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I am extremely pleased that the staff has begun the planning process for the Quadrennial Review in such a transparent and thoughtful manner.

Before I discuss some of the questions asked in the Public Notice, I feel obliged to start with my concern about a question the staff did *not* pose, which is the impact of relaxing the ownership rules on minority ownership. This is, and ought to be, a critical element of the inquiry the Commission must conduct. Indeed, one of the bases of the Third Circuit Court of Appeals reversal of the Commission's 2002 Biennial Review decision was its failure to consider precisely this question. Minority ownership should be baked into this proceeding from the outset. You should be asking questions about what kind of data the Commission should be collecting, how quickly it can start using data from the new Form 323, and how concentration of media ownership may create barriers of entry for minorities, among other things.

To understand my recommendations, it is important to set forth the history of the Commission's enforcement of the broadcast ownership rules. Until the 1980's, the Commission looked very closely at every proposed broadcast transaction not just to determine if it would transgress the ownership rules but also whether it would serve the public interest. During the Chairmanship of Mark Fowler and Dennis Patrick, the staff was directed to approve every transaction which did not transgress the ownership rules *unless* it was challenged by a third party as being contrary to the public interest. At the time, it was explicitly stated that, in the name of deregulation, the Commission would place extensive reliance on the general public to call attention to any transaction which might merit special attention. This was a very cynical step because at the same time the Commission stopped collecting important data on ownership, programming, revenues and other information which would enable citizens to participate meaningfully in the process. It also tightened its standing requirements, so as to make it more difficult to challenge broadcast renewals and transfers. To this day, the Commission staff generally relies on complaints to flag questionable transactions.

With that in mind, I now address some of the staff's specific questions.

The Commission should focus on the task at hand: review of the Commission's existing ownership rules to determine if they continue to serve the public interest and, if so, whether modifications could improve them. The Commission should resist any invitation to go beyond the mandate of Section 202(h) of the 1996 Act to engage in a broader review of the overall state of the broadcasting and media industries or any other more general exercise. In particular, the Quadrennial Review should be conducted independently from the more wide ranging analysis for which the Chairman has appointed Steven Waldman to the staff of the OPP. Similarly, while I look forward to prompt Commission action on its pending localism docket, and while the Quadrennial Review should and must consider the impact of its ownership rules on localism, this is not the place for a full-blown inquiry into localism issues.

In looking at the general scope and framework of the forthcoming proceeding, the Commission should specifically consider whether modifications to existing rules are needed to deal with two particular problems. The first is the proliferation of so-called "shared services" agreements which, in my view, amount to evasion of the local TV and radio ownership rules. Second, the Commission must address

the fact that the digital television transition has rendered obsolete the “UHF discount” provision of the national TV ownership rule.

I understand the logic and apparent intellectual consistency of replacing the existing broadcast ownership rule with an alternative measure which establishes some sort of limit for all media within a market. This is a matter which should be left to Mr. Waldman and OPP. It would bog down the Quadrennial Review in a gargantuan policy debate which would likely result in a conclusion that no such alternative could be adopted. First, to the extent that the Commission attempts to measure activities of internet, billboard and other companies which are not broadcast licensees, there are political, practical and jurisdictional questions which likely would prove insurmountable. Second, I’m sure that my friend Ken Ferree will have a lot to say about this, but my conclusion is that the effort to develop a less ambitious version of such a magic formula in the 2002 Biennial Review established that this is an impossible task. Moreover, any such formula would be inherently flawed. While broadcasting and newspapers compete with each other in the media marketplace and in many advertising categories, radio does not do so in the same way. Cable competes for advertising with local TV and, to a degree with radio for local advertising, but is, as the Commission has frequently noted, not a meaningful player in terms of local media diversity. The internet and billboards raise many additional complexities, and are even less important in local media and advertising markets.

You will surely hear from many broadcasters that they need certainty in the marketplace. I cannot imagine anything less certain than a formula which will rely on constantly changing and largely proprietary metrics. That brings me to my final point with respect to an alternative media measure, which is that it will be completely unenforceable by the public. Citizens have no way to test, much less challenge, claims based on market share, advertising revenues, cumulative circulation and so on. So long as the Commission continues to expect the public to participate in the regulatory process as private attorneys general, any kind of universal media measurement will frustrate effective enforcement.

In the time remaining, I would like to discuss a few data collection problems.

First, because the Commission no longer collects the necessary data itself, it has increasingly come to rely upon expensive proprietary databases. The utility of these databases is often questionable because they are generally designed for commercial use rather than for policymakers. These data are not always reliable because there is no legal penalty for failure to report or for misreporting. And, most importantly, they are generally unavailable to public interest groups which lack the resources to purchase them. Reliance on proprietary data also raises obvious transparency and APA problems.

Second, much of the data the Commission needs for the upcoming Quadrennial Review does not exist anywhere. In addition to minority ownership data, we have no good information on local broadcast programming. The best available research shows that there is a link between greater multiple and cross-ownership and decreasing amounts of original local news and public affairs programming, but this is, inevitably, based on incomplete and anecdotal information. The Commission has voted to collect much better and more comprehensive data on the new Form 355, but this important proceeding remains on reconsideration. The Commission must effectuate this provision if it is to have a complete picture of the impact of consolidation upon local media diversity.