

**Written Statement
of
Kevin J. Martin**

Commissioner, Federal Communications Commission

**Before the
Committee on Commerce, Science and Transportation
United States Senate**

FCC Oversight Hearing

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Thank you for this invitation to be here with you this morning. I look forward to listening to your comments and to answering any questions you may have. And I reiterate what I have said in testimony to this Committee before: I recognize that the Federal Communications Commission is a creature of Congress. As a member of the Commission, my job is to implement the laws you pass, and I appreciate the opportunity to hear directly from you about your concerns.

While I understand this hearing is one of general oversight, we have been asked to focus our testimony on our recent Order concluding the 2002 biennial review of our broadcast ownership rules. First, I think it is important to commend Chairman Powell for his leadership on these issues. Chairman Powell has long advocated his vision for a new media ownership framework. Through his hard work and dedication, we were able to conclude on Monday the most comprehensive review of our broadcast ownership rules since the biennial review provision was enacted in 1996.

I also want to commend my Democratic colleagues, Commissioners Copps and Adelstein, for their tireless efforts in reaching out to the public, informing people of the issues, and encouraging participation in this process. While I ultimately disagreed with them on the course of action the Commission must take, I appreciate and deeply respect the contribution they made to this debate.

This proceeding required each of us to make decisions that were as difficult as they were critical. The media touches almost every aspect of our lives. We are

dependent on it for our news, our information, and our entertainment. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. In fact, I agreed with many of the concerns about consolidation and preservation of diversity that were expressed by my colleagues on the Commission and by members of this Committee.

I am also aware, however, that the FCC must respond to congressional and judicial calls to update our rules for the 21st century. As you know, the Telecommunications Act of 1996 significantly changed the rules governing broadcast ownership. As part of that process, the 1996 Act created a continuing obligation to review and modify the Commission's media regulations. In section 202(h) of the Act, Congress instructed the Commission to review each of the Commission's media ownership rules every two years. Specifically, the statute states:

§202(h) Further Commission Review.—The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall 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 it determines to be no longer in the public interest.

In sum, the Commission is under a legal mandate to review our broadcast ownership rules and determine whether they are still necessary in today's marketplace. If they are not, we must repeal or modify the rules.

The courts have interpreted this provision as placing a substantial burden on the Commission. In fact, since 1996, the courts repeatedly have found the Commission's reasoning insufficient to justify retaining its media ownership regulations. In these decisions, the D.C. Circuit concluded that section 202(h) places an exceedingly

demanding burden on the Commission: “Section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules. . . . [T]he Commission may retain a rule only if it reasonably determines that the rule is ‘necessary in the public interest.’”¹

Particularly after the courts’ specific admonitions, I believe our statutory obligation requires that we review our rules in light of the current media landscape. The media marketplace is not stagnant. Factors such as rapidly improving technology and innovation have contributed to a media environment that is continually evolving—and considerably different from the one when most of the broadcast ownership rules in which first adopted.

For instance, I recall having extremely limited choices on our family television set when I was growing up. There was no cable. There was no satellite. Even with our roof antenna, we received just five channels—the three major networks, one independent, and one public television station. Our national news was delivered to us by the three networks for one-half hour, straight from New York City, at the same time every evening. No CNN, FOX, MSNBC, or CNBC. Local news was broadcast by the local stations just once at 6:00 and once at 11:00. And at that time, news from 24 hour local cable channels was far off on the horizon. While my parents still live in the same house, they now have access to seven broadcast networks, hundreds of digital cable channels (including a local cable news channel), many more radio stations, and thousands of sites on the Internet.

¹ *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048 (D.C. Cir. 2002).

Indeed, we have progressed far from a world in which consumers received their news and entertainment from 3 or 4 television stations, a handful of radio stations, and a local newspaper. The number of broadcast networks has doubled, and we now have cable networks that regularly rival the broadcast networks in audience share. Indeed, over 85% of households receive their video programming via satellite or cable. Consumers today can choose from hundreds of televisions stations for their news and entertainment, often including a channel devoted entirely to local news. There also are more radio stations and more local weekly newspapers. In addition, the growth and popularization of the Internet has dramatically changed how people receive and distribute information. The Internet represents a significant outlet for diverse views, as well as an important source of news and information to consumers. As a result, people today have access to more information than at any time in our history.

It is important to appreciate, however, that while the media landscape has changed significantly, the three principles our original rules were intended to promote—competition, localism, and diversity—remain critical. Fundamentally, I believe our rules must continue to promote competition, localism, and diversity to nourish a vibrant media marketplace that functions in the public interest.

The Order we adopted on Monday was our best attempt to respond to the courts' admonitions and our Congressional mandate by recognizing the availability of new media outlets, evaluating their impact on these core goals, and modifying our rules as appropriate.