FCC PUBLIC HEARING ON MEDIA OWNERSHIP RULES

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REMARKS OF THOMAS G. KRATTENMAKER,

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Introduction -- It is a privilege and an honor to moderate today's hearing. My sincere thanks to each of the Commissioners -- Chairman Powell, Commissioner Abernathy, Commissioner Adelstein, Commissioner Copps, Commissioner Martin -- as well as to the FCC's Media Bureau Staff for inviting me here today.

And my thanks to you for attending . . . And thanks to the people in Richmond for hosting us.

Let me try to explain what we are here to talk about and what ground rules we will follow in today's discussions:

Today's topics -- The Commission is reviewing, in one comprehensive proceeding, all of its rules that limit the extent to which owners of radio and television broadcast facilities can control additional outlets or related businesses. There are essentially six of these rules under review:

4 Rules centered around local markets

* *The Local TV Station Ownership Rule* -- provides that no one may own more than 2 tv stations in any one market and may own two only under certain conditions concerning the size of the market and the strength of the co-owned stations.

* *The Local radio ownership cap* -- A firm may own up to eight radio stations in one market depending on the size of the market, as measured by the number of radio stations in that market.

* *The Local TV-Radio Crossownership Rule* -- provides that a firm that owns only one tv station in a local market may own

one, four, or seven radio stations in that market depending on the size of the local market, which is measured by taking account of not only the number of radio and tv stations but also the number of cable systems and newspapers.

* *The broadcast-newspaper cross ownership ban* -- No one may own both a daily newspaper and either a tv or a radio station in the same market.

<u>2 Rules centered around national markets</u>

* *The limitation on tv network mergers* -- No merger between firms that are among the top four television broadcast networks is permitted, but a top four network may merge with a network outside the top four.

* *The national tv station ownership cap* -- No company may own a group of television stations that, in the aggregate, can reach more than 35% of U.S. households. (There is no

corresponding limit in the number of radio stations that any firm can own nationwide.)

<u>In sum</u>, to understand the rules, just think local and national. In local broadcast markets, there are rules limiting tv +tv, radio+radio, tv+radio, and newspapers+radio/or tv. At the national broadcasting level, there are limits on tv (but not radio) network mergers and total national tv (but not radio) ownership.

These ownership rules were not all created at the same time -- for example, the antecedents of the local radio rule trace back almost all the way to 1927, while the newspaper ownership rule is relatively new, about 30 years old. All these rules grew up in silos, so to speak -- not always taking account of one another. For example, recall how the local ownership rules usually, but not always, take account of local market size -- and when they do so, measure that size in apparently different ways. Further, these rules have never before been exhaustively reviewed as part of a single comprehensive package.

It is important to know why these rules are being reviewed collectively and so thoroughly today and the terms -- “competition,” “diversity,” and “localism” -- that have come to frame most of the discussion concerning these rules.

<u>Why Now?</u>

We know what rules are on the table. Why are they on the table today? Fundamentally, because of what Congress did in one section of its comprehensive communications law reform legislation, the Telecommunications Act of 1996. There, in addressing broadcast ownership rules, Congress did three things. <u>First</u>, it eliminated the FCC’s national radio ownership limits and raised both the local radio caps and the national tv caps. <u>Then</u>, Congress directed the Commission to immediately tweak a couple of its remaining rules. <u>Finally, and most importantly here</u>, Congress required the FCC to review each of its broadcast ownership rules every two years. Congress said that the question the FCC must address in these biennial reviews is whether “any of [these] rules [-- that is, the six we just reviewed --] are necessary in the public interest as a result of competition." And the federal court that reviews the agency's ownership rules has construed that provision as "carrying with it a presumption in favor of repealing or modifying the ownership rules."

So the Commission has been directed to carry out these reviews now -- and, then, to do it again two years later, and again two years after that, etc, etc. Further, according to the courts, the Commissioners must approach the task with a presumption to at least modify the rules. These facts do not tie the Commission's hands, or ordain any particular outcome, -- "presumption" does not mean "fixed determination" -- but they do place limits both on how long the Commission can wait before it acts and on its ability to preserve the rules without identifying evidence that clearly supports them.

<u>What are the terms of the discussion?</u>

As I indicated, we have had limits on radio and tv ownership virtually from the inception of each of these services. So, many discussions have already taken place concerning what is at stake here. Most people, including most Commissioners, who think about these issues tend to conclude that the values at stake are those of *competition, diversity and localism*-- and that these are three distinct values, each focusing on a different aspect of the effects of any media consolidation.

To illustrate, take a very simple hypothetical. Suppose someone wants to buy two tv stations in Richmond. Without knowing further details about the transaction, we can already imagine three potential opponents of that merger. One, would say, "I worry about the effects of the merger on **competition**. By that I mean that I worry whether the merged firm will be able to behave anticompetitively -- for example, by raising ad rates to monopoly levels or by cutting back its program day to restrict output."

A second opponent might say, “I don’t see a problem with competition here. In fact, this merger might be good for competition in that it will create a more efficient firm, but competition is not the only value we should care about. I worry about **diversity**. That is, I worry that the merger might result in fewer distinct points of view being aired in Richmond or in fewer differences in the types of programs offered over the air.”

And our hypothetical third opponent might say, “I think that after the merger there will be more robust competition and just as much diversity of programs and formats, but I worry about the impact of this merger on **localism**. By that I mean that I worry that the owners and operators of the merged firm may not be as deeply rooted in, and in touch with, the Richmond communities when programs, personnel or formats are chosen.”

Of course, certain broadcast combinations may, depending on one’s point of view, raise significant questions with respect to one, two, all three or none of those values. Nor are these categories of concern airtight; obviously, for example concerns about localism or competition may each translate into concern over diversity. And there may be other values that need to be accounted for as well. [For example, I wonder whether media consolidation rules should be seen as an aspect of the Commission's spectrum management duties, but I also seem to stand alone in this.]

Nevertheless, the fact remains that most of what you will hear today will be couched in terms of "competition, diversity, and localism" and how -- if at all -- the FCC's ownership rules should be influenced by each of those values. Indeed, the Staff has arranged the three panels around those concepts.

SO, as a gross, but useful I think, overgeneralization -- We will now spend about six hours talking about radio and television ownership patterns, national and local, actual and potential, and how these patterns might positively or negatively affect competition, diversity and localism.

How will we do that? By following two rules, please.

Rules for our sessions -- As your moderator, I ask that every participant -- panelists, open-mikers and Commissioners alike -- please agree to abide by two -- and only two -- simple rules today:

1. Please stay strictly within your time limits.

2. Please speak through me.

Thanks in advance for following these (hopefully) simple rules. Now, let's hear what's on your minds.

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