

**STATEMENT OF
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BEFORE THE SENATE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION
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Mr. Chairman, Senator Hollings, Members of the Committee, I am honored to appear before you today and to participate in this discussion of the most important issue before the Commission this year – media concentration. So much rides on the outcome of this issue and, in light of the Commission’s action Monday, dealing with it as soon as possible becomes critical. I look forward to our discussion and to receiving the guidance of the Committee. In these opening remarks, I will limit myself to discussing Monday’s decision to dismantle most of our media concentration protections.

I strongly dissented to this decision. I dissented on grounds of substance. I dissented on grounds of process. I dissented because I believe the Commission’s actions empower America’s new Media Elite with unacceptable levels of influence over the ideas and information upon which our society and our democracy so heavily depend.

We *are* at a crossroads – for television, radio and newspapers and for the American people. The decision the FCC made on Monday will recast our entire media landscape for years to come. At issue is whether a few corporations will be ceded enhanced gatekeeper control over the civil dialogue of our country; more content control over our music, entertainment and information; and veto power over the majority of what our families watch, hear and read.

Two very divergent paths beckoned us.

Down one road is a reaffirmation of America’s commitment to local control of our media, diversity in news and editorial viewpoint, and the importance of competition. This path implores us not to abandon core values going to the heart of what the media mean in our country. On this path we reaffirm that FCC licensees have been given very special privileges and that they have very special responsibilities to serve the public interest.

Down the other road is more media control by ever fewer corporate giants. This path surrenders to a handful of corporations awesome powers over our news, information and entertainment. On this path we endanger time-honored safeguards and time-proven values that have strengthened the country as well as the media.

So the stakes are high – higher than they have been for any decision the five people sitting before you today have ever made at this Commission. How should we have decided which path to choose?

We should have begun by examining the law. What does the law tell us? The Communications Act tells us to use our rules to promote localism, diversity and competition. It reminds us that the airwaves belong to the American people, and that no broadcast station, no company, no single individual owns an airwave in America. The airwaves belong to all the people. The law tells us that the last time Congress legislated on this topic -- and keep in mind this was only seven years ago, not in the 1940s or the 1960s, but in 1996 -- it thought that restrictions on how large a single media corporation could get and how much power one company could amass were important and necessary. And the Supreme Court has upheld media protections, stating that “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.” Speaking of jurisprudence, I am often reminded of Judge Learned Hand’s admonition that “The hand that rules the press, the radio, the screen, and the far-spread magazine, rules the country.” Those words come down through the years with shining clarity and continuing relevance.

We should then have looked deeply at the world of experience. What practical, real world experience do we have to guide us? Radio deregulation gives us powerful and relevant lessons. When Congress and the Commission removed radio concentration protections, we experienced massive, and largely unforeseen, consolidation. We saw a 34 percent reduction in the number of radio station owners. Diversity of programming suffered. Homogenized music and standardized programming crowded out local and regional talent. Creative local artists found it evermore difficult to obtain play time. Editorial opinion polarized. Competition in many towns became non-existent as a few companies bought up virtually every station in the market. This experience should *terrify* us as we consider visiting upon television and newspapers what we have inflicted upon radio. “Clear Channelization” of the rest of the American media will harm our country.

We should, finally, have sought out the counsel and wisdom of the American people. Commissioner Adelstein and I have attended public hearings across the country with conservatives and liberals, broadcasters and creative artists, concerned parents and civil rights activists, church leaders and educators. Our Commission has seen close to three quarters of a million people register their views – more than for any proceeding in Commission history. And in a nation that can be deeply divided on important issues, these citizens are uniquely unanimous on the question of whether this Commission should allow further media concentration. They are *screaming* that we should protect local broadcasting, diversity of programming and opinion, and the ability to compete with the huge companies. We should heed their conservatism – their urgent call to refrain from abandoning time-honored protections when so much is at stake and so much is unknown about the consequences of what we are doing here today.

The majority instead chose radical deregulation – perhaps not quite so radical as originally intended a year ago before Americans found out what was going on and began to speak out – but radical nevertheless. This decision allows a corporation to control three television stations in a single city. *Why does any company need to control three television stations anywhere?* The decision allows the giant media companies to buy up

the remaining local newspaper and exert massive influence over a community by wielding three TV stations, eight radio stations, the cable operator, plus the already monopolistic newspaper. The decision further allows the already massive television networks to buy up even more local TV stations, so that they could control up to an unbelievable 90 percent of the national television audience. Where are the blessings of localism, diversity and competition here? ***I see centralization, not localism; I see uniformity, not diversity; I see monopoly and oligopoly, not competition.***

Will the vaunted 500-channel universe of cable TV save us? Well, 90 percent of the top cable channels are owned by the same giants that own the TV networks and the cable systems. More channels are great. But when they're all owned by the same people, cable doesn't advance localism, editorial diversity or competition. And those who believe the Internet alone will save us from this fate should realize that the dominating Internet news sources are controlled by the same media giants who control radio, TV, newspapers and cable.

Some would have us believe that this was merely an ordinary examination of our rules that we conduct every two years. Let's not kid ourselves. This was the granddaddy of all reviews. It sets the direction for how the next review will get done and for how the media will look for many years to come. I have seen the concern, the deep feeling and outright alarm on the faces of people who have come out to talk to Commissioner Adelstein and me all across this country. Are they emotional? You bet. And I think they are going to stay that way until we get this right.

Why did the Commission get this so wrong? Good, sustainable rules are the result of an open administrative process and a serious attempt to gather all the relevant facts. Bad rules and legal vulnerability result from an opaque regulatory process and inadequate data. Unfortunately, today's rules fall into the latter camp. This proceeding has been run as a classic inside-the-Beltway process with too little outreach from the Commission and too little attention paid to the public. This is the way the Commission usually does business, we are told. Well, I submit this is too important to be treated on a business-as-usual basis. So Commissioner Adelstein and I traveled across the country to attend as many hearings and forums as we could.

I am also troubled that the Commission refused to publicly disclose the rules before voting on them. What possible harm can come from transparency? How can telling Congress and the public what we plan to do possibly be bad? Isn't the animating spirit of our "notice and comment" procedure to make sure our people know as much as possible about the specifics of what is being proposed?

Even with incomplete information, the public reaction against the proposed changes has been unlike anything the FCC has ever experienced. Of the nearly three quarters of a million comments we have received, nearly all oppose increased media consolidation – over 99.9 percent.

We've heard bipartisan concern from more than 150 Members of Congress, including a majority of this Committee, as well as the Congressional Black Caucus, the Congressional Hispanic Caucus and the Congressional Asian Pacific American Caucus, asking us to slow down and put these proposals out for public comment before we vote.

Dozens of organizations have weighed in with their concerns about media concentration. Among others, we have heard from Children Now, the Writers Guild of America, the Parents Television Council, the Communications Workers of America, AFTRA, the National Association of Hispanic Journalists, the National Association of Black Journalists, the Conference of Catholic Bishops, the Center for the Creative Community, Common Cause, the American Civil Liberties Union, the National Rifle Association, the American Civil Liberties Union, the National Organization for Women, the Family Research Council, the National Association of Black Owned Broadcasters, Rainbow Push, the Media Access Project, Consumers Union, the Consumer Federation of America, Move On, the Center for Digital Democracy, United Church of Christ, the Minority and Media Telecommunications Council, the Leadership Conference on Civil Rights, and many, many more across a broad political and geographic spectrum. City councils across this country in such places as Chicago, Seattle, Philadelphia, San Francisco, Atlanta, and Buffalo, as well as a whole state -- Vermont -- have gone on record against media concentration. Note, please, that several of these are cities where Big Media would have us believe that all is well with the consolidation they have introduced.

As Brent Bozell of the Parents Television Council so aptly put it, "When all of us are united on an issue, then one of two things has happened. Either the Earth has spun off its axis and we have all lost our minds or there is universal support for a concept." Well, it's the concept -- a transcending, nationwide concept.

The FCC is not, of course, a public opinion survey agency. Nor should we make our decisions by weighing the letters, cards and e-mails "for" and the letters, cards and e-mails "against" and awarding the victory to the side that tips the scale. But even this independent agency is part of our democratic system of government. And when there is such an overwhelming response on the part of the American people and their representatives in Congress assembled, we ought to take notice. Here the right call is to take these proposals, put them out for comment and then -- only then -- call the vote. The spirit underlying the "notice and comment" procedure of independent agencies is that important proposed changes need to be seen and vetted before they are voted. We haven't been true to that spirit.

And what did we vote on? The majority allows TV networks to control up to 45 percent of the national audience -- up to 90 percent once the strange decision to keep the UHF discount is considered. This decision is made without an adequate explanation for why 45 percent is not just an arbitrary number pulled out of a hat, and despite exhaustive and largely uncontested evidence supporting the existing cap by local broadcasters. I frankly doubt the courts will be impressed.

Merrill Lynch predicts this decision will result in a “Gold Rush” where the national networks buy up the remaining local broadcasters. The newspapers, on the morning after Monday’s vote, were filled with speculation of what kinds of deals, mergers and swaps would now take place.

Some have argued that free over-the-air television is doomed unless we allow more concentration. The facts tell a different story. The networks not only reach consumers over the air through their own highly profitable stations and through affiliates, but they are also guaranteed carriage to cable subscribers. Indeed, they own much of cable. The networks command an enormous advertising premium, recently receiving a record \$9.4 billion in up-front prime-time advertising for the next season. They have ownership in most of their profitable programs, and these are subsequently put into syndication or “repurposed” – the fancy new term for a re-run. This argument that the only way for the poor among us to continue receiving free, over-the-air television is to allow already powerful networks to grow more powerful would have been better left unsaid.

The majority inexplicably, maintains the UHF Discount. Under the UHF Discount, UHF TV stations are considered to reach only 50 percent of the households that VHF TV stations reach for purposes of determining whether a company has exceeded the national cap. Once upon a time, that was warranted. The Commission found that over-the-air UHF stations reached fewer viewers than VHF stations because their signals were different. But UHF and VHF stations reach an identical number of viewers when delivered over cable TV facilities. Today, over 85 percent of consumers receive their signal from cable and DBS. Program carriage requirements ensure that cable consumers receive the UHF signal, and DBS operators are required to carry all UHF stations in any market where they carry any local channel.

With 85 percent of Americans experiencing no difference between UHF and VHF stations, the discount no longer makes sense. Eliminating the entire discount may be warranted, but at a minimum it requires replacement with a number that reflects the reality of today’s technology and marketplace.

The more you dig into this Order, the worse things get. The Order finds:

- That further concentration in already highly-concentrated markets is acceptable.
- That in a town with only four TV stations, it is acceptable for the top-rated television station to buy the only daily newspaper.
- That consolidation going forward will enhance news programming, despite considerable record evidence showing that increased concentration more often than not reduces quality news.

There are other things this order could have done. Commenters addressed the need to require more independent programming on our airwaves so that a few conglomerates do not act anti-competitively to control all of the creative entertainment that we see. These proposals should have received the serious attention they deserve in *this* decision. Over the past decade, we have witnessed a substantial increase in the amount of programming owned by the networks. In addition to the obvious loss of diversity, this has also entailed the loss of thousands of jobs, including creative artists, technicians and many, many others. Years ago, we had protections against this kind of program ownership. Now that the majority is loosening outlet ownership rules, we ought to be looking at the consequences of having no limits on who owns the programming.

The Order could have addressed having a legitimate license renewal process to partially protect against the risks of further consolidation. The system has degenerated into one of basically post-card license renewal. Unless there is a major complaint pending against a station, its license is almost automatically renewed. A real, honest-to-goodness license renewal process, predicated on advancing the public interest, might do more for broadcasting than all these our other rules put together.

The Order could have considered the impact of media concentration on local broadcasters. As I have traveled across the country, I have spoken to local broadcasters. We should recognize and reaffirm the proud heritage of local broadcasters, most of who are strongly committed to serving the public interest. Unfortunately, consolidation has already meant that broadcasters are less and less captains of their own fate and more and more captives to Wall Street and Madison Avenue expectations. Increasing consolidation threatens their very survival. Media analysts expect that the only option for local broadcasters will now be to sell. They conclude that those that want to remain will face an extremely tough road. During our hearings, we heard from small broadcasters that had already been squeezed out of the market. These rule changes can only accelerate this trend. Yet, we have failed even to consider the impact on these independent broadcasters.

The Order could have analyzed the impact of media concentration on indecent and excessively violent programming. Some have suggested that there may be a link between increasing consolidation and increasing indecency on our airwaves. The Commission fails to address this issue in its analysis. It seems plausible that there is such a connection. I don't know the answer to this question. I do know this: we have no business voting until we take a serious look at the matter and amass at least a credible body of evidence.

The Order could have addressed the impact of media concentration on women and minority groups. We know that there are substantially fewer radio station owners today than there were before the rules were changed in 1996. People of color now make up less than four percent of radio and television owners. The National Association of Black Owned Broadcasters tells us that the number of minority owners of broadcast facilities has dropped by 14 percent since 1997.

We have not even attempted to understand what further consolidation means in terms of providing Hispanic Americans and African Americans and Asian-Pacific Americans and Native Americans and women and other groups the kinds of programs and access and viewpoint diversity and career opportunities and even advertising information about products and services that they need. America's strength is, after all, its diversity. *And our media need to reflect this diversity and to nourish it.*

Today's Order puts most such questions off into the future, with the exception of a curious plan to allow a small business, perhaps a minority firm, to buy a consolidated block of outlets from an incumbent who exceeds the limits. That would require deeper pockets than most such firms could afford. I would prefer to look for real opportunities for small entrepreneurs instead of encouraging them to buy large consolidated properties.

All this means that I am deeply saddened by the Commission's actions. Some have characterized the fight against this seemingly pre-ordained decision as Quixotic and destined to defeat. But I think, instead, that we'll look back at this 3-2 vote as a Pyrrhic victory.

This Commission's drive to loosen the rules and its reluctance to share its proposals with the people before we voted awoke a sleeping giant. American citizens are standing up in never-before-seen numbers to reclaim their airwaves and to call on those who are entrusted to use them to serve the public interest. In these times when many issues divide us, groups from right to left, Republicans and Democrats, concerned parents and creative artists, religious leaders, civil rights activists, and labor organizations have united to fight together on this issue. Senators and Congressmen from both parties and from all parts of the Country have called on the Commission to reconsider. The media concentration debate will never be the same. The obscurity of this issue that many have relied upon in the past, where only a few dozen inside-the-Beltway lobbyists understood the issue, is gone forever.

I didn't carry that Commission vote on Monday. Was I disappointed? Sure, of course. Am I discouraged? Not a bit. I am *encouraged*. Let me tell you why. I am encouraged that this Committee is following up so quickly with urgent oversight of Monday's vote. I am encouraged by the increased attention this issue is receiving throughout the Congress. I am encouraged that judicial avenues of redress remain open to our people, and even administrative redress through reconsideration petitions at the Commission. I'm not putting all my bets on this latter one, but I do urge my colleagues to listen anew in the weeks and months ahead.

But far more than any of this, I am encouraged by my fellow citizens. After traveling almost the length and breadth of this land and talking with thousands of people of every size, stripe and persuasion, I am convinced that the vast majority of them want, deserve, and are increasingly demanding a renewed discussion of how their airwaves are being used and how to ensure that their public property is serving the public interest. I congratulate the hundreds of thousands of people who have attended hearings, filed comments, written letters to the editor, and contacted the Commission. They have made

a difference. And I believe they will stay the course, looking to you, their representatives, to tackle what I am convinced is a great emerging grassroots issue. The people understand the issue, because it goes to values and virtues that are part of democracy's soul. It goes so far beyond statistics about the boundaries of radio markets, or the formulas behind diversity indexes, or the precise mix of properties one company can own in various sized media markets. It goes to protecting the freedom and openness of their media; encouraging diversity of entertainment, diversity of information, diversity of ownership and diversity of viewpoint; and keeping a large chunk of the media local, making it available to new entrants, preserving its competitiveness. Taking only a little license, I think the concern underlying all those cards, letters and e-mails that have come into the Commission can be summed up this way:

Dear Commissioner: I understand you're messing around with the people's airwaves. I don't think I like what you're doing. I know I don't like the way you're doing it. I'm a citizen and I expect to be told what your plans are before you do it. Get a grip. Straighten out your priorities. Thank you.

Yours truly,

What animates this concern is clear: these good citizens want us to settle this issue of who will control our media and for what purposes *now*, and they want to resolve it in favor of airwaves of, by and for the people. Mr. Chairman, Senator Hollings, Members of the Committee, I look forward to working with you to make it happen.