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## SUMMARY

- The basic principle that the FCC should keep in mind as it examines the broadcast ownership rules is that the public interest is best served by permitting broadcasters to compete effectively in the digital multichannel marketplace.
- The analytical framework for the Commission's analysis of these rules may be found in the Communications Act, particularly Section 202(h) and the cases interpreting it. Under that framework, the FCC must take current competitive conditions into account as it reviews the broadcast ownership rules.
- The Commission should base its decisions on real evidence, not unsupported opinion. To that end, it is important to have current, realistic data that fully accounts for the impact that new media sources have on broadcast stations and the audiences they serve.

Good morning and thank you for allowing me to participate in this workshop on media ownership. My role today is to represent the views of free, local radio and television broadcast stations throughout the country on this important topic. In my opening remarks, I intend to make three main points. First, the basic principle that the FCC should keep in mind as it examines the broadcast ownership rules is that the public interest as it relates to these rules is best served by permitting broadcasters to compete effectively in the digital multichannel marketplace. Second, the analytical framework for the Commission's analysis of these rules may be found in the Communications Act, particularly Section 202(h) and the cases interpreting it. Under that framework, the FCC must take current competitive conditions into account as it reviews the broadcast ownership rules. Third, the Commission would be well served if it bases any judgment of these rules on real evidence, not unsupported opinion. To that end, it is important to have current, realistic data that fully accounts for the impact that new media sources have on broadcast stations and the audiences they serve.

Allow me to expand briefly on each of these points. My first point is that the public interest is best served by rules that will allow broadcasters to compete effectively in the digital multi-media world. Local radio and television broadcasters take great pride in the programming and other value that they provide to listeners and viewers who receive free broadcast service in virtually every community in the nation.

Despite what some have suggested, local broadcasters continue to serve their listeners and viewers with a wide variety of entertainment, news, public affairs programming and vital emergency information. Broadcasters have a demonstrated record of unparalleled service to their local audiences. True, the formats and styles of broadcast stations are varied. They are not all

alike, nor should they be. The fact is that broadcasters provide service to their local communities even as the competitive business model under which they operate is under assault from multiple and growing sources in today's multi-platform, multichannel world.

I don't think it will surprise anyone to hear me say that to maintain their ability to provide quality local service, broadcasters believe that the FCC's rules must permit reasonable combinations of station ownership so that broadcasters can compete effectively. As the Commission has itself recognized, only competitively viable broadcast stations supported by adequate advertising revenues can serve the public interest effectively and provide a significant local presence. Providing up-to-the minute news, local and national emergency information and highly-valued entertainment programming takes money. Stations must be supported and sustained by economics that make sense in today's world. Broadcasters cannot compete successfully, and serve our communities successfully, unless they have a somewhat level playing field with the new and varied competitors that are not subject to restrictions on local ownership.

To be clear, broadcasters are not calling for an end to all ownership regulation. But in light of current competitive realities, the Commission must revise the newspaper cross-ownership ban that it and the reviewing court have recognized as out-of-date. The Commission must also recognize the impact multichannel providers have had on the competitive position of local television stations, as articulated by the D.C. Circuit Court of Appeals.

Let me also clearly oppose any suggestion that restrictions on broadcast ownership should remain unchanged or even increased. To support such views, one must believe that the media marketplace has not changed over the past several decades or that the media marketplace is less competitive and diverse than before the development of digital technology, numerous multichannel video and audio services, and the Internet. Such a position is clearly untenable.

It is important to recall the state of the broadcast industry in the early 1990s before some of the ownership restrictions were reformed to permit more economically viable ownership structures. In 1992, for example, the Commission found that, due to “market fragmentation,” many in the radio industry were “experiencing serious economic stress.”<sup>1</sup> Specifically, stations were experiencing “sharp decrease[s]” in operating profits and margins. *FCC Radio Order*, 7 FCC Rcd at 2759. By the early 1990s, “more than half of all stations” were losing money (especially smaller stations), and “almost 300 radio stations” had gone silent. *Id.* at 2760. Indeed, the Commission concluded that “radio’s ability to serve the public interest” had become “substantially threatened.” *Id.* Accordingly, the Commission believed that it was “time to allow the radio industry to adapt” to the modern information marketplace, “free of artificial constraints that prevent valuable efficiencies from being realized.” *Id.*

This leads me to my second point: that the analytical framework for evaluating the ownership rules is found in the Communications Act and Section 202(h) of the 1996 Telecommunications Act and the court cases that have interpreted it. The motivation behind the Congressional directive that the FCC regularly evaluate the ownership rules was to “preserve and to promote the competitiveness of over-the-air broadcast stations.”<sup>2</sup> Congress found that “significant changes” in the “audio and video marketplace” called for a “substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes.” *House Report* at 54-55. Congress specifically noted the “explosion of video distribution technologies and subscription-based programming sources,” and stated its intent to

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<sup>1</sup> *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2756 (1992) (*FCC Radio Order*).

<sup>2</sup> H.R. Rep. No. 204, 104<sup>th</sup> Cong., 2d Sess. at 48 (1995) (*House Report*).

ensure “the industry’s ability to compete effectively” and to “remain a vital element in the video market.” *Id.* at 55.

Congress specifically directed elimination of a number of the Commission’s ownership rules, including the national numerical caps on radio and television station ownership and the cable-broadcast network cross-ownership restriction. It also directed the Commission to relax other local rules. Section 202(h) was an important part of the paradigm. In particular, Section 202(h) requires the Commission to “determine whether any of [its ownership rules] are necessary in the public interest **as the result of competition**” and to “repeal or modify any regulation it determines to be no longer in the public interest.”

I am not going to go through an exhaustive tale of the litigation that has sustained much of the communications bar in the wake of the 1996 Act and various attempts to change the ownership rules. Rather, I will note that a key lesson to be learned from those cases is that the Commission must take current competitive conditions into account as it reviews the broadcast ownership rules.

The current media marketplace is marked by a growth in competition for viewers and listeners. There are greater numbers and different types of outlets and providers. Consumer tastes are changing, especially among younger viewers and listeners. Dramatic changes in the advertising marketplace have affected free, over-the-air broadcast stations more than subscription-based media. In this environment, local broadcast stations are clearly unable to obtain and exercise any undue market power. For this reason, the traditional competition rationale for maintaining a regulatory regime applicable only to local broadcasters and not their competitors must be reexamined.

If anything, the primary competition-related concern in today's digital, multichannel marketplace is the continued ability of local broadcasters to compete effectively and to offer the free, over-the-air entertainment and informational programming upon which Americans rely.

This is where my third principle comes into play: The Commission should base its decisions on real evidence, not unsupported opinion. To that end, it is important to have current, realistic data that fully accounts for the impact that new media sources have on broadcast stations and the audiences they serve.

NAB has previously documented in detail the audience fragmentation and increasing competition for listeners, viewers and advertising revenue experienced by broadcast stations, as the result of new entry by cable television, satellite television and radio, numerous Internet video and audio applications, and mobile devices such as iPods. We noted, for example, that in the first three months of 2007, Internet advertising set new records by taking in \$4.9 billion, a 26% increase over the previous year.<sup>3</sup> Similarly, cable's share of local television advertising has also grown substantially, with cable local advertising revenues increasing 12.2% from 2003 to 2004 and 12.0% from 2004 to 2005.<sup>4</sup> The record of this proceeding must include updates of this data, and the local ownership rules should be structured so that traditional broadcasters and newer programming distributors – which clearly compete fiercely for advertising revenue and audiences – can all compete on an equitable playing field.

Another study that could inform the Commission's decision on ownership rules would be an examination of investment trends. Investment is the lifeblood of any industry, so the FCC should endeavor to determine how its ownership policies affect investment in the media

<sup>3</sup> *Internet ads hit another milestone*, Chicago Tribune, June 7, 2007.

<sup>4</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, Table 4 (2006). This report also documented the continued growth in viewing shares of cable/satellite television, at the expense of broadcast television.

marketplace. In particular, the FCC should examine the difficulties that broadcast outlets have today in obtaining investment capital, and whether those difficulties are related to asymmetric regulation of broadcast outlets in comparison to their competitors. In this regard, NAB notes that cable operators are not subject to local ownership restrictions (e.g., the D.C. Circuit vacated the local cable/broadcast cross-ownership rule) and that the same court more recently vacated the 30% national horizontal cap on cable operators. Anecdotal evidence suggests that investment capital flows more freely to the lesser regulated media space.

### **Conclusion**

Broadcasters are not calling for an end to all ownership regulation, but for the modernization of out-of-date restrictions that do not reflect current competitive realities in the Internet age. Reasonable reform to outmoded limitations will enable free, over-the-air broadcasters to compete more effectively against multichannel video and audio operators and Internet-based media providers. As the FCC has previously recognized, only competitively viable broadcast stations supported by adequate advertising revenues can serve the public interest effectively, provide a significant presence in local communities, and offer costly local services such as local news. Above all, broadcasters want to be able to continue to serve their local communities and audiences effectively. Reform of local ownership limitations can help local stations do just that.