. During the roughly year and a half of on-going hearings, we also arranged for ten media studies by experts – preeminent economists, academics, and researchers – and also released all of those studies for public comment and peer review.

Never before has so much competition existed for the eyes and ears of American consumers of news and information, wherever, whenever, and however, over any device they may choose. This competition is cross-platform, and it includes newspapers and broadcasters, of course, but also cable, satellite and wireline networks and, increasingly, mobile networks. And as more platforms offer access to the Internet, the breadth of our sources only expands.

Like many of you, I consider myself an avid consumer of news – from industry trade publications to local and national newspapers, from my hometown paper, The Tennessean, to the New York Times, from CNN clips to other online news sites, and tools such as alerts that are set to my personal news preferences. But my list of news sources pales in comparison to the number of sources accessed by many of our citizens, particularly the younger generation.

I have said it countless times, but I want to reiterate it again today. We must structure our media ownership rules to account for the needs not just of our generation, but of the next generation. The "I-Generation," as they are often called, lives in an online world, with access to local, national, and international news sources we could only have dreamed of at their ages.

I share many commenters' concerns about the negative impact media can have, from extreme violence to exceedingly coarse language, to the impact on childhood obesity. I also continue to be troubled by the statistics regarding the disappointingly low rates of female and minority ownership we see in the media industry. During my tenure at the Commission, I have tried not merely to talk about the issues, but to work with others to find solutions, both inside and outside the Commission, which could have a positive impact. Over the past year, I participated in the NAB Education Foundation series for women and minorities who are interested in purchasing and operating a local broadcast station; I attended the Hispanic Broadcasters Association Financing and Capitalization Seminar; and I have worked with the National Association of Black Owned Broadcasters at other outreach events. At these events, when women and minority broadcasters discuss challenges they face, financing is always at the top of the list. This is true with those who are just starting out, and those who have been in the industry for years. I am very pleased that the Commission is presently considering a number of proposals to assist women and minorities, specifically with both capital and debt financing. In addition, I have offered to lend my support to an annual conference to partner potential financiers with broadcasters to discuss investment opportunities. Another recommendation before the Commission is allowing minority and women

broadcasters to purchase expiring construction permits, and giving them the duration of the permit, or 18 months, to complete construction. Finally, we continue to discuss changing the Equity-Debt Plus (EDP) attribution rule so that investors' concerns with ownership limits will not prevent them from making investments they would otherwise consider.

Let there be no doubt that women – many of whom are also African-American – are indeed succeeding in this industry. Look for example at Cathy Hughes, founder and chairperson of Radio One/TV One, Inc., the largest African-American-owned and operated broadcast company in the United States, or Susan Davenport Austin, Vice President and Treasurer of Sheridan Broadcasting Corporation, which manages the only African-American-owned national radio network. And then there is Caroline Beasley, Executive Vice President and CFO of Beasley Broadcast Group, Inc., the 18th largest radio broadcasting company in the country, and Susan Patrick, co-owner Legend Communications, who has been in the media brokerage business for more than 20 years. I hope that we will employ every possible avenue to have a more positive impact on the diversity of both voices and ownership.

I look forward to hearing your thoughts and working with you on these and many other important issues facing the Commission, Congress, and our nation.

Mr. MARKEY. Thank you, Commissioner Tate, very much. Next we will hear from Commissioner Jonathan Adelstein, and we welcome you back again, Commissioner. Whenever you are ready, please begin.

STATEMENT OF JONATHAN S. ADELSTEIN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. ADELSTEIN. Mr. Chairman, Congressman Upton, Congressman Barton, and members of the subcommittee, thank you for calling this hearing to address the future of American media. No issue on our agenda has more far-reaching consequences for the future of our democracy than this one. As I have traveled across the country, I have heard a bipartisan chorus of opposition to further media consolidation. Americans from all walks of life, from all political perspectives, from the right, left and virtually everyone in between, do not want a handful of companies dominating their main sources of news and information. It goes against the spirit of America for that kind of concentration of power in the media to occur. People from all perspectives decry the coarsity of our media that has coincided with the rise of consolidation. Yet, we seem to be on a sprint to disregard the public's view of the public interest. We are on a dangerous course that could damage the diversity of voices that is so critical to the future of our democracy and to an informed citizenry.

Given the importance of this, it is very disappointing to see the Commission proceed without due deference to the American public and their elected representatives. For example, at a recent hearing in Seattle, Washington, it was announced with just 5 days' notice, the minimum amount of notice allowed by law, despite the express request for more time by members of the Washington delegation, including Congressman Jay Inslee. Nevertheless, over 1,000 people showed up on a Friday night to voice their opposition to increased media consolidation. And I can tell you that, as you know in Seattle, Mr. Inslee, there are a lot of diversions on Friday night out there, but they poured out because they cared about this issue. They poured out their heart and soul. They read poems, they sang, they begged us not to allow further media consolidation.

And what was their answer? The next day, back at the office, the chairman announced in a New York Times op-ed—not to us, but in a New York Times op-ed—his plans for relaxing the cross-ownership rule. It is hard to imagine how it was possible to review and consider hundreds of public comments that we received that night in Seattle before issuing that proposal the next working day. It is also an ominous sign for those hoping their comments on the current proposal be considered in the decision-making process as we hurtle towards December 18th and are given only one week to consider the public comments after they close.

Though the proposal is portrayed as modest, it would actually open the door to newspapers buying up broadcast outlets in every market in America as Commissioner Copps indicated. It would replace the current ban with a wide-open bazaar that only requires buyers to meet the loosest standards for a waiver. The waiver standards are so weak that combinations could be allowed in any city, no matter how small, for any TV station, no matter how domi-

nant. My colleague, Mr. Copps, called it a bowl of Jell-O. I called it like a wet noodle that can be shaped at will by three Commissioners. They are overcooked.

Some claim that relaxing the rule would create more local news, yet a path-breaking study by leading consumer organizations, using the FCC's own data, demonstrates that claim to be wrong. Properly analyzed, the FCC's data shows that in communities with cross-owned stations, the overall level of local news actually is diminished. There is less local news. It is hard to see how that promotes localism, it is hard to see how that promotes competition, and it is hard to see certainly how combining these outlets would increase diversity. Further, there is no real evidence that cross-ownership improves the finances of the newspaper industry. Witness Tribune, whom we just approved a merger for who came in in very desperate financial straits. Virtually no company in America owns more cross-ownership stations than the Tribune. So to argue that this is somehow going to save the newspaper industry when they were recently put on the block defies reason and defies the evidence on the record.

The Internet is causing some disruption in revenues, there is no question. Newspapers are under a lot of pressure, but their profits remain very high by corporate standards, 20 percent margins on average. The Internet also though presents a wonderful opportunity for future revenue growth if newspapers focus on news.

So I think we really need to reassess our priorities here. Whatever you think of the newspaper/broadcast cross-ownership ban, across the country—and we have been all across the country, we have been to over 20, 30 hearings—people aren't clamoring for us to relax the newspaper cross-ownership ban. They are concerned about how responsive their local media is to local communities, what is happening in their own community, the local artists that aren't getting heard on the radio to the local civic and cultural affairs that they are not hearing enough about on the news that covers if it bleeds, it leads. They are concerned, people of color and women are stereotyped, misrepresented or underrepresented.

So first things first. Media consolidation would only take these outlets further out of the reach of women and people of color. We should first implement improvements to localism and diversity of ownership before we consider loosening the media ownership rules, not afterwards. As Congresswoman Solis noted, I have called for the creation of an independent, bipartisan panel to guide us on a course to raise the dismal level of ownership of media outlets cited by members of this committee by women and minorities. Many members of Congress, along with Congresswoman Solis, have joined that call. And many civil rights organizations have joined that call, thus far to no avail.

So to restore an open and transparent process, I think the Commission should voluntarily follow course along the lines laid out by members of this committee and in the bipartisan bill approved unanimously yesterday by your counterpart committee in the other body, the Media Ownership Act of 2007. I don't see why we can't follow something that was on a bipartisan basis approved by our Oversight Committee and by request of members of this committee.

Following these simple guidelines can set us on a path toward a fair and transparent process, and you will no longer hear complaints about process from me if we follow those guidelines.

Another critical area of concern, and an area where the FCC should show far greater leadership, is the DTV transition. We need a national DTV outreach, education, and implementation plan that coordinates the efforts of all stakeholders. We should create a DTV Transition Task Force immediately to coordinate Federal efforts and work with our private sector partners. And we need to establish more guidance for broadcasters soon. As the GAO recently noted, nobody is in charge of the transition, and there is no plan. We still have time to turn this around but only if we increase the level of leadership, coordination, and resources dedicated to it. The ongoing leadership of this subcommittee has been extremely helpful, and I thank you for that in focusing our efforts; and we need more focusing from you.

I also look forward to working with you to ensure that the American media remains the most vibrant in the world and to ensure that the DTV transition goes as smoothly as you intended.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Adelstein follows:]

TESTIMONY OF
JONATHAN S. ADELSTEIN
COMMISSIONER
FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES
"OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION: MEDIA OWNERSHIP"

December 5, 2007

Mr. Chairman, Congressman Upton, and members of the Subcommittee, thank you for calling this hearing to address the future of American media. No issue on the Commission's agenda has more far-reaching consequences for the future of our democratic society. It is clear the public grasps the gravity of the issue. As I have traveled to communities across the country, I have heard a bipartisan chorus opposing further media consolidation. Americans from all political perspectives, whether right, left and virtually everyone in between, do not want a handful of companies dominating their primary sources of news and information. I am afraid the Commission's current course, if unchecked, could cause lasting harm to the American media for future generations.

Given the importance of this issue, it has been disappointing to see the Commission proceed without due deference to the American public and their elected representatives. Perhaps there is no better example of a process gone awry than an event that had its origins at our last oversight hearing before this Committee. Congressman Jay Inslee had a productive discussion with the Commissioners that influenced the decision to hold the final media ownership hearing in Seattle, Washington. This was a positive

development, and just the kind of exchange with Congressional leaders that improves our responsiveness and service to the American people.

Perhaps symptomatic of this entire proceeding, what might have begun with good intentions soon ran off the tracks. As the date of a rumored Seattle hearing approached and no announcement was made, Congressman Inslee and Senator Maria Cantwell wrote to ask that the public be afforded one month notice so they could plan for the event. Within hours, their letter was ignored and the public hearing was announced with just five business days notice, the very minimum allowed by federal law.

The people of Seattle were outraged at the short notice, but showed up in large numbers anyway, over 1100 strong on a Friday night, in protest. Public witnesses expressed with passion and eloquence their concern about any steps that would further media consolidation, which they believed had gone too far already. They openly questioned how the FCC could proceed on such a course.

The next day back at the office, the American people received an answer. The Chairman announced plans in a *New York Times* op-ed and a press release on how he sought to relax the newspaper-broadcast cross ownership rule. That was not only the first time the public learned of the plan. It was also the first time the Commissioners were notified of the details. It is hard to imagine how it was possible to review and consider hundreds of public comments made in Seattle alone before issuing the proposal the next working day. What could have been a meaningful opportunity for public input and cooperation with Congress turned into a charade It is also an ominous sign for those hoping their comments on the Chairman's proposal will be considered in the decision-making process and the final rule.

The proposal itself is fraught with substantive problems that require internal Commission cooperation, consultation and negotiations. Portrayed as a "modest" proposal that would only affect the top twenty markets, it would actually open the door to dominant local newspapers buying up broadcast outlets in every market in America and potentially of any size. It would transform the current ban on newspaper-broadcast into a wide-open nationwide bazaar that would only require buyers to meet the loosest standards for a waiver.

Even if the proposal were limited to the top 20 markets, that would account for 43 percent of U.S. households, or over 120 million Americans. But the details reveal loopholes that would permit new cross-owned combinations from the largest markets down to the smallest markets, potentially affecting every American household.

The waiver standards are like a wet noodle that a majority of Commissioners would be able to move and reshape at will. Even under the current stronger standards of a blanket prohibition on cross-ownership, the Commission has been lax in permitting waivers.

Under the proposal, each of the four factors considered for waivers are so overcooked they look like mush. First, we are to consider if a company will "increase the local news disseminated." With no definition, presumably an additional 10 minutes of news a year could qualify. Second, each outlet would have to maintain "independent news judgment." But there is no way to determine or enforce what that means. Third, we consider the "level of concentration" in the market. But there is no measure by which

to judge what is too concentrated, so evidence showing concentration can be dismissed on a whim. And fourth, we consider a newspaper's "financial condition." This factor is so vague that, for example, margins that have decreased from 30 percent to 20 percent could be grounds for approval. This economic "downturn" is exactly what has happened to the newspaper industry as a whole and forms the rationale for the current proposal. Although 20 percent margins far outstrip the national average, it could be grounds for a waiver based on "financial condition," because it is less than newspapers' previously even more outsized profits.

These loopholes also undercut the assertion that the proposal would prevent a newspaper from buying one of the top-four rated stations in the same market. That alleged protection would disappear with the wave of a hand if these loose waiver standards were invoked, so that a newspaper could buy any TV station in any city, no matter how large.

The main public interest justification for newspaper-broadcast cross-ownership has been the claim that relaxing the rule would create more local news. A path-breaking study by leading consumer organizations, using the FCC's own data, demonstrated that claim to be wrong. They found that the data underlying an FCC-sponsored study finding more local news by cross-owned stations actually reveals that there is less local news in those markets as a whole, taking into account all news outlets. It remains unclear exactly why the overall level of local news available diminishes. Perhaps it is because other outlets choose not to compete with the local leviathan or they lose equal access to the newspaper's investigative and news resources. But the fact is the Commission's own data reveals the other outlets in those cities reduce their news coverage more than the

cross-owned outlets increase it. So not only is less news produced in the market, but an independent voice is silenced when the dominant local newspaper swallows up a broadcast outlet.

We must find the root causes of this problem and address them before we proceed to relax the cross-ownership rule. But rather than study that critical question, a number of experts assembled by leading consumer groups found that the studies conducted under the auspices of the Commission were designed to support a foregone conclusion rather than the facts. They say the process by which the studies were conceived and executed was tainted at every stage. The result is a series of deeply flawed, if not outright misleading, research cobbled together to promote a media consolidation agenda. There are many important questions this Committee has asked that need to be answered about whether federal laws and regulations were followed in how these studies were procured and peer-reviewed.

This debate is fundamentally about priorities. As we solicited the views of citizens across the country, we did not hear a clamor for relaxation of the cross ownership rules. We only hear that from lobbyists for big media companies within the Beltway. The public is concerned about the lack of responsiveness of their media outlets to local communities, artists, civic and cultural affairs. They are concerned that people of color and women are stereotyped, misrepresented or underrepresented. They want us to address the public interest obligations of broadcasters first.

That is why I have insisted that we first address and implement improvements to localism and diversity of ownership before – not after – we address the media ownership rules. I have called for an independent, bipartisan panel to guide us on a course to

implement improvements in the level of ownership of media outlets by women and minorities. Many members of Congress and leading civil rights organizations have joined that call. And I have demanded, along with many members of Congress, that we finalize the Localism Report and implement real improvements in the responsiveness of media outlets to local concerns first. Rather than take this in order, address these lingering crises first, the Commission seems to be moving forward obsessively to allow more consolidation, notwithstanding congressional and public concern. That is unwise.

There is a path to get us out of the ditch and restore an open and transparent process to consider changes in our media ownership rules. I can support a process that has been laid out in bipartisan legislation introduced in Congress. Even if it is not adopted immediately, the Commission should, in the spirit of compromise, cooperation and responsiveness to Congress, follow the process outlined in the Media Ownership Act of 2007 (S. 2332), which would:

- require the FCC to complete a separate proceeding to evaluate how localism is affected by media consolidation;
- give the public an opportunity to comment on that proceeding for 90 days;
- require that the localism proceeding be done separately and be completed prior to a vote on proposed media ownership rules; and
- require establishment of an independent panel on female and minority ownership and for the FCC to provide the panel with accurate data on female and minority ownership -- this panel must issue recommendations and the FCC must act on them prior to voting on any proposed ownership rules.

Following these simple guidelines is a path to restoring a fair process to the media ownership proceeding.

As we focus today on the public's access to their media -- their airwaves -- it is also critical that the FCC show far greater leadership on a potential disaster that is the DTV transition. It is my firm belief that we need a national DTV outreach, education and implementation plan that coordinates the efforts and messages of all stakeholders. Here are some next steps that I believe we need to take, immediately, to get on the path of reaching and educating people in the more than 111 million U.S television households.

Create Federal DTV Transition Task Force. It is long overdue for the FCC, NTIA and other relevant federal agencies to formalize their relationship and develop a Federal DTV Transition Task Force with representation from the leadership of each agency. The Government Accountability Office (GAO) has told this Subcommittee that the FCC has the authority to establish a task force under the Federal Advisory Committee Act. This multi-agency task force would develop benchmarks and a timeline to achieve nationwide awareness of the DTV transition. And, it would be accountable to Congress. The private sector has established a coordinating mechanism through the DTV Transition Coalition, and it is high time we do the same for the Federal government.

The task force would need staff. The FCC, for example, should detail staff to the task force from CGB, the Media, Enforcement, and Public Safety and Homeland Security Bureaus, and the Offices of General Counsel and Engineering and Technology. With dedicated staff from different agencies, the task force would also serve as the clearinghouse for all things related to the DTV transition national campaign and for coordinating this network of networks. The aging and disabilities communities, for

example, would have access to financial and human resources to assist these at-risk groups in making the transition. The task force would be able to coordinate with public and private partners, leverage existing resources and develop a single unified federal message, *i.e.,* develop and use common terminology to describe the digital-to-analog converter box program and other DTV technology. In addition to coordinating government efforts at all levels – including state, regional, local, and tribal governments – the task force can convene joint meetings with the private sector DTV Transition Coalition to ensure a coherent, consistent message across all channels. And it can help coordinate the many public-private assistance efforts needed for at-risk communities.

Maximize Existing Federal Resources. Once a unified federal message has been developed, the task force could then work with other federal agency components, such as the Administration on Aging, the Social Security Administration, Departments of Agriculture, Labor, Education, and Health and Human Services, the Bureau of Indian Affairs, the U.S. Postal Service and AmeriCorps, to integrate DTV educational information into many points of contact with consumers. Relevant federal agency websites and correspondence to citizens' homes, such as Social Security mailers and Meals on Wheels deliveries, are golden opportunities to educate and inform consumers about different aspects of the DTV transition, including the converter box program and the analog cut-off date.

Establish a National DTV Call Center and Hotline. We should establish a National DTV Call Center with a multi-lingual staff and a national toll-free number that is easy to remember, accessible to persons with disabilities, and unassociated with the ongoing, non-DTV operations of the FCC. NTIA's toll-free number is a standard

recording, and some have complained the wait for the FCC's general customer helpline is much too long, as it covers many other issues, and consequently it is not as useful as it could be. There is no reason for two separate toll-free numbers for DTV information when it is easier to promote and staff one. Consumer outreach specialists should be able to develop a more succinct and consumer-friendly message. The call center could also be the point of contact for households in need of local assistance to obtain or install converter boxes. We can help state, local, and tribal governments connect seniors to community-based service providers. This is especially important to seniors, a disproportionate number of whom do not have access to the Internet or know how to reach our website.

Launch a Targeted Grassroots Information and Technical Assistance Campaign. The task force, working with state, local and tribal governments, the DTV Transition Coalition partners, and community-based service providers, could target communities with the highest concentration of over-the-air viewers, including senior citizens, low-income, non-English speaking, rural populations and tribal communities. It can launch a coordinated grassroots campaign, which would include posting signs in supermarkets, retail stores, churches, social service organizations, all modes of public transportation and other public places. Many at-risk citizens will need help acquiring and hooking up their converter boxes, and it remains entirely unclear who is going to help them. If it is to be done through volunteers, it will take a vast effort to vet and train them.

No Federal agency currently has the mandate or resources to help people who can't themselves hook up the boxes to their TV sets. For example, while the FCC, the AoA and its allied aging network -- which includes state and local agencies, as well as

community based service providers like Meals on Wheels -- have been in very early discussion about various grassroots efforts, no plan is in place. People with disabilities experience great difficulty accessing closed captions and video descriptions. A technical assistance program must be established soon, with timelines for training and outreach to ensure people who need help can get it.

While these steps may require some additional funding from Congress or a reallocation of funds already appropriated, first and foremost, dedicated leadership and focus are required from the FCC – the expert agency primarily responsible for the DTV transition.

Establish Much Needed Guidance for Broadcasters Soon. In addition to these outreach and education initiatives, the Commission must take steps to ensure that over-the-air viewer are not disenfranchised during or after the DTV transition, and that all full-power stations are prepared to cease analog transmission and to operate in digital by the end of the transition on February 17th, 2009. Accordingly, *I believe the Commission should: (1) complete the Third DTV Periodic Review as quickly as possible; and, (2) prepare a report to Congress on the status of the DTV transition on February 17, 2008 – one year before the hard deadline.*

Because the law does not provide for any waivers or extension of time, February 17th, 2009 is indeed the last day that full-power broadcast stations will be allowed to transmit in analog. There are a total of 1,812 stations that will be serving the American people after the transition but, to date, only 750 are considered to have fully completed construction of their digital facilities and are capable to broadcast in digital only in the final position from which they will broadcast. The remaining stations vary in levels of

transition preparedness. Some stations need to construct their transmission facilities, change their antenna or tower location, or modify their transmission power or antenna height, while others may have to coordinate with other stations or resolve international coordination issues.

In the Third DTV Periodic Review, the Commission is contemplating rules to govern when stations may reduce or cease operation on their analog channel and begin operation on their digital channel during the DTV transition. The Commission also sought comment on how to ensure that broadcasters will complete construction of digital facilities in a timely and efficient manner that will reach viewers throughout their authorized service areas. These and other important questions, such as the deadlines by which stations must construct and operate their DTV channels or lose interference protection, must be answered as soon as possible. Broadcasters need to know the rules as they invest billions into this transition. We have lost valuable time focused on other more tangential aspects of the transition while not moving forward on clarifying urgent demands on broadcasters to get a huge job done in short order.

The Third DTV Periodic Review also proposed that every full-power broadcaster would file a form with the Commission that details the station's current status and future plans to meet the DTV transition deadline. While each individual form would be posted on the Commission's website, I believe it is just as important for the Commission, Congress and the public to get a comprehensive sense of where each full-power broadcast station is 12 month before the end of the transition. A report to Congress ***one year*** before the transition ends will provide both the broadcaster and the FCC sufficient time for any mid-course correction.

As GAO has noted, there is nobody in charge of the transition and there is no plan. We still have time to turn this around, but only if we increase the level of leadership, coordination and resources dedicated to this undertaking. The ongoing leadership of this subcommittee has been and will continue to be extremely helpful in focusing our efforts.

Thank you for holding this critical hearing, and I look forward to working with you to make sure that American media remain the most vibrant in the world and it continues to enrich our democracy. I also look forward to working with the subcommittee to ensure that the DTV transition is a success for the American people.

Mr. MARKEY. Thank you, Commissioner Adelstein, very much. And now we will turn to the fifth of five FCC Commissioners, Commissioner Robert McDowell. We welcome you back, Commissioner. Whenever you are ready, please begin.

STATEMENT OF ROBERT M. MCDOWELL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. MCDOWELL. Thank you, Mr. Chairman, Ranking Member Upton, and members of the subcommittee.

Almost exactly 216 years ago, on December 15, 1791, the American people ratified the Bill of Rights. First among them is the first amendment. Among other things, it guarantees the freedom of speech and freedom of the press. Perhaps it is first because all other rights and all other issues can be affected by how the media filters and shapes information. In 1791, other than word of mouth, the primary medium for conveying information and opinion was paper. Today, competition, innovation and technology have produced an explosion of countless forms of media that bombard us with so much data our culture has created a text-messaging acronym to name one of the phenomena produced by these changes, TMI, or too much information.

Of course, the Federal Communications Commission is tasked with reviewing rules governing the ownership of only some of the platforms that comprise today's media marketplace. The Commission's work on this matter has been unprecedented in scope and thoroughness. The current proceeding began at my very first open meeting as Commissioner, almost 18 months ago. We gathered and reviewed over 130,000 comments and extended the comment deadline. We released a Second Further Notice regarding proposals to increase ownership of broadcast stations by people of color and women. We traveled across our great nation to hear directly from the American people during eight field hearings. During those hearings, we heard from 115 expert panelists, and we stayed late into the night and sometimes early into the next morning to hear directly from concerned citizens who signed up to speak. We also commissioned and released for public comment 10 economic studies by respected economists.

So, during my entire term as a Commissioner, we have been reviewing this matter. But our review didn't begin last year. The previous round began in 2002. At that time, the Commission received millions of formal and informal comments. Four localism hearings were held across the country, and the FCC also produced more studies. The 2002 review ended with both the legislative and judicial branches overturning large portions of that Order. However, the Third Circuit in the Prometheus case concluded that, "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."

But the debate began even earlier, in 2001. That proceeding sprouted up as a result of a June 2000 report from a Democrat-controlled FCC. That report resulted from a 1998 proceeding, which stemmed from a 1996 proceeding, which was sparked by bipartisan legislation.

In short, the directly-elected representatives of the American people enacted a statute that contains a presumption in favor of modifying the ownership rules as competitive circumstances change. Section 202(h) states that we must review the rules and "determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation that it determines to be no longer in the public interest."

We also have a statutory duty to pursue the noble public policy goals of competition, diversity, and localism. We have been debating all of these ideas for years. In the meantime, the media landscape has undergone dramatic change.

Now, we have five national networks, not the three I grew up with. Today we have hundreds of cable channels spewing out a multitude of video content produced by more, not fewer, but more entities than existed before. Now we have two vibrant DBS companies, telephone companies offering video, cable overbuilders, satellite radio, the Internet and its millions of websites and bloggers, a plethora of wireless devices operating in a competitive marketplace, iPods, Wi-Fi, and much, much more. And that's not counting the myriad new technologies and services that are coming over the horizon, such as those resulting from our wireless auctions.

All Americans, and the rest of the world, are migrating toward the boundless promise of new media for their news, information, and entertainment. That is where the eyeballs, ad dollars, energy, and investments are going. It should be no wonder that this new, exciting frontier is lightly regulated. While traditional media is shrinking, new media is growing. The best news is that all Americans will benefit from this new paradigm, because new technology empowers the sovereignty of the individual, regardless of who you are. All of us should continue to examine the important public policy implications of this new era in the context of these facts.

Thank you for having us here today, and I look forward to answering your questions.

[The prepared statement of Mr. McDowell follows:]

STATEMENT
of
COMMISSIONER ROBERT M. McDOWELL
FEDERAL COMMUNICATIONS COMMISSION

Before the
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

December 5, 2007

Good morning Mr. Chairman, Ranking Member Upton and distinguished members of the Subcommittee. Thank you for inviting us to appear before you again this morning.

Almost exactly 216 years ago, on December 15, 1791, the American people ratified the Bill of Rights. First among them is the First Amendment. Among other things, it guarantees the freedom of speech and freedom of the press. Perhaps it is first because all other rights and all other issues can be affected by how the media filters and shapes information about them. In 1791, other than word of mouth, the primary medium for conveying information and opinion was paper. Today, competition, innovation and technology have produced an explosion of countless forms of media that bombard us with so much data our culture has created a text messaging acronym to name one of the phenomena produced by these changes: "TMI" or "too much information."

Of course, the Federal Communications Commission is tasked with reviewing rules governing the ownership of only some of the platforms that comprise today's media market place. As a direct result of the importance the media play in our society, media ownership has been the highest-profile issue that the Commission has worked on over the years. The current proceeding began at my first open meeting as a Commissioner, almost 18 months ago. The Commission's work on this matter has been unprecedented in scope and thoroughness. We gathered and reviewed over 130,000 initial and reply comments and extended the comment deadline once. We released a Second Further Notice in response to concerns that our initial notice was not sufficiently specific about proposals to increase ownership of broadcast stations by people of color and women. We gathered

and reviewed even more comments and replies in response to the Second Notice. We traveled across our great nation to hear directly from the American people during six field hearings on ownership in: Los Angeles and El Segundo, Nashville, Harrisburg, Tampa-St. Pete, Chicago, and Seattle. We held two additional hearings on localism, in Portland, Maine and here in our nation's capital. During those hearings, we heard from 115 expert panelists on the state of ownership in those markets and we stayed late into the night, and sometimes early into the next morning, to hear from concerned citizens who signed up to speak.

We also commissioned and released for public comment ten economic studies by respected economists from academia and elsewhere. These studies examine ownership structure and its effect on the quantity and quality of news and other programming on radio, TV and in newspapers; on minority and female ownership in media enterprises; on the effects of cross-ownership on local content and political slant; and on vertical integration and the market for broadcast programming. We received and reviewed scores more comments and replies in response. Some commenters did not like the studies and their critiques are part of the record.

So, during my entire term as a Commissioner, we have been reviewing this matter. But our review didn't begin last year. The previous round began in 2002. At that time, the Commission received thousands of formal comments and millions of informal comments. The Commission held four localism hearings across the country to gather additional evidence. The FCC also produced twelve media ownership working group studies. We all know that the 2002 review ended badly for the Commission – with

both the legislative and judicial branches reacting through a Congressional override of the national ownership cap, and a reversal and remand from the Third Circuit in the *Prometheus* case. Although the court threw out almost all of the Commission's order, it concluded that, "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."[1]

But this debate did not begin in 2002 either. In 2001, the FCC issued a rulemaking focused on the newspaper-broadcast cross ownership ban, which was implemented in 1975. Comments and replies were gathered there too. That proceeding sprouted up as the result of a June 2000 report from a Democrat-controlled FCC, which found that the ban may not be necessary to protect the public interest in certain circumstances. That report resulted from yet another proceeding, which commenced in 1998. The 1998 proceeding stemmed from a 1996 proceeding; which was sparked by legislation; which was engendered by a strong bi-partisan vote in a Republican-controlled Congress and signed into law by a Democrat President.

In short, the directly elected representatives of the American people, the Congress, enacted a statute that contains a presumption in favor of modifying or repealing the ownership rules as competitive circumstances change. Section 202(h) states that we must review the rules and "determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation that it determines to be no longer in the public interest."[2] This section

[1] *Prometheus Radio Project v. F.C.C.*, 373 F.3d 372, 398 (3d. Cir. 2004)
[2] 47 U.S.C. § 303, note.

appears to upend the traditional administrative law principle requiring an affirmative justification for the modification or elimination of a rule. We also have a duty to pursue the noble public policy goals of competition, diversity and localism. This is our mandate from Congress. All of the ideas before us have been debated for years and, in some cases, decades. We are still debating them today, and will continue to do so through the public comment and Sunshine period.

I've greatly valued hearing directly from the thousands of people who have traveled to our hearings on media ownership, often on short notice. While we have been the object of a great deal of anger, being on the frontlines of democracy in this way has deepened my love for our country and its diverse peoples. We are truly the greatest nation on earth.

The media landscape has undergone dramatic change in the past few years. Now we have five national networks, not the three I grew up with. Today we have hundreds of cable channels spewing out of a multitude of video content produced by more, not fewer, but *more* entities than existed 32 years ago. Now we have two vibrant DBS companies, telephone companies offering video, cable overbuilders, satellite radio, the Internet and its millions of websites, a plethora of wireless devices operating in a robustly competitive wireless market place, iPods, Wi-Fi, and much more. And that's not counting the myriad new technologies and services that are coming over the horizon such as those resulting from our Advanced Wireless Services auction of last year or the upcoming 700 MHz auction, which starts next month. There is no disputing that the marketplace has been transformed by technological advances and business innovations into the most

competitive multimedia environment in human history. Consumers have more choices and more control over what they read, watch and listen to than ever. As a result, at least 300 daily newspapers have gone out of business in the last 32 years because people are looking elsewhere for their content. Newspaper circulation has declined year after year. Since just this past spring, average daily circulation has declined 2.6 percent. Newspapers' share of advertising revenue has shrunk while advertising for online entities, which are not subject to cross ownership restrictions, has surged. Is the cross-ownership ban still in the public interest, or is it a millstone around the neck of a drowning industry? The statute demands an answer.

Has this new era of competition been helpful or harmful to localism and diversity? Audiences seeking news, local information and entertainment are more fragmented than ever before. But combinations allowed by the 1996 Act have occurred. What these changes mean for localism and diversity is a question we are still examining. On the one hand, some argue that combinations that may have been dangerous to diversity in 1975 are no longer any threat due to the existence of an unlimited number of delivery platforms and content producers. Not only are there more hoses to deliver the information, there are more spigots to produce the information. On the other hand, most people still rely primarily on television broadcasts and newspapers for their local news and information. With local broadcasters and newspapers still producing a large share of local online content as well, are there really more diverse sources of local journalism than before? All of us must handle this question with great care.

That question begs yet another question that is vexing to me: what can the FCC do to promote ownership among people of color and women? Many positive and constructive ideas before the Commission may be hobbled by Supreme Court prohibitions against race-specific help on one side, and a lack of statutory authority for doing much more on the other side. Like it or not, whatever the FCC or Congress does must withstand constitutional muster. So let's focus on the possible -- and the legally sustainable. I am hopeful that many of the ideas before us for a vote on December 18 can be adopted so America can start back on the path of increased ownership of traditional media properties by women and people of color.

In the meantime, all Americans, and the rest of the world, are migrating toward the boundless promise of new media for their news, information and entertainment. That's where the eyeballs, ad dollars, energy and investments are going. It should be no wonder that this exciting frontier is lightly regulated. While traditional media is shrinking, new media is growing. The best news is that all Americans will benefit from this new paradigm because new technology empowers the sovereignty of the individual, regardless of who you are. All of us should continue to examine the important public policy implications of this new era in the context of these facts.

Thank you for having us here today, and I look forward to answering your questions.

Mr. MARKEY. Thank you, Commissioner McDowell, very much. And now we will turn to members of the subcommittee for questions for the Commission. The Chair will recognize himself for that purpose at this time.

Chairman Martin, why does your proposal select the top 20 markets? Aren't you concerned that that will be viewed as an arbitrary decision in the same way that the court ruled earlier that Commissioner Powell's plan was arbitrary and not backed by facts? How did you arrive at the number 20?

Mr. MARTIN. Well, whenever the Commission is trying to make any kind of a line-drawn exercise, it becomes difficult, and people will always argue that the Commission drew those lines arbitrarily. Traditionally, the Commission does deserve some deference from the courts on that. But the main reason that I drew it was it was a natural breaking point. If you looked at the number of commercial owners for television stations in the top DMAs, and the top 20 DMAs, 18 of those 20 had at least double-digit owners of television stations. But starting with No. 21, that went down to seven/five, seven/six, six/six, seven. So it started going down to single digits and actually below the eight independent owner threshold that we were trying to establish and that we mirrored off of the television duopoly rule.

Mr. MARKEY. In your plan, you actually include a waiver for markets that are below the top 20, and you have a hurdle that has to be overcome in order for mergers of newspapers and media outlets to occur below the top 20 markets. Is that a Berlin Wall or just a speed bump? In other words, why have you abandoned the historical test that the property has to be in distress essentially and used a new test that some are saying could result in an easier path to merger?

Mr. MARTIN. In both the top 20 markets in the cases where there is a presumption that this would be allowed and in the bottom markets and the other remaining 200 markets where the presumption is it wouldn't be allowed, we will consider a series of factors so that people can come in and make their case that either the presumption in favor of a merger should be overcome and the presumption against a merger should be overcome. And actually, when I met with particular public interest groups, some had advocated that kind of a case-by-case analysis because they also wanted the opportunity to come in and oppose mergers that would still be within the top 20 markets and still be able to put forth evidence that would indicate that those shouldn't be sold out. Right in the——

Mr. MARKEY. Would you consider, Mr. Chairman, working with the other members of the Commission towards moving back to the current standard for waivers, rather than the new standard which you propose in this draft?

Mr. MARTIN. First I should say I would absolutely consider working with all of the Commissioners on the proposal to the extent that any of them are willing to engage in the substance of it to try to figure out—and their proposals on how they think that they can be improved and make it better.

Mr. MARKEY. Let me just ask this.

Mr. MARTIN. Sure.

Mr. MARKEY. Is your intent that this be a high hurdle or just a speed bump?

Mr. MARTIN. Oh, no, I think that when there's a presumption in favor or presumption against the merger, I think it should be a high hurdle.

Mr. MARKEY. A high hurdle? Let me then turn to Commissioner Copps.

Mr. MARTIN. The one thing I would add is I do think it is important that the previous waiver policy was only for financial distress.

Mr. MARKEY. I understand that.

Mr. MARTIN. I think that one of the critical factors that we should be considering is their commitment to start new local news, and I think that that would be something that I would be hesitant to not be able to take into account.

Mr. MARKEY. Commissioner Copps?

Mr. COPPS. I don't think it is a Berlin Wall, and I don't think it is a speed bump, either. I think it is an on ramp to more consolidation in many markets across the country. This is a tremendous loophole, so all you have to do in the top 20 markets is meet the presumption or you are presumed to have met, and in the smaller markets you have to demonstrate that you are meeting that presumption. But we make this so very, very easy it is not even a test, it is just factors that we will consider. That is what it is called.

Does a combination produce more news? We are not looking at whether it produces more news for the market, we are looking to see maybe they added one little column in the newspaper. So OK, they do that. Do they maintain independent news judgment? Do you know how we are going to determine that? We are going to look at their organizational charts and their titles of the people who hold them. So that is not exactly the most stringent kind of test I have ever seen. We look at levels of concentration. We haven't done a very good job with that. It is hard to get levels of concentration on any market in this country, and we go through proposals where you count the New York Times the same as the Penny Shopper; so you know, that is a little bit leaky, too. And then we look at financial condition, you know. I have never met with a company at the FCC that doesn't come in and say they are in financial distress at some point. They are all in distress. They are all broke. Or then they go to Wall Street and they say we will pay you, we are doing so great; and then when they come down here, it is moan and groan and bewail their horrid——

Mr. MARKEY. Mr. Copps, could I just hear from Commissioner Adelstein on this subject for a second?

Mr. ADELSTEIN. I would certainly agree that all of the standards are so loose that there is virtually no line that is drawn that is set in stone. All of them are like shifting sands. Financial distress, it is not financial distress, it is financial condition. I could always say I would like my financial condition to be better, who wouldn't? Newspapers right now, their margins have gone down from 30 percent to 20 percent, very high by corporate standards. And yet they could argue, gee, we have had our margins cut by one-third. Even though we make more money than everybody else, our financial condition is affected. Therefore, they would be eligible for a waiver.

You talk about the other standards. They are all so loose. The level of concentration in the market, no definition of a level of concentration.

Mr. MARKEY. You have heard both of their comments, Commissioner Martin, but you say you want a high standard that would be difficult to me. Could you explain the difference in perspective in terms of the language which you are——

Mr. MARTIN. Sure.

Mr. MARKEY. —using in your proposal, and would you be willing to work to find language that would raise the presumption which you are saying is a high hurdle and not a speed bump?

Mr. MARTIN. Sure. First, I would say I absolutely would be willing to work with them on finding language that would make them feel more comfortable that this is a high hurdle. So absolutely, I would be willing to work with them.

For example, on the level of concentration, our typical concentration analysis we use an HHI concentration analysis. Because broadcasters aren't selling a product to consumers, we have to traditionally look at the advertising market as a surrogate for the level of concentration among properties, so that is traditionally how the Commission has looked at that level of concentration. Some public interest groups have criticized that and want us to look at other things like viewership and subscription to newspapers. I didn't want to foreclose on people being able to put that kind of evidence in the record to demonstrate concentration, but our traditional analysis has been an HHI analysis, which I would assume the Commission would follow. That would be one of the examples of how I would traditionally think that we would be imposing this, but I didn't want to preclude others from coming forward with other evidence of self-concentration, which is why it was a broader standard. But I would certainly be happy to work with the other Commissioners.

Mr. MARKEY. Great. Thank you, Mr. Chairman. The time of the chairman has expired. I now recognize the ranking member, the gentleman from Michigan, Mr. Upton.

Mr. UPTON. Well, thank you, Mr. Chairman. I am glad you went over your time. I will try not to go over. I am going to try to get two questions in. We will see what happens.

First, I want to ask unanimous consent to put an L.A. Times story in the record which I missed during my opening.

Mr. MARKEY. Without objection, it will be included.

Mr. UPTON. Chairman Martin, just a quick question going back to my opening statement as it relates to radio. Again, the numbers are in. We know that the industry is doing far worse today than at any time in the past. Isn't this the same situation as what you are trying to address with the newspaper side of things as it relates to radio? Some of them I know are on the second panel.

Mr. MARTIN. Sure. The most significant difference between what is occurring in the radio market and the newspaper/broadcast cross-ownership ban is that the radio market and the radio owners received some significant amount of ownership relief in 1996. The 1996 Act actually changed the Commission's previous ownership rules directly, whereas it told the Commission to only study the newspaper rule. So actually the implementation of the newspaper

rule, as Commissioner McDowell went through the lengthy process, that the Commission has never been fully implemented.

Mr. UPTON. The courts though allowed this door to open, though, to reexamine the radio side, is that not right?

Mr. MARTIN. They absolutely did, and there is a significant increase in the number of radio stations that are actually available today compared to the number of radio stations that were even in the marketplace in 1996. But there has also been a significant decrease in the number of owners since 1996, and that is a different situation that we are facing today in the radio than we see in newspapers. That is why that, in combination with a significant amount of concern that was raised at many of the public hearings about the radio consolidation that has already occurred, has convinced me that at this stage we should be careful about the radio markets and any immediate further consolidation and instead focus on the rule that hasn't been updated since 1975.

Mr. UPTON. OK. I'm watching the clock, and I want to get an observation, and I would be interested in each of your comments as it relates to this. I just drove halfway across the country three times during the Thanksgiving break, and I did not listen to my iPod or CD player. I listened to the radio. I picked up literally hundreds of stations, AM and FM, talk, music, et cetera, three different languages, French, English, and Spanish. I can remember as a child having only three TV stations, the three networks from Chicago that reached my house over the air along with WGN. Today as I have cable, literally hundreds of stations, everything that you could imagine in terms of diversity, I listen and log onto the Internet every day for news and sports, a variety of different stations; and I know in terms of my local station, WSBT, which is in South Bend, the 89th largest media market in the country, received a waiver 35 years ago. It is aligned with the newspaper, the South Bend Tribune, as well as a couple of different radio stations, as well as the TV, and now that we are in the digital stage, they have partnered between all of those different entities, a 24-hour digital newsroom of which a number of news stories are required literally every hour that pop up on that screen. And to go back a little bit to Mr. Markey's question on maybe a different angle is while I believe that it is important to lessen the cross-ownership restrictions on the 20 largest markets, I think it is also very important as we have seen the success here in South Bend, the 89th market, that we look at the list of stations at the bottom also crying for that same type of relief in order to survive. And I would be interested in your comments briefly knowing that I have got a couple minutes.

Mr. MARTIN. I think that you can make certainly a strong case that actually consumers would benefit from additional newspaper/broadcast cross-ownership in the smaller markets in that there could be more financial situations that are difficult for people to do local newsgathering. The problem is those smaller markets are also where there is the greatest danger of consolidation that has occurred. So you have the most potential benefit but also the greatest danger because there are fewer outlets. And that is the reason why I think that a strong case can be made, but I think the Commission should take what obviously is a controversial step gradually and at

least address it where there seems to be a plethora of other voices in those largest markets first before we move forward on the smaller markets. But I don't disagree that there are lots of people who argue it is actually just as important or more so in the smaller markets to preserve the ability to gather news.

Mr. UPTON. And Commissioner Copps, you have seen this. I don't know if you have been to WSBT in South Bend, but I am sure that you have seen a number of these smaller markets where in fact it works, the localism, the diversity, they are indeed, you know, truly a part of the community in terms of as it relates to them. They have received numerous awards, NAB, newspaper, et cetera, for their commitment to their localism, which frankly, I don't know if they could survive without somewhat of that cross sharing of different pools of reporters as well as technical assistance, particularly as they go to the digital age, which requires really millions of dollars to convert from analog to digital, which they have already done.

Mr. COPPS. Well, I have been to a lot of markets around this country, and I have listened to a lot of people decry the loss of localism. We have heard of episodes where the consolidated stations, nobody is minding the studio; so a public safety incident occurs, and it is impossible to notify the community of it. I have heard complaint after complaint about consolidation leading to the cutback in local newsroom staff, which leads me to the other point I would like just briefly to make. We have heard a lot of discussion about the dynamism of the new market with the Internet, and I am a great believer, I love the Internet. It is not a substitute for newspapers and broadcast. It is far and away a minor player when it comes to how most people get their news, and anybody who is concerned about the future of this new media ought to be concerned about what we do with the old media, because some of the same trends are coming there. You go on the Internet, and most people go on the Internet, they are not looking for Mike Copps's news website coming out of Alexandria, Virginia, they are going to read their own newspaper. Look at the 20 titled news items on the Internet. It is the same folks that——

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Pittsburgh, Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman. Let me first start off by saying how much I appreciate the LPFM order last week. I want to thank the chairman and the Commissioners for their part, and I want to make sure that people hear this part that was unanimously agreed to. The Commission said, and I quote, recommends to Congress that it remove the requirement that LPFM stations protect full-power stations operating on third adjacent channels. Interference isn't a question anymore. Not only did the $2 million study the FCC commissioned prove it, but also the fact that big broadcasters want to use the same technology as LPFM on those same frequencies for repeating their signals proves it, too. If anything, having new local non-commercial options might keep people listening to free FM radio across the dial. So again, FCC to Congress, fix the anti-LPFM law. Mr. Chairman, I hope we can expect movement on my bill to do just that early next year, and I want

to thank my friend Mr. Terry, who has co-sponsored that bill with me.

Now, Commissioner Adelstein, very briefly, the Commission was supposed to vote last week on whether or not cable operators have met the 70–70 rule, the market penetration and take rate standard. What happened?

Mr. ADELSTEIN. Well, we did vote on a report that was radically altered. The initial draft suggested that the 70–70 part had been met, and it wasn't until the night before the meeting that I learned from our own internal data that I had asked for earlier that day that it had been omitted from the earlier draft for the first time in history. After many years of our own internal data being included, it was dropped, that in fact we determined that the 70–70 test had not been met.

Mr. DOYLE. Sounds like a question of process. I want to piggyback on top of questions of process because I think another important question of process is a memo on cross-ownership dated June 15, 2006, from the FCC's chief economist, and it begins like this, "Mr. Chairman," it says, "this document is an attempt to share some thoughts and ideas I have about how the FCC can approach relaxing newspaper/broadcast cross-ownership restrictions." Then it lays out the work that would need be done to justify lifting the cross-ownership rule. Now this is June 15, 2006. Just 6 days later, the FCC announces that it was going to look into media ownership and commission some studies and hold public hearings and "invite comment on how the commission should address radio, television, and newspaper/broadcast cross-ownership issues."

Mr. Chairman, could I ask unanimous consent that these be entered into the record for today's hearing, both the paper on cross-ownership rule and the press release from a week later?

Mr. MARKEY. Without objection, it will be included in the record.

Mr. DOYLE. Thank you. Chairman Martin, a more cynical person than I might ask the question, did you know what you wanted to do on June 15, 2006? I would hope that overturning cross-ownership rules wasn't a foregone conclusion, that you actually looked at studies, saw what they said, wanted the field hearings, listened to the public and the stakeholders, and then announced your rule. And my question is, Chairman Martin, did your chief economist prepare similar papers that took sides on other media ownership rules before the FCC announced it was going to seek comment and pay for studies?

Mr. MARTIN. I think that it is fair that I did have an idea of what I thought the Commission should end up doing in June and that is to implement the rule the Commission had already adopted and had been affirmed by the Third Circuit. The difference is——

Mr. DOYLE. But my question is did your economist prepare other studies on other issues?

Mr. MARTIN. I was first trying to answer the first I think you said more cynical question and that is that the cross-ownership rule, the ban on cross-ownership, had already been eliminated. The Commission had said the ban was no longer appropriate, and the Third Circuit had already said by the time that memo was produced the ban was no longer appropriate. As a result, we were going to do some kind of ownership relaxation for cross-ownership

because the ban was no longer appropriate. As a result, I did ask staff to try to determine how we were going to do ownership studies to make a new determination of where that line should be drawn so that they didn't accuse us of doing it arbitrarily. But I am not aware——

Mr. DOYLE. Has this been done in any other instance?

Mr. MARTIN. The memo? No, we didn't do a memo on any other rules because going into the rule-making, none of the other rules had a presumption.

Mr. DOYLE. OK. Thank you very much.

Mr. MARTIN. The one rule was the courts had——

Mr. DOYLE. By the way, I have 8 minutes, Mr. Chairman, not five, just so you know. Is that from 8?

Mr. MARKEY. Yes, you——

Mr. DOYLE. OK. I want to move on. Thank you, Mr. Chairman. Chairman Martin, in my years on the committee, I have learned a lot from Chairman Dingell, including this technique, so a simple yes or no will suffice to the following questions. In the Seattle hearing last month, you referred to the publisher of the Seattle Times, Frank Blethin, as being a vocal proponent of keeping the rules the way they are. And you also said, and I quote, "I think you have to put that in the context of almost every newspaper in the country having cutbacks and that those will continue until they can diversify their media holdings and spread their costs over other outlets." Do you agree with that statement?

Mr. MARTIN. I haven't——

Mr. DOYLE. It is just a yes or no question.

Mr. MARTIN. I can't say for sure that I said it, but yes, I think I generally agree with it.

Mr. DOYLE. Are you aware that Dean Singleton, owner of the York Daily Record, and dozens of other papers of the Media News Group, said that the newspaper industry is, quote, very, very, very profitable, and it will continue to be for a long time?

Mr. MARTIN. I am not aware that he said it but——

Mr. DOYLE. He did say that. Are you aware in late October that he also said that more people read the Sunday newspaper than watch the Super Bowl and that newspapers are, quote, holding up better than most other media?

Mr. MARTIN. No, I am not aware that——

Mr. DOYLE. He said that, too. Are you aware that Scarborough Research, a firm that works closely with the Newspaper Association of America, their report concluded that, and I quote, they continue to find that when online readers are considered, the story of newspaper readership for many papers transforms from one of slow, steady decline to one of vibrancy and growth?

Mr. MARTIN. I am sorry, what was the question? Have I seen that report?

Mr. DOYLE. Yes.

Mr. MARTIN. I haven't seen that report, no.

Mr. DOYLE. Are you aware that the Mid-Atlantic Community Papers Association opposes lifting the cross-ownership rule?

Mr. MARTIN. I think someone from that group testified at one of our hearings I believe.

Mr. DOYLE. Thank you. Are you aware that the Midwest Free Community Papers opposes lifting the cross-ownership rule?

Mr. MARTIN. I apologize. It may have been the Midwest, not the Mid-Atlantic, that testified in Chicago.

Mr. DOYLE. Are you aware that the Association of Free Community Papers opposes lifting the cross-ownership?

Mr. MARTIN. Yes.

Mr. DOYLE. Are you aware that the Independent Free Papers Association opposes lifting the cross-ownership rule?

Mr. MARTIN. No, I haven't heard of that association.

Mr. DOYLE. They are. Are you aware that the Community Papers of Michigan opposes lifting the cross-ownership rule?

Mr. MARTIN. No.

Mr. DOYLE. How about the Free Community Papers of New York?

Mr. MARTIN. I knew the Free Community Papers Association was.

Mr. DOYLE. The Free Community Papers of New England?

Mr. MARTIN. No.

Mr. DOYLE. The Texas Community Newspapers Association?

Mr. MARTIN. No.

Mr. DOYLE. The Wisconsin Community Newspapers Association?

Mr. MARTIN. No.

Mr. DOYLE. The National Newspaper Publishers Association, also known as the black press of America, opposes lifting the cross-ownership rule. Did you know that?

Mr. MARTIN. I believe they were at the Chicago hearing. I think a representative——

Mr. DOYLE. Are you aware the National Association of Hispanic Publishers opposes lifting the cross-ownership rule?

Mr. MARTIN. I think so, yes.

Mr. DOYLE. Thank you. Now, let me get to the hearings. We had one in Pennsylvania. It was in Harrisburg. I remember frantically calling about a week before that hearing to try to find out what time it was and get the details. One of the things that Commissioner Copps said struck me particularly about the dumbing down of America. Do you know that you had this hearing in Harrisburg, only one newspaper, Harrisburg Patriot, made an effort to cover that story. AP did a wire on it, but only the broadcast trade journals picked that up. Nothing in the News Media Group, York Daily Record, Lebanon Daily, or any other newspaper in the State of Pennsylvania. But every one of those papers ran a five-paragraph AP wire story on Hugh Hefner's belief that Anna Nicole Smith's body should be buried in the Bahamas. You talk about the dumbing down of America. You can see why many people, Commissioner Copps and myself, were concerned.

I am going to skip my last question because I want to get to my conclusion, Mr. Chairman, if you will indulge me.

Mr. MARKEY. I am sure it is going to be great.

Mr. DOYLE. I know we have lots of questions about process here, and I agree with Chairman Dingell that the vote on media ownership needs to be given complete analysis and reflection. I am not sure if that is possible to do by the end of this year. I read what is driving it is the transfer of the Tribune company to a private

owner. I understand the chairman has proposed the Commission will deny the waivers, but if the Tribune sues the FCC, it gets an automatic waiver. That doesn't sound right to me. I would be interested in hearing from the Commissioners if they have ever seen any process like that before, and finally, Mr. Chairman, I am withholding judgment on media ownership rules, but I am really concerned with how the FCC got here. And I think we need more time to take a look at this process. December 18th seems way too short of a time. The Senate has already passed a bipartisan bill.

Mr. MARKEY. The gentleman——

Mr. DOYLE. I think we may need to do that in the House, and I thank the chairman for his indulgence.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes——

Mr. DOYLE. Was it really 8 minutes?

Mr. MARKEY. It was 10 minutes that the gentleman from Pennsylvania received, and it is I am sure in silence being noted by the Republicans and perhaps not in silence after I recognize the ranking member, the gentleman from Texas, Mr. Barton.

Mr. BARTON. Well, thank you, Mr. Chairman. I will just tell my good friend Mr. Doyle from Pennsylvania that if you wore a watch that had numbers on it and not one of those fancy watches with no numbers, you would know that you had more than 8 minutes, see. Well, I want you to know, Chairman Martin, that some of us do support the relaxation of the cross-ownership rules. So you have a few friends on that issue. Now, some of us are skeptical on some of your other positions, but on that one, we are with you; and we hope that you will vote to do that.

What puzzles me though is that in that same hearing apparently next week or the week after next you are going to reimpose the 30 percent cap for cable ownership. Now, I don't understand the philosophy that the Commission apparently is going to support relaxation in the top 20 markets for newspaper ownership but in the same hearing is prepared to vote to reimpose an ownership cap on cable television. Could you explain that dichotomy?

Mr. MARTIN. Sure. I think at that same hearing I would propose we actually leave in place all of the other ownership rules that the Commission has had, which would be not only the cap on cable, but also the current radio caps and the current cap on duopolies and that we not make any other changes at this time on the other media ownership rules. I think that media ownership in general is obviously a very contentious issue, and I think as a result of that I would encourage the Commission to move cautiously. And I think that the appropriate response is then we should move forward where there seems to be the most need for some kind of change, and I think the most need for that is the rule that affects the industry that seems to be having the most difficulty in continuing its local newsgathering and also seems to be the only one that hasn't been updated since the 1970s. All of the other ownership rules have been amended either by statute or by the Commission at some point in the 1990s. This is the only rule that has had no change. That is why I think it is important that is the one we move forward with first.

Mr. BARTON. You don't see any irony in going one way on one issue and the other way on the other issue?

Mr. MARTIN. Well, I don't view it as going the other way on the other issues because I would not impose and provide lower caps than the Commission had previously. I am just not going to provide any further regulatory relief on any of the other issues. Some of the other Commissioners have encouraged the Commission to reconsider some of those ownership caps than actually lower them, even at the expense of trying to get media companies to divest some of their assets, and I'm not proposing to do that, I just don't propose providing additional relief for those other companies at this time.

Mr. BARTON. I want to switch issues here. We are all aware of the dispute that is going on between various interests on what is called carriage disputes. I am a little concerned that the Commission has chosen apparently right now to consider imposing a government mandated arbitration for carriage disputes. I am told that in the latest FCC possible version, the government is actually prepared to dictate the structure of a carriage agreement between two private parties. That just really amazes me. So I have a two-part question for each of the five Commissioners. I want each of you to tell me whether you believe the FCC has the statutory authority to intervene in a private commercial negotiation over carriage of video programming. If you say yes, I would like for you to tell me and the committee what conditions you believe must exist before you would agree to such an extraordinary step. Let us just start with the chairman and then go through the Commissioners.

Mr. MARTIN. I do believe we have the authority, and we have actually exercised it before, most recently in the context of the MASN-Comcast dispute in which they were unable to reach an agreement, and we ordered an arbitration process for that particular dispute and also announced that we would reform our rules to better ensure that those disputes got resolved quickly. And I think the touchstone of when the Commission should be interfering is when there is evidence of discrimination in which the operator of the cable system who has the infrastructure for providing access to news and information is discriminating against other people who are trying to get access to that vis-à-vis content they own. And I think that is the touchstone for the Commission's analysis.

Mr. BARTON. Let us just go Mr. Adelstein, Mr. Copps, Ms. Tate, and then Mr. McDowell.

Mr. ADELSTEIN. I do believe that we have the authority but only under the statute when there is discrimination by a vertically integrated cable operator. I was very concerned about a proposal that we were considering that would have allowed this to go to arbitration with no finding of discrimination. In other words, I can set up the Adelstein Channel, which would be very boring, I am certain. And I would be able to go to arbitration immediately, and the cable operator would actually have to offer me some kind of a contract. That was extraordinary in its breadth and I thought did not consider the limitations on our authority in the statute that there should be a finding of discrimination first, and hopefully we can work with our colleagues to come up with a more rational proposal for dealing with what should only be in extraordinary cir-

cumstances that the government intervenes and only those authorized by Congress.

Mr. BARTON. OK. Mr. Copps?

Mr. COPPS. More than occasionally I find myself agreeing with Chairman Martin. In a basic answer to your question, do we have the authority? We came close to actually having an item on this, but there are items of contention that remain. So hopefully we can work through them. I think any independent programming is vitally important.

Mr. BARTON. You might want to repeat that. People couldn't hear you. I heard you.

Mr. MARKEY. The last part.

Mr. COPPS. I am sorry. I said, more than occasionally I find myself in agreement with the chairman, and the basic thrust of his answer to the question you asked was one I agree with. There are items to be debated. Commissioner Adelstein pointed some of them out. We came close to having an item at the last agenda meeting. We didn't quite get there. Hopefully we will soon. I think it is vitally important to make sure that independent programming is provided to the American consumer.

Mr. BARTON. We have got two more Commissioners.

Mr. MARKEY. If the final two Commissioners could answer quickly.

Ms. TATE. Yes, sir. I have been leery about entering into these agreements. I have tried to encourage the companies to do that. When they come in to talk to us, I say, have you filed a complaint? Have you gone through the process that you have available to you now? I agree with Commissioner Adelstein that I was concerned about there needs to be a finding of discrimination before we act, before we come up with any remedy.

Mr. MCDOWELL. Similarly, I am concerned that we first must have a finding of discrimination. In the case of the MASN deal, we had a complaint that was filed at the FCC and had been sitting there for 15 months and was not acted upon. So I was very concerned about that, and we wanted to resolve that. If the government couldn't do it, then let us try a private-sector solution. But in the history of some of these complaints, certain types of these complaints, there have only been two of them that were filed at the Commission, so if folks are serious, they should file a complaint. Both of those two, by the way, were settled out of court, so to speak.

Mr. BARTON. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired. Without objection, I would like to enter into the record a letter to the committee from the Consumers Union, the Consumer Federation of America, and Free Press on Chairman Martin's proposal and process issues at the Commission. Without objection, so ordered.

[The information appears at the conclusion of the hearing on page 359.]

Mr. MARKEY. The Chair recognizes now the gentlelady from California, Ms. Harman.

Ms. HARMAN. Thank you, Mr. Chairman, and thank you Commissioners for very thoughtful and interesting testimony. As I mentioned in my opening statement, I am rabid about getting the DTV

transition right so that first responders at long last have communications systems which they did not have on 9/11 and still do not have, 6 years after 9/11. I only have 5 minutes, but I do want to probe this point with each of you very briefly because we need to remember that if Americans' TV sets go dark on February 17, 2009, our debates about cross-ownership and media consolidation will only be purely academic because the airwaves will be inaccessible to large swaths of the country.

You are the lead agency for consumer education on DTV, and I know you have not all agreed that the Commission is doing enough. Commissioner Copps just testified that the Commission is flubbing the DTV transition. So I would like to start with you, Commissioner Copps. Why do you say this and ask each of you to comment.

Mr. COPPS. We don't have a program. I recently had the opportunity to visit the United Kingdom, where they are doing a lot on the DTV transition. They are phasing it in, they are not pulling the switch all on one day and potentially discombobulating millions of Americans, they are going in city by city by city, one station, then the rest of the stations. All of this is preceded by consumer outreach.

Two specific personal contacts to every subscriber in the United Kingdom. If you are either elderly or disabled, they come to your home and not only tell you what you need to do but do the hookup for you. They are spending an outrageous $400 million for 60 million citizens of the United Kingdom. We have spent like $5 million. We are giving NTIA I think to do consumer outreach. We can't get the job done that way. It is just simply not going to happen. They are doing consumer surveys. We ought to be considering transitioning in and do some demonstration projects. I think we are setting ourselves up, you and me both, for some mighty irate consumers come February 18, 2009.

Ms. HARMAN. Thank you. Chairman Martin.

Mr. MARTIN. I assume you just want me to respond to Commissioner Copps'——

Ms. HARMAN. No, I want you to respond to the question. Are we flubbing the DTV transition?

Mr. MARTIN. Oh, do I think we are flubbing it? No. Are we spending as much money per consumer as they are spending in other countries? No, we are not, either. I think that how much money we have for consumer education, that the Commission has requested monies in the past, and we have got some in our budget this year. Ultimately that is Congress's decision about how to allocate public resources for consumer education. We did receive a letter this past summer from Chairman Markey and from Chairman Dingell encouraging us to adopt a series of requirements on all the industries we regulate, most specifically on broadcasters, that would require a series of PSAs and public education information. There is an order in front of all the Commissioners that implements almost exactly the letter that Chairman Markey and Chairman Dingell had requested, and it goes almost verbatim to implement those kind of requirements. And it is in front of all the Commissioners. I hope that we will implement it soon.

Ms. HARMAN. Thank you. Do others have comments? Commissioner Adelstein.

Mr. ADELSTEIN. I commend the chairman for that proposal. I think it is an excellent proposal that gets us started. It comes directly, almost rips from what Chairman Markey and members of this committee propose, which I think is a good and responsible thing to do, a good place to start. It is not just a matter of resources, though, it is a matter of leadership. The GAO has testified that nobody is in charge. The GAO has testified that there is no plan. And I hate to report to you, but it is true, there is no plan to make a plan. I don't even know of any effort underway to try to figure out how we are going to systematically deal with the education we need to do, to implement the program. We need to start I think with creating an interagency Federal task force. If the private sector has done that, we should at least do that for the Federal Government.

Ms. HARMAN. Thank you. Other comments? Commissioner Tate.

Ms. TATE. Yes. One of the first things that we did, of course, was discuss with the retailers what their responsibility was in terms of informing consumers who are buying new televisions, and we have already issued I think several hundred citations. So I think we are beginning to use the tools that we have.

Ms. HARMAN. Thank you. Commissioner McDowell.

Mr. MARTIN. If you deferred, I was going to ask you if I could have entered in the record our written response to the GAO study that was referenced by one of the other Commissioners. Actually, GAO has not accepted all of our written response because they said it is too long on the plan that we have. So I would ask if that could be entered in the record as well.

Mr. MARKEY. Great. I think that would be very helpful for us, and without objection, we will take that and——

[The information appears at the conclusion of the hearing on page 362.]

Ms. HARMAN. And finally Commissioner McDowell, I just have 10 seconds of comments following what he says.

Mr. MCDOWELL. Absolutely. I think the level of anxiety and angst right now is very healthy. It reminds me of the angst that was building before Y2K. I think there are a lot of moving parts obviously working in partnership with the Department of Commerce. Certainly there is always room for more effort, but I think as we get closer to February 2009, we will see a heightened consumer awareness.

Ms. HARMAN. Thank you. Let me just add that we cannot let this deadline slip. This is about consumer convenience and access to television sets, but it is mostly about whether or not we are going to give tools to first responders that will protect all of us in the event of future manmade and natural disasters, and I urge all of you to do much more, and I urge all of us to do much more. Thank you, Mr. Chairman.

Mr. MARKEY. The gentlelady's time has expired. The Chair recognizes the gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. First, I have a question I want to submit in writing to Chairman Martin. It is on emergency services stuff, and if I just put that in the record——

Mr. MARKEY. And we would ask for a written response to it which we will put in the record.

Mr. SHIMKUS. Thank you. And I was wondering if my friend Michael Doyle is the guy that he mentioned was Solomon. I am reading 1 Kings again. It sounds like Solomon you were referring to, so maybe those comments are appropriate. But I also would note the increased partisan tension. I think Congresswoman Harman brought the hearing back to some process, and that is unfortunate because telecommunications is not a partisan debate. We are regionally focused on areas of concern. And it is tough. We appreciate the concerns about process from the Democrat minority on the Commission because we are going to vote on an Energy Bill today that has no hearing, no language, no subcommittee, no full committee; and I don't think anybody knows what it is. I mean, we have got some broad outline. So for my colleagues over there to complain about your process is ironic to say the least. And I think what is fair is fair in the battle of ideas. If we all had a clear process, the policy that comes out is better. We all don't deny that. We are going to pass an Energy Bill that gets vetoed by the President because it is not going through the process.

Having said that, let me ask if we could just go with Commissioner Adelstein first. Everybody is up here while you are making your testimonies, reading their BlackBerrys, getting information and news stories from an Illinois local guy. It is called Capitol Facts, and he is in the Capitol. He is not an AP or UPI guy, and he is sending what is going on in the Illinois government and politics right here, real time. Do we have more access to information today or less than when the Telecom Act was initiated in 1996, and then if you would say we have more access to information today or not since the three court rulings on media ownership in 2002, the two DC Circuit decisions and the 2004 Third Circuit decisions. More information now or less?

Mr. ADELSTEIN. I would say that there might be more hoses, but as Congressman Inslee is the one who said they are coming out of the same spigot.

Mr. SHIMKUS. Let me try the Michael Doyle approach. More information or less in both areas, yes or no?

Mr. ADELSTEIN. Yes.

Mr. SHIMKUS. Thank you. Both timeframes?

Mr. ADELSTEIN. I would say slightly.

Mr. SHIMKUS. In 1996 and——

Mr. ADELSTEIN. People still rely on newspapers for their information and broadcast.

Mr. SHIMKUS. Commissioner Copps.

Mr. COPPS. More or less diverse information.

Mr. SHIMKUS. I may disagree with that but——

Mr. MARTIN. Yes, more of the timeframes.

Ms. TATE. Yes, more.

Mr. MCDOWELL. Yes, more, in both times.

Mr. SHIMKUS. And that is for both timeframes, 1996 and——

Mr. MARTIN. Yes. Yes.

Mr. SHIMKUS. My time is short, and I am going to be punctual for the chairman's sake. You know, my local radio stations are concerned about staying on the air. I visited two during the break,

WJBD in Salem, Illinois, WGEL in Greenville, Illinois. They are more concerned with this royalties board and the artist payments. And then the other concern goes with webcasting and the fact that they are webcasting but there may be two grabs at the money. And the local radio stations do provide a public service for information. And you know, if something happened in Salem, Illinois and people went one community over, the radio station is still broadcasting. It is not big enough to cover very far, I think 1500 watts. How do they know what is going on locally? Well, they can go to the web. But the problem is on the royalties issue, there is going to be so many big gaps of time because they are not going to pay a second bite at the apple on a royalties board. So you have got a lot of in essence dead air on their ability. That is what concerns small, rural information providers, and I cover 30 counties in rural southern Illinois. I am not worried about St. Louis. I am not worried about Springfield, Illinois, and I am definitely not worried about Chicago because they have got a lot of money, they have got a lot of constituents, they have got a lot of advertising, they have got a lot of big business. I am worried about rural southern Illinois, where there are few people, few large businesses, not a lot of advertising revenue, and if you all help focus on that, then you will make rural America very happy. Mr. Chairman, I will yield back on that.

Mr. MARKEY. The gentleman's time has expired. I think we have time to recognize one additional member and that is Mr. Gonzalez who is next in line.

Mr. GONZALEZ of Texas. Thank you very much, Mr. Chairman. My question will go to Chairman Martin. In your opinion, what is the greatest obstacle——

Mr. MARKEY. By the way, if I may interrupt, for all members, we will return with the Commission after we have the four roll calls that are scheduled on the House floor, and all the members who seek to be recognized for questioning the Commission will be recognized at that time. The Chair recognizes the gentleman from Texas again.

Mr. GONZALEZ of Texas. Thank you. The greatest obstacle to minority ownership. How do you accommodate it, how do you facilitate it? I know you have some proposals. You have responded to a letter that was sent to you by members of the Congressional Hispanic Caucus, some of them anyway, and how does access to capital play into that whole equation?

Mr. MARTIN. The two biggest obstacles for increasing diversity of ownership are access to capital by the people who want to buy stations and actually access to new stations or to the airwaves themselves. So I think that those are the two biggest, single biggest obstacles, and I think it is very difficult to address both of them. Obviously we have already issued lots of licenses for television, news, and radio stations; and many of them were done long before the current process is in front of the Commission. We do have a process now in which we auction off the rights to new broadcast stations on the commercial side, and in that context we do provide opportunities for smaller entities to compete and get certain bidding credits, just like we do on the wireless side. But the problem is that the vast majority of licenses have already been issued. So the single biggest obstacle is the fact that the vast majority of licenses

have been issued already and then access to capital to buy some of those licenses on the market.

Mr. GONZALEZ of Texas. So let us just say the supply is limited and the price is high, and you know, economics is economics, regardless. So what can the FCC do again to facilitate, encourage, accommodate minority ownership? I mean, we go round and round on this, but the reality is like in any other enterprise, minority businessmen and women generally don't have those assets. I mean, is it something that is a permanent situation, or what can you do?

Mr. MARTIN. I think it can be a challenge for a long time. I think there are some things the Commission can do, I think there are some things that Congress could end up doing to support it. I think that what the Commission can do is try to increase the supply. So what we have tried to do is identify where new stations could be available. We also have tried to, as we were talking about with Congressman Doyle, try to identify ways in which we could have other avenues like low-power FM stations that would become available where it wouldn't need to protect the current commercial operators as much. That is one area of increasing supply. We have also tried to, and what I propose is that we waive some of our rules to the extent that these stations are going to be utilized by new entrants, so that for example if a current provider has a construction permit that is expired, he could be able to sell that to someone else who is a designated entity. That would be one way of increasing the supply for them. I also think that there are a variety of ways we could try to address some of the financing, but it is more limited. One of the things that I propose doing is changing what we call our attribution rule, our equity plus debt rule, that would allow for a designated entity who wanted to buy a broadcast station to help get financing from other people that are involved in broadcast properties without having those broadcast properties attributed to him so that he would violate the ownership rule. So that is one way that he could go and get financing from other people involved in the business who would understand the value of the broadcast property. So I think that would address some of the prices-too-high component, along with increasing the pool or the limited supply.

I think Congress could and the Commission has unanimously or supported and recommended in the past and does again now that Congress enact a tax certificate legislation, which would significantly help on the financing side for designated entities and minorities to be able to purchase property. So those are the ideas that we have. Some of the proposals that were put forth by the diversity committee do give me pause that I don't think we are able to enact. For example, there was a proposal that we waive all the foreign ownership restrictions on broadcasters if the foreigner was someone who was a minority or a designated entity. I am very concerned about foreign ownership in broadcasting. That has traditionally been something that Congress has been very concerned about. That is one of the commendations that was put forth to us. I would not recommend to the Commissioners that we waive foreign ownership to try to diversify the airwaves. I think that that is not a good idea. So I think there are things we can do. I recommend that we take

some steps. Some of the things that have been recommended I would be hesitant about doing.

Mr. GONZALEZ of Texas. Commissioner Adelstein, your thoughts?

Mr. ADELSTEIN. You talked about economics, there is very small supply, the price is very high. If you relax the newspaper/broadcast cross-ownership rule, you actually then increase the price, because you have a new deep-pocketed entry coming in. As it turns out, over half of the minority-owned stations are in the top 20 markets, and of those, none are in the top four. So the chairman's proposal directly targets those stations, those very few stations that are owned by minorities, for sale and makes it more difficult for minorities to have their own unique voices heard by being able to buy in because prices will actually go up. So the access to capital actually becomes higher, the prices become higher, and the economics issue is affected.

Secondly, he laid out I think today many positive proposals that he has discussed in the minority ownership proceeding that we are engaged in, but the definition of minorities is such that the organizations representing interests of Hispanics and Latinos and others have said that it actually undercuts the ability of minorities to get access, because he doesn't define them as socially and economically disadvantaged business, it uses the broader small business definition. And in fact, there are fewer minorities that own media outlets in that definition than there are in the STB definition which is Constitutionally approved and is something that we could use. So if we could change the definition, I think many of the proposals he is talking about would actually be very beneficial.

Mr. GONZALEZ of Texas. Commissioner Copps?

Mr. COPPS. I believe the greatest obstacle has been our reluctance to address this issue in a holistic and a comprehensive fashion. There are lots of good ideas, but we need to prioritize them. We are not going to get them all done. What are the four or five that are really going to make a difference here? Certainly the tax certificate, that would have to be done legislatively and would make a huge difference. I think there are some other good suggestions here, but the Diversity Committee sent recommendations forward maybe a couple of years ago, and until recently most of them sat. We have to have the commitment that we really need to address the shameful state of minority ownership.

Mr. MARKEY. Would the gentleman from Texas yield? There are only 3 minutes left on the House floor just so you know.

Mr. GONZALEZ of Texas. In that case, I yield back.

Mr. MARKEY. The gentleman yields back, and we at this point will take a recess for about 30 minutes, and then we will come back and reconvene the hearing.

[Recess.]

Mr. MARKEY. The subcommittee will reconvene, and after another couple of seconds here so that everyone can settle in, the Chair will recognize the gentleman from Florida, Mr. Stearns, for a round of questions. Why don't we instead move to the gentleman from Virginia, Mr. Boucher, and then we will come back to Mr. Stearns. The gentleman from Virginia, Mr. Boucher, is recognized for 5 minutes.

Mr. BOUCHER. Well, thank you very much, Mr. Chairman. I want to thank the members of the Commission for joining us here today and sharing their views with us and responding to some of our questions.

I want to return to the subject of the digital television transition. One week ago today I had the opportunity to visit the U.K. community of Whitehaven, which is the first community in the United Kingdom where the digital television transition has been accomplished. And it was accomplished with remarkable smoothness. As a matter of fact, the individuals there with whom I met said that the only surprise they had was the fact that on switchover day there was total calmness, absolutely no surprises. And that is the kind of results I would like to see us have and I know you would here in the United States.

There are, however, some remarkable differences between what was done in the United Kingdom and what we are prepared to do, and I would just like to make a couple of observations about those differences and get your reaction to how we might change our process going forward. In the United Kingdom, there was a multimedia advertising effort, and every television viewer in Whitehaven was literally inundated with information, publicly funded, about the fact that the transition was coming and the kinds of steps that television viewers ought to take to prepare for it. The elements of that public campaign included radio and television ads, a newspaper comprehensive guide that was inserted in newspapers delivered to every home, and independent direct mail publicly funded that went to every home announcing that the transition was coming and talking about steps to take, and in the Whitehaven community, they even had a countdown clock in the harbor that everybody in town viewed. Some loved it, some hated it, but everybody saw it, and they absolutely knew what that countdown clock meant. So on transition day, everybody was prepared.

Now, in the United Kingdom, as Commissioner Copps noted, they proceeded community by community; and within the individual communities, even one television channel at a time starting with the channels least viewed and then moving up to those that are more popular. So they are clearly taking this step by step, unlike the United States, where in a little more than a year we are going to have a nationwide switchover with every community on every channel.

In the United Kingdom they allocated about $1.2 billion, the pound equivalent of that, to their public education and their public assistance effort. We have a total of about $1.2 billion in this country, and that is largely for a converter box program. We have allocated about $5 million to public education. The United Kingdom has one-fifth the population of the United States, so in comparable dollar terms, if we were to spend the same amount per viewer that they are spending, we would have to spend about $6 billion. We are spending $1.2 billion.

And there are a few other things to note. There were some surprises for me. We have talked a lot about converter boxes. We haven't had much to say about external aerials. But they have had to replace 10 percent of the external aerials on homes that have analog television sets. These aerials were sufficient to get an ana-

log signal, perhaps a snowy one, but are not sufficient to pick up a digital signal at all. And these aerials have had to be replaced. Beyond that and perhaps even more importantly, they discovered that many people did not have the technical know-how to be able to take the converter device that switches digital back to analog and actually install that in their homes so that they can keep their analog set in operation. And they had to have technical assistance. We haven't contemplated that. That is not a part of our converter box subsidy program.

And so I realize Chairman Martin indicated earlier that the level of funding is Congress's decision, and I certainly agree with that; but all of you are Presidentially-appointed and you are Senate-confirmed, and at a minimum, I think that entitles you to express an opinion. So I am going to ask you for your thoughts on the adequacy of the current program that we have in the United States. Do we need more money? Do we need to think about things we have not considered, such as external aerials and the need for technical assistance, and perhaps as Commissioner Copps earlier indicated, we should consider some kind of demonstration program here in the United States akin to what the U.K. has done, starting in one community, the community of Whitehaven, and even expanding out from there. I agree with Ms. Harman when she said we should not delay the switchover date. I think too much planning has gone into that date. But prior to that date, we have a little more than a year. I think we need to do things differently, and I would welcome your views on whether or not we do and what different things we ought to be doing. Who would like to begin?

Mr. MARKEY. The gentleman's time has expired. But the witnesses would be allowed to, if they would, please briefly answer the question.

Mr. MARTIN. I certainly think some additional public resources for public education would be helpful. The Commission has asked for some of those in the past. We actually have some of that in our budget now. I think that would be helpful. I don't anticipate we will ever be able to match on a per-dollar, per-capita basis what they have done in the U.K., but at least some additional resources would be helpful.

I also think that in lieu of that, the Commission needs to—and as again, I think that Chairman Markey and Chairman Dingell deserve the credit for prodding the Commission to go on and put in full place requirements that require the industry to go through a similar kind of education campaign. Some of them were already trying to put together proposals to do that, but I think that that was a helpful thing for the Commission to put in place some requirements to make sure there is a multi-media, multi-faceted education campaign. So I think we need to do that, some additional resources directly would help.

Mr. MARKEY. Very briefly.

Mr. COPPS. It is a totally inadequate project as Jonathan said that needs leadership. I was part of the Y2K thing when I was in the Clinton administration, and that was organized, it had a focus of leadership, and it got the job done.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. Chairman Martin, you know, I have been to these hearings quite a bit, and I see a little bit more friction between the Commissioners here than I have seen before, and I would certainly want to be able to understand, and Mr. Copps has indicated there has been not enough comment period. Incidentally, Mr. Copps, you can see we didn't start our hearing on time, either, so if you are saying the FCC doesn't meet on time, we don't do the same thing here.

But Chairman Martin, this whole business of media ownership, when I was on the Telecom Conference Committee with the Senate for the Telecom bill in 1996, you know, by 1998, we started talking about media ownership. So this has been going on for almost a decade. So I guess my question to you, FCC media ownership restrictions I think have received a lot of public scrutiny in light of the court review which occurs regularly, the comments, there have been economic studies, my staff told me there have been field hearings, so maybe you can walk us through what the public input has been. The comment by Mr. Copps has been there has been not enough time for comments

Mr. MARTIN. Obviously in light of the 2003 court decision as we were beginning this process, again, I wanted to provide more of an opportunity and address some of the concerns that have been raised about not having enough public hearings and not having enough time for public comment. When we started the process, we had an extended 120-day comment period, so it was 4 months to provide comments. That got extended several times to give people even more time to prepare their comments. We had six field hearings focused on ownership and an additional two hearings focused on localism at which we would stay for hours and provided the public an opportunity to comment. And we did hear hundreds and thousands of comments from the public on our ownership rules and the concerns they had with the media in general and whether they were serving their community.

We have received thousands of public comments, both from the industry and from advocacy groups that are more specific and then just in e-mail campaigns and the opportunity for the public to weigh in just to express concerns about media consolidation more generally.

And as you said, we have done a series of economic studies. We have put those out for comment and for peer review. And so I think we have had an extended comment period for debate on this issue.

Mr. STEARNS. All right. Commissioner Copps and Adelstein, I think you have heard all the members, particularly on this side, talk about how the media market has changed so much in terms of the media platforms, whether it is satellite, Internet, or MP3 players. I guess the question for both of you is doesn't that fact, combined with the mandates of section 202(h), which is ownership restrictions are reviewed every 4 years, and recent court decisions in which the courts have really made decisions, doesn't that require the FCC to relax ownership restrictions that were created many years ago before these developments? So in a sense I am saying perhaps we need to relax them. The courts have indicated that on the court decisions, but wouldn't the two of you agree that based upon the media platforms that have come out here and what has

happened in the courts under the mandates of section 202(h) that the FCC should relax ownership restrictions?

Mr. ADELSTEIN. The court said the Commission could relax the rules. It did not indicate that we necessarily should. The concern I have——

Mr. STEARNS. But isn't that important if they indicate you should relax but they are not siding on your side?

Mr. ADELSTEIN. They are saying that it is possible, but they are not saying it is necessary for us to do so. So in other words, the court hasn't compelled us to relax the rules. They said that if you want to relax, that is something which you would have the capability to do under their——

Mr. STEARNS. If the courts were concerned, wouldn't they compel you?

Mr. ADELSTEIN. They could compel us to change the rule. They could say you have to change it. We still have the opportunity to find that the current rule is in the public interest and sort of modify it in another way. My concern is that people still get their news and information from the same sources, even as we have an explosion of technology and new opportunities for access to information. Our own data that we viewed in the course of this proceeding found that 89 percent of the people we surveyed list newspapers and broadcasting as their first and second most important source of news, and just three percent referred to the Internet or cable. And just one percent rely exclusively on alternative media for their news and information. If you go out there and you look at the other sources, the Internet, people say you can go to the Internet. The Newspaper Association said there are all these wonderful competitive alternatives. Consumer groups evaluated them and found that just 3.6 percent contained original reporting. So there is not really a lot of original news being generated there.

Mr. STEARNS. The question that I have asked, I don't think the courts have even justified the existing rules.

Mr. COPPS. What the court said was that a blanket prohibition without any possibility of having an exception appears to be no longer justified but that further regulation of newspaper/broadcast ownership might be entirely justified, and it is perfectly consonant with both the first and the fifth amendment of the Constitution. That is what the court said. So I think had we gone in eventually with a justification for a good rule, that is where so many of our FCC decisions break down. We have inadequate legal justification that with the deference the chairman was talking about before, we would expect that we could have gone in and had a realistic presentation and still could justify a realistic approach to this.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentlelady from California, Ms. Solis.

Ms. SOLIS. Thank you, Mr. Chairman. My question is for Chairman Martin, and this has to deal with access to accurate data about minority- and women-owned broadcasters. And I would just ask you, is it in fact important for the FCC to have adequate data that reflects those populations that we are going to be deciding their participation in these important topics that we are discussing today? Is that something that you personally feel is important?

Mr. MARTIN. Sure. I think it is important to understand exactly the scope of the diversity of ownership in the media landscape today, and trying to get additional information to understand that I think is important.

Ms. SOLIS. Information that was I guess provided that you asked for regarding minority ownership and demographic information, information that came from your own agency, was not accurate. And I hate to say but what we are hearing is essentially there are serious flaws in demographic information for various populations. So I am wondering what kinds of remedies or what kinds of steps will you take and the Commissioners to help rectify that? We have already heard from members talking about that, the under-representation and ownership of minorities and women. How do we then address the issue if we don't have adequate information to make those kinds of policy decisions?

Mr. MARTIN. Well, I think there are a variety of things we can even do still to try to address the issue, but I agree with you that we need to be collecting information. Part of the recommendations that have been made to the Commission and part of the minority ownership proposal that I have in front of the other Commissioners begins to collect the varying information that people said we didn't have adequate enough information and develops and starts longitudinal studies that starts saying we are going to collect this information, and we are going to do it over time so we can see what the impact has been over time of minority ownership. So——

Ms. SOLIS. We do kind of know right now that we haven't changed in terms of the under-representation, so how rapidly would you be willing to move on this? Because I think so many of us here are very tired about hearing the same things over and over again and would like to see some action.

Mr. MARTIN. On the data-collection issue that is in front of the Commissioners now to begin doing the data collection exactly as the diversity groups have advocated that we do, both short term and long term, that is what they mean by a longitudinal study, they want to do it over time and see how the differences have been impacted. But I have proposed the Commission begin collecting information exactly as they would like us to.

Ms. SOLIS. I think one of the concerns I would have is who those researcher demographers are and some accountability and transparency as to how that data is collected, because that just goes back to the same question of not having good data and being more transparent about that. The other question I have is something that we really haven't talked about, and I would like to ask Mr. Copps as well as Mr. Martin. But Mr. Martin, I will start with you. On private equity, we are talking about media ownership and who owns the levers here, and it just strikes me that for some reason we don't really understand fully if there is enough transparency in terms of who and truly are the owners or folks that pull the levers for these trust funds that are established and what kind of disclosure and accountability has been made available or what steps will you take to make that known? My concern is that as we talked about localism with the Tribune merger and all that, I look at my own community and I see that we have actually turned the corner and gone in the opposite direction. So I would like to know if there

is a way for members of this committee to be able to get that kind of information from you and what steps you are going to take to do that.

Mr. MARTIN. We have certain rules about what kind of ownership interests are attributable and which ones aren't. The private equity companies are obviously increasingly interested in media properties, but our ownership rules are the same whether it is a private equity company or another kind of person or entity that is interested in owning media properties. I——

Ms. SOLIS. Could I ask Mr. Copps if he agrees with that?

Mr. COPPS. No, this is such an important question because private equity is transforming the media ownership environment. Instead of publicly held corporations, which you can at least track and file 10K forms with the SEC, you have these private money funds and everything else which don't have to file, I can't find out who owns what. When we got into a recent merger it was only because my staff started digging that we began to find out what this one company held. How can I do my job of protecting the public interest if I can't even locate who owns what, leave alone who is responsible for a bad decision that may have been made?

Ms. SOLIS. Mr. Chairman, I don't know if I am going to have enough time to ask my other questions, but I would like to submit them to the Commissioners for their response, if that is possible.

Mr. MARKEY. And we would ask the Commission please to respond in writing.

Ms. SOLIS. Thank you.

Mr. MARKEY. The gentlelady's time has expired. The Chair recognizes the gentleman from Mississippi, Mr. Pickering.

Mr. PICKERING. Thank you, Mr. Chairman. And what I will try to do is ask a series of questions, and I will combine some and have some stand alone. I thank the chairman for having this hearing, and I thank all the Commissioners for coming before the committee.

First, to the chairman, as I understand it your recent proposal on media ownership applies to the top 20 markets.

Mr. MARTIN. That is correct.

Mr. PICKERING. Mississippi would not be one of those top 20, is that correct?

Mr. MARTIN. That is correct.

Mr. PICKERING. There are some who say that there is a loophole, though, that would allow someone to drive a truck through that. Is that true, not true? If true, how, and if not true, why?

Mr. MARTIN. It is not true that there is a loophole that you can drive a truck through, and the Commission has rules the people can file for waivers on. Even if we have a presumption against allowing cross-ownership in smaller markets, people can always file for waivers. What we have said is those waivers would be presumed to be against the public interest, but we would take certain factors into account like the financial distress of the properties as we traditionally have in waivers. But even in that context, we would look at the level of concentration as we traditionally have done in ownership issues. We would also look at something we have not talked about before, and that is if someone is willing to start new news, if they are willing to create a new local news voice,

I think that is an important consideration that we should take into account.

Mr. COPPS. I think as I said before this is a loophole. These factors that we are going to consider are so generic and they are so porous, I mean, it is the new media ownership sponge. I don't know what it is, but it scares the heck out of me.

Mr. ADELSTEIN. I think it is open season in any community, including Jackson, Mississippi, any community in the country can apply for a waiver on the basis of very loose standards. For example, the financial condition. If they are making less money than they used to, that would be a factor. If they have more news than otherwise would have been the case, but we don't define what more news is. That could be 10 minutes a year more news. Somebody promises, I will put on 10 minutes more, I will put on one special for a half-an-hour more news than you had last year, that would qualify for a waiver. I can't imagine a more porous standard.

Mr. MARTIN. We did not say that would qualify for a waiver. That is not what the order says. No, what we have said is you can apply for a waiver and these are the criteria we would consider. We do not say that you would qualify for it.

Mr. ADELSTEIN. The waiver standard says more news. That is the only standard, more news. So what is more news? There is no definition if it is 5 minutes, 10 minutes, or 50 hours. Theoretically, under that standard 10 minutes could qualify.

Mr. COPPS. It doesn't get you the waiver, but it sure as heck opens the door.

Mr. PICKERING. Is more news a new standard?

Mr. MARTIN. It is. We have not taken into account before people starting additional local news, but if the concern that the Commission has and what is the most evident that we have heard from people is the negative implications on local news, I think it would be significant if we were saying as a result of the transaction people were going to make a commitment to start new local news. I think that would be significant and something we should take into account.

Mr. PICKERING. Let me quickly note a couple of other different areas. One, special access. I know the Commission is considering and gathering data. If the data in addition to what is already established on the record shows that in special access lines that the local incumbents enjoy 90 percent control of that market, would the Commission consider that as a functioning competitive market, or would appropriate action be warranted if it is that type of finding, 90 percent control?

Mr. MARTIN. I think you would have to look at what the trends were over time. I mean, if it used to be 100 percent and it is down to 90 and you saw trends that were increasing competition, that would be different than if there had been increased competition and the special access markets had become more competitive and had become more consolidated. So I think it would depend, and it is hard to say the absolute figure without looking at what the trend lines were.

Mr. PICKERING. Any other Commissioner?

Mr. COPPS. The 90 percent scares me.

Mr. PICKERING. Commissioner McDowell?

Mr. MCDOWELL. You know, the record from my perspective is uneven. It does not give us a conclusive, well-defined picture of the marketplace. As you know, and as I said last summer, I would like to see more detailed mapping, broadband mapping actually, of special access ruling on a very granular basis before we make any further decisions.

Mr. PICKERING. On universal service, a number of merger conditions have been accepted or adopted and likely additional merger conditions that would cap the growth of probably 80 percent of the fund on the wireless side. Given that, it seems to me that that is an automatic constraint on the growth of the fund, and would that justify making sure that we get comprehensive and give us the chance? While you have constrained growth of the fund, probably reduction of the growth of the fund, does it give us a chance both here on the Hill and at the Commission to make sure that we get this right to consider broader proposals or the joint board recommendations, and does that argue for a go-slow approach because this is very significant as we build out broadband, especially in underserved and rural markets?

Mr. MARTIN. I think it does relieve some of the pressure and in that sense give us a chance, but I think it is incumbent upon the Commission to still try to move forward then with those broader processes. In addition to the item in front of the Commission where I have proposed we implement the joint board's recommendation of a cap, I have also proposed other more fundamental reform, including making all carriers come forward and provide their actual costs and including trying to look toward how we can reform the process so that we move to a most efficient or least costly mechanism for serving communities that otherwise wouldn't get service. So I think it does provide us that opportunity, but then it is incumbent upon us to engage in those other items that are in front of us as well.

Mr. COPPS. As a member of the joint board, I really welcome your emphasis on what Congress and the Commission can do together. We have submitted recommendations to include broadband, to do away with the identical support rule, to make sure we have good auditing. I think if you threw into that baby collecting on intrastate, you would have yourself pretty good universal service plans. So I hope the Congress will maybe consider that, and together we can move forward and bring this to a conclusion, because we got to get this broadband deployment done.

Mr. PICKERING. I would encourage the Commission to make sure that we get it right, to work with Congress. And we have a chance now with these cost constraints in place to do something comprehensive and sustainable and to really promote broadband in rural areas, combined with what we are doing with 700 megahertz. So I do encourage you to act, but in this case in concert with Congress, and judiciously and wisely because this is a major, major opportunity and reform that we want to get right. The last question deals with FCC process and reform. I have always been a proponent of shot clocks and deadlines. How do you handle your process so that principled outcomes are most likely guaranteed? And as five Commissioners are before the committee, however many members of Congress we have, all the personalities in a process will have the right outcome. Do you have any thoughts on what we

could be doing to improve the internal process for each member of the Commission, each Commissioner? Do you each have deadlines for responding, for acting? What is the process not only from the chairman's perspective, but also from each Commissioner and meeting deadlines? And I would like to just ask a broad question, do you have any proposals of FCC reform that would help you do your job better?

Mr. MARKEY. The gentleman's time has expired, so we will ask the witnesses to respond very briefly, please.

Mr. MARTIN. I think that the most significant process reform that has been proposed by the Commissioners for a long time has just been the opportunity for the Commissioners to meet more than just two Commissioners at a time. I think that obviously would help facilitate some further discussions and debate. But I think there are all kinds of rules and deadlines that are in place on Commissioners, and I certainly think that I work with all the Commissioners to try to end up accommodating the concerns that they end up having, but I think that there has been a lot made of certain public concerns about deadlines that some people think of them as, and I am not sure I agree with those, that there are a lot of deadlines that are missed by Commissioners that actually significantly delay, for example, release of items, when statements aren't provided when they are supposed to be. There are some process concerns that would apply to everyone.

Mr. COPPS. Real quickly we have some process concerns to work ourselves through, when our meetings are going to be scheduled, how much notice, what are the rights of three Commissioners to bring an item up, to send an item back, to edit an item, and so forth. There are a number of them. I would also though echo what the chairman said, we need to do something, and I have been talking about this every time I come before this committee, to do something about the closed-meeting rule. Some of these frictions you are talking about I think could possibly be significantly ameliorated if we were able to sit down a couple times during the pendency of an item.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Michigan, Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman, and thank you to the Commission for being here. A number of you mentioned these 10 studies. I have a number of questions about these studies. Mr. Chairman, I am going to start with you. How were the authors of these studies selected?

Mr. MARTIN. The authors of the studies were selected primarily by the Chief Economist at the time. The Chief Economist provided a list of potential authors.

Mr. STUPAK. Is that the report that Mr. Doyle put in the record, the summary of the ideas based on broadcast——

Mr. MARTIN. No, it wasn't that report. She tried to gather a list of academics and econometricians around the country who would focus in particular on the industry.

Mr. STUPAK. Did you get input from the other Commissioners?

Mr. MARTIN. We did. We did actually get input and ask the other Commissioners. Only one of the Commissioners suggested any names, and all of the potential authors that any Commissioner sug-

gested were reached out to. Three of the four study authors that were suggested by Commissioner Copps agreed to end up doing a process, one I think said they didn't want to.

Mr. STUPAK. Are you generally satisfied with these 10 studies?

Mr. MARTIN. Are we generally satisfied with the 10 studies? I think that they give us a general sense of what is going on——

Mr. STUPAK. Well, let me ask you. Study No. 1, which looks at how people get their news, is alleged to use data that excluded Latinos. Have you heard that claim?

Mr. MARTIN. What is that?

Mr. STUPAK. Your first study excluded Latinos. It was a study on how people received their news. It excluded Latinos. Wouldn't that be a flaw in the study?

Mr. MARTIN. I think it doesn't capture how Latinos are actually receiving their news, no.

Mr. STUPAK. Well, if you don't count them, they are excluded, right?

Mr. MARTIN. If they are not included, then they are not——

Mr. STUPAK. How about No. 2, which focuses on TV station ownership structure, which allegedly missed 75 percent of the TV stations that were female-owned in 2005 and missed 69 percent of the TV stations that were minority-owned in 2005, is that correct?

Mr. MARTIN. I am sorry, you were saying the study missed those?

Mr. STUPAK. Yes.

Mr. MARTIN. I think that what was important though is that the study also concluded that even having missed those that minority ownership for TV stations had fallen and that female ownership of stations——

Mr. STUPAK. Well, of course, it is fallen if you missed 75 percent of them.

Mr. MARTIN. No, I am saying the point of the study actually supported there were concerns with minority and female ownership. You are right, I think it is unfortunate if they didn't find all of them, but they were still concluding that there were concerns with it.

Mr. STUPAK. Let us go to study No. 3. Study No. 3 I am a little concerned about because it is by Mr. Crawford. At the time wasn't Mr. Crawford negotiating with the FCC to become the Chief Economist?

Mr. MARTIN. No, when we asked him to do the study, we actually asked Mr. Crawford to be the Chief Economist the year before. He was unable to because of his academic commitments. We asked him to end up doing this study. We subsequently asked him when it came open again would he consider being the Chief Economist for a year. It is a rotating position that academics come and take.

Mr. STUPAK. Sure.

Mr. MARTIN. But more importantly, because he did this study, Mr. Crawford has not and will not and is recused from working on the media ownership proceeding——

Mr. STUPAK. OK, but it looks like the dates overlap from our investigation. Let us go to study No. 6. In the peer review it says the imperial data in the study are so limited that the study conclusions do not and cannot possess the reasonable level of confidence necessary to provide policymakers with useful evidence on which to

use their regulatory decisions. Put simply, the findings from the single, 3-day study of one type of news broadcast should not form the evidentiary basis of any sort of public policymaking. Do you agree with that peer review?

Mr. MARTIN. I am familiar with that peer review, and the way that the proposed item responds is that this is not the only study. There were three different other studies, all concluded the same thing.

Mr. STUPAK. Let us go to study No. 7.

Mr. MARTIN. The cross-owned newspapers and broadcast properties actually increased their news. It was the same conclusion we had had in the other studies that had been done. So while we recognize that there have been peer reviews that say we shouldn't rely on this, we don't exclusively——

Mr. STUPAK. But you are relying on this study and this peer review to help make your decision?

Mr. MARTIN. We are relying on the study and the peer review, along with the criticism.

Mr. STUPAK. Number 7. It said the study is oversimplistic. Its assumptions and methodology are flawed. It fails to analyze the effectiveness of the failed station rule and fails to evaluate any of the MMTC's recommendations to improve minority ownership. Each of these were required by the Third Circuit. That is the Prometheus court ruling. Instead, the Beresteanu and Ellickson study, study No. 7, develops a legally flawed and unsolved methodology that inflates the percentage of minority- and women-owned broadcasters by using census data that includes music program distribution, piped-in music services, network television. Overall, it says, I find the study is insufficient to meet rational decisionmaking standards. So that is what the peer review said on No. 7 again on minority ownership.

Mr. MARTIN. Yes, and if I could respond, what study seven concluded was it found that minority and females were clearly underrepresented in radio, television, and newspapers relative to their proportion.

Mr. STUPAK. Well, isn't it——

Mr. MARTIN. And it found our data was extremely limited and that we needed to do better datagathering, both of which I think——

Mr. STUPAK. So I have just pointed out five of the 10 studies that you are relying upon to make this decision on December 18th that you are rushing to make are flawed or have some real serious question about the integrity of the data being based upon. Why would they have to use census data? Why wouldn't they use FCC data to reach conclusions about women and minorities?

Mr. MARTIN. I think what is most important is I am not sure that there is any disagreement, and I think the studies support what the concerns that have been raised that minorities and females are underrepresented in broadcast.

Mr. STUPAK. Maybe I am not making myself clear.

Mr. MARTIN. But I think that they still support that minorities and females are underrepresented, which was the finding of the study.

Mr. STUPAK. Let me quote the last line of the peer review No. 7. It said, I find that Beresteanu and Ellickson study insufficient to meet the rational decisionmaking standard. That is what the FCC is supposed to be doing. Five of the 10 studies have serious flaws and questions. Minorities and women are not being counted. There is no basis to do it. You talk about wanting to go forward in the future, either short term or long term, however women and minorities as Ms. Solis mentioned are being counted. You don't have a rational basis to even begin for a baseline, so how can you go forward to make a comparison, your own data within the Commission? Commissioner Tate mentioned Ms. Hughes, Cathy Hughes, being the largest minority-owned radio station. But when she submitted her application, was it FCC–323, you excluded her. You don't even have her in your own records. That is how flawed the data are and your studies are that you are trying to make this decision. That is what is bothering us. What is the rational decisionmaking, what are you basing it upon?

Mr. MARTIN. The concerns you are raising about study seven, though, the study actually had the same conclusions and findings as I think you all are saying you support, which is that minorities and women are underrepresented and that we need to gather better data. That was the conclusion of the study. So while people think that they should have gathered better data, which we are in the process of trying to do, the studies' basic findings I think you agree with and I agree with. But more importantly the study——

Mr. STUPAK. But you said in your own opening, you, Commissioner Tate, Commissioner McDowell, you rely on these studies. In fact, one you said $170,000 you spent of the taxpayers' money on these studies. You actually spent $322,500 on these studies, and five of the 10 are flawed. And then you also released them, or I believe you did, Mr. Chairman. You released these studies before you had a final published, submitted, peer review. And that is contrary to OMB guidelines on the way you do it, right?

Mr. MARTIN. No it is not.

Mr. STUPAK. It is not a violation of your own OMB guidelines in peer reviewing?

Mr. MARTIN. No, it is not in violation of the OMB guidelines. OMB guidelines say that before a Commissioner agency disseminates, and by disseminate which is a term of art, they mean that they put out——

Mr. STUPAK. Let me ask you about this.

Mr. MARTIN. They put out the peer review, and it has to be within Commission position, that we did not disseminate it if we put it out for public comment.

Mr. STUPAK. We will pick this up when you come back for O&I. But let me say this. The Commission did set section 257, Market Entry Barrier Studies, in 2000, which were made part of the FCC's official record. Those studies, among other things, discuss the extent to which small businesses, women- and minority-owned businesses, face barriers entering in the communications industry along with a series of proposals. What work has the FCC done to follow up on this section 257 findings of 2000, which was recommended you do?

Mr. MARTIN. Sure.

Mr. MARKEY. The gentleman's time has expired. Please answer.
Mr. MARTIN. Can I respond?
Mr. MARKEY. Please.
Mr. MARTIN. Actually, the Commission has a section 257 report and order that I circulated a year ago that was adopted by the Commission in October that hasn't been released because we are still waiting on a statement from one of the Commissioners. Commissioner Adelstein voted it December of last year but has still not given us his statement.
Mr. ADELSTEIN. Correction. I have given you the statement.
Mr. MARTIN. Hold on. I am sorry?
Mr. ADELSTEIN. I just don't want to have myself misstated here. I did give the statement.
Mr. MARTIN. You didn't as of yesterday morning. So when we checked yesterday morning——
Mr. ADELSTEIN. It is as of yesterday.
Mr. MARTIN. I am sorry, you did that as of yesterday? He voted it a year ago, and he did not give us his statement for a year. The report recommends that Congress adopt the Minority Tax Certificate program. We have been trying to get that out for a long time and have been unable to because we didn't have a statement that was provided by one of the Commissioners. That is the action we took in response to the section 257 report and circulated it a year ago. It was opted in October.
Mr. STUPAK. I have further questions. I will take them up later. Thank you, Mr. Chairman.
Mr. MARKEY. We will submit the questions to the Commission. We will ask that they be responded to. The Chair recognizes the gentleman from California, Mr. Radanovich.
Mr. RADANOVICH. Thank you, Mr. Chairman, and welcome panel members. I do have a couple questions of some of the various members. Mr. Adelstein, earlier today you stated that no matter how you feel about broadcast ownership, that there hasn't been a large enough gathering of information or enough time to comment; and given the fact that there have been no hearings on the proposal to limit cable ownership and huge changes in the competitive landscape have happened since 2001, how can you feel that the Commission is ready to vote on the cable ownership cap?
Mr. ADELSTEIN. Well, the cable ownership cap is a very difficult issue. I mean, it certainly is something that we were directed by the Court to look at. The law requires that we put in place a limit on the ownership by cable companies. This has been pending for some time. The chairman put forth the proposal which I have supported to maintain the current cap, but it certainly is something that you know, we have had the rules remanded by the DC Circuit. So it is a difficult order. And I have supported the chairman's proposal on that.
Mr. RADANOVICH. Mr. McDowell, would you care to comment on that as well?
Mr. MCDOWELL. Can you repeat the question? I am sorry, Congressman.
Mr. RADANOVICH. Yes. Do you feel that the Commission is ready to vote on the cable ownership cap now given the fact that there

have been no hearings and, you know, perhaps debated that there is not enough information to do that yet?

Mr. MCDOWELL. Well, the cap, of course, goes back to litigation from a prior Commission and the DC Circuit decision in 2001. I am reviewing the draft order. It is teed up for our December 18th meeting. I am reviewing it in the context of the Turner II decision from 2001 of the DC Circuit. The big concern there are the first amendment implications. I am not sure the draft order as currently written will satisfy the Court's concerns, so it could be ripe to be handed back to us or overturned by the DC Circuit.

Mr. RADANOVICH. Thank you. Ms. Tate, I wanted to commend you for your stance against unjustified regulation of the cable industry at last month's FCC open meeting. Thank you very much. I understand that another item is now circulating at the FCC that would reimpose the very same 30 percent cable ownership cap that a 2001 DC Circuit decision concluded that the FCC failed to justify under the first amendment. In light of the fact that there is more video competition now than there was in 2001, do you oppose this unjustifiable cable regulation just as you opposed the previous regulation last month?

Ms. TATE. Would you repeat the question?

Mr. RADANOVICH. It is a long one.

Ms. TATE. Unlike Commissioner McDowell, I am still looking at this. It is set for our December meeting, and you know, certainly I am going to go back and look and see what the Court said in 2001 and then try to review the record before I make my decision.

Mr. RADANOVICH. Thank you. Mr. Martin, do you view this as arbitrary, that we are considering all sorts of media except cable in the cap debate?

Mr. MARTIN. No, not at all. Indeed, as I stated earlier, actually except for newspapers and only in a very limited way, we are leaving in place all of the caps on radio, all of the caps on TV, and all of the caps on cable. So I think it is actually very consistent.

Mr. RADANOVICH. Mr. Martin, one further question. There are two main rationales for media ownership limits, and they are promotion of viewpoint diversity and localism, but haven't the FCC and now the Third Circuit concluded that the newspaper/broadcaster cross-ownership ban harms rather than helps diversity and localism?

Mr. MARTIN. I think the Commission has said that it could end up raising concerns, but the Third Circuit didn't conclude that. What the Third Circuit in fairness said was that the newspaper/broadcaster cross-ownership cap, it was rational for the Commission to remove it. And some of the Commission's rationale was that, but the Third Circuit didn't affirmatively find that.

Mr. RADANOVICH. Thank you. I yield back. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Illinois, Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman. To all the Commissioners, first of all, welcome, and I just can't express the level of my frustration as I sit here before you and I hear the same song and dance, the same empty words, the same expressions of concern, and frankly the same universal agreement that minority media owner-

ship is a very serious problem. I am just absolutely frustrated. I am a minority, and to hear this body continue to come up with for me empty rhetoric as it relates to minority ownership is just almost abysmal as far as I am concerned. It just shows a total lack of sincerity. Back in 1998, the FCC identified the minority ownership issue as a serious problem, as a real critical issue. The Commission accepted this problem, this analysis, this viewpoint, and the Commission declared that it would take some steps to remedy the situation. Ten years later, no remedy, just rhetoric. And I haven't seen any concrete FCC action, and I have been on this subcommittee for a number of years now. The Federal courts got involved. The Third Circuit criticized the FCC on this issue when it remanded the FCC's last attempts to relax its rules and specifically ordered the FCC to address the issue on remand. It is my understanding, Chairman Martin, that the FCC has yet to fill the Third Circuit's mandate. Yet today, you are coming in, you are saying December the 18th you are going to promulgate and pass some rules to relax cross-ownership provisions, but yet still, there are still no real efforts and activities, no real plan to deal with the No. 1 issue before the FCC and before the American people, and that is the unfairness in the telecommunications industry, the lack of ownership, the problem that a majority of the American citizenry do not have a voice, a recognized sustained voice in terms of media ownership over the public's airwaves. Next month you are going to be quoting Dr. King's ceremonies at the FCC, and I am sure you are going to be quoting his statement about justice delayed is justice denied. Well, let me paraphrase him if I can. Ownership, media access delayed is media access denied. Now when will the FCC stop denying minorities ownership provisions and assist them to become owners of media outlets in this Nation? Start with you, Chairman Martin. When, specifically when?

Mr. MARTIN. On December 18th the Commission will vote on the item that implements the minority ownership proposals that were put forth by the Diversity Committee. There were 28 proposals they said we could implement right away, and I have gone through and proposed to the Commission that we adopt more than a majority of them but not all. But I think that on December 18th is the day we will adopt those specific proposals. That includes extending time for construction permits when they sell the property to a minority. It includes adjusting our attribution rules so that the equity-plus-debt rules do not apply if the owner is a designated entity, which includes minority, female, and small businesses. It adjusts some structural waivers. It does non-attribution for, as I said, equity-plus-debt. It has a zero tolerance for abuse——

Mr. RUSH. Commissioner Copps. Excuse me. Commissioner Copps, do you agree with this?

Mr. COPPS. When we should do this is before we vote on ownership. Consolidation has made minority ownership infinitely more difficult than it was before, so why would we vote to open up a new bazaar before we have these things really in place? It is a question of commitment. The chairman wanted to vote a number of these items in an item that was drastically changed like 3 days before we were to vote. That is not considered leadership, considered pub-

lic comment on an item. We need to do this before we vote on consolidation.

Mr. RUSH. Commissioner Adelstein?

Mr. ADELSTEIN. I would like to say that I wish that that was a token item that we were going to be voting December 18th, but that would be too kind. We have actually been told by some of the representatives of the minority communities that it actually hurts women and minorities because the definition of women and minorities is any small business. There is not a socially and economically disadvantaged business definition in there. As a result, these things will actually be a setback. They won't actually help. So we need to change the definition of who gets benefited by the proposal or it is less than worthless.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Washington State, Mr. Inslee.

Mr. INSLEE. Thank you. I think it is appropriate to have these oversight hearings any time there is an instance where the Federal Government or an agency of the Federal Government is really demonstrating palpable contempt of the people it is supposed to serve—the American people. And the 650,000 people I represent believe that that is what is happening with the FCC on the cross-ownership rules right now. For two significant reasons I want to talk about those and ask the Commissioners about that. The first reason is that the proposed rule Chairman Martin has proposed and a lot of press accounts suggest it only affected the top 20 markets and the first amendment will be safe everywhere else. Well, in fact, if you read the rule, it essentially allows the FCC to remove these cross-ownership protections for the first amendment in every market in the country and even to allow ownership of the top four media outlets, even in the top 20 markets. All it does is it allows the FCC to take bites out of the first amendment in market by market and cloaks that in some innocuous language that it affects only the top 20 markets. So this is something that ought to concern everybody in small and large markets, and it is certainly a concern to my constituents.

And I want to move to the second reason why I am a little concerned about this. Out in Seattle we had a hearing. We heard about it 5:00 p.m. on November 2nd to tell us about a hearing on November 9th, effectively less than a week's notice under the apparent attempt to reduce the number of people in Seattle who were going to turn out, knowing Seattle is a very vigorous opponent of these rules. It didn't work. Over 1,000 people showed up, stayed until 1:00 in the morning, and enormous eloquence, sincerity, and strength of the message, don't do what the proposal of Chairman Martin is now proposing to do. And the thing that was most disturbing is that when you had 1,000 people staying until 1:00 at night on a Friday, on the next Tuesday morning in the New York Times, we see an op-ed by the chairman saying that he is going to propose rules that would basically ignore the testimony of these hundreds of people in Seattle the Friday before.

Now, that troubles me, because apparently this is an op-ed that I can't believe wasn't written before this testimony was even listened to. We expect Commissioners to go out and listen to the will of the American people, take testimony, evaluate it, work with the

other Commissioners and come up with reasonable proposals. My folks in Seattle believe that they were treated like a bunch of chumps out there that they had the FCC come out, fake like you are listening to them, and the deal was already done. And I don't think that is consistent with the obligation of FCC Commissioners to listen to the people. The Commissioners need to listen to the commissioned who are the real bosses here.

So my first question, Chairman Martin, is, was your op-ed, at least rough draft, written before you listened to these thousands of people out in Seattle?

Mr. MARTIN. Sure, I was working on drafts of the op-ed. I am sure I was working on it on the way out to Seattle as well.

Mr. INSLEE. And when did you send the final draft to the New York Times?

Mr. MARTIN. I am sure it was some time over the weekend. I don't know. I don't know whether I submitted it on Friday or Saturday. I don't know.

Mr. INSLEE. Well, knowing how the New York Times works, I bet you submitted it before you heard the testimony in Seattle. I am going to ask you to check that out and let us know. But it doesn't really matter because it is pretty clear that minds were made up before 1,000 people spent their Friday night coming out to share their opinions with the people who are supposed to be working for them, not telling them what they are doing in their infinite wisdom. And I have heard arrogance out of Washington, DC, before; and even though I work here, I don't believe that it is the source of all wisdom. And I can respect people's academic assessments of this rule and studies that we do and everything else. But you know, the ultimate repository of wisdom in this country is the people that we work for, and they have told you repeatedly in very visceral terms, they don't like this idea of reducing the protection of cross-ownership between newspapers and electronic media outlets. Maybe you don't respect their views, but they are sincere, and they have them, and we ought to listen to them a little bit. And what happened here is really a disgrace to that principle. And the folks in Seattle deserve an apology, frankly, in this regard. And maybe you move forward after apology with the rule you want, but this is not right. It does not sit well with me or them. So I am hopeful that you will go back and really think at some point about the substance of what the people in Seattle told you and reconsider this rule, because I will tell you what, the way you set up this rule, it is clever. It says, well, we have a presumption, you know, against in the taller markets, the non-top-20 markets. We will just have a presumption of innocence if you will. Well, there are a lot of people sitting in jail where the presumption of innocence has been overcome, and in front of this jury, there are going to be a lot of people that are going to be convicted, and the first amendment is going to go down big time. This rule is wrong and should not stand. Thank you.

Mr. MARKEY. The gentleman's time has expired. The Chair notes that all members of the subcommittee have been recognized, asked a round of questions. The gentlelady from Tennessee, Mrs. Blackburn, is not a member of the subcommittee but a member of the full committee, and she is as faithful an attendee at these hear-

ings as any member of the subcommittee; and with unanimous consent, I will recognize the gentlelady for 5 minutes to ask a round of questions.

Mrs. BLACKBURN. Thank you, Chairman Markey, and I appreciate your consideration.

Mr. MARKEY. Put on your microphone there.

Mrs. BLACKBURN. It is on. Maybe my voice is too soft, too genteel. How about that? Too genteel, but you and the ranking member are kind in allowing me to continue to work through this. I do appreciate that very much. I think that it is clear to the Commissioners that there is a great deal of disappointment with the way some things have been carried out, and Chairman Martin, I will have to tell you that reading the proceedings of the 26th, reading some of the transcript, your comments leading up, it has been with great disappointment that I have looked at how you have approached disagreement. And I do consider it an element of disrespect for our constituents who have chosen to speak out on those issues. I regret that. I regret the subjective approach that you have chosen to take, and as many of my colleagues have said today, the lack of an orderly process within your working framework is evident, and that is regrettable for those of us who are working diligently and who see the telecom industries and the interactive technology industries as essential for economic growth and prosperity.

I did want to ask one question if I may, Mr. Chairman, and submit my opening statement for the record. Commissioner McDowell, coming to your testimony, you talked a lot about the diversity within the industry as a whole. And I am working on a piece of legislation I am going to file which would repeal section 612(g), the 70–70 rule, which I think is something that is anachronistic. I don't think the chairman needs to dust it off and try to unilaterally regulate the industry. I don't think the Commission needs to do that. I think the industry is vibrant, and it is competitive, and some things are just not necessary. And I went back and looked at 1984 and when that was put in place, and I thought of myself as a young mother who was very proud of my 19-inch color TV that I could get as much Sesame Street on that thing as I needed to occupy my little kids. I was very proud of my wall-mounted wireless phone because I no longer had a 20-foot cord across the kitchen, and I think about how far we have come since that time. So since you talked about diversity, very quickly, if you would just make a comment for me about the 70–70 rule and repealing the Commission's authority in 612(g) and where you think that would stand, I would appreciate that.

Mr. MCDOWELL. Well, certainly back in 1984 it was a different world. Most consumers only had a choice of one paid video subscriber, MVPDs we called them; and there was far more vertical integration and far fewer independent networks. Back in 1984, there were less than 100 national programming networks, now there are over 500. Back then, vertical integration between cable operators and programmers was at about 50 percent. Today it is about 15 percent, actually less than 15 percent. Today the average consumer has the choice of about three MVPDs, video providers. Back then, satellite was basically non-existent. Now it has a market share of about 30 percent. Back then, phone companies were not in this

market, now Verizon alone has about a million subscribers. And I could go on, but the point is that the marketplace has changed considerably. Now, prices have gone up, but on a per-channel basis, they have actually gone down. There are reports out there and studies that show that prices have, you know, gone up 100 percent over a certain period of time, but at the same time the number of channels that subscribers have available to them——

Mrs. BLACKBURN. So you would say it is a point worthy of consideration?

Mr. MCDOWELL. It is a point worthy of consideration

Mrs. BLACKBURN. Commissioner Adelstein.

Mr. ADELSTEIN. I enforce the laws, Congress writes it. If you repeal it, I won't, but, as it is on the books, I think we need to enforce it. I was very concerned of course with the method by which there was an attempt to arrive at a conclusion that wasn't supported by our own internal FCC data. So I think as long as it is on the books, I think we have to do the best we can to be accurate, fair, and basically report the truth to Congress as we see it.

Mrs. BLACKBURN. But you wouldn't fret if it went away?

Mr. ADELSTEIN. Well, you know, I think you could give frankly the FCC some valuable tools to promote diversity if we reach the 70–70 limit, so I am not necessarily going to advocate its repeal. I just think we need to be accurate in how we assess whether or not we reached that number.

Mrs. BLACKBURN. Very good. Thank you. Mr. Chairman, I yield back.

Mr. MARKEY. The gentlelady's time has expired. The Chair recognizes the chairman of the full committee, the gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, thank you for your courtesy, and again, I commend you for this hearing.

Members of the Commission, Chairman Martin, thank you for being here. I have a limited amount of time, so I will try and proceed by asking questions that can be responded to by yes or no. Chairman Martin, this question is in two parts. Do you agree that the Administrative Procedure Act requires an opportunity for notice and comment and that that Act is essentially an expression of the constitutional requirements on these matters? And would you agree that the APA requires that orders adopted by the Commission must take into account those comments received from the public? Yes or no.

Mr. MARTIN. Yes.

Mr. DINGELL. Now, to the other Commissioners then. Please again, with apologies, I ask yes or no. Ladies and gentlemen, would you each agree that each of your offices has received a draft order in the media ownership proceeding from the chairman's office? Starting on your left and my right, yes or no?

Mr. MCDOWELL. Yes, we have received a draft.

Mr. DINGELL. Ma'am?

Ms. TATE. It was published, and so I have seen what the chairman has stated publicly.

Mr. DINGELL. Thank you. Mr. Chairman, I know you have gotten one. Commissioner?

Mr. ADELSTEIN. Yes.

Mr. DINGELL. Sir?

Mr. COPPS. Yes.

Mr. DINGELL. Now, Chairman Martin, can you explain to us very quickly how a draft order in the media ownership proceeding that is circulated in this fashion before the comment cycle on the proposed rule ends could possibly take into account comments that are yet to be submitted to the Commission?

Mr. MARTIN. The APA notice requirements where we go out and ask the public for what they think about our proposed rules are satisfied when we began this process 18 months ago. We adopted the NPRM at the time, and we actually sought public comment. Public comments have been coming in almost the entire time since then, and indeed, what was requested of me by members of Congress and urged by some of my colleagues is that we publish the proposed rule, publish it, which is what I did. I think that was in Commissioner Copps's original statement when we adopted the NPRM. But as the Third Circuit when they sent it back to us recognized it can't be that every time we try to take action that the APA results in a revolving-door requirement. It can't be that we propose to do something, people comment on it, and then we actually try to move to final order and we have to put that out for comment on it and then people have to seek comment on it. Then as we reach another decision we have to put that out for comment, and then if we alter it every time that results in a revolving door that never allows us to reach a decision. We have sought public notice and comment on our proposals, and we have satisfied the APA for that. What I have proposed doing is publishing the one rule change so that everyone would have an opportunity to actually see it, which is what was actually urged on me and urged on the previous Chairman.

Mr. DINGELL. I want to thank you for that, Mr. Chairman. I want to observe that this is a very fine answer, but I am not sure it is quite responsive to the question. Now, in the interest of time, this question is for Commissioners Adelstein, Copps, Tate, and McDowell. Please again, yes or no. The first one is does this indicate that the Commission can be assumed to be operating in a fair, open, and transparent manner that allows for the full examination of all issues in a reasonable, responsible, rational way on the basis of an adequate record? Start on your left and on my right, yes or no?

Mr. MCDOWELL. Sometimes yes, and sometimes it could use improvement.

Mr. DINGELL. Sometimes yes, sometimes no? Ma'am?

Ms. TATE. I would agree.

Mr. DINGELL. Sir?

Mr. COPPS. No.

Mr. ADELSTEIN. No.

Mr. DINGELL. This question then again for a yes or no answer. Commissioners, do you believe that you and your staff have full, unfettered access to all the Commission's information and resources without oversight or interference by the chairman so that you may make informed decisions when voting on items before the Commission? Starting again on your left.

Mr. MCDOWELL. Same answer, sometimes yes and sometimes no.

Mr. DINGELL. Ma'am?

Ms. TATE. When I have had a problem, I have gone and asked the chairman for more information, and he has responded.

Mr. DINGELL. Thank you. Sir?

Mr. COPPS. No.

Mr. ADELSTEIN. No, not in all circumstances.

Mr. DINGELL. Then this question, have you always voted and had opportunity to vote on items only after seeing a final and complete order? Starting on your left if you please

Mr. MCDOWELL. Yes, I have only voted on items after seeing a complete order.

Mr. DINGELL. Ma'am?

Ms. TATE. Typically we get a red-line version, and then we have the opportunity after the vote to go back and make sure that if we had any changes to that order they were included in the order.

Mr. DINGELL. Thank you. Sir?

Mr. COPPS. I think the answer would have to be no in light of posted option at us and changes that have occurred in items.

Mr. DINGELL. Sir?

Mr. ADELSTEIN. Technically Mr. Copps is correct. Usually we wait until we see them, and that is sometimes why the meetings start so late.

Mr. DINGELL. Now, this question, gentlemen, and ladies. Do you believe that the Commission is doing all that it can to ensure that the regulatory process is open, fair, and is done with a full opportunity for public comment in an appropriate and proper fashion? Starting again, please, ladies and gentlemen on your left.

Mr. MCDOWELL. It could always use improvement.

Ms. TATE. I believe we have been doing that, but we could always improve.

Mr. DINGELL. Thank you. Sir?

Mr. COPPS. Not the way that I would define those items you talked about.

Mr. DINGELL. Thank you.

Mr. ADELSTEIN. No.

Mr. DINGELL. Now, Mr. Chairman, I think you would agree with me that you and I both would like to hear the answer to every question that I have just asked to have been yes. I am concerned here about the way the FCC is running, and I am much concerned about the process that we are observing and seeing that the agency improves dramatically. It is my view that when the Commission acts, these matters should be the subject of adequate notice and full opportunity for comment, that the Commission should function in a way which brings all of the Commissioners in because they are all equal, all have a vote, in determining whether the agency functions as is required by the Communications Act and other statutes in the, quote, public interest. And until and unless I see that that is happening or I see evidence about opportunity for people outside of the Commission to file comment in a way that enables it to be properly considered and heard by the Commission, to create a proper record upon which we may be assured that the Commission is functioning properly and carefully, I will continue to have significant concerns. Now, in view of what I have said, Mr. Chairman, I think it is fair that I should permit you to respond. I hope I have

not offended you, but these are honest concerns which I think you can observe are shared by members of the Commission. I think that when you observe the process and the practice, it becomes clear that the Commission has not been including the public in a way that the public should have been included to have its comments properly considered as part of the record. Mr. Chairman, if you wish to respond, I would be honored that you do so.

Mr. MARTIN. Sure, and thank you for the opportunity. I think that the Commission has actually followed the appropriate procedures in the media ownership context to allow for people to be able to understand what the Commission is proposing to do and to actually allow for them to have the opportunity to comment on it. Indeed the Commission has no obligation to go through the extra step before we adopt an order of publishing the proposed rule. In our notices of proposed rulemaking the law allows us to seek general comments with directions of what we are thinking about doing and have people make comment on it, and we actually very rarely go through the extra step that we did here of before the Commission action, publishing the actual rule so people can see that again. But that does not create an initial obligation to go through and do the whole notice and comment cycle over again. And actually, it was an extra step. If an extra step of disclosure to the public triggers additional process requirements, it will actually discourage the commission from taking that extra step. And what we were doing in this instance was to try to give them more opportunity to see what we were doing.

As far as the internal processes and how the Commission ends up operating, I am sure that they can always end up being improved; but we have been operating under the same internal processes since I was a staffer working for Commissioner Furchtgott-Roth, when Bill Kennard was chairman, and we followed the same process and procedures that we did then. When I was in the minority as a staffer, when I was a Commissioner under Chairman Powell, and since I have been Chairman, we have followed the same basic processes and procedures.

Mr. DINGELL. I am going to say something that I learned when I got to be chairman of this committee. I went over to see the Parliamentarian, he was Lou Deschler, who was one of the giants in that business, and I said Lou, I am very concerned about how I am going to do when I am chairman. I said, what do I need to do to do a good job? He said, John, you have got to do two things. One, you have got to be fair, and two, you have got to appear fair. Those are rules that I have not breached. I suspect the second is the more difficult of the two rules to adhere to. I just would observe one other thing. I always am interested in the substance, but I am very, very interested in the procedure because my old daddy taught me a little lesson way back when I was young. He said, son, if you let me write the procedure and you write the substance, I will overcome you every time. And that is why it is so important that the process and the procedure be fair. You are the guardian of that within the Commission, and I say this with respect and affection because I like you and I think you are trying. But I would observe that these are matters that are going to I think require your attention, and I suspect if they do not get that, I imagine that you are

liable to see these things upset by the courts over failure of the Commission to properly give notice and opportunity for comment. And I just hope that you will keep that in mind as you proceed about the business of the Commission. Thank you, Mr. Chairman.

Mr. MARTIN. Thank you.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. MARKEY. Thank you, Mr. Chairman, and I think that is a very good note on which to end the questioning of the Federal Communications Commission. We thank you very much for your patience, and obviously we are going to be in very close contact with you with many of the issues that were raised today. And we will take a minute or so break here while the first panel moves out and the second panel of witnesses comes up before the committee.

Mr. COPPS. Thank you very much.

[Recess.]

Mr. MARKEY. Thank you all very much for your patience. This is obviously a very important subject, and we have put together one of the most expert panels ever constructed on any subject in the history of Congress. It has been put together with a lot of very careful thought, and we thank you for staying around. We are now heading towards 4½ or 5 hours into this hearing, and there is no end in sight. And I think, you know, you can't get too much of a good thing. So let us just keep going, and we will begin with Sidney "Skip" Bliss, who is the president and chief executive officer of Bliss Communications, Inc. His company owns both newspapers and radio stations in Wisconsin. Here is what I am going to say, though, just so that you all understand, that each of you is going to have to aspire to a higher percentage of your thoughts going unspoken. And so this 5-minute rule upon which you were invited to testify will be enforced, and so please look at maybe the opening two or three or four paragraphs of your statements, and maybe some of that could go and you could get right down into the guts of what it is you want us to know, you know? So that would be very, very helpful to us. We will begin with you, Mr. Bliss. Welcome. You have 5 minutes.

STATEMENT OF SIDNEY BLISS, PRSEIDENT AND CEO, BLISS COMMUNICATIONS, INC.

Mr. BLISS. Thank you. I am happy to be here today to offer you a real-life story of how owning and operating a newspaper/radio combination in a small town can mean better service to the public. I live and work in Janesville, Wisconsin, a growing community of 70,000 people. The Janesville Gazette, founded in 1845, is Wisconsin's oldest daily newspaper publishing 7 days a week and since 1883 has been under the continuous ownership and operation of five generations of my family. Over the course of those 162 years of operation, the Gazette has covered the news and events of our community like no other source, and the people of Janesville have come to rely on the newspaper for its accuracy and credibility.

Before there was a Federal Communications Commission, the government turned to newspaper publishers during the Great Depression and asked them to invest in the new industry of radio to get it off the ground because newspapers knew more about how to gather information and disseminate it than anyone. My father pur-

chased the license for WCLO–AM, and the station went on the air August 1, 1930, 4 years before Congress passed the Communications Act of 1934. The programming was locally produced and included large segments of local news gathered by a team of local news reporters who aggressively competed with the newsroom of the daily newspaper, which was located in the very same building. Over time, as the medium grew, local groups of all kinds appeared on WCLO. Radio became the people's source for timely information of breaking news, community events, sports, and emergency weather. Eventually a new medium emerged which offered a higher quality listening experience, and my father acquired an FM license, and on October 10, 1947, WJVL–FM went on the air.

Although this new technology lent itself best to music-oriented formats, we continued to inform the audience of important news with on-the-hour and half-hour news updates. The Gazette and these stations have been owned and operated together since we went on the air, and our newspaper/radio combination was not made subject to the cross-ownership ban that went into effect in 1975. Our 77-year commitment to quality, independent, community-based broadcast journalism continues today on both of these legacy stations. In fact, newsroom staffing at the stations over the past several years is at an all-time high.

Both the newspaper and radio stations are frequent award winners on a state and national level, and the newspaper is currently Best in Class in Wisconsin. In every case, we have acted responsibly, and our public file at WCLO and WJVL reflects this. Community leaders from all walks of life seek us out so that we can better understand their issues. As a result, we take proactive positions and help push quality initiatives forward. WCLO–AM is an all-local news, weather, and sports talk radio station with a combination of CNN, local newscasts on the hour, and local news on the half-hour. Monday through Friday our morning local talk show brings in community leaders and elected officials to discuss issues of importance with our listeners. Each election cycle, we produce local debates in cooperation with the newspaper and the local University of Wisconsin campus. Last night, in conjunction with local performing arts groups, we recreated a live radio broadcast of Dickens's Christmas Carol.

However, since our founding, the information business has undergone enormous change. Where we were once the sole provider of news locally, today there is a wide array of outlets for people to get that news. Television, Internet, cable, satellite, and telephone communications all compete with us every day for our audience and often for the advertising revenue that supports our newspaper and radio stations. This intense level of communication is creating tremendous challenges for our industries, and it is critical that we have the ability to operate and acquire new businesses that will ensure our economic future.

Under the current cross-ownership ban, as a newspaper publisher, I am the only businessman who is prohibited from pursuing local business broadcast opportunities, while national companies with no local ties to the community are free to do so. This makes it much harder for our company to stay competitive and do what we do best, providing our community with local news and informa-

tion. There is another FM station in our community that offers no local news programming. It has been sold four times in the last 15 years, and if we were allowed to acquire it, we would have extended our full complement of newscasts. We also operate daily newspapers in three other communities, and in one of them, Marinette, Wisconsin, the local radio stations were just sold a year ago. And again, we were prohibited from acquiring them and providing formal local news programming where there was none.

The newspaper industry is one of America's great institutions and is the principal defender of the first amendment. Yet, it is changing dramatically as we speak. If we are to do our job and be economically viable, we must not be forced to operate with one hand tied behind our back while our competitors are allowed to prosper. The newspaper/broadcast cross-ownership ban is antiquated and outdated rulemaking and in the interest of economic fairness needs to be eliminated.

Thank you, sir.

[The prepared statement of Mr. Bliss follows:]

TESTIMONY OF SIDNEY H. (SKIP) BLISS

PRESIDENT AND CHIEF EXECUTIVE OFFICER,
BLISS COMMUNICATIONS, INC.

Before the

TELECOMMUNICATIONS AND THE INTERNET SUBCOMMITTEE,
HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE

December 5, 2007

Good morning, my name is Skip Bliss, and I am President and CEO of Bliss Communications, Inc. in Janesville, Wisconsin.

I am happy to be here today to offer you a real-life story of how owning and operating a newspaper-radio combination in a small town can mean better service to the public.

I live and work in Janesville, Wisconsin -- a growing community of 70,000 people located in Southern Wisconsin.

The Janesville Gazette founded in 1845 is Wisconsin's oldest daily newspaper publishing 7 days a week, and since 1883 it has been under the continuous ownership and operation of 5 generations of my family. Over the course of those 162 years of operation, the Gazette has covered the news and events of our community like no other source of that information and the people here have come to rely on the newspaper for its accuracy and credibility. They continue to rely on the Gazette today, although they now have many more choices to receive their news and information.

Before there was a Federal Communications Commission, the government turned to newspaper publishers during the great depression and asked the industry to get radio off the ground, because they knew more about how to gather information and disseminate it better than anyone. My father purchased the license for WCLO-AM, and the station went on the air August 1, 1930 – four years before Congress passed the Communications Act of 1934 which regulates us today. The programming then was locally produced and included large segments of local news gathered by a team of local news reporters who aggressively competed with the newsroom of the daily newspaper which was located in the very same building. Over time, as the medium grew, local groups of all kinds appeared at the station and on WCLO-AM. Radio became the people's source for timely information on breaking news, community events, sports, and emergency weather. Eventually a new medium emerged which offered a higher quality listening experience and my father acquired an FM license and on October 10, 1947 WJVL-FM went on the air. Although this new technology lent itself best to a music-oriented format, we continued to inform the audience of important news with on the hour and half hour news updates. The Gazette and these stations have been owned and operated together since we went on the air, and our newspaper-radio combination was not made subject to the newspaper-broadcast cross-ownership ban that went into effect in 1975.

Our 77-year commitment to quality, independent community based broadcast journalism continues today on both of these legacy radio stations. In fact, the newsroom staffing at the stations over the past several years is at an all time

high. Janesville is a progressive community with a tremendous school system, great parks, a growing industrial base, and a newspaper/broadcast franchise that has served the city well all these years. By any standard, we have met and exceeded our obligation to provide top quality news and information, and our reputation in the eyes of our readers and listeners as well as our peers are above reproach.

Both the newspaper and radio stations are frequent award winners on a state and national level and the newspaper is currently best in its class in Wisconsin. In every sense we have acted responsibly and our public file at WCLO/WJVL reflects this. Community leaders from all walks of life seek us out so that we can better understand their issues. As a result, we take proactive positions and help push quality initiatives forward. WCLO-AM is an all local news, weather, and sports talk radio station with a combination of CNN/Local newscasts on the hour and local news on the half hour. Monday thru Friday our morning local talk show brings in community leaders and elected officials to discuss issues of importance to the listeners. Each election cycle we produce local debates in cooperation with the newspaper and the local University of Wisconsin campus. Last night, in conjunction with the local performing arts groups we recreated a live radio broadcast of "Twas The Night Before Christmas."

However, since our founding the information business has undergone enormous change. Where we were once the sole provider of news locally, today there is a wide array of outlets for people to get their news. Television, internet, cable,

satellite, and telephone communications all compete with us everyday for our audience and often for the advertising revenue that supports the newspaper and the radio stations. This intense level of competition is creating tremendous challenges for our industries, and it is critical that we have the ability to acquire and operate new businesses that will ensure our economic future.

Under the current cross/ownership ban – as a newspaper publisher – I am the only businessman who is prohibited from pursuing local broadcast business opportunities while national companies – with no local ties to the community - are free do so. This makes it much harder for our company to stay competitive, and do what we do best, providing our community with local news and information. I find this ironic in that, in the beginning, the government sought out publishers to put radio and television in business and today we are the only people that are deemed unfit to operate these franchises where we have a newspaper. There is another FM station in the Janesville market that offers no local news programming which has been sold 4 times in the last 15 years and if we were allowed to acquire it we would extend our full compliment of newscasts. We also operate daily newspapers in 3 other communities and in one of them, Marinette Wisconsin, the local radio stations just were sold a year ago and again we were prohibited from acquiring them and enhancing the quality of their local news programming.

The newspaper industry is one of America's great institutions as the principal defender of the First Amendment and yet it is changing dramatically as we

speak. If we are to do our job and be economically viable we must not be forced to operate with one hand tied behind our back while our competitors are allowed to prosper. The Newspaper/Broadcast Cross Ownership Ban is antiquated and outdated rule, and in the interest of economic fairness it should be eliminated.

Mr. MARKEY. Thank you. You finished with 1 second left to go, Mr. Bliss. You did an excellent job.

Mr. UPTON. You got to be in radio.

Mr. MARKEY. It is our sincere desire that it can be emulated by the——

Mr. UPTON. That is authorized by Mr. Markey, right?

Mr. MARKEY. So we thank you. Our next witness, Dr. E. Faye Williams, is National Chair of the National Congress of Black Women, a non-profit organization dedicated to the educational, political, economic, and cultural development of women and their families. We welcome Dr. Williams.

STATEMENT OF E. FAYE WILLIAMS, NATIONAL CHAIR, NATIONAL CONGRESS OF BLACK WOMEN, INC.

Ms. WILLIAMS. Thank you, Chairman Markey and Mr. Upton, members of the subcommittee. We have been this way before, Mr. Chairman, and this is early compared with the last time we were here when we got on about 5:30. But as you know, the National Congress of Black Women has had a keen interest in media matters for over 15 years when we began a campaign against violence, denigration, and misogyny in the media. And I think I speak for much of the civil and human rights community in making three essential points. My first point is that America's media companies, over whom you exert considerable influence, need to display more responsibility and refrain from disseminating degrading, misogynistic content in order to make a simple buck. Members are all too aware of the examples of media companies jumping at opportunities to produce movies, videos, music, and other content that portray people of color as debase caricatures and poor images of women. They hide behind the first amendment, which is their right, but ignore the larger issue about assuming corporate responsibility to remove the poison from our airwaves.

And that brings me to my second point. There is no balance. As Chairman Dingell and Chairman Conyers have said previously, the current FCC is broken. As a lawyer and a former congressional staff member, I know the administrative agencies require transparency and the meaningful participation of the public. I hope this committee, as others have done, will call on the FCC to cease all rulemaking until the committee is able to complete a full-fledged investigation into recent abuses by the FCC, abuses cited by both Republicans and Democrats.

Third, the current FCC chairman seems bent on pursuing a decidedly anti-diversity agenda, but I hope this committee will stop that. Chairman Martin insists on a big reward for the media companies by relaxing ownership rules. All the available data show that this drastically curtails diversity in local markets. Clear Channel, and I am not sure whether Mr. Levin has a good right or left punch, so let me not be too hard on him, but let me just say they own a whole lot out there and that prevents women and people of color from owning also and having something to say about the content.

As a result, the minority-owned media company is becoming an endangered species, Mr. Chairman. Despite making up 34 percent of the U.S. population, racial and ethnic minorities own only 7.7

percent of radio stations and just over 3 percent of television stations. Under Chairman Martin the situation has worsened. Last year alone minority ownership among TV stations dropped over 8 percent. The number of black-owned stations fell 80 percent, yet the chairman continues to roll back cross-ownership rules, and like Mr. Rush, I am frustrated that no plan is coming forth. This kind of special interest giveaway at the expense of the public is made all the more disturbing by Chairman Martin's effort to disproportionately regulate the only medium on which black-owned programmers and people of color have been able to gain any kind of foothold, cable television.

And so I want to say, Mr. Chairman, as we go through this, a la carte pricing, a long-time pet project of Chairman Martin, would kill minority programmers because they rely on the bundled tier for exposure and for their advertising revenue; and without this benefit, their costs would soar and their audience would really dwindle.

So, Mr. Chairman, the Commission's recently adopted leased access price cuts, for whatever good points it might have by definition, does nothing to increase minority ownership. I think the term media sharecropping has been used, and as a sharecropper's daughter, we definitely don't want to go back there, Mr. Chairman.

Mr. Martin continues to promote these policies as helping minorities, but in a letter written to 13 major organizations and virtually the entire civil rights community, Mr. Chairman, Mr. Martin's agenda would set back the cause of diversity. We have seen this play out before. We would be happy to invite Mr. Martin and others to come into our communities to hear what we have to say and then of course try doing some of the things that would be helpful to us.

I also hope that my friends in the consumer advocacy community will become more sensitive to our concerns as well and not seek to enable Mr. Martin's power grab. They are bad government and detrimental to diversity.

And once again, I thank you, Mr. Chairman, for the opportunity to appear before your committee. And, of course, I will submit my entire statement for the record.

[The prepared statement of Ms. Williams follows:]

House Subcommittee on Telecommunications and the Internet

The Honorable Edward Markey, Chairman

December 5, 2007, 9:30 AM

Remarks of Dr. E. Faye Williams, Esq., National Chair

National Congress of Black Women

Chairman Markey, Chairman Dingell, and Members of the Committee on Energy and Commerce, thank you for inviting me to testify on behalf of the National Congress of Black Women, Inc. (NCBW), a civil rights organization dedicated to the educational, political, economic and cultural development of African American Women and their families.

As many of you know, the NCBW has taken a keen interest in media matters for over 15 years. I think I speak for much of the civil rights community in making three essential points.

First, America's media companies, over whom you exert considerable influence, need to display more responsibility, and refrain from disseminating degrading, misogynistic content in order to make a simple buck. Members are all too aware of the examples of media companies jumping at opportunities to produce movies, videos, music and other content that portray African Americans as debased caricatures. They hide behind the First Amendment, which is their right, but ignore the larger issue about assuming corporate responsibility to remove this poison from our airwaves.

Second, as both Chairman Dingell and Chairman Conyers have pointed out, the current FCC is broken. As a lawyer and former Congressional staff member, I know that administrative agencies require transparency and the meaningful participation of the public. The current FCC is being run in a high-handed, autocratic manner. I hope this committee will call on the FCC to cease all rulemaking until the Committee is able to complete a full-fledged investigation into recent abuses by the FCC – abuses cited by both Republican and Democratic commissioners on the FCC.

Third, the current FCC Chairman seems bent on pursuing a decidedly anti-diversity agenda that I hope this Committee will stop. Chairman Martin insists on a big reward for the media companies by relaxing cross-ownership rules. All the available data show that this drastically curtails diversity in local markets.

ClearChannel alone owns some 1,200 radio stations reaching 110 million listeners, and 42 TV stations in 27 markets. Mega-conglomerates like General Electric control NBC Universal and Universal Studios as well as 38 local broadcast stations; News Corp.'s holdings range from the Fox family of broadcast and cable channels to major newspapers such as the *Wall Street Journal* and the *New York Post* to major film production companies and publisher Harper Collins. These are, of course, but a small sampling, but a representative one nonetheless.

As a result, the minority-owned media company has become an endangered species: despite making up 34% of the U.S. population, racial and ethnic minorities own only 7.7% of radio stations and just over 3% – **3%** – of television stations. Under Chairman Martin, the situation has worsened: last year alone, minority ownership among

TV stations dropped 8.5%; the number of Black-owned stations fell **80%.** Yet the Chairman continues to roll back cross-ownership rules.

This kind of special interest giveaway at the expense of the public interest is made all the more disturbing by the Chairman's efforts to disproportionately regulate the only medium on which Black-owned programmers have been able to gain any kind of foothold – cable television.

His ploy to arrogate imperial powers in the botched 70/70 proceeding – powers that he apparently felt he could used to promote this anti-diversity agenda – could have devastated both present and future minority-owned cable programmers but for the bold leadership of Commissioners Adelstein, Tate and McDowell.

A la carte pricing – a long-time pet project of the Chairman's – would kill minority programmers because they rely on the bundled tier for exposure and for their advertising revenue. Without this benefit, their costs would soar and their audience reach would dwindle.

The Chairman's various multicast must-carry proposals are a Christmas gift for broadcasters that will kill cable channel space that we believe could host future minority-owned networks. Commissioner Adelstein appropriately referred to the Chairman's must-carry leasing proposal as "media sharecropping."

And the Commission's recently-adopted leased access price cuts will not foster diversity in content and will by definition do nothing to increase minority ownership.

Mr. Martin continues to promote these policies as helping minorities. But, in a letter, thirteen major organizations, and virtually the entire civil rights community, have said that Chairman Martin's agenda would set back the cause of diversity. We've seen this play before: highhanded bureaucrats think they know what is best for our communities. Well, we'd invite him to come spend some time in our communities first.

I also hope that my friends in the consumer advocacy community will become more sensitive to our concerns as well, and not seek to enable Mr. Martin's power grabs; they are bad government and detrimental to diversity.

Once again, I thank you for the opportunity to appear before this Committee. I look forward to your questions.

Mr. MARKEY. Thank you, Dr. Williams, very much. Our next witness, Andrew Levin, is executive vice president and chief legal officer of Clear Channel Communications, a media conglomerate that owns hundreds of radio stations, television stations, and outdoor advertising. And like you, Dr. Williams, Mr. Levin is also a former Hill staffer, for this committee, in fact. So we welcome you back, Andy.

STATEMENT OF ANDREW LEVIN, EXECUTIVE VICE PRESIDENT AND CHIEF LEGAL OFFICER, CLEAR CHANNEL COMMUNICATIONS

Mr. LEVIN. Thank you, Chairman Markey, Ranking Member Upton, Congressman Stupak. It is great to be here today. It is certainly an honor to be back here. I have to say if there is anything I have learned since I left, it is a lot more fun to be on that side than it is on this side. But I appreciate the opportunity to be here, and I thank you for inviting me.

The focus of the hearing obviously was the FCC Chairman's proposed changes in newspaper/broadcast cross-ownership rules. Chairman Martin has made it clear he doesn't intend to propose changes to any other ownership rules, including the radio rules. But neither the FCC review that is required by law nor the Third Circuit remand are limited to just the newspaper rule. The FCC has a legal obligation to address all of its ownership rules and make a decision based on the entirety of the record before it, not just on a small subset of that universe. It is my hope that members of the committee will focus on today's marketplace realities and agree that changes to the local radio ownership rule are once again necessary in 2007.

People often forget, and it has been mentioned a few times today, that prior to the Telecom Act of 1996, more than 60 percent of the Nation's radio stations were operating in the red, and many of them were facing the threat of going silent entirely. Congress recognized that crisis, took action, and it worked. And now we are sitting here 12 years later, and radio companies are again facing major operating challenges. Radio industry revenues have grown less than 1 percent a year over the last 5 years. Projections going forward are all flat to negative. This is unsustainable for our industry.

A seismic shift has taken place in the competitive landscape. The rapid growth in new, unregulated digital services, including satellite radio, iPods, and Internet radio, is significantly eroding the amount of time spent listening to free broadcast radio. In the space of only the last 4 years, XM and Sirius increased their subscribership from less than 1 million customers in 2003 to over 16 million customers today. Likewise, I doubt that anyone in this room could have imagined in 1996 that 110 million iPods and other MP3 players would be in consumers' hands by now.

Clear Channel by no means begrudges these new technologies for their success, quite the contrary. But free radio broadcasters, who ironically are the only ones who serve the local needs of their communities, are still shackled by these outdated regulations that not only limit their growth but by extension limit their ability to deliver important local services. The FCC simply can't look the other

way. Regulatory reform is needed, and there is ample room for more ownership flexibility in the radio market without causing excessive concentration.

Just look at the facts. The top 20 radio companies in this country make up less than half of the total radio market. Clear Channel itself owns just 8 percent of U.S. radio stations. By contrast, nearly 90 percent of the recording industry is controlled by just four companies. And the top seven cable companies control 85 percent of that market. The Commission can't simply ignore the change that has occurred in the marketplace, and if the Commission does the unthinkable and approves the XM/Sirius merger, it will make repeal of the local ownership limits an absolute imperative. A combined XM/Sirius would control more spectrum than both the AM and FM bands combined in every local market.

If the FCC approves the creation of a spectrum monolith like this, without at the same time revising rules for local free radio, it would be both a dereliction of its statutory mandate and profoundly unfair to the broadcast industry and the American public. As Ranking Member Upton and other members of the subcommittee have recognized, at a minimum, the FCC should raise the current caps in the largest markets, as Chairman Martin is proposing to do with newspapers. That action would be exceedingly modest, but it is the bare minimum needed to ensure that radio does not become something that only people who can afford to pay for it can listen to.

Finally, and very importantly, I agree with Dr. Williams that immediate action is needed to improve the disgraceful state of minority media ownership. One way is for Congress to reinstate the minority tax certificate program, which Clear Channel has supported for years. Clear Channel also urges the Commission to take immediate action and adopt the bold proposals of the MMTC and 26 other minority media groups, including Rainbow Push and LULAC, who support repeal of both the AM/FM subcaps and adoption of an incubator program that they believe will provide an immediate spike in minority and women ownership.

In closing, I implore the members of the committee to not leave free, over-the-air radio behind. It is an opportunity to protect the future viability of free broadcast radio service, and thank you very much.

[The prepared statement of Mr. Levin follows:]

TESTIMONY OF

ANDREW LEVIN
EXECUTIVE VICE PRESIDENT AND CHIEF LEGAL OFFICER
CLEAR CHANNEL COMMUNICATIONS, INC.

HEARING ON
OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION:
MEDIA OWNERSHIP

BEFORE THE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
HOUSE COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

DECEMBER 5, 2007

TESTIMONY OF

ANDREW LEVIN
EXECUTIVE VICE PRESIDENT AND CHIEF LEGAL OFFICER
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DECEMBER 5, 2007

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to appear before you today. My name is Andy Levin, and I am Executive Vice President and Chief Legal Officer of Clear Channel Communications, Inc. It is an honor to be back in this hearing room, although with all due respect, it's really more fun to be on your side of the dais. I appreciate the opportunity to testify today.

The principal focus of this hearing is the FCC Chairman's proposed change to the newspaper-broadcast cross-ownership rules. Chairman Martin has made it quite clear that he does not intend to propose changes to other broadcast ownership rules, including the local radio rules. I appear today because neither the FCC review required by statute nor the Third Circuit remand are limited to the newspaper-broadcast prohibition. The FCC has an obligation to address all of its ownership rules, not merely a small subset of that universe.

It is no secret that broadcast ownership issues have always been controversial. But it's my hope that my testimony will help the Subcommittee put aside some common misconceptions and hyperbole, and focus instead on today's marketplace realities. I believe that is the key to making fact-

based, dispassionate determinations about whether the current regulatory regime continues to make sense.

Clear Channel operates radio stations serving local communities across the United States. It is a fact that the radio industry has been able to significantly improve its service to the public as a result of changes to the radio ownership rules that Congress mandated in the "Telecommunications Act of 1996." Most people forget that prior to the Telecommunications Act more than 60% of working radio stations were operating in the red, and at risk of going silent entirely. But twelve years ago Congress acted, and it worked. In the years following the Act, radio stations were once again able to compete fairly and be successful. And, just as important, because Congress knew that technology was changing rapidly, it directed – in Section 202(h) of the '96 Act – that the FCC periodically review its broadcast ownership rules, including the local radio ownership rule, to determine whether those rules remain necessary in the public interest as the result of increased competition. If not, Congress directed that the broadcast ownership rules must be modified or repealed.

It is our view that the current state of the media marketplace – in which Americans have access to a super-abundance of news, information, and entertainment options – renders the local radio ownership caps entirely unnecessary and subject, at the very least, to meaningful relaxation.

Today, nearly twelve years after Congress directed increases in the local radio ownership caps, radio stations of all sizes across the nation are once again facing major operating challenges, not only due to ever-increasing competition among local radio stations, but now due to the onslaught of competition from new – and largely unregulated – technology platforms.

In 1996, Congress could not have imagined the dizzying array of digital audio platforms available to consumers today. The country's two satellite operators – XM and Sirius – can now provide listeners with nearly 300 channels of programming in every local market across the country. In 1996, they weren't even licensed to operate. In 2003, when the FCC last examined the state of competition in the industry, XM and Sirius had less than one million subscribers combined. Today, just four years later, they boast over 16 million customers. That's an astounding 16-fold increase. Certainly the FCC is legally required to take notice of this seismic shift in the competitive landscape.

Likewise, Congress could not have imagined in 1996 that nearly 110 million iPods and other MP3 players that are used to listen to music instead of radio would be sold by now. And, as you can imagine, iPods have significantly eroded the amount of time spent listening to free radio, and it's getting worse. In 2007, 70% of new cars were delivered to customers iPod-ready. This will hit radio where it hurts the most, given that 50% of time spent listening to radio takes place in the car. Those devices did not even exist in 1996.

While Congress may have been able to envision the day when people might listen to music over the Internet, it had no idea that today 30 million people would listen to music services on the Internet every week.

All of these wonderful technologies have one profound thing in common - they are achieving tremendous growth – which we otherwise term "success" – and providing wonderful new services to consumers, but all are doing so in unregulated, market-driven environments. Free radio broadcasters, by contrast, remain shackled by outdated regulations that limit their growth, and, by extension, their ability to deliver services that consumers want and need.

The numbers more than bear this out: in the five year period between 2002 and 2006, the average annual growth rate for XM was 161%. Sirius grew 430%. Apple grew 43%. But during that same period, free radio grew less than 1%. Moreover, radio industry revenues fell by an average of 8 percent between September 2006 and September 2007, and industry expectations are that it will be down 3 percent by the end of this year. Projections going forward are all flat to down. This is unsustainable. Free, local radio needs regulatory reform now.

The FCC simply cannot look the other way. It is clear that the marketplace has changed enormously. It is also clear that real trouble is brewing for the local radio industry. Congress doesn't wait for the nation to go into a deep recession before it urges the Federal Reserve to cut interest rates. Similarly, it should not wait for the bottom to fall out for local radio before it urges the FCC to take preventative measures. Relaxing or repealing the local ownership restrictions is required both as a matter of law and sound communications policy.

And let's just imagine for a moment the possibility the Commission were to suspend rational thought, and approve the pending XM-Sirius merger application. If that were to happen, repeal of the local radio ownership limits would be an absolute imperative. Just consider that a combined XM/Sirius would control a block of frequencies that spans 25 MHz. That means they would control more spectrum than the AM and FM bands combined in every market. If the FCC approved the creation of a spectrum monolith like this, without concurrently revising its rules for radio, it would be both a dereliction of its statutory mandate and profoundly unfair to the broadcasting industry and the American public.

Some people may believe that consolidation is a dirty word, but there is abundant evidence that increased levels of common ownership have produced real benefits for American listeners. For example, the number of diverse programming formats has more than doubled since 1993. As a

result of more niche formats, Clear Channel has increased the number of unique songs in rotation by more than 70% since 2001. That means more new music, and more new artists than ever before.

Clear Channel also has become a pioneer in foreign language programming, introducing wholly new formats – such as La Preciosa, Hurban, Mega, Viva, and Reggaeton – which previously were nonexistent anywhere on America's airwaves.

And often overlooked is that the '96 Act was the catalyst for the launch of progressive talk radio. It gave companies like Clear Channel the financial breathing room to experiment with new and untested formats. As a result, in 2006 Clear Channel was the largest affiliate of Air America, carrying progressive talk in 23 markets, six of which were in the top ten.

What's more, reforms of the '96 Act have gone beyond enabling Clear Channel to increase the diversity of programming on its own operated stations. Clear Channel also has made its stations available for diverse program offerings by others. For example, Clear Channel recently entered into an "historic," five-year, local marketing agreement and option to buy with the licensee of WVON(AM), an independently-owned Chicago station that airs an all-Black information and talk format, an arrangement that community leaders in Chicago have heralded as "the most important economic news to hit Black Chicago in years," and one that provides "the only vehicle that we [Black Chicagoans] have to get information and to express our opinions" with expanded reach and the opportunity to create new jobs.

The increased economic and operational efficiencies resulting from the 1996 Act have also allowed Clear Channel stations to greatly augment their commitment to local news and other locally oriented programming. At the end of 2006, Clear Channel had more than 900 news staff in 72 bureaus – rivaling any other national broadcast organization, and, we believe, surpassing many.

Clear Channel stations are routinely recognized by leading journalism organizations for their excellence in news coverage.

Similarly, Clear Channel has expended considerable resources expanding its stations' emergency preparedness capabilities, further enhancing its operations following our stations' experiences with Hurricane Katrina, the recent southern California wildfires, and other local crises that have affected various parts of the country. Of particular note, Clear Channel's "Disaster Assistance & Response Team" has installed radio transmitters, studio equipment and news gathering packages in trucks and RVs in many cities that Clear Channel serves across the country. Those cities will also house generators, satellite phones, fuel and supplies, even a portable tower on a trailer. An emergency backup satellite system will enable any of the company's radio studios located in the vicinity of a particular city with specialized equipment to broadcast their local programming directly to any of the company's tower sites when microwave links or land lines are down or fail. If emergencies force Clear Channel news teams and announcers to abandon their studios, the satellite equipment will enable the station crews of affected areas to broadcast from alternative, nearby locations to provide their listeners with valuable and up-to-date information. This type of comprehensive emergency response plan would simply not be possible were it not for the operational efficiencies flowing from common ownership.

Indeed, I could go on all day – even all week – about the efforts of local Clear Channel stations and their extraordinarily dedicated employees to make a meaningful, positive difference in the communities they serve. The stations throughout Florida and the Gulf Coast that played an integral role before, during and after each of the devastating hurricanes of 2005. The niche public affairs programming offered by our San Francisco stations that address compelling community concerns ranging from the welfare of local children to issues affecting the gay community. The

three-day-a-week open forum provided by Clear Channel's Lebanon, NH stations, which promote discussion of issues of importance to the community and the region. The "Fuel for Families" program hosted by Clear Channel's stations in August/Waterville, Maine, which increases awareness and raises money to provide heating fuel for families in need. These are but a few of many examples which show how Clear Channel stations are better able to serve the specific interests and needs of their local communities due to the economies and efficiencies made possible by common ownership.

It is very important to understand that the amount of consolidation created by the '96 Act did not result in excessive concentration. In fact, nearly every other segment of the media is far more concentrated than the very competitive free, over-the-air, radio industry.

Let's look at the facts:

- Satellite Radio – 2 companies control 100% of the market.
- DBS – 2 companies control 100% of the market.
- Record labels – 4 companies control nearly 90% of the market.
- Cable Television – 7 companies control 85% of the market.
- Internet Search: 2 companies control 80% of the market.

Compare that to:

- Radio Industry: the top 20 companies control less than half of the total market.

As Ranking Member Upton and many other members of the Subcommittee have recognized, in order to compete effectively, at a minimum the FCC should raise the current caps in the largest markets, just as it is proposing to do with the Newspaper Broadcast Cross-Ownership Rules. That action would be exceedingly modest, and is the bare minimum needed to ensure that

free radio will remain just that: free- and that news, information, and entertainment does not become something that is available only to people who can afford to pay for it.

Finally, and very importantly, changes in the local radio ownership rules could be coupled with FCC adoption of key elements of the MMTC proposals, some of which have been pending for more than a decade, to jumpstart real increases in minority and woman ownership of radio properties. The state of minority ownership in media today is a disgrace. There is a need for bold initiatives to change the status quo.

When Clear Channel commenced the process of divesting more than 400 radio stations earlier this year, nearly 40 percent of its radio assets, it sought minority and woman-owned buyers. It wanted to replicate the success of the year 2000, following the 1996 Telecommunications Act, when, in connection with the AMFM merger, it sold 40 of 110 stations, or nearly $2 out of $4 billion in assets, to minority-owned broadcasters. But, Clear Channel's desires this year were thwarted by the stubborn problem of insufficient access to capital by economically disadvantaged groups. The economies of the marketplace need to change to smash the barrier to increase minority ownership. One way to do that is for Congress to reinstate minority tax certificates. Clear Channel is proud to support strongly H.R. 3003, House Ways and Means Committee Chairman Rangel's bill, and H.R. 600, Congressman Bobby Rush's bill, to do just that.

But, we don't have to wait for enactment of that legislation to move the ball forward. The Commission should immediately consider and adopt MMTC's proposals to facilitate increased minority ownership. Of special note, MMTC and multiple other prominent minority media groups, including LULAC, Rainbow/PUSH, Multicultural Radio Broadcasting, Inc., and others support repeal of the AM-FM subcaps. The court in the *Prometheus* case expressly found that the FCC had failed to justify its retention of the subcaps. The history of the subcaps amply reveals that there is

no justification for their retention in today's radio marketplace. Moreover, retention of the AM/FM subcaps actually constrains opportunities for increased minority ownership by reducing the inventory of radio stations for purchase by minority and woman-owned enterprises.

Another MMTC proposal – the so-called incubator program, also has the potential to provide an immediate spike in minority and woman ownership. The FCC should allow companies to acquire more than the otherwise-allowable number of stations in any market where the company establishes an "incubator" program that substantially promotes minority or woman ownership. A "menu-based" approach should be adopted, allowing a company to choose from among several options that would enhance the ability of such businesses to enter, or expand their presence in, the radio industry in exchange for an ownership "credit" or credits. Each such credit, could, in turn, be used by the company to own one station above the ownership cap in a local market. In most cases, the diversity-enhancing benefits would be delivered in a market of similar size to that in which the proposed transaction "over the cap" would take place.

In closing, I implore Members of the Subcommittee, do not leave free, over-the-air radio behind. And do not view media ownership as the third rail of telecommunications policy. The FCC's proceedings afford the opportunity to do much good for American consumers and to promote the kinds of investment that will lead to a more locally oriented and diversely programmed free broadcast radio service. Please don't let that opportunity pass.

Mr. MARKEY. Thank you, Mr. Levin, very much. And our next witness, Jim Winston, came before the subcommittee many times in the past. He is the executive director of the National Association of Black Owned Broadcasters, the largest trade organization representing the interests of African-American owners of radio and television stations. Welcome back, Jim. Whenever you are ready, please begin.

STATEMENT OF JAMES L. WINSTON, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS

Mr. WINSTON. Thank you, Mr. Chairman. Thank you and the members of the subcommittee for inviting me to speak this afternoon.

I am here today to make three requests of the subcommittee. Please support reinstatement of a minority tax certificate policy to promote minority ownership of broadcast facilities. Please prevent the Federal Communications Commission from further relaxing its broadcast ownership rules until it has adopted meaningful policies to promote minority ownership of broadcast facilities. Third, please investigate Arbitron's new portable people meter audience measurement system, because it appears that within its design is a critical flaw in the gathering and processing of the audience data.

We have had very good discussion about the need for a minority tax certificate policy. I will cut my comments short there other than to note that Congressman Charles Rangel has introduced H.R. 3003, and Congressman Bobby Rush has introduced H.R. 600, both designed to reinstate the tax certificate policy. NABOB requests that the members of the subcommittee join Congressmen Rangel and Rush in working to reinstate the tax certificate policy.

With respect to the FCC's media ownership proceeding, again, we have had a great deal of discussion about that today. And NABOB requests the subcommittee direct the Commission to adopt policies either specifically designed to promote minority ownership or at a minimum adopt policies to promote ownership by socially and economically disadvantaged businesses. Also, the subcommittee should direct the Commission to delay any action on changes in its ownership rules until a task force to establish policies to promote minority ownership as proposed by Commissioner Jonathan Adelstein has been created and it has completed its work and reported back to the Commission with its recommendations.

What I would like to do is to take this opportunity to bring to the subcommittee's attention a new threat to minority ownership of broadcast stations coming from the portable people meter audience measurement system adopted by Arbitron. Arbitron maintains a monopoly of the business of measuring audiences of radio stations, which means that if radio stations do not subscribe to Arbitron's rating service, the radio stations will have no ratings data to present to advertisers who purchase advertising time on radio stations. Arbitron has recently created the PPM methodology, an unaccredited electronic audience measurement tool, to replace a paper diary methodology, an accredited methodology, which Arbitron has used for decades. Initial results from the PPM system have shown drastic declines in the audiences for stations serving African-American and Hispanic audiences. The failure of Arbitron

to obtain Media Ratings Council accreditation for PPM in Philadelphia and New York and its failure to obtain reaccreditation in Houston is a situation that calls for an investigation by this subcommittee, because that failure suggests that there are other deficiencies in the methodology that are not yet apparent.

NABOB therefore requests that the subcommittee investigate the PPM methodology and obtain information on the PPM accreditation process from Arbitron and the Media Ratings Council. There is precedent for such a request. Congress requested such information from Nielsen and the Media Ratings Council when the local people meter was being investigated by Congress in 2004.

NABOB applauds the subcommittee's decision to investigate the Federal Communications Commission's efforts to allow further consolidation of ownership in the broadcast industry. However, NABOB submits that the committee must investigate this even more sinister threat to minority ownership of media properties posed by Arbitron's PPM system. If Arbitron was allowed to use its monopoly system in the audience rating business to force its defective PPM methodology on stations nationwide, the loss of minority media ownership that may result could be far more devastating than the loss which may result from the proposed further relaxation of the FCC's ownership rules being proposed by Chairman Martin.

We thank you in advance for considering this request, and we look forward to working with you to investigate and rectify this very serious situation. Thank you for the opportunity to appear today.

[The prepared statement of Mr. Winston follows:]

Testimony
of
JAMES L. WINSTON
Executive Director and General Counsel
of the
NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.

Before the
Subcommittee on Telecommunications and the Internet
of the
Committee on Energy and Commerce
of the
United States House of Representatives
December 5, 2007

Good Morning Chairman Markey and members of the Subcommittee. My name is James Winston, and I am the Executive Director and General Counsel of the National Association of Black Owned Broadcasters, Inc. ("NABOB"). I thank you for inviting me to testify this morning.

NABOB is the only trade association representing the interests of the 245 radio and 13 television stations owned by African Americans across the country. The association was organized in 1976 by African American broadcasters who desired to establish a voice and a viable presence in the industry to increase minority station ownership and to improve the business climate in which these stations operate.

Throughout our existence, NABOB has been involved in Congress's efforts to determine the amount and type of regulation to impose upon the ownership of radio and television stations. NABOB actively opposed the enactment of the Telecommunications Act of 1996, because we knew that it would result in massive industry consolidation of ownership and have a negative effect on the ability of minorities to acquire broadcast stations. Now, eleven years later, our fears have been realized, and the American public is not well served as a result.

Since enactment of the Telecommunications Act of 1996, the number of African American owned companies holding broadcast station licenses has fallen by 40%. Fortunately, some minority owned companies were able to grow during this period of consolidation so that the aggregate number of stations owned by African Americans did not fall as precipitously as the fall in the number of companies owning stations. However, many of the stations that were sold were the only stations serving African American audiences in their communities and those communities have been left without a voice.

I am here today to make three requests of the Committee:

1. Please support reinstatement of the minority tax certificate policy to promote minority ownership of broadcast facilities.

2. Please prevent the FCC from further relaxing any of its broadcast ownership rules until it has adopted meaningful policies to promote minority ownership of broadcast facilities.

3. Please investigate Arbitron's new Portable People Meter ("PPM") Audience Measurement system, because it appears that within its design is a critical flaw in the gathering and processing of the audience data which has resulted in a clear bias against the reporting of minority audiences. That bias is compounded by Arbitron's failure to implement the PPM service in the manner in which Arbitron committed that it would. Initial results from the PPM measurements have shown such huge rating declines for stations serving Black and Hispanic audiences that the financial survival of these stations would be at stake if Arbitron were to implement PPM across the nation in the form it has been initially introduced. As it stands today, PPM is a greater threat to the survival of minority owned media than even the FCC's threatened ownership rule changes.

The Minority Tax Certificate

In 1978, through the use of a tax code change enacted by Congress, the FCC adopted the minority tax certificate policy which provided companies selling broadcast stations a deferral of the capital gains tax on the sale, if the sale was made to a company owned and controlled by minorities. From 1978 to 1995, the tax certificate policy was the single most significant factor in the growth of minority ownership of broadcast stations. For African Americans, the number of stations owned grew from 40 radio stations and 1 television station, to 240 radio stations and 20 television stations. While this growth was substantial in comparison to where we started, in 1995 African Americans still only owned 2% of the total broadcast stations, although we were 12% of the US population. In spite of these dismal numbers, Congress repealed the tax certificate policy in 1995.

Today, as I have mentioned above, minority ownership of broadcast stations is falling. The only proven policy that might help to reverse that slide is the tax certificate. I am pleased to report that Congressman Charles Rangel has introduced H.R. 3003 and Congressman Bobby Rush, has introduced H.R. 600, both designed to reinstate the tax certificate policy. NABOB requests that the members of the Subcommittee join Congressmen Rangel and Rush in working to reinstate the tax certificate policy.

The FCC Ownership Proceeding

In 2003, then-Chairman Michael Powell attempted to further relax broadcast station ownership rules, but the Third Circuit Court of Appeals reversed the Commission's decision. Now, Chairman Kevin Martin is again contemplating further relaxation of the Commission's broadcast ownership rules. NABOB has consistently opposed further relaxation of those rules.

The evidence in the record before the Commission has demonstrated that minority ownership of broadcast stations is declining at a precipitous rate. The evidence before the FCC also demonstrated that minority owners are more likely to provide programming, including news and public affairs programming, that serves minority audiences neglected by mainstream media. Therefore, before any consideration can be given to allowing further ownership consolidation, an effort must be made to stop the erosion of minority ownership in the broadcast industry.

NABOB has been advised that the Commission will in the very near future adopt one or more policy changes that will be announced as policy changes to increase minority ownership of broadcast facilities. However, from the reports that we have heard, the contemplated policy announcements will have little or no benefit for minority owners or potential minority owners, because they will only be directed at "small businesses," as defined by the Small Business Administration. Moreover, Chairman Martin has proposed relaxing the newspaper/broadcast ownership rule, an action that will definitely harm ownership growth opportunities for minority entrepreneurs. Thus, the ownership rule change that has been proposed will harm minority ownership opportunities, and the proposed small business policy changes will have no offsetting benefit to promote minority ownership growth.

NABOB requests that the Subcommittee direct the Commission to adopt policies either specifically designed to promote minority ownership, or, at a minimum, adopt policies to promote ownership by "socially and economically disadvantaged businesses." Also, the Subcommittee should direct the Commission to delay any action on changes in its ownership rules until a task force to establish policies to promote minority ownership, as proposed by Commissioner Jonathan Adelstein, has been created, and it has completed its work and reported back to the Commission with its recommendations.

The Arbitron PPM Ratings Methodology

NABOB would like to take this opportunity to bring to the Subcommittee's attention a new threat to minority ownership of broadcast stations coming from the Portable People Meter audience measurement system adopted by Arbitron. Arbitron maintains a monopoly over the business of measuring the audiences of radio stations, which means that, if radio stations do not subscribe to the Arbitron ratings service, those stations will have no ratings data to present to advertisers who purchase advertising time on radio stations.

Arbitron has recently created the PPM methodology, an unaccredited electronic audience measurement tool, to replace the paper diary methodology, an accredited methodology which Arbitron has used for decades. Initial results from the PPM system have shown drastic declines in the audiences for stations serving African American and Hispanic audiences.

One clear cause of these audience declines is Arbitron's deficiencies in the recruitment, retention and participation of young African Americans and Hispanics in the sample panel, and these deficiencies have resulted in a significant under representation of young African Americans and Hispanics in the PPM panel results. In addition, PPM's attribution of sporadic listening and the lack of a metric that reflects listener engagement also add to the under representation of minorities in the panel results.

However, it seems clear that there are other not so obvious factors affecting this decline. NABOB suspects that these additional factors have been uncovered in the Media Rating Council ("MRC") accreditation review. The MRC is the industry group that accredits audience research used in the advertising industry. The MRC was created by the advertising industry in response to a request from Congress. The MRC's accreditation process is confidential, so the MRC has provided no public statement on the status of the PPM accreditation process. In addition, when the MRC denies accreditation, it allows a confidential appeal process, which also is not public.

Although the MRC has made no public statement about the status of PPM accreditation, it is clear that the PPM methodology has been under accreditation review far longer than needed to obtain accreditation in Philadelphia and New York. In addition, the Houston PPM methodology is up for reaccreditation, and no announcement has been made that it has been reaccredited. (A PPM methodology was previously accredited in Houston, but Arbitron no longer uses that methodology.)

The failure of Arbitron to obtain MRC accreditation for PPM in Philadelphia and New York and to obtain reaccreditation in Houston is a situation that calls for investigation by this Subcommittee, because that failure suggests that there are other deficiencies in the methodology that are not yet apparent. NABOB therefore requests that the Subcommittee investigate the PPM methodology and obtain information on the PPM accreditation process from Arbitron and the MRC. (There is precedent for such a request. Congress requested such information from Nielsen and the MRC when the Local People Meter was being investigated by Congress in 2004.)

1. NABOB submits that the Subcommittee should ask Arbitron to produce: all correspondence, meeting minutes, requests for information, and all other communications between Arbitron and the MRC regarding: (a) reaccreditation of the Houston PPM methodology, (b) accreditation of the Philadelphia PPM methodology (c) accreditation of the New York PPM methodology, and (d) accreditation sought by Arbitron for any other PPM methodology.

2. A similar request should be directed to the MRC for: all correspondence, meeting minutes, requests for information, and all other communications between Arbitron and the MRC regarding: (a) reaccreditation of the Houston PPM methodology, (b) accreditation of the Philadelphia PPM methodology (c) accreditation of the New York PPM methodology, and (d) accreditation sought by Arbitron for any other PPM methodology.

3. We would request that the Subcommittee ask Arbitron:

- Why is there such a large discrepancy between the ratings results for radio stations serving African American and Hispanic audiences under the diary methodology versus the PPM methodology?
- Why has Arbitron consistently failed to reach the targets that Arbitron sets for young African Americans and Hispanics in their survey results?
- What is Arbitron doing to reach its targets for young African American and Hispanic listeners?
- Why is Arbitron unwilling to wait until it reaches its targets for young African Americans and Hispanics before making the PPM methodology "currency?"
- Why is Arbitron unwilling to await Media Rating Council accreditation before making PPM methodology "currency?"
- What is the status of Arbitron's accreditation applications for PPM in Philadelphia and New York, and its reaccreditation application in Houston?
- What objections, problems and concerns has the MRC raised regarding Arbitron's accreditation applications in Philadelphia and New York, and its reaccreditation application in Houston?

If Arbitron is allowed to move forward issuing flawed reports on African American and Hispanic audiences, it will result in huge financial losses for the radio stations serving those audiences and might even force some stations out of business. This would be a tremendous loss for the communities that rely on those stations. The stations serving the African American and Hispanic communities are the voices of those communities. They carry the messages of those communities on social, political, economic, health, and all other issues of concern to those communities. Without stations serving them, the African American and Hispanic communities will become even more isolated and ignored by mainstream media than they are already. Therefore, defective ratings information being spread by Arbitron is more than a business crisis for African American and Hispanic station owners; it is a civil rights crisis for all of America.

NABOB applauds the Committee's decision to investigate the Federal Communications Commission's effort to allow further consolidation of ownership in the broadcast industry. However, NABOB submits that the Committee must investigate this even more sinister threat to minority ownership of media properties posed by Arbitron's PPM system. If Arbitron is allowed to

use its monopoly position in the audience ratings business to force its defective PPM methodology on stations nationwide, the loss of minority media ownership that may result could be far more devastating than the loss which may result from the proposed further relaxation of the FCC's ownership rules being proposed by Chairman Martin.

We thank you in advance for considering this request, and we look forward to working with you to investigate and rectify this very serious situation.

Thank you for the opportunity to appear before you today.

Mr. MARKEY. Thank you, Mr. Winston, very much. Our next witness, John Sturm, is the president and chief executive officer of the Newspaper Association of America. Welcome back to the subcommittee, Mr. Sturm. Whenever you are ready, please begin.

STATEMENT OF JOHN F. STURM, PRESIDENT AND CEO, NEWSPAPER ASSOCIATION OF AMERICA

Mr. STURM. Thank you, Mr. Chairman, Mr. Upton, Mr. Towns, Mr. Stupak. I appreciate the opportunity to testify today. I will try to address the goals of competition, diversity, and localism, which is what we are here about in the context of the 32-year-old ban on newspaper/broadcast cross-ownership. Let me be clear, however, at the outset. In our humble opinion, Chairman Martin's proposal is extremely limited. It is limited only to the top 20 markets. For all other markets, essentially, the ban remains in place. It would be subject to waiver criteria that for the first time ever presumes newspaper/broadcast cross-ownership to be against the public interest. So you are presumed guilty before you come into the FCC to seek a waiver. In fact, our position is and always has been that the across-the-board ban should be eliminated across the board.

As was mentioned earlier today when the Commission testified, this is the only ownership rule that was enacted by the Commission in the 1970s that has not been changed, modified, or eliminated since that time, a time when there were three stations per market and a handful of radio stations. Since that time, broadcast stations, the number of them, has more than doubled. We have cable, satellite, wireless, Internet, and all the things that you have heard referred to earlier today. This is the largest, the biggest, the most enormous expansion and explosion of media in the history of the world, and during that period of time, only newspapers have contracted.

Process. This is the sixth time in the last 11 years that the FCC has a proceeding to review the newspaper/broadcast cross-ownership rule in some fashion. My association has filed 12 sets of comments on this issue over the last 11 years. I last testified on this exact issue on September 15, 1999, in front of this committee. Very little has changed in that time as far as the application of the rule is concerned, but what has changed is that there is more competition, more competitors, more choices, more diversity, and much more difficult times for newspapers.

We have had a unique situation with this rule and that is the grandfathered markets where the rule has been inoperative since 1975, and Mr. Upton referred to one of those, shows that there is no harm to the public through cross-ownership; and in fact, all of the studies also indicate by the FCC and other sources that more news and public affairs is the one differentiator between newspaper ownership of a station and ownership by any other. It is the single differentiator. It is the only difference. More news, more public affairs for local audiences. Eliminating the rule would be pro-competitive because it would allow newspapers to reach audiences just like everybody else does.

Diversity. There is a wealth of viewpoint diversity. Not only is there talk radio, national newspapers, blogs, local Internet services but an increasing desire in local markets for the Internet to provide

truly hyper-local news. These things are developing. Many of you saw just the other day in the Washington Post a story of digital sports. That is a local, Internet-based sports newsgathering organization that will compete with local newspapers.

Localism, an important part of the FCC's criteria. Local newspapers are simply the most local of all media. Local autonomy and local editorial control is the culture of newspapers. No one else does local news like newspapers, and broadcast stations and their audiences would benefit from relaxation under this rule. Local news is not being invested in by anyone these days. You should not count on Google or Yahoo to do local news.

Newspapers have been kept out of the market for 32 years. It is time for newspapers to be allowed to compete just like everyone else. In order to be ineligible to hold a broadcast license, you have to be either a foreigner, a convicted felon, or a newspaper publisher. That is the way it has been since 1975. In today's world, not the world of 1975, that is unconscionable, it is unwarranted, and even as the court said in 2004, unnecessary.

Thank you for your time and your attention.

[The prepared statement of Mr. Sturm follows:]

TESTIMONY OF JOHN F. STURM

**PRESIDENT AND CHIEF EXECUTIVE OFFICER,
NEWSPAPER ASSOCIATION OF AMERICA**

Before the

**TELECOMMUNICATIONS AND THE INTERNET SUBCOMMITTEE,
HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND
COMMERCE**

December 5, 2007

Good morning/afternoon. I am John Sturm, the President and CEO of the Newspaper Association of America. I am very pleased to have the opportunity to appear before this Subcommittee today to discuss the FCC's current review of its absolute ban on newspaper/broadcast cross-ownership in local markets. While defenders of the status quo have characterized the FCC Chairman's plan to move forward in this proceeding in the near future as a "rush to judgment," the facts show that such action is, in reality, woefully overdue. Further, in light of the remarkably one-sided record before the Commission demonstrating that the current ban is counterproductive to the interests of newspaper publishers, broadcasters, and local communities alike, the Chairman's recent proposal will provide only a modicum of the regulatory relief that would be fully justified in the agency's proceeding.

I. FCC ACTION TO RELAX THE DECADES-OLD NEWSPAPER/ BROADCAST CROSS-OWNERSHIP BAN IS EGREGIOUSLY OVERDUE AND IS SUPPORTED BY A COLOSSAL EVIDENTIARY RECORD.

Before commenting on the substance of the Chairman's recently announced proposal to modify the newspaper/broadcast ban, it is important to place the timing and context of the FCC's current media ownership proceeding in proper perspective. The flat restriction on the cross-ownership of a daily newspaper and a TV or radio station within

the same local market now has been in existence for 32 years. More than a decade ago, the FCC began questioning the utility of the ban and recognized the need to reformulate it. Since that time, the agency has conducted a series of interrelated proceedings with the goal of relaxing the absolute restriction. Indeed, the media ownership proceeding currently underway at the Commission represents the *sixth* that the FCC has conducted in the past 11 years to consider the continuing validity of the 1975 rule.

None of these proceedings, however, has resulted in any actual changes to the absolute ban. In fact, most of these proceedings were not completed at all. Instead, they were rolled into subsequent rulemakings, creating a seemingly endless cycle of regulatory uncertainty for the affected newspaper and broadcast industries. Thus, although the Commission repeatedly has recognized that the flat cross-ownership restriction is no longer needed and in reality is inimical to some of the agency's central public interest goals, the rule has remained stubbornly in place.

As a result, the prohibition now stands alone among the series of broadcast ownership regulations that were enacted by the Commission in the 1960s and 1970s. Each of those rules has been relaxed by the agency on at least one occasion. For example, since 1999, broadcasters have been permitted to own two TV stations in many markets. In 1996, Congress determined that a single party should be permitted to own as many as eight radio stations in large markets. By contrast, new newspaper/broadcast combinations are strictly prohibited in all markets.

During the course of the agency's protracted reconsideration of the newspaper ban, the FCC has amassed a mammoth record on the impact of cross-ownership. Based on clear, convincing, and consistent evidence that a blanket restriction is not necessary to

protect either competition or diversity and is detrimental to localism, the FCC decided in 2003 to replace it with a set of more flexible—though still measured—cross-media limits. That decision, as the agency explained, was based on the "most comprehensive" record ever gathered on the issue of newspaper/broadcast cross-ownership. Prior to issuing its 2003 decision, the Commission received and analyzed many thousands of pages of information from a wide range of interested parties, including the full gamut of industry representatives, many public interest organizations, and an unusually large number of private citizens. The agency supplemented this massive amount of information by commissioning 12 media ownership working group empirical studies and conducting a series of localism hearings around the country.

As everyone who has followed this issue is acutely aware, the agency's 2003 attempt to adopt the cross-media limits never went into effect. Instead, it was reversed and remanded by the U.S. Court of Appeals for the Third Circuit. It is imperative, however, for those interested in the outcome of these proceedings not to lose sight of the scope of that remand decision. Even in directing the agency to reconsider the new cross-media limits, the Third Circuit expressly found that "*reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest.*"

As part of the periodic review mandate imposed on the Commission with respect to its broadcast ownership rules in the Telecommunications Act of 1996, Congress directed the agency to "repeal or modify any regulation that it determines to be no longer in the public interest." Because the Third Circuit confirmed that the blanket cross-ownership ban falls into this category, the FCC is under an express directive to abandon

the restriction in order to satisfy the demands of the 1996 Act. Thus, its specific task in the current proceeding is to decide how to respond to the Third Circuit's objections to the calibrated restrictions the agency proposed in 2003.

In order to respond to the court's concerns and to fulfill its quadrennial review obligation under the 1996 Act, the FCC once again is in the midst of updating the already voluminous record it has accumulated with respect to this issue. More than 18 months ago, the Commission again requested input from interested parties. The resulting comment period spanned six months and generated thousands of pages of additional evidence from a wide variety of industry representatives, consumer interest groups, and individual consumers. Furthermore, the FCC commissioned ten empirical studies from academics and other economic experts, the release of which this past summer triggered yet another round of extensive public comment. Overall, more than 160,000 comments already have been filed in the latest round of these proceedings. To build on this gigantic record even further, the Commission also has held six field hearings on media ownership and two hearings on broadcast localism over the past several months. Overall, the FCC took testimony from more than 100 expert witnesses at these hearings as well as the statements of multitudes of concerned citizens.

In sum, few, if any, issues have been examined more thoroughly by the FCC in recent history. While the gathering of additional public input and other information will remain a theoretical possibility far into the indefinite future, the Commission must move forward at some point to finally bring these proceedings to a close. On behalf of the NAA, I submit that the time for such action is long overdue. By any reasonable measure, the agency now has before it far more than enough evidence to eliminate or, at the very

least, modify the outdated ban. Further, nearly three and one-half years have passed since the Third Circuit remanded the FCC's most recent cross-ownership decision, a delay that already has imposed significant regulatory costs on the affected industries during a period that any realistic observer would describe as a "challenging" time to be in the newspaper or broadcast business. In light of these considerations, the FCC Chairman's proposal to issue a decision in this proceeding in the coming weeks is entirely reasonable. If nothing else, this action finally may bring a small measure of regulatory certainty to newspaper publishers and broadcasters, many of whom now have been waiting for more than a decade for the fate of this rule to be resolved.

II. THE PROPOSED MODIFICATION TO THE FLAT CROSS-OWNERSHIP BAN WOULD PROVIDE ONLY MODEST, AND MUCH-NEEDED, REGULATORY RELIEF TO NEWSPAPER PUBLISHERS AND BROADCASTERS.

Since the Chairman released his proposal to modify the blanket newspaper/broadcast cross-ownership ban several weeks ago, opponents of deregulation predictably have sent out alarm bells that the revised rule would lead to wave upon wave of consolidation. According to these parties, local media marketplaces would be left in an almost unrecognizable state, devoid of diverse local news and information, if this proposal comes to fruition. But a close look at the suggested changes to the rule reveals that the reality is quite different. In fact, the Chairman's proposal would give newspaper publishers and broadcasters only modest regulatory relief in an intensely competitive environment.

Given that the FCC now is *obligated* under the 1996 Act and the Third Circuit's holding to relax the blanket cross-ownership restriction, the suggested changes are about as limited as possibly could be expected. Indeed, in light of the revolutionary changes

that have taken hold of the media marketplace in recent years as well as the unequivocal evidence that restrictions on cross-ownership disserve (and certainly are not needed to protect) the public interest, NAA strongly believes that far more extensive deregulation is called for and would be fully justified.

The limited changes to the rule suggested by Chairman Martin would create relatively few and modest opportunities for new media combinations. Out of the 210 Designated Market Areas (DMAs) that exist in this country, the Chairman's current proposal would permit cross-ownership only in the 20 largest. Even in these markets, the new rule would create only a "presumption" in favor of cross-ownership, meaning that opponents would have an opportunity to make the case that a given combination should be precluded. To qualify for such a presumption, moreover, newspaper publishers could own, at most, only one TV station *or* one radio station—but not both. In this respect, the new rule would be considerably more limited than the current TV/radio cross-ownership rule, pursuant to which one entity can own up to two full-power TV stations and as many as six or seven radio stations within the same market. What is more, daily newspapers would be prohibited from owning same-market TV stations that are ranked among the top four in their markets based on audience share. While it is true that the proposal includes a waiver standard for combinations that do not meet the strict criteria for a presumption in favor of cross-ownership, the possibility of waivers is nothing new—the FCC always has the capacity to waive its rules when the public interest would be served as a result.

Further, the Chairman's proposed rule would provide no assurance of relief from the ban in medium-sized and smaller markets. In many markets of this size, broadcast news is becoming a scarcer commodity as the cost of producing news escalates, media

choices increase, and audiences get smaller. Thus, the proposed rule does nothing to enhance the quantity or quality of local news on television and radio in precisely the markets that need help the most. In addition, the proposed rule could lead to the divestiture of co-owned properties that have been created in the past decade through acquisitions—a result that is clearly unwarranted and will result in less local news, not more, for the public.

The proposed changes to the newspaper rule appear even more modest when viewed against the backdrop of the vast changes in the media marketplace since the ban first was put in place. By any reasonable measure, today's media world bears little resemblance to that which informed the FCC's decision to impose the ban in 1975. Back then, consumers had access to a local daily newspaper and, at best, a handful of television and radio stations. The original "Big Three" television networks brought us the only national newscasts, cable television was in its infancy, and the Internet, wi-fi, cell phones, DBS, satellite radio, and iPods were not even visible on the distant horizon.

By contrast, consumers today can turn to all of these choices and a growing chorus of others for news, information, and entertainment at any given time and on virtually any imaginable topic. Choices have expanded for local news, just as they have for nearly any other content category. In particular, the endless capacity of the Internet has proven to be a particularly rich breeding ground for hyper-local blogs and websites, which often cover news and information that may be too narrowly focused to be addressed by mainstream media. Thus, as consumers turn to an ever broader variety of media to get full diets of news and information, the decades-old notion that newspapers

and broadcasters serve as the exclusive "gatekeepers" to local viewpoints has become antiquated and increasingly detached from reality.

As a consequence of the growing fragmentation in the media marketplace, there has been an undeniable decline in the prominence and economic performance of local daily newspapers. Since the cross-ownership ban was adopted in 1975, at least 300 daily newspapers have ceased publishing altogether. Newspaper circulation has been on a downward slide for 20 years. In the past six months alone, it declined 2.6 percent. Not surprisingly, advertising revenue—which accounts for 75 to 80 percent of average newspaper earnings—also has taken a substantial hit. For example, newspaper advertising revenue decreased by more than nine percent in May 2007 compared to May 2006, a drop that Goldman Sachs recently described as "extraordinary in terms of the scale of the decline and the scope of the challenges it represents." As a result of this statistic and similar data, Goldman Sachs concluded in a recent report that "the magnitude of the recent declines [in newspaper ad revenue] is extraordinary for a non-recession period and provides concrete evidence, in our view, that the share shift from print to online in the publishing industry is accelerating."

The broadcast industry is facing similar challenges, especially in smaller markets. The transition to digital television has been expensive for all television stations, and has not been any less so in smaller markets. Likewise, cutbacks in network compensation have been particularly deep for smaller-market stations. At the same time, small-market broadcasters must borrow funds and seek investors in the same capital and money markets as large-market owners who have more resources to leverage and pledge. As the

FCC media ownership rulemaking languishes at the agency, the trends in the newspaper and broadcast industries have become increasingly troubling.

Thus, while the opponents of deregulation continually make the nonsensical claim that any modification of the cross-ownership ban would spell the end of democracy as we know it, there are realistic and urgent concerns that need to be addressed with respect to the rule. Until the FCC levels the regulatory playing field between traditional daily newspapers, broadcasters, and their growing list of competitors, it will continue to inflict unnecessary economic injury on the nation's traditional media. As a result, the agency needlessly will detract from newspapers' and broadcasters' ability to remain efficient, vital, and competitive in today's media marketplace and thus to continue informing and serving their local communities to the best of their abilities. In particular, unless and until these media are permitted to operate in a more efficient manner by shedding regulations designed for a bygone era, they may have little choice but to begin cutting back on some of their most important—but costly—services, including in-depth investigative reporting.

III. REMOVING THE CROSS-OWNERSHIP RESTRICTION WOULD SERVE, AND NOT HARM, LOCAL COMMUNITIES.

Perhaps most fundamentally, in all the volumes of evidence that have been accumulated on this issue, there is none that credibly shows that newspaper/broadcast cross-ownership is detrimental to the public interest. To the contrary, the record repeatedly and indisputably has demonstrated that cross-ownership enhances localism. This is because broadcast stations that are jointly owned with a co-located daily newspaper offer local audiences superior national and local news coverage. This has been proven time and again through the real-world experiences of existing

newspaper/broadcast combinations as well as through numerous empirical and academic studies. For example, notwithstanding the efforts of some deregulatory opponents to mask the results, this reality was confirmed once again by no fewer than five of the empirical studies released by the Commission just this past summer. Given the extensive newsgathering resources and journalistic traditions of daily newspapers, it makes perfect sense that this would be the case.

Working together, newspaper and broadcast staffs can overcome the financial obstacles that both industries have faced in recent years and continue to deliver quality journalism. Notwithstanding the economic challenges confronting the newspaper industry, dailies that are part of newspaper/broadcast combinations have remained especially well-equipped to continue providing exceptional local service. This has proven especially true in medium and small-sized markets. In many such communities, cross-ownership has helped to stem losses in newspaper circulation.

At the same time, combination owners have continued to increase local broadcast news and information. For instance, in four of the smaller markets where Media General, Inc., a proponent of cross-ownership, operates combined properties, the weekly television news output of its stations has grown by between 30 minutes and seven and one-half hours since the combinations were created. Contrary to general media industry trends, these TV stations have increased their newsroom staffs in order to bring this enhanced news programming to local communities. In fact, Media General has increased the overall TV staff numbers in the majority of its cross-ownership markets.

Similar trends also are apparent in larger markets. By way of example, in Atlanta, the country's ninth largest market, the newspaper/radio/television combination owned

and operated by Cox Enterprises, Inc. consistently has offered more local news and public affairs programming than its peers. WSB-TV now airs seven more hours of news programming than its closest competitor, and it is currently the only television station in the market to feature a weekly community affairs show and editorials during its Sunday evening newscast. Similarly, *The Atlanta Journal-Constitution* features additional daily local coverage, including local community zoned editions of the paper.

As these and many other combination owners repeatedly have demonstrated, cross-ownership enables media properties to "tag-team" on local administrative and political proceedings. Among other benefits, such collaboration has ensured gavel-to-gavel coverage for small-town residents who otherwise would not receive such thorough reports. Newspaper/broadcast combinations also are better able to cover developments in the "far corners" of sparsely populated rural markets, ensuring comprehensive regional coverage. By joining forces, co-owned newspaper and broadcast outlets also have produced serious investigative journalism pieces that otherwise would not have been feasible. Such benefits are particularly pronounced in the area of election coverage. Cross-owned properties consistently are the leaders in their markets in holding candidate debates and town hall forums. On election nights, the pooled resources of both outlets are able to bring more results to more residents more quickly and present more in-depth reports on them.

In addition, it is well-established that cross-ownership is not harmful to local viewpoint diversity. Rather, as many existing combination owners have shown through their own practices, same-market outlets tend to make editorial decisions on an individual basis and have strong incentives to offer divergent viewpoints on different platforms.

This experiential evidence has been soundly confirmed by recent empirical evidence: one of the studies released in the ownership proceeding over the summer unambiguously found that cross-owned broadcast stations and daily newspapers are no more likely to share viewpoints than any other same-market media outlets. Previous studies on this topic consistently have reached analogous conclusions. Finally, it is now widely recognized that restrictions on newspaper/broadcast cross-ownership are not needed to protect competition. The FCC concluded in 2003, and the Third Circuit affirmed, that newspaper publishers and broadcasters simply do not compete directly for advertising revenue.

Given the clear benefits and lack of harms stemming from cross-ownership, undoing existing combinations through forced divestitures clearly would be a public interest loss. Notably, the FCC's peer-reviewed studies and numerous other record studies regarding news produced on cross-owned TV stations offer no reason to distinguish by market size in granting relief from the current ban. In addition, the proposed waiver standard may be extremely difficult to meet in smaller markets, both for existing combinations and potential new ones. The uncertainties inherent in case-by-case evaluations also will make acquisitions extremely difficult. Most TV deals are today accomplished through brokers' auctions, and sellers undoubtedly will be reluctant to consider deals with buyers that bring the prospect of lengthy waiver litigation at the FCC.

* * *

Chairman Markey, Vice Chairman Doyle, and Members of the Committee, the evidence shows that the time has long since passed for the FCC to change the decades old ban on newspaper cross-ownership and that consumers will be the beneficiaries of such

action. On behalf of the NAA, I respectfully request that Congress allow the agency to move forward on this important issue as expeditiously as possible.

Again, the NAA appreciates this opportunity to share its views with you, and I look forward to answering any questions you may have.

Thank you.

Mr. MARKEY. Thank you, Mr. Sturm, very much. The next witness, Juan Gonzalez, is past President of the National Association of Hispanic Journalists, an organization dedicated to the recognition and professional advancement of Hispanics in the news industry. We welcome you, sir.

STATEMENT OF JUAN D. GONZALEZ, PAST PRESIDENT, NATIONAL ASSOCIATION OF HISPANIC JOURNALISTS

Mr. GONZALEZ. Thank you, Mr. Chairman. Good afternoon, Mr. Chairman and committee members. And I have prepared some written remarks, which I have submitted to you, but I will also change it a little bit on the basis of the testimony.

My name is Juan Gonzalez. I am here representing the National Association of Hispanic Journalists, a non-profit organization with more than 2,000 members who work in television, radio, and newspapers in the United States in both English and Spanish language medium. I am founder and former president of the Association, a staff columnist for the New York Daily News, and a co-host of the national radio program Democracy Now. In nearly 30 years as a professional journalist, I have never testified before any government body on any issue, but I and the members of my Association are here today to plead for your help because the profession that we love and the media industry in which we labor has repeatedly and profoundly failed the public interest, convenience, or necessity of a huge portion of our population, the approximately 100 million Americans of African, Hispanic, Asian, and Native descent.

Even as our Nation has become ever more diverse racially and ethnically, we all know as much as 35 percent of our population is now minority. Minority ownership of the broadcast companies that provide the public essential news reports and interpretations of daily events has remained at shockingly low levels. The Free Press report released last week found the percentage of minority-owned stations declined from an already paltry 3.45 percent in 2006 to 3.1 percent and that among African-Americans, it plummeted from 25 stations in 1998 to 19 in 2006 to eight to 2007. Black ownership of television stations in America is disappearing. Since 1998, even though the total number of commercial television stations has increased by about 13 percent, the number of minority-owned stations has stagnated.

And radio is hardly much better. A 2006 study by Free Press concluded that minorities own just eight percent of the 10,000 commercial radio stations in the country. In contrast, overall minority ownership in the general non-farmed sector of business in America reached nearly 18 percent in 2002, the last year for which we have comprehensive government data. That is five times better than television and twice the level of radio.

Chairman Martin's plan to permit expanded cross-ownership by newspapers and television stations places the future of minority ownership in even greater jeopardy. Under the chairman's plan, all 19 minority-owned television stations operating in the top 20 markets would become potential targets for purchase by local newspapers.

Some might ask why we as journalists place so much emphasis on the racial and ethnic composition of media owners. It is simple.

Direct experience has shown us that ownership matters when it comes to diversity in newsroom employment and more importantly when it comes to diversity of voices and meeting the news and information needs of minority communities. Not surprisingly, the percentage of journalists of color working at local TV stations and at daily newspapers also declined last year, and minority employment in both local broadcasting and newspapers continues to lag behind overall population.

For 11 years, our association has issued annual reports on the coverage of Hispanics by the evening news broadcasts of the major television networks. Year in and year out the results are inevitably the same, less than 1 percent of network news has been devoted to stories that specifically focus on Hispanics. Depending on that year, anywhere from 30 to 45 percent of that small universe of stories has centered on two main issues, immigration and crime. A more marginalized and distorted image of the Latino population in America could not be imagined.

In 2001, NBC spent $1.9 billion to buy a bunch of local Telemundo stations. At the time, NBC executives personally assured me as president of the Association and the FCC that the merger was in the public interest and would provide more resources and news to the Hispanic community. After gaining regulatory approval, merging its back office operations, in 2006 NBC laid off 700 workers and announced that it was eliminating local news staffs at Telemundo stations in five of the Nation's biggest cities, San Diego, Phoenix, Houston, San Antonio, Denver, and consolidating them in a regional newscast, in a regional local newscast in Dallas. Only in the Orwellian world of our major media broadcast companies can you improve local news coverage by eliminating it in local cities and piping it in from 1,000 miles away.

Previous FCC studies have confirmed a direct nexus between minority ownership, workforce diversity, and the content of news. NAHJ and more than 20 civil rights groups——

Mr. MARKEY. Mr. Gonzalez, please summarize.

Mr. GONZALEZ. Yes—have called on the FCC to address minority ownership, and I would just like to say that next year represents the 200th anniversary of the Hispanic press in America and of the black press, 180 years ago, and we are still fighting those fights to require adequate representation of the concerns of the minority community. We urge the committee to please stop these proposals of Chairman Martin until full understanding of the implications for minority media is resolved. Thank you, sir.

[The prepared statement of Mr. Gonzalez follows:]

Testimony of Juan Gonzalez,
From the National Association of the Hispanic Journalists,
To the Subcommittee on Telecommunications and the Internet
Of the House of Representatives
December 5, 2007

Good morning Chairman Markey and committee members. My name is Juan Gonzalez. I am here today representing the National Association of Hispanic Journalists, a non-profit organization with more than 2,000 members who work in television, radio and newspapers across the United States. I am a founder and former president of that association, a staff columnist for the New York *Daily News*, and a co-host of the national radio program Democracy Now!

In nearly thirty years as a professional journalist, I have never testified before a governmental body on any issue. But I and the members of my association are here today to plead for your help because the profession we love and the media industry in which we labor has repeatedly and profoundly failed the "public interest, convenience or necessity" of a huge portion of our population – the approximately 100 million Americans of African, Hispanic, Asian and Native descent.

Even as our nation has become ever more diverse racially and ethnically - people of color now comprise 35% of the population - minority ownership of the broadcast companies that provide the public essential news reports and interpretations of daily events has remained at shockingly low levels.

Last week, the non-profit group Free Press released perhaps the most comprehensive and accurate picture of the state of minority ownership of the 1,300 full power commercial television stations in the U.S. Unfortunately, neither the FCC nor any other agency in the federal government is even bothering to keep accurate records on this anymore. The Free Press study found the percentage of minority-owned stations declined from an already paltry 3.45 percent in 2006 to 3.1 percent this year, and that among African Americans it plummeted from just 19 stations to 8. (See Chart 1)

Since 1998, even though the total number of commercial TV stations has increased by about 13%, the number of minority-owned stations has stagnated.

Today, minorities own just 5 of the 845 stations which are affiliated with the four major television networks. That's less than 1%. And radio is hardly much better. A 2006 study by Free Press concluded that minorities owned just 8 per cent of the 10,000 commercial radio stations in the country.

The broadcast industry has one of the poorest levels of minority ownership in American business. Overall minority ownership in the general non-farm sector reached nearly 18%

(Chart 2) in 2002, the last year for which we have comprehensive government data. That's five times better than television and twice the level of radio.

FCC Chairman Martin's plan to permit expanded cross-ownership by newspapers of television stations places the future of minority ownership in even greater jeopardy. That's because virtually all minority-owned stations are ranked below the top four in their given markets. Under the Chairman's plan, all 19 minority-owned stations currently operating in the top 20 markets – the precise markets where cross-ownership would be permitted - would become potential targets for purchase by local daily newspapers.

Some might ask why we as journalists place so much emphasis on the racial and ethnic composition of media owners. It's simple. Direct experience has shown us that ownership matters when it comes to diversity in newsroom employment and, more importantly, when it comes to a diversity of voices and meeting the news and information needs of minority communities.

Not surprisingly, the percentage of journalists of color working at local TV stations and at daily newspapers also declined last year, and minority employment in both local broadcasting and newspapers continues to lag far behind overall population.

For eleven years our association has issued annual reports on the coverage of Hispanics by the evening news broadcasts of the major television networks. Year in and year and year out, the results are inevitably the same: less than 1% of network news has been devoted to stories that specifically focus on Hispanics. Depending on the year, anywhere from 30 to 45% of that small universe of stories has centered on two main issues – immigration and crime. A more marginalized and distorted image of the Latino population in America could not be imagined.

Previous FCC studies have confirmed a direct nexus between minority ownership, work force diversity, and the content of news. As the Supreme Court concluded in the Metro Broadcasting case: "A broadcast industry with representative minority participation will produce more variation and diversity than will one whose ownership is drawn from a single racially and ethnically homogenous group."

Unfortunately, the FCC, first under Chairman Michael Powell and now under Chairman Martin, has ignored the problem and seeks to rush ahead with policies that could widen the ownership disparity, thus ignored its regulatory obligations under Section 257 of the 1996 Telecommunications Act.

NAHJ and more than 20 civil rights groups have called on the FCC to address minority ownership by creating an independent task force on the issue before it adopts new rules. We have also called on the FCC to conduct an accurate ownership census and to study the impact of consolidation on minority ownership. Chairman Martin has refused the deal with the issue.

In closing, I must note that 2008 will mark the 200th anniversary of the first Spanish-language newspaper in the U.S. – El Misisipi in New Orleans. It was 180 years ago that John Russwurm and Samuel Cornish, two free black men fed up with the racial slanders and misrepresentations of New York City's all-white newspapers, launched Freedom's Journal, the first black newspaper in America. "*We wish to plead our own cause. Too long have others spoken for us,*" they said in that first issue. "*From the press and the pulpit we have suffered much by being incorrectly represented.*" Ever since, journalists of color have labored to eliminate bias and misrepresentation in American news coverage.

Chairman Markey, we urge the members of your committee to reject this rush to greater consolidation.

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Mr. MARKEY. Thank you. Chairman Markey is, like, good. Next we will turn to Jerald Fritz, who is the senior vice president of legal and strategic affairs for Allbritton Communications, a Washington, DC-based owner of local television stations affiliated with ABC. Welcome.

STATEMENT OF JERALD N. FRITZ, SENIOR VICE PRESIDENT, LEGAL AND STRATEGIC AFFAIRS, ALLBRITTON COMMUNICATIONS COMPANY

Mr. FRITZ. Thank you, Mr. Chairman, Mr. Upton, Mr. Towns, Mr. Stupak. I appreciate the invitation.

If Congress or the FCC were to design a media company today, it might want to use the Allbritton organization in Washington as its model. WJLA, the ABC affiliate here, is the local news leader. Its commitment to extensive local service and news is award winning. Combined with News Channel 8, the first local, all-news cable service in the country that Allbritton founded 15 years ago, the two television stations program a remarkable 18 hours of live news per day. These channels of course are supplemented by rich Internet websites that expand information options to those viewers who are unwilling or unable to sit and watch traditional television.

WJLA also recently launched two digital subchannels focused exclusively on local community interests. Local Point is a fast-paced, short form channel that features local filmmakers, local bands, local comedians, local news, and local entertainment. WJLA's other digital subchannel is its unique 24-hour local weather channel. As many of you know, the addition of Politico and Politico.com to the information mix was driven by Robert Allbritton's vision of a specialty website and print publication that would take coverage of politics to a new level. The depth of its articles and range of all things political is reflected in the recent survey from Editor and Publisher Magazine, which ranked Politico.com as one of the top–25 rated newspaper websites in the entire nation after only 10 months of existence. This is powerful evidence of changing information habits. Politico shares its infrastructure with WJLA, News Channel 8, and Local Point. In fact, that is the key point to this media platform model in Washington.

More information is generated by these co-owned platforms together than possibly could be accomplished separately. The ability of the broadcast and cable channels to rely on information from each other is critical to the journalistic and economic success of both. Similarly, Politico's reliance on the television stations' infrastructure enhances both organizations. The Allbrittons have created these platforms from scratch with their own capital and the vision to enhance locally-owned media that serves the needs of the local community.

Now, as you may know, this multiple media platform organization was born out of the tragic loss of one of the region's great newspapers, the Washington Star. In fact, the Washington community and Joe Allbritton in particular are among the victims of the unintended consequences of the newspaper/broadcast cross-ownership rule. In 1975, the Star was losing $1 million a month, a lot of money in those days. Joe Allbritton had recently purchased the Washington newspaper/broadcast combination in hopes of saving it.

He came to the FCC requesting a waiver of the newly-adopted rule so that he could redirect money from the television station into the paper to keep it alive. The FCC said no. Commissioner Robert E. Lee wrote a dissent to that decision prophetically entitled, "Au Revoir Etoile, Goodbye to The Star." Allbritton wanted to keep the paper and try to swap WJLA for a station in Oklahoma City. The Commission didn't like that, either, because he would keep a non-voting stock interest in WJLA, even though he would have absolutely no control over the station. The Commission threatened to unscramble the proposed deal by making any rule changes retroactive to him. So he reluctantly sold his locally-owned newspaper to Time magazine based in New York, which kept it for a year or so and then shut it down, ironically leaving a monopoly newspaper in the shadow of the FCC and in the Congress's backyard. So much for diversity.

Much has changed in the ensuing 30 years. We have so many channels of information available to us now that it takes well over 5 minutes just to scroll through most television program guides. Adding the information from the Internet simply explodes the premise of the ownership rules. The threat that any organization can dominate the information flow to the public is a long-retired notion, if it ever had any viability. Broadcasters are not calling for an end to all ownership regulation. We merely want to modernize out-of-date restrictions that do not reflect current competitive realities. Reasonable reform of outmoded limitations will permit broadcasters to compete more effectively against multi-channel media and Internet providers and maybe even save some newspapers. As the FCC has recognized, maintaining competitively viable stations serves the public interest. It allows them to provide significant presence in their communities and offer costly services such as local news. Reform of broadcast-only local ownership limitations can help those stations do just that.

Thank you.

[The prepared statement of Mr. Fritz follows:]

Oversight of the Federal Communications Commission: Media Ownership
Subcommittee on Telecommunications and the Internet
House Committee on Energy and Commerce

Testimony of Jerald N. Fritz
Senior Vice President for Legal and Strategic Affairs
Allbritton Communications Company
December 5, 2007

SUMMARY

- There is substantial anecdotal evidence in the Washington DC market of the positive effects of jointly owned cross-platform media including broadcast television, cable channels, Internet websites, digital subchannels and specialty newspapers.

- There is also sad evidence in the Washington market of the unintended consequences of cross-media ownership restrictions.

- Creating an uncompetitive and undercapitalized broadcast industry through maintenance of out-of-date restrictions on media ownership will not serve the public interest.

- The existing local ownership restrictions are not needed to prevent broadcasters from exercising market power in today's multichannel marketplace.

- Consumers' interests in diversity are unquestionably being fulfilled nationally and in local markets.

- Localism is best preserved by permitting broadcasters to compete effectively in the digital multichannel marketplace.

Oversight of the Federal Communications Commission: Media Ownership
Subcommittee on Telecommunications and the Internet
House Committee on Energy and Commerce

Testimony of Jerald N. Fritz
Senior Vice President for Legal and Strategic Affairs
Allbritton Communications Company

December 5, 2007

Good morning Chairman Markey, Ranking Member Upton, and Members of the Subcommittee, my name is Jerald Fritz. I am the Senior Vice President for Legal and Strategic Affairs for Allbritton Communications Company, the parent company of eight broadcast television stations including WJLA, Channel 7 here in Washington, DC, along with NewsChannel 8, the 24-hour cable news channel in Washington, Maryland and Virginia. Allbritton is also the parent of the new Capitol Hill publication, *Politico*, along with its Internet website, Politico.com. I respectfully submit this statement for the record of the Subcommittee on Telecommunications and the Internet's hearing on "Oversight of the Federal Communications Commission: Media Ownership." I appear today on behalf of myself and Allbritton Communications, but I express views that I believe are important for free, local radio and television broadcast stations throughout the country and for their listeners and viewers who receive free broadcast service in virtually every community in the nation. The topic before the Subcommittee today, media ownership and the FCC's regulatory role in this regard, is critical to broadcasters' continued superior service to their communities. I am thus grateful for the opportunity to present my views on this subject and welcome the subcommittee's consideration of my testimony.

If the Congress or the FCC were to design a media company today, I suspect it might want to model it after the Allbritton organization in Washington. **WJLA-TV**, the ABC affiliate here, is the local news leader. Based upon recent Nielsen reports, it is the number 1 rated station

for both the 5:00 and 11:00 local news programs. Its commitment to local service is award-winning with Seven On Your Side and I-Team reports and in-depth political reporting on programs like the nationally syndicated *Inside Washington* and *Capital Sunday*. Combined with **NewsChannel 8**, the first local all-news cable channel in the country, the two television channels program a remarkable ***18 hours of live news per day***. This includes a daily political program, *NewsTalk*. These two channels are available to you twenty-four hours a day on the House cable system. WJLA also recently launched two digital subchannels focused exclusively on local interests of the Washington, Maryland and Virginia communities. **Local POINT** is a fast-paced, short-form channel that features local film makers, local bands, local comedians, local news, and local entertainment. WJLA's other digital subchannel is its unique 24-hour local **weather channel** with local news inserts.

As many of you know, the addition of ***Politico*** and Politico.com to the information mix was driven by Robert Allbritton's vision of a specialty website and print publication that would take coverage of public policy and politics to a new level never seen before. The depth of its articles and range of all things political from Capitol Hill to elections to Hollywood to Wall Street to the nation's college campuses is reflected in the recent survey from *Editor & Publisher Magazine* which ranked Politico.com as one of the top 25 rated newspaper websites in the entire nation -- after only 10 months of existence.

Politico shares the infrastructure of WJLA, NewsChannel 8 and Local POINT. In fact, that is the key point to this media platform model in Washington. More information is generated by these co-owned platforms together than could be accomplished separately. More to the point, many could not exist as viable entities without the others. The ability of the broadcast and cable channels to rely on information from each other is critical to the journalistic and economic

success of both channels. The digital subchannels could not exist as viable entities without the support available from the broadcast and cable channels. Similarly, the Politico reporters and Politico.com's reliance on the television station's infrastructure enhances both organizations. The Allbrittons have created these platforms from scratch with their own capital and the vision to enhance locally-owned media which serves the needs of the local community.

As you may know, this permitted multiple media platform organization was born out of the tragic loss of one of the great newspapers in Washington, the *Washington Star*. In fact, the Washington community and Joe Allbritton in particular are among the very few victims of the unintended consequences of the newspaper-broadcast cross-ownership rule. In 1975, the *Star* was losing a million dollars a month. Joe Allbritton had recently purchased the newspaper/broadcast combination in hopes of saving it. He came to the FCC requesting a waiver of the newly adopted rule so that he could redirect money from the television station into the paper to keep it alive. The FCC said no. FCC Commissioner Robert E. Lee wrote a dissent to that decision prophetically entitled, "Au Revoir Etoile," Goodbye to the Star. The Commission gave Allbritton three years to sell either the paper or TV station. Allbritton wanted to keep the newspaper, so he worked out a deal to swap WJLA for a station in Oklahoma City. Allbritton would also get some non-voting stock in the company that would own WJLA, but he would have no control or say-so over the station. The FCC looked at that arrangement and told Allbritton that it would approve the deal but would think about changing the rule -- and, oh by the way, if they changed it, they might make it retroactive to him! Now who does that kind of multimillion dollar deal on the threat it may be unscrambled? So he sold this locally-owned paper to *Time Magazine* which kept it for a year then shut it down, ironically leaving a monopoly newspaper in Congress's back yard and in the shadow of the FCC.

Much has changed in the ensuing 30 years. We have so many channels of information available to us that it takes well over five minutes to scroll through most television program guides. Adding the information from the Internet explodes the premise of the ownership rules. Witness the integration of television and Internet in the recent CNN/YouTube debates among both the Democratic and Republican Presidential candidates. The threat that any organization can dominate the information flow to the public is a long-retired notion, if it ever had viability.

What has not changed in the past three decades is that local broadcasters continue to serve their listeners and viewers with a wide variety of entertainment, news, public affairs programming and vital emergency information. They have a demonstrated record of significant service to their local audiences. They continue to do this amidst the sea changes to the competitive business model from multiple and growing sources in the new digital, multi-channel world. Broadcasters continued role as providers of up-to-the minute news, local and national emergency information and highly-valued entertainment programming must be supported and sustained by economics that make sense in today's world. We cannot compete successfully, and serve our communities successfully, unless we have a somewhat level playing field with our new and varied competitors that are not subject to restrictions on local ownership as we are.

Thus, broadcasters are frustrated that the FCC has not been able to move ahead with broad reform of outdated media ownership rules, which we believe would result in stronger and more sustainable service by broadcasters to our communities. Currently, the FCC appears poised to "conclude its review of the broadcast ownership rules" by addressing only the newspaper/broadcast cross ownership ban and, then, proposing only partial and limited relief

from constraints designed for a far different media landscape.[1] In this regard, I join in the oft-repeated views of our broadcast trade organization, the National Association of Broadcasters (NAB), that the FCC should repeal in toto the complete ban on newspaper cross-ownership. My views on media ownership in general, as expressed in this statement submitted for the hearing record, similarly reflect those that have been presented on behalf of the broadcast industry by NAB. Broadcasters are not calling for an end to all ownership regulation, but for the modernization of out-of-date restrictions that do not reflect current competitive realities in the Internet age. Reasonable reform to outmoded ownership restrictions will enhance the ability of local stations to serve their diverse audiences and local communities.

Creating an Uncompetitive and Undercapitalized Broadcast Industry Through Maintenance of Out-of-Date Restrictions on Media Ownership Will Not Serve the Public Interest

Some parties in the media ownership debate continue to argue that the broadcast ownership rules should not be modernized in any respect. Indeed, a few contend that restrictions on local broadcasters should be increased. However, to support such views, one must believe that the media marketplace has not changed over the past several decades or that the media marketplace is less competitive and diverse than before the development of digital technology, numerous multichannel video and audio services, and the Internet. Such a position is clearly untenable.

The Federal Communications Commission (FCC or Commission) originally adopted its local broadcast ownership restrictions decades ago in a very different media environment. In fact, the FCC first implemented local ownership restrictions starting with radio in 1938. The

[1] *Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule*, FCC News Release, Nov. 13, 2007.

"newest" local ownership rule – the newspaper/broadcast cross-ownership ban – was adopted in 1975 and has never been updated. Moreover, these restrictions on local broadcasters do not apply to any other industry, even those as highly concentrated as cable and satellite. Broadcasters believe that these decades-old rules should be brought up-to-date to reflect the dramatic technological and marketplace developments that have occurred over the past 30 years, and to level the playing field so that local stations can compete against other outlets, including large cable and satellite companies.

Beyond ignoring all the changes that have occurred in the media marketplace in recent decades, those calling for no change to, or for increases in, media ownership restrictions also ignore the state of the broadcast industry in the early 1990s before some of the ownership restrictions were reformed to permit more economically viable ownership structures. In 1992, for example, the Commission found that, due to "market fragmentation," many in the radio industry were "experiencing serious economic stress."[2] Specifically, stations were experiencing "sharp decrease[s]" in operating profits and margins. *FCC Radio Order*, 7 FCC Rcd at 2759. By the early 1990s, "more than half of all stations" were losing money (especially smaller stations), and "almost 300 radio stations" had gone silent. *Id.* at 2760. Given that the radio industry's ability "to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability," the Commission concluded that "radio's ability to serve the public interest" had become "substantially threatened." *Id.* Accordingly, the Commission believed that it was "time to allow the radio industry to adapt" to the modern information marketplace, "free of artificial constraints that prevent valuable efficiencies from being realized." *Id.*

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[2] *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2756 (1992) (*FCC Radio Order*).

Motivated by such concerns, Congress in the 1996 Telecommunications Act acted to "preserve and to promote the competitiveness of over-the-air broadcast stations."[3] Congress found that "significant changes" in the "audio and video marketplace" called for a "substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes." *House Report* at 54-55. Congress specifically noted the "explosion of video distribution technologies and subscription-based programming sources," and stated its intent to ensure "the industry's ability to compete effectively" and to "remain a vital element in the video market." *Id.* at 55.

We respectfully submit that the Committee should not forget these important lessons of the past. Arguments that the broadcast-only local ownership restrictions should not be reformed are based on a refusal to recognize all the factors that have transformed today's media marketplace, including the development and spread of new technologies; growth in competition for viewers and listeners among greater numbers and different types of outlets and providers; changing consumer tastes, especially among younger viewers and listeners; and dramatic changes in the advertising marketplace, which affect free, over-the-air broadcast stations more than subscription-based media. Policies turning back the regulatory clock would create a fragmented, undercapitalized broadcast industry and place broadcasters at an even greater competitive disadvantage against multichannel and other information/entertainment providers and outlets. As the FCC recognized in its 1992 *Radio Order*, only competitively viable broadcast stations sustained by adequate advertising revenues can serve the public interest effectively, provide a significant presence in local communities, and offer the valuable programming and services that local viewers and listeners want and expect.

[3] H.R. Rep. No. 204, 104th Cong., 2d Sess. at 48 (1995) (*House Report*).

Despite the claims by some opposing any modernization of the broadcast ownership restrictions, I also observe that the FCC is hardly rushing to judgment in its current statutorily-required review of the ownership rules.[4] The Commission began its reexamination of the newspaper/broadcast cross-ownership ban in 1996 with a notice of inquiry on newspaper/radio cross-ownership, and commenced the still-pending review of the newspaper/broadcast prohibition in 2001. The Commission also commenced a review of radio ownership in 2001. The Commission's review and revision of the television duopoly and radio/television cross-ownership rules in the 1990s resulted in a 2002 court appeal finding the revised duopoly rule to be arbitrary and capricious, and sending the FCC's decision back to the agency for further consideration. *See Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002). This remand remains pending, with the arbitrary and capricious duopoly rule still in effect. In addition, the Commission reexamined the local broadcast ownership rules in its statutorily-required 1998, 2000 and 2002 biennial reviews (the last of which remains pending at the FCC after an appeal and decision by the Third Circuit Court of Appeals remanding the agency's decision for further consideration). *See Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004). Given the number of years that the Commission has been considering reform of the local broadcast ownership restrictions, and the voluminous empirical and anecdotal evidence that has been submitted by those urging reform of these rules, the opponents of reform have no basis for their claims that the Commission is somehow rushing to judgment or that another decade of delay is necessary.

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[4] Section 202(h) of the Telecommunications Act of 1996 (1996 Act), as amended, requires the FCC to review its broadcast ownership rules every four years and determine whether those rules remain "necessary in the public interest as the result of competition." Pub. L. No. 104-104 § 202(h), 110 Stat. 56 (1996), as amended by Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004).

The Existing Local Ownership Restrictions Are Not Needed to Prevent Broadcasters from Exercising Market Power in Today's Multichannel Marketplace

In a multichannel environment dominated by consolidated cable and satellite system operators and supplemented by the information explosion of the Internet, local broadcast stations are clearly unable to obtain and exercise any undue market power. For this reason, the traditional competition rationale for maintaining a regulatory regime applicable only to local broadcasters and not their competitors is not a proper basis for keeping the current rules. Indeed, the primary competition-related concern in today's digital, multichannel marketplace is the continued ability of local broadcasters to compete effectively and to offer the free, over-the-air entertainment and informational programming upon which Americans rely. Due to technological advancements, the growth of multichannel video and audio outlets and the Internet, and an expansion in the number of broadcast outlets, an FCC report concluded that, even five years ago, traditional broadcasters were struggling to maintain their audience and advertising shares "in a sea of competition." [5] This competition has only intensified in the past five years.

Specifically, NAB has documented in detail the audience fragmentation and increasing competition for listeners, viewers and advertising revenue experienced by broadcast stations, as the result of new entry by cable television, satellite television and radio, numerous Internet video and audio applications, and mobile devices such as iPods and other Mp3 players. For example, in the first three months of 2007, Internet advertising set new records by taking in $4.9 billion, a 26% increase over the previous year.[6] Meanwhile, advertisers are expected to spend 5% less on

[5] Jonathan Levy, Marcelino Ford-Livene, Anne Levine, OPP Working Paper Series #37, *Broadcast Television: Survivor in a Sea of Competition* (Sept. 2002).

[6] *Internet ads hit another milestone*, Chicago Tribune, June 7, 2007.

local and national spot advertising in 2007 than they did last year.[7] U.S. Internet advertising spending is now predicted to overtake radio advertising in 2007.[8] Cable's share of local television advertising has also grown substantially, with cable local advertising revenues increasing 12.2% from 2003 to 2004 and 12.0% from 2004 to 2005.[9] Local cable system advertising revenue experienced compound annual growth of 10% from 1999-2004, with local television station revenue experiencing only 2% compound growth in those same years.[10] In light of this undisputed evidence about enhanced competition in the advertising market, the local ownership rules should be structured so that traditional broadcasters and newer programming distributors – which clearly compete fiercely for advertising revenue -- can all compete on an equitable playing field.

A more level regulatory playing field is particularly urgent, given that local broadcasters' most prominent competitors enjoy dual revenue streams of both subscriber fees and advertising revenues. Broadcasters, of course, are almost solely dependent on advertising, and local stations today must struggle to maintain needed revenues in a vastly more competitive advertising market. Any realistic assessment of today's media marketplace leads to the conclusion that competition considerations dictate change in the broadcast ownership rules.[11]

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[7] Jack Myers Media Business Report, *2007 Advertising and Marketing Communications Forecast*, Nov. 1, 2006.

[8] Louis Hau, *Web Ad Spending To Eclipse Radio In '07*, forbes.com, Aug. 29, 2007.

[9] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, Table 4 (2006). This report also documented the continued growth in viewing shares of cable/satellite television, at the expense of broadcast television.

[10] *Local Television Market Revenue Statistics,* Attachment F to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

[11] Claims by opponents of reform that post-1996 ownership changes in the radio industry have resulted in competitive harm are unfounded. A recent study commissioned by the FCC concluded that "consolidation in local radio has no statistically-significant effect on advertising prices" and that "[n]ational ownership has a statistically significant, *negative* effect on advertising prices." Tasneem Chipty, CRA International,

Consumers' Interests in Diversity Are Unquestionably Being Fulfilled Nationally and in Local Markets

The existing broadcast-only local ownership restrictions are not necessary to maintain diversity in today's media marketplace. The proliferation of broadcast outlets and the rise of new multichannel video and audio programming distributors and the Internet have produced an exponential increase in programming and service choices available to viewers and listeners. This proliferation has been documented by numerous surveys of the numbers of media outlets and owners in local markets.[12] An FCC study of selected radio markets from 1960 to 2000 showed an increase in the number of outlets of almost 200% and an average increase in the number of owners of 140% over the 40-year period.[13] Empirical studies have also shown that consumers routinely access many additional "out-of-market" outlets, thereby adding to the diversity of entertainment and information sources widely accessible to viewers and listeners in local communities.[14] The public's interest in receiving diverse content is therefore being met both nationally and on a market basis.

Inc., *Station Ownership and Programming in Radio* at 40-41 (June 24, 2007) (emphasis added). This study is consistent with previous academic studies on advertising and consolidation in the radio industry.

[12] *See, e.g.,* BIA Financial Network, *Media Outlets Availability by Markets*, Attachment A to NAB Comments in MB Docket No. 06-121 (Oct. 23, 2006) (an examination of 25 Designated Market Areas of various sizes from 1986-2006 found an average increase of 39.0% in the number of full power television stations; an average increase of 42.3% in the number of full power radio stations; an increase in multichannel video programming service penetration from 52.0% to 86.5%; and an increase in the average number of cable delivered channels in use from 31.7 channels in 1986 to 283.3 channels in 2006). This BIA Financial Network study also showed that, on average, there were 8.8 different owners of the 11.7 full power television stations, and 37.6 different owners of the 73 radio stations, in these DMAs.

[13] *See* Scott Roberts, Jane Frenette and Dione Stearns, *A Comparison of Media Outlets and Owners for Ten Selected Markets (1960, 1980, 2000)* (Sept. 2002).

[14] *See* BIA Financial Network, *A Second Look at Out-of-Market Listening and Viewing: It Has Even More Significance*, Attachment C to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

Numerous studies, including those by independent parties, have confirmed that the post-1996 changes within local broadcast markets, especially among radio stations, have enhanced the diversity of programming offered by local stations. Indeed, independent studies have concluded that "increased concentration" in radio markets has "caused an increase in available programming variety."[15] A 2007 study commissioned by the FCC concluded that "consolidation of radio ownership does not diminish the diversity of local format offerings." Indeed, "[i]f anything, more concentrated markets have less pile-up of stations on individual format categories, and large national radio owners offer more formats and less pile-up." *Station Ownership and Programming in Radio* at 44.

A 2006 study by BIA Financial Network also showed that radio stations are providing a wide range of programming targeted for diverse audiences, including minority groups and groups with niche tastes and interests. For example, between 2000-2006, the number of Spanish-language radio stations increased by 45.5%; as a result, over half (50.4%) of the Hispanic population in Arbitron metro areas receive over-the-air 10 or more Spanish-language radio stations, with more than three-quarters (79.5%) receiving six or more of these stations. The number of news/talk stations grew by 20.6% between 2000-2006 so that more than half (55.5%) of the population in Arbitron metros receive at least six news/talk radio stations and 70.8% have over-the-air access to at least four such stations.[16] Given the diversity benefits stemming from

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[15] Steven Berry and Joel Waldfogel, *Mergers, Station Entry, and Programming Variety in Radio Broadcasting*, National Bureau of Economic Research, Working Paper 7080 at 25-26 (April 1999). *Accord* Steven Berry and Joel Waldfogel, *Do Mergers Increase Product Variety? Evidence from Radio Broadcasting*, 116 Q. J. Econ. 1009 (Aug. 2001); BIA Financial Network, *Has Format Diversity Continued to Increase?*, Attachment A to NAB Comments in MM Docket Nos. 01-317 and 00-244 (filed March 27, 2002); Bear Stearns Equity Research, *Format Diversity: More from Less?* (Nov. 2002); BIA Financial Network, *Over-the-Air Radio Service to Diverse Audiences*, Attachment G to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

[16] *Over-the-Air Radio Service to Diverse Audiences* at 9-10; 13-14. This study also documented growth in the number of Urban programmed stations and Asian language stations. *See id.* at 10-12.

joint ownership of radio stations, and the lack of any competitive harm from such ownership, there is no basis for cutting back on the permitted levels of common ownership in local radio markets, but in fact the continued relaxation of these limitations should be considered.

Beyond increasing diversity of content, numerous other studies indicate that the joint ownership of media outlets in local markets does not inhibit the expression of diverse *viewpoints* by the commonly owned outlets. For instance, two studies examining the diversity of information and viewpoints expressed by commonly owned newspaper/broadcast combinations regarding the 2000 Presidential campaign concluded that commonly owned outlets did not speak with a single voice about important political matters.[17] One of the new studies commissioned by the FCC examined the partisan slant of television news coverage, finding that there is no difference between newspaper cross-owned television stations and other major network-affiliated stations in the same market.[18] In fact, the most recent research casts considerable doubt on the long-assumed (but never proven) link between ownership and viewpoint and shows instead a link between *consumer* preferences and the viewpoint or slant of media outlets, whether print or broadcast. For instance, a 2006 academic study of newspaper slant found that "ownership does not account for any of the variation in measured slant," but concluded that the political orientation of newspapers is driven more by the ideology of the targeted market than by

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[17] *See* David Pritchard, *A Tale of Three Cities: "Diverse and Antagonistic" Information in Situations of Local Newspaper/Broadcast Cross-Ownership*, 54 Fed. Comm. L. J. 31 (2001); David Pritchard *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (Sept. 2002). An examination of 2004 presidential endorsements similarly found no pattern among the endorsements made by commonly owned newspapers, with newspapers owned by the same company frequently endorsing different candidates. *See* Comments of Media General in MB Docket No. 06-121, Appendix 6 (filed Oct. 23, 2006).

[18] *See* Jeffrey Milyo, *The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News* (June 13, 2007) (*Milyo Television News Study*).

ownership and that "newspapers' actual slant is close to the profit-maximizing level."[19] Similarly, an FCC-commissioned 2007 study examining the political slant of television stations found that the partisan slant of local television news was associated with average partisan voting preferences in the local market, rather than ownership patterns. *Milyo Television News Study* at 23-24. In other words, the most recent research has found that any media slant is in direct response to *consumer* preferences – not the ideology of any particular owner.

The ability of consumers to obtain diverse content and viewpoints is only enhanced by the growing level of substitutability between media for both entertainment and informational purposes. Studies conducted for the Commission and other surveys on media usage reveal considerable substitutability between media for various uses. Indeed, the recent studies showed that multichannel outlets and the Internet compete with – and substitute for – the use of traditional media including broadcast and newspapers for both entertainment and information, especially among younger consumers. For example, Arbitron/Edison Media Research recently found that the Internet is now regarded by consumers as the second "most essential" media in American life, and researchers predict that "it is likely that the Internet will soon" move into "first place."[20] One of the recent FCC-commissioned studies confirms that the Internet is gaining as a competitor to traditional media outlets.[21] Respondents to the Nielsen Media Research survey in *FCC Study I* reported greater weekly Internet usage (12.8 hours) than usage of both broadcast television (10.4 hours) and radio (6.2 hours). *FCC Study I* at 4, 30, 72. When compared to

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[19] Matthew Gentzkow & Jesse Shapiro, *What Drives Media Slant? Evidence from U.S. Daily Newspapers* at 4-5, 43-44 (Nat'l Bureau of Econ. Research, Working Paper No. 12707, 2006).

[20] Arbitron/Edison Media Research, *Internet & Multimedia 2007 Report Summary*, at 1, June 26, 2007.

[21] Nielsen Media Research, Inc., *Federal Communications Commission Telephone Study: May 7-27; May 29-31; June 1-3, 2007* (*FCC Study I*).

similar survey results from 2002, this new Nielsen survey also strongly indicates that the extent to which consumers are substituting the Internet for television and radio is increasing over time. In just the five years between the two Nielsen surveys, the percentage that responded that they did not use the Internet fell sharply from 31.3% to only 5.4%.[22] These Nielsen surveys also showed that other outlets, particularly cable television, are important sources of news and information, including local, national and international.

Opponents of reform, however, continue to insist that the effect of the Internet in the media marketplace generally, and especially as a source of news, is minor. This position is contrary to reality. Obtaining news and information (along with sending or reading e-mail) are the most popular on-line activities. As of early 2007, 72% of all Internet users (and 79% of home broadband users) report that the "get news" online, with 37% of all Internet users (and 45% of home broadband users) reporting that they got news "yesterday" online.[23] Online video, including news videos, now reach a mainstream audience, with 57% of online adults using the Internet to watch or download video and nearly one-fifth (19%) doing so on a "typical day."[24] More than three in four (76%) young adults Internet users (ages 18-29) report online consumption of video, with 31% watching or downloading some type of video on a typical day. News content is the most popular type of online video overall and with every age group, except

[22] *Compare* Nielsen Media Research, Inc., *Consumer Survey on Media Usage* (Sept. 2002), at 88, 90, 94, with *FCC Study I* at 4, 30, 72 (showing that number of respondents not using traditional media, including radio and television, increased substantially between 2002 and 2007).

[23] John Horrigan and Aaron Smith, Pew Internet & American Life Project, *Home Broadband Adoption 2007* at 11-12 (June 2007).

[24] Mary Madden, Pew Internet & American Life Project, *Online Video* at i (July 25, 2007) (*Pew Online Video Report*).

for the youngest. Overall, 37% of adult Internet users report watching news videos. *Pew Online Video Report* at i-ii.

Thirty-one percent of all Americans (and 46% of all Internet users) used the Internet during the 2006 campaign to obtain political news and information and discuss the races through e-mail.[25] Fifteen percent of all American adults reported that the Internet was their "primary source for campaign news" during the 2006 mid-term elections, up from only 7% in the 2002 mid-term elections. Broadband users under age 36 said that the Internet was a "more important political news source than newspapers." *Pew 2006 Election Report* at i-ii.

Moreover, the Internet is already proving more integral than ever to political candidates in the upcoming 2008 elections. Candidates are spending large sums on Internet advertising and relying heavily on the Internet to communicate with supporters, while potential voters looking more to the Internet to find political information, either directly from candidates or from blogs and other online news sources.[26] The fact that politico.com could become one of the top-25 most viewed publication website in only its first ten months of operation is persuasive testament to this phenomenon. Clearly, the number of Americans relying on most traditional media, such as newspapers, magazines and television, for political/election news has declined significantly since the 1990s as on-line sources have become much more important. *See id.* at i.

In sum, continued claims about the miniscule impact of the Internet in the media marketplace cannot be credited, and certainly cannot be used to justify retaining the current broadcast ownership rules unchanged. Given the growth of multichannel video and audio outlets

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[25] Lee Rainie and John Horrigan, Pew Internet & American Life Project, *Election 2006 Online* at ii (Jan. 17, 2007) (*Pew 2006 Election Report*).

[26] *See* NAB *Ex Parte* in MB Docket No. 06-121 at 14-15 (filed Nov. 1, 2007) (giving numerous examples of the growth of the Internet in the 2008 campaign).

and consumers' ability to access content as "diverse as human thought" via the Internet,[27] claims that, for example, allowing a television broadcaster to own two stations in a local market could somehow substantially reduce the diversity of ideas and views available to consumers is not sustainable.

Localism Is Best Preserved by Permitting Broadcasters to Compete Effectively in the Digital Multichannel Marketplace

As shown by NAB in the Commission's pending localism proceeding, local stations provide a wealth of local news and public affairs programming, political information, emergency information, other locally produced and responsive programming, and additional, unique community service (including billions of dollars of free air time for local and national public service announcements and billions of dollars in monies raised for charities, other local organizations and causes, and needy individuals).[28] But given the relentless competition for audience and advertising shares from the vast array of other media outlets, the real threat today to the extensive locally-oriented service offered by television and radio broadcasters is not the group ownership of stations. Rather, it is the challenge stations face in maintaining their economic viability in a market dominated by consolidated multichannel providers and other competitors. To maintain a system of competitively healthy commercial broadcast stations offering free, over-the-air service to local communities, stations must be allowed to form efficient and financially sustainable ownership structures.

Studies almost too numerous to recount have shown that local service is enhanced if local broadcasters are able to jointly own media properties in the same market. For example, several of

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[27] *Reno v. ACLU*, 521 U.S. 844, 870 (1997).

[28] *See* Comments of NAB in MB Docket No. 04-233 (filed Nov. 1, 2004) Reply Comments of NAB in MB Docket No. 04-233 (filed Jan. 3, 2005).

the recent FCC-commissioned studies concluded that television stations owned by in-market newspapers aired more news programming overall, more local news programming specifically, and more political news coverage.[29] Similar empirical evidence from earlier studies[30] persuaded the Third Circuit Court of Appeals to agree with the Commission's determination in its 2002 review of the broadcast ownership rules that the blanket ban on newspaper/broadcast cross-ownership no longer served the public interest. *Prometheus*, 373 F.3d at 398. The Court concluded that "newspaper/broadcast combinations can promote localism," and agreed with the Commission that a "blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity. *Id.* at 398-99. We fully agree with these earlier determinations, and urge the FCC in its pending ownership review to reaffirm its repeal of the complete ban on newspaper cross-ownership.

One of the recent FCC studies similarly concluded that the co-ownership of two television stations in the same market "has a large, positive, statistically significant impact on the quantity of news programming." *Shiman Ownership Structure Study* at I-21. "For each additional co-owned station within the market," this study found "an increase in the amount of news minutes by 24 per day about a 15% increase." *Id.* A November 2007 study by Economists Incorporated found that same-market television stations that are commonly owned or operated are significantly more likely to carry local news and public affairs programming than other

[29] *See Milyo Television News Study*; Gregory Crawford, *Television Station Ownership Structure and the Quantity and Quality of TV Programming* (July 23, 2007); Daniel Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming* (July 24, 2007) (*Shiman Ownership Structure Study*).

[30] A 2002 FCC study concluded that network affiliated television stations co-owned with newspapers received higher ratings for their local news programs, aired more hours of local news, and received a higher number of awards for local news than other network affiliates. *See* Thomas Spavins, Loretta Denison, Scott Roberts and Jane Frenette, *The Measurement of Local Television News and Public Affairs Programs* (2002).

television stations, even after controlling for other factors.[31] Two earlier studies by BIA Financial Network demonstrated that the acquired stations in duopolies experience increases in their local audience share and revenue share following their acquisition.[32] As this evidence makes clear, the formation of a duopoly allows the acquired station to offer programming more attractive to viewers, thereby better serving their local audiences.

Interestingly, recent research from certain opponents of ownership reform indicates that television "duopolies may lead to more local news and public affairs."[33] Although these parties generally continue to insist that, "[a]s market concentration increases, local news and public affairs decreases," they also conclude that "duopolies appear to work in the opposite direction." Comments of Consumers Union, *et al.* at 98. Thus, the research of those opposing reform of the local ownership rules provide further evidence of the public interest and localism benefits that flow from the common ownership of television stations in local markets. Indeed, even before these recent studies, the Third Circuit Court of Appeals agreed with the Commission that media other than broadcast television contributed to viewpoint diversity in local markets, and agreed that common ownership of television stations "can improve local programming." *Prometheus*, 373 F.3d at 414-15.

Given these established public interest benefits flowing from television duopolies, we support allowing duopolies more freely in markets of all sizes, especially in smaller ones where

[31] Michael G. Baumann and Kent W. Mikkelsen, Economists Incorporated, *Effect of Common Ownership or Operation on Television News Carriage: An Update*, Attachment to NAB Comments in MB Docket No. 06-121 (filed Nov. 1, 2007) (a station in a same-market combination is 6.2% more likely to carry such programming than a station that is not in such a local combination).

[32] *See* BIA Financial Network, *Economic Viability of Local Television Stations in Duopolies*, Attachment H to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006); BIA Financial Network, *Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity?*, Attachment A to Comments of Coalition Broadcasters in MB Docket No. 02-277 (filed Jan. 2, 2003).

[33] Further Comments of Consumers Union, Consumer Federation of America and Free Press in MB Docket No. 06-121 at 98 (filed Oct. 22, 2007) (Comments of Consumers Union, *et al.*).

the need for television stations to form more competitively viable ownership structures in the most acute.[34] As the FCC has previously recognized, "the ability of local stations to compete successfully" in the video marketplace has been "meaningfully (and negatively) affected in mid-sized and smaller markets," primarily because "small market stations are competing for disproportionately smaller revenues than stations in large markets."[35] Reform of the television duopoly rule would thus enable local television stations, especially those in medium and small markets, to compete more effectively and thus ultimately to better serve their local communities.

Finally, I observe that, despite exaggerated claims by those opposing any modernization of the local ownership restrictions, local owners and small owners have not disappeared from the broadcast industry. According to the Commission, the number of locally owned television stations increased approximately 3% from 2002-2005.[36] In 2005, 6,498 radio stations (out of 13,590) were locally owned. *FCC Media Robustness Study* at 11. As of 2006, nearly 37% of all radio stations in Arbitron markets were either standalone (*i.e.* the only station owned within its market by its station owner) or part of a duopoly (*i.e.*, part of a two station group within that

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[34] The current rule limits the formation of duopolies only to large markets. This rule allows an entity to own two television stations in the same DMA only if at least one of the stations in the combination is not ranked among the top four stations in terms of audience share, and at least eight independently owned and operating commercial and noncommercial full power television stations would remain in the DMA after the combination. In 2002, the Court of Appeals for the D.C. Circuit found that the FCC had failed to justify its exclusion of nonbroadcast media, including cable television, from the duopoly rule's eight voice threshold, and remanded the rule to the FCC for further consideration. *See Sinclair*, 284 F.3d at 165, 169. This remand remains pending at the FCC and the eight voice standard still remains in effect.

[35] *2002 Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13698 (2003) (*2002 Biennial Review Order*). NAB has further documented the "different economics of station ownership depending on market size." *Id. See, e.g., Local Television Market Revenue Statistics*, Attachment F to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006); NAB, *Ex Parte* in MB Docket No. 06-121 (filed Sept. 25, 2007) at Attachments B, E & F.

[36] Kiran Duwadi, Scott Roberts and Andrew Wise, *Ownership Structure and Robustness of Media* at 5, 11 (2007) (*FCC Media Robustness Study*) (reporting 439 locally owned television stations in 2005).

local market).[37] Nationwide, there were, as of 2005, 4,412 unique radio station owners and 480 unique television station owners. *FCC Media Robustness Study* at 11. These figures do not even include the additional owners of thousands of low power television and low power FM stations. Given these large numbers of separate owners, it is hardly surprising that radio and television station ownership is less concentrated than other media sectors and less concentrated than other leading industries.[38]

Conclusion

Broadcasters are not calling for an end to all ownership regulation, but for the modernization of out-of-date restrictions that do not reflect current competitive realities in the Internet age. Reasonable reform to outmoded limitations will enable free, over-the-air broadcasters to compete more effectively against multichannel video and audio operators and Internet-based media providers, many of which earn subscription fees yet also compete against broadcasters for vital advertising revenues unencumbered by local ownership restrictions. As the FCC has previously recognized, only competitively viable broadcast stations supported by adequate advertising revenues can serve the public interest effectively, provide a significant presence in local communities, and offer costly local services such as local news. Above all, broadcasters want to be able to continue to serve their local communities and audiences effectively. Reform of broadcast-only local ownership limitations can help local stations do just that.

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[37] *Independent Radio Voices in Radio Markets*, Attachment B to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

[38] *See, e.g., Percentage of Industry Revenues Earned by Top 10 Firms in the Sector*, Attachment E to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

Mr. MARKEY. Thank you, Mr. Fritz. And our final witness, one of the most frequent witnesses in the history of the Telecommunications Subcommittee, Andrew Jay Schwartzman, one of the very few witnesses who everyone knows his middle name as well, is president and chief executive officer of the Media Access Project, a 35-year-old public interest media and telecommunications outfit. Welcome back.

STATEMENT OF ANDREW JAY SCHWARTZMAN, PRESIDENT AND CEO, MEDIA ACCESS PROJECT

Mr. SCHWARTZMAN. Thank you, Mr. Chairman. I am going to skip my prepared remarks and try to address some of the things that have come up on this panel, which means I don't have a sense of time, so I would appreciate if you would give me a high sign after 4 minutes.

Thank you, Mr. Chairman, Ranking Member Upton, Mr. Towns, Mr. Stupak. For 30 years, I have been coming here and sitting on panels with some of the very best and most responsible broadcasters in the country. This is not about the Skip Blisses of the world, this is not about the Allbrittons. The responsible broadcasters who do a good job, are close and responsive to their communities, would make it unnecessary for us to have a regulatory scheme. This is about the broadcasters who don't do their jobs, who abuse the licenses that they have to serve the public interest. The simple fact is that in a community of 60,000 people in Wisconsin, one daily newspaper and two radio stations is enough, and the cost of diversity to the public would be too great to change those rules. That is just the way it is.

The simple fact is that most of the synergies that can come from common ownership from newspapers and broadcasting companies can come from joint ventures without ownership. As I detailed in my testimony, there are hundreds of those. Just last week I heard Newscorp and Channel 9 in New York talk about their joint venture with the Bergen Record in northern New Jersey to improve their coverage of northern New Jersey. They take more use of the services of the Bergen Record in northern New Jersey than they do the commonly-owned New York Post in New York. It is just not necessary to own these properties in order to get the synergies that can come from combining the sources of news organizations and without the cost to the loss of diversity.

As I said, I deal with some of the best broadcasters in the country here, but that brings me to Mr. Levin and Clear Channel. Not always. Thousands and thousands of comments have been filed before the FCC, hundreds of witnesses have testified, not one member of the public of which I am aware has called for greater local consolidation in radio. It comes from Clear Channel, and it comes from the NAB and nowhere else. Local radio consolidation means less diverse formats, more imported formats, less localism. Clear Channel just laid off four programming people in Chicago in favor of adding sales people—more distant programming, less attention to regional taste. There is no need to change the local radio rules.

With respect to the fact that the XM merger would somehow justify changing the radio ownership rules, I know it takes a lot of chutzpah for a company that has owned 8 million shares of XM

radio to complain about that merger and then say it justifies letting them own more radio stations. I also point out that Clear Channel benefits from the news digital radio formats that allow multiple program feeds. Again, Clear Channel is a major owner of iBiquity, the company that has the exclusive license for that technology. So they have ample means for dealing with alleged competition from XM and Sirius radio.

Back to newspaper cross-ownership in the time I have remaining. Newspaper/broadcast cross-ownership results in a loss of a diverse voice in the community, and as the studies have shown, the FCC's own data unequivocally shows that on a market-wide basis, newspaper/broadcast cross-ownership means less news to the community. Yes, some, but not all, newspaper/broadcast combinations increased the amount of news created by that television station, but they crowd out their competition and result in a loss of diversity; and when you control for grandfathered cross-ownership, even that difference goes away.

Finally, with respect to the discussion about what the court held in Philadelphia, the court held in Philadelphia that, based on the record the FCC had in 2003, it could properly conclude that there was no continuing need for a newspaper/broadcast cross-ownership rule. The thousands of pages of additional information filed, including what I just referred to, gives the FCC an ample basis going forward to conclude based on the record available to it in 2007, or I hope in 2008, provides a powerful basis for retaining the existing newspaper/broadcast cross-ownership rules; and there is nothing contrary to what was said this morning, nothing that the court said that requires the FCC to change those rules.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Schwartzman follows:]

TESTIMONY OF
ANDREW JAY SCHWARTZMAN
PRESIDENT AND CEO, MEDIA ACCESS PROJECT

Delivered to the
Subcommitee on Telecommunications and the Internet
of the
Committee on Energy and Commerce
United States House of Representatives

OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION: MEDIA OWNERSHIP

December 5, 2007

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SUMMARY

It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee.

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969)(citations omitted)

Chairman Martin's purported justification for modifying the newspaper/broadcast cross-ownership rule is ill-placed. The newspaper industry is a mature, but very profitable and healthy industry, albeit one facing the challenge of changing technology.

The evolution of national media platforms for the delivery of programming via cable, satellite and the internet has not diminished the influence of local broadcasting and daily newspapers.

Most of the supposed synergies of common operation of newspapers and broadcast properties can be obtained without ownership by means of joint ventures. There are hundreds of such partnerships presently in operation.

Newspaper/broadcast cross-ownership results in a loss of a diverse voice and a marketwide diminution of the total amount of local news available to the public. Cross-ownership crowds out the competition. The public receives less, and lower quality, service as a result.

Repeal of the newspaper/broadcast cross-ownership rule would have an especially deleterious impact on minority and female ownership.

Chairman Martin's November 13 proposal for ownership deregulation is deceptively packaged to conceal the fact that it is actually a radical repeal of existing rules.

The FCC is rushing to judgment based on a manipulated and flawed research record. The Commission continues to suppress information, has failed to comply with the peer review requirements of the Data Quality Act and evidently intends to adopt a rule which cannot possibly take into account thousands of pages of new information which has just been filed.

Last week's waivers given to the Tribune Company add insult to injury. In its zeal to eviscerate FCC procedure and precedent, the majority constructed a scheme which is clearly intended to undercut the U.S. Court of Appeals for the Third Circuit, which has retained jurisdiction over the FCC's ownership rules proceeding.

Independent agencies such as the FCC exercise authority delegated by Congress. When agencies demonstrate that they are unable or unwilling to carry out their legislative mandate, Congress must act affirmatively to rein them in.

That time has come. Congress should enact legislation to terminate the FCC's authority to modify its ownership rules and to provide the transparency that the American public is entitled to receive at one of the most important agencies in the federal government.

I begin with the core constitutional principle underlying the Communications Act: it is the public's First Amendment right to have access to diverse sources of information which is, in the words of the Supreme Court, "paramount." It is important then, to bear in mind that this debate is not about hypothetical synergies. It is not about what the internet may be like some day. Rather, it is about democracy, and the impact that relaxing the Commission's ownership rules would have on the American public.

WHY WE SHOULD RETAIN THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE

Chairman Martin, in his infamous November 13, 2007 "Notice of Proposed Press Release," announced that he contemplated a significant revision to the Commission's newspaper/ broadcast cross ownership rules. Although it is deceptively packaged to seem more benign than it really is, Chairman Martin's plan would gut the current rules and replace it with a system that would allow permanent cross-ownerships in large and small markets alike.

Newspapers Are Not in Trouble

Chairman Martin did not use the *Federal Register* to announce his proposal. Instead, he delivered an op-ed column to the *New York Times*. He bases his argument on the publishers' lament that the newspaper business is struggling financially. It is certainly true that this is a tougher than usual period, but newspaper publishing's operating profits are among the highest of any industry. According to W. Dean Singleton, CEO of MediaNews Group, and one of Mr. Sturm's most prominent members, the newspaper industry is "very, very, very profitable" and it will continue to be so "for a very long time."[1]

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[1] "Singleton Sold on Newspapers," *Chicago Tribune*, June 21, 2006.

Newspaper publishing is a mature business facing the emergence of disruptive technological change. But, as Mr. Singleton recently said, "It's not a dying business, it's a changing business."[2]

On October 25, 2007, Mr. Singleton delivered a speech to the Associated Press Managing Editors conference in Baltimore.[3] I will quote from it at length, because he makes many of the points I wish to make, perhaps more persuasively than I can.

For one thing, it is true that newspaper circulation is down somewhat, although some of it is the result of metropolitan newspapers intentionally abandoning exurban subscribers.[4] But let Mr. Singleton place this in proper context:

> As you all know, circulation figures have been trending down for more than a decade ... dropping from more than 62 million copies for both weekday and Sunday newspapers ... to less than 60 million on Sunday ... and under 56 million daily.
> When we talk about those numbers, we need to keep our perspective.
> 56 million copies a day still find their way to a lot of eyeballs ... and more people still read an average Sunday newspaper than watched the Super Bowl.
> And when you look at those numbers closely ... there is a lot of good news.
> Our readers rank high in income ... big-ticket purchases ... home ownership ... education ... and lots of other measures that say we're reaching an attractive demographic.
> And even with the decline ... we're holding up better than most other media. But there is one other strength that is particularly important to our future ... and particularly important to what happens in the newsroom.
> And that is our local connection.

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[2]"Newspapers Won't Work Without Net," *Denver Post*, August 14, 2007.

[3]"Newspapers Are the Cornerstones of Convergence," available at http://www. iwant-media.com/ people/people21.html

[4]Moreover as Mr. Singleton points out, smaller newspapers such as Mr. Bliss' are especially profitable and robust. According to Mr. Singleton's own newspaper, the *Denver Post*,

> Singleton...said that while advertising dollars may be falling away from large metropolitan dailies, newspapers between 20,000 and 250,000 are thriving.

"Newspapers Won't Work Without Net," *Denver Post*, August 14, 2007.

The Evolution of Cable, Satellite and the Internet Platforms Has Not Diminished the Influence of Local Broadcasting and Daily Newspapers

Mr. Singleton thus brings me to this extremely important point: over the air broadcasting and daily newspapers are - by far - the most powerful forces shaping ***local*** public opinion. The internet, satellite services and cable TV simply do not matter when it comes to local advertising and local coverage of local issues. That is why those of us who seek a diverse marketplace of ideas seek to maintain the newspaper/broadcast cross-ownership rule. In fact, the FCC's own data make this point very forcefully.

- 89% of those surveyed list newspapers or broadcasting as both their first and second important sources of local news.
- only 3% of respondents say the internet or cable are their first and second most important sources of local news.
- 88% of respondents say they use traditional media for local news and current affairs.
- only one percent of respondents say they rely exclusively on alternative media for local news and current affairs.[5]

For those who, quite understandably, don't entirely trust the FCC's numbers, here is what Mr. Singleton had to say:

> Study after study shows that we are the number-one choice for local news, business, sports ... everything that impacts the lives of our readers where they live, where they work.
> We don't just reflect the community. We don't just report on the community. We are a part of it.
> We are as imbedded in the lives of the people who live there as they are in us.

The NNA and some of the newspaper publishers have produced long lists of purportedly

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[5]These data are discussed at great length in the October 21, 2007 comments filed by Consumer Federation of America, Consumers Union and Free Press ("CFA, *et al.*"), from which these statistics were obtained.

competitive local internet sites. However, CFA, *et al.* analyzed these claims and found that only 3.6% of the stories from cited websites contained original reporting on hard news, *i.e.*, what one would call "journalism." And they found that newspaper web sites had 50 times as much traffic.

The fact that the internet extends the reach of newspapers rather than the other way around is affirmed by Mr. Singleton, who points out that the internet actually expands newspapers' local dominance:

> A recent study of 80 markets showed that online newspapers have a commanding lead over other Web sites for local news and information. And of the nation's Top 20 Web sites today, 10 are newspaper sites.
> One of the more interesting things we've also discovered is that our Web presence is not eroding our print readership ... quite the opposite, in fact.
> A study by media research firm Belden Associates showed that newspaper Web sites actually sell newspapers.
> Belden researchers found a clear jump in single-copy sales among people who visited a newspaper's Web site ... 21 percent bought more newspapers.
> The impact on overall readership was even more dramatic ... 31 percent said they look at the print edition more often since they started visiting the newspaper's Web site

Common Ownership Is Not Necessary to Achieve the "Synergies" That Newspaper Publishers Claim to Seek.

The centerpiece of the argument for common ownership of newspapers and broadcasting stations is that common ownership somehow allows for efficiencies and permits collaboration on special projects that neither the broadcaster nor the newspaper could do on its own.

The fact is that common ownership is not necessary to achieve such synergies. This is not speculative, but is proved by everyday experience. Indeed, just last week I attended an FCC staff hearing on TV service to New Jersey in which WWOR-TV bragged about a new joint newsgathering venture with the *Bergen Record* to improve its coverage of northern New Jersey. Indeed, WWOR-TV appears to have many more synergies with the separately owned *Record* than it does with the

commonly owned *New York Post*.

Such joint ventures are hardly rare. More than 100 local TV and radio stations ***not*** under common ownership realize the same kind of benefits by forming partnerships with each other to share information and resources. According to the Ball State University's Center for Media Design, "Half of the television station news operations in the United States have a news partnership with a newspaper and those partnerships exist across market size."[6] Thus, while Gannett has touted the benefit of its common ownership of a TV station and a newspaper in Phoenix, it does not need to own a TV station to obtain essentially similar synergies for the Knoxville *News-Sentinel* because it has an agreement to share resources with station WBIR. In fact,

> cooperation is the norm for Gannett-owned WBIR and the News-Sentinel. Reporters collaborate on four big projects a year, newspaper editors appear regularly on the station's newscasts, and managers are in daily contact.[7]

According to the Ball State Report, "news directors report their partnerships frequently perform many functions associated with convergence: cross-promotion of partners' content and some sharing of daily news lineups." Thus, if the concern is that the public interest can better be served through the efficiencies and synergies of cooperation, repeal or modification of the cross-ownership rule is not necessary to achieve this goal.

Repeal or Modification Would Cause Harm to the American Public

Despite the FCC's suppression of unfavorable reports, and its result-oriented effort to gin up research to justify repeal of the newspaper/broadcast cross-ownership rule, the dataset generated by

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[6] *Television Newsroom Partnership Survey, Executive Summary* (June 2005) ("Ball State Report").

[7] Allison Romano, *Newspapers and Stations Try Cross-Pollination*, Broadcasting and Cable, July 25, 2005, p. 16. *See also,* Michael Roberts, *Lets Get Together*, Westword, October 31, 2002.

the FCC, when properly examined, strongly supports retention of the cross-ownership ban.

The effect of cross-ownership on a market place is doubly harmful. First, it results in the loss of a diverse voice. And second, it reduces the overall amount of news available to the public.

While I don't think it is necessarily the only, or the superior, measure, the FCC has decided that the best proxy for measuring benefits to the public is the quantity of local broadcast news produced. Simply put, using this criterion and the FCC's own dataset, CFA, *et al.* have forcefully demonstrated that common ownership of newspaper results in a ***net loss*** in the amount of local broadcast news that is produced across local markets.

- Cross-ownership crowds out the competition. The presence of a cross-owned station leads other stations in the market to curtail their news output by 25 percent.
- Cross-owned stations - and markets with cross-owned stations - do not produce more local news.
- Cross-ownership does not increase the number of stations providing news in a market.
- There is no evidence to support the FCC's research hypothesis that allowing cross ownership will increase the amount of news even in smaller markets.

Data submitted by the NNA and various individual newspaper publishers focuses entirely on whether the cross-owned broadcaster carries more news than its competitors. Given the economic clout that comes with common ownership, it is hardly surprising that these stations do outperform their weaker competitors. But this does not mean that these stations carry more news than they would carry if they were not commonly owned and, indeed, the data shows they do not.

There is another important, if less easily quantified, form of damage caused by cross-ownership. The community's news product is often qualitatively damaged. According to Craig Aaron

of Free Press:

> In markets without cross-ownership, local TV news stations generally take their cues from the local newspaper. Since these papers are independently owned, all the local TV news departments have reasonably equal access to the newspaper's reporters and editors.
>
> However, this mutually beneficial relationship is destroyed in markets with cross-ownership. Cross-owned TV stations are able to use their exclusive access to the local newspaper to shut out competitors from the stories that they would normally report. This leads these stations to curtail their local news operations.

Repeal of the Cross-Ownership Rule Would Have an Especially Deleterious Impact on Minority and Female Ownership

Every time the FCC has relaxed its broadcast ownership rules, more minority owners have been forced out. When larger deeper-pocketed companies can bid for available properties, they outbid less well-connected competitors, including minorities and women.

FCC Chairman Martin's current proposal for substantially eliminating cross-ownership limits in the top 20 markets is just as likely to reduce minority ownership as prior ownership deregulation. Nearly half of the TV stations owned by people of color are in the top 20 markets, and not one of them is in the top four of their markets. Thus, almost every one of those stations will be in the cross-hairs as potential acquisition targets. The dearth of minority ownership will be even worse if the FCC ultimately votes to go further than the Chairman's current plan.

Chairman Martin's Plan Is Deceptively Packaged to Conceal the Fact That it Is Actually a Radical Repeal of the Existing Cross-Ownership Rules.

Chairman Martin's November 13 proposal is far more sweeping than he has attempted to portray it. Under the current rules, the FCC has granted only four permanent waivers, not counting last Friday's unprecedented - and unasked for - giveaway to the Tribune Company. To get a permanent waiver, an applicant must demonstrate that one of the merging properties is in danger of

going out of business without the waiver.

Chairman Martin would now give permanent relief - not waivers - to any applicant in the top 20 markets (about 43% of the country). All it needs to do is to promise to carry more news and that it will operate its newsrooms independently of each other (synergies be damned). Then, supposedly after considering the degree of concentration in the market and the properties' "financial condition," the Commission will grant the application. Applicants in smaller markets will have an unspecified higher degree of burden, but they, too will, be eligible to obtain FCC authorization for a cross-ownership.

This standard is no standard at all. The truth is that the necessary degree of "concentration" and "financial condition" which will permit approval of cross-ownership applications will always be whatever three FCC Commissioners say they are.

This plan has no benchmarks and no means of verification. There is no effective means of enforcing the two simple promises that the applicants must make. There is no protection for the public. It is little more than a cleverly packaged repeal of the cross-ownership ban in every market in the United States.

The FCC Is Rushing To Judgment Based on A Manipulated and Flawed Research Record

The FCC's disgraceful process for administering its ownership rules proceeding is no better than the substance that it has created. First, there is the question of timing. Although it has been two and a half years since the end of the litigation which sent the ownership issue back to the FCC, the FCC spent two years doing very little and six months rushing to complete its inquiry.[8] Final action

[8]The Supreme Court denied petitions for *certiorari* in *Prometheus v. FCC* in June, 2005. The FCC did not initiate its ownership rulemaking until July, 2006. Comments and reply comments were filed by January, 2007. Although the Chief Economist laid out her plans to commission research in

at this time is, to put it mildly, premature.

Between October 22 and November 1 of this year, the FCC has received several thousand pages of highly substantive research which calls into question the studies the FCC released this summer. Between October 1 and October 16, the FCC received hundreds of pages of new filings about the impact of the Commission's ownership rules on minority ownership.[9]

Although any serious review of this newly filed information would certainly take weeks, at a minimum, just days after the last comments were filed, on November 13, Chairman Martin released his proposed final rule - in a press release. He has requested comments by December 11, and announced an intention to hold a vote on December 18. Leaving aside the Chairman's blatant disregard for the requirements of the Administrative Procedure Act, there is no way the FCC's hard-working and methodical staff can possibly assimilate the material which has been filed and take it into account in any decision to be adopted by December 18.

Next, there is the matter of transparency or, more properly, the lack of it.

It is, of course, now well known that the FCC attempted to suppress two important studies which demonstrated the harmful impact of consolidation and thus supported continuation of the current regulatory scheme.[10] The Commission has now commissioned a series of research studies

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June, 2006, the studies were not commissioned until well into the spring of 2007, and the studies were not released until July, 2007.

[9]In its *Prometheus* decision three years ago, the U.S. Court of Appeals specifically directed the FCC to consider this question. The Commission inexplicably took no action on this matter even after August, 2006, when the Minority Media Telecommunications Council filed a petition specifically calling on the FCC to implement the Court's directive. Finally, in August, 2007, notice was not published in the *Federal Register* establishing a comment period as directed by the Court.

[10]In September, 2006, Senator Boxer revealed that the Commission had failed to release a 2004 study which showed that locally owned TV stations produced more news coverage than their

in an ill-fated and flawed attempt to support its preordained result.

Because of our belief that we need to know more about what is going on at the FCC, my colleague Angela Campbell of the Georgetown Law Center's Institute for Public Representation has spent over 15 months trying to extract data from the FCC about the conduct of its ownership proceeding. The Commission continues, without explanation, to withhold some 1400 pages of evidence. Professor Campbell has now sued the FCC.

There is good reason to seek this data, because there is considerable doubt about the *bona fides* of the FCC's review. While we do not know what the FCC is withholding, we do know that the documents Professor Campbell has already unearthed contain damning evidence of the FCC's bias in favor of deregulation. One document in particular stands out. It is a June 2006 internal memorandum written by the FCC's Chief Economist which shamelessly lays out a roadmap for deregulation. The memo states

> This document is an attempt to share some thoughts and ideas I have about how the FCC can approach relaxing newspaper-broadcast cross-ownership restrictions.

A year later, the Commission finally released a series of studies including three which exactly followed the scheme laid out in the Chief Economist's memo.

The Commission gave parties an extremely short period of time - two months - to review these all-important and highly questionable studies. Moreover, the material necessary to examine them did not come until a month later.

Congress has established standards to insure that decisionmaking is not based on junk

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competitors and concluded that media consolidation would likely harm local news gathering. Shortly thereafter, Senator Boxer obtained a second previously unreleased study which raised questions about consolidation in the radio industry.

science. As is detailed in two pending Data Quality Act complaints, the Commission followed outrageously impermissible procedures. It released its commissioned studies on July 31, 2007. Under OMB Guidelines, peer review is supposed to be conducted ***before*** it is disseminated to the public. However, the FCC did not even solicit peer review until after the studies were released, and posted the "peer review" comments on September 4, well over one month into the comment period. The underlying data was finally made available to researchers under extremely strict conditions on September 6.

The Waivers Given the Tribune Company Add Insult to Injury

The FCC majority's treatment of last week's Tribune Company merger decision is the latest, and greatest, departure from normal and appropriate procedure. In its zeal to eviscerate FCC procedure and precedent, the majority constructed in a complex and mindnumbingly contorted decision designed to force the Commission to complete its review of the newspaper/broadcast cross-ownership rules by the end of the year and inviting, even forcing, Tribune to start a lawsuit in the District of Columbia. This artificially inseminated litigation is plainly intended to undercut the four year-old litigation citizens groups successfully brought in Philadelphia to challenge the FCC's earlier ownership deregulation efforts.

To explain this fully would require more detail and more legal procedure than this subcommittee could possibly wish to hear. But here is the essence of it:

- Lawsuits challenging decisions relating to FCC broadcast licenses, such as Tribune's, may be brought only in the District of Columbia Circuit Court of Appeals.

- It is a basic principle of administrative law that when a party receives a partial waiver of a rule, it may not accept the waiver and also challenge it in court.

- In 2003, citizens groups, led by Prometheus Radio Project, chose to bring their challenge to the earlier ownership decision in Philadelphia, where the U.S. Court of Appeals for the Third Circuit ultimately rejected the FCC's June, 2003 decision and retained jurisdiction of the matter after its remand.

In last week's action, the Commission majority cunningly packaged the Tribune decision as a ***denial*** of its request for temporary waivers and then effectively granted Tribune ***more*** than it sought. Specifically, while Tribune asked only for temporary waivers, and despite the absence of any showing of financial distress, the Commission majority nonetheless gave Tribune an unprecedented ***permanent*** waiver for its Chicago properties. As to the other cities, Tribune's requested temporary waivers were purportedly denied, although the Commission gave essentially the same relief through special waivers which would last for six months past the end of any lawsuit Tribune might bring in the District of Columbia Court. As Commissioner Copps explained in his dissent, this artifice actually forces Tribune to file a law suit in the District of Columbia and thereby create the possibility of a conflict among the circuit courts that increases the possibility of Supreme Court review. Commissioner Adelstein quite properly described this as using Tribune as a "human shield" to advance Chairman Martin's agenda.

Conclusion

Independent agencies such as the FCC exercise authority delegated by Congress. When agencies demonstrate that they are unable or unwilling to carry out their legislative mandate, Congress must act affirmatively to rein them in.

That time has come. Congress should enact legislation to terminate the FCC's authority to modify its ownership rules and to provide the transparency that the American public is entitled to receive at one of the most important agencies in the federal government.

Mr. MARKEY. Thank you, Mr. Schwartzman, and that completes the time for opening statements from our witnesses. The Chair will now recognize himself for a round of questions.

Earlier you heard the chairman of the FCC talk about what happens under his proposal outside the top 20 markets. One of the criteria is in order to receive a waiver, there would have to be proof that merger between a newspaper and a television station would result in more news. Mr. Sturm, how would you quantify more news? What is the test?

Mr. STURM. I am not sure that I can absolutely quantify right off the top of my head, but clearly let us say that a first local news service by a broadcast station, radio or television, would seem to me clearly to be in the public interest. If that station is not doing news and it can be acquired by a newspaper which is going to put news on that station, that I can assure you, that would certainly fulfill the criteria.

Mr. MARKEY. OK. Let me go to Mr. Bliss. What would your test be? Can you use the microphone, please?

Mr. BLISS. I am in the business of local news. That is what I do, that is what my people do, that is what we are best staffed to do. We have a staff of 25 full-time committed journalists at our newspaper. We have four full-time broadcast journalists at our radio stations. There are no locally-staffed news operations in anywhere of half-a-dozen radio stations in my market. My definition would be that I would apply what my newspaper is capable of doing and take that staff of 20 to 30 people and apply that to a broadcast situation. I would enhance. I think it is fairly clear what I bring to that organization.

Mr. MARKEY. Mr. Schwartzman, how would you define it?

Mr. SCHWARTZMAN. I don't think it is possible to quantify on a market-wide basis, which as I have indicated has to be the test. If the effect of newspaper/broadcast cross-ownership is to crowd out the other competitors in the market, it is going to mean less news and much less diversity in that community. You can have a standard which I think would be terrible, that an applicant simply raises his hand and promises that he will do more news, and goodness knows how that is going to be enforced years later when the license comes up for renewal. It is not possible to make every other broadcaster in the community raise their hand and make the same promise. So I don't think it is a workable standard.

Mr. MARKEY. OK. Back to you quickly, Mr. Sturm. Is there something else that you——

Mr. STURM. Yes, there is. I think if a newspaper came in in a proposal for a waiver with a tough standard that the Commission has proposed, a very difficult standard, can show there is going to be a substantial increase in local news and public affairs over what is being provided by the station at the present time. That, too, should be a criteria, at least one of the criteria, to undergird a waiver of the rules.

Mr. MARKEY. I have to just quickly move on. I am sorry. Dr. Williams, elaborate on the importance of minority and female ownership of media properties. Why is it so significant?

Mr. WILLIAMS. Mr. Chairman, I believe it is important because we, particularly women of color, have been so denigrated that we

believe we need the opportunity to speak for ourselves and to speak freely; and when the media are owned by someone else, then we do not have the opportunity to paint that picture of us. So I think it would give us more time in the media, we think it would give us an opportunity to speak and speak loudly about who we are. Malcolm X once said, unless we know who we are, the world will never know who we are. And some of us have been working particularly in the Women's Coalition, which was here not long ago that is made up of the National Organization for Women, Feminist Majority, Black Civic Participation, women from Rainbow Push. All of these organizations, including women in labor and sports and others, we believe that we have come together, and we have been able to define what we want to see, but we don't have the opportunity to present who we are and to influence our children because now we are seeing too much negative out there.

Mr. MARKEY. Mr. Gonzalez, could you answer the same question? Why is it so important?

Mr. GONZALEZ. Well, I think it has been demonstrated both in some of the FCC's own studies that minority ownership has an effect on the kind of news it is covering, on the employment situation within many of these news organizations, minority owners are more likely to regard minority journalists as qualified to do the job than other owners, and I think that the choices that are made over what gets covered is critical; and that is why we have so much marginalization of news that affects the minority community in the existing local television stations, local newspapers as well, although newspapers generally have done a better job on this. Mr. Sturm, I agree that newspapers provide an enormous amount of local news, but television stations could provide. No one is saying the television stations are distressed financially. Even newspapers are not distressed, but television stations could provide more news, they just choose not to do so. They choose not to do so with their huge profit margins.

Mr. MARKEY. Thank you, Mr. Gonzalez. My time has expired. The Chair recognizes the gentleman from Michigan, Mr. Upton.

Mr. UPTON. Thank you, Mr. Chairman, and I want to make the observation as we look at all the members that are here on this panel, I dare say that all of us are news junkies. When we are at home and when we are here as well, we want to know what is going on in our communities. We want to be able to help those in need, we want to be able to be responsible using the position that we have, and I have to say, as I have traveled the great State of Michigan, when I was up in Marquette, it was the local TV and broadcasters that I saw, whether it be weather or other issues that might impact me. And Mr. Sturm, I know I have seen you on the plane to South Bend on a lot of Saturdays, maybe not as many this year, but you will be back next year, I know. But as we all visit, my district is a microcosm of the country. I have got a large city like Kalamazoo, I got Chicago media and obviously we get South Bend, Elkhart, Grand Rapids, Kalamazoo, and as I visit my newspapers, large and small, Mr. Bliss, I really connect with your side of the State of Wisconsin, because that is not unlike mine. They are very similar. And as I watch my local station, not Chicago, but the one, South Bend particularly, they are there. They got news trucks

that are there on traffic, I mean a whole variety of things, much like I see here, just as I identified to the Washington scene with Allbritton. Channel 7 is a great station, and I know that at any time I can go to Channel 8 on my Comcast cable and I can see the weather, the time, I can see all the things that are happening. I look at the Post, which is delivered to my office. They have got a special section on Virginia that comes. I mean, just a whole variety of things that connects the media conglomerates with what is going on on the local scene, whether it be in a smaller community like Alexandria where I live here or obviously back home. And I was glad to hear Dr. Williams, your comment against a la carte as well, because I am a believer that the broader that base is, that has allowed for channels that would never be there without that because they have got to share some of those costs. And to me, that is what this lifting the ownership does. It shares some of those costs, like it has in my little niche in South Bend between the newspaper in the 89th largest market, the radios, and the TV together so they can share that staff. And I have seen the same thing when I walk the streets of Michigan Avenue in Chicago where I can see WGN broadcasting live right on Michigan Avenue, and when you go inside you see the connection that is made with their TV as well as their radio. And in terms of local content, man, you can't beat that flavor as it relates to the Chicagoland region.

As I get to my question, let me say, Mr. Levin and Mr. Fritz, when it comes to the cable and the satellite services, whether it be audio or video, it is the ability to program large numbers of channels that allows the providers to offer the consumers that wide choice, diverse, find your own niche, and I made the comment earlier in my opening statement, as I traveled halfway across the country three times in the last couple weeks during the Thanksgiving break, multitude of stations, everything that you could imagine you could get. And it took forever to get that seek button to actually recycle all the way through as I traveled from Michigan through literally 10 to 12 States coming back to DC. Ironically, isn't it the broadcast ownership caps that force the broadcasters to aim more at the mass market; and therefore, if you lifted that cap, you would provide more diversity so that you would find all the different niches that the consumers are going to want to find and keep?

Mr. LEVIN. Mr. Upton, you hit the nail right on the head, and if you look at the actual data from 1996 until today, the number of unique formats that are on the air on radio have increased dramatically, despite Mr. Schwartzman's comments. In fact, we have gone from I think 35 formats in the radio industry to at least 80 since 1996. And the concept is exactly as you described. The more outlets that an operator is allowed to program, the more diverse, the more niche——

Mr. UPTON. They share those expenses.

Mr. LEVIN. Absolutely. Cost sharing as well as taking a risk that some new format, an untested format, may not be successful.

Mr. UPTON. I am running out of time so I want to get my question in before the gavel comes down. Mr. Sturm, what will be the fate of the newspaper industry if the FCC fails to reform these caps?

Mr. STURM. If the newspaper industry continues to not be able to compete with the same platforms, the same opportunities to gather audience that other forms of media have, the newspaper industry trends will continue to go down. All of the vital signs of the newspaper industry now are negative. That is very difficult for me to say, but it is true. Note Mr. Fritz's testimony about the wonderful local services that are provided by Channel 7, News Channel 8, and indeed other channels that they are bringing online to the Washington area community. Interestingly enough, that is all competition for the Washington Post and Washington Times because it is local news.

Also interestingly enough, he can own Channel 7 and own News Channel 8. The Washington Post can't own a broadcast station that competes with his offerings in the Washington market.

Mr. MARKEY. But you do very well competing against the Politico. The gentleman's time has expired. The Chair recognizes the gentleman from Michigan, Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Markey. Mr. Bliss, I live in the Upper Peninsula of Michigan, so I know quite well your stations and your newspaper. A string of public interest groups have submitted an analysis of the FCC that allegedly shows that cross-ownership reduces the total amount of local news and eliminates the independent voice. And there is supposed to be a Localism Task Force within the FCC which really hasn't been functioning much in recent years. Have you had any contact with the Localism Task Force? Have you worked on that, anyone from your papers been involved with it?

Mr. BLISS. No, sir, I am not familiar with it.

Mr. STUPAK. OK. So the hearing they had on October 31st here in Washington, DC, you had been made aware of it?

Mr. BLISS. No, I was not aware of it.

Mr. STUPAK. OK. Let me ask this question. Mr. Gonzalez, I mention in my questioning of the Commissioner the studies. I find the studies to be rather flawed, especially when it comes to the minority and women ownership issue. In fact, study one looks at how people receive their news; and its use of data basically excluded Latinos in that study. Do you believe the FCC had properly considered minority media ownership especially as it relates to Latinos as they have come up with this proposal?

Mr. GONZALEZ. No, I don't think it has. I mean, I think it is pretty clear that even in analyzing its own reports filed by the media companies in terms of ownership, I think the Free Press study documented that it missed quite a few minority owners.

Mr. STUPAK. Like two thirds of them.

Mr. GONZALEZ. Two thirds. And when we wrote to the NTIA last year to find out why the NTIA had stopped doing its own survey, we were told that it as an agency had no plans to do any further surveys and referred us to the FCC. So we find the situation where there is basically no government agency that has accurate data on what is the level of minority ownership. How can they resolve the problem when they don't even have the proper data on the problem?

Mr. STUPAK. Right. In fact, on some of them they used the census data. But where did you get your data then when you testified? You had specific numbers and——

Mr. GONZALEZ. Well, I based it on the Free Press study that was done.

Mr. STUPAK. OK.

Mr. GONZALEZ. They actually, as they explain in their study, they took all of the FCC 323 data, but they actually manually reviewed it as opposed to doing a computerized analysis of it, which is how the FCC ended up with inaccurate data, an inaccurate summary of its own data.

Mr. STUPAK. Mr. Schwartzman, do you believe that the FCC has adequately researched and addressed the important issues relating to minorities and localism?

Mr. SCHWARTZMAN. No, I don't. The FCC's failure, as has been discussed, to have any meaningful awareness of minority ownership is a stunning failure in light of the court's directive that it ensure that it take minority ownership into account in connection with any new rules that it would adopt. So the answer is that I think the Commission has fallen very far short of that. Its Localism Task Force has been, as you have indicated, somnambulant until the last few weeks, and there is no reason to expect that the powerful viewpoints expressed at the Commission's hearings is going to be reflected in whatever the Commission puts out. So I think it is falling short.

Mr. STUPAK. Well, they have referred to this proposed rule, as this proposed rule with the loophole that would allow the newspaper/broadcast combination in all markets. Would you see that as a loophole?

Mr. SCHWARTZMAN. Yes, absolutely I do. While we could discuss it at great length, I would point to one thing in particular. Instead of the current standard for a permanent waiver, which is financial distress, until last Friday when Tribune received a waiver it didn't ask for in Chicago, there had been exactly four permanent waivers in history, four stations which have qualified for this difficult test. Instead of that, it is substituting for financial distress, financial conditions; and financial conditions is anything that three FCC Commissioners say it is.

Mr. STUPAK. Well, the Tribune waiver, I guess I am still confused on that one. How do you not get a ruling but yet you get a waiver or if you go to court you get a 2-year waiver? How do you undo the work you have done those 2 years? Wouldn't you—shouldn't there be a stay or something? How do you put it back together if at the end of 2 years you find the waiver wasn't appropriate and it is denied then? It is a crazy one.

Mr. SCHWARTZMAN. What the FCC did last Friday is cunning, devious, and highly questionable.

Mr. STUPAK. Ever been done before?

Mr. SCHWARTZMAN. Never been done before. Whether the court will be able to sort it out, we can only begin to tell.

Mr. STUPAK. More questions but I am out of time, I think.

Mr. MARKEY. We will come back. We will do a lightning round of 2 minutes. We will recognize Mr. Radanovich, and anyone else

that has a final question we will be able to accommodate. The gentleman from California.

Mr. RADANOVICH. Thank you, Mr. Chairman.

I am wondering if anybody in the panel can speak up then and advise me that if it were accepted that the minority view was not necessarily represented in the court case and FCC rulings, then if they were represented, would that change anybody's opinion that is supportive of the FCC ruling, would it change the results? Mr. Sturm, I am thinking that you might have a comment on that. If the minority status, if it is accepted that that view wasn't adequately represented in the reviews and such through the courts and all, if they were, then how would that change things? Because of the media platform explosion since 2001 and the ability to access media now is so great that——

Mr. STURM. I am not sure I fully understand your question, but I think what you are saying is if minorities were fully represented in broadcast ownership, would that change anything? Do I understand you correctly?

Mr. RADANOVICH. My question is because I am hearing a lot from folks here that those reviews that substantiate the FCC position, the court rulings were based on inadequate data. Is that correct or not correct? I mean, that is the accusation.

Mr. STURM. I am not familiar with the data, the studies that have been done with regard to the minority ownership part of this thing. I am familiar with the studies that have been done about newspaper/broadcast cross-ownership for the last dozen years or so. And I would just say, I am not sure this is responsive, but all those studies find that newspaper ownership of broadcast stations increases local news and public affairs on those stations. And I would also say that we have had several references to a study that suggests that there is some sort of a contraction in the marketplace because of newspaper/broadcast cross-ownership. That was one study done by an advocate, versus all of the government's studies and all the independent studies that have been done over the last 12 years. I believe it is statistically invalid, that study, but in order to reach its conclusion, interestingly enough, it has to assume the validity of all the FCC studies and the independent studies that in fact show that newspaper/broadcast ownership increases local news on those stations.

Mr. RADANOVICH. Dr. Williams, can you kind of walk me through this on your position that improved access through your community is being denied given the increase in media platforms that are available to the public now.

Mr. WILLIAMS. Well, sir, if we, not just in the black community but in the people of color, are nearly 35 percent of the population but own such a small or miniscule percent of radio and television, I don't think then media ownership would be going down as it has been under the current FCC Chairman Martin. I believe if we had more ownership, then we could give better images of ourselves. I think it is fine when other people want to speak for us, but we want to speak for ourselves, and we want to have the opportunity to do that; and the only way we can do that is to increase our ownership, because only then are we free to say what must be said.

Mr. RADANOVICH. Under the current proposal, then, you believe that your ability to own and control your own stations and media outlets is hampered by this proposal?

Mr. WILLIAMS. Yes, I think so.

Mr. RADANOVICH. Maybe I understand your FCC position but the courts and the justification that they need to do this—I guess I want to be able to understand how that FCC ruling backed up by the courts would make it less able for your community to have station ownership but also on your purpose of getting your message out in the community and how that would hamper it.

Mr. WINSTON. May I speak to that, sir?

Mr. RADANOVICH. Yes.

Mr. WILLIAMS. Thank you.

Mr. WINSTON. As a trade association of African-Americans who own radio and television stations, what we know is that the consolidation of the media industry over the last decade resulting from the Telecommunications Act of 1996 has increased the prices of stations, which means that minorities have not been able to buy into the industry, so that when you allow further consolidation, you further increase the value of existing stations, making it more difficult for minorities to buy into the industry.

So consolidation has the immediate effect of pricing us out, and as all the witnesses have been talking about, the studies clearly indicate that the minority community is best served by its own outlets. And this is both an economic issue as well as a voice issue. Half of the general managers of radio stations in America who are minorities are employed by African-American owned stations. We are 2 percent of the stations. We employ half the general managers. OK? That is the kind of thing that is affected by excluding us from being industry owners.

Mr. WILLIAMS. And I accept Mr. Winston's position as my own since he is the expert.

Mr. SCHWARTZMAN. May I add something, Mr. Radanovich?

Mr. MARKEY. Very quickly, please, Mr. Schwartzman.

Mr. SCHWARTZMAN. Mr. Radanovich, perhaps this will help. The chairman's proposal would allow acquisition of stations which are outside of the top four in their market. Every single minority-owned television station in the top 20 markets falls outside of the top four, and therefore it becomes an acquisition target for a local newspaper; and we strongly believe that the chairman's proposal if adopted will have a dramatically adverse effect in reducing the number of minority-owned television stations in the top 20 markets.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes—Mr. Sturm?

Mr. STURM. Can I comment on that? Thank you. The notion that somehow the rules should not be changed because of those 19 stations, and I will certainly accept Mr. Schwartzman's number, in fact it is like I might want to buy your house but you don't have to sell it to me. In fact, what will happen is the value of those stations, if you change the rules as Mr. Winston just said, will go up. So those minorities that own those stations will have a better property, certainly a more valuable property, than they do now. They don't have to sell it to anybody.

Mr. MARKEY. OK. Got it. Thank you.

Mr. RADANOVICH. Thank you, Mr. Chairman.

Mr. MARKEY. Thank you. The gentleman from Michigan, Mr. Stupak, is recognized for 3 minutes. Mr. Radanovich went over 2 or 3 minutes, so we will give you another 2 or 3 minutes.

Mr. STUPAK. Thanks. It has been brought up repeatedly here today there are other ways that people get their news and all that, but if we go back and look at the real statistics and you start talking about the Internet and you can access it there, in one of these peer reviews they indicated that many people don't have access to it. Ninety-nine percent of the public has a television in their home, yet only 47 percent of Americans have broadband access. Twenty-nine percent of the public state they have no Internet access, 27 percent don't own a computer. When you break it down, 71 percent of white Americans have Internet access compared to 60 in the African-American community and 56 in Latinos. So the different diverse media outlets we can get our news from for diversity I don't think really exists. I think the problem is more compounded.

Let me ask you this one, though. Mr. Winston, can you explain further how that Arbitron PPM system threatens minority ownership of properties, because you were just talking about point share and all this?

Mr. WINSTON. Yes. Let me just take a minute. I have written it up in my written testimony, but let me try to break it down very simply. What happened when Arbitron introduced the first PPM data in Houston, the minority-formatted stations' ratings fell, like, to two, from 89. And let me give you these hypothetical numbers. I don't have the exact numbers in front of me. In Philadelphia, a minority station goes from two to 14. In New York, a minority station goes from two to 12. None of them has changed anything they are doing, but suddenly their ratings are different. So now the advertising community comes in and says, oh, you got much less audience than you had yesterday, so now your rates that you want to charge us, well, you can talk about half that price.

Mr. STUPAK. Well, then the value of your station would go down?

Mr. WINSTON. The station goes down, you have got to lay off people, and when we met with Arbitron about this and described the problem to them, they said, well, what you need to do is to program to the data, which means go from the black format to a white format, which would undermine exactly everything we are trying to be about.

So the answer is not that we need to change, the problem is that we didn't do anything different under the diaries than that we are doing under PPM. There is something wrong with their methodology, and it needs to be looked at.

Mr. STUPAK. Mr. Sturm, let me ask you this. Mr. Schwartzman mentioned about joint ventures, and there you wouldn't have to worry about the ownership stuff. You could put the economic resources there and go into joint ventures. Why wouldn't that joint venture that he suggested work to what you were trying to do, what you are trying to advocate on behalf of newspapers?

Mr. STURM. Two points. It can work in certain situations perhaps. The most local one that I can think of recently was the Washington Post had a programming arrangement with Bonneville

here in the Washington market to do a sort of a news kind of service, and it didn't work for whatever reasons. There are cultural differences between the station and the programmer in so many cases. And the last point I would make, and I will confess that if anything I thought of coming here today, I didn't think I would quote Commissioner Adelstein, but when he complained about the concept or the idea of having minorities lease channels on cable systems, he called that media sharecropping versus media ownership. And I guess the same principle applies. There is no substitute for ownership.

Mr. MARKEY. The gentleman's time has expired. Thank you. We thank——

Mr. RADANOVICH. Mr. Chairman, just one more question?

Mr. MARKEY. Mr. Radanovich, you have one final question, please.

Mr. RADANOVICH. Thank you, Mr. Chairman. Mr. Fritz, if I can engage you here for a second. Much attention has been placed on the current newspaper/broadcast ownership ban, but both the DC Circuit in 2002 and the Third Circuit in 2004, the Prometheus decision, ruled that the FCC has failed to justify the current radio and television ownership restrictions. In your opinion, does section 202(h) demand that these limitations be revised as well?

Mr. FRITZ. I don't think it demands it, but I think that the evidence suggested in the multiple filings to the Commission justifies it.

Mr. RADANOVICH. Thank you very much, and thank you, Mr. Chairman.

Mr. MARKEY. I thank the gentleman from California. So that completes the questions from the subcommittee members. We thank our witnesses. This is an important subject. Newspapers are vital. They serve important functions in our communities and in our democracy. Advocates for and against relaxing the newspaper/broadcast cross-ownership ban both argue that their view will result in more news, diversity, and localism. This argues at a minimum that the FCC should give Chairman Martin's proposal the time it merits to fully address these issues and its impact. I have urged him to do that, and I hope that he will. This has been a full day. These issues have been aired out I think in a very constructive fashion. We thank our witnesses. It was a great panel.

With that, this hearing is adjourned.

[Whereupon, at 3:05 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Independent Film & Television Alliance®

10850 Wilshire Boulevard / 9th Floor
Los Angeles, CA 90024-4321
310-446-1000 TEL / 310-446-1600 FAX
www.ifta-online.org / info@ifta-online.org

JEAN M. PREWITT
President and CEO

December 5, 2007

Chairman Edward J. Markey
Subcommittee on Telecommunications and the Internet
House Energy & Commerce Committee
Washington, DC

Ranking Member Fred Upton
Subcommittee on Telecommunications and the Internet
House Energy & Commerce Committee
Washington, DC

RE: Dec. 5, 2007 House Energy & Commerce Telecommunications and the Internet Subcommittee Hearing on "Media Ownership"

Dear Representatives Markey and Upton:

On behalf of the Independent Film and Television Alliance (IFTA), which represents independent film and television producers and has more than 180 members, I would like to submit this letter for the record. These companies, which produce and distribute entertainment programming that is financed outside of the seven major U.S. studios, are responsible for more than 400 films each year and countless hours of television programming. Collectively, they generate more than $4 billion in distribution revenues annually. Since 1980, over half of the Academy Award winners for best picture have been produced or distributed by IFTA members, including this year's "The Departed," last year's "Crash," and the prior year's "Lord of the Rings" and "Million Dollar Baby."

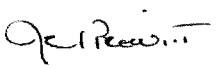
IFTA commends the subcommittee for holding this hearing and for its continued oversight on the important issue of media consolidation. IFTA would like to call the subcommittee's attention to an important aspect of this debate – the inability of independent producers to distribute their product today in the television marketplace through either broadcast or cable networks. Source diversity has been virtually eliminated in American television, and the loser is the American viewer. IFTA has filed comments at the FCC, calling on the FCC to examine this aspect of media consolidation and to reinstitute regulatory safeguards to restore competition and diversity. IFTA urges this subcommittee to encourage the FCC to address the issue of source diversity in the pending Media Ownership Proceeding. This guidance is particularly important in light of the FCC's decision in the previous Biennial Review to defer action on this issue.

Since the elimination of the Financial Interest in Syndication Rules (Fin/Syn) and their related consent decree, there has been a sea change in the television marketplace. Through the early 1990's, for example, independent production companies were able to sell programming to broadcast networks. This provided diverse, high-quality programming to the American public. From 1980 to the demise of Fin / Syn in the early nineties, nearly half the Emmys given for "Best Drama" and "Best Comedy" series were awarded to independent producers. Since then, independent production has fallen from 50 percent in 1995 to only 18 percent of primetime programming today.

Independents are now only able to sell their products to networks at below-cost prices and are forced to relinquish syndication rights. Additionally, major television networks have stopped acquiring independent feature films or movies-of-the-week for broadcast. And, a number of IFTA members have been advised by networks or cable channels that they would no longer acquire independently produced children's programming or family films unless ownership rights are included and they can control its content with "traditional" family themes being expressly out of favor. As a result, many members have been forced to abandon production of this type of programming.

As a result of the easing of program diversity regulation, there has been a decline in quality, creativity and diversity of programming. IFTA respectfully requests that the Congress encourage the FCC to reinstitute reasonable regulation to ensure program diversity. Specifically, IFTA seeks a 75 percent cap on the amount of self-produced network programming that major broadcast and cable networks may distribute. Without such action, independent voices will continue to be silenced and the diversity of programming for the American viewer will continue to decline.

Sincerely,



Jean Prewitt

http://www.latimes.com/news/opinion/la-oew-welch16nov16,0,7463136.story?coll=la-opinion-center
From the Los Angeles Times

OPINION DAILY

Free Sam Zell!

Why 'media activists' should be mocked for trying to block the buying and selling of newspapers and television stations.
By Matt Welch

November 16, 2007

The funniest thing about **anti-media activists** — whoops, I mean "**public interest groups**" — is that their sky-is-falling brief against big media consolidation always (and I mean *always*) disintegrates on contact with what I like to call "personal experience." As in, theirs. And mine.

Take the **uniformly hostile reaction** this week to the proposed **half-hearted loosening** of the Federal Communication Commission's **1970s-era restrictions** prohibiting newspapers from owning television stations in the same market. "Our media world remains desperately anemic for want of diverse ownership," activist Harold Feld **wrote**. "The conversation we ought to be having is, 'How do we break up the media barons the way Teddy Roosevelt broke up Standard Oil?' "

OK, Harold, let's have that conversation. Here goes: Standard Oil, unlike every "Big Media" company you despise, was a monopoly (and no, merely **repeating the myth year after year** does not **magically make it so**). End of conversation.

But where Personal Experience really disproves the anti-consolidation thesis is in the persistent notion that "our media world remains desperately anemic for want of diverse ownership." If that's true, surely it would be reflected in the media consumption habits of most everyone, media critic and fat-cat apologist alike. I'll go first:

In the morning, I read most of the **L.A. Times** (Tribune Co.), and scan the funny headlines from the **New York Post** (**Dr. Evil**). To see what people in the L.A. Times newsroom are gossiping about, I'll check Kevin Roderick's independently owned (or "I," from here on out) **L.A. Observed**. For more local scuttlebutt, I might click on **Mayor Sam** (I), **Fishbowl L.A.** (**Media Bistro**), **LAist** (**Gothamist LLC**) and **Blogging.LA** (**Metroblogging.com**). Since I'm a baseball fanatic and Angels partisan, if I have time before work I'll read and maybe post a comment on **Halos Heaven**, which is part of the interesting **SB Nation** family of fan-blogs launched by (believe it or not) that **Great Orange Satan** of the lefty blogosphere Markos "**Daily Kos**" Moulitsas (pssst! Media reporters! There's an interesting story there!).

If I drive to work I'll listen to (God help me) **Jim Ronie** (**Premier Radio Networks**) on **KLAC** (Clear Channel); when commercials come on I'll either flip to **Sandra Tsing Loh's science bit** on **KPCC** (Southern California Public Radio) or to the latest Hugo Chavez speech on **KPFK** (Pacifica). On the way home it's usually the Angel game on **KSPN** (ESPN), the Dodger game on **KFWB** (CBS Radio), the Laker game on KLAC ... or barring sports, some rock music on the fab **Indie 103.1** (**Entravision**). If I'm **taking transit** I might grab the **New Yorker** (Conde Nast), **Reason** (**Reason Foundation**), the **L.A. Downtown News** (I) or my current favorite newspaper in the world, the **Los Feliz Ledger** (a nice-sounding gal named **Allison**).

And at various times throughout the day I'm likely to catch about 10 minutes of CNN (Time Warner) before turning it off in disgust at their inane anchor-banter; watch C-SPAN (God) with the sound off in order to truly appreciate the hand-flapping genius of Robert Byrd, and top it off with the jazz stylings of Comedy Central's **Stephen Colbert** (Viacom).

This represents maybe one-third of my daily media diet, but I'm getting exhausted just typing in the names. So what's the ownership-diversity scorecard? Best as I can reckon, that's 20 media properties with 20 different owners; six of whom are independents (with three or four others possibly qualifying, depending on how you look at things). Six of the 20 (and probably closer to 50% of my actual media consumption) are entities that did not exist in the 20th century. So much for the "**new totalitarianisms**" warned of (or was it hoped for?) by lefty media grump Norman Solomon in the wake of that previous death-knell for the "independent press," otherwise known as the spectacularly ineffective **AOL-Time Warner merger**. In the game of Monopoly, a 5% share of the board means you're about to lose, unless you have Broadway and Park Place. But in the game of media activism, that's enough to bring out the calls for a new, media-bustin' Teddy Roosevelt.

Ah, comes the rejoinder: Even though us fancy-lad elitists may enjoy a rich palate of media goodies the likes of which the world has never seen before, and even though it's never been cheaper or easier for an individual citizen to start his or her own damned publication with the potential to **permanently alter the very news cycle**, what about those poor 15% or fewer of the people who *don't* have cable or satellite, don't have an Internet connection and get most of their current-affairs information from local TV news? You know, those lovely but ignorant *other people* who but for the iron hand of media consolidation would be perfectly informed and would thus vote, consume and otherwise behave the way we, the rightly guided, know they ought? Why shouldn't *they* get federal protection from the dreaded possibility that a single company might own both a newspaper *and* a television station?

The answer gets to Part Two of the Personal Experience test. Which is to say, in the world that actually exists, newspapers and television stations owned by the same parent get along about as well as Sunni and Shia, only with less inter-marrying. To cite the experience of the **company** most potentially affected by the FCC's ownership agonizing, when is the last time you saw **Steve Lopez** on KTLA's "News at Ten," talking about his violin-playing, ex-homeless pal? Why is it that when I stumble upon Times sports columnist Bill Plaschke on television, it's on ESPN and not the local Tribune property? If synergy is choking off alternative viewpoints, where's my make-up?

The truth is that newspaper employees hate local TV news for its cheesiness almost as much as media activists hate large media corporations for their larginess. The culture of an organization — especially a large, lumbering, monster-organization like a big metro newspaper — does not blend easily with others. That goes even for other newspapers. (Ask any Spring Streeter how the synergy's going with the folks in Chicago, and prepare to receive an earful of spittle.)

The FCC was created seven decades ago to oversee the sensible distribution of then-scarce broadcast spectrum, not artificially limit the ownership options of newspapers in a media-rich world, or play to the paranoia of economic illiterates. Yet thanks to public pressure and good old-fashioned government mission creep, commissioners have some **seriously bizarre notions** of what they're there for. Thanks to all that, media deregulation in any meaningful sense is indeed **dead**, and the fat cats will continue having to schlep to Washington to kiss the FCC's ring (otherwise known as getting a "waiver"). So much for "**Congress shall make no law....**"

Matt Welch is an assistant editorial page editor; click here to read more of his Opinion Daily columns.

Send us your thoughts at opinion@latimes.com.

NEWS

Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC. 515 F 2d 385 (D.C. Circ 1974).

For Immediate Release
June 21, 2006

News Media Contact:
Rebecca Fisher (202) 418-2359

FCC Opens Media Ownership Proceeding for Public Comment

Washington, DC – The Federal Communications Commission (FCC) today adopted a *Further Notice of Proposed Rulemaking* that seeks comment on how to address the issues raised by the U.S. Court of Appeals for the Third Circuit in *Prometheus v. FCC*, which two years ago stayed and remanded several media ownership rules that the Commission had adopted in its *2002 Biennial Review Order*. The *Further Notice* also opens a comprehensive quadrennial review of all of the media ownership rules, as required by statute.

Section 202(h) of the 1996 Telecommunications Act, as amended, mandates that the FCC periodically review its broadcast ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." As directed by Congress, the FCC opened a review proceeding in 2002 to analyze its broadcast ownership rules. The Commission's decision, set forth in the *2002 Biennial Review Order*, was adopted in June 2003. The Third Circuit Court of Appeals issued its decision affirming some Commission decisions and remanding others for further justification or modification.

The *Further Notice* details the issues raised in *Prometheus* regarding the Commission's earlier decisions and rationale. It discusses, and invites comment on, the rules that the court remanded:

- Should the Commission revise the limits adopted in the *2002 Biennial Review Order* on the number of stations that can be commonly owned in one market, or is there additional evidence or analysis available now upon which the Commission can rely to further justify the limits adopted then?
- Similarly, in order to address the court's concerns, should the Commission revise these numerical limits or is additional evidence available to further justify them?
- How should the Commission address radio/television and newspaper/broadcast cross-ownership issues?

The item also seeks comment on the court's remand of certain proposals relating to minority ownership. In addition, responsive to the quadrennial review required by statute, the *Further Notice* seeks comment on whether these rules sent back to the Commission by the court, as well as the dual network rule which was not at issue in *Prometheus*, are necessary in the public interest as a result of competition.

Finally, the *Further Notice* lists pending petitions for reconsideration of the *2002 Biennial Review Order* and states that parties may refresh the record concerning these petitions.

Action by the Commission June 21, 2006, by *Further Notice of Proposed Rulemaking* (FCC 06-93). Chairman Martin, Commissioners Tate and McDowell, with Commissioners Copps and Adelstein concurring and dissenting in part. Separate statements issued by Chairman Martin, Commissioners Copps, Adelstein, Tate, and McDowell.

-- FCC--

Fact Sheet for Media Ownership FNPRM

FNPRM Seeks Comment On the Following Rules:

- Local Television Ownership Limit
- Local Radio Ownership Limit
- Newspaper Broadcast Cross-ownership Ban
- Radio Television Cross-ownership Limit
- Dual Network Ban
- UHF discount on the National Television Ownership Limit

Studies

- Comprehensive studies that will address a variety of issues including:
  - How people get news and information
  - Competition within types of media and across media platforms
  - Marketplace changes since the Commission last reviewed its ownership rules
  - Localism
  - Minority participation in today's media environment
  - Independent and diverse programming in today's media environment
  - The impact of ownership on the production of children's and family-friendly programming.
- $200,000 budgeted for these studies

Opportunity for public participation

- Hearings:
  - The Commission will hold six public hearings on this ownership proceeding to be held in geographically diverse locations around the country.
  - Participants in the hearings will discuss the impact of the rules on topics including but not limited to:
    - Localism
    - Competition
    - Diversity
    - Minority ownership
    - Children's and family-friendly programming

    - Senior citizens
    - Religious programming
    - Independent programming
    - Campaign and community event coverage
    - Music and the creative arts
    - The growth of the internet
    - Jobs and the economy
    - Advertisers
    - Rural America
    - The disabled community
- The comment cycle will be extended beyond the normal period, to 120 days.

- Facilitating Public Comment
    - The main page of the Commission's website (www.fcc.gov) will be updated to feature a hyperlink to a webpage dedicated to the media ownership proceeding.
    - The page will feature details on public hearings, access to the FNPRM and studies, and instructions to facilitate the filing of public comments.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

The Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner Adelstein:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Members who have submitted the questions and include the text of the Member's question along with your response. Since you have been asked questions from more than one Member of the Committee, please begin the responses to each Member on a new page.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, January 18, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Phil Murphy, Staff Assistant. An electronic version of your response should also be sent by e-mail to Mr. Murphy at **phil.murphy@mail.house.gov** in a single Word formatted document.

The Honorable Jonathan S. Adelstein
Page 2

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Elliot L. Engel, Member
Subcommittee on Telecommunications and the Internet

The Honorable John D. Dingell

1. On what date did you first receive a draft order proposing to adopt the specific language of Chairman Martin's changes to the newspaper/broadcast cross-ownership rule?

My office received a draft order proposing to adopt changes to the newspaper/broadcast cross-ownership rule on Wednesday, November 28th, 2007. The agenda meeting was scheduled and held on December 18th, 2007, so all agenda items should have been delivered to each Commissioner's office by November 27th – three weeks before the agenda meeting.

   a. If this date was before December 11, 2007, is it correct to assume that the draft order did not take into account public input on the proposed rule?

Yes, the draft order distributed on November 28th, 2007, did not take into account public input on the proposed rule because public comments were due on December 11th.

   b. If this date was after December 11, 2007, is it correct to assume that you did not have the customary 3 weeks to consider the draft order?

The Honorable Joe Barton

1. Commissioner Adelstein at the hearing, I pointed out that consumers today enjoy a wider range of media choices than ever before, and yet the Commission is apparently considering government-mandated arbitration for carriage disputes as well as a "wholesale *a la carte*" proposal that would dictate the structure of a carriage agreement between two private parties. I do not believe any of this intervention is necessary in light of the robustly competitive state of the marketplace. Nonetheless, I asked you whether you believe the Commission has statutory authority to intervene in negotiations over carriage of video programming and, if so, what conditions you believe must exist before you would agree to such an extraordinary step. You indicated that the Commission may intervene in such negotiations in the narrow circumstance where the Commission makes a definitive finding of discrimination against a provider of video programming. So that we might have more precise answers for the record, I ask that you please point specifically to all sections of the Communications Act that you believe authorize the Commission to intervene in or regulate negotiations for carriage of video programming. For each, please indicate:

    a. What threshold standard or standards the statute requires to be met before the Commission may intervene;

    b. Whether there must be, at a minimum, evidence of discrimination before the Commission may intervene;

    c. The evidentiary elements for a finding of the discrimination or other statutory standards that must be met prior to intervention;

    d. What obligations or restrictions the Commission may impose if the standard or standards are met; and

    e. Upon what types of entities the Commission may impose the obligations or restrictions.

The Commission has interpreted the statutory provisions related to program carriage, program access and retransmission consent as explicit authorizations to regulate negotiations for carriage of video programming under certain specific circumstances.

While these provisions generally proscribe certain anticompetitive conduct, Congress intended to preserve the legitimate aspects of negotiations for video programming that result in greater availability of programming in the video marketplace. Indeed, the 1992 Cable Act contained the specific directive to "rely on the marketplace, to the maximum extent feasible, to achieve greater availability" of the relevant programming.

Program Carriage

As the Commission has observed, Section 616 of the Communications Act directs the Commission to "establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors." Congress concluded, among other things, that vertically integrated cable operators have the incentive and ability to favor affiliated programmers over unaffiliated programmers with respect to granting carriage on their systems.

As required under the statute, the Commission's program carriage rules prohibit a cable operator or other MVPD from (1) requiring "a financial interest in any program service as a condition for carriage" of such service, (2) coercing a programmer to grant "exclusive" carriage rights, implicitly or explicitly or (3) engaging in conduct that has the effect of unreasonably restraining "the ability of an unaffiliated programming vendor to compete fairly" by discriminating against such vendor "on the basis of affiliation or non-affiliation."

The Commission endeavors to identify specific behavior that constitutes "coercion" and "discrimination" to resolve program carriage complaints on a case-by-case basis and evaluates the parties' behavior within the context of specific facts pertaining to each negotiation. Also, for purposes of the program carriage rule, a vendor is considered to be "affiliated" with respect to a multichannel distributor if the distributor holds five percent or more of the stock of the programmer, whether voting or non-voting.

The Commission has established rules governing program carriage, procedures for the review of program carriage complaints, as well as penalties and remedies. 47 CFR §§ 76.1301-1302. The procedures generally provide for resolution of a complaint on the basis of a complaint, answer, and reply. Upon a determination that the complainant has established a prima facie case, the case may be referred for an adjudicatory hearing before an Administrative Law Judge, or if the parties choose, alternative dispute resolution. FCC regulations require that all complaints must be accompanied by an affidavit signed by an authorized officer or agent of the complainant. Section 536 of the Communication Act required the Commission to establish program carriage regulations. In response, the Commission promulgated Rule 76.1302. Subpart (a) of that rule requires a complaint to be filed before action and subpart (c)(3) requires evidence that supports the claimant's claim of discrimination. The complainant may reply within 20 days. If

there is not sufficient evidence the complaint will not be accepted. Rule 76.7(e) allows the Commission to request an evidentiary hearing.

However, the Commission rejected establishing specific evidentiary elements that must be met before the Commission could intervene "because we believe that the unique aspects of individual negotiations will require a more direct examination and evaluation of the facts pertaining to each complaint situation." *In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 Development of Competition and Diversity in Video Programming Distribution and Carriage,* 9 FCC Rcd. 2642, 2649.

The appropriate relief for violations of the program carriage rules is determined on a case-by-case basis, to include forfeitures, mandatory carriage, or carriage on terms revised or specified by the Commission. The Commission may impose obligations or restrictions on cable operators or any multichannel video programming distributor.

Program Access

Section 628 of the Communications Act authorizes the Commission to regulate MVPD's access to programming. Congress concluded that vertically integrated program suppliers also "have the incentive and ability to favor affiliated cable operators over non-affliliated cable operators and programming distributors using other technologies." As part of the Telecommunications Act of 1996("Act"), Congress expanded program access protection to include common carriers and their affiliates that provide video programming by any means directly to subscribers, and to satellite cable programming vendors in which a common carrier has an attributable interest.

Last year, the Commission re-examined the program access rules. We concluded, among other things, that "the exclusive contract prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming." We found that vertically integrated programmers "continue to have the ability to favor their affiliated cable operators over competitive MVPDs such that competition and diversity in the distribution of video programming would not be preserved and protected absent the rule."

The program access rules prohibit unfair methods of competition, or unfair or deceptive practices that hinder or prevent any MVPD from providing satellite-delivered programming to consumers. Specifically, Section 628(b) prohibits cable operators and vertically integrated programmers from engaging in unfair practices which hinder significantly or to prevent any MVPD from providing satellite-delivered programming. Section 628(c) generally prohibits exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators.

Parties aggrieved by conduct alleged to violate the program access provisions have the right to commence an adjudicatory proceeding before the Commission by filing a

complaint. Rule 76.1003 requires the complaint to include evidence to support the claim. Evidence must also be included that proves the complainant competes with the defendant cable operator. If the complaint alleges discrimination, documentary evidence such as a rate card or a programming contract that demonstrates a differential in price, terms or conditions between complainant and a competing multichannel video programming distributor or, if no programming contract or rate card is submitted with the complaint, an affidavit signed by an officer of complainant alleging that a differential in price, terms or conditions exits, a description of the nature and extent (if known or reasonably estimated by the complainant) of the differential, together with a statement that defendant refused to provide any further specific comparative information must be provided.

As a general matter, the Commission encourages resolution of program access disputes through private negotiated settlements. However, when denial of programming (i.e., unreasonable refusal to sell, petitions for exclusivity, and exclusivity complaints) cases are filed, the Commission endeavors to resolve them within five months. All other program access complaints, including price discrimination cases, should be resolved within nine months.

Section 628(e) of the Communications Act provides that the Commission has "the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to the aggrieved multichannel video programming distributor." The Commission has found that it also has statutory authority to impose damages for program access violations.

In the 2007 Order, the Commission expanded the use of voluntary arbitration for resolution of program access disputes. By increasing opportunities for parties to choose arbitration prior to the Commission making a determination to forward the complaint to an administrative law judge, the Commission is decreasing the likelihood it must intervene or regulate in the future.

Retransmission Consent

Section 325(b)(3)(C) of the Communications Act obligates broadcasters and MVPDs to negotiate retransmission consent agreements in good faith. Specifically, the Commission established regulations that "prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith."

The Commission has held that "[r]efusal by a Negotiating Entity to put forth more than a single, unilateral proposal" is a *per se* violation of a broadcast licensee's good faith obligation. The Commission has also indicated that such requirement is not limited to monetary considerations, but also applies to situations where a broadcaster is unyielding in its insistence upon carriage of a secondary programming service undesired by the cable operator as a condition of granting its retransmission consent.

The Commission has adopted rules implementing the good faith negotiation provisions and the complaint procedures for alleged rule violations. We have adopted a two-part test for good faith. The first part of the test consists of a brief, objective list of negotiations standards. The second part of the good faith test is based on the totality of

the circumstances of a particular retransmission consent negotiation, that a television broadcast station or multichannel video programming distributor breached its duty to negotiate in good faith.

The Commission has utilized certain standards to determine if the entities are acting in good faith. First, a broadcaster may not refuse to negotiate with an MVPD regarding retransmission consent. Second, a broadcaster must appoint a negotiating representative with authority to bargain on retransmission consent issues. Third, a broadcaster must agree to meet at reasonable times and locations and cannot act in a manner that would unduly delay the course of negotiations. Fourth, a broadcaster may not put forth a single, unilateral proposal. Fifth, a broadcaster, in responding to an offer proposed by an MVPD, must provide considered reasons for rejecting any aspects of the MVPD's offer. Sixth, a broadcaster is prohibited from entering into an agreement with any party conditioned upon denying retransmission consent to any MVPD. Finally, a broadcaster must agree to execute a written retransmission consent agreement that sets forth the full agreement between the broadcaster and the MVPD. *See* 47 C.F.R. § 76.65(b)(1)(i)-(vii).

Any television broadcast station or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The Media Bureau has ruled that the Act does not authorize the Commission to require binding arbitration to resolve retransmission consent disputes, notwithstanding Senate legislative history that indicates otherwise and the Commission's general authority under Section 4(i) and 303(r) of the Act.

The Honorable Elliot L. Engel

1. I am sensitive to the concerns of my colleagues about media concentration in their districts, but as a Representative of New York, I live in the biggest and most diverse media market on the planet! With the advent of hybrid digital radio, the choices are already expanding. Thus, I do have a somewhat different view than most. I was wondering what each of the Commissioners are thinking regarding the proposal to allow one company to own more radio stations in the very large markets?

Indeed, with the deployment of hybrid digital radio, choices and program offerings are expanding. One radio station will be able to transmit multiple streams of audio programming instead one analog stream. Using In Band On Channel (IBOC) technology, each radio station will be able to transmit at least three high fidelity digital audio streams, in addition to its main, analog stream. So, one radio station can effectively operate as if it were three or four stations, transmitting distinct streams over its existing frequency. In large markets like New York City, one company is permitted own 8 radio stations. In terms of digital audio, that single station will be able to program at least 24 separate programming streams. This appears to be ample reach for one station in even the largest radio market.

While existing broadcasters are taking advantage of digital technology, Commission policy should promote entry of new parties, especially women and people of color, into the ranks of broadcast station owners. While there is diversity of programming in large media markets, there is not sufficient diversity of ownership to justify further consolidation. Consolidation needs to be balanced against diversity of programming and especially ownership.

2. As the Representative of an ethnically diverse district, I am sensitive to the concern that minorities are not well represented in the media – on camera, behind the microphone, and behind the scenes working as writers, producers, etc. What is the Federal Communications Commission doing to promote greater diversity in the media?

On December 18, 2007, the Commission adopted an Order that took some limited steps to promote greater diversity in the media. As the gatekeeper of the public airwaves, the Commission has a solemn obligation to ensure that all Americans have equal access and opportunity to own, operate and control broadcast outlets. Indeed, the founding charter of the FCC requires us to protect the public interest by promoting competition, localism and *diversity*. It requires us to take affirmative steps to *prevent* discrimination on the basis of race, gender, religion, and nationality. It also requires us to take affirmative steps to *promote* diversity of ownership because, in America, *ownership is the key to having your voice heard.* Further, if these statutory mandates are not sufficient, in

Section 257 of the Communications Act, Congress specifically encourages us to develop and promote policies that favor diversity of media voices.

Despite this clear and unequivocal mandate to facilitate ownership and participation by new entrants, women and people of color, the Commission has been hesitant to act. Even when we have acted, it has not been in a comprehensive and sustained manner. Piecemeal, short-term measures will not improve the number of women and minority broadcasters, especially when the Commission continues to relax our media ownership rules.

Women make up over half of the U.S. population, and minorities make up over a third. But women and people of color own broadcast stations at roughly one-tenth of their level of representation in the population. In radio, women and people of color own six percent and eight percent of stations, respectively. Media consolidation only takes outlets further out of the reach of women and people of color, and further from the local communities and their values. That is why we needed to first implement improvements to diversity and localism before we consider loosening the media ownership rules.

As you are aware, on December 18, 2007 and over my objection, the Commission relaxed the newspaper/broadcast cross-ownership rule in all markets. This decision will make broadcast TV stations further beyond the reach of women and minority owners. As Free Press has shown, an examination of FCC data reveals that women and people of color, respectively, own about six percent and three percent of TV stations. Rather than improving the opportunities for women and people of color to purchase local TV stations, the FCC has substantially raised the barrier of entry – decreasing further the likelihood of diversifying the ownership class of TV stations.

Under the revised newspaper/broadcast cross-ownership rule, in the top 20 markets, there is a high presumption in favor of permitting the dominant local newspapers to purchase a local TV station that is not among the top four ranked stations in the market. The main problem is that these are the only stations that a women or minority would have an opportunity to purchase. Under the new FCC rules, women or minority ownership of a local TV station is now further out of reach. So instead of promoting women and minority ownership, the FCC has taken affirmative steps to impede it.

Rather than limiting opportunities for women and people of color, the FCC – for starters – should attempt to improve the regulatory climate by (1) staying any relaxation of the broadcast media structural rules; (2) adopting a definition of "eligible entity" that will truly provide women and minority owned broadcast businesses with regulatory relief; (3) developing an accurate census of women- and minority-owned stations; (4) conducting a longitudinal study of the effects of our media ownership rules on women and minority ownership; and (5) creating an independent, bipartisan panel to review Commission rules, propose reform measure and monitor the Commission's progress over time

These initial steps are critical because over the years, it has been standard operating procedure for the FCC to neglect its statutory obligation to promote diversity of

ownership. Often, as the Commission has neared completion of items addressing women and minority ownership, so much time has gone by that it has had to start all over again. Such was the case when the Commission made a good faith attempt to respond to the Supreme Court's decision in *Adarand v. Pena*. In 2000, the Commission developed a series of empirical studies to determine the impact of Commission policy on women and minority businesses. Since that time however, the Commission has done nothing more than "refresh the record."

Also, as the Commission knows all too well, there is no accurate census of women- and minority-owned stations. A study commissioned by the FCC has found, "the data currently being collected by the FCC is extremely crude and subject to a large enough degree of measurement error to render it essentially useless for any serious analysis." We do not even have enough data to determine which owners or stations will actually benefit or be harmed. For safe measure, we should not act in an area of such sensitivity until we can clearly ascertain the actual impact.

While I'm critical of the certain important aspects of the Order, it nevertheless took some important positive steps, such as (1)requiring broadcasters renewing their licenses to certify that their advertising sales contracts do not discriminate on the basis of race or gender; (2) convening an "Access-to-Capital" conference that will focus on the investment banking and private equity communities and opportunities to acquire financing; and (3) encouraging local and regional banks to participate in SBA-guaranteed loan programs in order to facilitate broadcast and telecommunications-related transactions.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

Mr. Sidney Bliss
President and CEO
Bliss Communications, Inc.
P.O. Box 5001
Janesville, WI 53547–5001

Dear Mr. Bliss:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from a Member of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, January 18, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Phil Murphy, Staff Assistant. An electronic version of your response should also be sent by e-mail to Mr. Murphy at **phil.murphy@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Fred Upton, Member
Subcommittee on Telecommunications and the Internet

RESPONSES OF SIDNEY H. BLISS TO QUESTIONS POSED BY THE HONORABLE FRED UPTON

1. Mr. Bliss, how many shots does the FCC get? We have already gone several rounds of the FCC being told by courts that it has failed its statutory burden to justify its broadcast ownership restrictions, and that it must do them over. At what point does the FCC's failure to justify its restrictions, and good public policy, require eliminating all the restrictions in favor of allowing competition, the market and consumer satisfaction to determine the appropriate size, structure and number of media companies.

   It is my understanding that the FCC's current proceeding is the sixth one that the commission has conducted in the last 11 years. The commission has held six public hearings and has received hundreds of thousands of comments from the public. This proceeding reinforces the view – outside of the Beltway – that nothing gets done in Washington. I fear, that by the time the FCC acts to make a first time change to a 32-year old rule, it will be too late.

   Under the current cross ownership ban-only foreign citizens, convicted felons, and myself as a newspaper publisher – are prohibited from pursuing local broadcast business opportunities – while national companies (with no ties to the local community) are free to do so. Ironically, before there was a Federal Communications Commission, the government turned to newspaper publishers during the great depression and asked the industry to get radio off the ground, because newspapers knew more about how to gather information and disseminate it better than anyone. Now, the ban is placing my business at a competitive disadvantage at a time of intense competition across the media landscape.

   The ban is preventing combinations that will make both a newspaper and a broadcast station in a market more efficient, vital and competitive in today's marketplace. Removing the regulatory shackles will allow newspapers to do what we do best – produce more local news and public affairs programming to broadcast audiences and, in some cases, bring local news to stations where there is none today.

2. Mr. Bliss, promoting diversity of viewpoints and localism are the main justifications claimed for broadcast cross-ownership restrictions, but in today's market, do restrictions help or actually hurt those goals.

   The newspaper/broadcast cross-ownership ban hinders viewpoint diversity in local communities. As I mentioned in my testimony, my father – the publisher of the Janesville Gazette – purchased a license for an AM radio station in 1930 and a license for an FM radio station in 1947. These newspaper / broadcast combinations were grandfathered when the FCC's ban on cross-ownership was put into place in 1975.

   The news for these radio stations are locally produced and gathered by a local news reporters that aggressively compete with the newsroom of the daily newspaper. The newsroom staffing at these stations over the past several years is at an all time high.

The importance for local newspapers and broadcasters to maintain credibility with their communities provides an additional safeguard against any risk that co-owned outlets will harmonize their opinions.

The AM radio station produces a morning local talk show from Monday through Friday where community leaders and elected officials are invited in to talk about important local issues facing the community. It is not uncommon for the host as well as guests of the talk show to criticize the viewpoints of our newspaper. In addition, the AM radio station produces local debates in cooperation with the newspaper and the local University of Wisconsin campus.

If the newspaper / cross-ownership ban is eliminated, newspapers around the country will be able to do the type of programming mentioned above and bring more news and community affairs programming to local communities that we serve. We are the credible local news disseminators who the community turns to for leadership on important issues and who rely on the financial success of our businesses to provide for our employees and the growth of our company, not some out of town national company or individual who is totally unfamiliar with our city.

3. Mr. Bliss, when the media ownership restrictions were created, there were only a few media platforms, and they operated in largely distinct markets. Today, there are many more media platforms, and they compete against each other. Doesn't that, combined with the FCC's obligation under section 202 (h) require a revision of the ownership limits?

   It is my understanding that Section 202(h) of the Telecommunications Act of 1996 directs the FCC to repeal or modify any regulation that it determines to be no longer in the public interest.

   Congressman Upton, you are certainly correct in stating that the media landscape has seen tremendous change since this regulation was put into place 32 years ago. Where there were only one or two providers of local news, there are a wide variety of outlets for people today to get news and information with television, cable, satellite television and radio, and the Internet.

   It is my understanding that the Third Circuit recognized the newspaper / broadcast cross-ownership ban was no longer in the public interest when it sent back the 2003 media ownership rules to the FCC. So, my answer is that not only does an Act of Congress require the FCC to revise the rule, the courts have directed it to do so as well.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner Copps:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Members who have submitted the questions and include the text of the Member's question along with your response. Since you have been asked questions from more than one Member of the Committee, please begin the responses to each Member on a new page.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, January 18, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Phil Murphy, Staff Assistant. An electronic version of your response should also be sent by e-mail to Mr. Murphy at **phil.murphy@mail.house.gov** in a single Word formatted document.

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Sincerely,

JOHN D. DINGELL
CHAIRMAN

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Subcommittee on Telecommunications and the Internet

The Honorable Elliot L. Engel, Member
Subcommittee on Telecommunications and the Internet

The Honorable Lois Capps, Member
Subcommittee on Telecommunications and the Internet

Question for the Record from the Honorable John D. Dingell
to Commissioner Michael J. Copps, FCC
Hearing with Federal Communications Commission
December 5, 2007

1. **On what date did you first receive a draft order proposing to adopt the specific language of Chairman Martin's changes to the newspaper/broadcast cross-ownership rule?**

    a. **If this date was before December 11, 2007, is it correct to assume that the draft order did not take into account public input on the proposed rule?**

    b. **If this date was after December 11, 2007, is it correct to assume that you did not have the customary 3 weeks to consider the draft order?**

My office first received a draft Order proposing to adopt Chairman Martin's proposed changes to the newspaper-broadcast cross-ownership rule on November 28, 2007. Since public comment on the Chairman's proposal was not due until December 11, 2007, the draft did not take public comment into account.

Questions for the Record from the Honorable Joe Barton
to Commissioner Michael J. Copps, FCC
Hearing with Federal Communications Commission
December 5, 2007

1. **Commissioner Copps, at the hearing, I pointed out that consumers today enjoy a wider range of media choices than ever before, and yet the Commission is apparently considering government-mandated arbitration for carriage disputes as well as a "wholesale *a la carte*" proposal that would dictate the structure of a carriage agreement between two private parties. I do not believe any of this intervention is necessary in light of the robustly competitive state of the marketplace. Nonetheless, I asked you whether you believe the Commission has statutory authority to intervene in negotiations over carriage of video programming and, if so, what conditions you believe must exist before you would agree to such an extraordinary step. You indicated that the Commission may intervene in such negotiations in the narrow circumstance where the Commission makes a definitive finding of discrimination against a provider of video programming. So that we might have more precise answers for the record, I ask that you please point specifically to all sections of the Communications Act that you believe authorize the Commission to intervene in or regulate negotiations for carriage of video programming.**

There are several sections of the Communications Act that I see as expressly authorizing the Commission to "intervene in or regulate" negotiations for carriage of video programming, including:

- Broadcaster Retransmission Consent (Section 325)
- Commercial Leased Access (Section 612)
- Regulation of Carriage Agreements (Section 616)
- Program Access (Section 628)

(Note: There are other provisions that authorize the Commission to intervene in or regulate negotiations for carriage of video programming. For instance, the Commission has promulgated rules regarding cable must-carry, satellite local-into-local and distant carriage, broadcast network non-duplication and syndicated exclusivity. Please advise if you would like a broader response.)

For each, please indicate:

a. **What threshold standard or standards the statute requires to be met before the Commission may intervene;**

Section 325 – The statutory standards for Commission intervention are set forth in Section 325(b)(3). The Commission's rules implementing the statutory directive of "good faith" negotiation were originally adopted in the *Report and Order* at 15 FCC Rcd 5445 (2000).

Section 612 – The statutory standards for Commission intervention are set forth in Section 612(c)-(f). The Commission adopted leased access rules in its *Report and Order and Further Notice of Proposed Rule Making*, 8 FCC Rcd 5631 (1993); *Order on Reconsideration of the First Report and Order and Further Notice of Rulemaking*, 11 FCC Rcd 16933 (1996); and *Second Report and Order and Second Order on Reconsideration of the First Report and Order*, 12 FCC Rcd 5267 (1997). The Commission's rules implementing the directives of Section 612 were recently modified at the Commission meeting on November 27, 2007. That Order has not yet been publicly released.

Section 616 – The statutory standards for Commission intervention are set forth in Section 616(a). The Commission's rules implementing the directives of Section 616 were originally adopted in the *1993 Program Carriage Order*, 9 FCC Rcd 2642 (1993).

Section 628 – The statutory standards for Commission intervention are set forth in Section 628(c)-(e). The Commission's rules implementing the directives of Section 628 were originally adopted in the *First Report and Order*, 8 FCC Rcd 3359 (1993), *recon.*, 10 FCC Rcd 1902 (1994), *further recon.*, 10 FCC Rcd 3105 (1994).

b. Whether there must be, at a minimum, evidence of discrimination before the Commission may intervene;

Section 325 – No.

Section 612 – No.

Section 616 – Section (b)(3) requires discriminatory conduct to constitute a violation.

Section 628 – Section (c)(2)(B) requires discriminatory conduct to constitute a violation.

c. The evidentiary elements for a finding of the discrimination or other statutory standards that must be met prior to intervention;

Section 325 – the evidentiary elements are set forth in the Commission's *Report and Order* at 15 FCC Rcd 5445 (2000), and subsequent decisions. In addition, I believe that we must judge the retransmission consent process not from the vantage point of companies, but from the vantage point of consumers. Since the great majority of negotiations are resolved without any disruption in service, the FCC's "good faith" requirements typically are adequate to protect consumers' interests. However, if and when screens go dark in homes because big media companies are waging war over retransmission consent rights, consumers' interests change

dramatically. I am prepared in such situations to exercise whatever formal or informal authority the Commission possesses to resolve these disputes

Section 612 – the evidentiary elements are set forth in the Commission's various *Orders* cited above and subsequent decisions, as well as the *Order* adopted in November 2007 that has not as yet been released.

Section 616 – the evidentiary elements are set forth in the *1993 Program Carriage Order* and subsequent FCC decisions.

Section 628 – the evidentiary elements are set forth in the *Program Access Orders* cited above and subsequent FCC decisions.

d. What obligations or restrictions the Commission may impose if the standard or standards are met;

Section 325 – the potential remedies are set forth in the Commission's *Report and Order* at 15 FCC Rcd 5445 (2000), and subsequent FCC decisions. In addition, as noted above, when negotiations fail and consumers lose programming, I am prepared to exercise whatever formal or informal authority the Commission possesses to resolve these disputes.

Section 612 – the potential remedies are set forth in the Commission's various *Orders* cited above and subsequent decisions, as well as the *Order* adopted in November 2007 that has not as yet been released.

Section 616 – the potential remedies are set forth in the *1993 Program Carriage Order* and subsequent FCC decisions.

Section 628 – the potential remedies are set forth in the *Program Access Orders* cited above and subsequent FCC decisions.

e. Upon what types of entities the Commission may impose the obligations or restrictions.

Section 325 – broadcasters and multichannel video programming distributors (MVPDs)

Section 612 – cable operators

Section 616 – cable operators or other MVPDs

Section 628 – cable operators, satellite cable programming vendors in which a cable operator has an attributable interest, or a satellite broadcast programming vendor.

Questions for the Record from the Honorable Eliot L. Engel
to Commissioner Michael J. Copps, FCC
Hearing with Federal Communications Commission
December 5, 2007

1. **I am sensitive to the concerns of my colleagues about media concentration in their districts, but as a Representative of New York, I live in the biggest and most diverse media market on the planet! With the advent of hybrid digital radio, the choices are already expanding. Thus, I do have a somewhat different view than most. I was wondering what each of the Commissioners is thinking regarding the proposal to allow one company to own more radio stations in the very large markets?**

I opposed such a proposal in our recent quadrennial media ownership review. I believe that the public interest in competition, localism, and diversity has been harmed by the massive consolidation of the radio industry in the wake of the Telecommunications Act of 1996, and that additional consolidation would only cause further harm. Although I dissented from the Commission's Media Ownership Order, I would note that the majority agreed with my conclusion that it would not be in the public interest to raise the local radio caps.

2. **As the Representative of an ethnically diverse district, I am sensitive to the concern that minorities are not well represented in the media - on camera, behind the microphone, and behind the scenes working as writers, producers, etc. What is the FCC doing to promote greater diversity in the media?**

Not as much as we can be doing and should be doing. In the FCC's short-circuited consideration of diversity issues last month, the most important issue we faced was defining the group of "eligible entities" that would benefit from the few steps we did take. Diversity groups told us it would be better to have no definition at all than adopt a general "small business" definition that would largely benefit white males. Unfortunately, the FCC majority adopted the very "small business" definition opposed by the diversity community.

The FCC majority did agree to seek comment on a more race-conscious definition of "eligible entity." But I'm concerned abut whether the majority is serious about developing the record needed to withstand judicial scrutiny. I'm not aware of any plans at the FCC to conduct any studies to build a record or even to improve our roundly-criticized lack of minority ownership data.

There were some decisions last month that don't rely on the definition of "eligible entity" that I supported and that I believe have the potential to do some good—like the ban on discrimination in advertising and a "zero tolerance" policy for ownership fraud. But to be more than mere slogans, these policies need strict

enforcement mechanisms, such as random audits. Again, however, I am concerned whether the commitment exists to give these policies some teeth.

Questions for the Record from the Honorable Lois Capps
to Commissioner Michael J. Copps, FCC
Hearing with Federal Communications Commission
December 5, 2007

1. In your view, what specific barriers prevent greater media ownership by women and minorities? What are your specific recommendations—by regulatory Federal Communications Commission (FCC) action, Congressional action, or industry action—to increase ownership by women and minorities?

The FCC released a series of studies more than seven years ago that began the process of exploring these issues, but those studies have been allowed to languish. Some of the important potential barriers to entry that those studies began to assess include: (1) the discrimination faced by women and minorities in their efforts to obtain access to capital, discrimination in securing advertising on their stations, and discrimination by members of their communities and members of the communications industry; (2) the effect of media consolidation on the ability of women and minorities to enter and survive in the broadcast industry; and (3) whether the FCC's historical licensing processes actively or passively perpetuated patterns of societal disadvantage.

There are tangible steps the FCC could take right now to put us on the right path. First, the FCC should reconsider its decision last month to adopt a general "small business" definition of "eligible entities" that would largely benefit white males and implement a race-neutral "full file review" definition. Second, the FCC should implement a strict enforcement regime to put some teeth into the anti-discrimination and anti-fraud rules it adopted—and I supported—to give these rules some teeth. Third, the FCC needs to do the data-gathering and any additional studies necessary to justify a more race-conscious approach.

Finally, I support Congressional action on a properly-structured minority tax certificate program.

2. What is the foremost action that the FCC can take to promote greater localism and a diversity of voices and images?

First, we should acknowledge that the loss of localism is not something that was inevitable – it was a conscious choice. Back in the 1980's, we had a Chairman of the FCC who famously said that a television set was nothing but a "toaster with pictures." And that's how he and his allies treated it—as just another appliance. So they did away with most of the FCC licensing and public interest requirements that promoted localism.

This is a travesty. We allow the nation's broadcasters to use half a trillion dollars of spectrum—for free. In return, we require that they serve the public interest: devoting at least some airtime for worthy programs that inform viewers, support local arts and culture, and educate our children—in other words, that aspire to something beyond just minimizing costs and maximizing revenue.

To begin with, the FCC needs to reinvigorate the license-renewal process and the public interest standard. We need to return to examining a station's record every three or four years rather than the current eight. And we should be actually ***looking*** at this record. Did the station show original programs on local civic affairs? Did it broadcast political conventions? In an era where too many owners live thousands of miles away from the communities they allegedly serve, do these owners meet regularly with local leaders and the public to receive feedback? The bottom line is that the FCC needs to start doing its job again by ensuring that every licensee is actually using the public airwaves to serve the public interest.

cc: A Levine
P Murphy
E. Ertel

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Michael J. Copps
Commissioner

January 22, 2008

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find my responses to the additional questions for the record attached to your letter of January 7, 2008. I hope you will find them fully responsive to the interests of you and your colleagues.

Warm regards,

Michael J. Copps

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to Commissioner Michael J. Copps, FCC
Hearing with Federal Communications Commission
December 5, 2007

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b. Whether there must be, at a minimum, evidence of discrimination before the Commission may intervene;

Section 325 – No.

Section 612 – No.

Section 616 – Section (b)(3) requires discriminatory conduct to constitute a violation.

Section 628 – Section (c)(2)(B) requires discriminatory conduct to constitute a violation.

c. The evidentiary elements for a finding of the discrimination or other statutory standards that must be met prior to intervention;

Section 325 – the evidentiary elements are set forth in the Commission's *Report and Order* at 15 FCC Rcd 5445 (2000), and subsequent decisions. In addition, I believe that we must judge the retransmission consent process not from the vantage point of companies, but from the vantage point of consumers. Since the great majority of negotiations are resolved without any disruption in service, the FCC's "good faith" requirements typically are adequate to protect consumers' interests. However, if and when screens go dark in homes because big media companies are waging war over retransmission consent rights, consumers' interests change

dramatically. I am prepared in such situations to exercise whatever formal or informal authority the Commission possesses to resolve these disputes

Section 612 – the evidentiary elements are set forth in the Commission's various *Orders* cited above and subsequent decisions, as well as the *Order* adopted in November 2007 that has not as yet been released.

Section 616 – the evidentiary elements are set forth in the *1993 Program Carriage Order* and subsequent FCC decisions.

Section 628 – the evidentiary elements are set forth in the *Program Access Orders* cited above and subsequent FCC decisions.

d. What obligations or restrictions the Commission may impose if the standard or standards are met;

Section 325 – the potential remedies are set forth in the Commission's *Report and Order* at 15 FCC Rcd 5445 (2000), and subsequent FCC decisions. In addition, as noted above, when negotiations fail and consumers lose programming, I am prepared to exercise whatever formal or informal authority the Commission possesses to resolve these disputes.

Section 612 – the potential remedies are set forth in the Commission's various *Orders* cited above and subsequent decisions, as well as the *Order* adopted in November 2007 that has not as yet been released.

Section 616 – the potential remedies are set forth in the *1993 Program Carriage Order* and subsequent FCC decisions.

Section 628 – the potential remedies are set forth in the *Program Access Orders* cited above and subsequent FCC decisions.

e. Upon what types of entities the Commission may impose the obligations or restrictions.

Section 325 – broadcasters and multichannel video programming distributors (MVPDs)

Section 612 – cable operators

Section 616 – cable operators or other MVPDs

Section 628 – cable operators, satellite cable programming vendors in which a cable operator has an attributable interest, or a satellite broadcast programming vendor.

Questions for the Record from the Honorable Eliot L. Engel
to Commissioner Michael J. Copps, FCC
Hearing with Federal Communications Commission
December 5, 2007

1. **I am sensitive to the concerns of my colleagues about media concentration in their districts, but as a Representative of New York, I live in the biggest and most diverse media market on the planet! With the advent of hybrid digital radio, the choices are already expanding. Thus, I do have a somewhat different view than most. I was wondering what each of the Commissioners is thinking regarding the proposal to allow one company to own more radio stations in the very large markets?**

I opposed such a proposal in our recent quadrennial media ownership review. I believe that the public interest in competition, localism, and diversity has been harmed by the massive consolidation of the radio industry in the wake of the Telecommunications Act of 1996, and that additional consolidation would only cause further harm. Although I dissented from the Commission's Media Ownership Order, I would note that the majority agreed with my conclusion that it would not be in the public interest to raise the local radio caps.

2. **As the Representative of an ethnically diverse district, I am sensitive to the concern that minorities are not well represented in the media - on camera, behind the microphone, and behind the scenes working as writers, producers, etc. What is the FCC doing to promote greater diversity in the media?**

Not as much as we can be doing and should be doing. In the FCC's short-circuited consideration of diversity issues last month, the most important issue we faced was defining the group of "eligible entities" that would benefit from the few steps we did take. Diversity groups told us it would be better to have no definition at all than adopt a general "small business" definition that would largely benefit white males. Unfortunately, the FCC majority adopted the very "small business" definition opposed by the diversity community.

The FCC majority did agree to seek comment on a more race-conscious definition of "eligible entity." But I'm concerned abut whether the majority is serious about developing the record needed to withstand judicial scrutiny. I'm not aware of any plans at the FCC to conduct any studies to build a record or even to improve our roundly-criticized lack of minority ownership data.

There were some decisions last month that don't rely on the definition of "eligible entity" that I supported and that I believe have the potential to do some good—like the ban on discrimination in advertising and a "zero tolerance" policy for ownership fraud. But to be more than mere slogans, these policies need strict

enforcement mechanisms, such as random audits. Again, however, I am concerned whether the commitment exists to give these policies some teeth.

Questions for the Record from the Honorable Lois Capps
to Commissioner Michael J. Copps, FCC
Hearing with Federal Communications Commission
December 5, 2007

1. In your view, what specific barriers prevent greater media ownership by women and minorities? What are your specific recommendations—by regulatory Federal Communications Commission (FCC) action, Congressional action, or industry action—to increase ownership by women and minorities?

The FCC released a series of studies more than seven years ago that began the process of exploring these issues, but those studies have been allowed to languish. Some of the important potential barriers to entry that those studies began to assess include: (1) the discrimination faced by women and minorities in their efforts to obtain access to capital, discrimination in securing advertising on their stations, and discrimination by members of their communities and members of the communications industry; (2) the effect of media consolidation on the ability of women and minorities to enter and survive in the broadcast industry; and (3) whether the FCC's historical licensing processes actively or passively perpetuated patterns of societal disadvantage.

There are tangible steps the FCC could take right now to put us on the right path. First, the FCC should reconsider its decision last month to adopt a general "small business" definition of "eligible entities" that would largely benefit white males and implement a race-neutral "full file review" definition. Second, the FCC should implement a strict enforcement regime to put some teeth into the anti-discrimination and anti-fraud rules it adopted—and I supported—to give these rules some teeth. Third, the FCC needs to do the data-gathering and any additional studies necessary to justify a more race-conscious approach.

Finally, I support Congressional action on a properly-structured minority tax certificate program.

2. What is the foremost action that the FCC can take to promote greater localism and a diversity of voices and images?

First, we should acknowledge that the loss of localism is not something that was inevitable – it was a conscious choice. Back in the 1980's, we had a Chairman of the FCC who famously said that a television set was nothing but a "toaster with pictures." And that's how he and his allies treated it—as just another appliance. So they did away with most of the FCC licensing and public interest requirements that promoted localism.

This is a travesty. We allow the nation's broadcasters to use half a trillion dollars of spectrum—for free. In return, we require that they serve the public interest: devoting at least some airtime for worthy programs that inform viewers, support local arts and culture, and educate our children—in other words, that aspire to something beyond just minimizing costs and maximizing revenue.

To begin with, the FCC needs to reinvigorate the license-renewal process and the public interest standard. We need to return to examining a station's record every three or four years rather than the current eight. And we should be actually ***looking*** at this record. Did the station show original programs on local civic affairs? Did it broadcast political conventions? In an era where too many owners live thousands of miles away from the communities they allegedly serve, do these owners meet regularly with local leaders and the public to receive feedback? The bottom line is that the FCC needs to start doing its job again by ensuring that every licensee is actually using the public airwaves to serve the public interest.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

Mr. Jerald N. Fritz
Senior Vice President
Legal and Strategic Affairs
Allbritton Communications Company
1000 Wilson Boulevard, Suite 2700
Arlington, VA 22209–3921

Dear Mr. Fritz:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from a Member of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, January 18, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Phil Murphy, Staff Assistant. An electronic version of your response should also be sent by e-mail to Mr. Murphy at **phil.murphy@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Fred Upton, Member
Subcommittee on Telecommunications and the Internet

Dear Representative Upton,

1. **Question:**

Mr. Fritz, when it comes to cable and satellite service, whether audio or video, hasn't it been the ability to program large numbers of channels that allows providers to offer consumers a wide range of niche, diverse, and local content? Ironically, isn't it the broadcast ownership caps that force broadcasters to all offer a narrow range of programming aimed at getting the "biggest bang for the buck" rather than cater to a varied selection of consumer interests?

Answer:

The market for information and entertainment has changed dramatically in the last 30 years. In fact, the market has changed drastically in the last five years. Whereas in the 1970s, most American families huddled around their lone television every night to watch one of three major television stations, today, for that same family, the options for entertainment are nearly endless. Cable television alone, with many systems offering close to 500 channels, is reason enough to reexamine the media ownership rules. But if you add in satellite radio and television, video games, iPods and iPhones, Facebook, the Blogosphere, YouTube and countless other news and entertainment Web sites, it becomes clear that the picture of today's media marketplace is not only different than it was in the 1970s, it is wholly reinvented.

Saddled with 20th century rules in a 21st century marketplace, broadcasters are operating with their hands tied behind their backs. While broadcasters, both radio and television, are making mighty efforts to upgrade to the digital world, the rules that bind them are hopelessly mired in an analog past. Each year, broadcasters watch as the advertising dollars that are our lifeblood are lured to cable channels, Web sites, and other media properties that do not share the same regulatory burden as broadcasters.

The truth is that Americans today enjoy access to more information, more entertainment, and more local news than at any point in our history. It is called "The Information Age" for a reason. The Internet does provide local information, and not just on broadcaster Web sites. Cable television and satellite radio do provide niche content that serves nearly every segment of society. And with the barriers to access virtually eliminated, anyone with a computer and a little gumption can have a voice in today's media marketplace.

Broadcasting is, of course, a unique business. Broadcasters and their network partners are proud to offer content that remains some of the most popular. However, as you note, ownership caps restrict broadcasters, particularly radio broadcasters, from offering more niche content. The math is simple. Owners with one or only a few stations will air only what they conceive to be the most popular programming, to, as you say, get the "biggest bang for the buck." They have no choice. But owners that have several stations will offer a more diverse selection of content to gain the greatest cumulative audience. Because they do not want to cannibalize their own audience, owners with several stations will diversify, and provide niche content that reaches both broad and underserved audiences. Numerous empirical studies have demonstrated just that.

2. **Question:**

Mr. Fritz, we demand that our broadcasters serve "the public interest" with their content. I don't know about you, but I don't think of "the public" or its interests as monolithic. The public has diverse tastes. Is it fair to place that broad mandate on broadcasters, to expect them to meet it with nothing but advertising revenue, and then to place restrictions on how they meet that mandate?

Answer:

Congressman Upton, you are correct. There is no one "public interest," and there is no one key to satisfying the public interest. It differs by community, and even within each community.

If satisfying the public interest means providing relevant local content, news, weather, and emergency information, broadcasters are doing their job. If it means giving a voice to local citizens, to shining a light on local government, and to providing a platform for local artists, then again, broadcasters are doing their job. Local stations do not need a mandate from Washington that tells them to operate in the public interest. The market demands it. In today's multichannel universe, if broadcasters do not satisfy the public interest, they will not survive.

Broadcasters are proud of their record serving the public. And they will continue to do so long into the future. But satisfying that broad mandate without some regulatory flexibility will become more difficult as competition from other sources increases.

3. **Question:**

Mr. Fritz, the general opposition to relaxing broadcast ownership restrictions seems to come from a paranoia that media conglomerates will take over all media outlets and control not only public information, but public thought. Isn't this fear clearly contradicted by the unprecedented diversity of content that Americans have access to today, and the unprecedented diversity of debate that goes on daily?

Answer:

There is no question, Americans are passionate about their media. Media, in all forms, is pervasive in our lives. It's the engine of discourse and information exchange. But the "Big Media" myth that has inflamed the media ownership debate has been fanned by gross generalizations. Statements, for example, that suggest 90 percent of everything we hear, see and read is controlled by six companies are simply not accurate. Are there big media companies? Of course. Creating great entertainment, providing detailed news coverage, and organizing the world's information are projects that may require entities with the financial wherewithal to dedicate the needed capital and resources.

But even these bigger companies do not have the capacity to control public thought. The American media marketplace is far too diverse to be bullied by one company. As I noted above, Americans today have access to more information than at any point in our history. They likewise have the ability to "broadcast" their own ideas more easily than ever before. Whereas just a decade ago, having a "voice" in media meant buying a newspaper or radio station, today it can be nothing more than an afternoon spent creating a blog. Collectively these new outlets represent a very powerful change in the marketplace of ideas, and a very real check on traditional media outlets.

4. **Question:**

Mr. Fritz, much of the attention lately has been on the newspaper-broadcast cross-ownership ban, but hasn't both the D.C. Circuit in 2002 and the Third Circuit in the 2004 *Prometheus Radio* decision ruled that the Federal Communications Commission (FCC) has failed to justify the current

radio and television ownership restrictions? Doesn't Section 202(h) demand that these limitations be revised, as well?

Answer:

The D.C. Circuit and the Third Circuit courts of appeal have both found existing conditions to be unnecessary in light of current market conditions. In *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004), the Third Circuit determined that a blanket ban on newspaper/broadcast cross-ownership no longer serves the public interest. The Court concluded that "newspaper/broadcast combinations can promote localism," and agreed with the Commission that a "blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity." *Id.* at 398-99.

The D.C. Circuit found the current television duopoly restriction to be arbitrary and capricious in 2002 for its failure to justify the exclusion of nonbroadcast media, particularly cable television, from the rule's "voice" threshold. *See Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d. 148, 164–165, 169 (D.C. Cir. 2002). The Court made that determination after concluding that Section 202(h) of the Communications Act "carries with it a presumption in favor of repealing or modifying the ownership rules." *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1051 (D.C. Cir. 2002).

Separate from the courts' decisions, Section 202(h), by its plain language, clearly requires the Commission to determine whether changing market forces eliminate the necessity of certain ownership rules. Congress contemplated market shifts following the 1996 Telecommunications Act, and Section 202(h) shifts the burden to the FCC to show why ownership rules in light of those market shifts remain necessary.

5. **Question:**

Mr. Fritz, how many shots does the FCC get? We have already gone several rounds of the FCC being told by courts that it has failed its statutory burden to justify its broadcast ownership restrictions, and that it must do them over. At what point does the FCC's failure to justify restrictions, and good public policy, require eliminating all the restrictions in favor of allowing competition, the market, and consumer satisfaction to determine the appropriate size, structure, and number of media companies?

Answer:

The FCC is arguably in a difficult position on the issue of media ownership. It must balance political pressure against the facts. But clearly, with emotion and politics removed, the facts support a significant reform of the media ownership rules.

We believe that market forces, competition and consumer behavior, absent regulatory restrictions, would ensure a robust marketplace of ideas. Indeed, the market is already ahead of regulators. Contrary to popular belief, major media companies are not looking to radically expand their holdings in traditional media spheres. Clear Channel, for example, has been actively divesting itself of radio holdings, and has been reinvesting in new media properties. Other major media companies have been doing the same. But some owners, particularly those with stations in small and medium-sized communities, would benefit greatly from a relaxation of the ownership rules. And, as a result, media in these communities would flourish, rather than suffocate under the weight of archaic policy.

6. **Question:**

Mr. Fritz, promoting diversity of viewpoints and localism are the main justifications claimed for broadcast ownership restrictions, but in today's market, do the restrictions help or actually hurt those goals?

Answer:

The proliferation of broadcast outlets and the rise of new multichannel video and audio programming distributors and the Internet have produced an exponential increase in programming and service choices available to viewers and listeners. Strong evidence shows that the public's interest in receiving diverse content is therefore being met both nationally and on a market basis. Nonetheless, there is little evidence that the current ownership caps have helped create that diversity. In fact, as I've noted, there is good reason to believe that ownership restrictions actually *harm* diversity and localism. Previous studies and FCC decisions have established that "programming and other" public interest benefits flow from the "efficiencies derived from common ownership of radio and television stations in local broadcast markets." *In re Golden West Broadcasters, Memorandum Opinion and Order*, 10 FCC Rcd 2081, 2084 (1995). Thus, in addition to affecting the "competitive standing" of broadcast outlets, the retention of strict broadcast-only local ownership rules adversely impact the "quality of viewpoint diversity" in local markets. *Id.*

7. **Question:**

Mr. Fritz, when the media ownership restrictions were created, there were only a few media platforms, and they operated in largely distinct markets. Today, there are many more media platforms, and they compete against each other. Doesn't that, combined with the FCC's obligation under section 202(h), require revision of the ownership limits?

Answer:

My answer is yes. The silo approach to regulation no longer makes sense in a market where consumers substitute media across a variety of platforms. Ownership restrictions that considered the broadcasting industry in isolation may have been appropriate in the 1970s, but they are not appropriate today. Section 202(h) requires the Commission to repeal or modify ownership rules that are no longer necessary "as the result of competition." In both the audio and video markets, competition is increasing every day as new products are launched at breakneck speed, and innovators are flocking to reinvent each medium. Yet, the ownership rules, particularly those that affect local markets, have changed little in the last 35 years. There is no justification for delaying a comprehensive overhaul of the ownership rules, a move clearly required by Congress. The rules must be modernized and brought into line with the technological changes that are massively affecting our industry.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

Mr. Andrew Levin
Executive Vice President and Chief Legal Officer
Clear Channel Communications
200 East Basse Road
San Antonio, Texas 78209

Dear Mr. Levin:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from a Member of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's questions along with your responses.

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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Fred Upton, Member
Subcommittee on Telecommunications and the Internet

January 16, 2008

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Dingell:

Thank you for the opportunity to testify on Wednesday, December 5, 2007, before the Subcommittee on Telecommunications and the Internet at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership."

Per your request of January 7, 2008, and under the Rules of the Committee on Energy and Commerce, please find enclosed my responses to the additional questions posed by Members of the Committee.

Should you have any additional questions, please let me know.

Sincerely,

Andrew W. Levin
Executive Vice President
And Chief Legal Officer

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Fred Upton, Member
Subcommittee on Telecommunications and the Internet

Responses to Questions Posed By Ranking Republican Member Upton

1. ***Mr. Levin, isn't there a natural economic cycle between consolidation and divestment? Doesn't the development of new technologies and increased competition often first lead companies to combine in an effort to offer consumers new services, aggregate market share, and achieve economic efficiencies, and then to divest if they get too unwieldy to adequately meet consumer demands? In fact, isn't your company starting to divest of certain stations in light of market conditions? Shouldn't competition, the market, and consumer satisfaction be left to determine the appropriate size, structure, and number of media companies?***

Representative Upton, your understanding of the marketplace forces driving consolidation and divestment is right on target. The success of any company – in terms of meeting the needs of its customers, stockholders, employees and even other

symbiotic industries – depends on its ability to adapt to new marketplace conditions. Conversely, the absence of that flexibility – whether it be to grow or down-size – especially when it is applied to only a subset of competitors, grossly skews the marketplace, to the detriment of consumers, competition and choice. And yet that is precisely the case with the current radio ownership rules. Unlike all of our competitors, free, local radio alone is prohibited by law from adapting as we must to meet new marketplace challenges and avail ourselves of new opportunities. That hurts our listeners, our shareholders and even other industries – such as recording artists – who depend on a vibrant free radio industry to promote their works.

2. ***Mr. Levin, when it comes to cable and satellite service, whether audio or video, hasn't it been the ability to program large numbers of channels that allows providers to offer consumers a wide range of niche, diverse, and local content? Ironically, isn't it the broadcast ownership caps that force broadcasters to all offer a narrow range of programming aimed at getting the "biggest bang for the buck" rather than cater to a more varied selection of consumer interests?***

Representative Upton, it is definitely the case that the local radio ownership caps artificially constrain broadcasters' ability to offer niche programming formats. In addition to the chilling effect of the specific channel limits on diverse programming, however, by limiting broadcasters' ability to grow and thrive more robustly financially, the local ownership limits chill broadcasters' ability to invest in these new, often untested formats. It's simply a basic tenet of business: if you're financially healthy, you can take more risks, and spread that risk – for us, that could include putting our corporate strength behind new and niche formats. In fact, Clear Channel's commitment to progressive talk radio in the mid-Nineties is credited by the founders of Air America as being essential to the launch of that new network.

3. ***Mr. Levin, we demand that our broadcasters serve "the public interest" with their content. I don't know about you, but I don't think of "the public" or its interests as monolithic. The public has diverse tastes. Is it fair to place that broad mandate on broadcasters, to expect them to meet it with nothing but advertising revenue, and then to place restrictions on how they meet that mandate?***

Representative Upton, the best way to ensure that radio broadcasters are able to fulfill our mission – and it is a mission – to meet the needs of the communities we serve is to allow them the flexibility to compete head-to-head with all other audio competitors. If local radio is given the flexibility to compete, we can grow to meet new marketplace challenges, invest in our stations' human and technological resources, introduce new formats that respond to the specific interests of that community, and generally serve our communities better. An economically hobbled radio industry cannot meet those needs or serve those interests of its communities nearly as well as a healthy, thriving radio industry.

4. Mr. Levin, the general opposition to relaxing broadcast ownership restrictions seems to come from paranoia that media conglomerates will take over all media outlets and control not only public information, but public thought. Isn't this fear clearly contradicted by the unprecedented diversity of content American have access to today, and the unprecedented diversity of debate that goes on daily?

Absolutely, Representative Upton. Consumers today can choose from more sources of news and information than ever before. Just as the days of getting the evening news from 3 networks has passed to history, so too have the days of getting news, information and entertainment mostly from local radio. Not only has there been an explosion of commercial media outlets – cable, satellite audio, iPods, Internet radio – personal networking sites such as YouTube and the virtually limitless number of Internet "blogs" and other sites gives consumers additional tools with which to receive and share that information. The diversity of sources of public discourse has grown exponentially as a result. That there even *could* be some form of organized, consolidated control of these outlets is simply without merit.

5. Mr. Levin, much of the attention lately has been on the newspaper-broadcast cross-ownership ban, but haven't both the D.C. Circuit in 2002 and the third Circuit in the 2004* Prometheus Radio *decision ruled that the FCC has failed to justify the current radio and television ownership restrictions? Doesn't section 202(h) demand that these limitations be revised, as well?

Absolutely. Especially in light of the dramatically increased competition that exists in the audio marketplace since 1996, Clear Channel is deeply disturbed that the Commission has apparently decided to simply ignore its obligation under Section 202 to modify or repeal the local radio ownership rules account for that competition. The Commission has offered no reason or rationale for this decision, and instead appears content to base its decisions on a "just because" basis. That is not sustainable – not under the law, not under the courts' rulings, and certainly not as a matter of sound public policy.

6. Mr. Levin, how many shots does the Federal Communications Commission (FCC) get? We have already gone several rounds of the FCC being told by courts that it has failed it statutory burden to justify its broadcast ownership restrictions, and that it must do them over. At what point does the FCC's failure to justify its restrictions and good public policy, require eliminating all the restrictions in favor of allowing competition, the market, and consumer satisfaction to determine the appropriate size, structure, and number of media companies?

In our view, there is ample justification right now – especially in light of the explosion of outlets available – for the Commission to eliminate its local broadcast ownership limits. It's time for the government to allow *all media companies* to compete without interference or artificial encumbrance. Short of that, for many of the same

reasons it has relaxed the criteria it applies to newspaper-broadcast combinations in the largest markets, the Commission should relax the local radio ownership rules to permit modestly greater ownership in the largest markets. If the Commission is unwilling or unable to take action, Congress should lead the way.

7. Mr. Levin, promoting diversity of viewpoints and localism are the main justifications claimed for broadcast ownership restrictions, but in today's market, do the restrictions help or actually hurt those goals?

Representative Upton, there is no question in my mind that the ownership restrictions have the effect of harming the goals of localism and diversity. They weaken broadcasters' competitive stature vis-à-vis all of our virtually unregulated competitors, they artificially limit the number of channels we are allowed to program, and they deny us the financial breathing space we need to take risks on new, more diverse programming and to invest in new technology, services, and personnel.

8. Mr. Levin, when the media ownership restrictions were created, there were only a few media platforms, and they operated in largely distinct markets. Today, there are many more media platforms, and they compete against each other. Doesn't that, combined with the FCC's obligation under section 202(h), require revision of the ownership limits?

Representative Upton, any consumer can tell you that when it comes to audio entertainment, they are far from limited to free, local radio. That goes for their home, at work, in their car, and just out and about. Satellite radio, iPods, Internet radio and WiFi, audio-enabled cellphones. We consider each and every one of these new audio services a competitor for the ears of our audience. That they are free of government-imposed limits on their growth and operations gives them a huge competitive advantage. If free, local radio is to continue to thrive, and to serve as the lifeline that it so often is to so many Americans – when there is a natural disaster or any other time when access to local information can truly save lives – we must be released from the chains of government regulations that are impeding our ability to grow and compete. At a minimum, that must start with modest relaxation of the local ownership caps in markets that are already served by at least 60 stations.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Chairman:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

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Committee on Energy and Commerce

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Subcommittee on Telecommunications and the Internet

The Honorable Elliot L. Engel, Member
Subcommittee on Telecommunications and the Internet

The Honorable George Radanovich, Member
Subcommittee on Telecommunications and the Internet

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Dingell:

Please find enclosed my responses to the Questions for the Record from the December 5, 2007, Subcommittee on Telecommunications and the Internet hearing.

Please contact me if I can be of any further assistance.

Sincerely,

Kevin J. Martin
Chairman

Enclosure

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Fred Upton, Member
Subcommittee on Telecommunications and the Internet

The Honorable Elliot L. Engel, Member
Subcommittee on Telecommunications and the Internet

The Honorable George Radanovich, Member
Subcommittee on Telecommunications and the Internet

U.S HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION: MEDIA OWNERSHIP

QUESTIONS FOR THE RECORD

FOR

FEDERAL COMMUNICATIONS COMMISSION
CHAIRMAN KEVIN J. MARTIN

DECEMBER 5, 2007

PLEASE RETURN TO THE SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET BY JANUARY 18, 2008

Questions for the Record from Chairman Dingell
to Chairman Kevin Martin

1. **On what date did you first circulate to your fellow Commissioners a draft order proposing to adopt specific changes to the newspaper/broadcast cross-ownership rule?**

    a. **If this date was before December 11, 2007, why did you not wait until after receiving comments on the proposed language before circulating a draft order? Also, wouldn't it then be true that the draft order did not take into account public comment on the proposed rule?**

    b. **If this date was after December 11, 2007, why did you not give your fellow Commissioners the customary three weeks to consider the draft order?**

Answer:

Although not required, on November 13, 2007, I took the unusual step of sharing with the public the actual text of the one rule I was proposing that the Commission should amend. Because of the intensely controversial nature of the media ownership proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review the actual rule prior to any Commission action.

On November 28, 2007, I circulated an order that included my proposal to modestly relax the newspaper/broadcast cross-ownership rule and otherwise retain the media ownership limits that existed prior to 2003. Thus, my colleagues had the customary three weeks to review the analysis supporting the proposal contained in the draft order.

By November 28, the Commission had completed its public hearings on media ownership, and the comment cycle on both the *Further Notice of Proposed Rulemaking* and the *Second Further Notice of Proposed Rulemaking* had closed. The proposed order reflected all of the submissions, as well as the entire record compiled up until then by the Commission over the course of its eighteen-month review of the media ownership rules. As is customary with all meeting Agenda items. Subsequent ex partes were allowed to be filed until the "sunshine" period began. Typically, this occurs one week prior to the open meeting. With circulation items, ex partes may be filed up until an item is actually adopted.

From November 13, 2007 through the beginning of the "sunshine" period (ending the close of business on December 14, 2007), my colleagues and I received additional public input and ex partes on the text of the proposed rule. The final order reflects the Commission's final decision including revisions to the proposal

based on discussions with my colleagues and the public input received through the ex parte process.

2. **In response to my letter to you dated December 3, 2007, you stated that you took an "extra step" and published the precise text of your proposed change to the newspaper/broadcast cross-ownership rule. Are you aware that other Federal agencies, including the Securities and Exchange Commission and the Federal Energy Regulatory Commission, routinely solicit public comment on the specific language of a proposed rule well in advance of a vote on the proposed rule?**

   a. **Do you believe that the Commission could benefit from adopting this practice?**

   b. **Do you believe that the public interest would be served if the Commission routinely sought comment on the specific text of proposed rules prior to voting on such rules?**

   Answer:

   The notice-and-comment obligation set forth in the Administrative Procedure Act requires notice of the "terms or substance of the proposed rule *or* a description of the subjects and issues involved." 5 U.S.C. § 553(b)(3) (emphasis added). Therefore, Congress has not mandated that the Commission seek comment on the "precise text" of a proposed rule but rather has provided the Commission with the additional option of describing the subjects and issues involved. As the United States Court of Appeals for the District of Columbia Circuit has held, "notice must be sufficient to fairly apprise interested parties of the issues involved, *but it need not specify every precise proposal which [the agency] may ultimately adopt as a rule.*'" *Nuvio Corp. v. FCC*, 473 F.3d 302, 309-10 (D.C. Cir. 2006) (quoting *Action for Children's Television v. FCC*, 564 F.2d 458, 470 (D.C. Cir. 1977)) (emphasis added).

   The Commission has complied with Congress's direction over the years, under both Democratic and Republican Chairmen, by either seeking comment on the subjects and issues involved or, in the minority of cases, seeking comment on the terms of a proposed rule. Indeed, the Commission's practice for seeking comment has been quite consistent over time. For example, during 2007, the text of proposed rules appeared in 26% of NPRMs issued by the Commission, whereas the text of proposed rules appeared in 24% of NPRMs issued by the Commission in 1999 under Chairman Kennard's leadership.

Questions for the Record from The Honorable Joe Barton
to Chairman Kevin Martin

1. **Chairman Martin, at the hearing, I pointed out that consumers today enjoy a wider range of media choices than ever before, and yet the Commission is apparently considering government-mandated arbitration for carriage disputes as well as a "wholesale *a la carte*" proposal that would dictate the structure of a carriage agreement between two private parties. I do not believe any of this intervention is necessary in light of the robustly competitive state of the marketplace. Nonetheless, I ask you whether you believe the Commission has statutory authority to intervene in negotiations over carriage of video programming and, if so, what conditions you believe must exist before you would agree to such an extraordinary step. You indicated that the Commission may intervene in such negotiations in the narrow circumstance where the Commission makes a definitive finding of discrimination against a provider of video programming. So that we might have more precise answers for the record, I ask that each of you please point specifically to all sections of the Communications Act that you believe authorize the Commission to intervene in or regulate negotiations for carriage of video programming. For each, please indicate:**

    a. **What threshold standard or standards the statute requires to be met before the Commission may intervene;**

    b. **Whether there must be, at a minimum, evidence of discrimination before the Commission may intervene;**

    c. **The evidentiary elements for a finding of the discrimination or other statutory standards that must be met prior to intervention;**

    d. **What obligations or restrictions the Commission may impose if the standard or standards are met; and**

    e. **Upon what types of entities the Commission may impose the obligations or restrictions.**

Answer:

Section 616 of the Communications Act regulates negotiations between a programmer and a cable television system operator or multichannel video programming distributor (MVPD) for carriage. Congress added this provision to the Communications Act in 1992 to address concerns regarding the negative effects of cable television system operators requiring non-affiliated programmers

to grant exclusive rights to programming, a financial interest in the programming, or some other additional consideration as a condition of carriage on the cable system.

As required by Section 616, the Commission adopted regulations that prohibit a cable television system operator or other MVPD from: (1) "requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems"; (2) "coercing a video programming vendor to provide, and [ ] retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system"; or (3) "engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors."

The Commission intervenes in a carriage dispute between a programmer and a cable television operator (or other MVPD) upon the filing of a formal complaint by an aggrieved programmer pursuant to Section 76.1302 of the Commission's rules. Although not required by Section 616, the Commission's current rules place the burden of proof on the programming vendor to establish a *prima facie* showing in its complaint that the defendant multichannel distributor has engaged in behavior that is prohibited by Section 616. The programming vendor "must describe with specificity the behavior constituting the alleged violation" and the "complaint must be supported by documentary evidence of the alleged violation, or by an affidavit (signed by an authorized representative or agent of the complaining programming vendor) setting forth the basis for the complainant's allegations."[1]

In terms of the specific prohibition on discrimination, the Commission has stated that it will identify specific behavior that constitutes discrimination on a case-by-case basis "because the practices at issue will necessarily involve behavior that must be evaluated within the context of specific facts pertaining to each negotiation."[2] Both the statute and the Commission's regulations require a complainant to demonstrate that the effect of the allegedly discriminatory conduct was to "unreasonably restrain the ability of the complainant to compete fairly."[3]

If the Commission finds that a cable operator or other MVPD has violated the statute and rules governing program carriage, it may impose any number of remedies and/or sanctions, including forfeitures, mandatory carriage, or carriage

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[1] *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order, 9 FCC Rcd 2642, 2654 (¶ 29) (1993).
[2] *Id.* at 2648 (¶ 14).
[3] *Id.*

on terms revised or specified by the Commission.[4]

Non-affiliated programmers have complained that the Commission's procedural rules governing program carriage complaints appear to be ineffective in facilitating the filing of legitimate complaints alleging abuse of non-affiliated programmers by cable operators, as Congress intended in passing Section 616. Non-affiliated programmers have expressed frustration with the requirement to establish a *prima facie* case in a program carriage complaint, the ability of cable operators to retaliate against non-affiliated programmers all discourage the filing of legitimate complaints, and the time it takes for Commission staff to resolve such complaints.

In light of these concerns, as well as the Congressional mandate in Section 616(a)(4) that the Commission "provide for expedited review of any complaints made by a video programming vendor" pursuant to Section 616, the Commission initiated a proceeding to examine whether to revise the existing procedures for resolving program carriage disputes.[5] The record in this proceeding reflects that revisions to the Commission's program carriage rules may better serve the intent of Section 616 to prevent anticompetitive abuse of non-affiliated programmers by cable operators. The Media Bureau is preparing a Report and Order for consideration by the full Commission.

Finally, I note that in addition to Section 616, other provisions of the Communications Act also provide the Commission with statutory authority to regulate negotiations for carriage of video programming, including Section 325 (pertaining to retransmission consent for broadcast stations), Section 628 (pertaining to, among other things, MVPD access to cable-affiliated programming), and Section 612 (pertaining to making channel capacity on cable systems available for commercial use to unaffiliated programmers).

2. **Chairman Martin, I understand that there have been thousands of payphone-related formal and informal complaints filed at the Commission since the payphone provisions of the Communications Act were added in 1996. If that is correct, it suggests there may be a need to reform the Federal Communications Commission's (FCC's) implementation of the payphone provisions to ensure that the rules are fair to all entities involved in providing payphone service. So that the Committee can better understand the evolution of the current payphone compensation rules and the status of pending complaints, we would appreciate the following information:**

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[4] *Id.* at 2653 (¶ 26).

[5] Development of Competition and Diversity in Video Programming Distribution and Carriage, Notice of Proposed Rulemaking, 22 FCC Rcd 11222, 11228 (¶ 19) (2007).

a. By year of filing, please provide the number of informal and formal payphone compensation complaints, how many of these complaints remain pending, and how many have been resolved. With respect to resolved complaints, please also indicate by year how many have been granted, how many dismissed, how many settled, etc. For each year, please identify the top five complainants, the top five defendants, and the number of formal and informal complaints associated with each.

Answer:

The Commission recognizes the importance of payphones and we are committed to enforcing the payphone compensation rules. Please refer to Attachment A for the information you requested regarding formal payphone compensation complaints from 1996 through 2007. Please refer to Attachment B for the information you requested regarding informal payphone compensation complaints from 2000 through 2007. The Enforcement Bureau was created in the fall of 1999 and its databases do not track this type of informal complaint prior to 2000.

b. Please describe which entity or entities are responsible for compensating payphone providers for coinless calls under the Commission's current rules. When was the current rule adopted?

Answer:

On September 30, 2003, in the *Tollgate Order*, the Commission adopted the current payphone compensation rules to ensure that payphone service providers (PSPs) are fairly compensated for each and every completed, payphone-originated call, as required under section 276 of the Telecommunications Act of 1996. The *Tollgate Order* and its implementing rules became effective on July 1, 2004.

In the *Tollgate Order,* the Commission placed the obligation to compensate PSPs for coinless calls on the "Completing Carrier." In our rules, a "Completing Carrier" is defined as "a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call." This facilities-based long distance carrier is the switch-based reseller (SBR) or interexchange carrier that completes the call on a switch that it owns or leases.

In satisfying its liability obligation to a PSP, the completing carrier must establish its own call tracking system, have a third party attest that the system accurately tracks payphone calls to completion, and pay a PSP directly based on the completing carrier's own call tracking data. Other

facilities-based long distance carriers in the call path, if any, must provide reports to the PSPs of payphone-originated calls switched to another facilities-based carrier's platform.

c. Please explain what entity or entities were responsible for compensating payphone providers under the prior rules. Please describe each such rule and indicate when each prior rule was adopted.

***Answer*:**

Since 1996, the Commission has issued a number of orders that have defined the relationship between PSPs and other carriers in the call path from the payphone to the called party for purposes of assuring that PSPs are adequately compensated for calls placed from payphones. In our prior orders, the Commission has identified three categories of such entities, depending on whether such entity completed the payphone originated call: (1) facilities-based long distance carriers (usually the IXCs); (2) switchless long distance resellers; and (3) switch-based resellers (SBRs).

- *IXCs Responsible.* On September 20, 1996, in the *First Payphone Order*, the Commission adopted a "carrier-pays" system for per-call compensation, concluding that "the primary economic beneficiary of payphone calls should compensate the PSPs." The Commission concluded that the primary economic beneficiary was the IXC and required "all IXCs that carry calls from payphones [. . .] to pay per-call compensation." The Commission recognized that switchless long distance resellers do not have the facilities to track calls. In the interests of lower costs and administrative efficiency, the Commission required facilities-based carriers to pay for calls received by their long distance reseller switchless customers and then, if they so chose, "to impose the payphone compensation amounts on these [reseller] customers."

- *SBR Responsible.* On November 19, 1996, in the *Order on Reconsideration*, the Commission addressed the payphone compensation responsibilities for calls involving resellers that maintain their own switches. Recognizing that SBRs were the primary economic beneficiary of payphone calls and were capable of tracking calls, the Commission imposed on SBRs the responsibility to pay compensation to the PSPs.

- *First Facilities-Based IXC Responsible.* On March 28, 2001, in response to a Petition for Clarification of the Rules, in the *Second Order on Reconsideration*, the Commission made the following findings. The Commission revised its rules to address the difficulty that PSPs face in

obtaining compensation for coinless calls placed from payphones that involve an SBR in the call path. In the *Second Order on Reconsideration,* the Commission adopted rules requiring the first facilities-based IXC to which a LEC routes a compensable coinless payphone call to: (1) compensate the PSP for completed calls at a mutually agreeable rate; (2) track or arrange for tracking of the call to determine whether it is completed and therefore compensable; and (3) provide to the PSP a statement of the number of coinless calls it receives from each of that PSP's payphones. The Commission required each reseller or debit card customer whose number is dialed on a coinless basis to reimburse the first facilities-based carrier (1) for the amount paid by that carrier to the PSP and (2) for that carrier's cost of tracking the call and providing such information to the PSP. The Commission also encouraged PSPs and SBRs to enter into private contractual arrangements with each other for direct payment of compensation to PSPs.

- In January 2003, on a petition for review, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated and remanded the *Second Order on Reconsideration* on the grounds that parties were not afforded proper notice and opportunity for comment. The D.C. Circuit vacated the Commission's order, but stayed its mandate and its vacatur of the *Second Order on Reconsideration* through September 30, 2003. As a result, the rules promulgated in the *Second Order on Reconsideration* remained in effect through September 30, 2003.

- *Completing Carrier Responsible.* On September 30, 2003, the Commission adopted the current payphone compensation rules in the *Tollgate Order,* which placed payphone compensation liability on the Completing Carrier. Instead of assigning liability to the *first* facilities-based IXC, who had no relationship to the customer, the Commission imposed liability on the "primary economic beneficiary" of the payphone-originated call, *i.e.,* the facilities-based carrier that sold the dial-around service to end-user customers and that can recover payphone compensation from its customers.

- Until the new *Tollgate Order* rules could become legally effective, the Commission adopted, for a limited period, the rules originally adopted in the *Second Order on Reconsideration* until the current payphone rules became effective on July 1, 2004.

Questions for the Record from The Honorable Fred Upton
to Chairman Kevin Martin

1. **Chairman Martin, you have indicated that you do not intend to revise the local broadcast radio ownership limits. However, in 2003, the Third Circuit found the existing restrictions unjustified, and that was before all the dramatic new competition coming from satellite, the Internet, and MP3 players. In light of Congress's direction in Section 202(h) that the Commission re-justify its rules on a periodic basis to reflect competitive developments, the unambiguous terms of the Third Circuit remand, and the weight of the record evidence, how can the existing local radio ownership caps and subcaps stand?**

Answer:

The Commission's media ownership rules are intended to further three core goals: competition, diversity, and localism. I believe that the Commission's media ownership order strikes a balance between preserving the values that make up the foundation of our media regulations while ensuring those regulations keep apace with the marketplace of today.

With respect to the local radio ownership rule in particular, the Commission found that retaining the current local radio ownership rules is "necessary in the public interest as a result of competition," under Section 202(h) of the Telecommunications Act of 1996. We reached this conclusion after a thorough review of the extensive record, including the research studies, and after listening to the numerous participants in the public hearings we held around the country, including many speakers and commenters who complained about the effects of consolidation. The Commission concluded that the current numerical limits help to prevent the formation of market power in local radio markets. The Commission concluded that record does not include sufficient evidence that the numerical limits need to be modified and that the current numerical limits strike the appropriate balance between competition and preservation of diversity.

Section 202(h) requires the Commission to review quadrennially its broadcast ownership rules to "determine whether any of such rules are necessary in the public interest as a result of competition." The statute further requires the Commission to "repeal or modify any regulation it determines to be no longer in the public interest."

In *Prometheus*, the Third Circuit concluded that "necessary in the public interest" is a "'plain public interest' standard under which 'necessary' means 'convenient,' 'useful,' or 'helpful,' not 'essential' or 'indispensable.'" The court explicitly rejected the argument that Section 202(h) is a "one-way ratchet" that the Commission may use only to eliminate existing regulations, reasoning that this construction ignores the word "modify" and the requirement that the Commission

act "in the public interest." Thus, the court rejected contentions that Section 202(h) imposes "rigid limits on the Commission's ability to regulate in the public interest" and instead held that the statute requires only that the Commission "monitor the effect of . . . competition and make appropriate adjustments" to its regulations.

Indeed, the Court approved the Commission's decision to retain a numerical limits approach to radio. "Without numerical limits, radio markets risk becoming 'locked up' in the hands of a few owners (or even one owner) because all of the available radio frequency spectrum has been licensed—a high barrier to new market entrants. Based on record evidence, the Commission justifiably concluded that numerical limits are necessary 'to guard against consolidation ... and to ensure a market structure that fosters opportunities for new entry into radio broadcasting.'" *Prometheus*, 373 F.3d at 431-32.

The Commission held that retaining the current numerical limits on radio station ownership helps to prevent the formation of market power in local radio markets. Prior to 1992, our radio ownership rules prohibited most radio mergers. In 1992, we relaxed our local radio ownership rules in recognition of the fact that our rules prevented some firms from achieving the economies of scale that they needed to survive financially.

Congress further relaxed the local radio ownership limits in the 1996 Telecommunications Act. Congress's 1996 radio ownership rules revisions have had a substantial effect on the market structure of radio broadcasting, resulting in further consolidation of radio station ownership at both the national and the local level. The number of commercial radio station owners declined by 39 percent, from 5,133 to 3,121, between 1996 and 2007, with most of the decline occurring during the first few years after the 1996 Act. In 111 of the 299 Arbitron Metro markets, the top two commercial station owners control at least 80 percent of radio advertising revenue. The top four commercial firms also dominate audience share. This data in the record supports the conclusion that the current numerical limits are not unduly restrictive and that additional consolidation would not serve the Commission's competitive goals.

The Commission also retained the subcaps in order to promote new entry. Because radio can reach specific demographic groups more easily than other forms of mass media, and because of its relative affordability compared to other mass media, radio remains a likely avenue for new entry into the media business, particularly by small businesses, women, minorities, and entrepreneurs.

2. **Chairman Martin, there is widespread, bipartisan support in both Houses of Congress to increase slightly the number of radio stations that an entity can own in the Nation's largest markets, which are beyond any doubt characterized by vibrant competition. How many members of Congress have signed letters to you urging you to relax the local radio ownership restrictions?**

   Answer:

   I have received correspondence signed by 78 Members of Congress urging some relaxation of the local radio restrictions.

3. **Chairman Martin, the reality is that the radio industry is doing worse today than at nearly any time in our past. It is losing listeners and advertising revenue to new media daily. This is the very same situation that you say you are trying to remedy by proposing modest changes to the newspaper-broadcast cross-ownership ban. While it is true, as you have pointed out, that radio experienced some deregulation in 1996, that does not change the fact that the amount of competition has increased even more since then, that section 202(h) requires the FCC to periodically justify its ownership rules as market conditions continue to change, and that the courts have held that the FCC has not justified the current local radio ownership limits. So why are you not also pursuing reform of the local radio ownership restrictions?**

   Answer:

   The Commission's media ownership rules are intended to further three core goals: competition, diversity, and localism. I believe that the Commission's media ownership order strikes a balance between preserving the values that make up the foundation of our media regulations while ensuring those regulations keep apace with the marketplace of today.

   With respect to the local radio ownership rule in particular, the Commission found that retaining the current local radio ownership rules is "necessary in the public interest as a result of competition," under Section 202(h) of the Telecommunications Act of 1996. We reached this conclusion after a thorough review of the extensive record, including the research studies, and after listening to the numerous participants in the public hearings we held around the country, including many speakers and commenters who complained about the effects of consolidation. The Commission concluded that the current numerical limits help to prevent the formation of market power in local radio markets. The

Commission concluded that record does not include sufficient evidence that the numerical limits need to be modified and that the current numerical limits strike the appropriate balance between competition and preservation of diversity.

4. **Chairman Martin, when the media ownership restrictions were created, there were only a few media platforms, and they operated in largely distinct markets. Today, there are many more media platforms, and they compete against each other. Section 202(h) of the 1996 Telecommunications Act requires the FCC to justify regularly the continued application of all its broadcast ownership restrictions in light of changes in the marketplace. Two D.C. Circuit decisions in 2002 held that the FCC failed to justify regularly the continued application of all its broadcast ownership restrictions in light of changes in the marketplace. Two D.C. Circuit decisions in 2002 held that the FCC failed to justify certain of its strict broadcast ownership restrictions, and ordered it to try again. Then, in 2004, the Third Circuit held in its *Prometheus Radio* decision that the FCC failed to justify even the revised, looser restrictions. If the FCC has failed its obligation to justify each of its specific broadcast ownership restrictions, shouldn't they all be eliminated in favor of allowing competition, the market, and consumer satisfaction to determine the appropriate size, structure, and number of media companies?**

Answer:

Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review quadrennially its broadcast ownership rules to "determine whether any of such rules are necessary in the public interest as a result of competition." The statute further requires the Commission to "repeal or modify any regulation it determines to be no longer in the public interest."

In *Prometheus*, the Third Circuit concluded that "necessary in the public interest" is a "'plain public interest' standard under which 'necessary' means 'convenient,' 'useful,' or 'helpful,' not 'essential' or 'indispensable.'" The court explicitly rejected the argument that Section 202(h) is a "one-way ratchet" that the Commission may use only to eliminate existing regulations, reasoning that this construction ignores the word "modify" and the requirement that the Commission act "in the public interest." Thus, the court rejected contentions that Section 202(h) imposes "rigid limits on the Commission's ability to regulate in the public interest" and instead held that the statute requires only that the Commission monitor the effect of competition and make appropriate adjustments to regulations.

In the *Prometheus* decision, the Third Circuit found that the Commission's decision to continue to regulate cross-media ownership is in the public interest and that "retaining some limits was necessary to ensure diversity." The *Prometheus* court also confirmed the Commission's conclusion that local

television and local radio ownership restrictions were in the public interest and advanced its goals of diversity and competition, but remanded the specific limits for further justification.

Indeed, the Court approved the Commission's decision to retain a numerical limits approach to radio. "Without numerical limits, radio markets risk becoming 'locked up' in the hands of a few owners (or even one owner) because all of the available radio frequency spectrum has been licensed—a high barrier to new market entrants. Based on record evidence, the Commission justifiably concluded that numerical limits are necessary 'to guard against consolidation ... and to ensure a market structure that fosters opportunities for new entry into radio broadcasting.'" *Prometheus*, 373 F.3d at 431-32.

5. Chairman Martin, how can ownership restrictions possibly promote viewpoint diversity and localism if they force untenable economic business models on broadcasters, leaving less resources to be dedicated to employees, news and entertainment programming, digital broadcasting, audio streaming, and emergency alert system equipment?

Answer:

I believe that, under some circumstances, efficiencies from common ownership of two media outlets may increase the amount of diverse, competitive news and local information available to the public. In the media ownership proceeding, there is evidence in the record that cross-ownership in the largest 20 markets can preserve the viability of newspapers without threatening diversity by allowing them to spread their operational costs across multiple platforms. In doing so, we find that they will be able to improve or increase the quality and quantity of news offered by the broadcaster and the newspaper. That is why we adopt a presumption that it is not inconsistent with the public interest for one entity to own a newspaper/broadcast combination in the same market.

The record in the 2006 quadrennial ownership review proceeding demonstrated that the current local radio ownership rule already allows radio firms to achieve significant efficiencies. These efficiencies enhance a firm's ability to promote localism and provide diverse programming to their listeners.

In the context of the local television ownership rule, the Commission found that broadcasters already can achieve substantial savings in overhead and management costs, thus allowing local broadcasters to innovate by spreading their fixed costs and operating capital over a larger number of operating units.

In the media ownership order, we also find that the record evidence supports retaining the local radio and local television ownership rules in order to preserve adequate levels of competition within each of those media markets. We find that the local radio and local television ownership limits continue to be necessary to protect competition for viewers and in the local advertising markets. Thus, we believe that our rules appropriately balance our goals of competition, diversity, and localism.

Questions for the Record from The Honorable Eliot L. Engel to Chairman Kevin Martin

1. **I am sensitive to the concerns of my colleagues about media concentration in their districts, but as a Representative of New York, I live in the biggest and most diverse media market on the planet! With the advent of hybrid digital radio, the choices are already expanding. Thus, I do have a somewhat different view from most. I was wondering what each of the Commissioners is thinking regarding the proposal to allow one company to own more radio stations in the very large markets?**

   ***Answer*:**

   The Commission's media ownership rules are intended to further three core goals: competition, diversity, and localism. I believe that the Commission's media ownership order strikes a balance between preserving the values that make up the foundation of our media regulations while ensuring those regulations keep apace with the marketplace of today.

   With respect to the local radio ownership rule in particular, the Commission found that retaining the current local radio ownership rules is "necessary in the public interest as a result of competition," under Section 202(h) of the Telecommunications Act of 1996. We reached this conclusion after a thorough review of the extensive record, including the research studies, and after listening to the numerous participants in the public hearings we held around the country, including many speakers and commenters who complained about the effects of consolidation. The Commission concluded that the current numerical limits help to prevent the formation of market power in local radio markets. The Commission concluded that record does not include sufficient evidence that the numerical limits need to be modified and that the current numerical limits strike the appropriate balance between competition and preservation of diversity.

2. **What is the status of the XM-Sirius radio merger?**

   ***Answer*:**

   The Commission is actively reviewing and analyzing the extensive record concerning the proposed merger of XM and Sirius. In June 2007, we initiated a docketed proceeding (MB 07-57) to consider the Application for Authority to Transfer Control ("Application") filed by Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc., the nation's sole satellite digital audio radio service (SDARS) providers. Approximately 11,800 comments, *ex parte* filings, and informal submissions have been filed in the docket, including eight petitions to deny. In June 2007, the Commission also released a Notice of Proposed Rule

Making (*Notice*) seeking comment on whether language included in the 1997 Order establishing the SDARS service, which prohibited the transfer of control of one SDARS licensee to the other, constitutes a binding Commission rule. The Commission received approximately 14 comments and six reply comments in response to the *Notice*. We are currently in the process of evaluating this information and plan to conclude our review in the near future.

3. **I understand that TracFone has had a petition pending to provide wireless "lifeline" service for over 3 years. Is the FCC planning to approve this service? When will an official decision be made?**

***Answer*:**

I have presented my colleagues at the Commission a proposed Order that addresses some universal service issues. That Order would grant the petitions of TracFone Wireless to be designated as an ETC for Lifeline support in New York, Florida, Connecticut, Virginia, Massachusetts, Alabama, North Carolina, and Tennessee.

4. **As the Representative of an ethnically diverse district, I am sensitive to the concern that minorities are not well represented in the media—on camera, behind the microphone, and behind the scenes working as writers, producers, etc. What is the FCC doing to promote greater diversity in the media?**

***Answer*:**

I share your concerns about increasing the opportunities for women and minorities to own broadcast outlets. On December 18, 2007, the Commission adopted a range of initiatives intended to enhance opportunities for broadcast ownership for small businesses, including women- and minority-owned entities. Many of the actions taken in this *Report and Order* were recommended to the Commission by the Advisory Committee for Diversity in the Digital Age. Among other things, the item: (1) changes the construction permit deadlines to allow "eligible entities," defined as entities that meet the Small Business Administration's criteria as small businesses that acquire expiring construction permits additional time to build out the facility; (2) revises the Commission's equity/debt plus attribution standard to facilitate investment in "eligible entities"; (3) modifies the Commission's distress sale policy to allow certain licensees – those whose license has been designated for a revocation hearing or whose renewal application has been designated for a hearing on basic qualifications issues – to sell the station to an "eligible entity" prior to the commencement of the hearing; (4) adopts an Equal Transactional Opportunity Rule that bars race or gender discrimination in broadcast transactions; (5) adopts a "zero-tolerance" policy for ownership fraud and "fast-tracks" ownership-fraud claims; (6) requires broadcasters renewing their licenses to certify that their advertising sales contracts

do not discriminate on the basis of race or gender; (7) encourages local and regional banks to participate in SBA-guaranteed loan programs in order to facilitate broadcast and telecommunications-related transactions; (8) gives priority to any entity financing or incubating an "eligible entity" in certain duopoly situations; (9) considers requests to extend divestiture deadlines in mergers in which applicants have actively solicited bids for divested properties from "eligible entities"; and (10) revises the exception to the prohibition on the assignment or transfer of grandfathered radio station combinations, permitting assignment or transfer of grandfathered radio station combinations intact to any buyer, not just an eligible entity as currently permitted, provided that such a buyer files an application to assign the excess stations to an eligible entity, or to an irrevocable divestiture trust for purposes of ultimate assignment to an eligible entity, within 12 months after consummation of the purchase of the grandfathered cluster.

The Commission also provides a range of outreach services to assist small businesses and new entrants, including those owned by women and minorities, to acquire radio and television broadcast stations. The Commission's Office of Communications Business Opportunities promotes business and ownership opportunities for small businesses, including women and minority enterprises. The Commission also provides bidding credits to new entrants who seek to participate in broadcast auctions for radio and television construction permits. These bidding credits help to reduce the overall financial output required from winning bidders who are small or new entrants.

In addition, in its most recent report, *Section 257 Triennial Report to Congress Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses* (FCC 07-181), released on December 6, 2007, the Commission recommended a tax certificate incentive program that would authorize the provision of tax advantages to eligible companies involved in the sale of communications businesses to small firms, including those owned by women and minorities. The proposed program could permit deferral of the taxes on any capital gain involved in such a transaction, as long as that gain is reinvested in one or more qualifying communications business(es), and could also permit tax credits for sellers of communications properties who offer financing to small firms.

Finally, for more than 30 years, the Commission has implemented equal employment opportunity rules which prohibit discrimination and seek to encourage outreach by broadcast and cable facilities to attract qualified applicants for employment.

5. **New York was ready to transition to digital television on September 10, 2001. On the next day, we lost over 3,000 people. New York also almost lost all its digital television capabilities. The loss of lives is far more horrible than losing transmitters. However, I am very aware that if we had the spectrum**

allotted for emergency communications back then, we may not have lost as many lives. Thus, I am supportive of moving forward with the digital television transition, but concerned that New York City is not left in the dark. Mr. Chairman, what is the status of the New York City temporary fix?

Answer:

On May 23, 2007, the Commission's Media Bureau issued a letter granting the Metropolitan Television Alliance ("MTA") experimental authority to operate a low power multiple transmitter digital television ("DTV") system in New York City. As you know, the MTA consists of the licensees of ten New York City area television stations (WCBS-TV, WNBC-TV, WNYW-TV, WABC-TV, WWOR-TV, WPIX-TV, WNET-TV, WPXN-TV, WNJU-TV, and WXTV(TV)), eight of which operated digital facilities from the North Tower of the World Trade Center prior to September 11, 2001.

Of the ten MTA stations, eight intend to re-locate from the Empire State Building to the new Freedom Tower, which is scheduled to be completed in 2011. Two of the stations, WNJU-DT and WXTV-DT, will remain at the Empire State Building.

The experimental DTV network currently is testing the ability of the ten stations represented by the MTA to provide fill-in over-the-air DTV coverage in areas of New York City. The MTA expects to issue a status report in the coming months, and the Commission will continue to monitor this matter.

Questions for the Record from The Honorable George Radanovich to Chairman Kevin Martin

1. **As I understand it, under current rules, a company can own up to 50 percent of all the stations in a market as small as Comanche, TX (which has fewer than 15 stations), but is limited to owning no more than 5 percent of the stations in a market as big, competitive, and diverse as New York City. The FCC has now relaxed the newspaper-broadcast ban in the most competitive markets. Wouldn't it make sense to consider a similar approach with respect to the local radio ownership rules? My colleague Mr. Upton has suggested permitting ownership of 10 stations in markets with 60 to 74 stations, and 12 stations in markets with 75 or more stations. Respectively, that still limits ownership to no more than 17 to 16 percent, based on the market. Isn't such a modest adjustment the least we can do to help local broadcasters compete and serve the local interests of our citizens?**

   Answer:

   The Commission's media ownership rules are intended to further three core goals: competition, diversity, and localism. I believe that the Commission's media ownership order strikes a balance between preserving the values that make up the foundation of our media regulations while ensuring those regulations keep apace with the marketplace of today.

   With respect to the local radio ownership rule in particular, the Commission found that retaining the current local radio ownership rules is "necessary in the public interest as a result of competition," under Section 202(h) of the Telecommunications Act of 1996. We reached this conclusion after a thorough review of the extensive record, including the research studies, and after listening to the numerous participants in the public hearings we held around the country, including many speakers and commenters who complained about the effects of consolidation. The Commission concluded that the current numerical limits help to prevent the formation of market power in local radio markets. The Commission concluded that record does not include sufficient evidence that the numerical limits need to be modified and that the current numerical limits strike the appropriate balance between competition and preservation of diversity.

2. **Shouldn't a similar approach to what you recently took with newspaper cross-ownership be employed to help local radio broadcasters? Wouldn't this enable them to make investments—in technology, people, facilities, and services—that would enhance their ability to meet the needs of local communities?**

***Answer*:**

The Commission carefully reviewed all of this evidence that was submitted into the record. Based on this extensive record, we concluded that the newspaper/broadcast cross-ownership ban should be relaxed modestly.

The Commission's media ownership rules are intended to further three core goals: competition, diversity, and localism. I believe that the Commission's media ownership order strikes a balance between preserving the values that make up the foundation of our media regulations while ensuring those regulations keep apace with the marketplace of today.

With respect to the local radio ownership rule in particular, the Commission found that retaining the current local radio ownership rules is "necessary in the public interest as a result of competition," under Section 202(h) of the Telecommunications Act of 1996. We reached this conclusion after a thorough review of the extensive record, including the research studies, and after listening to the numerous participants in the public hearings we held around the country, including many speakers and commenters who complained about the effects of consolidation. The Commission concluded that the current numerical limits help to prevent the formation of market power in local radio markets. The Commission concluded that record does not include sufficient evidence that the numerical limits need to be modified and that the current numerical limits strike the appropriate balance between competition and preservation of diversity.

ATTACHMENT A

Formal Payphone Compensation Complaints							
Year	**Total Filed**	**Still Pending**	**Granted**	**Denied**	**Settled and Dismissed**	**Top 5 Complainants (number of complaints)**	**Top 5 Defendants (number of complaints)**
1996	0	0	-	-	-	-	-
1997	1	0	-	-	1	International (1)	Sprint (1)
1998	10	0	9	-	1	Pacific Bell (7) Ameritech (2) US West (1)	Frontier (8) MCI (2)
1999	2	0	-	-	2	US West (1) Ameritech (1)	Frontier (2)
2000						US West (1) Ameritech (1)	Oncor Communications (1) One Call Communications (1)
2001	0	0	-	-	-	-	-
2002	8	0	2	3	3	APCC (8)	Advanced Business Tel. (1) Bee Line Long Distance (1) Gadjraj & Sons Import and Export (1) Orion Telecommunications (1) Tekbilt World Communications (1) TS Interactive, Inc. (1) United Tech Systems (1) Vertex Group (1)
2003	3	0	1	-	2	APCC (2) Qwest (1)	Cable & Wireless (1) NetworkIP (1) ATX Communications (1)
2004	0	0	-	-	-	-	-

Formal Payphone Compensation Complaints							
Year	**Total Filed**	**Still Pending**	**Granted**	**Denied**	**Settled and Dismissed**	**Top 5 Complainants (number of complaints)**	**Top 5 Defendants (number of complaints)**
2005	12	1	1	1	9	A Telecom (6) APCC (5) Verizon (1)	Tel-America (2) Capsule Communications, Inc. (2) IDT Corp. (1) Operator Communications, Inc. (1) Intelligent Switching & Software/Radiant (1) CommuniGroup of KC, Inc. (1) Centris Information Services (1) PAC-WEST Telecom (1) T-Netix, Inc. (1) Qwest (1)
2006	1	0	-	-	1	Western Payphone Systems (1)	World Communications Group (1)
2007	0	0	-	-	-	-	-

ATTACHMENT B

Informal Payphone Compensation Complaints							
Year	**Total Filed**	**Still Pending**	**Granted**	**Denied**	**Settled and Dismissed**	**Top 5 Complainants (number of complaints)**	**Top 5 Defendants (number of complaints)**
2000	40	0	Under the applicable Commission rules (47 C.F.R. §§ 1.716-1.736), an informal payphone compensation complaint does not result in a Commission resolution on the merits. Rather, the parties settle their dispute (often with Commission staff assistance), or the complainant files a formal complaint.			US West (12) Fort Mill Telecom (9) Lancaster Telephone (9) Rock Hill (9) GTE (1)	BTI (6) Cable & Wireless (5) Sprint (5) Excel (4) MCI (4)
2001	2	0				Qwest (2)	Focal (1) Transcommunication, Inc. (1)
2002	64	0				APCC Services (55) Verizon (8) Qwest (1)	Network IP/NET/NOS (5) Dancris Telecom (3) Verizon (2) ALLTEL (2) AT&T (2) RSL Communications (2) Gateway (2) US Advanced Net (2) ATX (2) CCI (2)
2003	3	0				APCC Services[1] (3)	ARC Networks (1) Telstar (1) Network Enhanced (1)

[1] APCC Services serves as a billing and collections agent representing its numerous member payphone service providers in each complaint.

Informal Payphone Compensation Complaints							
Year	**Total Filed**	**Still Pending**	**Granted**	**Denied**	**Settled and Dismissed**	**Top 5 Complainants (number of complaints)**	**Top 5 Defendants (number of complaints)**
2004	16	0				APCC Services (8) Verizon (5) WBC (1) OCI (1) Bulletins (1)	Tele-America (4) Pac-West (3) Qwest (1) ATX (1) CCL (1) OCI (1) Verizon (1) AT&T (1) One Call (1) Covista (1) OCMC (1)

Informal Payphone Compensation Complaints							
Year	**Total Filed**	**Still Pending**	**Granted**	**Denied**	**Settled and Dismissed**	**Top 5 Complainants (number of complaints)**	**Top 5 Defendants (number of complaints)**
2005	28	0				Western Payphone Systems (15) Bulletins (10) ComTech (1) LittleJohn Communicaitons (1) Nevada Tel (1)	Intelco (3) Acceris Communications Co. (1) Capital Telecommunications(1) T-Netix, Inc. (1) Network Operator Services (1) Midwest Wireless Holdings (1) Shared Communications Services (1) The CommuniGroup of KC (1) Capsule Communications/Covista (1) Long Distance of Michigan (1) Navigator Telecom (1) WesTel, Inc. (1) KDI Distribution, Inc. (1) Korea Telecom America, Inc. (1) International Telecom Exchange (1) KDDI America, Inc. (1) 88 Telecom Corporation (1) Network Enhanced Technology (1) Mpower Communications Co. (1) ITG Services, LLC (1) Next-G Communications, Inc. (1) Novatel, Ltd. (1) Global Network Communications (1) Belmont Telecom, Inc. (1) Transcon Communications (1) Maskina Communications, Inc. (1)

Informal Payphone Compensation Complaints							
Year	**Total Filed**	**Still Pending**	**Granted**	**Denied**	**Settled and Dismissed**	**Top 5 Complainants (number of complaints)**	**Top 5 Defendants (number of complaints)**
2006	70	27 (16 remain pending at the request of the complainant)				APCC (48) G-Five (10) AT&T (4) Western Payphone Systems (2) Verizon (1) Global Network Communications (1) PayPhones North, Inc. (1) Orion Payphones LLC (1) Superior (1) Rollo Hodgamar & Associates (1)	Compass Global (5) Intelco (4) BAK/Miriam/LATAOne (4) Telefyne (3) NextG (3) Southwest iNet (3) Geo Group (3)
2007	38	24				PBS Telcom (16) C&M (8) G-Five (3) AT&T (3) Pinnacle Public (2) Western Payphones (2)	West Star (5) International Telcom Exchange (2) Global Network Communications (2) Triple Tiger Trading (2) Miriam (2)

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

January 7, 2008

The Honorable Robert M. McDowell
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner McDowell:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Members who have submitted the questions and include the text of the Member's question along with your response. Since you have been asked questions from more than one Member of the Committee, please begin the responses to each Member on a new page.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, January 18, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Phil Murphy, Staff Assistant. An electronic version of your response should also be sent by e-mail to Mr. Murphy at **phil.murphy@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Fred Upton, Member
Subcommittee on Telecommunications and the Internet

The Honorable Elliot L. Engel, Member
Subcommittee on Telecommunications and the Internet

Oversight of the Federal Communications Commission: Media Ownership
House Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
December 5, 2007

Questions for the Record from Chairman Dingell to Commissioner Robert McDowell

1. On what date did you first receive a draft order proposing to adopt the specific language of Chairman Martin's changes to the newspaper/broadcast cross-ownership rule?

    a. If this date was before December 11, 2007, is it correct to assume that the draft order did not take into account public input on the proposed rule?

    b. If this date was after December 11, 2007, is it correct to assume that you did not have the customary 3 weeks to consider the draft order?

The draft order was circulated at 12:42 a.m. on November 28, 2007, shortly after the conclusion of the Commission's November 27 open meeting. The Chairman announced his proposal regarding the newspaper/broadcast cross-ownership rule in a news release issued on November 13, 2007. The deadline for public comment on the Chairman's proposal was December 11, 2007. It is correct that the draft order was circulated prior to the submission of public comments on the Chairman's proposal. The Commission, however, considered all of the comments submitted during the course of the proceeding.

I respect the Committee's concerns about process, but I also think it is important to note that this media ownership proceeding has been unprecedented in scope and thoroughness. The proceeding began at my very first open meeting as a Commissioner, 18 months ago. We gathered and reviewed over 130,000 initial and reply comments and extended the comment deadline once. We released a Second Further Notice in response to concerns that our initial notice was not specific enough about proposals to increase minority and female ownership of stations. We gathered and reviewed even more comments and replies in response to the Second Notice. We traveled across our great nation to hear directly from the American people during six field hearings on ownership in: Los Angeles and El Segundo, Nashville, Harrisburg, Tampa-St. Pete, Chicago, and Seattle. We held two additional hearings on localism, in Portland, Maine and here in our nation's capital. In those hearings, we have heard from 115 expert panelists on the state of ownership in those markets and we've stayed late into the night, or early into the next morning, to hear from concerned citizens who signed up to speak.

We also commissioned and released for public comment ten economic studies by respected economists from academia and elsewhere. These studies examine ownership structure and its effect on the quantity and quality of news and other programming on radio, TV and in newspapers; on minority and female ownership in media enterprises; on the effects of cross-ownership on local content and political slant; and on vertical integration and the market for broadcast programming. We received and reviewed scores more comments and replies in response. Some commenters did not like the studies and their critiques are part of the record.

In sum, the issues raised in our media ownership proceeding, and comments on those issues,

were examined thoroughly and carefully prior to our adoption of the order at the December 2007 FCC Open Meeting. All of the concepts adopted in our December 18 order received years of public scrutiny, debate and comment. I cannot remember any proceeding where the Commission has solicited as much comment and given the American people as much opportunity to be heard.

**Question for the Record from the Honorable Joe Barton
to Commissioner Robert McDowell**

1. Commissioner McDowell, at the hearing, I pointed out that consumers today enjoy a wider range of media choices than ever before, and yet the Commission is apparently considering government-mandated arbitration for carriage disputes as well as a "wholesale *a la carte*" proposal that would dictate the structure of a carriage agreement between two private parties. I do not believe any of this intervention is necessary in light of the robustly competitive state of the marketplace. Nonetheless, I asked you whether you believe the Commission has statutory authority to intervene in negotiations over carriage of video programming, and, if so, what conditions you believe must exist before you would agree to such an extraordinary step. You indicated that the Commission may intervene in such negotiations in the narrow circumstance where the Commission makes a definitive finding of discrimination against a provider of video programming. So that we might have more precise answers for the record, I ask that you please point specifically to all sections of the Communications Act that you believe authorize the Commission to intervene or regulate negotiations for carriage of video programming.

Congress authorized the Commission to regulate carriage of video programming in Section 616 of the Communications Act. Section 616 directs the Commission to "establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors ("MVPD") and video programming vendors."[1] Our existing rules, codified in 1993, set forth the specific practices prohibited by the statute and also establish procedures for the resolution of program carriage complaints and appropriate penalties and remedies. These procedures generally provide for resolution of a dispute on the basis of a complaint, answer, and reply or, upon a determination that the complainant has established a *prima facie* case, referral for an adjudicatory hearing before an Administrative Law Judge, or if the parties choose, Alternative Dispute Resolution. I note that since the Commission established these rules in 1993, only two complaints have been filed and both have been dismissed because the parties were able to reach a settlement.

For each, please indicate:

a. What threshold standard or standards the statute requires to be met before the Commission may intervene;

The statute requires the Commission to enact regulations that prohibit a cable operator or other MVPD from requiring "a financial interest in any program service as a condition for carriage" of such service, from coercing a programmer to grant "exclusive" carriage rights, or from engaging in conduct that unreasonably restrains "the ability of an unaffiliated programming vendor to compete fairly" by discriminating against such vendor "on the basis of affiliation or

[1] 47 U.S.C. § 536. The Commission's cable program carriage rules are set forth at 47 C.F.R. §§ 76.1300-76.1302 and were established in *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage*, 9 FCC Rcd 2642 (1993).

nonaffiliation."[2] The Commission's rules follow the mandate set forth by Congress.[3] As a result, the Commission may intervene where such prohibited practices occur.

b. Whether there must be, at a minimum, evidence of discrimination before the Commission may intervene;

Our program carriage rules require evidence of discrimination before the Commission may intervene. When filing a complaint, a programming vendor must establish a *prima facie* showing, supported by documentary evidence, that the multichannel distributor has engaged in behavior that is prohibited by Section 616. With respect to the third prohibited practice specified by Congress, the complainant must establish a *prima facie* case that the MVPD discriminated against the complainant on the basis of affiliation or nonaffiliation in order to obtain relief.

c. The evidentiary elements for a finding of the discrimination or other statutory standards that must be met prior to intervention;

If the Commission's staff determines that a complainant has established a *prima facie* case, the staff may then make a determination regarding whether Section 616 has been violated. However, if disposition of the complaint will require the resolution of factual disputes or extensive discovery, the parties may elect to resolve the dispute through alternative dispute resolution (ADR) or if the parties do not choose ADR, the staff will refer the complaint to an Administrative Law Judge for an administrative hearing. A decision by Commission staff or an Administrative Law Judge is immediately appealable to the full Commission.

d. What obligations or restrictions the Commission may impose if the standard or standards are met; and

When establishing its program carriage rules in 1993, the Commission decided that appropriate relief for violations of the these rules would be determined on a case-by-case basis, to include forfeitures, mandatory carriage of programming, or carriage on a price, terms and conditions specified by the Commission.

e. Upon what types of entities the Commission may impose the obligations or restrictions.

According to Section 616 and our rules, the Commission may impose obligations or restrictions on multichannel video programming distributors, as defined in 47 CFR 76.1300(d), which include cable operators and direct broadcast satellite services.

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[2] 47 U.S.C. § 536(a)(1)-(3).

[3] *See* 47 C.F.R. § 76.1301(a)-(c).

**Questions for the Record from the Honorable Fred Upton
to Commissioner Robert McDowell**

1. Commissioner McDowell, when the media ownership restrictions were created, there were only a few media platforms, and they operated in largely distinct markets. Today, there are many more media platforms, and they compete against each other. Section 202(h) of the 1996 Telecommunications Act requires the Federal Communications Commission (FCC) to justify regularly the continued application of all its broadcast ownership restrictions in light of changes in the marketplace. Two D.C. Circuit decisions in 2002 held that the FCC failed to justify certain of its strict broadcast ownership restrictions, and ordered it to try again. Then, in 2004, the Third Circuit held in its *Prometheus Radio* decision that the FCC failed to justify even the revised, looser restrictions. If the FCC has failed its obligation to justify each of its specific broadcast ownership restrictions, shouldn't they all be eliminated in favor of allowing competition, the market, and consumer satisfaction to determine the appropriate size, structure, and number of media companies?

As you point out, it is important to remember that Congress enacted a statute that contains a presumption in favor of modifying or repealing the ownership rules as competitive circumstances change. Section 202(h) states that we must review the rules and "determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation that it determines to be no longer in the public interest." This section appears to upend the traditional administrative law principle requiring an affirmative justification for the modification or elimination of a rule. Accordingly, we have a duty to uphold this presumption and to pursue the noble public policy goals of competition, diversity and localism when considering changes to the broadcast ownership rules.

The record in our recent media ownership proceeding shows dramatic changes in competitive circumstances for media companies in recent years. Since the newspaper-broadcast cross-ownership ban was established in 1975, at least 300 daily newspapers have shut their doors. Newspaper circulation and advertising revenues continue to decline year after year, while online readership and advertising revenues have surged. As a result of economic losses, newspapers have cut costs and sliced into the heart of the news-gathering operation: the newsroom and its reporters, resulting in a diminished capacity to cover news. We have five national broadcasting networks, hundreds of cable channels cranking out a multitude of video content produced by independent voices, two vibrant satellite TV companies, telephone companies offering video, cable overbuilders, satellite radio, the Internet and its millions of websites and bloggers, a plethora of wireless devices operating in a robustly competitive wireless market place, iPods, Wi-Fi, and much more. And that's not counting the myriad new technologies and services that are coming over the horizon such as those resulting from our Advanced Wireless Services auction of last year, or the upcoming 700 MHz auction, which will be underway shortly. Certainly, more voices and more delivery platforms exist today than when the media ownership rules were established.

The energy, creativity, capital and growth of the private sector have been focused on areas that are *less* regulated than traditional media. Companies such as Disney, Citadel, Clear Channel and Belo actually have been shedding broadcast radio and television properties to raise capital for new ventures. The Hollywood writers' strike is all about following the eyeballs and ad dollars to

new media and getting fairly compensated as a result. Over one-third of Americans go online to get their news. YouTube alone requires more bandwidth than the *entire Internet* did in 2000. Unregulated new media's numbers are growing. Heavily-regulated traditional media's numbers are shrinking.

These developments led a majority of the Commission to determine that a modest and narrowly-tailored deregulation of the newspaper-broadcast cross-ownership ban is necessary in the public interest as the result of competition.

2. Commissioner McDowell, how can ownership restrictions possibly promote viewpoint diversity and localism if they force untenable economic business models on broadcasters, programming, digital broadcasting, audio streaming, and emergency alert system equipment?

I am concerned that excessive regulation will harm the ability of broadcasters to compete in an audio and video marketplace that is more competitive than at any other time in history. Television and radio stations still play an important role in their local markets. However, their audiences, seeking news, local information and entertainment, are more fragmented now than ever before. As this Commission and future policymakers consider media ownership issues during the quadrennial reviews required by Congress, the FCC must continue to balance carefully the interaction between regulations and business incentives and necessities when considering whether to modify the rules.

3. Commissioner McDowell, the alleged justification in the past for the broadcast media ownership restrictions has been promoting diversity of viewpoints and localism. They were created at a time, however, when we really did not have the cable, satellite, and Internet competition we have today. Isn't it those platforms, not regulations, which now promote diversity and localism? In fact, don't the regulations now hinder diversity and localism by dividing audience share and forcing each media company to cater only to mass market tastes that can garner the widest audience?

I agree that the competition among the video and audio platforms available to consumers promotes both localism and diversity. The majority of programming outlets that have increased exponentially in number in recent years provide national programming – such as coverage of national news, national elections and public affairs, and sporting events that attract national audiences. Local television and radio broadcasters, as well as newspapers, have increasingly differentiated their service by migrating to hyper-local coverage of news, events, sports and so forth.

To compete in this era, many broadcasters have intensified their focus on localism. The increased diversity – of content, of sources, of voices – that has resulted from the plethora of media platforms and the programming outlets that have grown to fill those platforms is apparent to all of us as consumers of this content. Audiences seeking news, local information and entertainment are more fragmented than ever before. Combinations that may have been dangerous to diversity in the past are no longer any threat due to the existence of an unlimited number of delivery platforms and content producers. Not only are there more hoses to deliver the information, there are more spigots to produce the information.

4. Commissioner McDowell, some worry that relaxing media ownership rules will result in an increase in media bias. What does the record show?

The record provides both empirical and anecdotal evidence that commonly owned outlets can, and often do, exercise independent editorial control. The FCC-sponsored economic study authored by Jeffrey Milyo, "The Effects of Cross-Ownership on Local Content and Political Slant of Local Television News" focuses on the political slant of TV stations and concludes that "television stations cross-owned with newspapers exhibit a slight and statistically insignificant Republican-leaning slant" in content. The study also concludes that cross-owned TV stations air more local news, including political news, than non-cross-owned TV stations. The Milyo study's results are consistent with those in the Pritchard study conducted in the 2002-2003 round of the rulemaking. That study, "Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign" found that "in five of the 10 newspaper-television combinations analyzed, the overall slant of the coverage broadcast by a company's television station was noticeably different from the overall slant of the coverage provided by the same company's newspaper."

Several comments submitted in the rulemaking provide examples of commonly owned outlets speaking with separate editorial voices. For example, the Newspaper Association of America provided several examples of programming and viewpoint diversity to demonstrate that newspaper/broadcast combinations do not speak with a single, coordinated voice. Belo's WFAA-TV and The Dallas Morning News historically have not coordinated their opinions or viewpoints. Media General's various news and information platforms, regardless of their method of disseminating content, operate separately in developing their content. The Freedom of Expression Foundation commented that newspaper/broadcast combinations are more likely to produce more public affairs programming, and such firms are unlikely to present a monolithic viewpoint on any or all issues of public importance. This evidence in the record demonstrates that common ownership does not equate to common editorial viewpoints or control, as sometimes alleged.

Questions for the Record from the Honorable Elliott L. Engel to Commissioner Robert McDowell

1. I am sensitive to the concerns of my colleagues about media concentration in their districts, but as a Representative of New York, I live in the biggest and most diverse media market on the planet! With the advent of hybrid digital radio, the choices are already expanding. Thus, I do have a somewhat different view than most. I was wondering what each of the Commissioners is thinking regarding the proposal to allow one company to own more radio stations in the very large markets?

I agree that the advent of digital radio, as well as iPods, satellite radio, Internet radio and other technologies, has changed the competitive outlook for traditional radio broadcasters in recent years. Strong policy arguments have been made in favor of allowing one company to own more radio stations in the very large markets. This is especially true because the applicable statute, Section 202(h), contains a presumption in favor of modifying or repealing the broadcast ownership rules as competitive circumstances change. However, the majority of the Commission declined to adopt that proposal in our media ownership proceeding.

2. As the Representative of an ethnically diverse district, I am sensitive to the concern that minorities are not well represented in the media – on camera, behind the microphone, and behind the scenes working as writers, producers, etc. What is the Federal Communications Commission doing to promote greater diversity in the media?

At our December 18, 2007, Open Meeting, the Commission adopted an order aimed at promoting broadcast ownership among people of color and women. We focused on the possible – and the legally sustainable – proposals suggested to us by the Minority Media and Telecommunications Council, our Diversity Committee and other groups. To that end, we defined the "eligible entities" who may obtain relief under our order as any entity that would qualify as a small business, under the Small Business Administration standards for industry grouping, based on revenue. Given the Supreme Court's decision in *Adarand v. Pena,* which prohibits distinctions based on race, I believe this definition, although imperfect, is legally sustainable and the best option we have currently. As part of a further notice of proposed rulemaking, we will continue to consider alternative definitions of an eligible entity.

We specifically adopted a number of changes to our existing rules, for the benefit of the eligible entities, including tolling build-out deadlines for selling expiring construction permits to eligible entities, deciding not to attribute Equity Debt Plus interests in eligible entities, enforcing nondiscrimination provisions in advertising sales contracts, relaxing the grandfathered transfer deadline for cluster purchasers who will resell stations to small businesses, extending divestiture deadlines in mergers where applicants have actively solicited bids for spin-off properties from eligible entities, and so forth. I hope that these "small steps" will spur the education, investment and economic incentives necessary to improve the state of diversity in broadcast ownership.

I also look forward to leadership from our Congress, as it considers renewing the tax certificate program and other measures. I hope that Congress will give us more statutory authority to help this situation.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

Mr. Andrew Jay Schwartzman
President and CEO
Media Access Project
1625 K Street, N.W., Suite 1000
Washington, D.C. 20006

Dear Mr. Schwartzman:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from a Member of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, January 18, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Phil Murphy, Staff Assistant. An electronic version of your response should also be sent by e-mail to Mr. Murphy at **phil.murphy@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Lois Capps, Member
Subcommittee on Telecommunications and the Internet

MEDIA ACCESS PROJECT

1625 K Street, NW
Suite 1000
Washington, DC 20006
Phone: (202) 232-4300
Fax: (202) 466-7656
www.mediaaccess.org

January 15, 2008

John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20505-6115

Dear Mr. Chairman:

This is in response to your letter dated January 7, 2008 forwarding written questions arising from the December 5, 2007 hearing of the Subcommittee on Telecomunications and the Internet.

My answers are attached.

Sincerely,

Andrew Jay Schwartzman
President and CEO

1. IN YOUR VIEW, WHAT SPECIFIC BARRIERS PREVENT GREATER MEDIA OWNERSHIP BY WOMEN AND MINORITIES? WHAT ARE YOUR SPECIFIC RECOMMENDATIONS - REGULATORY FEDERAL COMMUNICATIONS ACTION, CONGRESSIONAL ACTION, OR INDUSTRY ACTION - TO INCREASE OWNERSHIP BY WOMEN AND MINORITIES?

The greatest barriers to greater media ownership for minorities and women are the lack of capital and barriers to entry attributable to the current concentration of control of media ownership. Remediating the disparities in ownership is also complicated by inadequate data on the nature of the problem and by a federal judiciary which is increasingly hostile to policies which promote diversity in society.

To begin to address these problems, I have the following recommendations:

FCC ACTION

1. Establish procedures to collect and analyze ownership data for all electronic media on an ongoing basis.

2. Increase enforcement of broadcasters' public interest responsibilities, so that more TV and radio stations become eligible for the Commission's distress sale policy.

3. Promulgate and enforce stricter rules on local and national media ownership, thereby making more stations available to minority and female entrants.

4. Shorten broadcast license renewal terms.

5. Adopt rules which require minimum amounts of cable and broadcast programming to be provided by unaffiliated program producers.

6. Strengthen EEO rules applicable to the DBS, broadcasting and cable industries.

7. Expand the DBS set-aside established by Section 335 of the Communications from 4 to 7 percent of channel capacity.

CONGRESSIONAL ACTION

1. Enact HR 3003, to restore the tax credit for diversifying broadcast ownership.

2. Enact HR 2802, the Local Community Radio Act of 2007 to expand the number of low power FM community radio stations.

3. Amend Section 309(j) of the Communications Act to provide that non-exclusive applications for commercial broadcast licenses be considered on a comparative basis.

4. Enact a Joint Resolution making findings of fact as to the government's compelling interest in diversity of media ownership.

5. Repeal Section 309(k) of the Communications Act to make more broadcast stations available to new entrants.

INDUSTRY ACTION

While a number of individual broadcasting and cable companies have attempted to promote diversity, the overall record of the two industries is spotty at best. In general, the industry trade associations should adopt affirmative policies to promote diverse employment and ownership, and to create pools of capital for diverse station and programming network ownership. In addition, they should take the following specific steps:

1. The National Association of Broadcasters should expressly renounce the past and current challenges to FCC policies promoting diversity in ownership and employment brought by various state broadcasters' association.

2. The National Association of Broadcasters and National Cable Television Association should stop their opposition to enhanced FCC industry data collection.

3. The National Cable Television Association should stop its opposition to strengthened enforcement of leased access policies promulgated pursuant to Section 612 of the Communications Act.

2. HOW DO YOU BELIEVE GREATER MEDIA CONSOLIDATION IMPACTS THE IMAGES WE SEE ON TELEVISION OR THE VOICES THAT WE HEAR ON RADIO?

Consolidation in ownership of programming outlets in broadcasting and cable reduces the diversity of viewpoints and perspectives which are reflected in the programming. Diversifying employment and ownership of programming outlets increases sensitivity to different viewpoints and perspectives.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

Mr. John F. Sturm
President and CEO
Newspaper Association of America
4401 Wilson Boulevard, Suite 900
Arlington, VA 22203–1867

Dear Mr. Sturm:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from a Member of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, January 18, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Phil Murphy, Staff Assistant. An electronic version of your response should also be sent by e-mail to Mr. Murphy at **phil.murphy@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Fred Upton, Member
Subcommittee on Telecommunications and the Internet

RESPONSES OF JOHN F. STURM TO QUESTIONS POSED BY THE HONORABLE FRED UPTON

Answer to Question # 1:

Mr. Sturm, how many shots does the FCC get? We have already gone several rounds of the FCC being told by courts that it has failed its statutory burden to justify its broadcast ownership restrictions, and that it must do them over. At what point does the FCC's failure to justify its restrictions, and good public policy, require eliminating all the restrictions in favor of allowing competition, the market and consumer satisfaction to determine the appropriate size, structure and number of media companies.

The FCC began questioning the utility of the cross-ownership ban and recognized the need to reformulate it more than a decade ago, when Reed Hundt was the FCC Chairman. The media ownership proceeding just now being concluded at the Commission represents the *sixth* such proceeding that the FCC has conducted in the past 11 years to consider the continuing validity of the 1975 rule. And the record in all those proceedings consistently has shown that the rule is outdated, unnecessary, and actually harmful to the Commission's localism and diversity objectives.

As part of the periodic review mandate imposed on the Commission with respect to its broadcast ownership rules in the Telecommunications Act of 1996, Congress directed the agency to "repeal or modify any regulation that it determines to be no longer in the public interest." Because the Third Circuit confirmed that the blanket cross-ownership ban falls into this category, the FCC is under an express directive to abandon the restriction in order to satisfy the demands of the 1996 Act.

More than 18 months ago, the Commission again requested input from interested parties. The resulting comment period spanned six months and generated thousands of pages of additional evidence from a wide variety of industry representatives, consumer interest groups, and individual consumers. Furthermore, the FCC commissioned ten empirical studies from academics and other economic experts. The Commission also has held six field hearings on media ownership and two hearings on broadcast localism over the past several months. Overall, the FCC took testimony from more than 100 expert witnesses at these hearings as well as the statements of multitudes of concerned citizens. Once again, the record compiled by the FCC overwhelmingly supported repeal or, at a minimum, substantial relaxation of the cross-ownership ban.

In sum, few, if any, issues have been examined more thoroughly by the FCC in recent history. By any reasonable measure, the agency now has before it far more than enough evidence to eliminate or, at the very least, substantially modify the outdated ban. The FCC's recent action is a very modest step in that direction, but far short of the relief actually warranted by the record assembled by the FCC over the past decade.

Answer to Question #2:

Mr. Sturm, promoting diversity of viewpoints and localism are the main justifications claimed for broadcast cross-ownership restrictions, but in today's market, do restrictions help or actually hurt those goals.

There is no reasonable doubt that broadcast stations that are jointly owned with a co-located daily newspaper offer local audiences superior national and local news coverage. This has been proven time and again through the real-world experiences of existing newspaper/broadcast combinations as well as through numerous empirical and academic studies. For example, notwithstanding the efforts of some deregulatory opponents to mask the results, this reality was confirmed once again by no fewer than five of the empirical studies released by the Commission just this past summer. Moreover, in view of the extensive newsgathering resources and journalistic traditions of daily newspapers, it makes perfect sense that this would be the case.

Cross-ownership enables media properties to "tag-team" on local administrative and political proceedings and ensures gavel-to-gavel coverage for small-town residents who otherwise would not receive such thorough reports. Newspaper/broadcast combinations also are better able to cover developments in the "far corners" of sparsely populated rural markets, providing comprehensive regional coverage. By joining forces, co-owned newspaper and broadcast outlets also can produce serious investigative journalism pieces that otherwise would not be feasible. Cross-owned properties consistently are the leaders in their markets in holding candidate debates and town hall forums. On election nights, the pooled resources of both outlets are able to bring more results to more residents more quickly and present more in-depth reports on them.

Further, as many existing combination owners have shown through their own practices, same-market outlets tend to make editorial decisions on an individual basis and have strong incentives to offer divergent viewpoints on different platforms. Perpetuating a 33-year old ban on cross-ownership, then, not only is not necessary, but is demonstrably harmful to the FCC's stated public interest objectives.

Answer to Question # 3:
Mr. Sturm, when the media ownership restrictions were created, there were only a few media platforms, and they operated in largely distinct markets. Today, there are many more media platforms, and they compete against each other. Doesn't that, combined with the FCC's obligation under section 202 (h) require a revision of the ownership limits?

Today's media world bears little resemblance to that of 1975 when this rule was established. Back then, consumers had access to a local daily newspaper and, at best, a handful of television and radio stations. Cable television was in its infancy, and the Internet, wi-fi, cell phones, DBS, satellite radio, and iPods were not even visible on the distant horizon. There were no national newspapers.

By contrast, consumers today can turn to all of these choices and a growing array of others for news, information, and entertainment at any given time and on virtually any imaginable topic including local news and information. The endless capacity of the Internet has spawned countless hyper-local blogs and websites, which often cover news and information that may be too narrowly focused to be addressed by mainstream media. In this environment, the decades-old notion that newspapers and broadcasters serve as the exclusive "gatekeepers" to local viewpoints has become antiquated and increasingly detached from reality, and Section 202(h) demands that the FCC act to remove unnecessary restraints on the traditional media.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. OINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

The Honorable Deborah Taylor Tate
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner Tate:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Members who have submitted the questions and include the text of the Member's question along with your response. Since you are asked questions from more than one Member of the Committee, please begin the responses to each Member on a new page.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, January 18, 2007.** Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Phil Murphy, Staff Assistant. An electronic version of your response should also be sent by e-mail to Mr. Murphy at **phil.murphy@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Fred Upton, Member
Subcommittee on Telecommunications and the Internet

The Honorable John Shimkus, Member
Subcommittee on Telecommunications and the Internet

The Honorable Elliot L. Engel, Member
Subcommittee on Telecommunications and the Internet

Responses

of

DEBORAH TAYLOR TATE

Commissioner,
Federal Communications Commission

to the

Questions for the Record

from the
Oversight Hearing of the Federal Communications Commission: Media Ownership

Subcommittee on Telecommunications and the Internet
House Committee on Energy and Commerce

December 5, 2007

The Honorable John D. Dingell

1. On what date did you first receive a draft order proposing to adopt the specific language of Chairman Martin's changes to the newspaper/broadcast cross-ownership rule?

   I first received the draft order on November 28, 2007.

   a. If this date was before December 11, 2007, is it correct to assume that the draft order did not take into account public input on the proposed rule?

      The draft order gave great weight to the volume and nature of the public comments the Commission received. As I stated at the hearing, in my twenty-plus years at all levels of government, I cannot recall a more open, transparent, public approach to addressing a policy decision. During the four year procedure that began with the release of our 2002 Biennial Review Order in July 2003, we held six public hearings all across the country, heard from over a hundred thousand laypersons, academics, economists, industry representatives, artists, and public interest organizations, commissioned and completed ten media studies, and subjected those studies to expert peer review. The comments received both before and after the November 28 draft was released, were carefully considered and led to numerous revisions to the item prior to its December 18 adoption.

   b. If this date was after December 11, 2007, is it correct to assume that you did not have the customary 3 weeks to consider the draft order?

      Not applicable. See answer (a).

The Honorable Joe Barton

1. Commissioner Tate, at the hearing, I pointed out that consumers today enjoy a wider range of media choices than ever before, and yet the Commission is apparently considering government-mandated arbitration for carriage disputes as well as a "wholesale *a la carte"* proposal that would dictate the structure of a carriage agreement between two private parties. I do not believe any of this intervention is necessary in light of the robustly competitive state of the marketplace. Nonetheless, I asked you whether you believe the Commission has statutory authority to intervene in negotiations over carriage of video programming and, if so, what conditions you believe must exist before you would agree to such an extraordinary step. You indicated that the Commission may intervene in such negotiations in the narrow circumstance where the Commission makes a definitive finding of discrimination against a provider of video programming. So that we might have more precise answers for the record, I ask that you please point specifically to all sections of the Communications Act that you believe authorize the Commission to intervene in or regulate negotiations for carriage of video programming. For each, please indicate:

    a. What threshold standard or standards the statute requires to be met before the Commission may intervene;

    b. Whether there must be, at a minimum, evidence of discrimination before the Commission may intervene;

    c. The evidentiary elements for a finding of the discrimination or other statutory standards that must be met prior to intervention;

    d. What obligations or restrictions the Commission may impose if the standard or standards are met; and

    e. Upon what types of entities the Commission may impose the obligations or restrictions.

I generally agree with your analysis of the robust competitive state of the marketplace. The statute which authorizes the Commission to act in program carriage disputes is section 616 of the Telecommunications Act of 1934, codified at 47 U.S.C. §536.

Section 616(a)- "[T]he Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors."

    a. What threshold standard or standards the statute requires to be met before the Commission may intervene;

    The statute itself does not offer a specific standard, but merely directs the Commission to establish regulations that: (1) prevent a multichannel video programming distributor ("MVPD") from requiring a financial interest in a program service as a condition for carriage; (2) prohibit an MVPD from coercing a video programming vendor to provide exclusive rights against other MVPDs as a condition of carriage; (3) prevent an MVPD from discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video

programming provided by such vendors; (4) provide for expedited review of any complaints; (5) provide for appropriate penalties; and (6) provide penalties for frivolous complaints.

The Commission's Order implementing this Congressional directive states, "Complaint. When filing a complaint, the burden of proof will be on the programming vendor to establish a prima facie showing that the defendant multichannel distributor has engaged in behavior that is prohibited by Section 616." (9 FCC Rcd 2642)

b. Whether there must be, at a minimum, evidence of discrimination before the Commission may intervene;

Under Commission regulations, if a programmer alleges discrimination, evidence must be included in the initial complaint.
"For complaints alleging a violation of §76.1301(c) of this part, evidence that supports a complainant's claim that the effect of the conduct complained of is to unreasonably restrain the ability of the complainant to compete fairly." (47 CFR §76.1302(c)(3))

c. The evidentiary elements for a finding of the discrimination or other statutory standards that must be met prior to intervention;

There are no specific standards expressly provided in the statute or regulations. However, the following are procedural steps that must be taken:

1. Prefiling Notice: Any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in §76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days to respond before filing a complaint with the Commission. (47 CFR §76.1302(b))

2. Contents of Complaint: (1) The type of multichannel video programming distributor that describes the complainant, the address and telephone number of the complainant, and the address and telephone number of each defendant; (2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations; (3) For complaints alleging a violation of §76.1301(c) of this part, evidence that supports complainant's claim that the effect of the conduct complained of is to unreasonably restrain the ability of the complainant to compete fairly; (4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (b) of this section has been made. (47 CFR §76.1302(c))

d. What obligations or restrictions the Commission may impose if the standard or standards are met; and

Section 76.1302(g) lists the remedies for violations of program carriage rules. These include mandatory carriage, the establishment of prices, terms, and conditions of carriage, as well as any sanctions available under title V or any other provision of the

Communications Act.

e. Upon what types of entities the Commission may impose the obligations or restrictions.

Obligations may be imposed against cable operators or other multichannel video programming distributors. (47 U.S.C. 536(a))

Since I arrived at the Commission, there have been only three program carriage complaints, two resulted in commercially negotiated settlements and a third, which was filed only last month, is still in the pleading stage. Other provisions which may be relevant to program carriage disputes are:

(1) **Section 628**- Development of Competition and Diversity in Video Programming Distribution.
(b) Prohibition. It shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

(2) **Section 614**- Carriage of Local Commercial Television Stations.
(a) Carriage Obligations. Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b).

(3) **Section 615-** Carriage of Noncommercial Educational Television.
(a) Carriage Obligations. In addition to the carriage requirements set forth in section 614, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

(4) **Section 612**- Cable Channels for Commercial Use
(b)(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:
* * *
(e)(1) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available pursuant to this section may petition the Commission for relief under this subsection upon a showing of prior adjudicated violations of this section.

The Honorable Fred Upton

1. Commissioner Tate, when the media ownership restrictions were created, there were only a few media platforms, and they operated in largely distinct markets. Today, there are many more media platforms, and they compete against each other. Section 202(h) of the 1996 Telecommunications Act requires the Federal Communications Commission (FCC) to justify regularly the continued application of all its broadcast ownership restrictions in light of changes in the marketplace. Two D.C. Circuit decisions in 2002 held that the FCC failed to justify certain of its strict broadcast ownership restrictions, and ordered it to try again. Then, in 2004, the Third Circuit held in its *Prometheus Radio* decision that the FCC failed to justify even the revised, looser restrictions. If the FCC has failed its obligation to justify each of its specific broadcast ownership restrictions, shouldn't they all be eliminated in favor of allowing competition, the market, and consumer satisfaction to determine the appropriate size, structure, and number of media companies?

   Section 202(h) of the 1996 Telecommunications Act states "The Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest." (47 U.S.C. 161(b)) I generally agree with your evaluation of the marketplace and the expansion of platforms and competition, yet Congress has directed the Commission to look not only at these factors, but also at whether existing media ownership rules are "in the public interest." Based on the comments we received at our six public hearings, and the more than one hundred thousand written comments that were submitted, the Commission determined that it was in the public interest to relax our cross-ownership rule, and retain the other ownership rules. We received comments expressing concern about further consolidation. As you are aware, the radio industry has recently seen a number of conglomerates engaging in significant divestitures. Major companies like Clear Channel, ABC, Entercom, and CBS have divested, or filed applications to divest, hundreds of stations over the last few years.

2. Commissioner Tate, how can ownership restrictions possibly promote viewpoint diversity and localism if they force untenable economic business models on broadcasters, leaving less resources to be dedicated to employees, news and entertainment programming, digital broadcasting, audio streaming, and emergency alert system equipment?

   I believe it is important to maintain a balance between adopting policies that serve the public interest and giving broadcasters the flexibility to develop successful business strategies. For example, in an effort to improve localism, the Commission adopted an order which requires broadcasters to post their public inspection files online. This requires a modest amount of effort by most broadcasters, and results in the public having easier and broader access to the public files. In an effort to protect broadcasters from undue burdens, the rule does not apply to those that do not maintain a website, and it allows those that do to simply link to the FCC's website for portions of the required information. Regarding diversity, the Commission carefully weighed more than forty proposals submitted by the Minority Media and Telecommunications Council, the FCC's Diversity Committee, and the National Association of Black Owned Broadcasters, and selected twelve that appear not only to hold the most potential for promoting diversity, but also impose a relatively small burden on the broadcast community. Certainly the Commission is committed to the continued dedication of broadcast resources for news,

entertainment, and most importantly, emergency alerts.

3. Commissioner Tate, the alleged justification in the past for the broadcast media ownership restrictions has been promoting diversity of viewpoints and localism. They were created at a time, however, when we really didn't have the cable, satellite, and Internet competition we have today. Isn't it those platforms, not regulations, which now promote diversity and localism? In fact, don't the regulations now hinder diversity and localism by dividing audience share and forcing each media company to cater only to mass market tastes that can garner the widest audience?

   I agree that the world has changed since the inception of our media ownership rules. Satellite and cable television have transformed the video marketplace from three major networks to hundreds of subscription channels. The Internet and mobile devices allow consumers to access news and information from around the world any time, from any place, over any device they chose. These new platforms clearly create a more diverse media universe.

   As I mentioned previously, in December we adopted an order on diversity and also opened a Notice of Proposed Rulemaking on localism. I agree that cross-platform competition and new technologies will create opportunities for more niche programming.

4. Commissioner Tate, some worry that relaxing media ownership rules will result in an increase in media bias. What does the record show?

   While the ten media studies that were commissioned on media ownership did not as a whole focus on the relationship between ownership and political bias, Study #6 ("The Effects of Cross-Ownership on the Local Content and Political Slant of Local television News," by Professor Jeffrey Milyo) did address this issue. That study found no difference between newspaper/television cross-owned stations and other stations in terms of political bias in a given geographic market. Rather, the study found some evidence that the partisan slant of a local news broadcast corresponds to the partisan preferences of the local audience.

The Honorable John Shimkus

1. You appeared before the Senate last year and predicted that the Federal high-cost universal service fund would grow by $280 million per year if all of the competitive eligible telecommunications carrier (CETC) petitions at the FCC were granted. Can you tell me what methodology the FCC used to arrive at this number? Can you please provide this Committee with the FCC's work product and methodology that resulted in this number being published? In addition, your statement included substantial growth from existing CETCs in 2008 and 2009. Can you tell me what methodology the FCC used to arrive at these numbers?

The numbers in my testimony were based on those of Chairman Martin as originally presented at the *en banc* hearing hosted by the Federal State Joint Board on Universal Service on February 20, 2007 (the testimony and accompanying charts are attached as Attachment A). Following the *en banc*, the Joint Board issued a Recommended Decision recommending an emergency interim cap on the CETC portion of the High Cost Fund (a copy of which is attached as Attachment B). To the extent you would like more information on the methodology used, I would be happy to forward your request to the appropriate Commission staff.

The Honorable Elliot L. Engel

1. I am sensitive to the concerns of my colleagues about media concentration in their districts, but as a Representative of New York, I live in the biggest and most diverse media market on the planet! With the advent of hybrid digital radio, the choices are already expanding. Thus, I do have a somewhat different view than most. I was wondering what each of the Commissioners is thinking regarding the proposal to allow one company to own more radio stations in the very large markets?

   As you are aware, on December 18, 2007, the Commission adopted a proposal which retained the existing limit on the number of radio stations which can be held by a single owner. As you are aware, the radio industry has recently seen a number of conglomerates engaging in significant divestitures. Major companies like Clear Channel, ABC, Entercom, and CBS have divested, or filed applications to divest, hundreds of stations over the last few years.

2. As the Representative of an ethnically diverse district, I am sensitive to the concern that minorities are not well represented in the media—on camera, behind the microphone, and behind the scenes working as writers, producers, etc. What is the FCC doing to promote greater diversity in the media?

   I share your concern. As you are likely aware, the Commission has a committee dedicated to the advancement of minorities in the media. That Committee, the FCC Advisory Committee for Diversity in the Digital Age, is chaired by the first Hispanic FCC Commissioner, Henry Rivera, and is comprised of numerous members of diverse communities. They, along with the Minority Media and Telecommunications Council and the National Association of Black Owned Broadcasters, developed a list of proposals, a dozen of which we have already adopted, to increase involvement by women and minorities in the media industry. Those proposals include: (1) extending construction permit deadlines, (2) modifying our equity/debt plus attribution rule, (3) strengthening our distress sale policy, (4) adopting a policy banning racial or gender-based discrimination in broadcast transactions, (5) adopting a zero tolerance policy for ownership fraud, (6) requiring non-discrimination provisions in advertising sales contracts, (7) conducting longitudinal studies on minority and women ownership trends, (8) encouraging local and regional bank participation in SBA guaranteed loan programs, (9) offering duopoly priority for companies that finance or incubate an eligible entity, (10) extending divestiture deadlines in certain mergers, (11) holding an "Access to Capital Conference", (12) creating a guidebook on diversity. All of these proposals will be implemented expeditiously, and as new proposals are presented we will continue to consider those as well. I personally have attended the National Association of Broadcasters' Education Foundation, which offers women and minorities the opportunity to develop professional business skills that will assist them in accessing managerial and ownership positions in the media industry. I have also attended the Hispanic Broadcasters Association Financing and Capitalization Seminar, worked with the National Association of Black Owned Broadcasters, and attended the Rainbow/Push Coalition's Wall Street Project. Improving the staggeringly low rate of female and minority ownership will continue to be one of my top personal and professional goals. The FCC has and continues to show great dedication to increasing local news and to diversity in media ownership.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

Mr. James L. Winston
Executive Director
National Association of Black Owned Broadcasters
1155 Connecticut Avenue, N.W., Sixth Floor
Washington, D.C. 20036

Dear Mr. Winston:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from a Member of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, January 18, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Phil Murphy, Staff Assistant. An electronic version of your response should also be sent by e-mail to Mr. Murphy at **phil.murphy@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Lois Capps, Member
Subcommittee on Telecommunications and the Internet

NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS

1155 Connecticut Avenue, N.W., Sixth Floor, Washington, D.C. 20036
(202) 463-8970 • Fax: (202) 429-0657 • E-mail: nabob@nabob.org

January 22, 2008

VIA HAND DELIVERY

The Honorable Lois Capps
U.S. House of Representatives
Committee on Energy and Commerce
316 Ford House Office Building
Washington, D.C. 20515-6115

Dear Congresswoman Capps:

Thank you for sending the follow-up questions regarding my testimony. My answers are attached.

Sincerely,

James L. Winston

JLW/kn

ANSWERS TO QUESTIONS OF CONGRESSWOMAN LOIS CAPPS
JAMES WINSTON
EXECUTIVE DIRECTOR
NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.
REGARDING TESTIMONY AT HEARING
"OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION: MEDIA OWNERSHIP"
DECEMBER 5, 2007

Question 1. In your view, what specific barriers prevent greater media ownership by women and minorities? What are your specific recommendations—regulatory Federal Communications Commission action, congressional action, or industry action—to increase ownership by women and minorities?

Response: In 1978 the Federal Communications Commission adopted its "Policy Statement on Minority Ownership." In it, the Commission adopted a number of policies to promote minority ownership; the most significant of them was the tax certificate policy. From 1978 to 1995, minority ownership of broadcast stations grew steadily, due primarily to the tax certificate. In 1995, Congress repealed the tax certificate policy. In 1996, Congress adopted the Telecommunications Act of 1996, which eliminated many of the Commission's multiple ownership rules and allowed rampant consolidation of media ownership.

Since the elimination of the tax certificate policy and the elimination of the Commission's restrictions on multiple ownership, minority ownership of broadcast stations has been crippled. The number of African American companies owning broadcast stations has decreased by 40% since 1996.

Therefore, the principal barriers to greater media ownership by women and minorities are the following:

1. Concentration of ownership has caused the preferred transaction for financial institutions to be the purchase and sale of station clusters. Financial institutions are disinclined to finance the acquisition of a single station in a market, because they believe that a single station cannot successfully compete against a company owning many media outlets. For example, one company may own eight radio stations in a market, giving that company a great competitive advantage over the owner of a single station.

2. Minority purchasers usually cannot finance a purchase of a cluster of stations. Minority purchasers are not likely to have the financial ability to purchase a cluster of stations, which is the type of acquisition that most financial institutions prefer to finance

3. Station clusters are rarely available for purchase. Operation of radio clusters is a very lucrative method of operation, such that even minorities with the financial ability to purchase a cluster of stations, rarely find sellers looking to sell clusters of stations.

4. Stations are rarely available in the large urban markets where minorities live. When clusters become available for purchase, they are usually in small rural markets where the minority populations are negligible. Most minority purchasers desire to serve minority audiences. Minority audiences generally live in large markets where stations rarely become available for purchase, and when they do become available, they are offered at very large purchase prices.

5. Because the tax certificate was repealed, minorities cannot offer sellers a tax advantaged transaction. The lack of ability to offer a seller a tax certificate leaves minority station purchasers at a completive disadvantage. Large group owners usually engage in purchase and sale transactions in which stations are transferred in tax free exchanges utilizing publicly traded stock.

Recommendations:

In order to increase minority ownership, the Congress must:

1. reinstate the minority tax certificate policy,
2. pass legislation preventing the FCC from allowing further industry consolidation, and
3. create government incentives for financial institutions to invest in minority owned companies.

Question 2. How do you believe greater media consolidation affects the images we see on television, or the voices that we hear on the radio?

Response: Greater media consolidation removes control of media content from professionals working at stations and shifts it to corporate executives driven by the desire to obtain increased quarterly profits to serve the interests of the publicly traded stock market. The drive for short term profits has led to programming designed to provide short term shock value, which results in short term ratings spikes and short term profits. It devalues the provision of serious, thought provoking programming that will create a steady level of loyal viewers and listeners.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

January 7, 2008

E. Faye Williams, Ph.D.
National Chair
National Congress of Black Women, Inc.
1224 W Street, S.E., Suite 200
Washington, D.C. 20020

Dear Dr. Williams:

Thank you for appearing before the Subcommittee on Telecommunications and the Internet on Wednesday, December 5, 2007, at the hearing entitled "Oversight of the Federal Communications Commission: Media Ownership." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from a Member of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, January 18, 2007.** Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Phil Murphy, Staff Assistant. An electronic version of your response should also be sent by e-mail to Mr. Murphy at **phil.murphy@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Amy Levine, Senior Counsel, at (202) 226-2424.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Lois Capps, Member
Subcommittee on Telecommunications and the Internet

NATIONAL CONGRESS OF BLACK WOMEN, 20INC.

1224 "W" Street, SE Washington, DC 20020 * www.npcbw.org * info@npcbw.org *

January 16, 2008

The Honorable Lois Capps
Subcommittee on Telecommunications and the Internet
316 Ford House Office Building
Washington, DC 20515

Dear Representative Capps:

In response to your follow-up questions sent to me on January 7, 2008 from Chairman John Dingell, I offer the following responses.

What specific barriers prevent greater media ownership by women and minorities? I 0believe the largest barrier is relative lack of access to capital among independent minority- or women-owned entities. While the large conglomerates possess tens of billions of dollars dedicated to capital investment – and in the case of broadcast, spectrum licenses – independent operators are far less likely to have access to sufficient capital. And while recent FCC action, based on recommendations from the Minority Media & Telecommunications Council, seeks to address this concern through a variety of incentives, these actions barely scratch the surface; indeed, MMTC noted that its list of recommendations captured actions the FCC could take immediately, not actions that would immediately! level the playing field for independent, minority- an d women-owned media outlets.

What are your specific recommendations – regulatory Federal Communications Commission action, congressional action, or industry action – to increase ownership by women and minorities? Our best hope for improving this situation likely lies with Congress. The FCC has proved maladroit at promulgating media ownership rules that meet any kind of consensus. The courts have rejected previous attempts as either rolling the= 20rules back too far or not far enough. A strong bipartisan coalition of left- and right-leaning organizations has consistently opposed the relaxation of rules that the Commission has pushed under Chairmen Powell and Martin, while the media conglomerates often demand even more than the Commission is willing to grant.

In any case, the Commission seems to have scant ability to assess w! hich rules are necessary "in the public interest " as Congress required in Sec. 202 of the Telecommunications Act of 1996. Congress should consider either revoking the Commission's authority for biennial review of the ownership rules or codifying a more specific set of metrics for triggering relaxation of the rules.

1. **How will the FCC's media consolidation proposal affect female ownership of broadcast stations?** I have two immediate concerns about the Commission's rules and the justification therefore as they relate to women-owned broadcasters. Primarily, the Commission's more permissive stance toward consolidation will mean additional acquisitions of female- and minority-owned station! s. Independently-owned outlets a re typically the fourth- or fifth-largest in a market, making them ripe targets for takeover by the largest stations. Clearly, this will reduce the number of outlets owned by women.

Secondly, as the Subcommittee pointed out, the FCC has failed to even *identify* 75% of existing women-owned broadcasters. By under-counting the number of women-owned outlets in existence today, the FCC is ill-equipped to accurately report on the impact of future consolidation on those outlets. In short, how will we know the impact should additional women-owned stations become victims of the FCC's relaxed ownership caps if we haven't counted them in the first place?

I appreciate the opportunity to once agai n address the Subcommittee on this critical matter and thank you for your continued interest and leadership.

Sincerely,

Dr. E. Faye Williams, Esq.
National Chair
National Congress of Black Women

cc:

The Honorable John Dingell, Chairma
Committee on Energy and Commerce

The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet

Sincerely,
E. Faye Williams, Esq.
Dr. E. Faye Williams, Esq.
National Chair

Summary of Ideas on Newspaper-Broadcast Cross-Ownership

Leslie M. Marx

June 15, 2006

Contents

1 Introduction

This document is an attempt to share some thoughts and ideas I have about how the FCC can approach relaxing newspaper-broadcast cross-ownership restrictions. The current rule is that one company may not own a daily newspaper and a TV or radio station in the same market;[1] however, some cross-ownership is grandfathered or waivered, and some cross-ownership occurs without being grandfathered or waivered in the periods between license renewals.

The rough calculations described below suggest that it might be appropriate to drop the restrictions and allow any newspaper-broadcast cross-ownership that respects the broadcast ownership limits. The calculations also leave open the possibility that restrictions might be appropriate in some markets that are small, but not so small that local news and public affairs programming is at risk to be eliminated for economic reasons.

2 Overall approach

In this section, I outline one possible approach to newspaper-broadcast cross-ownership regulation.

In what follows, I assume that cross-ownership has the potential to decrease the quantity and/or quality of news coverage of local public affairs available in local media. If it does not, then one could justify dropping or significantly relaxing the cross-ownership restriction on those grounds alone.[2] In what follows, I assume that cross-ownership has at least some negative impact on the diversity of viewpoints available in local media.

The basic argument is then as follows: In markets with a large number of independent media outlets (particularly news outlets), we would not expect cross-ownership to harm competition, diversity, or localism. And, in very small markets, cross-ownership may be necessary to guarantee the survival of the news outlets that currently exist. This leaves us with the question of whether cross-ownership restrictions are appropriate for medium-sized markets.

I envision an analysis that requires three basic inputs.

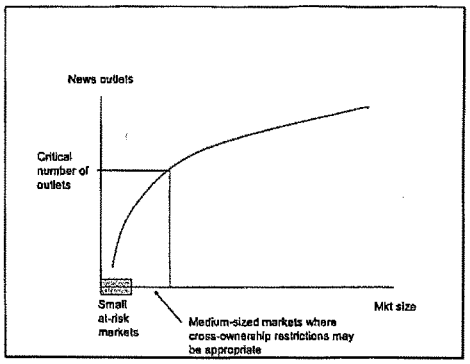
First, we would need to determine the "critical number of outlets" required so that we can be reasonably sure that the goals of competition, diversity, and localism

[1] The rule adopted in the FCC's 2002 Biennial Review was that in markets with three or fewer TV stations, no cross-ownership was allowed; and that in markets with 4–8 TV stations, a newspaper could be combined with one TV station and up to half of the radio station limit for that market, or a newspaper could be combined with up to the radio station limit for that market. For markets with 9 or more TV stations, the 2002 Rules imposed no cross-ownership limits (although the local TV and local radio rules applied).

[2] The proposed study "Effect of Cross-Ownership on Viewpoint/Diversity Variables" would attempt to address this.

are met.[3] Second, we would need to determine what defines markets where we see failures of news operations that could have been prevented through cross-ownership.[4] Third, we would need data on how many independent news outlets there are in various markets.

With these three pieces of information, one could construct the following graph:



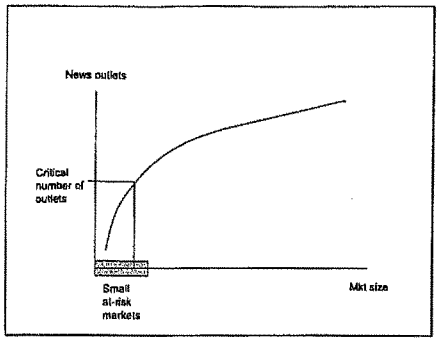
The curve shown in the graph traces out the number of news outlets in markets of different sizes, where market size could be measured by population, number of households, number of TV stations, etc. To the left of the point where the vertical line hits the horizontal axis are markets with fewer than the critical number of news outlets. To the right are markets with more than the critical number of news outlets. The shaded rectangle indicates markets that are sufficiently small as to be "at risk" for losing coverage of local news and public affairs. Note that the vertical line hits the horizontal axis to the right of the shaded box, indicating that there are some medium-sized markets that have fewer than the critical number of news outlets, but that are not "at-risk" markets.

The above figure shows an example of when cross-ownership restrictions might be appropriate for "medium-sized" markets, where "medium-sized" is defined to be markets that are large enough that cross-ownership is not needed for the survival of news outlets, but that are sufficiently small that a reduction in the number of independent news outlets would impact competition, diversity, and/or localism.

[3]The proposed study "Utilization of Media to Acquire Information on News and Public Affairs" would attempt to answer the question: To what extent do consumers use different media outlets for information about local public affairs? This study could be an input to estimating the critical number of outlets.

[4]Another proposed study, "Termination of News Operations by Local Television and Radio Stations," would attempt to answer the question: Have some local television or radio stations closed their news operations and, if so, might a currently-prohibited combination of media have saved those operations? This study should provide useful information in defining what the small, at-risk markets are.

Another possibility is that the data will reveal a world that looks like the figure below.



In the case of the above figure, there is no range of market sizes where cross-ownership restrictions are appropriate. The very small markets are at risk for media failures in the absence of cross-ownership, and the larger markets have sufficient numbers of media outlets that cross-ownership would not be expected to have a detrimental effect on competition, diversity, or localism.

We need to determine which figure applies, and if it is the former, we must define the boundaries of the "medium-sized" markets.

Overall, this approach would identify two sets of markets: first, competitive markets where newspaper-TV cross-ownership restrictions are not needed to ensure the public interest; and second, small markets where newspaper-TV cross-ownership restrictions are harmful to the public interest in that they prevent cost sharing that could make local TV news viable when it would not be otherwise.

2.1 Identifying the "critical number of outlets"

In this section, I show how one might use standard economic techniques to determine which TV markets are competitive. I would argue that if a TV market, taken by itself, is competitive, then the market for local news and information, which would include TV as well as local newspapers and radio, is certainly competitive. In this case, one would expect competitive forces to ensure that the information consumers need and desire (including sufficient diversity and localism) is provided, and so newspaper-TV cross-ownership should not be considered problematic.

The three approaches I describe below all suggest that markets with six or more commercial TV stations are competitive.

2.1.1 Herfindahl-based approach

Standard economic techniques for assessing whether a market is competitive often involve calculating and analyzing the Herfindahl-Hirschman Index (HHI) or the four-firm concentration ratio (C4).[5] A lower HHI or C4 indicates a more competitive, less concentrated, market. In addition, economists sometimes use other concentration ratios, such as the two-firm concentration ratio (C2) or the eight-firm concentration ratio (C8). As a complement to this, economists might consider whether there are barriers to entry, and if time series data is available, economists might analyze whether market shares tend to be stable over time (less stable markets shares suggest a more competitive market).

In what follows, I calculate the HHIs for broadcast television markets. This is the measure that is regularly calculated by the Department of Justice and Federal Trade Commission in their merger reviews.[6]

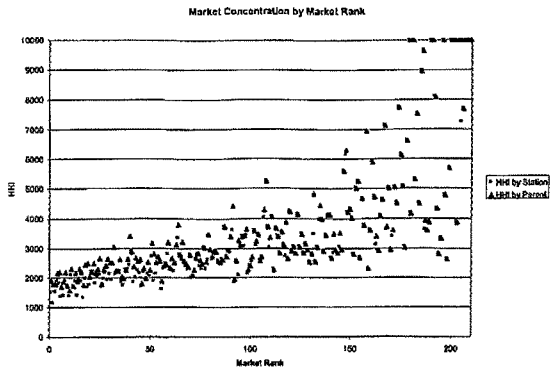
In order to calculate the HHIs, I must define a market, a firm, and a firm's market share. As the markets, I use the 210 Nielsen DMAs (this excludes Puerto Rico, Virgin Islands, Bermuda, American Samoa, and Guam).[7] To define a firm's market share, obvious choices are viewer share or advertising revenue share. Since I have easy access to advertising revenues for commercial stations using the BIA database, I focus on commercial broadcast stations, excluding satellite stations, and I use advertising revenue share as the measure of market share. I will comment later on ways to take account of non-commercial stations. If I had the data, I could easily repeat this analysis using viewer share. I consider two possible definitions of a firm. First, one can view each station as a firm. Second, one could view all the stations belonging to the same parent company as a firm.

Given these assumptions about the markets, firms, and market shares, one can easily calculate the HHIs for the broadcast television markets. The graph below shows the HHIs by market rank. The two series shown in the graph correspond to the two different definitions of a firm.

[5]The HHI is the sum of the squared market shares of the firms in a market. C4 is the sum of the market shares of the largest four firms in the market.

[6]This has appeal because cross-ownership is a merger.

[7]One could argue about whether cable and/or satellite television, or even radio and newspapers, should be considered to be in the same market.



As you can see from the graph, the top-50 markets tend to have HHIs below 3000, but the smaller markets often have substantially higher HHIs. This is consistent with the intuition that the large markets are competitive but the smaller ones are not.

Before continuing, let me describe some reasons why the HHIs I have calculated might understate the competitiveness of the markets. First, non-commercial stations are not included. Second, the BIA database does not have revenue information for the smallest commercial stations. For example, in the New York DMA, four commercial stations are listed in the BIA database as having zero revenue. I assume this is because Nielsen does not collect information from these stations. Third, to the extent that we want to look at the market for local news and information, it includes more than just local broadcast television stations.

This leads us to the question of where the cutoff is between the competitive and non-competitive markets. This is something that economists have argued about quite a bit. The 1992 "Horizontal Merger Guidelines," produced by the FTC and DoJ,[8] describes markets with HHIs greater than 1800 as highly concentrated. The merger guidelines say that "Mergers producing an increase in the HHI of more than 50 points in highly concentrated markets post-merger potentially raise significant competitive concerns, depending on the factors set forth in Sections 2–5 of the Guidelines. Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise."

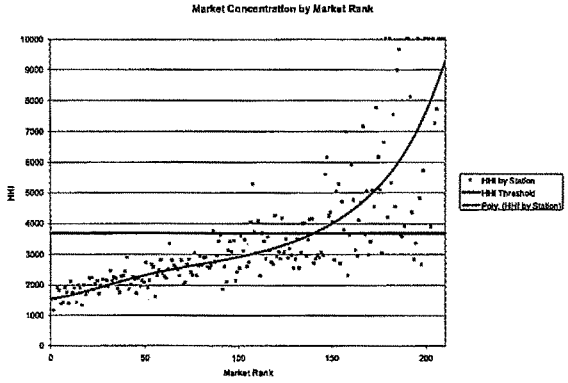
This suggests that an HHI of 1800, or rounding up a bit, perhaps 2000, might be a reasonable threshold. However, recent articles by Malcolm Coate of the FTC show that the FTC tends not follow the guidelines, but rather tends to use higher thresholds for the competitiveness of a market. In Coate's data, the average post-merger HHI for mergers that were challenged based on the theory of "collusion" was 3775, and the

[8] http://www.usdoj.gov/atr/public/guidelines/horiz_book/15.html.

average for mergers that were not challenged was 2472.[9] This suggests that perhaps an HHI above 3000 is an appropriate threshold. Coate states, "a collusion case with a post-merger HHI of 3712 has a 50% change of a challenge."[10]

In order to have a concrete number to work with, in what follows I use an HHI of 3700 as the threshold for markets to be competitive (markets with lower HHIs would be considered competitive and markets with higher HHIs would not). Obviously, the analysis could be repeated using different thresholds.

The graph below shows the HHIs by market rank using a station as a firm. The graph also shows the 3700 threshold and a polynomial trend line fitted to the data. This suggests that, generally speaking, markets 150–210 would not be considered competitive, but larger markets would be considered competitive.



If we do the analysis using parent companies to define firms, the results are similar.

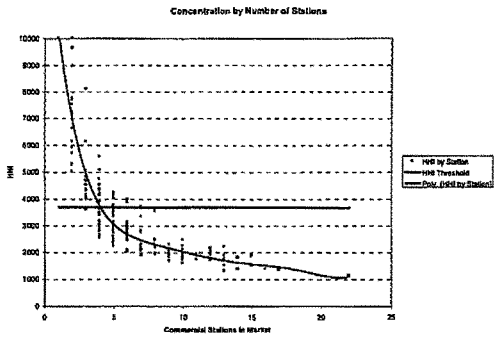
Although, generally speaking, market 150 is the cutoff market based on this measure, different policy goals might require different cutoffs. For example, if we want to set the cutoff so that cross-ownership restrictions are imposed in all non-competitive markets, then the cutoff market would be market 87. If we want to set the cutoff so that we avoid imposing restrictions on markets that are competitive, the cutoff would be market 198.

Alternatively, instead of defining a cutoff market, one could just use the HHI criteria directly. Based on the HHIs calculated by station, there would be 60 non-competitive markets. These markets are listed in Appendix A.

[9]There are also mergers challenged based on the theory of "unilateral effects." For these, the average post-merger HHI for those challenged was 6856, and the average for those not challenged was 3557.

[10]Coate, Malcolm B. (2005), "Empirical Analysis of Merger Enforcement Under the 1992 Merger Guidelines," Review of Industrial Organization 27: 279-301, at 299.

One could also consider ordering markets by the number of stations in the market rather than by the market rank. This approach gives us the following graph, which suggests that markets with fewer than four commercial stations tend not to be competitive. It also suggests that almost all markets with six or more stations are competitive and that almost all markets with three or fewer stations are not competitive. Results for HHIs defined relative to parent companies are similar. Thus, one might want to view markets with six commercial stations as sufficiently large that newspaper-broadcast cross-ownership restrictions can be relaxed.



Finally, one could order markets by the number of TV households. Taking this approach, suggests a cutoff of approximately 167,000 TV households, which corresponds to market 140.

As I mentioned above, I believe these HHIs understate the competitiveness of the markets. In an attempt to correct for this, I recalculated the HHIs under the assumptions that commercial stations shown in the data to have zero advertising revenue actually have a 1% share of the market and that non-commercial stations have a 0.5% share of the market. I can easily recalculate using different assumptions, but I wanted to illustrate something one might do to correct for the data problems.

The HHIs under these assumptions are only slightly below those under the original assumptions (the graphs are virtually unchanged). Even if we assume 5% market share for zero-revenue commercial stations and for non-commercial station, the threshold market only moves to approximately market 160.

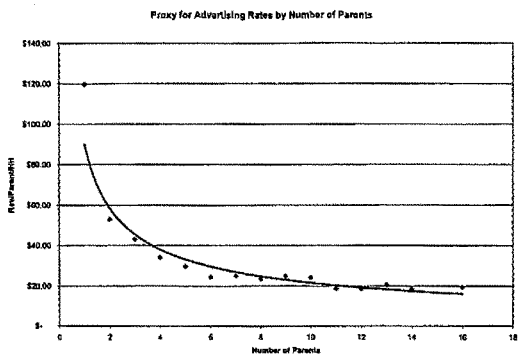
To conclude, this type of analysis might be used to argue that cross-ownership restrictions could be relaxed in markets with six or more commercial stations, or alternatively in markets ranked 1–150. The argument would be that these markets are competitive, so allowing newspaper-TV cross-ownership should not be problematic because competitive forces will drive the market to provide an appropriate level of local news and information, diversity, and localism.[11]

[11]For example, based on historical FTC data, the FTC would typically not challenge a merger in

2.1.2 Advertising rates approach

Another approach to identifying the competitive markets involves analyzing advertising rates charged in the different markets.

As a first pass at this, for each market, I constructed a measure of advertising rates. Presumably better data is available, but for this exercise, I used the advertising revenue per parent company per household. When you look at these numbers, you see a break between markets with five or fewer parents and markets with six or more parents. (Note that I only consider parents of commercial stations.)



This measure of advertising rates increases rapidly as you have fewer than six parents and stays fairly constant, although drifting down, as the number of parents increases above six. Roughly speaking, this suggests that markets with six or more parents tend to be competitive, but markets with five or fewer parents tend not to be as competitive.

The breakpoint is the same when you use the number of commercial stations rather than the number of commercial parents to describe the markets. (In markets with six or fewer stations, most parent companies own only one station.)

If markets with six or more commercial stations are competitive, then one would not expect newspaper cross-ownership to have a significant negative impact on these markets.

2.1.3 Paired market approach

The paired market approach involves matching markets with n stations with similar markets with $n-1$ stations and comparing advertising rates in the two markets to see how much higher are advertising rates in the market with only $n-1$ stations,

these markets.

relative to the market with only n stations. (Note that I only consider commercial stations.)

My initial rough calculations suggest rates are:

- 50% higher in markets with 3 parents than in markets with 4 parents
- 36% higher in markets with 4 parents than in markets with 5 parents
- 26% higher in markets with 5 parents than in markets with 6 parents
- 3% higher in markets with 6 parents than in markets with 7 parents.

These rough calculations suggest that the reduction in the number of commercial parents (and also stations since for markets of this size, most parent companies own only one station) stops having a significant effect on advertising rates once you have six or more commercial parent companies.

2.2 Identifying the "at-risk" markets

Now consider the set of non-competitive markets and analyze whether there is evidence that local television news is being curtailed in these markets because of the small size of the markets, in which case joint ownership between a local newspaper and a local TV station might provide benefits to consumers by preventing further curtailment of television news.

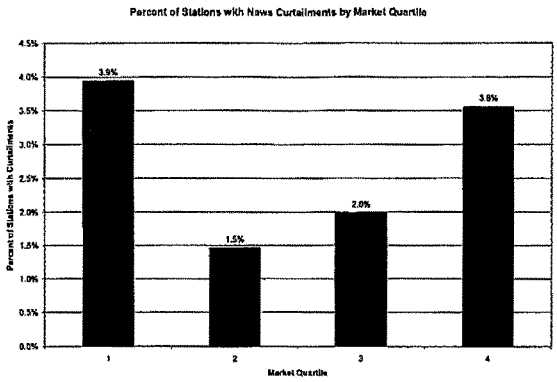
As a first pass at identifying which TV markets are more likely to see the curtailment of local TV news programming, we collected information on such curtailments from press reports.[12] We used information provided by Media General as a starting point and added information on additional curtailments as we could find it.[13]

As the following graph shows, the percentage of stations in our data with curtailments is highest in the first and fourth quartile of markets, and lower in the middle two quartiles. One explanation for this pattern might be that there are curtailments

[12]Diego Ruiz and Andrew Harrison were involved in this effort.

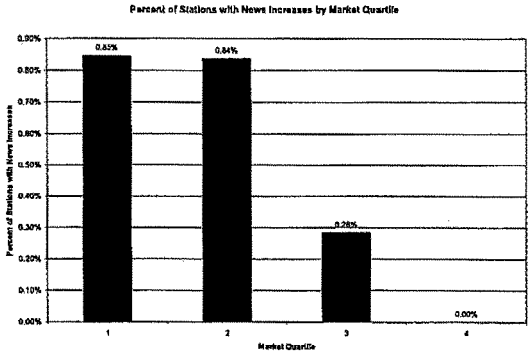
[13]Media General produced a report to argue that newspaper-broadcast cross-ownership restrictions should be lessened if not eliminated. As part of that report, they included a list of 45 TV stations with curtailments in local television newscasts between November 1998 and January 2003. This list is based on news reports in a wide variety of media (the report contains a list of all the sources). The list does not claim to include ALL curtailments that occurred during the period and does not contain examples of news expansions. There is one duplication in Media General's list, and two of the stations (WKPT in Kingsport, TN, and WKFT in Raleigh/Durham, NC) do not appear in the BIA database. Working with the remaining 42 stations and assuming that they are representative of the distribution of curtailments across markets, which may be a big assumption, we find that curtailments are relatively more likely in the largest and smallest markets than in the middle 100 markets. Note that the data may be biased in favor of finding curtailments in the largest markets because these may be the ones most likely to show up in the kinds of media outlets that Media General would notice.

in the largest markets due to competition and curtailments in the smallest markets due to difficulty covering costs, but relatively few curtailments in the middle-sized markets.



In addition, curtailments tend to be in stations that are in the bottom half of the commercial stations in their market, based on revenue. Curtailments in the smallest markets tend to be in the bottom quarter of the commercial stations in their market, based on revenue.

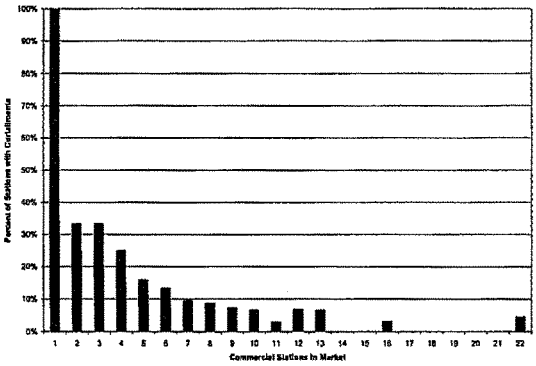
In contrast, if we look at the percent of stations in our data with increases in local news programming, the picture is quite different, with increases concentrated in the largest markets.



As a rough first cut, this seems to suggest that the quartile of smallest markets are at relatively greater risk for curtailments of local news programming. This quartile consists approximately of markets 150-210.

Combining these results with the preliminary analysis of which markets are competitive from Section 2.1, one could justify a policy of no cross-ownership restrictions at all based on the following argument: markets 1-150 are sufficiently competitive that cross-ownership is not a threat to competition, localism, or diversity; and stations in markets 150-210 are at risk for news curtailments, which could potentially be prevented by allowing cross-ownership.

If we want to define markets by the number of commercial stations in a market, then we can calculate the percentage of stations experiencing curtailments in markets with different numbers of commercial stations.



As the above graph shows, in markets with six or fewer commercial stations, 10% or more of the stations experience curtailments. This suggests that one might justify a policy of no cross-ownership restrictions based on the following argument: markets with six or more commercial TV stations are sufficiently competitive that cross-ownership is not a threat to competition, localism, or diversity; and stations in markets with fewer than 6 commercial stations are at risk for news curtailments, which could potentially be prevented by allowing cross-ownership.

2.2.1 Talking points related to "at-risk" markets

- Media reports suggest that a number of TV stations have stopped producing local news or have curtailed their local new broadcasts over the last several years. While this is potentially a concern no matter where these closures are occurring, anecdotal evidence suggests that the smallest markets are disproportionately affected by closures and curtailments of local television newscasts.

- Gathering and producing local news is costly. It is generally the costliest activity that a local TV station engages in. It is therefore often the first item to get eliminated in times of budget cutbacks or advertising revenue slowdowns.

- Indeed, anecdotal evidence suggests that over the last several years—which have corresponded with periods of tightening station operating budgets—dozens of TV stations across the country have curtailed news operations or eliminated newscasts entirely.

- These cut-backs in news operations appear to affect large markets and small markets alike. News consumers of every stripe—in markets large and small, in rural, urban and suburban communities—suffer when there is a decrease in the options available to them for local news and information.

- As the Commission revisits the issue of newspaper/broadcast cross-ownership, it is important that we examine the extent to which allowing cross-ownership may help to forestall this erosion in local news coverage by enabling companies to reduce duplicative costs and amortize their news product over multiple platforms.

- Aside from eliminating duplicative expenditures, newspaper/broadcast cross-ownership would not be expected to affect significantly the cost of covering a story (a reporter would still need to be assigned; background research would still need to be done), but cross-ownership would be expected to increase significantly the benefits of more in-depth coverage of existing stories and the provision of coverage of new stories because, under cross-ownership, that information can be provided to consumers through multiple outlets.

3 Economic studies to support newspaper-broadcast cross-ownership limits

In this section I discuss some studies that might provide valuable inputs to support a relaxation of newspaper-broadcast cross-ownership limits.[14]

In order to establish cross-ownership limits for newspapers, one would want to have the answer to the following question:

How does newspaper cross-ownership affect diversity?

There are a number of ways to try to answer this question, but one way is by seeking answers to the following four questions:

1. (supply) How does newspaper cross-ownership affect the quantity and quality of news coverage of local public affairs?

[14]When designing any economic studies, we should keep in mind that the FCC also needs to address radio-TV cross-ownership.

A study that shows that newspaper cross-ownership increases or does not significantly decrease the quantity and quality of news coverage of local public affairs would suggest that cross-ownership restrictions are not important for this measure of diversity.

2. (demand) To what extent do consumers use different media outlets for information about local public affairs?

   In order to determine the "relevant product market" for viewpoint diversity, it is necessary to know how citizens/consumers utilize the media and to what extent the different media are substitutes for one another. A study that shows that consumers use multiple sources of information for news about local public affairs, particularly sources such as the Internet or cable that would not be affected by cross-ownership between a newspaper and a local TV or radio station, would suggest that cross-ownership, even if it did reduce ownership diversity, would not have a significant detrimental effect on consumers. In addition, a study that shows that few consumers use newspaper and TV (or radio) as their primary and secondary sources of information for local public affairs would suggest that newspaper-TV (or newspaper-radio) cross-ownership would have little effect on the diversity of information available in consumers' primary and secondary sources of information.

3. (viability) Have some local television or radio stations closed their news operations and, if so, might a currently-prohibited combination of media have saved those operations?

   A study that finds evidence that TV stations in small markets tend to shut down their news divisions would suggest that cross-ownership in small markets would not reduce diversity and would potentially increase the dissemination of local news.

4. (supply—more subjective) How does newspaper cross-ownership affect viewpoint diversity with respect to political issues?

   A study that shows that co-owned newspaper and TV stations express viewpoint diversity that is similar to that of comparable newspaper-TV pairs that are not co-owned would suggest that cross-ownership does not reduce viewpoint diversity. This type of study could evaluate assertions that co-owned media maintain independent editorial policies.

3.1 Proposed Studies

The four studies described briefly below are designed to answer the four questions above. For more details on each study, see Appendix C.

3.1.1 Study 1: Effect of Cross-Ownership on Viewpoint/Diversity Variables

This study would analyze the effect of cross-ownership on various measures of the quantity and quality of news or news and public affairs programming on TV and radio using a cross-sectional regression analysis approach. Potential dependent variables are hours of relevant programming, ratings of relevant programming, awards won, and local voter participation. Regression analysis would be used to measure the impact on the dependent variables of market size and structure, including the incidence of cross-ownership.

3.1.2 Study 2: Utilization of Media to Acquire Information on News and Public Affairs

This study would survey consumers about their use of media. It would be similar to the 2002 Nielson Media Research study, but with questions designed to elicit information about sources of local news and current affairs programming, and with questions designed to identify separately the primary and secondary sources of local news and current affairs programming. One might expect the reliance on the Internet to have changed since the Nielsen data was collected.

3.1.3 Study 3: Termination of News Operations by Local Television and Radio Stations

This study would collect data on radio and television stations that have terminated their news operations and relate these data to the structure of the markets in question. This study could give some sense of the magnitude of local news output that markets of different sizes could sustain.

3.1.4 Study 4: Viewpoint Diversity in Cross-Owned Newspapers and Television Stations

This study would assemble a "matched sample" by matching cross-owned newspapers and TV stations with non-cross-owned newspapers and TV stations with similar characteristics. The study would construct a measure of "slant" for a chosen political issue for each newspaper and TV station in the sample. It would then analyze whether cross-owned newspapers and TV stations are more likely than their non-cross-owned counterparts to have divergent "slants" on the political issue considered.

3.2 Commentary

- Study 1: Some (more or less subjective) choices would need to be made on econometric techniques, which may be a reason to out source the study, but

otherwise it seems like something that could be done in house if the resources were available.

- Study 2: The previous Nielsen survey indicates that as a source for local news, consumers use: Internet 34.2%, magazines 20.0%, newspaper 78.7%, radio 67.9%, television 92.1%. However, reliance on the Internet may have increased since that study. In addition, the previous survey does not give us information on consumers' primary and secondary sources for local news and current affairs. If, for example, the primary or secondary source is the Internet (and is not simply the website for a local newspaper or TV station), then one could argue that cross-ownership of a local newspaper and local TV station should not affect the diversity available in consumers' primary and secondary sources for local information. Also, one could argue that newspaper-TV cross-ownership would have the largest effect on consumers whose primary and secondary sources are newspaper and TV, so it might be useful to know how many consumers are like this. (Similarly for newspaper-radio.)

- Study 3: If we anticipate arguments about cross-ownership being important for keeping news alive on local TV in small markets, then Study 3 seems useful.

- Study 4: This study would be quite involved and would be directed at a particular question: whether cross-owned media maintain separate editorial views. It would need to be outsourced.

3.3 Possible additional studies

Two additional studies could easily be done in house. They are:

1. Review of cross-ownership restrictions in other countries;

2. Review of the relevant theoretical economics literature.

A Appendix: Markets with HHI greater than 3700 based on stations as firms

Albany, GA
Alexandria, LA
Alpena, MI
Bangor, ME
Beaumont-Port Arthur, TX
Bend, OR
Biloxi-Gulfport, MS
Binghamton, NY
Bluefield-Beckley-Oak Hill, WV
Bowling Green, KY
Butte-Bozeman, MT
Charlottesville, VA
Clarksburg-Weston, WV
Dothan, AL
Elmira, NY
Fairbanks, AK
Gainesville, FL
Glendive, MT
Great Falls, MT
Greenwood-Greenville, MS
Harrisonburg, VA
Hattiesburg-Laurel, MS
Helena, MT
Jackson, TN
Jonesboro, AR
Juneau, AK
Lafayette, IN
Lafayette, LA
Lake Charles, LA
Lima, OH
Macon, GA
Mankato, MN
Marquette, MI
Meridian, MS
Monroe, LA-El Dorado, AR
Myrtle Beach-Florence, SC
North Platte, NE
Ottumwa, IA-Kirksville, MO
Palm Springs, CA

Panama City, FL
Parkersburg, WV
Presque Isle, ME
Quincy, IL-Hannibal, MO-Keokuk, IA
Salisbury, MD
San Angelo, TX
Sherman, TX - Ada, OK
South Bend-Elkhart, IN
Springfield-Holyoke, MA
St. Joseph, MO
Tallahassee, FL-Thomasville, GA
Terre Haute, IN
Topeka, KS
Twin Falls, ID
Tyler-Longview, TX
Utica, NY
Victoria, TX
Watertown, NY
Wheeling, WV- Steubenville, OH
Wilmington, NC
Zanesville, OH

B Appendix: Stations with curtailments

This table below shows the stations with curtailments in news that are in our data. They are sorted by ownership.

MARKET	CALL LETTERS	OWNERSHIP	AFFIL
Anchorage, AK	KTVA	Alaska Broadcasting	CBS
Fayetteville, NC	WKFT	Bahakel Communications	IND
Midland, TX	KOSA-TV	CBS Broadcasting	CBS
Chicago, IL	WBBM-TV	CBS Broadcasting	CBS
Los Angeles, CA	KCBS-TV	CBS Broadcasting	CBS
Evansville, IN	WEVV	CBS Broadcasting	CBS
Twin Falls, ID	KMVT	CBS Broadcasting	CBS
Detroit, MI	WWJ-TV	CBS Broadcasting	CBS
Austin, TX	KEYE-TV	CBS Broadcasting	CBS
Meridian, MS	WMDN	CBS Broadcasting	CBS
Boston, MA	WSBK-TV	CBS Corporation	UPN
Tampa, FL	WTOG	CBS Corporation	UPN
Youngstown, OH	WYTV	Chelsea Broadcasting	ABC
Watertown, NY	WWTI	Clear Channel Communication	ABC
Utica, NY	WUTR	Clear Channel Communication	ABC
Orlando, FL	WESH	Decisionmark Corp.	NBC
Los Angeles, CA	KCOP-TV	Fox Television Stations	UPN
Chattanooga, TN	WDSI-TV	Fox Television Stations	FOX
Green Bay, WI	WLUK-TV	Fox Television Stations	FOX
Topeka, KS	KTKA-TV	Free State Communications	ABC
Chattanooga, TN	WTVC	Freedom Broadcasting	ABC
Duluth, MN	KDLH	Granite Broadcasting	CBS
Fort Wayne, IN	WISE-TV	Granite Broadcasting	NBC
Topeka, KS	WIBW-TV	Gray Television Group	CBS
Parkersburg, WV	WTAP-TV	Gray Television Group	NBC
Manchester, NH	WMUR-TV	Hearst-Argyle	ABC
Wichita Falls, TX	KAUZ-TV	Hoak Media	CBS
Kingsport, TN	WKPT-TV	Holston Valley Broadcasting	ABC
Minneapolis, MN	KSTP-TV	Hubbard Broadcasting	ABC
Minneapolis, MN	KSTC-TV	Hubbard Broadcasting	IND
Battle Creek, MI	WOTV	Lin Television, Inc.	ABC
Hattiesburg, MS	WHLT	Media General	CBS
Los Angeles, CA	KNBC	NBC Universal	NBC
Fort Lauderdale, FL	WTVJ	NBC Universal	NBC
Cleveland, OH	WUAB	Raycom Media	UPN
Marquette, MI	WBUP	Scanlan Television Inc.	ABC
Cleveland, OH	WEWS-TV	Scripps Howard Broadcasting	ABC
Tampa, FL	WTTA	Sinclair Broadcasting	WB
Winston Salem, NC	WXLV-TV	Sinclair Broadcasting	ABC
Tallahassee, FL	WTWC-TV	Sinclair Broadcasting	NBC
St. Louis, MO	KDNL-TV	Sinclair Broadcasting	ABC
Cincinnati, OH	WSTR-TV	Sinclair Broadcasting	WB
Greensboro, NC	WUPN-TV	Sinclair Broadcasting	WB
Milwaukee, WI	WVTV	Sinclair Broadcasting	WB
Tampa, FL	WTTA	Sinclair Broadcasting	WB
Buffalo, NY	WNYO-TV	Sinclair Broadcasting	WB
Pittsburgh, PA	WPGH-TV	Sinclair Broadcasting	FOX
San Antonio, TX	KVDA	Telemundo Group Inc.	Telemundo
Miami, FL	WAMI-TV	Univision	Telefutura
Detroit, MI	WKBD	Viacom Stations	UPN

C Appendix: Details and Requirements of Proposed Studies

C.1 Study 1: Effect of Cross-Ownership on Viewpoint/Diversity Variables

This study would attempt to answer the question: How does newspaper cross-ownership affect the quantity and quality of news coverage of local public affairs?

This study would attempt to answer the question: How does newspaper (and radio-TV) cross-ownership affect the quantity and quality of news coverage of local public affairs?

This study would analyze the effect of cross-ownership on measures of the quantity and quality of news and public affairs programming that is broadcast over TV and radio. It would expand significantly on the 2002 study of Spavins et al. by using a cross-sectional regression analysis approach. In addition, a separate case-study analysis could be done using the small number of newspaper-broadcast combinations that were in effect temporarily pending the station's license renewal.

The Television Component Rather than measure viewpoint diversity directly, the study would focus on relevant related outputs. Per the Spavins study, these could include the quantity of news or news and public affairs programming measured in minutes, the size of audiences attracted by such programming as measured by ratings, or the "quality" of the programming as measured by journalism awards won. Because viewpoint diversity is important as in input to good citizenship, and because voting is one indicator of citizens' meeting their responsibilities, the voter participation rate in local elections could also be used as an "output" relevant to the Commission's diversity goal.

Regression analysis would be used to measure the impact on the various dependent variables of market size and structure, including the incidence of cross-ownership. Ideally, the sample would include all of grandfathered and other existing newspaper-television cross-ownership cases, as well as some radio-television combinations and standalone stations.

The Radio Component A similar approach could be used for radio. The journalism awards and political participation dependent variables could be used on a sample that includes all of the grandfathered and other existing radio-newspaper combinations. It is not clear that the relevant data would be available to measure the quantity of and ratings for radio news or news and public affairs programs.

The Temporary Cross-Ownership Component A station's compliance with the newspaper cross-ownership prohibition is apparently monitored only at license renewal. Since the license period is eight years, it is possible that there have been some newspaper-broadcast combinations created since the rule went into effect and that lasted for some years. The study could identify them and compare their performance before and after the combination with respect to the outputs mentioned above. It

is unlikely that there will be enough of these to support detailed statistical analysis, but some case studies could be useful.

This study would involve substantial data collection and econometric work. It could be done internally as long as someone with the necessary econometric skills was assigned to the project. It could also be outsourced to a group with the required econometrics skills and experience and with some institutional knowledge of broadcast media and/or newspapers.

The following is a list of the research components of this project:

1. Assemble a database for an appropriately chosen sample of markets. For each market, identify the market size. For each TV station in the market, identify the owner, rating and share for evening local news programs, quantity of local news and public affairs programming, and quantity of locally produced public affairs programming. For each newspaper in the market, identify the owner, frequency (daily, weekly, etc.), circulation, and subscribership. If possible, identify a measure of the quantity of locally produced news and public affairs content.

2. Assemble a database of Radio and Television News Directors Awards and A.I. DuPont Awards for local TV programming.

3. Classify TV stations as network owned and operated stations or as affiliates. Subdivide affiliates into stations held in common ownership with the publisher of a daily newspaper in the same market or the publisher of a daily newspaper in a different market or the publisher of some other category of newspaper.

4. (Extension to radio) For each radio station in the market, identify the owner. If possible, identify a measure of the quantity of locally produced news and public affairs content. Repeat #2 above for radio. Classify radio stations into stations held in common ownership with the publisher of a daily newspaper in the same market or the publisher of a daily newspaper in a different market or the publisher of some other category of newspaper.

5. (Extension to voter participation) For each market, identify the voter participation rate for local elections.

6. Use the data to construct measures of the quantity and quality of local news programming and use cross-sectional regression techniques to evaluate the effects on these measures (and on voter participation if doing that extension) of market size and structure.

7. (Extension to temporary cross-ownership) Identify any temporary newspaper-broadcast combinations and compare their performance before and after the combination with respect to the outputs mentioned above.

8. Produce a report, supported by appropriate data, charts, graphs, or other materials addressing the question of how newspaper cross-ownership affects the quantity and quality of news coverage of local public affairs.

C.2 Study 2: Utilization of Media to Acquire Information on News and Public Affairs

This study would attempt to answer the question: To what extent do consumers use different media outlets for information about local public affairs?

This study would attempt to answer the question: To what extent do consumers use different media outlets for information about local public affairs?

This study would consist of a phone survey similar to the 2002 Nielsen Media Research study "Consumer Survey on Media Usage" that was used extensively in the June 2003 decision. The Nielsen survey data was collected in August and September of 2002 and is now three years old. It would be useful to have updated data if media usage patterns have changed since then, especially with regard to the Internet.[15]

In addition to updating the data, a new survey would also allow for improvement in the survey instrument. In particular, although the June 2003 decision focused on local viewpoint diversity, the survey did NOT ask respondents for their primary source of local news and current affairs programming. (It asked for their primary source of all news programming and for their separate lists of sources used for national and for local news and current affairs programming.) In addition, the June 2003 decision concluded that some respondents may have confused local news on cable channels with local news on broadcast channels retransmitted by cable. In these and other areas, a new survey would allow for improved question design.[16]

The 2002 study by Nielsen Media Research involved a sample of approximately 10,000 consumers, with approximately 3,000 responding. The cost to the FCC was $50,000. The new study need not be done by Nielsen, but it would probably have a similar cost to the 2002 study.

The following is a list of the research components of this project:

1. Design and execute a survey, conducted with no fewer than 10,000 (?) persons regarding issues relating to consumers' use of the media to acquire information regarding local news and public affairs. Design of the survey questions should be done in conjunction with the FCC. The Contractor shall identify the target survey recipients, develop the methodology for and administer the survey. Following completion, the Contractor shall oversee the collection and compilation of survey responses.

[15]The Nielsen survey reports that 34.2% of respondents who had accessed local news and current affairs in the past 7 days used the Internet as a source, but the survey does not identify whether the Internet is a primary, secondary, or less important source. (Table 97)

[16]For example, one would want to distinguish news obtained from the website of a local newspaper or TV station from news obtained from other Internet sites.

2. Following the completion of the survey, the Contractor shall perform an in-depth analysis of the results.

3. The Contractor shall deliver a report, accompanied by the analysis source materials, applying the data to the question of the extent to which consumers use different media outlets to acquire information on news and public affairs.

C.3 Study 3: Termination of News Operations by Local Television and Radio Stations

This study would attempt to answer the question: Have some local television or radio stations closed their news operations and, if so, might a currently-prohibited combination of media have saved those operations?

This study would attempt to answer the question: Have some local television or radio stations closed their news operations and, if so, might a currently-prohibited combination of media have saved those operations?

In markets with relatively few media outlets, any combination has a significant impact on market structure. This is the reasoning behind the June 2003 decision's prohibition on cross-ownership in markets with few outlets (specifically in those with fewer than three television stations). However, small markets are likely to have the economic base to support fewer independent outlets than larger markets, so cross-ownership may in some cases be the only way that certain outlets can remain viable. This consideration may justify a less stringent cross-ownership limit in small markets. It may also affect the decision on a waiver standard for cross-ownership rules in small markets.

This study would gather information on radio and television stations that have terminated their news operations, probably from the Radio and Television News Directors Association.[17] These data would then be related to the structure of the markets in question. This could give some sense of the magnitude of local news output that markets of different sizes could sustain.

The study would also compare data on markets in which radio and television stations terminated their news operations with data for all markets to analyze what percentage of all markets might be at risk for losing a source of local news.

The study could potentially be done in house. The study would probably not require sophisticated econometrics, and the number of cases involved would probably not be very large.

The following is a list of the research components of this project:

1. Gather information on radio and television stations that have terminated their news operations, probably from the Radio and Television News Directors Association.

[17] It may also be useful to look at the NAB's annual TV Financial Reports.

2. For each market in which there is a radio or television station that has terminated its news operation, and for a large sample of other markets, collect data on the size and structure of the market, which particular attention to cross-ownership of media.

3. Produce a report applying the data to the questions: What magnitude of local news output can markets of different sizes sustain? Might a combination of media have saved those news operations that closed? What percentage of all markets might be at risk for losing a source of local news?

C.4 Study 4: Viewpoint Diversity in Cross-Owned Newspapers and Television Stations

This study would attempt to answer the question: How does newspaper cross-ownership affect viewpoint diversity with respect to political issues?

This study would attempt to answer the question: How does newspaper cross-ownership affect viewpoint diversity with respect to political issues?

This study would be similar in flavor to the 2002 study by David Pritchard, "Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign."[18] The 2002 study by Pritchard finds that of the ten commonly-owned newspaper-television combinations studied, five exhibited a similar slant in covering the final weeks of the 2000 Presidential election, while five exhibited divergent slants. Commenters stated generally that since the study was based on only 10 case studies and there was no "control group" of independently-owned broadcast stations and newspapers for comparison, the results could not be generalized to all broadcast/newspaper combinations. (See the 2002 Biennial Review at 361-63.)

The proposed study would begin with a sample (preferably all) of the grandfathered/waivered cross-owned newspapers and TV stations. This sample would include approximately 20 entities. These entities would then be characterized in terms of their market size, number of competitors, geographic location, subscribership, advertising revenues, cross-ownership with other TV stations or radio stations, etc.

Then the study would collect data on the same set of characteristics for a sample (preferably large) of newspaper and TV stations that are not cross-owned. Then an algorithm would be used to select for each cross-owned entity a non-cross-owned newspaper and TV station that share a market and that match the characteristics of the cross-owned pair as closely as possible. The construction of the "matched pairs" would follow standard techniques in the economics literature.

For each newspaper/TV pair (both cross-owned and non-cross-owned), it would be determined whether the outlets exhibited similar or divergent slants in covering a particular national political event, for example the coverage of the final weeks of

[18] Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A7.pdf.

the 2004 Presidential election. A method for evaluating and scoring the slant of each newspaper and TV station would have to be developed and defended. For example, the Pritchard study looked at all available non-advertising content related to the 2000 Presidential campaign in the newspapers and late-evening local newscasts in the last fifteen days of the campaign and coded each item as "favorable to Gore," "favorable to Bush," or "neutral," and then a slant coefficient between -100 and 100 was calculated.

Standard economic techniques for analyzing a matched sample would then be used to assess whether cross-owned newspaper/TV pairs exhibit more or less viewpoint diversity than non-cross-owned pairs.

This study would involve substantial data collection and econometric work and would have a subjective component. It would need to be outsourced to a group with sufficient manpower, the required econometrics skills, and familiarity with techniques for matched samples.

The following is a list of the research components of this project:

1. Identify the grandfathered/ waivered cross-owned newspapers and TV stations. Characterize these entities in terms of their market size, number of competitors, geographic location, subscribership, advertising revenues, cross-ownership with other TV stations or radio stations, etc.

2. Collect data on the same set of characteristics for a sample (preferably large) of newspaper and TV stations that are not cross-owned.

3. Select for each cross-owned entity a non-cross-owned newspaper and TV station that share a market and that match the characteristics of the cross-owned pair as closely as possible. The construction of the "matched pairs" should follow standard techniques in the economics literature.

4. For each newspaper/TV pair (both cross-owned and non-cross-owned), determine whether the outlets exhibited similar or divergent slants in covering a particular national political event. Develop a method for evaluating and scoring the slant of each newspaper and TV station.

5. Use standard economic techniques for analyzing a matched sample to assess whether cross-owned newspaper/TV pairs exhibit more or less viewpoint diversity than non-cross-owned pairs.

D Appendix: Possible authors for studies

- Study 1: Effect of Cross-Ownership on Viewpoint/Diversity Variables

  If it is useful to have more smaller studies rather than one large study, you could break off the radio component (Sweeting or Stromberg would be good choices for that) and/or the political participation component (Waldfogel or Gentzkow would be good choices for that). The people listed below are in order by my preference.

  - A List
    Steven Berry, Yale University
    Austan Goolesbee, University of Chicago
    Ken Hendricks, University of Texas at Austin
    Scott Stern, Northwestern University
  - Past Work/Interest in Media
    Joel Waldfogel, University of Pennsylvania
    Philip Napoli, Fordham University
    Steve Wildman, Michigan State University
    Matt Gentzkow, University of Chicago
    David Waterman, Indiana University
    Andrew Sweeting, Northwestern University
    David Stromberg, University of Stockholm

- Study 4: Viewpoint Diversity in Cross-Owned Newspapers and Television Stations

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Consumers Union
Nonprofit Publisher of Consumer Reports

CFA Consumer Federation of America

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December 4, 2007

The Honorable John Dingell
Chairman, Committee on Energy & Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Joe Barton
Ranking Member, Committee on Energy & Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Dingell & Ranking Member Barton:

We offer this letter for the official record of the hearing on "Oversight of the Federal Communications Commission: Media Ownership" conducted by the Subcommittee on Telecommunications and the Internet. This is the outline of a response to Chairman Kevin Martin's latest proposal to relax media ownership rules by three of the largest groups representing consumers on media policy issues.

Despite Chairman Martin's apparent effort to propose a compromise modification of the newspaper-broadcast cross-ownership ban, fundamental flaws in the Commission's data gathering, administrative procedures and ambiguities in the plan make it impossible for us to see how this proposal could serve the public interest goals of promoting diversity, competition and meaningful local and minority programming opportunities. Unless Chairman Martin remedies procedural flaws, eliminates dangerous and vague exceptions, and thoroughly expands meaningful minority ownership and local programming needs, his plan will not serve the public interest or meet minimum legal fairness requirements for FCC rules.

On November 13, 2007, Chairman Kevin Martin offered the public a proposal to relax the newspaper-broadcast cross-ownership rule. He did so outside the normal channels of agency procedure, publicizing the proposal instead through a press release and an OpEd in the *New York Times*.[1] The proposal and the time table for public comment were not conducted using standard Commission process, nor were they published in the Federal Register or put out on Public Notice. The Chairman declared that he would permit 30 days for public comment, which would be due on December 11th. Immediately thereafter, the "sunshine rules" would apply in advance of a December 18th vote and the public would have no further opportunity to comment or to reply to the comments of other stakeholders.

We believe this process is fundamentally inadequate and runs at cross-purposes with the public interest as a simple matter of proper review and consideration. The process used to put the proposal out can in no way replace a proper opportunity to comment on an actual proposed rule. Indeed, the act of the Chairman putting out a proposed rule in an OpEd rather than in a Notice of Proposed Rulemaking smacks of abuse of administrative process, which has typified this proceeding for the past five years. The process fouls committed by this agency on everything from data collection to research agendas to peer review are legion. We applaud

[1] Kevin J. Martin, "The Daily Show," New York Times, Nov. 13, 2007, Available at http://www.nytimes.com/2007/11/13/opinion/13martin.html; Federal Communications Commission, "Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule," News Release, Nov. 13, 2007, Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278113A1.pdf.

your leadership in launching an Oversight & Investigations Subcommittee inquiry into these questionable practices and trust that oversight will begin to correct these problems. It is our view that a December 18th vote on media ownership rules—as proposed by the Chairman—is not in the public interest.

Beyond our procedural concerns, the Chairman's proposal to allow case-by-case review of newspaper –TV mergers in all media markets suffers from a number of critical infirmities. The benefits he claims for it in his OpEd are not demonstrated in the record. The assertions that cross-owned combinations produce more news and that they benefit the financial viability of the newspaper business are simply not borne out by the facts and in no way justify reducing the diversity of viewpoint in our community. Our analysis shows that long-term cross ownership situations do not increase the amount of news in the market as a whole, or even by the individual station, and the stations tend to slant the news they produce. We note that both broadcast stations and newspapers (to the extent the Commission even has jurisdiction over these entities) continue to be very profitable businesses that do not deserve a bail out at the expense of the public interest. Further, there has never been any explanation for how the checks and balances provided by independent voices in different local media will be replaced in consolidated markets. The idea that the Internet is a suitable substitute for local news and original reporting doesn't pass even the lowest evidentiary bar. These are the central issues in setting the limits on cross ownership. Chairman Martin's proposal does not meet any of these public interest tests.

It is notable that the new proposal appears to permit media concentration only in the largest markets. However, this facial difference from the proposal of the previous FCC (which would have swept away ownership limits in all but the smallest markets) does not appear to hold up under scrutiny. Those mergers that are not permitted presumptively would be subject to a four part test. The criteria it proposes to use to ensure that mergers do not harm the public interest are vague and unspecified, and therefore unlikely to afford protection from harm. Of greatest concern, perhaps, is the fact that this new four part test could possibly be met almost entirely with unilateral assertions from merging companies ("Yes, we will do more news after consolidation." "Yes, we are having financial difficulties."). Effectively, this new waiver standard could permit waivers in most markets in the country.

Finally, we look in vain for any mention of minority ownership in this proposed rule, despite the fact that both the Congress and the Courts have repeatedly asked the Commission to address the issue. The agency's record on the issue of minority broadcast ownership can best be described as one of willful neglect. People of color own just 3 percent, and women just 5 percent of all TV stations, even though those groups make up 35 percent and 51 percent of the U.S. population, respectively. Sadly, those striking numbers had to be compiled by Free Press because the commission has never conducted an accurate census of minority owners. The FCC has clear statutory and moral obligations to address the woefully inadequate levels of minority and women-owned broadcast outlets before it moves forward with any further changes in its media ownership rules.

For this proposal to be worthy of consideration by the public and the Congress, the FCC should first correct its process problems and complete the record with regard to localism and minority ownership. From there, if the Chairman is determined to press forward quickly, it is imperative that strong limits on media mergers are preserved with very narrow exceptions based on important public policy goals that would prevent the most dangerous consolidation that could harm our democracy. Among those provisions that would be a starting place for consideration, the Commission should maintain the top four-firm exclusion concept as a hard line and impose a high standard with regard to other mergers, eliminating the loose waiver process. To the extent that a newspaper-TV combination will add news production to a TV station that has not produced local news during the period of its license (as opposed to merely adding news to an outlet that already does news), it should raise

the merits for its consideration. The Commission should study the impact of top market mergers on minority owners and the quantity/quality of local news to determine the economic impact at the market level.

To prevent excessive concentration, the FCC should adopt a ten voice test – which is consistent with the DOJ/FTC *Merger Guidelines* for the threshold where a market is defined as unconcentrated (more than 10 voices). The voice count should be based on a measure of market concentration that reflects all types of media outlets, their audiences and their relative contribution to the overall media market place. Only by adopting such an approach to counting of voices will the FCC ensure that its market analysis reflects the reality of media markets and achieves the public policy goal of promoting "the widest possible dissemination of information from diverse and antagonistic sources." Within this conceptual frame, the Commission should adhere strictly to the thresholds of impermissible concentration in the *Merger Guidelines.*

The current Martin plan will not serve the public interest or meet minimum legal fairness requirements for FCC rules. We therefore call on Congress to make sure that the FCC addresses all of these concerns before promulgating new media ownership rules.

Sincerely,

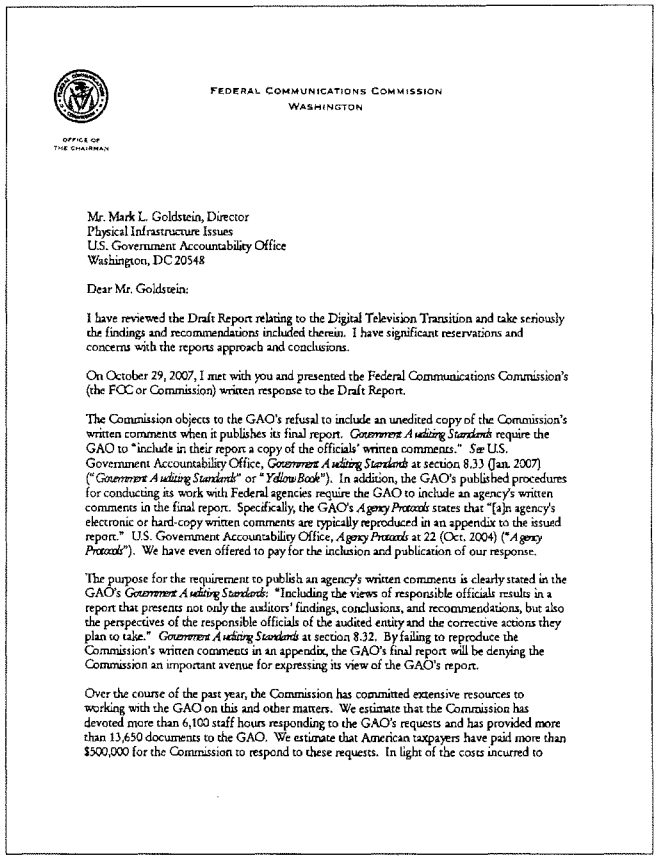
Gene Kimmelman
Vice President for Federal and
International Policy
Consumers Union

Mark Cooper
Research Director
Consumer Federation of America

Ben Scott
Policy Director
Free Press

cc: House Energy and Commerce Committee members
Federal Communications Commissioners

Appendix III: Federal Communications Commission Response



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

Mr. Mark L. Goldstein, Director
Physical Infrastructure Issues
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Goldstein:

I have reviewed the Draft Report relating to the Digital Television Transition and take seriously the findings and recommendations included therein. I have significant reservations and concerns with the reports approach and conclusions.

On October 29, 2007, I met with you and presented the Federal Communications Commission's (the FCC or Commission) written response to the Draft Report.

The Commission objects to the GAO's refusal to include an unedited copy of the Commission's written comments when it publishes its final report. *Government Auditing Standards* require the GAO to "include in their report a copy of the officials' written comments." *See* U.S. Government Accountability Office, *Government Auditing Standards* at section 8.33 (Jan. 2007) ("*Government Auditing Standards*" or "*Yellow Book*"). In addition, the GAO's published procedures for conducting its work with Federal agencies require the GAO to include an agency's written comments in the final report. Specifically, the GAO's *Agency Protocols* states that "[a]n agency's electronic or hard-copy written comments are typically reproduced in an appendix to the issued report." U.S. Government Accountability Office, *Agency Protocols* at 22 (Oct. 2004) ("*Agency Protocols*"). We have even offered to pay for the inclusion and publication of our response.

The purpose for the requirement to publish an agency's written comments is clearly stated in the GAO's *Government Auditing Standards*: "Including the views of responsible officials results in a report that presents not only the auditors' findings, conclusions, and recommendations, but also the perspectives of the responsible officials of the audited entity and the corrective actions they plan to take." *Government Auditing Standards* at section 8.32. By failing to reproduce the Commission's written comments in an appendix, the GAO's final report will be denying the Commission an important avenue for expressing its view of the GAO's report.

Over the course of the past year, the Commission has committed extensive resources to working with the GAO on this and other matters. We estimate that the Commission has devoted more than 6,100 staff hours responding to the GAO's requests and has provided more than 13,650 documents to the GAO. We estimate that American taxpayers have paid more than $500,000 for the Commission to respond to these requests. In light of the costs incurred to

respond to the GAO's requests, as well as the GAO's standards cited above, the GAO should publish the agency's unedited written comments in its final report.

Finally, we note that, should the GAO continue to refuse to publish the Commission's written comments, *Government Auditing Standards* require the GAO to modify its published statements that it performed its engagement in compliance with *Government Auditing Standards*. Specifically, the GAO's *Yellow Book* states that "[w]hen auditors do not comply with all applicable [government auditing] requirements, they should include a modified [government auditing] compliance statement in the audit report." *See Government Auditing Standards* at section 8.31. The GAO should inform readers of this report that it did not comply with all applicable *Government Auditing Standards* in this instance.

Sincerely,

Kevin J. Martin

FCC
WRITTEN RESPONSE
TO THE
GAO REPORT ON DTV

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I. TECHNICAL GOALS

General Overview of Technical Goals: One of the most important responsibilities of the Commission, with respect to the nation's transition to digital television, has been to shepherd the transformation of television stations from analog broadcasting to digital broadcasting. Currently, 95% of all full power television stations (1,636 stations) are broadcasting in digital, and over 99% of stations (1,706 stations) have been assigned a final post-transition channel for operations. **[Note: The GAO's Draft Report incorrectly states that "approximately 90 percent" of television stations are providing a broadcast signal. (p. 14)]** It has taken a series of complicated steps, spanning over two decades, in order to get to this point. First, the Commission worked with industry leaders and with other countries to adopt a standard for digital operations. Second, the Commission planned the process for recovering analog spectrum, with a focus on jump starting digital transmissions. Accordingly, the Commission established eligibility for and assigned digital channels, with this process ultimately resulting in a final post-transition channel for each broadcast station throughout the country for post-transition operations. Third, the Commission established construction deadlines for stations to build and operate pre-transition digital facilities. The Commission stayed very involved with this process by providing oversight for the buildout of pre-transition facilities. The Commission then turned to work on post-transition operations, and established mechanisms and deadlines for stations to elect and build final, post-transition facilities. This entire process has involved the Commission processing over 10,000 DTV modification applications, license applications and special temporary authority authorizations to expedite digital build out. The process has also involved intricate international negotiations with Mexico and Canada. Now that the Commission has adopted the final DTV Table of Allotments, which assigns virtually every full power television station a final channel for post-transition digital operations, the Commission is working on any last technical steps that can help broadcasters successfully transition their stations to full digital operations.

A. Technical Goal 1: Develop Technical Standard for Digital Broadcast Operations

Overview: Establishing a standard for digital operations was a critical first step in ushering in the era of digital television transmissions. Developing a technically excellent DTV service that would most efficiently meet the needs of terrestrial broadcasters, cable television operators and consumers required the creation of a standard. The standard was the culmination of years of collaboration between the Commission and various affected industries, including the computer, broadcast, and consumer electronics industries. The certainty provided by the standard was necessary for broadcasters and equipment manufacturers to move forward towards realizing the benefits of digital broadcasting more quickly.

Performance and Progress:

Milestone 1: Establish final standard for digital operations (COMPLETED 1996)

1. Timeframes and Steps:

- Initiate a proceeding to consider adoption of a final DTV standard (COMPLETED 1987): The Commission started the process for establishing the final standard in 1987, by opening a proceeding to explore the issues posed by advanced television systems (ATV, later known as DTV).[1] The Commission examined a broad range of possible ATV technologies then under development, and considered the numerous and complex spectrum allocation, compatibility, and policy issues presented by these technologies.

- Collaborate with industry in setting a standard (COMPLETED 1990): The Commission appointed a 25-member advisory panel – the Advisory Committee on Advanced Television Service (ACATS) – charged with providing recommendations concerning technical, economic and public policy issues associated with the introduction of ATV service.[2] The ACATS announced an open competition for the development of the best advanced television standard. Until June 1990, the Japanese MUSE standard – based on an analog system – was the front-runner among the more than 23 different technical concepts under consideration. Then an American company, General Instrument, demonstrated the feasibility of a digital television standard.

- Decide critical issues affecting implementation of a DTV standard (COMPLETED 1992): In 1990, in the first of a long series of FCC DTV decisions, the Commission announced that it intended to select a simulcast high definition television system for ATV service, and declared that the new ATV standard must be able to provide a genuine HDTV signal with at least twice the resolution of existing television images and must be capable of being "simulcast" on different channels.[3] The Commission stated that the record indicated that simulcast systems offer the potential for significantly greater improvement in the quality of television picture and audio performance than NTSC compatible ("EDTV") systems and are not constrained by the limitations inherent in the NTSC technology. In addition, the Commission determined it would not give further

[1] Notice of Inquiry, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, MM Docket No. 87-268, 2 FCC Rcd 5125 (1987).

[2] The Advisory Committee, chaired by former FCC Chairman Richard Wiley, consisted of a twenty-five member parent committee, a Steering Committee, and three Subcommittees. *See* Fourth Report and Order, MM Docket No. 87-268, 11 FCC Rcd 17771, 17773 (1996).

[3] *First Report and Order*, MM Docket No. 87-268, 5 FCC Rcd 5627, 5628 (1990).

consideration to transmission systems that require additional spectrum to augment the existing 6 MHz channel used for broadcast television.

With respect to the ATV standard, the Commission decided: (1) to adopt a 100% simulcasting requirement at the earliest appropriate point; (2) to condition selection of an ATV system on a winning proponent's adoption of reasonable and nondiscriminatory patent licensing policies; (3) to encourage the ongoing work of the Advisory Committee on compatibility issues; and (4) to direct the Advisory Committee to address new audio developments as well as proposals for flexible apportionment of audio and data selection of a system.[4]

- Evaluate proposals for standards (COMPLETED 1993): Objective testing of six proponent DTV systems began at the Advanced Television Test Center (ATTC), a private, non-profit organization funded by broadcasting and electronic industry companies, in July 1991. Co-located with the ATTC was the ATV facility of the Cable Laboratories (CableLabs), a consortium of cable television system operators that carried out the cable portions of ACATS' lab and field testing program. Subjective video tests of ATV systems were conducted at the Advanced Television Evaluation Laboratory in Ottawa, Canada. Audio tests were conducted by Westinghouse Science and Technology Center. In addition, field testing was conducted following completion of initial testing. In 1993, the ACATS reported that a digital HDTV system was achievable but that all four competing digital systems then under consideration were deficient in some way.[5] This finding prompted the remaining competitors to form a coalition, called the "Grand Alliance" to pool their expertise and work together with ACATS.[6] The former competitors agreed in 1993 to jointly develop a new standard that would incorporate the best of each system.

- **Final step** - Adopt final standard for digital television transmissions. **(ACHIEVED 1996):** In 1995, after extensive testing, ACATS formally recommended a set of prototype DTV protocols – the Grand Alliance standards – to the Commission. The members and staff of the Advanced Television Systems Committee (ATSC) considered which elements of the Grand Alliance broadcast system might require action by the Commission and which portions should be voluntary. The ATSC DTV Standard was

[4] Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340 (1992).

[5] ATV System Recommendation of the FCC Advisory Committee on Advanced Television Service (February 24, 1993).

[6] The members of the HDTV Grand Alliance were AT&T, General Instrument Corporation, Massachusetts Institute of Technology, Phillips Electronics of North America, Thomson Consumer Electronics, The David Sarnoff Research Center, and Zenith Electronics Corporation. *See* Fourth Report and Order, 11 FCC Rcd at 17774, n. 10.

then drafted by specialist groups divided into five specific areas: video, audio, transport, RF/transmission, and the receiver characteristics. ATSC is comprised of members from television networks, motion picture and television program and producers, trade associations, television and other electronic equipment manufacturers and segments of the academic community. On December 26, 1996, the Commission adopted the final standard for digital operations.[7] The standard allows transmission of one or two High Definition Television programs, four, five or more Standard Definition Television programs at a visual quality better than the current analog signal, many CD-quality audio signals and the delivery of large amounts of data. As compression technology improves, broadcasters are able to offer even more programming and other content within the 6 MHz for which they are licensed.

2. Collaboration Between Public and Private Sector Organizations: Initial steps towards achieving a DTV standard required input from affected industries. The Commission collaborated with the broadcast industry, including trade organizations, networks, station groups, and individual stations. As noted above, the Commission appointed a 25-member advisory panel – the Advisory Committee on Advanced Television Service (ACATS) – charged with providing recommendations concerning technical, economic and public policy issues associated with the introduction of ATV service. The Advisory Committee, chaired by former FCC Chairman Richard Wiley, consisted of a twenty-five member parent committee, a Steering Committee, and three Subcommittees.[8] Members of ACATS included leaders of the broadcast, cable, and engineering industries. By some estimates, according to ACATS, over one thousand individuals contributed to the work of the Advisory Committee and its subcommittees, working parties, and panels.[9] The efforts of the Advisory Committee, ATSC, and other industry parties had significantly advanced the Commission's ability to assess the merits of the various technical concepts. Furthermore, the Commission later directed the Advisory Committee to monitor developments in Coded Orthogonal Frequency Division Multiplex technology and report to the Commission as appropriate. In addition to these collaborative efforts, we have obtained significant input from these and other parties and individuals that file Comments in our many rulemaking proceedings.[10]

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[7] Fourth Report and Order, 11 FCC Rcd 17771 (1996). The standard allows transmission of one or two High Definition Television programs, four, five or more Standard Definition Television programs at a visual quality better than the current analog signal, many CD-quality audio signals and the delivery of large amounts of data. As compression technology improves, broadcasters are able to offer even more programming and other content within the 6 MHz for which they are licensed. Our rules and proceedings keep pace with these changes in technology through Periodic Reviews of the DTV transition.

[8] *See* Fourth Report and Order, MM Docket No. 87-268, 11 FCC Rcd 17771, 17773 (1996).

[9] Fifth Further Notice of Proposed Rule Making, MM Docket No. 87-268, 11 FCC Rcd 6235, 6237 (1996).

[10] *See* the Advanced Television (now known as DTV) Rulemaking Docket 87-268 (First through Eighth

3. Reporting Requirements:
   Under the direction of ATSC, the DTV Standard continues to evolve in response to ongoing technical developments. While there is no formal requirement that ATSC report to the Commission on developments regarding the standard, the Commission staff meets frequently with ATSC representatives and remains apprised concerning developments in the standard. As the standard evolves, the Commission considers whether aspects of the standard should be incorporated in the Commission's rules.

4. Mitigation of Risk:
   The television industry and technology continue to change at a rapid pace. The Commission monitors ongoing developments closely and evaluates when and if its rules should be revised to incorporate changes in the DTV Standard. For example, the Commission recently adopted the ATSC Program System and Information Protocol (PSIP) standard into its rules as part of its second DTV periodic review proceeding. The Commission recognized the utility that the ATSC PSIP Standard offers for both broadcasters and consumers. PSIP is data that is transmitted along with a station's DTV signal that tells DTV receivers information about the station and what is being broadcast. PSIP provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. PSIP identifies both the DTV channel and the associated NTSC channel and enables DTV receivers to associate the two channels, thereby making it easy for viewers to tune to the DTV station even if they do not know the channel number. In addition, the Commission is monitoring developments in the area of V-chip functionality to ensure that V-chip is available in the digital world to assist parents in selecting appropriate television programming for children.

B. Technical Goal 2: Pre-Transition DTV Channel Assignments/Allotments

Overview: Once the DTV standard was established, the Commission was able to start the planning process for recovery of the valuable analog spectrum, and move forward with the next steps for the transition. The Commission needed to act quickly to create rules related to, and establish, pre-transition DTV channel assignments and allotments. Such assignments and allotments were the foundation for enabling stations to construct their pre-transition digital facilities.

Notices of Proposed Rulemaking and First through Seventh Reports and Orders), and the series of DTV Periodic Reviews (First, Second, and Third, Dockets 00-39, 03-15, and 07-91, respectively).

Performance and Progress:

Milestone 1: Establish eligibility for digital channels (COMPLETED 1992)

1. Timeframes and Steps:

- Initiate proceeding to evaluate eligibility criteria for pre-transition channel assignments and allotments (COMPLETED 1992): The Commission initiated a proceeding to seek comment on a number of issues relating to the assignment and allotment of pre-transition DTV channels, including (1) whether to assign an existing broadcaster's ATV channel the same call sign as its NTSC channel; (2) whether to exercise the Commission's authority under the All Channel Receiver Act to require manufacturers to produce receivers capable of both NTSC and ATV reception; and (3) whether to permit the use of ATV channels for ancillary purposes. [11]

- Issue Order setting forth eligibility criteria (COMPLETED 1992): The Commission issued an Order to (1) limit initial eligibility for ATV frequencies to existing broadcasters; (2) use vacant noncommercial reserved channels only when no feasible alternative exists for assigning ATV channels to existing broadcasters and to leave vacant noncommercial allotments without an ATV channel pair only when there is no other practicable way to award an existing broadcaster an ATV channel; (3) maintain the secondary status of low-power television service stations vis-à-vis new ATV operations; and (4) notify broadcasters that when ATV becomes and is designated as the prevalent medium, they will be required to "convert" to ATV, i.e., surrender one of two broadcast channels and cease broadcasting in NTSC.[12]

Milestone 2: Provide existing licensees with a channel for digital service that replicates the station's analog service area and provide for maximization of facilities (COMPLETED 1997)

1. Timeframes and Steps:

- Adopt a simulcasting schedule (COMPLETED 1992): The Commission recognized that a 100% simulcasting requirement should be adopted at the earliest appropriate time. Accordingly, the Commission (1) adopted a 50% simulcasting requirement, to be imposed one year after the six-year application/construction period ends, and a 100% simulcasting requirement to be imposed three years after the application/construction

[11] Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340 (1992).

[12] Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340 (1992).

period closes; and (2) adopted a simulcasting definition.[13]

- Solicit comment on allocation of pre-transition digital channels (COMPLETED 1996): The Commission solicited comment on (1) how to allocate digital service areas; (2) the most appropriate and technically suitable spectrum allocation; (3) how to allocate channels based on preferences and negotiated agreements.[14]

- Grant broadcasters flexibility in the use of their digital channels (COMPLETED 1997): The Commission allowed broadcasters to put together the best mix of services and programming to stimulate consumer acceptance of digital technology and the purchase of digital receivers. Furthermore, we allowed broadcasters the flexibility to respond to the demands of their audience by providing ancillary and supplementary services that do not derogate the mandated free, over-the-air (OTA) program service.[15]

- Eligibility and licensing requirements (COMPLETED 1997): The Commission limited eligibility for DTV licenses to existing full-power broadcasters and concluded that NTSC and DTV facilities should be licensed under a single, paired license.[16]

- **Final step** - Adopt a final DTV Table of Allotments for paired channels **(ACHIEVED 1997):**[17] Through the DTV table, the Commission accommodated all eligible existing broadcasters, replicated existing service areas and ensured sound and efficient spectrum management. Those eligible for a DTV channel included parties licensed to operate a full service television broadcast station and those holding a construction permit for such a station.

- The DTV Table minimized all unavoidable interference to both existing analog TV and new DTV service. In addition, the DTV Table of

[13] Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making, 7 FCC Rcd 6924 (1992).

[14] Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996).

[15] DTV Table of Allotments: In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, MM Docket No. 87-268, Fifth Report and Order, 12 FCC Rcd. 12, 809 (1997).

[16] Fifth Report and Order, 12 FCC Rcd. 12, 809 (1997).

[17] In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Report and Order, 12 FCC Rcd. 14, 558 (1997). (The Fifth and Sixth Report and Orders were adopted on the same day; however, the Sixth Report and Order adopted the Table of Allotments for digital television).

Allotments provided interference protection for more than 100 new stations for which applications had been filed and provided 30 new DTV allotments for stations that had begun operation or received construction permits since it issued its draft DTV Table of Allotments.

- The Commission indicated that the DTV Table was based on a minimum power level of 50 kW and a maximum power level of 1000 kW. It stated that a 50 kW minimum power level would ensure that stations had a sufficient service area to compete effectively in the provision of DTV services and was consistent with the maximization concept supported by the industry. It also stated that 1000 kW was sufficient to provide a very high degree of service replication for almost all stations. The Commission indicated that this power level allowed for a more equitable distribution of opportunities for maximization of service areas to full service DTV stations of all sizes.

- The Commission set forth additional technical criteria for the allotment of additional DTV frequencies and the modification of allotments included in this initial Table. For new DTV allotments, the Commission chose to use the minimum geographic spacing requirements pursuant to Section 73.623(d) of its rules without undertaking an interference analysis. The Commission chose this approach to give rulemaking proponents an opportunity to select any transmitter site and the opportunity to expand and improve its subsequent facility. For modification of an allotment, the Commission chose an analysis based on interference pursuant to Section 73.623(c) of the rules.

2. Collaboration Between Public and Private Sector Organizations:
Initial steps towards technical goals and milestones require input from affected industries. The Commission has collaborated with the broadcast industry, including trade organizations, networks, station groups, and individual stations. We are continuing this collaboration, which is essential to assuring that our actions are appropriate for real world circumstances, and, equally important, that our actions are clear to those industries that must follow them. In addition to these collaborative efforts through outreach, the Commission has obtained significant input from these and other parties and individuals that file Comments in our many rulemaking proceedings.[18]

3. Reporting Requirements:
The Commission has many reporting and tracking requirements that apply, in general, to television stations. For example, we established timeframes for television licensee and permittee authorizations for construction of digital

[18] *See* the Advanced Television (now known as DTV) Rulemaking Docket 87-268 (First through Eighth Notices of Proposed Rulemaking and First through Seventh Reports and Orders), and the series of DTV Periodic Reviews (First, Second, and Third, Dockets 00-39, 03-15, and 07-91, respectively).

facilities.[19] In addition, stations must meet construction permit deadlines for building their pre-transition and post-transition digital facilities or must request extensions of time to construct based in compliance with the rules.[20] The Second DTV Periodic Report and Order established "use or lose" deadlines for stations to complete their pre-transition facilities.[21]

4. Mitigation of Risk:
As part of the Third DTV Periodic Review, the Commission has proposed a variety of deadlines and procedures to ensure that broadcasters meet the goal of completing construction of their post transition digital facilities by the statutory deadline. The Commission is drafting the Report and Order in that proceeding and will adopt all measures necessary to ensure that service to viewers is not disrupted, including providing broadcasters sufficient flexibility to allow them to make the switch to digital. The Commission recognizes, however, that it is possible that some stations will not be able to serve their entire service areas in digital by the cut-off date. For example, weather problems, particularly in northern states, could make changes to transmission facilities very difficult in the winter months leading up to February 17, 2009. Because of the unambiguous statutory provision requiring that full power analog television stations cease transmission by that date, however, the Commission cannot extend that deadline for any stations that might not have fully built their digital facilities. We note, however, that low power analog television broadcasters are not required to go dark on February 17, 2009. As a result, over-the-air only viewers that fail to take the steps necessary to view digital signals in areas served by low power television (LPTV) stations will, at a minimum, be able to access analog low power broadcasting service and the beneficial services it provides, such as emergency alert service (EAS). We expect this to be particularly beneficial in rural areas, where many LPTV stations are located, and where some full service stations might face

[19] *See, e.g., DTV Build-Out; Applications Requesting Extension of the Digital Television Construction Deadline*, Order, 22 FCC Rcd 9789 (2007) ("*Construction Deadline Extension Order*"). There were a total of 192 stations seeking a waiver. For 102 stations whose pre-transition DTV channel is the same as the station's post-transition DTV channel, the Commission granted these stations a waiver and gave them an additional six months from the release date of the *Use or Lose Order* in which to complete construction. For 38 stations whose pre-transition DTV channel is different from the station's post-transition channel, the Commission granted these stations a waiver and gave them until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction. For 45 stations that faced unique technical challenges preventing them from meeting the applicable replication or maximization requirements exactly, the Commission granted their waiver requests and extended their deadlines until February 17, 2009 – i.e. the end of the DTV transition. For the remaining 7 stations, the Commission denied their "use or lose" waiver requests and removed the interference protection to the unused portion of their associated coverage area.

[20] 47 C.F.R. §§ 73.624(d), 73.3598.

[21] Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 19 FCC Rcd 18279 (2004) ("Second DTV Periodic").

particularly difficult challenges in transitioning to digital. In addition, to the extent that standards associated with digital transmission, such as the ATSC standard, are amended over time to enable technical improvements and innovation, the Commission's continuing DTV Periodic Review proceedings will account for such changes.

C. Technical Goal 3: Construction of Pre-Transition DTV Facilities

Overview: Pre-transition assignments and allotments of digital channels enabled stations to construct their pre-transition digital facilities. The Commission gave broadcasters flexibility in the use of their digital channel. Such flexibility allows them to put together the best mix of services and programming to stimulate consumer acceptance of digital technology and the purchase of digital receivers. These early facilities were essential to the transition by providing digital broadcast programming to encourage consumers, and in particular, early adopters, to purchase digital televisions. This step was similarly critical for manufacturers to provide a market for their early digital televisions. The DTV construction schedule adopted by the Commission provided for varying construction deadlines based on the size of the market and type of station, with all stations required to construct by May 1, 2003.[22] To aid the launch of digital services, the Commission required the rapid construction of digital facilities by stations in the top thirty television markets affiliated with the top four television networks in order to maximize early exposure of households to the benefits of DTV. By focusing on network-affiliated stations, the Commission required those most able to bear the risks of introducing digital television to proceed most quickly. To date, all network-affiliated stations in the top thirty markets are operating DTV facilities. In the remaining markets, 94% of commercial stations and 95% of noncommercial stations are operating DTV facilities. With respect to the remaining non-operational DTV stations, in an Order released in May 2007, the Commission addressed applications filed by stations for extensions of time to construct DTV facilities.[23]

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[22] Under this schedule, television stations in the 10 largest TV markets and affiliated with the top four television networks (ABC, CBS, Fox, and NBC) were required to build DTV facilities by May 1, 1999. Stations affiliated with those networks in television markets 11 through 30 were required to construct their DTV facilities by November 1, 1999. All other commercial stations were required to construct their DTV facilities by May 1, 2002, and all noncommercial stations were to have constructed their DTV facilities by May 1, 2003. 47 C.F.R. § 73.624(d)(1).

[23] *See, e.g., DTV Build-Out; Applications Requesting Extension of the Digital Television Construction Deadline*, Order, 22 FCC Rcd 9789 (2007) ("*Construction Deadline Extension Order*"). The Commission considered 145 requests for an extension of time to construct a DTV facility. For 107 stations whose pre-transition DTV channel is the same as their post-transition channel, the Commission granted these applications and gave these stations an additional six months from the release date of the *Construction Deadline Extension Order* in which to complete construction. For 29 stations whose pre-transition DTV channel is different from their post-transition channel, the Commission granted these applications and gave these stations until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction. For 4 stations that faced unique technical challenges preventing them from completing construction of their DTV facilities, the Commission granted their extension applications and extended their construction deadlines until February 17, 2009 – i.e., the end of the DTV transition. The Commission denied 2 stations' applications but permitted them to continue to operate their licensed facilities. Finally, the Commission denied 3 stations' applications, admonished these stations for their continuing failure to timely construct, and afforded them additional time to comply with the DTV construction rule.

Performance and Progress:

Milestone 1: Establish construction deadlines for stations to build and operate pre-transition DTV stations (COMPLETED 2001)[24]

1. Timeframes and Steps:

- Fine tune timing for construction of pre-transition DTV stations (COMPLETED 1992): The Commission (1) extended the application deadline to three years after the time that a DTV Allotment Table or a DTV standard is effective, whichever is later, and permitted a total of six years for both application and construction to be completed; (2) provided for further review of this presumptive schedule; (3) declined to modify its policy regarding the secondary status of low power television service stations; and (4) adhered to its decision that a firm date for conversion for all broadcasters must be established.[25]

- Hasten construction by staggering build-out responsibility (COMPLETED 1997): To aid the launch of digital services, the Commission required rapid construction of digital facilities by network-affiliated stations in the top markets in order to maximize early exposure of households to the benefits of DTV. Our focus on network-affiliated stations required those most able to bear the risks of introducing digital television to proceed most quickly.[26]

- Adjust build-out timing to reflect experience while remaining on-track for transition (COMPLETED 2001): The Commission adopted the First DTV Periodic Review on November 8, 2001 in order to implement any mid-course corrections necessary to ensure the success of that conversion.[27] The Commission accomplished two major goals in the First Periodic Review. The first goal was to provide a more graduated approach to

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[24] Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 16 FCC Rcd 5946 (2001) ("First DTV Periodic Report and Order"), on recon., 16 FCC Rcd 20594 (2001) ("First DTV Periodic MO&O ").

[25] Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making, 7 FCC Rcd 6924 (1992).

[26] *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 12 FCC Rcd 12809, 12856 (1997) ("*Fifth Report and Order*"), *on recon.*, 13 FCC Rcd 6860 ("*Service Reconsideration Order*"), *on further recon.*, 14 FCC Rcd 1348 (1998) ("*Second MO&O on Recon. of the Fifth and Sixth R&Os" or "DTV Second MO&O*"), *recon. dismissed, Order*, 14 FCC Rcd 11572 (1999), *recon. dismissed, Order*, 15 FCC Rcd 4760 (2000).

[27] Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 16 FCC Rcd 5946 (2001), on recon., 16 FCC Rcd 20594 (2001).

providing DTV service. The second goal was to maximize the number of DTV stations providing service to at least all consumers in their community of license. To this end, the Commission relaxed its channel election, build out and replication deadlines. It temporarily deferred requirements that commercial stations with both analog and digital channel assignments within the DTV core (channels 2-51) elect by December 31, 2003 (December 31, 2004 for non-commercial stations) the channel that they would use for their post-transition digital channel. The Commission noted that a more graduated approach would give stations more time to increase power and gain experience at these higher power levels before having to choose which of their two channels would provide optimal DTV service. The Commission allowed broadcasters initially to build lower powered, and therefore less expensive, DTV facilities, and retain the right to expand their coverage area as the digital transition progressed. The Commission also allowed stations to construct initial DTV facilities designed to serve at least their communities of license, while still retaining DTV interference protection to provide full replication at a later date. It temporarily deferred its earlier requirement that commercial broadcasters replicate their entire current grade B NTSC analog service area with their DTV signal by December 31, 2004.

- Establish replication and maximization deadlines (COMPLETED 2004): The Commission established two deadlines by which stations were expected to either replicate or maximize DTV service on their current (pre-transition) DTV channel or lose interference protection to the unserved areas on that channel.[28] By July 1, 2005, the top four network affiliates in the top 100 markets were required to fully replicate or maximize if they will remain on their DTV channel after the transition. The Commission has consistently recognized that the top four network stations in the top 100 markets are best able to take the lead in transitioning to digital service while the particular needs of smaller market and non-commercial broadcasters are addressed by setting later deadlines for the smaller market, smaller broadcasters that are more likely to lack the financial resources of the larger stations. This schedule also recognized the different needs of stations that are moving to a new channel after the transition versus those that are remaining on the same channel that they used for pre-transition digital service. Therefore, top four affiliates in the top four markets that were moving to another channel post-transition, were required to serve at least 100% of their replication service population by July 1, 2005. By July 1, 2006, all other stations were required to fully replicate and maximize if they will remain on their current DTV channel after the transition. On May 17, 2007, the Commission addressed requests for extensions of time to construct DTV facilities and/or waivers of the deadline by which stations must build DTV

[28] *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18311-18319 ¶¶ 72-87.

facilities in order to retain the ability to carry over interference protection to their post-transition channel (so-called "use or lose" waivers).[29]

- Establish mechanism and procedures for low power television conversion to digital (COMPLETED 2004): The Commission continued the secondary status of low power TV and TV translator stations, and adopted a number of administrative and technical measures to minimize the impact of DTV implementation on low power operations.[30] In 2004, the Commission concluded that LPTV and translator stations ultimately must convert to digital by a date the Commission will establish in a future proceeding.[31] Subsequently, in the DTV Act of 2005, Congress did not apply the February 18, 2009 full-power analog shutoff date to LPTV and TV translator stations.[32] The Commission has adopted rules for digital low power television and television translator stations to construct digital facilities and has issued nearly 2000 construction permits for such stations.[33] Some low power and translator stations are already operating using digital technology. However, most LPTV and translator stations will convert to digital technology after full-power stations have completed their transition.

- Establish timing of low power digital transition (INITIATED AND IN PROGRESS): The last issue remaining with respect to low power stations is to consider a transition deadline. A draft item is in progress.

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[29] DTV Build-Out; Applications Requesting Extension of the Digital Television Construction Deadline, Order, 22 FCC Rcd 9789, 9805 ¶¶82-87 (2007) ("Construction Deadline Extension Order"); and DTV Build-Out; Requests for Waiver of July 1, 2005 and July 1, 2006 "Use or Lose" Deadlines Requests for Waiver of the August 4, 2005 "Checklist" Deadline, Order, 22 FCC Rcd 9750, 9764 ¶¶79-115 (2007) ("Use or Lose Order").

[30] DTV Sixth Report and Order, 12 FCC Rcd. at 14652-7. Such measures included allowing an LPTV station that is "displaced" by a full-power station to file an application for a new channel (displacement application) and for such application to be treated as a minor change and not subject to competing applications. In addition, the Commission eliminated the requirement that LPTV stations comply with certain interference rules. Finally, the Commission increased the permissible power for LPTV stations in order to facilitate the collocation of LPTV and full-power television facilities and eliminate interference between these types of stations.

[31] Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03-185, Report and Order, ("LPTV Order") 19 FCC Rcd. 19331 (2004).

[32] Digital Television and Public Safety Act of 2005 ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA") (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)). DTV Act § 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power stations.

[33] *See* LPTV Order, 19 FCC Rcd. 19331.

Milestone 2: Oversee station buildout of pre-transition facilities (COMPLETED)

1. Timeframes and Steps:

   - Since 1997, the year we issued the first DTV construction permit, the Video Division has processed 4,881 modification and license applications for DTV facilities; and processed and issued 5,472 DTV special temporary authority (STA) authorizations to expedite digital build out.
     - 1,706 stations (99%) have a DTV construction permit or license.
     - 1,636 stations (95%) are on the air in digital.[34]

2. Collaboration Between Public and Private Sector Organizations:
   Initial steps towards technical goals and milestones require input from affected industries. We have collaborated with the broadcast industry, including trade organizations, networks, station groups, and individual stations. The Commission conducts rulemaking proceedings in accordance with the requirements of the Administrative Procedures Act and the Commission's rules. We propose rules for comment, and review the Comments and Reply Comments and other submissions accordingly.[35] The Commission's rules also allow for ex parte meetings with private sector representatives. In this respect, we have conferred with representatives of the broadcasting industry and collaborated and shared information through panel presentations and distribution and collection of information at private sector conventions and conferences, such as with the NAB, APTS, and MSTV. We are continuing this collaboration, which is essential to assuring that our actions are appropriate for real world circumstances, and, equally important, that our actions are clear to those industries that must follow them.

3. Reporting Requirements:
   We have many reporting and tracking requirements that apply, in general, to television stations. For example, we established timeframes for television licensee and permittee authorizations for construction of digital facilities.[36] In

[34] *See Status Reports on DTV Applications and Buildout Topics* http://www.fcc.gov/mb/video/DTVstatus.html. This data is publicly available and is frequently updated.

[35] *See* the Advanced Television (now known as DTV) Rulemaking Docket 87-268 (First through Eighth Notices of Proposed Rulemaking and First through Seventh Reports and Orders), and the series of DTV Periodic Reviews (First, Second, and Third, Dockets 00-39, 03-15, and 07-91, respectively).

[36] *See, e.g., DTV Build-Out; Applications Requesting Extension of the Digital Television Construction Deadline*, Order, , 22 FCC Rcd 9789 (2007) ("*Construction Deadline Extension Order*"). There were a total of 192 stations seeking a waiver. For 102 stations whose pre-transition DTV channel is the same as the station's post-transition DTV channel, the Commission granted these stations a waiver and gave them an additional six months from the release date of the *Use or Lose Order* in which to complete construction. For 38 stations whose pre-transition DTV channel is different from the station's post-transition channel, the Commission granted these stations a waiver and gave them until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic

addition, stations must meet construction permit deadlines for building their pre-transition and post-transition digital facilities or must request extensions of time to construct based in compliance with the rules.[37] The Second DTV Periodic Report and Order established "use or lose" deadlines for stations to complete their pre-transition facilities,[38] and the Third DTV Periodic NPRM proposes final construction deadlines for stations to complete their post-transition facilities.[39]

4. Mitigation of Risk:
Throughout the process for construction of pre-transition DTV facilities, the Commission has considered how to advance the transition goals while adjusting for the realities of a challenging process. Through our rulemaking procedures, the Commission proposes mechanisms and deadlines, then adjusts them based on Comments received, and then further fine tunes the adopted timeframes to address legitimate issues encountered by broadcasters as they work through the construction process. For example, the Commission recognized that it was appropriate to require the largest stations in the largest markets move first, then the smaller commercial stations, and then the non-commercial stations. The Commission further recognized that not all stations in any category could meet their respective deadline and therefore adopted special rules governing requests for extension from stations building their paired digital facilities (criteria that do not apply to construction of analog facilities). Recognizing that even valid excuses should not delay the transition and delivery of digital broadcasting to viewers, the Commission further adjusted the requirements to establish use-or-lose deadlines. The Commission continues to balance and mitigate risk to broadcasters and the public they serve by establishing and adjusting deadlines and requirements as warranted and appropriate.

D. Technical Goal 4: Transition Broadcast Stations to Final Digital Operations

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Review proceeding in which to complete construction. For 45 stations that faced unique technical challenges preventing them from meeting the applicable replication or maximization requirements exactly, the Commission granted their waiver requests and extended their deadlines until February 17, 2009 – i.e. the end of the DTV transition. For the remaining 7 stations, the Commission denied their "use or lose" waiver requests and removed the interference protection to the unused portion of their associated coverage area.

[37] 47 C.F.R. §§ 73.624(d), 73.3598.

[38] Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 19 FCC Rcd 18279 (2004) ("Second DTV Periodic").

[39] Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07-91, Notice of Proposed Rulemaking, 22 FCC Rcd 9478 (2007) ("Third DTV Periodic Review NPRM").

Overview: In August 2007, the Commission adopted the final DTV table of allotments. This Order provided virtually all (over 99%) of full power television stations across the country with their final channel assignments for broadcasting in digital following the DTV transition. By resolving the remaining questions regarding broadcasters' allotments, the Commission helped ensure that the analog spectrum the broadcasters are vacating will be available as planned by 2009. This finality is important to ensuring a successful auction of this spectrum next year and the timely use of this spectrum for public safety and expanded wireless competition and innovation.

Performance and Progress:

Milestone 1: Establish mechanisms and deadlines for stations to build final post-transition facilities (COMPLETED 2004)

The next major milestone toward the DTV transition came in 2004, when the Commission established the mechanisms and deadlines for stations to elect and build final, post-transition facilities.[40] These steps resulted in the Final DTV Table of Allotments. The Order also furthered the transition by establishing firm deadlines for digital stations to increase their power levels to serve additional viewers or lose interference protection to the un-served areas.

1. Timeframes and Steps:

- Evaluate possible channel assignment procedures (COMPLETED 2004): The Commission worked closely with industry trade association representatives to develop a channel election process that was both consistent with Commission goals and responsibilities and that permitted stations, to the extent possible, to express their preferences for final channel assignments. The channel election process that was adopted in the Second DTV Periodic Review Report and Order was the product of many hours of careful planning by the Commission, evaluation of alternative channel election mechanisms, and discussion with industry representatives. The channel election process required the development of six new channel election forms by the Commission, as well as the development of computer programs and other processes to permit electronic filing of the forms and evaluation of the station parameters elected by licensees. In the end, the channel election process proceeded smoothly and provided stations with the opportunity to help select their channels for final, post-transition DTV operation.

- Commence the final channel selection process (COMPLETED 2004): In November 2004, the Commission began the open channel election process that provided certainty to the marketplace and ultimately resulted in the

[40] Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 19 FCC Rcd 18279 (2004) ("Second DTV Periodic").

Final DTV Table of Allotments.[41] In order to permit broadcasters to express their channel and service area preferences, the Commission employed a multiple step channel election process established by the Commission in the *Second DTV Periodic Report and Order.* Under this process, licensees elected their preferred post-transition channel during one of three rounds. Channel elections that could be approved, as well as "best available" channels selected by Commission staff, were locked in as tentative channel designations (TCDs) and protected against new interference from subsequent channel elections with a strong presumption that a station's TCD would be its channel assignment proposed in the new DTV Table. In order to facilitate the selection of channels and the development of a final DTV Table, prior to the commencement of the first step of the channel election process, the Commission announced a freeze on the filing of certain NTSC and DTV requests for allotment or service area changes.

- Establish deadlines to reach service areas (COMPLETED 2004): The Commission also established firm deadlines for digital stations to increase their power levels to serve additional viewers or lose interference protection to the un-served areas. [42] By July 1, 2005, the top four network affiliates in the top 100 markets were required to fully replicate or maximize if they will remain on their DTV channel after the transition. If these stations will move to another channel post-transition, they were required to serve at least 100% of their replication service population by July 1, 2005. By July 1, 2006, all other stations were required to fully replicate and maximize if they will remain on their current DTV channel after the transition. If they will move to another channel post-transition, they were required to serve at least 80% of their replication service population by July 1, 2006.[43] The Commission stated that stations that met the applicable "use-or-lose" deadline and that are going to move to a different channel after the transition would be permitted to carry over their authorized maximized areas to their new channels.[44] In addition, these "use-or-lose" replication/maximization deadlines became the new deadlines for stations operating temporary DTV facilities pursuant to STA to complete construction of their licensed DTV facilities.[45]

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[41] Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 19 FCC Rcd 18279 (2004).

[42] Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 19 FCC Rcd 18279 (2004).

[43] *Id.* at 18314-18315 ¶ 78.

[44] *Id.* at 18317-18318 ¶¶ 85-86.

[45] In 2001, the Commission temporarily deferred (until the Second DTV Periodic Review) the establishment of construction deadlines for these stations, provided they constructed initial DTV facilities designed to serve at least their communities of license. *See First DTV Periodic MO&O*, 16 FCC Rcd at

Approximately 80% of the stations in each of these categories met their respective deadlines.

Milestone 2: Establish mechanism for low power stations to begin digital services (COMPLETED 2004)[46]

1. Timeframes and Steps:

   - Adopt rules for digital operation for LPTV and TV translator stations (COMPLETED 2004): In 2004, the Commission has adopted rules for digital low power television (LPTV) and television translator stations to construct digital facilities and has issued nearly 2000 construction permits for such stations.[47] Some low power, translator, and Class A stations are already operating using digital technology. However, most Class A, LPTV and translator stations will convert to digital technology after full-power stations have completed their transition.

   - Determine appropriate transition time frame for LPTV and TV translator stations (INITIATED AND IN PROGRESS): The Commission concluded that LPTV and television translator stations ultimately must convert to digital by a date the Commission will establish in a future proceeding.[48] Subsequently, in the DTV Act of 2005, Congress did not apply the February 18, 2009 full-power analog shutoff date to LPTV and TV translator stations.[49] The Commission will initiate a proceeding to consider the remaining issues for the digital transition of these stations, principally a transition deadline by first quarter 2008.

20597-98 ¶ 10, 20603-04 ¶ 24.

[46] Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03-185 Report and Order, 19 FCC Rcd. 19331 (2004).

[47] *See* Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03-185, Report and Order, ("LPTV Order") 19 FCC Rcd. 19331 (2004).

[48] Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03-185, Report and Order, ("LPTV Order") 19 FCC Rcd. 19331 (2004).

[49] Digital Television and Public Safety Act of 2005 ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA") (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)). DTV Act § 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power stations.

Milestone 3: Adopt final DTV Table of Allotments (COMPLETED 2007)

In early 2006, after the channel election process had commenced, Congress enacted significant statutory changes to the DTV transition in the DTV Act. Most importantly, it set February 17, 2009, as the date certain for the end of the DTV transition, at which time all full-power television broadcast stations must cease their analog transmissions.[50] The DTV Act does not provide for waivers or extensions of this deadline for cessation of analog broadcasts.[51] The DTV Act also requires broadcast licensees to cease operations outside the core spectrum after February 17, 2009, in order to make that spectrum available for public safety and commercial wireless uses.[52]

1. Timeframes and Steps:

   - Propose channel allotments for post-transition operations (COMPLETED 2006): In late 2006, after channel preferences had been expressed, the Commission proposed its new Table of Allotments for post-transition operations. Numerous Comments were filed by stations requesting changes, which the Commission accommodated to the extent possible consistent with interference standards.

   - Adopt final DTV Table of Allotments and facilities for post-transition operations (COMPLETED 2007): On August 1, 2007, the Commission completed a critical milestone toward transitioning stations to digital broadcasting – adopting a Report and Order specifying the channels and facilities for operations for over 99% of broadcasters (more than 1800) after the transition on February 17, 2009.[53] Accordingly, the Commission

[50] 47 U.S.C. § 309(j)(14) ("A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009."). *See also* 47 U.S.C. § 337(e).

[51] Previously, 47 U.S.C. § 309(j)(14) provided an exception to the earlier December 31, 2006 transition deadline if the Commission determined that less than 85% of the television households in a licensee's market were capable of receiving the signals of DTV broadcast stations through various means (*i.e.*, via over-the-air reception, cable or satellite, or digital-to-analog conversion technology). 47 U.S.C. § 309(j)(14)(B)(iii) (2005). Congress eliminated the statutory provisions authorizing market-specific extensions of the DTV transition, including the 85% benchmark for DTV reception. This new hard deadline obviates the need for any further discussion of how to interpret and implement the former Section 309(j)(14)(B) of the Act, an issue previously deferred by the *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18282 ¶ 6.

[52] *See* 47 U.S.C. § 337(e)(1).

[53] *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, FCC 07-138 (rel. Aug. 6, 2007). The Order specifies the channels and facilities for 99% of broadcasters and addresses lingering issues with the remaining 1%, such as facilities for new stations, changes in certifications, minor variances and late filings.

achieved the important goal of finalizing the single channel on which each eligible broadcaster will operate, in digital, post transition.[54] Appendix B describes the specific parameters for each station's post-transition facilities and reflects revisions to the proposed facilities to ensure that stations that certified to "maximization" in the channel election process are able to replicate their analog facility if they are moving back to use their NTSC (analog) channel frequency for post-transition digital service. These revisions achieve the goal of assuring that stations can continue to serve their existing over-the-air analog viewers when the station completes its transition to digital operation.

- Address any remaining channel assignments (INITIATED AND IN PROGRESS): The Commission has proposed channels and station modifications for 13 television stations whose requests for modifications were received too late to be included in the final DTV Table.[55] These additional adjustments to the final DTV Table further the goal of assuring that every full power television station is properly accounted for. The deadline for Comments in response to the *Eighth FNPRM* was October 10, 2007, and the deadline for Reply Comments is October 25, 2007. Petitions for reconsideration related to any station assignments in the Final DTV Table of Allotments must be filed by October 26, 2007. We will address these petitions before the end of the year to ensure that all stations know what their final facilities for digital operations are. These steps are essential to complete the transition and keep stations on track to build their final digital facility.

Milestone 4: Complete Third DTV Periodic Review proceeding (INITIATED AND IN PROGRESS)

The Commission is considering whether to provide broadcasters any flexibility with respect to final construction deadlines, implementation of the rules and procedures for processing applications for final DTV channels and adoption of stricter criteria for extension of time to construct final DTV facilities. The Order also considers adoption of a form to track every station's transition status, revisions to the ATSC standard, and coordination with MVPDs.

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[54] The *Seventh Report and Order* includes Appendix B describing the parameters for stations' post-transition facilities and reflects revisions to the proposed facilities to ensure that stations that certified to "maximization" in the channel election process are able to replicate their analog facility if they are moving back to use their NTSC (analog) channel frequency for post-transition digital service. These revisions achieve the goal of assuring that stations can continue to serve their existing over-the-air analog viewers when the station completes its transition to digital operation.

[55] *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, FCC 07-138 (rel. Aug. 6, 2007).

Timeframes and Steps:

- Propose procedures for stations to complete their digital transition (COMPLETED 2007): The Third DTV Periodic NPRM proposed eight specific actions addressing particular situations to ensure completion of the transition by full-power television stations by February 17, 2009:

  The Commission proposed to establish February 17, 2009 as the construction deadline for stations that are building new digital facilities or that have situations in which the operation of their analog service prevents the completion of their full, authorized digital facilities. This deadline both serves the goal of completing construction of digital facilities on time and providing stations with the maximum time in which to complete their construction.

  Second, the Commission proposed to require stations whose post-transition channel is the same as their pre-transition DTV channel to complete construction of their DTV facilities by November 18, 2007. This proposal would advance the goal of hastening construction and readiness for these stations so that construction resources will be available for other stations that are changing channels for post-transition service.

  Third, the Commission proposed to adopt stricter standards to apply to future requests for extensions of time to construct, but to allow stations that meet the standard to complete construction after February 17, 2009 provided their DTV operation serves all of their analog viewers. In order to provide some flexibility, we also proposed to allow some to stay on the pre-transition digital channel for a limited time provided it does not interfere with another station's transition.

  Fourth, the Commission proposed to address the goal of a smooth transition by permitting stations that have different pre-transition and post-transition channels to devote their resources to building their post-transition channel stations and not complete construction of full, authorized facilities on their pre-transition channel.

  Fifth, the Commission proposed to hasten the transition by expediting processing for stations that are applying for a construction permit for their post-transition channel based on the new DTV Table of Allotments.

  Sixth, the Commission described circumstances in which we might consider allowing stations to reduce or terminate analog service to facilitate the goal of timely construction of post-transition facilities. We are cognizant, in this respect in particular, of the tension and controversy associated with allowing analog reduction or turn off before the February 17, 2009 transition date. The Commission is considering this step and

balancing it against the goal of ensuring that stations can build their final digital facilities on time. Such a step would most likely be permitted only if the stations provide advance notice to viewers as well as to the Commission.

Seventh, the Commission looked ahead to the post-transition period and proposed a new 0.5 % interference standard to apply to maximizations and new channel allotments after the transition. The Notice also tentatively concluded not to accept applications for maximizations or to lift the freeze on such applications until the processing is completed for stations to build their post-transition authorized facilities.

Eighth, to further enhance our tracking and to ensure that all stations are fully accounted for and on track, the Commission proposed to require stations to file a form with us detailing the current status of the station's digital transition, the additional steps the station must take before the transition deadline, and a plan for how the station intends to meet the deadline.

- Review and evaluate Comments and complete draft Report and Order (INITIATED AND IN PROGRESS): The comment and reply cycle ended on August 30, 2007, and over 120 Comments were submitted. Media Bureau staff is working on the draft of the Third Periodic Order now and planning for Commission consideration and adoption in November 2007.

- Continue international coordination efforts with Canada and Mexico (INITIATED AND IN PROGRESS): In addition, the Commission's Media Bureau, Office of Engineering and Technology, and International Bureau are working on the International Coordination issue with Canada and Mexico to meet the goal of international approval for stations' post-transition facilities that have been approved for domestic operation.

Related issue: Consideration of Distributed Transmission Systems as alternative to traditional single transmitter

In 2004, in the Second DTV Periodic Report and Order, the Commission approved the use of Distributed Transmission Systems ("DTS") on an interim basis, but deferred to a separate proceeding the development of rules for DTS operation and the examination of several policy issues related to its use. The value of DTS is to potentially provide better over-the-air service in areas that cannot be reached by a single transmitter (e.g., mountainous terrain.). On November 3, 2005, the Commission adopted the DTS Notice of Proposed Rulemaking requesting comment on whether and how to implement DTS and issued a Clarification describing how the interim rules would be applied. The comment and reply cycle closed March 7, 2006. Although there was support for DTS expressed in the

rulemaking proceeding, only a few stations have requested to use DTS under the interim rules, which restrict use to within the station's existing authorized facility.

Milestone 5: CP and license processing for final post-transition facilities (ONGOING October 2007 through January 2008)

1. Timeframes and Steps:

   - Develop process for accepting and evaluating applications (INITIATED AND IN PROGRESS): The Commission expects to receive applications for construction permits from roughly 300 stations making modifications to their existing post-transition facilities at the end of October, and to receive applications from roughly 625 stations building all new facilities beginning in January 2008 and continuing throughout 2008. The Media Bureau's Video Division and the Office of Engineering and Technology are developing an internal program to expedite processing, and we are contracting with an outside vendor to develop program to process applications that do not match Appendix B and for post-transition processing. The Commission proposed a one week turnaround on applications that fit specified criteria, at which point other applications will be reviewed.

2. Collaboration Between Public and Private Sector Organizations:
   Achieving this goal has required input from affected industries. The Commission has already collaborated with the broadcast industry, including trade organizations, networks, station groups, and individual stations. We have also collaborated with representatives of the computer industry and consumer products manufacturers. We are continuing this collaboration, which is essential to assuring that our actions are appropriate for real world circumstances, and, equally important, that our actions are clear to those industries that must follow them. In addition to these collaborative efforts through outreach, we have obtained significant input from these and other parties and individuals that file Comments in our related rulemaking proceedings.[56]

3. Reporting Requirements:
   The Commission has many reporting and tracking requirements that assist us in keeping track of how broadcasters are progressing in their transition to digital broadcasting. Stations must meet construction permit deadlines for building their pre-transition and post-transition digital facilities or must request

[56] *See* the Advanced Television (now known as DTV) Rulemaking Docket 87-268 (First through Eighth Notices of Proposed Rulemaking and First through Seventh Reports and Orders), and the series of DTV Periodic Reviews (First, Second, and Third, Dockets 00-39, 03-15, and 07-91, respectively).

extensions of time to construct based in compliance with the rules.[57] We also proposed in the Third DTV Periodic NPRM to require every station to specifically complete, file, and update a form, as needed, to keep the Commission and the public apprised of the station's progress in meeting the final transition deadline on February 17, 2009.

4. Mitigation of Risk:
As part of the Third DTV Periodic Review, the Commission has proposed a variety of deadlines and procedures to ensure that broadcasters meet the goal of completing construction of their post-transition digital facilities by the statutory deadline. The Commission is drafting the Report and Order in that proceeding and will adopt all measures necessary to ensure that service to viewers is not disrupted, including providing broadcasters sufficient flexibility to allow them to make the switch to digital. The Commission recognizes, however, that it is possible that some stations will not be able to serve their entire service areas in digital by the cut-off date. For example, weather problems, particularly in northern states, could make changes to transmission facilities very difficult in the winter months leading up to February 17, 2009. Because of the unambiguous statutory provision requiring that full power analog television stations cease transmission by that date, however, the Commission cannot extend that deadline for any stations that might not have fully built their digital facilities. We note, however, that low power analog television broadcasters are not required to go dark on February 17, 2009. As a result, over-the-air only viewers that fail to take the steps necessary to view digital signals in areas served by LPTV stations will, at a minimum, be able to access analog low power broadcasting service and the beneficial services it provides, such as emergency alert service (EAS). We expect this to be particularly beneficial in rural areas, where many LPTV stations are located, and where some full service stations might face particularly difficult challenges in transitioning to digital. In addition, to the extent that standards associated with digital transmission, such as the ATSC standard, are amended over time to enable technical improvements and innovation, the Commission's continuing DTV Periodic Review proceedings will account for such changes.

E. Technical Goal 5: Facilitate the production of set top boxes and other devices that can receive digital broadcast signals in connection with subscription services

Overview: Notwithstanding the major importance of developing standards for television sets and other devices to receive digital broadcast signals over-the-air, a much greater number of consumers (approximately 87% of television viewing households) rely on cable and satellite service to view television programming. Those Americans will be able to continue to view broadcast programming on analog television sets that are connected to an MVPD's system. In addition, consumers who rent set-top boxes from their cable providers or use digital-cable-ready devices equipped with a CableCARD will have the

[57] 47 C.F.R. §§ 73.624(d).

ability to receive non-broadcast programming that their cable providers transmit digitally.[58]

The primary goal of the "plug-and-play" proceeding is to develop a competitive market for devices that consumers use to access MVPD services.[59] This goal is tied inexorably to the digital transition because a device's ability to access MVPD services is a key element to consumer adoption of digital devices. The next major milestone for the Commission will be to adopt a standard that gives consumers the choice of buying bidirectional, or two-way, "plug-and-play" television sets that will allow them to access the multitude of interactive services that their MVPDs offer. The Commission is working toward establishing a standard that will allow manufacturers to produce, and consumers to buy, bidirectional digital cable ready products in time for the transition.[60] These devices will have the ability to access two-way MVPD services, such as video-on-demand, electronic program guides, impulse pay-per-view, and other interactive television features, without using a MVPD-provided set top box. The Commission intends that bidirectional "plug-and-play" devices will be available at retail as soon as possible in advance of the February 2009 digital transition.

Progress and Performance:

Milestone 1: Address digital cable set top box issues associated with commercial availability of unidirectional navigation devices for use in digital cable systems (COMPLETED 2005)

1. Timeframe and Steps:

   - Establish unidirectional "plug and play" ground rules (COMPLETED June

[58] Digital-cable-ready equipment available for purchase at retail today can not access two-way multichannel video programming services, such as electronic programming guides, video-on-demand, pay-per-view, and other interactive television capabilities. This lack of functionality has limited consumers' interest in such devices.

[59] *See* 47 U.S.C. §549(a).

[60] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, 22 FCC Rcd 12024 (2007). The Commission has already adopted a standard that allows consumer electronics manufacturers to produce, and consumers to buy, unidirectional digital-cable-ready devices. *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885 (2003). These devices can access cable operators' linear digital programming, but the devices are not able to access bidirectional services such as video-on-demand, electronic program guides, impulse pay-per-view, and other interactive television features. Despite the fact that millions of unidirectional television sets have been purchased at retail, only a small fraction of these sets access MVPD services using the intended CableCard. Because these devices are unable to access the bidirectional features discussed above, consumers have been reluctant to adopt the CableCard technology and, instead, opt to connect their unidirectional devices to MVPD systems using traditional, cable-leased set-top boxes.

1998): The Telecommunications Act of 1996 added a new Section 629 to the Communications Act that directs the Commission to adopt regulations to assure the commercial availability of navigation devices used by consumers to access services from MVPDs. In 1998, the Commission required MVPDs to make available a conditional access element separate from the basic navigation, or host, device in order to permit unaffiliated manufacturers and retailers to commercially market host devices, while allowing MVPDs to retain control over their system security.[61] The Commission also adopted a January 1, 2005 deadline for MVPDs to cease deploying new navigation devices that perform both conditional access functions and other functions in a single integrated device. This requirement was intended to establish common reliance by cable operators and manufacturers on identical security functionality in order to eliminate impediments discouraging customers from switching to devices available through retail outlets, and thereby promote competition in the marketplace. The requirement encourages consumer adoption of digital-cable-ready products and encourages consumers to transition to all-digital products.

- Seek comment on the state of the industry (COMPLETED September 2000): The Commission sought comment on whether the ban on cable operator deployment of set-top boxes with integrated security was necessary given current market conditions.[62] The Commission also addressed whether certain security functions could remain in the host device.

- Seek comment on a standard for unidirectional compatibility (COMPLETED January 2003): In December 2002, the cable and consumer electronics industries adopted a memorandum of understanding ("MOU") regarding a one-way "plug-and-play" cable compatibility standard. In January 2003, the Commission sought public comment on the MOU and the proposed standards that would allow consumers to directly attach "digital-cable-ready" receivers to cable systems and, with the use of a point-of-deployment module ("POD", now marketed as "CableCARD"), receive one-way cable services without the need for a set-top box.[63]

- Modify existing rules based on the state of the set-top box market (COMPLETED April 2003): The Commission deferred the effective date

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[61] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd 14775 (1998).

[62] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Further Notice of Proposed Rulemaking and Declaratory Ruling, 15 FCC Rcd 18199 (2000).

[63] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Further Notice of Proposed Rulemaking, 18 FCC Rcd. 518 (2003).

of the ban on cable set-top boxes with integrated security to July 2006.[64]

- Adopt a standard for unidirectional compatibility of consumer electronics equipment and digital cable systems (COMPLETED October 2003): The Commission issued the Second Report and Order ("Second Order") and Second Further Notice of Proposed Rulemaking ("Second FNPRM"), generally adopting the rules proposed in the MOU. The Second Order set technical and other criteria that manufacturers must meet in order to label or market one-way digital cable televisions and products as "digital cable ready." The Second Order imposes transmission standards for cable systems and requires that, as of July 1, 2004, all digital cable systems conform with these transmission standards and make CableCARDs available as needed. The Second Order also limits the levels of copy protection that MVPDs may apply to certain categories of content and prohibits all MVPDs from activating down-resolution of unencrypted broadcast television programming or selectable output controls. The Second FNPRM seeks comment on issues not resolved in the Second Order, including (i) whether the Commission should ban or permit the down-resolution of non-broadcast MVPD programming, and (ii) the appropriate standards and procedures to be used for the approval of new connectors or content protection technologies to be used with one-way digital cable televisions and products.[65] The Commission also sought comment on testing and output controls.

- Modify existing rules based on the state of the set-top box market (COMPLETED March 2005): In March 2005, the Commission issued an Order that maintained the prohibition on cable operator deployment of integrated set-top boxes (sometimes called the "integration ban"), but deferred the effective date of the ban to July 1, 2007. The Order also established detailed reporting requirements relating to the development of a software conditional access solution, cable operator support of CableCARDs, and the status of the ongoing negotiations among the cable and consumer electronics industries and other parties regarding a two-way plug-and-play specification.[66]

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[64] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 7924 (2003).

[65] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885 (2003).

[66] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd. 6794 (2005). *See also Charter Communications, Inc. v. FCC*, 460 F.3d 31 (upholding the Commission's ban on integrated devices as a reasonable interpretation of Section 629 of the Act).

- Consider requests for waiver of the Commissions' rules (INITIATED AND ONGOING): The Commission has considered and continues to consider requests for narrowly-focused waivers of the ban on cable set-top boxes with integrated security.[67] These waiver requests have been considered with consumers' best interests at heart. The Commission has balanced Section 629's mandate that the Commission adopt rules to develop a competitive market for navigation devices against the robust benefits that consumers will enjoy from a transition to all-digital cable systems. In doing so, the Commission is adopting policies that will create a vibrant retail market for navigation devices, while providing incentives for cable operators to transition to all-digital cable systems.

Milestone 2: Ensure the commercial availability of bidirectional navigation devices (INITIATED AND IN PROGRESS)

1. Timeframe and Steps:

- Seek comment on proposed standards for bidirectional compatibility (COMPLETED June 2007): The Commission sought comment on proposals from consumer electronics and cable industries to ensure bidirectional compatibility of retail navigation devices and digital cable systems, in an effort to address digital cable set top box issues associated with commercial availability of bidirectional navigation devices for use in digital cable systems.[68]

- Adopt a standard for bidirectional compatibility of consumer electronics equipment and digital cable systems (INITIATED AND ONGOING): The Commission is drafting an item that considers the proposals before it. The primary goal of the proceeding is to support consumer expectations by permitting the development of bidirectional digital cable ready products with a variety of price points, features, and degrees of interactivity, thereby hastening the digital transition. The Commission intends that the first generation of these devices be available for consumer purchase before the February 2009 digital television transition.

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[67] *See, e.g. Bend Cable Communications, LLC D/B/A Bendbroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, 22 FCC Rcd. 209 (2007) (Media Bureau grants request for waiver conditioned upon cable operators commitment to transition to all-digital system); *Comcast Corporation Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, FCC 07-127 (rel. Sept. 20, 2007).

[68] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, 22 FCC Rcd 12024 (2007).

2. Collaboration Between Public and Private Sector Organizations:
   As with the technical goal for broadcasters, here, too, we have worked and continue to work with representatives of the affected industries. For example, the Commission is participating with affected industry groups (NCTA, CEA, MPAA, CableLabs, DBS providers, Telco video providers) as well as applicable standards setting bodies (American National Standards Institute (ANSI), Society of Cable Telecommunications Engineers (SCTE), Alliance for Telecommunications Industry Solutions (ATIS)) to develop a standard for bidirectional compatibility of navigation devices and MVPD systems.

3. Reporting Requirements:
   The cable and consumer electronics industries are required to file status reports regarding negotiations on a bidirectional compatibility solution every 60 days. In addition, the cable industry is required to file a status report regarding CableCARD deployment and support every 90 days.

4. Mitigation of Risk:
   Consumers who continue to rely on analog-only equipment and subscribe to pay television services will be able to continue to view broadcast stations on those analog televisions. To the extent that the Commission can foster policies that spur consumers to voluntarily transition to digital television sets and products, the potential number of stranded analog television viewers will be reduced. In this regard, the Commission has adopted rules that have made unidirectional digital cable ready television sets and products available at retail today. In addition, because the Commission was disappointed by the lack of demonstrated progress by inter-industry efforts to develop standards for bidirectional digital cable ready televisions and products, the Commission initiated the *Third Notice* in June 2007. The intent of the *Third Notice* is to adopt bidirectional digital cable ready standards that will enable the retail availability of such devices prior to the February 17, 2009 digital television transition.

F. Technical Goal 6: Facilitate the production of television sets and other devices that can receive digital broadcast signals

Overview: The Commission has recognized that a successful transition is contingent upon the availability of equipment that allows consumers to view digital broadcast signals. As explained in more detail below, the approximately 13% of households that rely purely on over-the-air signals can purchase new television sets with off-air tuners as a result of Commission action requiring the manufacturing of such sets. Also, beginning in January of 2008, OTA television viewers who choose to keep their analog television sets will be able to purchase digital to analog converter boxes, allowing them to continue viewing their local broadcast signals.

Performance and Progress:

Milestone 1: Establish timeframe to require that all TV equipment in the US has a digital tuner (COMPLETED November 2005)

1. Timeframes and Steps:

   - Initiate a proceeding to consider requirements that new TV receivers include the capability to receive DTV signals (COMPLETED 2001): In response to the National Association of Broadcasters and the North American Broadcasters Association, the Commission sought comment on whether to require that certain types of TV sets have the capability to demodulate and decode over-the-air DTV signals. Under such a requirement, TV sets would have to provide useable picture and sound commensurate with their video display and audio capabilities when receiving any of the recognized ATSC video formats.[69]

   - Adopt requirements that new TV receivers include DTV tuners (COMPLETED August 2002): The Commission required equipment manufacturers to begin phasing in digital tuners in equipment that has an analog tuner. The Commission adopted a schedule as close as economically feasible to the target completion date for the DTV transition (December 31, 2006, at that time).[70] The Commission recognized that this would require manufacturers to redesign product lines, and accordingly, set forth a five-year rollout schedule starting with larger, more expensive TV sets.[71] This way, the Commission ensured continuing progress toward the ultimate goal, while minimizing the costs for equipment manufacturers and consumers.

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[69] *Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television,* MM Docket No. 00-39, *Further Notice of Proposed Rule Making,* 16 FCC Rcd 5946 (2001).

[70] *See* 47 U.S.C. §309(j)(14) (establishing December 31, 2006 as the transition date but allowing extensions of the date on a market by market basis).

[71] The Second Report and Order and Second Memorandum Opinion and Order in the First DTV Periodic ("DTV Tuner Mandate") required that all television receivers (i.e. those with a tuner) with screen sizes greater than 13 inches and all television receiving equipment, such as videocassette recorders (VCRs) and digital versatile disk (DVD) players/recorders, must DTV reception capability after July 1, 2007, according to the following schedule:

Receivers with screen sizes 36 inches and above -- 50% of a responsible party's units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005.

Receivers with screen sizes 25 to 35 inches -- 50% of a responsible party's units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective July 1, 2006.

Receivers with screen sizes 13 to 24 inches -- 100% of all such units must include DTV tuners effective July 1, 2007.

TV Interface Devices VCRs and DVD players/recorders, etc. that receive broadcast television signals -- 100% of all such units must include DTV tuners effective July 1, 2007.

- Consider modifying the adopted DTV Tuner implementation schedule due to concerns from the retailing and manufacturing community (COMPLETED 2005): The Commission in response to a petition filed by the Consumer Electronics Association and the Consumer Electronics Retailer Coalition sought comment regarding whether there is need to revise the TV tuner requirement implementation schedule for receivers with screen sizes 25 to 36 inches and suggestions for specific revisions to the schedule for such devices to address that need.[72] CEA and CERC claimed that the adopted requirement was slowing, rather than speeding up consumer migration to TV receivers with DTV tuners. Thus, the Commission specifically requested comment on the approach suggested by CEA-CERC whereby the requirement that 50% of receivers with screen sizes 25 inches to 36 inches incorporate a DTV tuner in the period from July 1, 2005 to July 1, 2006 would be eliminated and replaced with a new provision requiring that all receivers with screen sizes 25 inches to 36 inches be required to include a DTV tuner effective March 1, 2006.

- Modify the DTV tuner implementation schedule due to industry concerns (COMPLETED 2005): The Commission modified the schedule by which new broadcast television receivers with screen sizes 25 to 36 inches are required to include the capability to receive over-the-air digital television (DTV) broadcast signals.[73] The DTV tuner requirement is being implemented by applying the requirement first to large screen receivers and then progressively to smaller screen units and other devices over a period of several years. The Commission maintained the existing plan to require that 50% of 25 to 36-inch receivers that are imported or shipped in interstate commerce include DTV tuners beginning July 1, 2005, but modified the date on which 100% of such receivers must include DTV tuners by advancing that date from July 1, 2006 to March 1, 2006. This action was taken in response to concerns from the industry. The Commission concluded that maintaining the adopted approach for the mid-size 25 to 36-inch receivers prior to March 1, 2006 will most effectively ensure that DTV tuner equipped sets are available to consumers on a timely basis. The Commission also concluded that advancing the date by which all 25 to 36-inch receivers must include DTV reception capability to March 1, 2006 will serve to minimize any difficulties with the 50% provision at the earliest practicable date and will also serve to expedite the provision of DTV reception capability to consumers.

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[72] *Requirements for Digital Television Receiving Capability*, ET Docket No. 05-24, *Notice of Proposed Rulemaking*, 20 FCC Rcd 3780 (2005).

[73] *Requirements for Digital Television Receiving Capability*, ET Docket No. 05-24, *Report and Order and Further Notice of Proposed Rule Making*, 20 FCC Rcd 11196 (2005).

- Consider modifying the date on which all new TV receiving equipment must include capability to receive over-the-air DTV signals (COMPLETED 2005): The Commission sought comment on advancing the date on which all new television receiving equipment must include the capability to receive over-the-air DTV broadcast signals from July 1, 2007 to a date no later than December 31, 2006.[74] This revision would require all television receivers to include DTV tuners on a schedule not later than the statutory target date for the end of the DTV transition (December 31, 2006 at that time), when analog television service was to end. This proposal was intended to apply the DTV tuner requirement to all TV receivers on an advanced schedule that will allow a more rapid completion of the DTV transition while providing manufacturers with adequate time to include DTV tuners in all their TV products.

- Modify the rules to advance the date for compliance with the DTV tuner requirement for certain equipment (COMPLETED 2005): As Congress was considering adopting a hard deadline for the DTV transition towards the end of 2005, the Commission decided to accelerate the schedule for the DTV Tuner requirements and to expand the scope to cover all television receivers regardless of size.[75] The Commission advanced the date on which new television receivers with screen sizes 13 to 24 inches and certain other TV receiving devices such as VCRs and digital video recorders must include the capability to receive broadcast digital television signals from the current date of July 1, 2007 to March 1, 2007. The Commission also amended its rules to apply the digital television reception capability requirement to new receivers with screen sizes smaller than 13 inches on this same schedule. These modifications affected the final step of this phase-in plan to provide for all new TV receiver equipment to include digital reception capability as of March 1, 2007. The Commission concluded that this date, rather than the proposed December 31, 2006, date was more appropriate at it balanced the concerns of manufacturers who stated that the earlier date was too tight for product development cycles and our goal of promoting a rapid conclusion to the DTV transition.

2. Collaboration between Public and Private Sector Organizations: The Commission has worked and continues to work with representatives of the affected industries. For example, we work closely with broadcast engineering organizations and individual broadcast engineers and collaborate with public and private sector organizations to discuss roles and responsibilities.

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[74] *Id.*

[75] *Requirements for Digital Television Receiving Capability*, ET Docket No. 05-24, *Second Report and Order*, 20 FCC Rcd 18607 (2005).

In developing Orders and adopting rules, we met with engineers and manufacturers, as well as broadcasters, about their concerns. The rules and procedures we have adopted and continue to develop take into account the mandated timing of the transition along with normal manufacturing schedules.

3. Reporting Requirements:
We review reports from the U.S. Customs and Border Protection agency to determine if manufacturers or importers are importing analog-only devices in violation of FCC rules. Otherwise, we track compliance through investigation and, where necessary, enforcement actions.

4. Mitigation of Risk:
The Commission has taken steps to assure that no analog-only television is displayed at retail without a prominent warning of the February 17, 2009 analog deadline and the limited lifespan of such televisions without the addition of a device that will enable the viewing of digital programming. As stated in the discussion regarding Policy Goal 3, the Commission has conducted over 1300 retailer inspections to assess compliance with the labeling requirement, issued over 280 citations, and is considering forfeitures of nearly $4 million for apparent violations of the rule. **[Note: The GAO's Draft Report states that FCC staff have conducted over 1,000 inspections and issued over 250 citations, with potential fines exceeding $3 million, rather than using the more precise, updated figures above. (p. 19)]**

In addition, the Commission has taken enforcement action to punish and deter violations of the requirement that as of March 1, 2007, all televisions imported or distributed in the United States must include a digital tuner. On May 30, 2007, the Commission issued the first enforcement actions for violations of this rule. The Commission issued an NAL proposing a $63,650 forfeiture against Regent U.S.A., Inc. for importing or shipping interstate 1,182 non-DTV-compliant television receivers and issued an NAL proposing a $2,899,575 forfeiture against Syntax-Brillian Corporation for importing or shipping interstate 22,069 non-DTV-compliant television receivers. The Commission is conducting investigations of other manufacturers for potential violations of these requirements.

Moreover, consumers who continue to rely on analog-only equipment and subscribe to pay television services will be able to continue to view broadcast stations on those analog televisions. The Commission is working with NTIA on the coupon subsidy program so that all Americans may request a coupon for a digital-to-analog converter. The Commission's role is testing the boxes for compliance with NTIA's eligibility requirements. In addition, the Commission is coordinating with NTIA to educate viewers of the availability and need for converter boxes for over-the-air reception of digital signals on analog television sets after the transition.

Milestone 2: Coordinate with NTIA to ensure that analog over-the-air viewers have converters that enable them to view TV after the transition (ONGOING testing program to assist NTIA to certify converters that are eligible for the coupon subsidy)

1. Timeframes and Steps:

   - The Commission's Office of Engineering and Technology signed a Memorandum of Understanding (MOU) with NTIA in February, 2007 to conduct tests on converter boxes for compliance to NTIA requirements for coupon eligibility. Starting July 9, 2007, OET's laboratory has been receiving boxes from NTIA for testing under this MOU. Based on the test results submitted to NTIA, they have announced certification of three converter boxes from two companies. NTIA is reviewing the test results for several more boxes to make the final determination on certification of the boxes for coupon eligibility.

   - As a part of the program, NTIA has indicated that they have received additional notices of intent to submit converter boxes for testing.

   - Consumers will be able to request coupons beginning January 1, 2008, and the program will send out coupons when boxes available, which they expect will be early 2008, after holidays.

2. Collaboration between Public and Private Sector Organizations:
   When Congress designated NTIA to develop the converter box coupon program, we met with NTIA and developed a Memorandum of Understanding to assist their efforts by testing devices for compliance with the eligibility criteria that NTIA adopted.

3. Mitigation of Risk:
   Certification of converter boxes is contingent on successful completion of testing by the Commission's lab.

Milestone 3: Implement a requirement that broadcasters transmit program content information and a corresponding requirement that DTV receivers have the ability to decode this information (COMPLETED September 2004)

1. Timeframes and Steps:

   - Initiate a proceeding to ensure that V-chip functionality is available in DTV receivers (COMPLETED 2003): The Commission's rules require that digital television receivers have the capability to enable viewers to block the display of programs with a common rating. Accordingly, in its *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*[76] the Commission sought comment

[76] Notice of Proposed Rulemaking, 18 FCC Rcd 1279 (2003).

on whether it should require all digital television broadcasters to place V-chip rating information in the protocol accompanying their digital programming.[77] The Commission also asked whether it was necessary to require equipment manufacturers to develop equipment that accesses program rating information in the protocol.

- Decide issues affecting functioning of V-chip technology for DTV receivers (COMPLETED 2004): The Commission required broadcasters to transmit all V-chip rating information in the protocol with their digital programming.[78] It concluded that this uniform transmission practice would ensure that various receiver manufacturers can more readily design products which will search for and react to program rating information on a consistent basis. The Commission also recognized the importance of being able to extend or replace the content advisory system by assignment of a new, different rating region code. Accordingly, the Commission required that receivers must be able to process newer content advisory systems as suggested by the relevant industry standards body. In addition, the Commission adopted rules to apply V-chip rules to digital television receivers with displays in the 16:9 aspect ratio that are 7.8 inches or greater in height.[79] In addition, the Commission required that V-chip technology be included in all digital television receivers with integrated 4:3 displays measuring at least 13 inches diagonally. It was also determined that these rules would be applicable to DTV tuners which are sold without an associated display device. The Commission provided for an 18-month transition period after which all digital television receivers are required to provide V-chip functions following the adopted regulations. Similar to the requirements for analog television receivers, the rules require that the V-chip technology responds to the *TV Parental Guidelines* and the MPAA rating system.

2. Collaboration between Public and Private Sector Organizations: The Commission has worked and continues to work with representatives of the affected industries. For example, we work closely with broadcast engineering organizations and individual broadcast engineers and collaborate with public and private sector organizations to discuss roles and responsibilities.

   In developing orders and adopting rules, we met with engineers and

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[77] Specifically, this protocol is called the Program and System Information Protocol for Broadcast and Cable ("PSIP"). The PSIP carries the Rating Region Table ("RRT"), which describes the content advisory rating system being used.

[78] *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Report & Order, 19 FCC Rcd 18279 ¶¶ 155-159 (2004).

[79] *Id.* ¶¶ 158-159.

manufacturers, as well as broadcasters, about their concerns. The rules and procedures we have adopted and continue to develop take into account the mandated timing of the transition along with normal manufacturing schedules.

3. Reporting Requirements:
We do not require manufacturers or broadcasters to file reports with us, rather we track compliance through investigation and, where necessary, enforcement actions.

4. Mitigation of Risk:
The Commission manages the risk of noncompliance through enforcement action against manufacturers and importers. This past July, in response to a complaint, the Commission began investigating allegations that some manufacturers were not complying with our rules. As a result of these investigations, the Commission recently began consideration of Notices of Apparently Liability (NALs) against three manufacturers, totaling over $11 million. We have several other pending investigations and anticipate further enforcement actions. **[Note: The GAO's Draft Report states that the FCC has issued notices to television manufacturers with potential fines over $2.5 million for importing televisions without digital tuners, rather than using the $11 million figure above. (p. 19)]**

II. POLICY GOALS

General Overview of Policy Goals: In addition to the technical goals that focus on the requirements for broadcasters and equipment manufacturers to make the transition a success, the Commission has equally important policy-related responsibilities for the transition. Here, the Commission's role is to foresee and address the needs of the 120 million households viewing television in the United States, including the 87% of households which receive their television programming through subscription services. The Commission is focused both on minimizing any burdens to consumers as a result of the transition, and also maximizing the ability of consumers to reap the benefits of the digital transition. It is important to note that 70% of those subscription service households receive their programming through cable. The Commission has recently taken action to ensure that analog cable subscribers with analog equipment -- representing approximately 40 million households (98 million viewers) -- do not lose any of their local stations after the transition. The Commission has also acted to ensure that the digital signals received by cable subscribers have the same clarity and quality as those received by the cable system from local broadcasters, as well as the same technical treatment as any other digital signal transmitted by the cable operator. Most importantly, now that the technical pieces are in place, the Commission's foremost policy goal is to oversee efforts to educate consumers about the timing and nature of the transition, and the steps consumers should take to be sure they retain service and participate in the benefits available from the transition to digital television service. **[Note: The GAO's Draft Report states that "The Association for Public Television Stations reported in January 2007 that 61 percent of participants surveyed had "no idea" that the transition was taking place." (p. 7) In fact, a more recent survey conducted by APTS in September 2007 shows progress – a 10% improvement in consumer awareness (ie, 51% unaware) since the survey cited by GAO.[80]]** The Commission has worked with broadcasters, manufacturers and retailers to encourage voluntary education efforts, and many positive steps have been taken by these industry groups. The Commission has also coordinated with organizations that represent consumers that need special outreach to provide helpful and accurate information about the transition. Most recently, the Commission has taken steps to require consumer education actions by those industries most closely involved with the transition to be sure that all consumers receive the information they need. The Commission is also evaluating how broadcasters can best use the spectrum efficiencies and benefits offered by digital technology to meet their obligation to serve the public interest.

A. Policy Goal 1: Protect MVPD Subscribers in their Ability to Continue Watching their Local Broadcast Stations After the Digital Transition

Overview: A successful transition requires that the approximately 87% of households who receive their television programming through MVPD providers not lose their ability to view local broadcast channels. The Commission recently took action that guarantees that all cable customers (approximately 70% of MVPD subscribers) will be able to watch all broadcast stations after the digital transition. The next major milestone towards this

[80] *See* http://www.apts.org/news/govfailinggrade.cfm.

goal is to ensure that satellite operators also carry local broadcast stations after the transition.

Progress and Performance:

Milestone 1: Cable subscribers will be able to continue viewing their local broadcast stations after the DTV transition (COMPLETED 2007)

Approximately 70% of MVPD subscribers receive their programming through cable. It is also important to understand that approximately 35% of all television homes, or approximately 40 million households (98 million viewers), are analog-only cable subscribers. The Commission recognized that it was critical to ensure that these analog subscribers continue to enjoy the ability to view their local broadcast stations after those stations begin broadcasting only in digital. Accordingly, the Commission took action on September 11, 2007, to ensure cable operators continue to make signals of all must-carry broadcast stations viewable after the transition, as the must carry statute requires.[81] This action was important to ensure that cable subscribers are able to watch the same broadcast stations the day after the digital transition that they were watching the day before the transition. This action significantly reduced the number of Americans potentially needing a converter box to watch broadcast stations post-transition. The Commission was able to achieve the goal of protecting the largest group of MVPD subscribers, cable subscribers, by taking the following steps:

1. Timeframes and Steps:

   - Initiate proceeding to consider cable carriage of digital signals (COMPLETED 1998): The first major milestone towards this goal was achieved in 1998, when the Commission initiated a rulemaking proceeding to determine whether and how the must carry requirements in the Communications Act apply to cable carriage of digital television signals.[82] The Notice sought comment on whether local commercial and non-commercial stations' digital signals were entitled to "must carry," how to define cable channel capacity for digital signals, whether cable systems were required to carry both the analog and digital signals broadcast by local stations, the proper signal quality for digital signal strength as received at the cable headend, whether multicast programming streams were entitled to mandatory carriage, what constitutes duplicate signals in light of simulcasting requirements then in place, how to apply the statutory prohibition on material degradation, whether cable operators are required to provide all subscribers with a set top box, how to determine channel

[81] *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Third Report and Order and Third Further Notice of Proposed Rule Making, FCC 07-170 (adpt. Sept. 11, 2007).

[82] Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules, Notice of Proposed Rulemaking, 13 FCC Rcd 15902 (1998).

placement for digital signals, and how to apply the analog framework for PEG channels to carriage of digital stations. These and other questions addressed how to revise the cable must carry and retransmission consent requirements from the 1993 rules based on 1992 statutory requirements when there were only analog signals, to a framework of requirements that would work for the forthcoming transition to digital signals.

- Require cable operators to carry digital broadcast signals during the transition (COMPLETED 2001): The second major milestone took place in 2001, through the Commission's adoption of cable must carry requirements to provide for carriage of digital signals during the transition.[83] The First Report and Order ("First R&O"), adopted in 2001, concluded that stations broadcasting a digital signal is entitled to mandatory carriage. Specifically, cable operators must carry a "digital-only" local commercial or non-commercial station. Digital-only includes new digital stations and stations that return their analog spectrum and convert to digital-only. The First R&O also required that cable systems must not materially degrade broadcast signals, which must be provided comparably to other types of signals and to the quality of the signal as broadcast. Thus, cable systems were required to HDTV signals in HD format to avoid material degradation. This decision furthered the goal of assuring that the benefits of the digital transition, including improved sound and picture quality, reach all viewers. The First R&O also revised the rules for retransmission consent and channel capacity calculations to reflect the changing technology associated with digital signals. Similarly, the First Report and Order addressed channel placement, that is, the channel number to be used by cable operators, to respond to the different technology attendant to carriage of a digital signal. The First R&O also concluded that mandatory carriage of both analog and digital signals ("dual carriage") appears to burden cable operators' First Amendment interests more than is necessary to further a substantial governmental interest.[84]

- Address requirements related to carriage of both analog and digital signals (COMPLETED 2005): In February of 2005, the Commission concluded that cable operators are not required to carry both the analog and digital signals broadcast by most television stations prior to the transition and end of analog broadcasting.[85]

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[83] *Carriage of Digital Television Broadcast Signals*, etc., CS Docket No. 98-120, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001) ("*First R&O*").

[84] In the Further Notice of Proposed Rulemaking, the Commission sought additional information on the need for and burden of mandatory dual carriage before making a final decision. *Carriage of Digital Television Broadcast Signals*, etc., CS Docket No. 98-120, First Report and Order and First Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001) ("*First Report and Order*").

[85] Carriage of Digital Broadcast Signals: Amendments to Part 76 of the Commission's Rules, CS Docket

- Require cable operators to continue making signals of all must-carry broadcast stations viewable after the transition (COMPLETED 2007): On September 11, 2007, the Commission achieved the goal of ensuring that all cable subscribers, including those with analog TV sets, can view broadcast television after the transition to digital television occurs on February 17, 2009. Cable operators must comply with this "viewability" provision and ensure that cable subscribers with analog television sets are able to continue to view all must-carry stations after the end of the DTV transition by either: (1) carrying the digital signal in analog format, or (2) carrying the signal only in digital format, on an all-digital cable system.[86] This viewability requirement sunsets on February 18, 2012 unless the Commission determines to extend the requirements. Small cable systems (552 MHz or smaller) may request a waiver of the viewability requirement if capacity limitations prevent their carriage of additional digital versions.

- Related Issues and Next Steps: The Commission must now establish when the must carry rights will transfer from the analog signal to the digital signal, and determine how to ensure that all stations' digital signals are carried on February 18, 2009. One option is that mandatory carriage rights could shift from a station's analog signal to its digital signal as of the beginning of the carriage cycle on January 1, 2009, for those stations whose digital signals are fully constructed. Alternatively, all stations' mandatory carriage rights could shift from analog to digital as of February 18, 2009, after the analog signals are terminated. Second, the Commission must define "program-related," which will determine what cable operators are required to carry in addition to the "primary video."

Milestone 2: Ensuring DBS Subscribers Can View Local Broadcast Signals (INITIATED AND IN PROGRESS)

Addressing satellite carriage of digital signals is the final piece needed to ensure that viewers who get their television programming through subscription services continue to receive local broadcast stations after the stations transition to digital service. Satellite carriers already provide digital quality signals to their subscribers by digitizing the analog signals they receive from local broadcasters. The Commission must decide how, if at all, the satellite carriage requirements for carriage of analog signals should be revised to apply to carriage of signals that are broadcast in digital format. Most importantly, the Commission must decide how to apply the content to be carried and material degradation requirements of the statute to satellite carriage of digital broadcast signals, particularly signals that are in high definition format, as well

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No. 98-120, Second Report and Order and First Order on Reconsideration, 20 FCC Rcd 4516 (2005).

[86] Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, CS Docket 98-120 (Adp. Sept. 11, 2007).

as multicast programming streams. The Commission has taken the following steps toward achieving this portion of the goal:

1. Timeframe and Steps:

   - Initiate proceeding to consider satellite carriage of digital signals (COMPLETED 2001): The first major milestone towards achieving the protection of satellite subscribers was accomplished in 2001, when the Commission commenced a proceeding to determine how the rules for satellite carriage of local stations' analog signals should be revised to apply to digital signals.[87] In this Further Notice to the DTV Carriage Report and Order, the Commission noted that the statute directs the Commission to adopt rules for satellite carriage that are comparable to cable carriage rules.[88] The Further Notice asked how to apply the digital carriage rules adopted for cable carriage to satellite carriage requirements for digital signals.

   - Next Step: The Commission is working to better understand current and future satellite capacity to carry all local stations in the local markets served by satellite. We intend to address these issues by working with satellite providers and other public and private sources to determine how to best move forward. In addition, the transition will be furthered by providing for satellite carriage of digital-only stations, just as cable operators are required to do. (INITIATED AND IN PROGRESS)

2. Collaboration Between Public and Private Sector Organizations:
   The Commission conducts rulemaking proceedings in accordance with the requirements of the Administrative Procedures Act and the Commission's rules. We propose rules for comment and review the Comments and Reply Comments and other submissions accordingly. The Commission's rules also allow for ex parte meetings with private sector representatives. In this respect, we have conferred with representatives of the satellite and broadcasting industry, as well as cable companies and trade associations. The rulemaking docket for the satellite carriage rules currently contains nearly 400 Comments and ex parte filings. In addition, we collaborate and share information through panel presentations and distribution and collection of information at private sector conventions and conferences, such as the SBCA, NAB and NCTA.

3. Reporting Requirements:
   Cable operators are required by existing rules to maintain lists of the stations

[87] *Carriage of Digital Television Broadcast Signals*, etc., CS Docket No. 98-120, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001).

[88] *See* 47 U.S.C. § 338(j) (referring to cable requirements in 47 U.S.C. §§ 534(b)(3) and (4) and 535 (g)(1) and (2)).

they carry and to specify which are carried pursuant to "must carry" upon request.[89] We monitor compliance with carriage rules, however, through the complaint process.[90] Broadcasters may file a complaint with the Commission if the cable or satellite carrier refuses to carry the station or if there are disputes about the manner of carriage.

4. Mitigation of Risk:
In adopting the DTV Must Carry Viewability Order, the Commission ensured that any analog television connected to a cable system will continue to receive broadcast stations in a viewable format for a reasonable period after February 17, 2009. In addition, the Commission will put rules in place before the next retransmission consent/must carry election cycle so that carriage rights will switch to stations' digital signals before February 17, 2009. This way, broadcasters can ensure carriage of their digital signals by cable operators in a viewable format.

B. Policy Goal 2: Maximize Consumer Benefits of the Digital Transition

Overview: The successful completion of the digital transition depends not only on upon minimizing the burdens placed on consumers, but also maximizing their ability to benefit from it. The Commission has already acted to ensure that the 98 million American consumers viewing television programming over cable are able to view the best quality digital picture possible on their television set. The Commission has also raised for comment the issue of how to provide this same assurance to satellite subscribers. Furthermore, to the extent that the Commission can foster policies that spur consumers to voluntarily transition to digital television sets and products, the potential number of stranded analog television viewers will be reduced. In this regard, if the Commission acts to encourage and facilitate broadcasters' ability to offer additional free channels so that the DTV transition is a benefit rather than a burden to consumers, more consumers will want to move forward with obtaining the equipment necessary for the transition.

Performance and Progress:

Milestone 1: MVPD subscribers receive non-degraded digital signals

A major benefit of the transition to digital broadcasting is that it allows for crystal clear picture quality not possible through analog transmissions. The Commission is working toward ensuring that MVPD subscribers are able to enjoy this technological advancement. As explained below, this milestone has been achieved with respect to cable subscribers through a 2007 Commission Order. The Commission is expected to complete this milestone with respect to satellite subscribers before the end of the digital transition.

[89] 47 C.F.R. §§ 76.1614, 76.1709.

[90] 47 C.F.R. §§ 76.7, 76.61.

1. Timeframes and Steps:

Cable Operations

- Commence proceeding to consider digital signal quality requirement with respect to cable operations (COMPLETED 1998)[91]: The Communications Act requires that cable operators carry local broadcast signals "without material degradation," and instructs the Commission to "adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal."[92] Section 614(b)(4)(B) of the Act directs the Commission "to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed" as a result of the DTV transition.[93] In 1998, the Commission commenced a rulemaking proceeding concerning cable carriage of digital signals and sought comment on how to apply this statutory requirement to cable carriage of digital signals.

- Adopt approach to digital signal quality requirement with respect to pre-DTV transition cable operations (COMPLETED 2001)[94]: The Commission adopted a comparative approach to determining whether a cable operator has passed through to a subscriber a digital broadcast signal without material degradation. The Commission concluded that "a cable operator may not provide a digital broadcast signal in a lesser format or lower resolution than that afforded to any" other signal on the system.[95] Furthermore, a cable operator must carry broadcast stations such that, when compared to the original broadcast signal, "the difference is not really perceptible to the viewer."[96] The Commission specified that "a

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[91] Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules, Notice of Proposed Rulemaking, 13 FCC Rcd 15902 (1998).

[92] 47 U.S.C. § 534(b)(4)(A). See Section 615(g)(2) of the Communications Act, 47 U.S.C. § 535(g)(2) (material degradation requirements applicable to noncommercial stations). See also H.R. Conf. Rep. No. 102-862, at 67 (1992) ("The FCC is directed to adopt any carriage standards which are needed to ensure that, so far as is technically feasible, cable systems afford off-the-air broadcast signals the same quality of signal processing and carriage that they employ for any other type of programming carried on the cable system."); S. Rep. No. 102-92, at 85 (1991) (same).

[93] 47 U.S.C. § 534(b)(4)(B).

[94] *Carriage of Digital Television Broadcast Signals*, etc., CS Docket No. 98-120, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001) ("*First Report and Order*").

[95] *First Report and Order*, 16 FCC Rcd at 2629, para. 73.

[96] *Id.* at 2628, para. 72.

broadcast signal delivered in HDTV must be carried in HDTV."[97]

- **Final step for cable** - Ensure that after the digital transition deadline, cable subscribers can take advantage of the crystal clear picture quality made possible by the transition to digital **(ACHIEVED 2007)**[98]: The Commission recently affirmed that the prohibition on material degradation of digital broadcast signals by cable operators will continue after the transition date. The Commission retained the comparative approach to determining whether material degradation has occurred that was first adopted in 2001. Thus, "a cable operator may not provide a digital broadcast signal in a lesser format or lower resolution than that afforded to any" other signal on the system.[99] Furthermore, a cable operator must carry broadcast stations such that, when compared to the original broadcast signal, "the difference is not really perceptible to the viewer."[100] As a result, "a broadcast signal delivered in HDTV must be carried in HDTV."[101]

Satellite

- Commence proceeding to consider digital signal quality requirement with respect to satellite operations (INITIATED AND IN PROGRESS)[102]: In the Further Notice to the DTV Carriage Report and Order, the Commission sought comment on how the material degradation rules that apply to cable, and by cross-reference to satellite,[103] should be drafted to apply to satellite carriage of digital signals.[104] The Further Notice stated that the statute directs the Commission to adopt rules for satellite carriage that are comparable to cable carriage rules.[105]

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[97] *Id.* at 2629, para. 73.

[98] *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Third Report and Order and Third Further Notice of Proposed Rule Making, FCC 07-170 (adpt. Sept. 11, 2007)

[99] *First Report and Order*, 16 FCC Rcd at 2629, para. 73.

[100] *Id.* at 2628, para. 72.

[101] *Id.* at 2629, para. 73.

[102] *Carriage of Digital Television Broadcast Signals, Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001).

[103] *See* 47 U.S.C. § 338(j) (referring to cable requirements in 47 U.S.C. §§ 534(b)(4) and 535 (g)(2)).

[104] *Carriage of Digital Television Broadcast Signals, Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001).

[105] *See* 47 U.S.C. § 338(j) (referring to cable requirements in 47 U.S.C. §§ 534(b)(3) and (4) and 535 (g)(1)

- Adopt approach to digital signal quality requirement with respect to satellite operations (INITIATED AND IN PROGRESS): Expected to complete before the transition to afford satellite carriers time to prepare for carriage of the digital signals in the markets in which they provide local carriage. The Commission's decision will balance assuring satellite subscribers of the benefit of the excellent picture and sound quality associated with high definition, while balancing satellite capacity constraints that appear to limit the number of local markets that satellite carriers can serve. The issues include determining the requirements of the statute prohibiting material degradation as well as discriminatory treatment, the practical and technical limitations of satellite operations now and in the future, as well as consumer and broadcaster desire for signal carriage without material degradation.

Milestone 2: Consumers view more free broadcasting streams

Technology advances enable broadcasters to put out not just one programming stream, but multiple broadcast streams (for example, a movie channel, a 24-hour news channel and a sports programming channel) with no extra cost to the consumer. In other words, multicasting technology enables broadcasters to provide more free television programming to consumers. More free television programming would facilitate the transition by providing people with an incentive to get a converter box or purchase a digital television. The ability of consumers to have more free programming to choose from would be a major benefit of the DTV transition. Currently, over-the-air consumers must purchase such equipment just to maintain the status quo. With multicasting, consumers will gain a significant new benefit in terms of new and improved services if they buy new expensive HDTVs.[106] Making this benefit a reality requires cable companies to carry these additional channels.

1. Timeframes and Steps:

   - Commence proceeding to consider MVPD carriage of multicast broadcast signals (COMPLETED 1998)[107]: In 1998, the Commission initiated a rulemaking proceeding to determine whether and how the must carry

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and (2).

[106] This proposal is how it worked in Germany. In Berlin, the opportunity to receive more free channels drove people to proactively purchase converter boxes instead of viewing the need to do so as a burden imposed by their government. Before the transition, over-the-air viewers in Berlin received only 12 channels. After the transition, they received 27, more than twice as many. A German government report analyzing the transition concluded, "the switchover resulted in less protest than had been anticipated," in part because of "[t]he added value of receiving more services." (Berlin Goes Digital, http://www.mabb.de/bilder/Projektbericht_engl.pdf.)

[107] *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, Notice of Proposed Rulemaking, 13 FCC Rcd 15902 (1998).

requirements in the Communications Act apply to cable carriage of digital television signals.[108] The Notice sought comment, among other things, on whether local commercial and non-commercial stations' digital signals were entitled to "must carry," whether cable systems were required to carry both the analog and digital signals broadcast by local stations, and whether multicast programming streams were entitled to mandatory carriage.

- Require cable operators to carry multicast signals (INITIATED AND IN PROGRESS: item before the Commission). The next major step will be to require cable operators to carry this free multicast programming.[109] A proposal is before the Commission to facilitate multicasting by requiring cable companies to carry these multiple streams of free programming to consumers.

- Require satellite operators to carry multicast signals (COMPLETED in part, 2005): Pursuant to amendments to the Communications Act in 2004, satellite carriers are required to carry all local stations in Alaska and Hawaii. In implementing this statutory requirement, the Commission required satellite carriers to carry HD digital signals in HD and to carry multicast signals where aired in Alaska and Hawaii.[110] The Commission may consider whether to apply this requirement to all satellite carriage of local stations in a future proceeding.

Milestone 3: Programming with more diverse and more local content

Not only does the transition to digital allow broadcast stations to provide multiple streams of their own programming, it allows them to lease capacity to other entities unable to operate their own stations due to spectrum limitations and the high cost of entry. Such a leasing opportunity, with corresponding carriage requirements, would expand opportunities for new entrants and small businesses, including minority- and women-owned businesses, to own broadcasting outlets. By broadening participation in the broadcast industry, we would make available to all television viewers additional free, over-the-air programming from diverse sources, thereby strengthening the diverse and robust marketplace of ideas that is essential to our democracy.

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[108] *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, Notice of Proposed Rulemaking, 13 FCC Rcd 15902 (1998).

[109] As the courts have recognized, cable carriage is necessary for broadcast channels to survive. There is not an economic model by which a broadcaster can support a free programming stream that reaches only over-the-air households. As a result, without the guarantee of cable carriage, broadcasters are not able to invest in creating a second or third free programming stream.

[110] *Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, MB Docket No. 05-181, FCC 05-92, *In the Matter of Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act, Report and Order*, 20 FCC Rcd. 14242 (2005).

Beyond fostering viewpoint diversity, taking steps to facilitate the entry of new participants into the broadcasting industry will promote innovation in the field.

1. Timeframes and Steps:

   - Commence proceeding to consider leasing and carriage opportunities for qualified designated entities (IN PROGRESS): The Commission circulated a Notice of Proposed Rulemaking seeking comment on several initiatives. Among these is the recognition of innovative arrangements between qualified television broadcasters and Qualified Designated Entities ("QDEs") that would allow QDEs to become digital television broadcasters by using full power broadcasters' multicast streams and thereby obtain cable carriage through must carry.

2. Collaboration Between Public and Private Sector Organizations:
   The Commission conducts rulemaking proceedings in accordance with the requirements of the Administrative Procedures Act and the Commission's rules. We propose rules for comment and review the Comments and Reply Comments and other submissions accordingly. The Commission's rules also allow for ex parte meetings with private sector representatives. In this respect, we have conferred with representatives of the satellite and broadcasting industry, as well as cable companies and trade associations. The rulemaking docket for the satellite carriage rules currently contains nearly 400 Comments and ex parte filings. In addition, we collaborate and share information through panel presentations and distribution and collection of information at private sector conventions and conferences, such as the SBCA, NAB and NCTA.

3. Reporting Requirements:
   Cable operators are required by existing rules to maintain lists of the stations they carry and to specify which are carried pursuant to "must carry" upon request.[111] We monitor compliance with carriage rules, however, through the complaint process.[112] Broadcasters may file a complaint with the Commission if the cable or satellite carrier refuses to carry the station or if there are disputes about the manner of carriage.

4. Mitigation of Risk:
   In adopting the DTV Must Carry Viewability Order, the Commission ensured that cable operators would provide digital signals in the quality in which they are received by the cable system. The Commission also has before it for consideration an Order on reconsideration that would give viewers an incentive to obtain digital reception devices so that they can receive multicast

[111] 47 C.F.R. §§ 76.1614, 76.1709

[112] 47 C.F.R. §§ 76.7, 76.61.

programming, whether over-the-air or via cable. Multicast programming offers viewers more choices and thereby motivates them to obtain the equipment that will provide them with these enhanced viewing options. When consumers can easily see the immediate benefit of taking action, they are more likely to move forward voluntarily and less likely to be left behind at the last minute. Availability of multicast programming, especially when available for free over-the-air can provide this motivation.

C. Policy Goal 3: Educate consumers about the DTV transition

Overview: Educating consumers about the digital transition is critically important to its ultimate success. Consumers should be informed of the advantages of digital technology for them (HD quality and multicast offerings), the effect of the over-the-air transition, depending on how they receive television programming (over-the-air or through subscription service), and the steps they should take to be able to continue receiving television programming, as well as the steps they may choose to take to get the most benefit from the transition. We have initiated work towards this goal by, for example, ensuring that consumers are alerted to the limitations of buying television equipment that has only an analog tuner. We are also in the process of considering what actions to require from broadcasters, MVPDs, manufacturers, and others to convey this important information on a regular and continuing basis now through the end of the transition.

Performance and Progress:

Milestone 1: Require notice to purchasers of television equipment (COMPLETED 2007)

The Commission addressed the issue of labeling requirements in 2002 and again in 2004, urging retail and manufacturing entities in the private sector to undertake consumer education voluntarily.[113] When voluntary steps to provide adequate information and warnings for consumers were not forthcoming, and we learned from broadcasters and others that retailers intended to continue selling analog-only televisions for an extended time after manufacturers were required to stop production, import and distribution, the Commission acted. In April 2007, the Commission took a major step in requiring retailers to fully inform consumers about the DTV transition date at the point of sale.[114] The Commission found that, at the point of sale, many consumers were not aware that analog-only TVs would not be able to receive over-the-air-television signals without the use of a digital-to-analog converter box after the

[113] *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 5946 (2001) ("*First DTV Periodic Report and Order*"), *on recon.*, 16 FCC Rcd 20594 (2001) ("*First DTV Periodic MO&O*"), *Second Report and Order and Second Memorandum Opinion and Order*, 17 FCC Rcd 15978 (2002) ("*DTV Tuner Order*"); Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 19 FCC Rcd 18279 (2004).

[114] *In re Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Second Report and Order, FCC 07-69 (Adopted Apr. 25, 2007).

transition. Accordingly, the Commission required sellers of television receiving equipment that does not include a digital tuner to disclose at the point-of-sale that such devices include only an analog tuner and therefore will require a converter box to receive over-the-air broadcast television after the transition date. We have also initiated a DTV Education Notice of Proposed Rulemaking (NPRM) that, among other things, asks whether the Commission should require notice about the transition from manufacturers of new sets.

1. Timeframes and Steps:

   - Initiate proceeding to consider labeling requirements by manufacturers and retailers (COMPLETED 2001): The Commission sought comment on the need for labeling of television devices to describe digital features and to alert consumers about limitations.[115] The Commission urged manufacturers and retailers to voluntarily label their products when offered for sale so that consumers would be aware, in particular, that television receiving devices with only analog tuners would not be able to receive broadcast signals over-the-air after the transition.[116] The record developed in these proceedings indicated that there was sufficient information available on a voluntary basis concerning the features of monitors (without any tuner) and digital equipment (that included both analog and digital tuners), but there was inadequate information and disclosure concerning the long term limitations of equipment with only an analog tuner.

   - Require appropriate labels on devices (COMPLETED 2007): The Commission required sellers of television receiving equipment that does not include a digital tuner to disclose at the point-of-sale that such devices include only an analog tuner and therefore will require a converter box to receive over-the-air broadcast television after the transition date. The Commission provided specific language for retailers to use in labeling these devices.

   - Initiate proceeding requiring manufacturers to provide DTV transition information with television-related equipment (COMPLETED 2007): The DTV Consumer Education Initiative NPRM proposed that manufacturers be required to include information with television receivers and related devices about the transition. We received a number of Comments about this proposal, most supportive.

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[115] Second DTV Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, Notice of Proposed Rulemaking, 18 FCC Rcd 1279 at 1315, para. 98 (2003).

[116] *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 5946 (2001) ("*First DTV Periodic Report and Order*"), *on recon.*, 16 FCC Rcd 20594 (2001) ("*First DTV Periodic MO&O*"), *Second Report and Order and Second Memorandum Opinion and Order*, 17 FCC Rcd 15978 (2002) ("*DTV Tuner Order*"); Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 19 FCC Rcd 18279 (2004).

- Require manufacturers to provide DTV Transition information with television-related equipment (INITIATED AND IN PROGRESS): A proposal is before the Commission to require that this type of information be provided to purchasers of this equipment. Specifically, the proposal would require that manufacturers and those who hold themselves out to the public as manufacturers of television receivers and devices designed to work with television receivers include information with those devices explaining to consumers what effect, if any, the DTV transition will have on their use.

Milestone 2: Require multifaceted outreach and education by broadcasters, MVPD providers, and telecommunication companies to reach television viewers directly (INITIATED AND IN PROGRESS)

The Americans who will be most directly affected by the DTV transition are, of course, those who watch television, particularly over-the-air television. Consumer education efforts that specifically target this group are the best way to get information about the transition and its benefits into the hands of the people who need it. The Commission has found that members of certain "at-risk" groups, including low-income, elderly, minority, and those for whom English is a second language, are disproportionately over-the-air viewers, and should be specifically targeted for outreach. The Commission took a major step in educating consumers when it initiated the DTV Consumer Education NPRM. Along with the retailer and manufacturer notice requirements, discussed above, this NPRM sought comment on whether to require the industry to use bill inserts, public service announcements, and other techniques to educate consumers about the transition. Furthermore, the NPRM asked to what extent the Commission should gather information to oversee and review the progress of the transition and consumer education.

1. Timeframes and Steps (ALL INITIATED AND IN PROGRESS - proposal before the Commission):

   - Require broadcaster education efforts and reporting: The item proposes to require broadcasters to use PSAs and screen crawls throughout the day to inform viewers about the transition and to publicly report on these education efforts on a quarterly basis.

   - Require MVPD education efforts: The item proposes to require MVPDs to provide monthly inserts about the DTV transition in their customer billing statements.

   - Require targeted telecom education efforts: The item proposes to require that telecommunications providers who draw from the Universal Service Fund provide outreach and education to their low-income customers.

- Require reporting by 700 MHz auction winners: The item proposes that winners of the 700 MHz auctions (Auctions 73 and 76) report to the Commission on any consumer education efforts that they have undertaken.

- Require reporting by DTV.gov transition partners: The item proposes that industry actors who are listed on the DTV.gov page as Transition Partners be required to report to the Commission their consumer education efforts, as a condition of continuing Partner status.

2. Collaboration Between Public and Private Sector Organizations:
The Commission conducts rulemaking proceedings in accordance with the requirements of the Administrative Procedures Act and the Commission's rules. We propose rules for Comment and review the Comments and Reply Comments and other submissions accordingly. The Commission's rules also allow for ex parte meetings with private sector representatives. In developing the Labeling Order we conferred particularly with representatives of the retail industry, as well as the broadcast industry. As we consider these proposals from the DTV Consumer Education item, we have had comments from and/or meetings with representatives of the retail, manufacturing, broadcasting, satellite, cable, and telecommunications industries, as well as from public interest-focused organizations and private citizens. The rulemaking docket for these rules currently contains over 50 Comments and ex parte filings. In addition, we collaborate and share information through panel presentations and distribution and collection of information at both private sector conventions and conferences and the public workshops that have been produced and will be produced by the Commission and NTIA. These rules also propose continuing extensive collaboration with NTIA, which has been a touchstone of the Commission's DTV Transition efforts since the outset. Even if the rules are not adopted in this form, we anticipate a continuation of this relationship.

3. Reporting Requirements:
A draft item proposing a number of reporting requirements is currently before the Commission. Specifically, in the DTV Consumer Education Initiative, we are considering rules that would require broadcast stations to electronically report their consumer education efforts to the Commission on a quarterly basis, and that these reports be placed in the broadcaster's public file and, if a broadcaster has a public website, on that website. In addition, DTV.gov Transition Partners would be required, as a condition of continuing Partner status, to report their consumer education efforts on a quarterly basis, beginning on January 1, 2008. We are also considering requiring winning bidders in the 700 MHz spectrum auctions (Auctions 73 and 76) to detail what, if any, DTV transition consumer education efforts they are conducting. Going forward, we intend to include additional reporting requirements as necessary for the Commission to determine compliance.

4. Mitigation of Risk:
In adopting the Labeling Order, the Commission ensured that consumers would be well informed when making purchasing decisions. By vigorously enforcing this requirement, we encourage retailers to participate fully in transition education efforts, and the more information consumers have about the transition the more likely they are to participate actively and share information about the transition with others. As noted above, as of October 23, 2007, Commission staff had inspected 1275 stores and websites for compliance with the labeling requirement. As a result of our inspections, the Commission's Enforcement Bureau learned of violations at websites and stores across the country, at both "big box" retailers and small independent stores. Pursuant to the Communications Act of 1934, as amended, non-licensees (like many of the retailers) may be subject to monetary forfeitures only after first receiving a citation informing them of the rule violation and warning of further enforcement action, including monetary penalties. As of October 15, 2007, the Enforcement Bureau has issued 278 citations and published them on its website at www.fcc.gov/eb/dtv/. **[Note: The GAO's Draft Report states that FCC staff have conducted over 1,000 inspections and issued over 250 citations, rather than using the more precise, updated figures above. (p. 19)]**

Once a retailer has received a citation, future violations of the labeling rule may be subject to monetary forfeitures. Thus, in July, the Chairman circulated to the Commission Notices of Apparent Liability for forfeiture against seven large retailers for apparently violating the Commission's labeling requirement. These fines, in the aggregate, total nearly $3.4 million. In October, the Chairman circulated to the Commission NALs against seven additional retailers, totaling nearly $600,000. In addition, on October 15, 2007, the Enforcement Bureau issued another six NALs on delegated authority, totaling almost $100,000.

Additional violations could result in further enforcement action, including monetary forfeitures. Both the Commission and the Enforcement Bureau intend to move swiftly to impose monetary penalties on retailers that repeatedly fail to comply with the labeling rule. We note that in response to these enforcement actions, several major retailers have altered their processes and are now appropriately alerting consumers about the television equipment. At least one major retailer has discontinued the sale of analog-only equipment altogether.

The additional requirements of the DTV Consumer Education Order would further increase the amount of information available to viewers and consumers. The Commission will ensure that these requirements are followed through swift and strong enforcement action. For example, the Commission will promptly review broadcaster filings about their compliance with the DTV PSA and screen crawl requirements. Broadcasters that fail to comply with

FCC rules, or fail to file their reports, will be subject to enforcement action, including monetary forfeitures. The Commission also will promptly investigate complaints about potential violations of the requirements applicable to MVPDs, manufacturers, and others, and take enforcement action, where appropriate.

Finally, the DTV Consumer Education Order states that Commission personnel will perform random spot checks with the National Telecommunications and Information Agency (NTIA) to ensure that the retailers participating in the converter box program are appropriately training their employees and informing consumers. The Commission plans to conduct an increasing number of retailer spot checks as the converter boxes increasingly become available in the marketplace and reassess the number of inspections as the DTV transition date approaches. Because NTIA administers the converter box program, the Commission will defer to NTIA to take action against retailers that are not properly participating in the program.

Furthermore, the Commission's action, in conjunction with private entities and other Federal agencies, will widely disseminate educational information on the DTV transition, particularly to special needs groups. In doing so, the Commission is attempting to ensure that no consumer is left behind in the DTV transition. However, even those consumers that access television only through over-the-air reception and that fail to take action in anticipation of the February 17, 2009 deadline are not without recourse after the cessation of analog broadcasts. These consumers will still be able to take advantage of the NTIA coupon program through the end of June 2009, or barring that option, can subscribe to MVPD service or purchase a digital television or digital to analog converter at retail outlets to access DTV broadcasts.

D. Policy Goal 4: Identify public interest opportunities afforded by digital transition

Overview: In addition to ensuring that broadcasters, MVPDs, and consumers take all steps necessary so that viewers will be able to receive broadcast television after the transition date, the Commission must ensure that broadcast stations fulfill their fundamental obligation to serve the public interest. Digital technology enables broadcasters to offer new, innovative services, including HDTV and multiple streams of programming, and the Commission has given them flexibility to determine the appropriate mix of those services for their audiences. At the same time, the Commission has undertaken several proceedings to address how broadcasters can best serve the public interest using this new technology, through providing access to diverse entrants, valuable programming to the public, and information about that programming to the public.

Performance and Progress:

Milestone 1: Improve access to broadcasting for diverse entrants

Among the many benefits of digital technology is the ability of stations not only to provide multiple streams of their own programming, but to lease excess capacity to other entities unable to operate their own stations due to spectrum limitations and the high cost of entry. To expand opportunities for new entrants and small businesses, including minority- and women-owned businesses, to own broadcasting outlets, the Media Bureau circulated a Notice of Proposed Rulemaking seeking comment on several initiatives. Among these is the recognition of innovative arrangements between qualified television broadcasters and Qualified Designated Entities ("QDEs") that would allow QDEs to become digital television broadcasters by using full power broadcasters' multicast streams and thereby obtain cable carriage through must carry. By broadening participation in the broadcast industry, we would make available to all television viewers additional free, over-the-air programming from diverse sources, thereby strengthening the diverse and robust marketplace of ideas that is essential to our democracy. Beyond fostering viewpoint diversity, we also believe that taking steps to facilitate the entry of new participants into the broadcasting industry will promote innovation in the field.

1. Timeframes and Steps:

   - Initiate proceeding to facilitate access to broadcasting by diverse entrants (INITIATED AND IN PROGRESS: Diversity Initiatives NPRM on Circulation)

Milestone 2: Address public interest obligations of DTV stations

The Commission continues to explore other ways to ensure that the public benefits fully from the transition to digital. When the Commission adopted the initial table of allotments and service rules for DTV in 1997, it recognized that "[t]he dynamic and flexible nature of digital technology creates the possibility of new and creative ways for broadcasters to serve the country and the public interest."[117] Given the focus at the time on authorizing DTV service and providing construction deadlines to ensure that broadcasters quickly got on the air with digital signals, the Commission did not resolve digital public interest obligations at that time, but rather stated its intention to issue a Notice in the future to collect and consider all views. In the meantime, the Commission made clear that "broadcast licensees and the public are on notice that existing public interest requirements continue to apply to all broadcast licensees, and that "the Commission may adopt new public interest rules for digital television."[118]

[117] *In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12,809 para. 49 (1997).

[118] *Id.* at para. 50.

In December 1999, the Commission released the promised DTV Public Interest Notice of Inquiry (NOI).[119] The NOI sought comment on the application of television stations' public interest obligations to the new capabilities of digital television; how television stations, operating in either analog or digital, could better serve their communities; how digital broadcasters could increase access to television programming by people with disabilities and further diversity; and whether digital broadcasters could enhance the quality of political discourse through use of the airwaves for political issues and debate, including whether digital broadcasters should be encouraged or required to provide free airtime to political candidates.

1. Timeframes and Steps:

   - Initiate proceeding to consider public interest obligations of DTV stations (COMPLETED 1999)

   - Initiate proceedings regarding children's television and enhanced disclosure (COMPLETED 2000)

   - Adopt regulations regarding children's television (COMPLETED 2006) and enhanced disclosure (INITIATED AND IN PROGRESS: Report and Order on Circulation)

Milestone 3: Adopt children's television requirements for digital age (COMPLETED 2006)

Following the collection of public comment in the DTV Public Interest NOI proceeding, the Commission began a proceeding on DTV stations' obligations to serve children in the audience. On September 26, 2006, the Commission adopted a Second Order on Reconsideration and Second Report and Order resolving issues regarding the obligations of television broadcasters to protect and serve children in their audiences. In this proceeding, the Commission increased the children's educational and informational programming benchmark for digital broadcasters in a manner roughly proportional to the increase in free video programming offered by the broadcaster on multicast channels.

1. Timeframes and Steps:

   - Initiate proceeding on children's television obligations of digital television broadcasters (COMPLETED 2000)

   - Adopt regulations in children's television proceeding (COMPLETED 2004)

[19] In re Public Interest Obligations of TV Broadcast Licensees, Notice of Inquiry, 14 FCC Rcd 21,633 1999).

- Resolve reconsideration petitions in children's television proceeding (COMPLETED 2006)

Milestone 4: Adopt enhanced disclosure requirements

Another proceeding that grew out of the DTV Public Interest inquiry is the Enhanced Disclosure Proceeding. The Commission proposed changes to broadcasters' public file requirements to ensure that stations adequately inform the public about how the stations are serving their communities. Specifically, the Enhanced Disclosure NPRM proposed to replace the current "issues/programs" list for TV stations with a standardized form and to require TV broadcasters to make their public inspection files available on the Internet.

1. Timeframes and Steps:

   - Initiate proceeding to require broadcasters to enhance the public's access to information about their local stations (COMPLETED 2000)

   - Adopt regulations in enhanced disclosure proceeding (INITIATED AND IN PROGRESS: Report and Order on Circulation)

Milestone 5: Conduct proceeding on broadcast localism

At the same time the Commission has been exploring specific ways broadcasters can use digital technology to benefit their viewers, the Commission also began a proceeding on Broadcast Localism to address more broadly whether both television and radio broadcasters' public interest programming obligations should be modified. In addition to reviewing the voluminous record in that proceeding, the Commission has held five field hearings around the country from 2003 to 2007 to solicit input from the public on these issues, with a final hearing to take place in the coming weeks.

1. Timeframes and Steps:

   - Initiate Notice of Inquiry on Broadcast Localism (COMPLETED 2004)

   - Conduct field hearings to solicit information from around the country on broadcasters' localism efforts (INITIATED AND IN PROGRESS)

   - Adopt Report on Broadcast Localism (INITIATED AND IN PROGRESS)

2. Collaboration Between Public and Private Sector Organizations:
   In addition to seeking input from the public and the industry about broadcasters' public interest obligations through the rulemaking proceedings discussed above, the Commission has conducted numerous hearings around the country to solicit input on broadcast policy issues. In conjunction with the

Broadcast Localism proceeding, the Commission has held five field hearings in the following cities: Charlotte, North Carolina (October 2003); San Antonio, Texas (January 2004); Rapid City, South Dakota (May 2004); Salinas-Santa Cruz, California (July 2004); and Portland, Maine (June 2007). A final localism hearing will be held in the coming weeks. In addition, in conjunction with the Media Ownership proceeding, the Commission has conducted five public media ownership hearings during 2006 and 2007: in Los Angeles/El Segundo, California; Nashville, Tennessee; Harrisburg, Pennsylvania; Tampa-St. Petersburg, Florida and Chicago, Illinois. The Commission plans to conduct one additional ownership hearing on a date and at a location to be announced. Through these hearings, the Commission has been able to listen directly to members of the public on topics including localism, competition, diversity, minority ownership, children's and family-friendly programming, senior citizens, religious programming, independent programming, music and the creative arts, the growth of the Internet, campaign and community event coverage, jobs and the economy, advertisers, rural America, and the disabled community.

3. Reporting Requirements:
In the Enhanced Disclosure proceeding, the Commission indicated that our current requirements regarding broadcasters' public files are insufficient and that there is a need for a standardized form to provide information to the public on how stations serve the public interest. If adopted, this standardized form for the quarterly reporting of programming aired in response to issues relevant to a station's community would replace the current "issues/programs" list. The form would require quarterly reporting on the programs aired by the station that provided its most significant treatment of community issues during the preceding three-month period and broadcasters' efforts to determine the issues facing their communities. The NPRM also proposed to enhance the public's ability to access information by requiring television licensees to make most of the contents of the public inspection files, including the standardized form, available on their stations' Internet websites or, alternatively, on the website of their state broadcasters association. In addition, in the Children's Television proceeding, the Commission revised the Children's Television Programming Report form to require stations to report on their digital children's educational and informational programming to enable enforcement of the increased core programming benchmark.

4. Mitigation of Risk:
As discussed above, the Commission has pending several proceedings targeted at maximizing the public interest opportunities afforded by the digital transition. The risk to the DTV transition itself of not completing these proceedings is negligible, as these requirements do not relate to the technical challenges of ensuring stations make the transition, nor to the consumer education challenges outlined above. There is some potential risk to broadcasters for having to comply with any additional programming

obligations at the same time they are transitioning to digital. If the proceedings are not completed, however, there is also some potential risk to viewers of their local broadcasters not fully meeting their obligation to serve the public interest. The initiatives discussed above will ensure that digital broadcasting will serve the public interest in traditional and innovative ways as well as mitigate the risk to consumers that their local broadcasters will fail to serve the public interest without such obligations.

III. CONSUMER OUTREACH GOALS

* **NOTE**: Several of the sections listed in the "Policy Goals" above and the "Other Critical Elements" below involve consumer outreach efforts by public and private organizations and companies, at the direction of Congress and the Commission. We will not repeat those sections here.

General Overview of Consumer Outreach Goals: Consumer outreach is a dynamic process that will continue at the Commission throughout the transition period and, as described in more detail below, is underscored by frequent and close coordination with industry, other governmental agencies and consumer groups. Successful completion of the transition depends upon government, industry and community stakeholders working together in this regard. The Commission is committed to doing everything within its statutory and budgetary capacity to make sure that no American is left behind in this part of the digital revolution.

A. Consumer Outreach Goal 1: Prepare and Distribute Publications to Consumers and News Media

Progress and Performance:

Milestones:
Consumers and consumer and industry organizations are able to obtain and distribute general FCC DTV consumer education publications such as *Buying the Right TV: What Every Consumer Should Know* and *DTV Is Coming (And Sooner Than You Think)*, as well as target-specific publications, such as *Closed Captioning and Digital-to-Analog Converter Boxes* for deaf and hard-of-hearing consumers. Publications are also available in large font format, in audio format, and in Braille for consumers with low vision. Publications are translated into Spanish for Spanish for Spanish-speaking consumers.

Regarding news media, the Commission is coordinating with a variety of media outlets including newspapers, broadcasters, and working with various members of the industry on public service announcements (PSAs). The Commision's news media efforts focus primarily on media that target specific at-risk populations. For example, senior citizens and Hispanic consumers, among others, are most likely to be disproportionately impacted by the transition. With respect to communicating with seniors, the Commission authored an article that was published in the October 2007 edition of Baltimore's *Senior Digest*. In addition, Chairman Kevin Martin was recently interviewed about the transition on AARP radio which is heard on over 170 outlets nationwide and has a listenership of over 1,000,000 people. Similarly, Chairman Martin gave an interview to the AARP Magazine which is running a story on the digital transition for its early 2008 issue, and he also gave an interview to Erickson Tribune, a publication that reaches nearly 6 million seniors, for its story on the digital transition. The Chairman is scheduled to do a PSA with Retirement Living

TV, which targets its programming to senior citizens and reaches nearly 30 million homes nationwide.

Commission staff has also given interviews about the digital transition to various Hispanic media outlets. For example, the Hispanic Communications Network, which produces media campaigns for radio, television, print and Internet, taped an interview with Commission staff that will be distributed to its 230 member radio network in the United States and Puerto Rico. In addition, one of the Commission's Spanish-speaking staff was recently interviewed by Univision for an upcoming DTV special, which will be a part of a larger Univision effort to inform viewers about the transition.

1. Timeframes and Steps:

   - Advisories, fact sheets and other publications are prepared, updated and revised contemporaneously with the Commission's issuance of transition-related rules, orders and policies and to reflect developments with regard to NTIA's converter box coupon program and other industry developments and practices that might otherwise confuse or alarm some consumers about the transition or its impact on them. (INITIATED AND ONGOING)

   - Commission staff confers or coordinates as appropriate with industry, other government agencies and community stakeholders to promote clear, consistent and effective messages about the transition and the steps that consumers may need to take to prepare for it. (INITIATED AND ONGOING)

   - Commission staff tracks and monitors calls and emails into the Consumer Center to gauge the need for additional or revised consumer education materials. (INITIATED AND ONGOING)

   - Commission staff coordinates weekly and monthly with organizations which publish or distribute consumer oriented newsletters and periodicals regarding the placement of news articles and feature stories about the DTV transition. (INITIATED AND ONGOING)

B. Consumer Outreach Goal 2: Participate in Events and Conferences

Overview: Event participation has several important objectives: distributing DTV consumer information to individual consumers and organization leadership, providing information that can be used to conduct local DTV transition awareness programs, and tapping into networks that can be used to disseminate DTV information broadly to consumers.

Progress and Performance:

Milestones:
The Commission has participated in numerous events and conferences during the transition period where it has disseminated thousands of packets of DTV information to targeted consumers and their organization leadership, including, for example, the AARP Convention in Boston, MA; the Congressional Black Caucus (CBC) and the National Association of Black Owned Broadcasters (NABOB) conferences in Washington, DC; the Registry of Interpreters for the Deaf (RID) Conference in San Francisco, CA; and the Telecommunications for the Deaf, Inc. (TDI) Biannual Conference in San Mateo, CA. Further, the Commission held an Indian Telecommunications Initiative (ITI) Regional Workshop and Roundtable in July in Albuquerque, New Mexico. In addition, field agents in FCC field offices have conducted DTV awareness sessions (attended by over 1300 people) and distributed over 20,000 DTV handouts in 36 states ranging from Alaska to Florida, targeting senior citizens. The Commission will continue to attend and participate in events throughout the country with participation in over 100 events scheduled through the end of 2007.

1. Timeframes and Steps:

   - Consumer oriented events and conferences are identified throughout the transition period and, budget permitting, the opportunity to present, exhibit or distribute DTV education material is coordinated and planned with event sponsors and/or local community leaders. (INITIATED AND ONGOING)

   - In many instances, Commission staff are invited to events and conferences to provide an expert perspective about the DTV transition. For example, a representative of the Philadelphia, PA, Mayor's Office recently contacted the Commission to schedule a briefing in Philadelphia regarding the DTV transition. (INITIATED AND ONGOING)

   - The Commission will continue to utilize field office staff to distribute DTV information to senior centers and senior organizations around the country, and anticipates providing information to over 2000 organizations and making 350 DTV awareness presentations through the Commission's field offices by the end of the year. (INITIATED AND ONGOING)

   - The Commission is following-up on recommendations and suggestions received at outreach events and conferences. For example, at its recent DTV Education Workshop held in September, the Commission was asked to coordinate consumer education materials with consumer groups before releasing them. The Commission is working to implement these and other ideas that came out of the workshop. Feedback such as this demonstrates the critical importance of involving and engaging community stakeholders

in the Commission's consumer outreach efforts. (INITIATED AND ONGOING)

C. Consumer Outreach Goal 3: Coordinate with Federal, State and local Entities and Community Stakeholders

Overview: The success of any public outreach effort depends on many factors, none of which are more essential than the involvement of public officials and community stakeholders. For some time now, the Commission has been working to develop working relationships with federal, state and local entities, both public and private to assist in the dissemination of DTV education material.

Progress and Performance:

Milestones:
The Commission has contacted a broad spectrum of organizations, and several of them have made commitments to partner with us, such as the United States Administration of Aging, Bureau of Indian Affairs, the Executive Office of Elder Affairs for the Commonwealth of Massachusetts and the American Library Association which has agreed to assist us in getting DTV information into their more than 16,000 member libraries. Weekly and monthly coordination with entities and organizations representing specific categories of consumers, *e.g.*, seniors, people with disabilities, non-English speaking, minorities, etc., helps us gauge the level of awareness of the consumers they interact with and solicit suggestions for addressing any identified gaps or shortfalls in awareness and/or preparation for the DTV transition.

1. Timeframes and Steps:

   - Coordination and collaboration with stakeholders throughout the transition. (INITIATED AND ONGOING)

   - Gathering information from officials at the federal, state and local levels and community leaders and activists, especially those with high concentrations of consumers in our target groups (e.g., senior citizens, non-English speaking consumers, minority communities, people with disabilities, low-income individuals, and people living in rural and tribal areas.) (INITIATED AND ONGOING)

   - Providing essential information to these stakeholders for dissemination to their constituents and keeping them informed of the transition's progress and key milestones. (INITIATED AND ONGOING)

D. Consumer Outreach Goal 4: Utilize the Commission's Advisory Committees to Help Identify Effective Strategies for Promoting Consumer Awareness

Overview: The mission of the Commission's Consumer Advisory Committee (CAC) is to facilitate the participation of consumers in proceedings before the Commission and to make recommendations thereon. The CAC is comprised of members representing minorities and low income communities; disabilities communities; state, local, and Native American communities, and, the industry. In addition, the Commission recently announced our Intergovernmental Advisory Committee (IAC) membership, which includes elected and appointed officials of municipal, county, state, and tribal governments. It, too, is charged with providing recommendations for promoting for promoting consumer awareness of the DTV transition.

Progress and Performance:

Milestones:
The CAC met on August 10, 2007, for a full-day conference at Commission headquarters. The CAC also met on September 27, 2007 to prepare comments for the *DTV Consumer Education* Rulemaking proceeding. Comments containing the CAC's initial recommendations were submitted in the proceeding on October 1, 2007. The Commission recently announced our Intergovernmental Advisory Committee (IAC) membership, which includes elected and appointed officials of municipal, county, state, and tribal governments, and charged it too with providing recommendations for promoting consumer awareness of the DTV transition.

1. Timeframes and Steps:

   - Under their respective charters, the CAC and IAC meet up to four times a year. Commission staff work constructively with both committees to facilitate their work on behalf of the Commission. (INITIATED AND ONGOING)

   - The next meeting of the CAC will be on November 2, 2007. CAC meetings are open to the public and a Public Notice announcing the November 2, 2007 meeting and the agenda for the meeting was released in October 2007.

   - The IAC will hold its first meeting before the end of the year. Due to the make-up and nature of the IAC, its meetings are not open to the public.

E. Consumer Outreach Goal 5: Maintain and Expand Information and Resources Available via the Internet

Overview: Available research indicates that most people expect that the Internet will be their number one source of information about the DTV transition. The Commission's DTV web portal, www.DTV.gov, features a variety of detailed consumer friendly

advisories, fact sheets and other documents related to the transition.

Progress and Performance:

Milestones:
Created in 2004, the www.DTV.gov web portal is continually updated to reflect current information about the DTV transition and its implications for consumers. **[Note: Again, this website was launched back in 2004. The GAO's Draft Report might be read to suggest that the Commission only recently launched this portal.]** And, the Commission works closely with the DTV Coalition, other industry and consumer groups, as well as federal, state and local entities, to ensure that links to the site are located where consumers are most likely to find them. In addition, the Commission frequently asks other organizations to establish on their Website a link to www.DTV.gov and routinely follow-up as needed to confirm the placement of. Commission staff have confirmed over 100,000 links thus far. Another feature of our Web site is a "DTV Toolkit," a package of information we developed which can be used by government agencies, community organizations, and others to conduct their own DTV consumer awareness campaigns. Also, we have developed and are posting other means of reaching consumers online such as DTV-related educational podcasts, webcasts, and streaming videos.

1. Timeframes and Steps:
   - The www.DTV.gov web portal was created. (COMPLETED 2004)
   - The www.DTV.gov web portal and is continually updated to reflect current information about the DTV transition. (INITIATED AND ONGOING)
   - Links to NTIA's converter box coupon program are maintained and promptly updated as needed in consultation with NTIA (INITIATED AND ONGOING)
   - Commission staff coordinates regularly with DTV Coalition members, other industry and consumer groups, as well as federal, state and local entities, to ensure that links to the site are located where consumers are most likely to find them. (INITIATED AND ONGOING)

2. Collaboration Between Public and Private Sector Organizations – With Regard to all of the above-mentioned Consumer Outreach goals:
   The Commission recognizes that collaboration with public and private sector organizations is essential to a successful DTV transition. In the public sector, the Commission has been working with federal, state, and local agencies. The Commission has partnered with these agencies to disseminate DTV education materials to their core constituencies. They also inform us of events and conferences that are taking place where we can distribute materials and/or directly interact with consumers. In addition, as the Commission contacts each agency,

we ask them to link to our www.dtv.gov website, and offer assistance in drafting articles for publications and newsletters, as well as sample e-mails to send to their constituencies and employees. We also seek input and suggestions from these agencies for future outreach initiatives that would best serve their constituencies.

One of the Commission's most significant partnerships is with NTIA. We meet with them regularly, coordinate our outreach strategies, and share exhibit space at events to provide consumers with one-stop access to full DTV transition information. As the transition continues, we plan to meet more frequently and engage in additional joint marketing efforts. In addition, through our relationship with the Bureau of Indian Affairs (BIA), we have been able to distribute over 700 packets of DTV information through their nationwide field offices. This assists us in reaching Native Americans who may be living in rural areas and on tribal land. We have also developed a successful partnership with the Administration on Aging that has lead to partnerships with their over 600 local Area Aging Authorities. We recently sent DTV educational materials to all of these offices and would like to develop a coordinated outreach plan with them.

In addition to our on going efforts with the aforementioned agencies, the Commission is attempting to reach all federal agencies, their employees, and their constituencies. The Commission is coordinating with the Chief Human Capital Officers Council (CHOCC), which advises and coordinates the activities of members' agencies. The Council is composed of the Director of OPM, the Deputy Director for Management of the Office of Management and Budget (OMB), the CHCOs of the 15 Executive departments, and the CHCOs of 8 additional agencies designated by the OPM Director. Each CHCO serves as their agency's chief policy advisor on all human resources management issues and is charged with selecting, developing, training, and managing the workforce.

The Commission also plans on establishing partnerships with agencies such as the department of Housing and Urban Development (HUD), the office of Veterans Affairs (VA), and the Department of Health and Human Services (HHS). Through their local offices, we hope to get information into the hands of many low-income consumers who are over-the-air television viewers and who may not have internet access. In addition, through our meetings with the U.S. Department of Education, we expect to get our message into schools and homes across the country. We are also in the process of developing a "DTV Learning Center" on our website. As the transition progresses, we anticipate fraud issues may arise with converter box coupons or other issues relating to the DTV transition. We are poised to work with the Federal Trade Commission, should problems arise.

While the Commission has established strong federal relationships, we realize the importance of working with the states and local entities. Like the federal agencies, we will continue asking these groups to link to www.dtv.gov and offer to provide them with articles, publications, or e-mails to send to their employees and constituencies. Specifically, we are following-up with initial contacts with

the nearly 125 local chambers of commerce. Numerous follow-up meetings are scheduled with the state and local level consumer affairs and elderly departments to advance partnerships at those levels to aid consumers most affected by the transition.

Building on our successes with local DTV Transition Awareness sessions in partnership with local community groups, we are scheduling approximately 50 such sessions each quarter. These sessions are targeted towards high risk constituencies through the nation.

The Commission is also working to advance partnerships with a number of groups that we regularly work with and whose conferences we attend. These groups include the National Governors Association, the US Conference of Mayors, the National League of Cities, The National Association of Telecommunications Officers and Advisors (NATOA), the National Association of Regulatory Utility Commissioners (NARUC), the National Association of Attorneys General (NAAG), the National Association of Counties (NACO), the US Conference of Mayors, and the National Association of State Utility Consumer Advocates (NASUCA). Working with these types of organizations will allow us to more readily reach consumers at a local level and tailor our outreach accordingly In addition, we expect to receive recommendations from out Intergovernmental Advisory Committee (IAC) for working effectively with officials at the state and local level. The IAC, which is comprised of 15 elected and appointed public officials at the state and local levels, in state and local governments, will focus primarily on DTV awareness issues during its current term.

As with our public sector partners, the Commission is asking the private sector groups to link to www.dtv.gov and offer to provide them with articles, publications, or e-mails to send to their employees and constituencies. As a member of the DTV Coalition, we have a strong foothold in this area. The Commission also attends numerous events and conferences throughout the country to get our messaging out to consumers. At these events and conferences, we often participate on a DTV panel, give a presentation, and/or have an exhibit and staff providing materials and answering questions.

Our partnerships with private sector groups such as the Consumer Electronics Association (CEA), the Consumer Electronics Retailers Coalition (CERC), the National Association of Consumer Agency Administrators (NACAA), and the National Association of Broadcasters (NAB) are essential to our mission, and we are constantly working to strengthen these relationships. Through NACAA the Commission recently sent materials to their entire membership of over 200 organizations and individuals, asking them to link to our website and partner with us to get the message out about the transition. As we have done in the past, we will continue to develop joint publications as needed with industry associations. We are also working on developing partnerships with large umbrella groups such as the Boy Scouts and Girl Scouts to further develop community outreach

initiatives.

The Commission is also working closely with groups that target special interest groups that are more likely to have high concentrations of over-the-air viewers. For example, to reach the Hispanic/Latino constituencies, we scheduled a DTV Consumer Education Workshop to focus specifically on minority and non-English speaking consumers. In addition, we will continue to handle calls to the FCC Call Center in Spanish and address spikes in Spanish speaking calls and other languages as needed. We will also continue to translate all of our DTV publications into Spanish and update all publications to ensure consistency with industry translations. Going forward, we will be drafting Spanish language articles and developing Spanish language videos, podcasts and PSAs. We will be strengthening our partnerships with groups such as the National Council of La Raza, the League of United Latin American Citizens, the National Hispanic Chamber of Commerce and Univision.

Senior citizens are also one of our targeted outreach groups. Through our field offices, the Commission is reaching out to senior centers across the country with DTV presentations and large font publications. We are developing a partnership with the American Library Association and are working with them to develop a DTV Awareness Week in libraries across the country. The Commission also has a strong relationship with AARP. We plan to continue to participate in their conferences and provide them with articles and interviews. As we learn of senior events around the country, we also plan to send publications, or participate if budgeting allows. In addition, we will continue making large font versions of all of our DTV material available and develop materials directed at seniors as necessary.

Through our Disabilities Rights Office, we have reached out to a number of organizations to discuss the transition and the affect on consumers with disabilities. The Commission will continue to meet with these groups on a regular basis and seek their input on how to best reach their constituencies. In addition, our key publications are available in Braille & audio formats. We also attend conference and events around the country to discuss the transition and how it will affect those with disabilities. We have recently posted two FCC Advisories on Closed Captioning and DTV. As the transition continues, we plan to work with the disabilities community to develop additional outreach materials and further target our messaging.

Reaching low income consumers involves another focused campaign. In addition to the groups previously mentioned, we are working with groups such as the NAACP, National Urban League, National Association of Social Workers, and other government agencies to get our material into their offices and into the hands of low-income consumers. Budget permitting, we will also develop PSAs to target these consumers.

Reaching those living on tribal lands and rural consumers is also a priority for the

Commission. Through our office of Intergovernmental Affairs and our tribal liaison, we will continue to partner with the BIA to get our materials to tribal lands, develop articles and PSAs geared towards tribal consumers, and will be working with tribal organizations to have our materials translated in native languages. We also plan to continue to attend native American and rural-related conferences such as the National Congress of American Indians (NCAI), the United South and Eastern Tribes (USET), and Rural Telcon'.

3. Reporting requirements:
On July 21, 2007, the Commission adopted a *Notice of Proposed Rulemaking* (FCC 07-128) which requested comment on the best means of establishing a coordinated consumer education campaign. In particular, the *Notice* sought comment on several potential DTV consumer initiatives to be undertaken by broadcasters, multichannel video programming distributors (MVPDs), retailers, and manufacturers, including: requiring all MVPDs to include periodic notices about the transition in customer bills; requiring all manufacturers of "television receivers or related devices" to include DTV transition information with the devices; coordinating with NTIA to require retailers who participate in the converter set-top box coupon program to establish employee training and consumer information plans and file them with the Commission; requiring the "Partners" listed on the Commission's www.dtv.gov website to report their consumer outreach efforts; requiring public service announcements (PSAs) about the transition by broadcasters; and requiring reporting by broadcasters on their consumer education efforts.

The comment period in the *DTV Consumer Education NPRM* has closed and the Chairman has circulated a *Report and Order* to his colleagues that would adopt a number of the requirements proposed in the *Notice*, including various reporting requirements and guidelines for stakeholders to report their efforts directly to the Commission. The Chairman has encouraged his colleagues to adopt the *Report and Order* expeditiously so that the reporting requirements can become effective and the Commission can begin to track these stakeholder efforts against our planned DTV outreach goals.

Outside of, and in addition to the *DTV Consumer Education* proceeding, as mentioned above, the Commission has been working with various stakeholders such as the DTV Transition Coalition, the National Association of Broadcasters (NAB), the National Cable and Telecommunications Association (NCTA), the Consumer Electronics Association (CEA), and the Consumer Electronics Retailers Coalition (CERC), among others, to keep apprised of the various stakeholder outreach efforts and coordinate them where appropriate. The NAB and NCTA both recently announced multi-million dollar DTV transition outreach initiatives, including voluntarily performing many of the requirements proposed in the *DTV Consumer Education NPRM.* We anticipate that these detailed voluntary efforts, and those of others, will assist these stakeholders in providing us on a timely basis with the information that we need to assess whether their

efforts are effectively reaching our targeted consumers.

IV. OTHER CRITICAL ELEMENTS

Other Critical Elements Goal 1: Transition TV stations in the cross-border areas from analog to digital broadcasting by February 17, 2009

Overview: The FCC is negotiating arrangements with Canada and Mexico that will enable U.S. stations in the border areas to transition to digital broadcasting by February 17, 2009. While there are existing mechanisms by which DTV stations are coordinated with both Canada and Mexico, the FCC is working to negotiate new agreements with both countries to govern coordination of TV stations in the border areas in order to accommodate the final configuration of U.S. DTV stations after the completion of the transition from analog television.

Negotiation of new agreements will take several months, at a minimum, to complete. To expedite the transition in the border areas, however, Canada and Mexico have each agreed to negotiate new DTV allotment plans to enable U.S. stations in the border areas to plan and build their digital facilities in time to meet the February 17, 2009 deadline. Once agreement is reached on the DTV allotment plans, U.S. stations in the border areas will be entitled to operate in accordance with those plans and FCC rules. The new TV agreements with Canada and Mexico, which will govern DTV coordination in the border areas after the transition, will be concluded after the DTV allotment plans are agreed.

Progress and Performance:

Milestone for Canada: Early 2008 (January/February) – Finalize DTV Allotment Plan. The FCC has exchanged its DTV plan with Canada and reviewed the Canadian DTV plan to determine possible incompatibilities between U.S. and Canadian stations. The FCC is working to resolve the relatively few incompatibilities that exist between the two plans.

1. Timeframes and Steps:

   - The FCC has been discussing the DTV transition with Canada for the past couple of years. (INITIATED AND ONGOING)

   - The FCC has been negotiating in earnest new arrangements to effectuate the transition in the border areas with Canada over the past year. To that end, the FCC and Industry Canada have met three times since January 2007 to discuss plans for the DTV transition and have frequent email and phone contact to collaborate on the details of a new DTV allotment plan. (INITIATED AND ONGOING)

   - The FCC and its counterpart in Canada, Industry Canada, agreed to a negotiation schedule that targets completion of a DTV allotment plan by early 2008. (COMPLETED 2007)

- A meeting with Industry Canada is scheduled for January 2008, at which time the transition plan will likely be finalized.

Milestone for Mexico: Spring 2008 – Finalize DTV Allotment Plan. The FCC has exchanged its DTV plan with Mexico and is currently reviewing the Mexican DTV plan to determine possible incompatibilities between U.S. and Mexican stations. At this time, it appears that there are few incompatibilities.

1. Timeframes and Steps:

   - The FCC has been discussing the DTV transition with Mexico for the past couple of years. (INITIATED AND ONGOING)

   - The FCC has been negotiating in earnest new arrangements to effectuate the transition in the border areas with Mexico over the past year. To that end, the FCC and Industry Canada have met three times since January 2007 to discuss plans for the DTV transition and have frequent email and phone contact to collaborate on the details of a new DTV allotment plan. (INITIATED AND ONGOING)

   - The FCC and its counterpart in Mexico, COFETEL, agreed in August 2007 to a negotiation schedule that targets completion of a DTV allotment plan by spring 2008. (INITIATED AND ONGOING)

   - The United States and Mexico expect to hold the first meeting to focus on the DTV plans in December 2007. (INITIATED AND ONGOING)

2. Collaboration between public and private sector organizations to agree on roles and responsibilities:

   The International Bureau has collaborated with public and private sector organizations to agree on roles and responsibilities. In developing its negotiating plan with Canada and Mexico, we talked with broadcasters about their concerns. The negotiation plan takes into account broadcasters' concerns about the timing of the transition by setting a goal for completion of the DTV allotment plans with Canada and Mexico that will enable U.S. stations to meet the transition deadline. In addition, we have collaborated with the State Department, which heads formal negotiation sessions, to set an aggressive schedule.

   Members of the Enforcement Bureau Field Offices also participate in "Mixta." This is the Joint (U.S./Mexico) Commission, also known as Comision Mixta Encargada de Resolver Asuntos de Radiointerferencia (CMERAR), which is an international organization charged with resolving harmful radio interference problems relating to licensed radio systems operating along and within the common border areas between the United

States and Mexico. This group is made up of FCC Enforcement Bureau staff, FCC International Bureau staff and representatives from other U.S. federal agencies, such as DHS, USFS, DOJ and others. They meet with Mexican SCT and CoFeTel officials to informally resolve radio interference matters along the border areas. If the interference cannot be resolved on a local level, the matter is referred to Washington DC & Mexico City for higher level review.

3. Reporting requirements to track stakeholder efforts against planned goals: In order to track progress against planned goals for the negotiations with Canada and Mexico, the FCC, working with the State Department, develops a written summary of all bilateral meetings with Canada and Mexico. These summaries detail progress achieved at the meetings and note commitments made to advance negotiations before the next round of meetings. In this way, the FCC is able to measure the progress of its negotiations with Canada and Mexico.

4. Mitigation of Risk:

   The FCC has also built into its negotiation plan with Canada and Mexico strategies for managing and mitigating risks. The timeframe for completing new DTV allotment plans with each country builds in extra time to allow for possible delay in the negotiations. In addition, the FCC's negotiation strategy seeks to identify potential problems early, so that the DTV transition in the border area can advance without delay. Rather than coordinate individual stations, the FCC has agreed with Mexico and Canada to coordinate new DTV allotment plans that will take into account all stations in the border area. In this way, possible incompatibilities between U.S. and Mexican and Canadian DTV stations can be identified early and resolved more efficiently in the context of the overall DTV plan. The FCC has exchanged its DTV plan with both Canada and Mexico and is currently reviewing the DTV plans from those countries to determine possible incompatibilities between U.S. stations and Canadian and Mexican stations. At this time, it appears that there are few incompatibilities. The Commission's Field Offices have responded to requests regarding the transition from broadcasters and other entities that could be affected by the digital transition.

B. Other Critical Elements Goal 2: Promote Consumer Awareness of NTIA's Digital-to-Analog Converter Box Coupon Program

Overview: At the outset, note that in the Deficit Reduction Act of 2005, where Congress established the hard deadline of February 17, 2009 for completing the DTV transition, Congress specifically allotted NTIA one hundred million dollars ($100,000,000) to spend on administrative expenses for the digital transition and the converter box program, including five million dollars ($5,000,000) "for *consumer education concerning the digital television transition* and the availability of the digital to analog converter box

program." Deficit Reduction Act of 2005, Public Law 109-171, Sec. 3005(c)(2)(A), Feb. 8, 2006 (emphasis added). In addition, Congress anticipated that the administrative expenses might be even greater than $100 million and therefore gave NTIA the ability to spend an extra $60 million on such expenses. Thus, Congress explicitly gave NTIA the responsibility for both the coupon box program as well as consumer education about the digital transition generally. The Chairman respects Congress's decision in this matter.

The Commission has requested money for digital transition consumer education and outreach two years in a row. At nearly the same time that this legislation was being passed, the Commission requested $500,000 for purposes of consumer education, but has received no money for this purpose. Instead, as noted above, Congress provided to NTIA $5 million for their program of "consumer education concerning the digital television transition." Again, the Chairman respects Congress's determination that NTIA should be the agency provided with the primary financial resources, and thus be the primary lead, for the consumer education efforts. Although Congress has not yet acted upon it, we have requested $1.5 million for consumer education for Fiscal Year 2008. To the extent that Congress wishes to provide us with funds exceeding the $1.5 million we have requested for consumer education efforts, we would welcome such an increase, and have conveyed this to Congress. That being said, the Commission is doing everything within its current statutory and budgetary capacity to facilitate the digital transition and promote consumer awareness.

Appendix A
Details of Proceedings for Technical Goals

1. First Report and Order

On August 24, 1990, the Commission made several policy decisions concerning the introduction of Advanced Television (ATV) service in the First Report and Order in MM Docket No. 87-268.[120]

The Commission stated that its primary goal in the DTV proceeding was to assure the development of a technically excellent ATV service that will most efficiently meet the needs of terrestrial broadcasters, cable television operators and, most of all, consumers. The Commission noted that, in the three years since it first began to consider ATV service, substantial progress had been made toward the selection of an advanced television systems. The Commission stated that the efforts of the Advisory Committee and other industry parties had significantly advanced the Commission's ability to assess the merits of the various technical concepts. In addition, system designers had made substantial progress in developing new technical schemes for delivering HDTV service using a 6 MHz channel. Based on this progress, the Commission made several policy decisions in the First Report and Order to further narrow the focus of the proceeding and to speed the decision on ATV technical standards.

First, the Commission announced that it intended to select a simulcast high definition television system for ATV service; that is, a system that employs design principles independent of NTSC technology. The Commission stated that the record indicated that simulcast systems offer the potential for significantly greater improvement in the quality of television picture and audio performance than NTSC compatible ("EDTV") systems and are not constrained by the limitations inherent in the NTSC technology. In addition, the Commission determined it would not give further consideration to transmission systems that require additional spectrum to augment the existing 6 MHz channel used for broadcast television. The Commission emphasized that in deciding to concentrate its efforts on selection of a simulcast system it was taking no position at the time on the merits of any particular simulcast system.

2. Second Report and Order

On April 9, 1992, the Commission decided a number of critical issues affecting implementation of ATV service in the Second Report and Order and initiated a Further Notice of Proposed Rule Making.[121]

In the Second Report and Order, the Commission made numerous decisions,

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[120] First Report and Order, 5 FCC Rcd. 5627 (1990).

[121] Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340 (1992).

including the following: (1) to limit initial eligibility for ATV frequencies to existing broadcasters; (2) to use vacant noncommercial reserved channels only when no feasible alternative exists for assigning ATV channels to existing broadcasters and to leave vacant noncommercial allotments without an ATV channel pair only when there is no other practicable way to award an existing broadcaster an ATV channel; (3) to maintain the secondary status of low-power television service stations vis-à-vis new ATV operations; (4) to maintain the secondary status of low-power television stations vis-à-vis new ATV stations; (5) to notify broadcasters that when ATV becomes and is designated as the prevalent medium, they will be required to "convert" to ATV, i.e., surrender one of two broadcast channels and cease broadcasting in NTSC; (6) to set a firm date for conversion to ATV; (7) to adopt a 100% simulcasting requirement at the earliest appropriate point; (8) to condition selection of an ATV system on a winning proponent's adoption of reasonable and nondiscriminatory patent licensing policies; (9) to encourage the ongoing work of the Advisory Committee on compatibility issues; and (10) to direct the Advisory Committee to address new audio developments as well as proposals for flexible apportionment of audio and data in the selection of a system.

In addition, in the Further Notice of Proposed Rule Making the Commission sought comment on various issues, including: (1) the tentative conclusion that the Commission should establish a firm date for conversion to ATV that is 15 years from either selection of an ATV system or the date a Table of ATV Allotments is effective; (2) the tentative conclusion that we should impose a 100% simulcasting requirement no later than four years after the ATV application/construction period has passed; (3) the merits of Advisory Committee findings concerning new developments in ATV technology, including its findings that these new developments are not sufficiently concrete to allow timely testing and do not merit further consideration in selection of an ATV system; (4) a proposal to rank the class of parties initially eligible for ATV frequencies in the event of a spectrum shortfall; and (5) a proposal to allow broadcasters a period of time to negotiate channel assignments prior to adoption of a Table of Allotments.

3. Third Report and Order

On September 17, 1992, the Commission resolved and, in some cases reconsidered, a number of outstanding issues from the Second Report and Order proceeding and solicited further comment on other issues in the Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making.[122]

On the basis of petitions for reconsideration or clarification of the Second Report/Further Notice, the Commission: (1) reconsidered in part its decision regarding the application and construction period and extended the application deadline to three years after the time that an ATV Allotment Table or an ATV standard is effective, whichever is later, and permitted a total of six years for both application and construction to be completed; (2) provided for further review of this presumptive schedule; (3) declined to modify its policy regarding the secondary status of low power television

[122] *Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making*, 7 FCC Rcd 6924 (1992).

service stations; (4) adhered to its decision that a firm date for conversion for all broadcasters must be established; and (5) adhered to its determination that a 100% simulcasting requirement should be adopted at the earliest appropriate time.

On the basis of the comments and replies received in response to the Second Report/Further Notice, the Commission, among other things: (1) reiterated its decision to limit initial eligibility for ATV frequencies to "existing broadcasters"; (2) declined to consider the question of the appropriate use for the reversion spectrum that we will reclaim at the time of full conversion to ATV; (3) agreed to create a noncommercial reserve of ATV spectrum; (4) adopted a preliminary deadline for conversion that is 15 years from the effective date of ATV system selection or a final Table of ATV Allotments, whichever is later and clarified that broadcasters that do not convert to ATV will have to cease broadcasting in NTSC at the final conversion date; (5) adopted a 50% simulcasting requirement, to be imposed one year after the six-year application/construction period ends, and a 100% simulcasting requirement to be imposed three years after the application/construction period closes; (6) adopted a simulcasting definition; and (7) announced several recommendations and directives to the Advisory Committee.

The Commission also sought comment on a number of issues, including the following: (1) whether to accord further relief to noncommercial stations with respect to the presumptive application/construction deadline; (2) whether to assign an existing broadcaster's ATV channel the same call sign as its NTSC channel; (3) whether to exercise the Commission's authority under the All Channel Receiver Act to require manufacturers to produce receivers capable of both NTSC and ATV reception; and (4) whether to permit the use of ATV channels for ancillary purposes.

4. Fourth Report and Order

On December 26, 1996, the Commission adopted a modification of the Advanced Television System Committee's (ATSC) DTV Standard in the Fourth Report and Order.[123]

Adopting the ATSC DTV standards achieved four important goals. First, it provided certainty to broadcasters, equipment manufacturers and consumers by establishing the standard that would be used for digital signals broadcast in the United States. As a result, it has also effectuated the goal of allowing the benefits of digital broadcasting to be realized more quickly. Third, through this Order, the Commission also provided for new and innovative services to be made available by the data transmission capabilities of the DTV Standard. Finally, adoption of this standard permitted interoperability with computers, which encourages innovation and competition.

[123] *Fourth Report and Order*, 11 FCC Rcd 17771 (1996).

The standard is consistent with a consensus agreement voluntarily developed by a broad cross-section of parties, including the broadcasting, equipment manufacturing and computer industries. The standard allows transmission of one or two High Definition Television programs, four, five or more Standard Definition Television programs at a visual quality better than the current analog signal, many CD-quality audio signals and the delivery of large amounts of data. As compression technology improves, broadcasters are able to offer even more programming and other content within the 6 MHz for which they are licensed. Our rules and proceedings keep pace with these changes in technology through Periodic Reviews of the DTV transition.

5. Fifth Report and Order

On April 3, 1997, the Commission adopted both the Fifth and Sixth Report and Order. The Fifth Report and Order gave broadcasters flexibility in the use of their digital channel. Such flexibility allows them to put together the best mix of services and programming to stimulate consumer acceptance of digital technology and the purchase of digital receivers.

To aid the launch of digital services, we provided for a rapid construction of digital facilities by network-affiliated stations in the top markets in order to maximize early exposure of households to the benefits of DTV. By focusing on network-affiliated stations, the Order required those most able to bear the risks of introducing digital television to proceed most quickly.

This order reminded licensees that existing public interest requirements continue to apply to all licensees and that the Commission may adopt new public interest rules.

6. Sixth Report and Order

In the Sixth Report and Order, the Commission adopted a Table of Allotments for digital television (DTV).[124] In addition, the Commission adopted rules for initial DTV allotments, which enabled stations to construct their pre-transition digital facilities. These facilities were essential to the transition by providing digital broadcast program to encourage early adopters to purchase digital televisions and launch the first steps of the transition to reach consumers. This step was similarly critical for manufacturers to provide a market for their early digital televisions. The Commission also adopted procedures for assigning DTV frequencies. Finally, the Commission set forth plans for spectrum recovery.

Through the DTV table, the Commission accommodated all eligible existing broadcasters, replicated existing service areas and ensured sound and efficient spectrum management. Those eligible for a DTV channel included parties licensed to operate a full

[124] In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, Sixth Report and Order, 12 FCC Rcd. 14, 558 (1997) ("DTV Sixth Report and Order").

service television broadcast station and those holding a construction permit for such a station.

The DTV Table minimized all unavoidable interference to both existing analog TV and new DTV service. In addition, the DTV Table of Allotments provided interference protection for more than 100 new stations for which applications had been filed and provided 30 new DTV allotments for stations that had begun operation or received construction permits since it issued its draft DTV Table of Allotments.

The Commission indicated that the DTV Table was based on a minimum power level of 50 kW and a maximum power level of 1000 kW. It stated that a 50 kW minimum power level would ensure that stations had a sufficient service area to compete effectively in the provision of DTV services and was consistent with the maximization concept supported by the industry. It also stated that 1000 kW was sufficient to provide a very high degree of service replication for almost all stations. The Commission indicated that this power level allowed for a more equitable distribution of opportunities for maximization of service areas to full service DTV stations of all sizes. While the Commission continued the secondary status of low power TV and TV translator stations, it adopted a number of administrative and technical measures to minimize the impact of DTV implementation on low power operations.[125]

Finally, the Commission set forth additional technical criteria for the allotment of additional DTV frequencies and the modification of allotments included in this initial Table. For new DTV allotments, the Commission chose to use the minimum geographic spacing requirements pursuant to Section 73.623(d) of the Rules without undertaking an interference analysis. The Commission chose this approach to give rulemaking proponents an opportunity to select any transmitter site and the opportunity to expand and improve its subsequent facility. For modification of an allotment, because the transmitter site is established, the Commission chose an analysis based on interference pursuant to Section 73.623(c) of the rules.

7. First DTV Periodic Review

The Commission adopted the First DTV Periodic Review on November 8, 2001 in order to implement any mid-course corrections necessary to ensure the success of that conversion.[126] The Commission accomplished two major goals in the First Periodic Review. The first goal was to provide a more graduated approach to providing DTV

[125] *Id* at 14652-7. Such measures included allowing an LPTV station that is "displaced" by a full-power station to file an application for a new channel (displacement application) and for such application to be treated as a minor change and not subject to competing applications. In addition, the Commission eliminated the requirement that LPTV stations comply with certain interference rules. Finally, the Commission increased the permissible power for LPTV stations in order to facilitate the collocation of LPTV and full-power television facilities and eliminate interference between these types of stations.

[126] Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 16 FCC Rcd 5946 (2001), on recon., 16 FCC Rcd 20594 (2001).

service. The second goal was to maximize the number of DTV stations providing service to at least all consumers in their community of license.

To this end, the Commission relaxed its channel election, build out and replication deadlines. It temporarily deferred requirements that commercial stations with both analog and digital channel assignments within the DTV core (channels 2-51) elect by December 31, 2003 (December 31,2004 for non-commercial stations) which channel they would use for their post-transition digital channel. The Commission noted that a more graduated approach would give stations more time to increase power and gain experience at these higher power levels before having to choose which of their two channels would provide optimal DTV service. The Commission allowed broadcasters initially to build lower-powered, and therefore less expensive, DTV facilities, and retain the right to expand their coverage area as the digital transition progressed. The Commission also allowed stations to construct initial DTV facilities designed to serve at least their communities of license, while still retaining DTV interference protection to provide full replication at a later date. It temporarily deferred its earlier requirement that commercial broadcasters replicate their entire current grade B NTSC analog service area with their DTV signal by December 31, 2004.

8. Orders Addressing Requests for Extensions of Time to Construct DTV Facilities and Waivers of the "Use or Lose" Deadlines (Adopted May 2007)

On May 17, 2007, the Commission addressed requests for extensions of time to construct DTV facilities and/or waivers of the deadline by which stations must build DTV facilities in order to retain the ability to carry over interference protection to their post-transition channel (so-called "use or lose" waivers).[127] Extension requests were made for both pre-transition-only facilities as well as facilities used for both pre- and post-transition operation.

Based on the justifications submitted by the stations, the Commission granted extensions for 140 stations, denying 5, and granted waivers for 185 stations, denying 7. To focus stations' efforts on construction of their permanent DTV facilities, the extensions granted by these orders were based on whether the DTV facilities to be constructed were going to be used solely for pre-transition (*i.e.*, until February 17, 2009) operations or for both pre- and post-transition (*i.e.*, after February 17, 2009) operations. Stations whose pre-transition DTV channel is the same as their post-transition channel were given until November 18, 2007 (six months from the release date of the two orders) to complete construction.

Stations whose pre-transition DTV channel is different from their post-transition channel were given until 30 days after the effective date of the amendments to Section

[127] DTV Build-Out; Applications Requesting Extension of the Digital Television Construction Deadline, Order, 22 FCC Rcd 9789, 9805 ¶¶82-87 (2007) ("Construction Deadline Extension Order"); and DTV Build-Out; Requests for Waiver of July 1, 2005 and July 1, 2006 "Use or Lose" Deadlines Requests for Waiver of the August 4, 2005 "Checklist" Deadline, Order, 22 FCC Rcd 9750, 9764 ¶¶79-115 (2007) ("Use or Lose Order").

73.624(d) of the rules adopted in the Report and Order in the Third DTV Periodic Review proceeding in which to complete construction. However, in the Third DTV Periodic Review NPRM, the Commission proposed not to require these stations to further construct their pre-transition DTV channel and proposed to establish February 17, 2009 as the deadline by which these stations must complete their final, post-transition facilities. This was done to give stations facing the challenges associated with moving to a new DTV channel the maximum possible time to complete their post-transition facilities before analog transmissions must cease.

We have received three petitions for reconsideration of the extension order and eleven petitions for reconsideration of the Use or lose Order. First drafts are under review.

9. Low Power Television Transition (Order adopted 2004; FNPRM being drafted in MB)

Some low power, translator and Class A stations are already operating using digital technology. However, most LPTV and translator stations will convert to digital technology after full-power stations have completed their transition.

In 2004, the Commission concluded that LPTV and translator stations ultimately must convert to digital by a date the Commission will establish in a future proceeding.[128] Subsequently, in the DTV Act of 2005, Congress did not apply the February 18, 2009 full-power analog shutoff date to LPTV and TV translator stations.[129]

The Commission has adopted rules for digital low power television (LPTV) and television translator stations to construct digital facilities and has issued nearly 2000 construction permits for such stations.[130] Staff is working on a FNPRM to initiate a proceeding to consider the remaining issues for the digital transition of these stations, principally a transition deadline.

One issue is how low power stations can provide information to their viewers concerning their transmissions after February 17, 2009 (for example, whether the translator is transmitting digital or converted analog signals and, therefore, whether converter boxes will be needed to receive those stations on TV sets without DTV tuners).

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[128] Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03-185, Report and Order, ("LPTV Order") 19 FCC Rcd. 19331 (2004).

[129] Digital Television and Public Safety Act of 2005 ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA") (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)). DTV Act § 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power stations.

[130] *See* LPTV Order, 19 FCC Rcd. 19331.

There are also issues concerning the NTIA-subsidized converter boxes that do not easily pass through analog signals, and the NTIA coupons that will expire before many LPTV stations transition to digital.

10. Second DTV Periodic Review

The Commission adopted the Second DTV Periodic Review on August 4, 2004 with the goal of hastening the completion of the transition.[131] It did so by commencing an open channel election process in November 2004 that provided certainty to the marketplace and resulted in the Final DTV Table of Allotments. It promoted closed captioning, V-chip, channel numbering, and other functionality by requiring broadcasters to include PSIP information in their digital broadcast signals. The Order also furthered the transition by establishing firm deadlines for digital stations to increase their power levels to serve additional viewers or lose interference protection to the un-served areas. It clarified digital closed captioning rules in order to ensure that those services are consistently and effectively delivered. After an 18-month transition period, this Commission established that all digital television receivers contain V-chip functionality that will permit the current TV ratings system to be modified.

11. Seventh Report and Order (Final DTV Table of Allotments) (Adopted August 2007)

On August 1, 2007, the Commission adopted the *Seventh Report and Order and Eighth Further Notice* in the Advanced Television (DTV) docket.[132] Through the final DTV table of allotments which was adopted at this time, the Commission specified the channels and facilities for operations for over 99% of broadcasters after the DTV transition on February 17, 2009. The final DTV Table furthers the transition by providing all full power television stations (more than 1,800) across the country with their final channel assignments for broadcasting following the DTV transition. Accordingly, the Commission achieved the important goal of finalizing the single channel on which each eligible broadcaster will operate, in digital, post transition.

The Commission also achieved the important goal of reducing the amount of spectrum used for television service in order to make valuable spectrum available for public safety uses and expanded wireless competition and innovation. The new DTV Table of Allotments is based largely on the channel elections that stations made in 2004-2006 pursuant to channel election procedures established in the *Second DTV Periodic Review.*

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[131] Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 19 FCC Rcd 18279 (2004).

[132] *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, FCC 07-138 (rel. Aug. 6, 2007)

The *Seventh Report and Order* includes Appendix B describing the parameters for stations' post-transition facilities and reflects revisions to the proposed facilities to ensure that stations that certified to "maximization" in the channel election process are able to replicate their analog facility if they are moving back to use their NTSC (analog) channel frequency for post-transition digital service. These revisions achieve the goal of assuring that stations can continue to serve their existing over-the-air analog viewers when the station completes its transition to digital operation.

12. Eighth Further Notice of Proposed Rulemaking

In the *Eighth FNPRM,* the Commission proposes channels and station modifications for 13 television stations whose requests for modifications were received too late to be included in the final DTV Table. These additional adjustments to the final DTV Table further the goal of assuring that every full power television station is properly accounted for. The deadline for Comments in response to the *Eighth FNPRM* was October 10, 2007 and the deadline for Reply Comments is October 25, 2007.

We anticipate that some stations will need further adjustments to the facilities they received in the DTV Table and Appendix B. Petitions for reconsideration of the *Seventh R&O* must be filed by October 26, 2007. We will address these petitions before the end of the year to ensure that all stations know what their final facilities for digital operations are. These steps are essential to complete the transition and keep stations on track to build their final digital facility.

13. Third DTV Periodic Review NPRM (Adopted April 2007, Order being drafted)

On April 25, 2007, the Commission adopted a Notice of Proposed Rule Making initiating the third periodic review of issues related to the digital transition. The Third DTV Periodic Review provides a progress report on the DTV transition to date, proposes deadlines and procedures to ensure that broadcasters meet the goal of completing construction of their post-transition digital facilities by the statutory deadline, and addresses the steps needed so that service to viewers is not disrupted.

The Third DTV Periodic NPRM provided a list of 752 stations (approximately 42% of stations assigned a channel in the proposed new DTV Table of Allotments) that should now be ready, or very close to ready, to complete their transition to DTV.

The Third DTV Periodic NPRM also proposed eight specific actions to ensure completion of the transition by full-power television stations by February 17, 2009. First, we proposed to establish February 17, 2009 as the construction deadline for stations that are building new digital facilities or that have situations in which the operation of their analog service prevents the completion of their full, authorized digital facilities. This deadline both serves the goal of completing construction of digital facilities on time and providing stations with the maximum time in which to complete their construction.

Second, we proposed to require stations whose post-transition channel is the same as their pre-transition DTV channel to complete construction of their DTV facilities by November 18, 2007. This proposal would advance the goal of hastening construction and readiness for these stations so that construction resources will be available for other stations that are changing channels for post-transition service.

Third, we proposed to adopt stricter standards to apply to future requests for extensions of time to construct but allow stations that meet the standard to complete construction after 2/17/09 provided their DTV operation serves all of their analog viewers. In order to provide some flexibility, we also proposed to allow some to stay on the pre-transition digital channel for a limited time provided it does not interfere with another station's transition.

Fourth, we proposed to address the goal of a smooth transition by permitting stations that have different pre-transition and post-transition channels to devote their resources to building their post-transition channel stations and not complete construction of full, authorized facilities on their pre-transition channel.

Fifth, we proposed to hasten the transition by expediting processing for stations that are applying for a construction permit for their post-transition channel based on the new DTV Table of Allotments.

Sixth, we described circumstances in which we might allow stations to reduce or terminate analog service to facilitate the goal of timely construction of post-transition facilities. We are cognizant, in this respect in particular, of the tension and controversy associated with allowing analog reduction or turn off before the February 17, 2009 transition date. We are considering this step and balancing it against the goal of ensuring that stations can build their final digital facilities on time. Such a step would most likely be permitted only if the stations provide advance notice to viewers as well as to the Commission.

Seventh, we looked ahead to the post-transition period and proposed a new 0.5% interference standard to apply to maximizations and new channel allotments after the transition. The Notice also tentatively concluded not to accept applications for maximizations or to lift the freeze on such applications until the processing is completed for stations to build their post-transition authorized facilities.

Eighth, to further enhance our tracking and to ensure that all stations are fully accounted for and on track, we proposed to require stations to file a form with the Commission (by December 1st, 2007) detailing the current status of the station's digital transition, the additional steps the station must take before the transition deadline, and a plan for how the station intends to meet the deadline.

Ninth, the Notice sought comment on any actions needed to assure coordination between broadcasters and MVPDs to achieve the goal of assuring that viewers who

receive broadcast television through subscription service are also taken care of in the transition process.

The comment and reply cycle ended on August 30, 2007, and over 120 Comments were submitted. Media Bureau staff is working on the draft of the Third Periodic Order now and planning for Commission consideration and adoption in November 2007. In addition, the Media Bureau, OET, and IB are working on the International Coordination issue with Canada and Mexico to meet the goal of international approval for stations' post-transition facilities that have been approved for domestic operation. The Canadian negotiations are underway and going extremely well. Mexican negotiations have begun and meetings will be held in the next few months. These negotiations are on track to reach the goal of having the channels and facilities on the recently adopted Table of Allotments agreed to by both countries so that individual coordination is not needed until stations want to make further changes to their facilities.

14. DTV CP and License Processing for final post-transition facilities (October 2007 through January 2008)

We expect to receive applications for construction permits from roughly 300 stations making modifications to their existing post-transition facilities at the end of October and to receive applications from roughly 625 stations building all new facilities beginning in January 2008 and continuing throughout 2008.

The Third Periodic Review NPRM proposed one week turn-around on applications that fit specified criteria; then other applications will be reviewed; and then the freeze may be lifted (perhaps by August 2008) so that stations can file for expanded facilities.

The Video Division and OET are developing an internal program to expedite processing and we are contracting with an outside vendor to develop a program to process applications that do not match Appendix B and for post-transition processing. We are also coordinating with IB and OET on International Coordination issues with Canada and Mexico.

15. Distributed Transmission System ("DTS") technologies (Adopted NPRM 2006; Order under review in MB)

In 2004, in the Second DTV Periodic Report and Order, the Commission approved the use of DTS technologies on an interim basis, but deferred to a separate proceeding the development of rules for DTS operation and the examination of several policy issues related to its use. DTS employs multiple synchronized transmitters spread around a station's service area, rather than the current single-transmitter approach. The value of DTS is to potentially provide better over-the-air service in areas that cannot be reached by a single transmitter (e.g., mountainous terrain.)

On November 3, 2005, the Commission adopted the DTS Notice of Proposed

Rulemaking requesting comment on whether and how to implement DTS and issued a Clarification describing how the interim rules would be applied. The comment and reply cycle closed March 7, 2006.

Although there was support for DTS expressed in the rulemaking proceeding, only a few stations have requested to use DTS under the interim rules, which restrict use to within the station's existing authorized facility. At present, only one station, WTVE-DT, Reading, PA, has applied for and been authorized to operate a DTS system under the interim policy. Reading Broadcasting, Inc. ("RBI"), licensee of WTVE-DT, channel 25, Reading, PA was granted a DTS STA on Nov. 30, 2006. See FCC File No. BSDTS-20060407ACP.

In addition, the Commission has approved the use of a multiple DTV transmitter system in New York city using multiple channels under an experimental authorization. The Commission granted Metropolitan Television Alliance ("MTA") experimental authority to operate a low-power DTV multiple-transmitter system in New York, NY. The MTA consists of the licensees of ten New York City area television stations (WCBS-TV, WNBC-TV, WNYW-TV, WABC-TV, WWOR-TV, WPIX-TV, WNET-TV, WPXN-TV, WNJU-TV, and WXTV(TV)). These stations operated digital facilities from the North Tower of the World Trade Center, which was destroyed in the September 11th attack. The experimental DTV network is testing the ability of these stations to provide fill-in over-the-air DTV coverage in areas of New York City where adequate coverage is not provided.

In addition, TV station WSTE, channel 7, Ponce, PR, which currently operates an integrated system of synchronous boosters to broadcast its analog signal throughout its coverage area, will be allowed to convert its current system to a digital network when it files its application for post-transition operations.[133] Siete Grande, licensee of WSTE, Ponce, PR, seeks to fully replicate the coverage of its analog booster system when it transitions to DTV.

Two stations applied for and were authorized to operate a DTS system under an experimental authorization; however, such authority has now expired for these stations. The Pennsylvania State University, NCE licensee of WPSU-DT, Clearfield, PA, which was the first to build an experimental DTS system, applied for an experimental DTS system before the interim policy was established, but has since allowed authority for this system to expire.[134] Tribune Broadcast Holdings, Inc., licensee of WTTK-DT, Kokomo, IN, applied for an experimental DTS system. The station, however, has now ceased operating its experimental DTS system on channel 54 and has withdrawn its experimental authority to focus on the construction of the station's post-transition facility.[135]

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[133] *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, FCC 07-138 (rel. Aug. 6, 2007), at ¶67, n. 168.

[134] See FCC File Nos. BPEXT-20010608ABD, BPEXT-20010608ABD and BEPEXT- 20030805ARU.

[135] See FCC File No. BEPEXDT-20060519ACV.

Staff has drafted a Report and Order, which is under review in the Bureau

16. Low Power Television Transition (Order adopted 2004; FNPRM being drafted in MB)

Some low power, translator, and Class A stations are already operating using digital technology. However, most Class A, LPTV and translator stations will convert to digital technology after full-power stations have completed their transition.

In 2004, the Commission concluded that LPTV and translator stations ultimately must convert to digital by a date the Commission will establish in a future proceeding.[136] Subsequently, in the DTV Act of 2005, Congress did not apply the February 18, 2009 full-power analog shutoff date to LPTV and TV translator stations.[137]

The Commission has adopted rules for digital low power television (LPTV) and television translator stations to construct digital facilities and has issued nearly 2000 construction permits for such stations.[138] Staff is working on a FNPRM to initiate a proceeding to consider the remaining issues for the digital transition of these stations, principally a transition deadline.

One issue is how low power stations can provide information to their viewers concerning their transmissions after February 17, 2009 (for example, whether the translator is transmitting digital or converted analog signals and, therefore, whether converter boxes will be needed to receive those stations on TV sets without DTV tuners).

There are also issues concerning the NTIA-subsidized converter boxes that do not easily pass through analog signals, and the NTIA coupons that will expire before many LPTV stations transition to digital.

DTV TUNER MANDATE PROCEEDINGS

1. DTV Tuner Mandate (First Order adopted August, 2002)

In 2002, the Commission adopted rules requiring that all new TV broadcast

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[136] *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, ("LPTV Order") 19 FCC Rcd. 19331 (2004).

[137] *Digital Television and Public Safety Act of 2005 ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005*, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA") (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)). DTV Act § 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power stations.

[138] *See LPTV Order*, 19 FCC Rcd. 19331.

receivers that are shipped in interstate commerce or imported into the United States, for sale or resale to the public, be capable of receiving the signals of DTV broadcast stations over-the-air no later than July 1, 2007.[139] Under this requirement, TV broadcast receivers were required to provide useable picture and sound commensurate with their video and audio capabilities when receiving DTV signals. The DTV tuner requirement was intended to facilitate the transition to digital television by promoting the availability of DTV reception equipment and to protect consumers by ensuring that their TV receivers will provide off-the-air TV reception of digital signals when analog TV operation ceases. In order to minimize the impact of this requirement on both manufacturers and consumers, the Commission adopted a phase-in schedule that applied the requirement first to receivers with large screens and then to progressively smaller screen receivers and other TV receiver devices that do not include a viewing screen, *e.g.*, VCRs and digital video recorders.

2. DTV Tuner Mandate (Second Order adopted November 2005, Enforcement ongoing)

In November 2005, the Commission modified its DTV tuner rules and established March 1, 2007 as the date by which all televisions imported or distributed in the United States must include a digital tuners and applied the tuner mandate to all television equipment that has an analog tuner (including TV sets, DVD players, VCRs, etc), regardless of size.[140] This decision expanded the scope of the DTV Tuner Mandate, which previously did not apply to televisions with screen size smaller than 13 inches, and moved up the date by four months.

On May 30, 2007, the Commission issued the first enforcement actions for violations of the DTV tuner requirements. The Commission issued an NAL proposing a $63,650 forfeiture against Regent U.S.A., Inc. for importing or shipping interstate 1,182 non-DTV-compliant television receivers and issued an NAL proposing a $2,899,575 forfeiture against Syntax-Brillian Corporation for importing or shipping interstate 22,069 non-DTV-compliant television receivers.

3. Digital to Analog Converter Testing (ongoing)

The Commission's Office of Engineering and Technology signed a Memorandum of Understanding (MOU) with NTIA in February, 2007 to conduct tests on converter boxes for compliance to NTIA requirements for coupon eligibility. Starting July 9, 2007, OET's laboratory has been receiving boxes from NTIA for testing under this MOU. Based on the test results submitted to NTIA, they have announced certification of three converter boxes from two companies. NTIA is reviewing the test results for several more boxes to make the final determination on certification of the boxes for coupon eligibility.

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[139] *See Second Report and Order and Second Memorandum Opinion and Order* in MM Docket No. 00-39, 17 FCC Rcd 15978 (2002) at ¶¶ 8-46.

[140] *See Second Report and Order* in ET Docket No. 05-24, 20 FCC Rcd 18607 (2005).

As a part of the program, NTIA has indicated that they have received additional notices of intent to submit converter boxes for testing.

Consumers will be able to request coupons beginning 1/1/08 and the program will send out coupons when boxes are available, which they expect will be early 2008, after the holidays.

Appendix B
Details of Proceedings for Policy Goals

1. First DTV Cable Carriage Report and Order and Further Notice (NPRM 1998, R&O and Further Notice 2001)

In 1998, the Commission initiated a rulemaking proceeding to determine how to apply the must carry requirements in the Communications Act to cable carriage of digital television signals.[1]

In January 2001, the Commission adopted the *First DTV Carriage Report and Order* ("*First R&O*") which concluded that cable operators must carry the digital signals of "digital-only" local commercial and non-commercial stations.

In the First Report and Order, the Commission also addressed other issues including applying material degradation to digital signals by, for example, requiring that signals broadcast and received by cable systems in high definition are retransmitted to cable subscribers with HD equipment in high definition. This decision furthered the goal of assuring that the benefits of the digital transition, including improved sound and picture quality, reach all viewers. The First Report and Order also revised the rules for retransmission consent and channel capacity calculations to reflect the changing technology associated with digital signals. Similarly, the First Report and Order addressed channel placement, that is, the channel number to be used by cable operators, to respond to the different technology attendant to carriage of a digital signal. In a Further Notice of Proposed Rulemaking, the Commission sought comment on how to define "program related" and also sought comment on the issue of "dual carriage."

2. Second DTV Cable Carriage Report and Order

On February 10, 2005, the Commission adopted a Second Report and Order and First Order on Reconsideration ("Second R&O"), which was limited to resolving the dual carriage and multicast carriage issues.[2] In the Second R&O, the full Commission affirmed its tentative conclusion in the First R&O and, therefore, declined to impose a dual carriage requirement on cable operators. A majority of the Commission also declined to impose a mandatory multicast carriage requirement on cable operators based on the existing rulemaking record. Then-Commissioner Martin disagreed with the majority on the mandatory carriage of multicast signals and stated that the public benefits of free multicast programming outweighed the burden on cable companies.

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[1] Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules, Notice of Proposed Rulemaking, 13 FCC Rcd 15902 (1998).

[2] Carriage of Digital Broadcast Signals: Amendments to Part 76 of the Commission's Rules, CS Docket No. 98-120, Second Report and Order and First Order on Reconsideration, 20 FCC Rcd 4516 (2005).

3. Third Report and Order and Third FNPRM (Post-Transition Cable Carriage of DTV Signals ("Viewability") - (Adopted September 2007, action on FNPRM planned by May, 2008)

On September 11, 2007, the Commission adopted the *Third Report and Order and Third Further Notice of Proposed Rulemaking* in the cable carriage docket.[3] The Viewability Order ensures that all cable subscribers, including those with analog TV sets, can view broadcast television after the transition to digital television occurs on February 17, 2009.

Of critical importance is the Commission's requirement that cable operators make all mandatory carriage channels broadcast stations viewable after February 17, 2009 for all subscribers, including those with analog television sets. Cable operators must comply with this "viewability" provision and ensure that cable subscribers with analog television sets are able to continue to view all must-carry stations after the end of the DTV transition by either: (1) carrying the digital signal in analog format, or (2) carrying the signal only in digital format, on an all-digital cable system. This viewability requirement sunsets on February 18, 2012 unless the Commission determines to extend the requirements. Small cable systems (552 MHz or smaller) may request a waiver of the viewability requirement if capacity limitations prevent their carriage of additional digital versions.

Through the *Third Further Notice,* the Commission seeks comment on several issues related to the implementation of the new regulations, including the effect of channel positioning requirements, the applicability of rules governing material degradation, and suggestions for alternative rules that would minimize the economic impact of viewability requirements on small cable systems. The *Notice* commits the Commission to acting on the issues related to small cable systems within six months. We expect release of the *Third Report and Order and Third Further Notice of Proposed Rulemaking* soon and assume publication in the Federal Register by late October, giving us six months (May 2008) to complete the Fourth Report and Order.

4. Final Timing and Content Issues Related to Cable Carriage of Digital Television Stations (action planned by summer 2008)

Our plan is to first establish when the must carry rights will transfer from the analog signal to the digital signal and how to ensure that all stations' digital signals are carried on February 18, 2009. One option is that mandatory carriage rights could shift from a station's analog signal to its digital signal as of the beginning of the carriage cycle on January 1, 2009, for those stations whose digital signals are fully constructed; or all stations' mandatory carriage rights could shift from analog to digital as of February 18, 2009, after the analog signals are terminated. Second, the Commission must define

[3] Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, CS Docket 98-120 (adpt. Sept. 11, 2007).

"program-related", which will determine what cable operators are required to carry in addition to the "primary video." As explained above, the Chairman has in front of the Commission a proposal to require cable operators to carry all multicast streams, which will largely make this issue moot. The Chairman also has in front of the Commission a proceeding that would tee up the issue of allowing certain qualified designated entities to become broadcast licensees by using an existing broadcaster's multicast stream and thereby obtain cable carriage and provide an additional offering from another broadcaster to local viewers.

5. Post-Transition Satellite Carriage of DTV Signals (FNPRM adopted 2001; Order and Second FNPRM currently under pre-circulation review)

In January 2001, as part of the *First DTV Carriage Report and Order*, the Commission raised questions concerning satellite carriage of digital signals in a *Further Notice of Proposed Rulemaking*. These issues have not been addressed in the subsequent Carriage Orders, which have been limited to cable issues. Addressing satellite carriage of digital signals is the final piece needed to ensure that viewers who get their television programming through subscription services continue to receive local broadcast stations after the stations transition to digital service.

With this goal in mind, staff has drafted for Commission review and consideration a Second Report and Order in the satellite carriage docket that would require satellite carriage of digital-only stations. In addition, staff has drafted a Second Further Notice of Proposed Rulemaking seeking comment on how to apply the statutory requirements for carry-one, carry-all to satellite carriage of digital signals, particularly in light of DBS capacity limitations.

6. Multicast Must Carry (Order on reconsideration on circulation since May 2006)

The Second DTV Cable Carriage Report and Order in February, 2005, concluded that cable systems would not be required to carry both analog and digital broadcast signals before the end of the transition. This Second Report and Order also concluded, based on the record available at that time, that cable operators would not be required to carry more than one "primary" video stream.[4]

One of the benefits of the transition to digital is the ability of broadcasters to use the digital spectrum they already have to send multiple television signals to consumers for free. For example, a broadcaster using analog technology transmits one programming stream, but with digital technology, broadcasters can transmit several programming streams simultaneously (e.g., a movie channel, a 24-hour news channel and a sports

[4] In the Matter of: Carriage of Digital Television Broadcast Signals: Amendments to part 76 of the Commission's Rules, CS Docket No. 98-120, Second Report and Order and First Order on Reconsideration, 20 FCC Rcd. 4516 (2005).

programming channel) with no additional cost to the consumer or need for additional spectrum. In this way, multicasting enables broadcasters to provide more free television programming to consumers. With continuing advances in compression technology, broadcasters may eventually be able to fit upwards of 12, or even more programming streams in their digital broadcast signal, compared with their analog signal that encompassed the same 6 MHz of spectrum but could accommodate only one programming stream. This improved technology offers the potential to benefit all consumers with significantly more choice. Over-the-air viewers, in particular, including and particularly OTA-only consumers and low income consumers could gain access to many more programming options and reap greater benefits from obtaining the digital-to-analog converter box. More free over-the-air television facilitates the transition by providing people with an incentive to get a converter box to attach to their existing analog televisions. This is a more appealing incentive to many than the costs associated with buying a new HD television set. The faster that this technology is in consumers' homes, the less chance there is that Americans will be left in the dark after the digital transition.

The only way the Commission can make this opportunity of multiple streams of free programming for over-the-air viewers a reality is if the cable companies are required to carry all of this free over-the-air programming as part of their must carry obligations. Without the certainty and financial support of cable carriage, many broadcasters, particularly those that rely on mandatory carriage, will not be able to develop and provide this free programming to their viewers.

In May 2006, the Chairman circulated an Order on Reconsideration to require cable carriage of all free over-the-air programming streams after the transition. In June 2006, this order was placed and then withdrawn from the meeting agenda, but it remains on circulation.[5]

In September, 2007, in the *Third Report and Order and Third Further Notice of Proposed Rule Making*,[6] the Commission affirmed the prohibition on material degradation of digital broadcast signals by cable operators. It retained the comparative approach to determining whether material degradation has occurred that was first adopted in the 2001 *First Report and Order*. Thus, "a cable operator may not provide a digital

[5] By way of background, in February of 2005, the Commission decided not to require dual carriage of both analog and digital signals as broadcast by stations before the transition and not to require cable to carry the multicast signals of stations pre- or post- transition. Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules, Second Report & Order and First Order on Reconsideration, 20 FCC Rcd 4516 (2005). The Commission concluded that the statute was ambiguous with respect to multicast carriage, but found the record at that time inadequate to support the multicast requirement. We received several petitions for reconsideration, as well as comments and ex parte comments arguing that carriage of the full, free over-the-air signal is required by the statute and is in the public interest.

[6] *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Third Report and Order and Third Further Notice of Proposed Rule Making, FCC 07-170 (adpt. Sept. 11, 2007)

broadcast signal in a lesser format or lower resolution than that afforded to any" other signal on the system.[7] Furthermore, a cable operator must carry broadcast stations such that, when compared to the original broadcast signal, "the difference is not really perceptible to the viewer."[8] As a result, "a broadcast signal delivered in HDTV must be carried in HDTV."[9]

7. DTV Outreach (Ongoing)

The concerted education effort began in October 2004 when the Commission kicked off its nationwide consumer education with the national Web portal for DTV transition information, www.DTV.gov.

The FCC DTV consumer education and outreach initiative consists of four main components:

- Internet: Information is regularly updated and provided through the www.DTV.gov and www.hDTV.gov Web sites.
- Publications: The FCC has produced consumer-friendly publications helping consumers understand the digital transition, including a DTV Tip Sheet the Commission prepared in conjunction with the Consumer Electronics Association (CEA), and the Consumer Electronics Retailers Coalition (CERC). This Tip Sheet has been distributed widely through major retail outlets. Publications are updated as developments warrant.
- Media: In October 2004, as part of the DTV outreach kickoff, the Commission conducted a satellite media tour on DTV.
- Event Participation: FCC staff participates in numerous conferences and meetings with stakeholders and consumer groups.

8. Labeling Requirement for Analog-Only Television Receivers (Second Report and Order in the Second DTV Periodic Review, adopted May 2007, enforcement ongoing)

On April 25, 2007, the Commission adopted a rule requiring sellers of analog-only television equipment to disclose at the point-of-sale that such devices include only an analog tuner and therefore will require a converter box to receive over-the-air broadcast television after the transition date.

The Commission had found that, despite the prohibition on import or distribution of analog-only televisions, retailers were continuing to sell analog-only devices from

[7] *First Report and Order,* 16 FCC Rcd at 2629, para. 73.

[8] *Id.* at 2628, para. 72.

[9] *Id.* at 2629, para. 73.

existing inventory and were not disclosing that analog-only devices would not work without a converter or use with a subscription service after the transition.

As of October 1, 2007, the Enforcement Bureau had inspected 1141 stores and websites and issued 261 citations notifying retailers of their violations of the labeling rule and warning of possible enforcement action, including monetary forfeitures, for future violations.

9. Consumer Education Initiative NPRM (adopted July 2007, Order circulated October 16, 2007)

On July 21, 2007, the Commission adopted a Notice of Proposed Rulemaking[10] requesting comment on several proposals relating to consumer education about the DTV transition that were raised by Congressmen Dingell and Markey in a letter to the Commission.

The NPRM requested comment on rules that would require industry actions in a coordinated, nationwide consumer outreach campaign about the DTV transition. Specifically, the NPRM solicited comment as to whether the Commission should require all stations to broadcast public service announcements ("PSAs") about the transition and require broadcasters to report on these and other consumer education efforts, and whether MVPDs likewise should be required to include periodic notices about the transition in customer bills. The NPRM also requested comment on whether the Commission should require all manufacturers of "television receivers or related devices" to include DTV transition information with the devices. The NPRM also proposes coordinating with NTIA to require retailers who participate in the converter set-top box coupon program to establish employee training and consumer information plans and file them with the Commission, and requiring the "Partners" listed on the Commission's DTV.gov page to report their consumer outreach efforts.

The comment and reply cycle closed on October 1, 2007, and an order was circulated on October 16, 2007 which, if approved, would mandate a number of actions to implement the proposals. First, the draft order proposes that broadcasters must provide information to their viewers about the DTV transition via public service announcements (PSAs) and crawls, and report those efforts to the Commission and the public. Second, MVPDs would be required to provide monthly notices about the DTV transition in their customer billing statements. Third, manufacturers of television receivers and related devices would be required to provide notice to consumers of the transition's impact on that equipment, and the entities listed as "Partners" on DTV.gov must provide the Commission with regular updates on their consumer education efforts. In addition, the order would require telephone companies participating in the Low Income Federal Universal Service Program to provide notice of the transition to their low income customers and potential customers, and the winners of the 700 MHz spectrum auction to

[10] *See In re DTV Consumer Education Initiative*, Notice of Proposed Rulemaking, FCC 07-128 (Adopted Jul. 21, 2007).

report their own consumer education efforts. The Order further states that the Commission will assist NTIA in policing and enforcing the requirements of the digital converter box retail program.

10. Diversity Initiative: Promoting Diversification of Ownership in the Broadcasting Services (NPRM Circulated March 2007)

On March 12, 2007, the Bureau circulated a Notice of Proposed Rulemaking to seek comment on several initiatives to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

The Notice invites comment on several possible ways to define the entities that would benefit from any measures that ultimately may be adopted ("Qualified Designated Entities" or "QDEs"). The Notice also proposes to revise the rules regarding construction permit buildout deadlines to afford QDEs additional time to construct their broadcast facilities and recognize innovative arrangements between qualified television broadcasters and QDEs that would allow QDEs to become digital television broadcasters by using a full power broadcaster's multicast streams and thereby obtain cable carriage through must carry. In addition, it seeks comment on whether the equity/debt plus ("EDP") attribution rule should be waived or modified where doing so would assist QDEs in acquiring a broadcast station, retaining an existing station, or building out a construction permit.

11. DTV Public Interest Proceeding (1999 NOI, NPRM is next step)

In December 1999, the Commission issued a *Notice of Inquiry* on the nature of television broadcasters' public interest obligations as they transition to DTV.[11] The *DTV Public Interest NOI* sought comment on the application of television stations' public interest obligations to the new capabilities of digital television; how television stations, operating in either analog or digital, could better serve their communities; how digital broadcasters could increase access to television programming by people with disabilities and further diversity; and whether digital broadcasters could enhance the quality of political discourse through use of the airwaves for political issues and debate, including whether digital broadcasters should be encouraged or required to provide free airtime to political candidates.

The *DTV Public Interest NOI* also pointed out the difficulties that arise in determining how to apply public interest obligations to a DTV broadcaster that multicasts or provides ancillary or supplementary services. The resulting record in the *DTV Public Interest NOI* proceeding reflects that there is no consensus among parties in deciding how to apply public interest obligations in the context of advanced digital capabilities. The next action to be taken in the DTV Public Interest docket is preparation of a NPRM based on the findings in the NOI record.

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[11] In re Public Interest Obligations of TV Broadcast Licensees, Notice of Inquiry, 14 FCC Rcd 21633 (1999).

Several separate rulemaking proceedings have resulted from the *DTV Public Interest NOI*. The first is the children's DTV proceeding, which addresses digital broadcasters' children's programming obligations. On September 26, 2006, the Commission adopted a Second Order on Reconsideration and Second Report and Order[12] resolving issues regarding the obligations of television broadcasters to protect and serve children in their audiences, including application of the children's television core programming processing guidelines to DTV.

The second proceeding is the broadcast Localism proceeding, which addresses more broadly whether both television and radio broadcasters' public interest programming obligations should be modified: in July 2004, the Commission released the *Broadcast Localism NOI*.[13] The Commission has completed five in a series of six hearings on localism to solicit input from the public on these issues. The final hearing is in the planning stages.

The Enhanced Disclosure proceeding encompasses several proposals to change television broadcasters' disclosures of their public interest activities. In September 2000, the Commission adopted a *Notice of Proposed Rule Making* to determine whether the Commission's requirements pertaining to television stations' public inspection files are sufficient to ensure that the public has adequate access to information on how the stations are serving their communities.[14] The *NPRM* proposed to replace the current "issues/programs" list for TV stations with a standardized form and to require TV broadcasters to make their public inspection files available on the Internet.
A *Report and Order and Further Notice of Proposed Rulemaking* was circulated on March 13, 2007. The Report and Order on circulation would adopt a standardized form for the quarterly reporting of programming aired in response to issues relevant to a station's community which would replace the current "issues/programs" list. The new form would require quarterly reporting on the programs aired by the station that provided its most significant treatment of community issues during the preceding three-month period and broadcasters' efforts to determine the issues facing their communities. This Report and Order also would require that that much of each station's public inspection file be placed on the station's website, if they have one, or in public files on the website of their state broadcasters association provide a link to that site from their own. The item as circulated includes an FNPRM that seeks public comment on whether these obligations should be extended to radio, whether operating in analog or digital. But the issues raised in the FNPRM were recently included in an FNPRM in the Digital Audio Broadcasting item,[15] so the FNPRM should be removed from this Enhanced Disclosure

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[12] *In re Children's Television Obligations Of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006).

[13] *In re Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 (2004).

[14] *In re Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, 15 FCC Rcd 19816 (2000).

[15] In re Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service,

item prior to adoption. Comments on the Digital Audio Broadcasting FNPRM are due on October 15, 2007, and replies are due November 13, 2007.[16]

Second Report & Order and First Order On Reconsideration and Second Further Notice Of Proposed Rulemaking, 22 FCC Rcd 10344 (2007).

[16] *Id.*