WRITTEN STATEMENT

of

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on

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Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before you today to discuss our recent decision to adopt new broadcast ownership limits. I am proud that this Commission and its staff can say that we conducted the most exhaustive and comprehensive review of our broadcast ownership rules ever undertaken. We have done so, obligated by our statutory duty to review the rules biennially and prove those rules are "necessary in the public interest." The Court of Appeals has interpreted this standard as placing a high hurdle before the Commission for maintaining a given regulation, and made clear that failure to surmount that hurdle, based on a thorough record, must result in the rule's modification or elimination. This is an exceedingly difficult charge, but a critical one to fulfill if we hope to continue to promote the cherished values of diversity, competition and localism.

Over the past twenty months we have been working tirelessly towards achieving three critically important goals in this proceeding: (1) Reinstating legally enforceable broadcast ownership limits that promote diversity, localism and competition (replacing those that have been struck down by the courts); (2) Building modern rules that take proper account of the explosion of new media outlets for news, information and entertainment, rather than perpetuate the graying rules of a bygone black and white era; and (3) Striking a careful balance that does not unduly limit transactions that promote the public interest, while ensuring that no company can monopolize the medium. I am confident we achieved these goals with the June 2, 2003 *Order*.

To achieve these goals, however, the Commission needed to come face to face with reality. So, we faced the reality of the law and our responsibility to implement Congress' will, as interpreted by the courts. We faced the reality of having to compile and analyze a record unlike

any other in our history. We faced the reality of the modern media marketplace. And by doing so, the Commission was able to craft a balanced package of enforceable and sustainable broadcast ownership limits that will best serve to achieve our public interest objectives of diversity, competition and localism for our Nation's citizens.

I. STATUTORY MANDATE AND COURT DECISIONS

In the Telecommunications Act of 1996, Congress established the biennial review mandate. In relevant part, Section 202(h) requires that the Commission review all of its broadcast ownership rules every two years and determine "whether any of such rules are necessary in the public interest as a result of competition." The Commission, as a consequence, is required to repeal or modify any regulation it cannot prove is necessary in the public interest. Congress gave the Commission a sacred responsibility, one that I do not take lightly. We are duty bound to obey the law. It is not an optional exercise or one that we can choose to ignore.

Recent court decisions have established a high hurdle for the Commission to maintain a given broadcast ownership regulation. As interpreted by the U.S. Court of Appeals for the District of Columbia Circuit in the 2002 *Fox* and *Sinclair* cases, Section 202(h) requires the Commission to study and report on the *current* status of competition. Both decisions provide that the survival of any prospective broadcast ownership rules depends on this Commission's ability to justify those rules adequately with record evidence on the need for each ownership rule, and ensure that the rules are analytically consistent with each other. The implications of the court decisions were clear—fail to justify the necessity of each of our broadcast ownership regulations at the rules' and our sacred goals' peril.

Indeed, keeping the rules exactly as they were was not a viable option. As the only member of this Commission here during the last biennial review, I watched first hand as we bent to political pressure and left many rules unchanged. Nearly all were rejected by the court because of our failure to apply the statute faithfully. I have been committed to not repeating that error, for I believe the stakes are perilously high. Leaving things unaltered, regardless of changes in the competitive landscape, is a course that only Congress can legitimately chart. This is why I set in motion the process—over 20 months ago—that brought the Commission to the point we find ourselves at today.

II. FCC PROCEDURAL ACTION

The court admonitions demonstrated the need to rebuild our decaying broadcast ownership regulations from the ground up. Like any reconstruction project, our task began with the need to lay a solid foundation to support our structural regulations. Our cement was not the blind intuitions of generations past—but facts that would lay the foundation for a sustainable set of broadcast ownership regulations built around, and for, today's media marketplace.

Because of the critically important nature of this proceeding, we set out to lay this foundation by embarking on an exhaustive review, indeed the most comprehensive in the agency's history. It began in earnest 20 months ago when I created the Media Ownership Working Group. They commissioned studies of how Americans use the media for different purposes and how media markets function. The group's work formed the initial foundation of our review. More importantly, those studies sent a message that this review would not be business as usual when it comes to media ownership rules. For the first time, this agency took on

the challenge of updating and reconciling years of piecemeal, decades old, ownership regulations in a rigorous and comprehensive way.

We put out no less than three *Notice of Proposed Rulemakings* during that time and gave the public over fifteen months of open comment time to assist the Commission in its fact-gathering efforts. Approximately ten public hearings were held on the subject, thanks in large measure to the efforts of Commissioners Copps and Adelstein. I am enormously pleased that the public accepted our challenge. The record we received in this proceeding is deeper and more insightful than any I have seen in my six years of service at the Commission. I take pride in the fact that our decisions rest on an extraordinarily strong empirical record. For the agency charged with preserving the free flow of information in our democracy, the public should expect no less from us.

III. THE MODERN MARKETPLACE

Our fact-gathering effort demonstrated that today's media marketplace is marked by abundance. Since 1960 there has been an explosion of media outlets throughout the country. Even in small towns like Burlington, Vermont, the number of voices—including cable satellite radio, TV stations and newspapers has increased over 250 percent during the last 40 years. Independent ownership of those outlets is far more diverse, with 140 percent more owners today than in 1960.

What does this abundance mean for the American people? It means more programming, more choice and more control in the hands of citizens. At any given moment our citizens have

access to scores of TV networks devoted to movies, dramatic series, sports, news and educational programming, both for adults and children. In short, niche programming to satisfy almost any of our citizens' diverse tastes.

In 1960—the "Golden Age of Television"—if you missed the ½ hour evening newscast, you were out of luck. In 1980, it was no different. But today, news and public affairs programming—the fuel of our democratic society—is overflowing. There used to be three broadcast networks, each with 30 minutes of news daily. Today, there are three *24 hour all-news networks*, seven broadcast networks, and over 300 cable networks. Local networks are bringing the American public more local news than at any point in history.

The Internet is also having a profound impact on the ever-increasing desire of our citizenry to inform themselves and to do so using a wide variety of sources. Google news service brings information from 4,500 news sources to one's finger tips from around the world, all with the touch of a button. As demonstrated by this proceeding, diverse and antagonistic voices use the Internet daily to reach the American people. Whether it is the New York Times editorial page, or Joe Citizen using email to let his views known to the Commission, or the use by organizations such as MoveOn.org to perform outreach to citizens, the Internet is putting the tools of democracy in the hands of speakers and listeners more and more each day.

I have not cited cable television and the Internet by accident. Their contribution to the marketplace of ideas is not linear, it is exponential. Cable and the Internet explode the model for viewpoint diversity in the media. Diversity-by-appointment has vanished. Now, the media

makes itself available on *our* schedule, as much or as little as we want, when we want. In sum, citizens have more choice and more control over what they see, hear or read, than at any other time in history. This is a powerful paradigm shift in the American media system, and is having a tremendous impact on our democracy.

IV. PUBLIC INTEREST BENEFITS

The marketplace changes mentioned above were only the beginning, not the end of our inquiry. The balanced set of national and local broadcast ownership rules we adopted preserve and protect our core policy goals of diversity, competition and localism. Certain public interest benefits have clearly been documented in the record and the rules we adopted embrace and advance those benefits for the American public.

As an initial matter, the public interest is served by having enforceable rules that are based on a solid, factual record. For the last year, several of the Commission's broadcast ownership regulations have been rendered unenforceable—vacated or remanded by the courts.

Protecting Viewpoint Diversity

In addition, the Commission, recognizing that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public," introduced broadcast ownership limits that will protect viewpoint diversity. The Commission concluded that neither the newspaper-broadcast prohibition nor the TV-radio cross-ownership prohibition could be justified in larger markets in light of the abundance of diverse sources available to citizens to rely on for their news consumption.

By implementing our cross-media limits, however, the Commission will protect viewpoint diversity by ensuring that no company, or group of companies, can control an inordinate share of media outlets in a local market. We developed a Diversity Index to measure the availability of key media outlets in markets of various sizes. By breaking out markets into tiers, the Commission was able to better tailor our rules to reflect different levels of media availability in different sized markets. For the first time ever, the Commission built its data in implementing this rule directly from input received from the public on how they actually use the media to obtain news and public affairs information.

Furthermore, by instituting our local television multiple ownership rule (especially by banning mergers among the top-four stations, which the record demonstrated typically produce an independent local newscast) and our local radio ownership limit, the Commission will foster multiple independently owned media outlets in both broadcast television and radio—advancing the goal of promoting the widest dissemination of viewpoints.

Enhancing Competition

Moreover, our new broadcast ownership regulations promote competition in the media marketplace. The Commission determined that our prior local television multiple ownership limits could not be justified as necessary to promote competition because it failed to reflect the significant competition now faced by local broadcasters from cable and satellite TV services. Our revised local television limit is the **first** TV ownership rule to acknowledge that competition. This new rule will enhance competition in local markets by allowing broadcast television

stations to compete more effectively not only against other broadcast stations, but also against cable and/or satellite channels in that local market. In addition, the record demonstrates that these same market combinations yield efficiencies that will serve the public interest through improved or expanded services such as local news and public affairs programming and facilitating the transition to digital television through economic efficiencies.

The Commission found that our current limits on local radio ownership continue to be necessary to promote competition among local radio stations and we reaffirmed the caps set forth by Congress in the 1996 Telecommunications Act. The Order tightens the radio rules in one important respect—we concluded that the current method for defining radio markets was not in the public interest and thus needed to be modified. We found the current market definition for radio markets which relies on the signal contour of the commonly owned stations, is unsound and produces anomalous and irrational results, undermining the purpose of the rule. We therefore adopted geographic based market definitions which are a more rational means for protecting competition in local markets. For example, we fixed the case of Minot, North Dakota which under our former rules produced a market produced a market with forty-five (45) radio stations. Under our reformed market definition, Minot would have only ten (10) radio stations included in the relevant geographic market.

By promoting competition through the local television and radio rules, the Commission recognized that the rules may result in a number of situations where current ownership arrangements exceed ownership limits. In such cases the Commission made a limited exception to permit sales of grandfathered stations combinations to small businesses. In so doing, the

Commission sought to respect the reasonable expectations of parties that lawfully purchased groups of local radio stations that today, through redefined markets, now exceed the applicable caps. We promote competition by permitting station owners to retain any above-cap local radio clusters but not transfer them intact unless such a transfer avoids undue hardships to cluster owners that are small businesses or promote the entry into broadcasting by small businesses—many of which are minority- or female-owned.

Finally, by retaining our ban on mergers among any of the top four national broadcast networks, the Commission continues to promote competition in the national television advertising and program acquisition markets.

Fostering Localism

Recognizing that localism remains a bedrock public interest benefit, the Commission took a series of actions designed to foster localism by aligning our ownership limits with the local stations' incentives to serve the needs and interests of their local communities. For instance, by retaining the dual network prohibition and increasing the national television ownership limit to 45 percent, the Commission promoted localism by preserving the balance of negotiating power between networks and affiliates. The National Cap will allow a body of network affiliates to negotiate collectively with the broadcast networks on network programming decisions to best serve the needs of their local community, while at the same time allowing the networks to gain critical mass to prevent the flight of quality programs, such as sports and movies, to cable or satellite.

The record further demonstrated that by both raising the National Cap to 45 percent and allowing for cross-ownership combinations in certain markets the Commission would promote localism. Indeed, the record showed that broadcast network owned-and-operated stations served their local communities better with respect to local news production—airing more local news programming than did affiliates. Furthermore, the record demonstrated that where newspaper-broadcast television combinations were allowed, those televisions stations have produced dramatically better news coverage in terms of quantity (over 50 percent more news) and quality (outpacing non-newspaper owned television stations in news awards).

The Commission crafted a balanced set of broadcast ownership restrictions to preserve and promote the public interest goals of diversity, competition and localism.

V. CONCLUSION

This critical review has been an exhaustive one. The Commission has struggled with a difficult conundrum: building an adequate record, satisfying the administrative burden of the Section 202(h) mandate, and ultimately justifying its rules before the courts that have expressed growing impatience with irrational and indefensible ownership rules. Four years ago, in the last completed biennial review, I concluded "[i]t is indeed time to take a sober and realistic look at our broadcast ownership rules in light of the current competitive communications environment." With a full record in hand, it was appropriate to fulfill Congress's mandate of completing our broadcast ownership review. The extraordinary coverage of the issue and the comments and evidence on the record have allowed the Commission to make an informed judgment, and hopefully to resist claims of being both "arbitrary and capricious" before the courts.