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Summary of Oral Remarks
Media Ownership Workshop
MB Docket No. 09-182**

November 3, 2009

Overview

- No matter what part of the political or ideological spectrum we come from, we all agree that we want national policies that support a robust fourth estate – journalists that can hold politically-elected leaders accountable at every level of government, and citizens that understand the issues of the day so that they can participate in elections, town halls, and city council meetings with effectiveness and the ability to protect their own interests. The FCC should focus like a laser beam on these outcomes so they will be grounded in thoroughly defensible goals.
- We focus today on structural ownership rules – the bedrock and most universally supported rules to ensure that our broadcast infrastructure supports our democratic republic.
- Structural media ownership rules are some of the easiest to support because they are the least invasive into an arena that is replete with debates about their implications for the First Amendment. Ownership rules, are, by definition, content-neutral. They attach at the level of corporate ownership – they do not dictate programming in any way. These rules are the same for everyone, whether a licensee is a network owned and operated station, or a small company that owns an unaffiliated station.
- This Commission is the first Commission in a long time that is in the position to conduct a solid proceeding designed to protect the public interest based on a fulsome record and robust data. You have the chance to set the standard for how all future proceedings should be done – in part in terms of process, but particularly in terms of outcome and strength of analysis.

Implications of DTV Transition

- This is the first review of the media ownership rules to take place after the digital television transition. In the past, any broadcast licensee that wished to obtain another video stream necessarily had to acquire another entity holding a broadcast license. Today, every license holder has the capacity to develop up to five streams of programming in their home market.

- The new evaluation needs to start with the fundamental question of the impact of this large change in federal policy. Right now all we have is anecdotal data, but the anecdotal data does not show that broadcasters are making much use of this spectrum at all. The good news is the Commission has started on the path toward understanding this situation more comprehensively; the bad news is that there is still more to do before we can collectively understand the uses to which the new capacity will be put.
- The Commission should immediately begin work on the pending petitions for reconsideration in the enhanced disclosure docket. Almost two years ago, the prior administration adopted an improved data collection mechanism to provide, for the first time, comprehensive public data about the content of television broadcasting, including the use of new, digital channels. The Commission hosted a broad discussion about this docket during the summer under then Acting Chairman Copp's leadership. The data from this docket is essential and it is possible to revise the information collection to make it both manageable and informative. If done very soon, the data could be used by the Commission during this proceeding to inform itself about the business models, markets and ownership structures that produce the most journalism and local content, as well as other helpful data.

Commence a Proceeding to Address Waivers Immediately.

- The Commission currently has a volcano beneath the surface, bubbling and waiting to blow under the right circumstances, and it must take action to avoid its rules becoming meaningless as it moves to reassess them again.
- Right now the Commission has two problems regarding waivers – a long history of lax oversight and enforcement that has led to a *de facto* regime where certain corporate players can violate the ownership rules, apply for a waiver, and then, regardless of the waiver's express time limits or conditions, continue to own properties in excess of the limits indefinitely. This serves no one. It is unfair to the corporations that comply with the Commission's rules; it is unfair to the citizens who live in cities where rule violations continue unabated. It is antithetical to the transparency and openness to which this administration wants to dedicate itself.
- We have corporations that have owned multiple properties in violation of the rules, using expired waivers, for eight years. We have other owners who are not in compliance with stated waiver policies, but have never been required to make a showing as to why their ownership structure should continue. Companies with waivers that expire write letters to the Commission announcing their intent to continue as if the waiver has not expired, and *the Commission accedes*. Companies that request waivers can do so without even the most vigilant member of the public ever receiving notice about the waiver request.
- Some of these practices grew up in a time when ownership rules were revised much less frequently and waivers that were sought were more justified. Current times require new measures. It is safe to say that, under the current quadrennial review law, we will never have final rules. By the time the Commission starts a proceeding, reviews the record, adopts rules, addresses reconsideration petitions, and defends itself in massive multi-party litigation, most assuredly it will be time for the 2014 review. The Commission must adopt a default process by which to enforce some rules so that companies are not allowed to continue to the point where any application of a rule would necessarily require extensive unwinding of corporate transactions that have been on-going for years and years.

- The current situation is equivalent to a city that is trying to decide whether a the speed limit on a particular road should be 25 or 35 miles per hour, but while the city council debates the decision, everyone is allowed to drive 55 miles per hour because we are unsure what the final rule will be.
- Finally, such policies are very important because it is possible—although hopefully not likely—that the Third Circuit could lift the current stay of the rules adopted two years ago. If the stay were lifted, would you be ready? What would happen, what transactions would be permissible? A default process would assist greatly in such an event.
- The Commission should immediately commence a short proceeding to determine appropriate new process rules for waivers, regardless of the outcome of this ownership proceeding.

Data that Will Inform the Proceeding

- As I stated at the outset, the Commission should focus to a significant degree on measures of the outcomes it hopes to achieve. For example, does the Commission know which ownership structures produce the most local news? Or how many journalists that cover local government are working in various markets around the country? I think there are likely to be useful indicators of successful journalism structures in this type of data.
- Second, there are a range of operational structures which the Commission has not explored in the context of ownership proceedings. Most important of these are varying forms of shared services agreements. These agreements are sometimes called “virtual duopolies” with good reason.
- These agreements often allow two separately owned licensees to combine operations in virtually every respect, leaving but two or three staff at one of the television stations. While the Commission currently recognizes these agreements as attributable ownership agreements if they exceed a transfer of more than 15 percent of the programming, the 15 percent benchmark would allow most stations to completely outsource local news production.
- From preliminary analysis done by the Georgetown Institute of Public Representation, in 8 of the 10 top U.S. television markets, there are news sharing arrangements between at least two of the top-4 networks and in many cases among 3 or 4 networks. This practice is not limited to the top markets, as in the top 25 markets there are 14 such arrangements. For example, according to press reports, in New York City, NBC, CBS and Fox, as well as the CW network affiliates share news gathering operations.
- While in these cases the networks claim that they make their editorial judgments independently, it is difficult to understand how the shared operations could make decisions about where to send commonly-operated video crews without coordinating coverage. The Commission would need to gather additional information to determine how these arrangements are affecting its underlying assumptions for the media ownership proceeding.
- The Commission's old rules that considered the top-4 stations in any market in part rested on an assumption that these stations were collecting and reporting their own news. It appears that assumption is no longer valid, and the Commission should understand these practices more thoroughly as it adopts new rules.