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MINORITY OWNERSHIP AND EMPLOYMENT IN THE MASS MEDIA

A Report of the Leadership Conference on Civil Rights Education Fund

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MINORITY OWNERSHIP AND EMPLOYMENT IN THE MASS MEDIA

INTRODUCTION

Media remains a critical element in achieving equal opportunity and full participation in civic life. Media shapes public views of minority communities, as well as views on the causes and scope of social problems and the best solutions. The Leadership Conference on Civil Rights Education Fund believes that access to the media by the broadest sector of society is crucial in ensuring that diverse viewpoints are presented to the American people, and that all sectors of society are accurately depicted. To ensure an accurate depiction, all sectors of society must participate in media outlets, which can be accomplished through media ownership and employment.

Despite a national consensus as to the need and importance of diversity in media ownership and employment, progress has slowed to a crawl in the wake of the 1996 Communications Act. Attacks on policies promoting the inclusion of women and minorities in these areas have and will continue to limit the advancement of viewpoints and interests of under-represented communities, unless and until these attacks are stifled. These attacks can only be restrained with the active education of the public on these issues and continued agency and Congressional pressure.

BACKGROUND

Because of the powerful role broadcasting plays in the democratic process as well as in shaping perceptions about who we are, the civil rights movement has long regarded expanding minority and female ownership and employment in broadcasting as important goals. Spurred by a successful challenge to the license renewal of a racist TV station in Jackson, Mississippi in the mid-1960's, the civil right movement and the U.S. Civil Rights Commission pressed the FCC to use its broad public interest

authority to insure that broadcasters served all Americans. This effort was accelerated by an influential chapter in the 1968 Report of the President's Advisory Commission on Civil Disorders (the "Kerner Commission") which assessed coverage of urban riots and criticized the mass media for failing to report adequately on minority lifestyle and issues. This was, according to the report, in large part because of the absence of minorities in ownership and/or employment in the media.

> [T]he news media must publish newspapers and produce programs that recognize the existence and activities of the Negro, both as a Negro and as part of the community. It would be a contribution of inestimable importance to race relations in the United States simply to treat ordinary news about Negroes as news of other groups is now treated.
>
> Specifically, newspapers should integrate Negroes and Negro activities into all parts of the paper, from the news, society and club pages to the comic strips. Television should develop programming which integrates Negroes into all aspects of televised presentations. * * * * Negro reporters and performers should appear more frequently—and at prime time—in news broadcasts, on weather shows, in documentaries, and in advertisements. Some effort already has been made to use Negroes in television commercials. Any initial surprise at seeing a Negro selling a sponsor's product will eventually fade into routine acceptance, an attitude that white society must ultimately develop toward all Negroes.
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> In addition to news-related programming, we think that Negroes should appear more frequently in dramatic and comedy series. Moreover, networks and local stations should present plays and other programs whose subjects are rooted in the ghetto and its problems.
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> ***Kerner Commission Report (1968)***

Another closely related factor affecting the role of minorities and women in society is the concentration of control of media resources in a few hands. Restraining media concentration is central to the FCC's mission. Under the Communications Act of 1934, the FCC is charged with promoting "localism" in broadcast media and enhancing democracy by insuring that broadcasters "present those views and voices which are representative of [their] community and which would otherwise...be barred from the airwaves."

In fact, these airwaves belong to the citizens, who have permitted broadcasters to make use of the spectrum. The *quid pro quo* for broadcasters' right to exclusive use of publicly owned spectrum is their commitment under the Communications Act to serve the public interest,[1] because it is

[1]The right to use most non-broadcast electromagnetic spectrum for wireless transmission is

> the right of viewers and listeners, not the right of broadcasters, which is paramount..., the right of the public to receive suitable access to social political, esthetic, moral and other ideas and experiences which is crucial here.

This trusteeship theory of broadcast licensing is not new; it has been a pervasive influence on the FCC's regulatory approach to media concentration for nearly 70 years. FCC limits are premised

> on the theory that diversification of mass media ownership services serves the public interest by promoting diversity of program and service viewpoints, as well as by preventing undue concentration of economic power.

> "[W]e are compelled to observe that the views of racial minorities continue to be inadequately represented in the broadcast media. This situation is detrimental not only to the minority audience but to all of the viewing and listening public."
> ***FCC Statement of Policy on Minority Ownership of Broadcast Facilities (1978)***

In 1996, Congress undertook the most sweeping revisions of the Communications Act since it was enacted in 1934. Broadcast ownership, an issue that affects the goals and rights of minorities and women, was the subject of intense debate. The House leadership pressed for eliminating almost all ownership limits, but the law as enacted was substantially scaled back. Even so, it eliminated all limits on national radio ownership and substantially eased local radio ownership caps. As to TV, the law retained the national ownership reach cap first established by the FCC in 1984, but raised it from 25% to 35%. The law did not modify local TV ownership rules but instead directed the FCC to consider such changes via a rulemaking. In response, in 1999, the FCC allowed ownership of two TV stations, under certain conditions, in the largest markets.

The Government's policies on minority and women employment and ownership in media are integral to the lives of minorities and women. It is these policies that allow the voices of minorities

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generally auctioned to the highest bidder. Other spectrum is "unlicensed," and generally available for everyone to share. Broadcasters almost uniquely receive free and exclusive (unshared) use of the airwaves.

and women to be heard and allow for more informed decision-making in the democratic process. A better understanding of these policies will go a long way in keeping the pressure on the Government to adopt policies that truly embody the democratic process.

EQUAL EMPLOYMENT OPPORTUNITY RULES: EMPLOYMENT DISCRIMINATION AND RECRUITMENT

The roots of advancements towards diversity in broadcasting were grounded in the civil rights movement when, in 1963, the United Church of Christ's ("UCC") Office of Communication challenged the license renewal application of a Jackson, Mississippi television broadcaster, WLBT-TV. *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (1966). UCC teamed up with the NAACP in bringing the challenge on the basis that WLBT-TV had violated its position as a public trustee of the airwaves that WLBT-TV was making use of, freely and exclusively. The civil rights groups gathered and presented evidence to the FCC that WLBT-TV had engaged in racial and religious discrimination and had broadcast programming with only one view; programming that promoted racial segregation. The FCC not only renewed the station's license but also said that the citizens' groups lacked the legal standing even bring a challenge. These holdings were reversed in court, and WLBT-TV ultimately lost its license.

> Because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee.
> ***Red Lion Broadcasting Co. v. FCC (1969) (citations omitted)***

The Civil Rights Movement Makes Gains Towards Equal Employment Opportunities

The UCC and others involved in the civil rights movement did not stop with the gains achieved in *UCC v. FCC*. Rather, in 1967, the UCC, Leadership Conference on Civil Rights, and other groups petitioned the FCC to adopt Equal Employment Opportunity ("EEO") rules specifically requiring affirmative action and extensive disclosure of employment practices. The petition was grounded on the FCC's duty, in granting a license or renewal to a broadcast station, to determine "whether the public interest, convenience, and necessity will be served by the granting of such application." It is the presence of this public interest standard that allows for diversity in viewpoints, public debate, and the needs of all sectors of society to be met. In return for meeting this standard, broadcasters are able to use the airwaves, a limited and valuable commodity, for free.

As a consequence of the EEO petition, minorities and women gained more ground to a more diverse media marketplace when the FCC adopted nondiscrimination and EEO requirements in 1969. In adopting the requirements, the FCC determined that the interest of the diverse population could not be served if licenses were awarded to broadcasters with discriminatory hiring practices. More specifically, the FCC adopted rules which prohibited applicants from being turned down based on the applicants' race, gender, color, religion, or national origin. Additionally, the FCC required stations to maintain recruitment programs which would ensure equal employment opportunities. Thus, licensees had to "establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of station employment policy and practice."

These policies enabled minorities and women to access opportunities in broadcasting and cable which were previously unattainable. While it hardly seems unusual today for there to be minority and women news anchors, reporters and announcers, this was not commonplace in the 1970's. Similar changes occurred behind the camera. The transformative impact of the FCC's EEO rules can be seen

even today by comparing employment patterns in broadcasting and cable with those in the newspaper industry.

The Civil Rights Movement Loses Ground In Equal Employment Opportunities

Despite a Supreme Court decision specifically confirming the FCC's authority, and decades of compliance, enforcement, and undisputed acceptance by almost all broadcasters of the FCC's rules, this progress towards equal opportunity was thwarted during the 1990's. Taking advantage of a conservative judiciary increasingly hostile to the equal employment rules in general and at the FCC in particular, a handful of broadcasters began a systematic effort to challenge the FCC's EEO policies.

The FCC's regulations regarding recruitment were first challenged in *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (DC Cir. 1998), where a licensee in Missouri complained that the FCC's requirements were unconstitutional. At issue was the FCC's requirement that licensees maintain EEO practices to recruit minorities and the compliance of these requirements was based on proportional representation of the employees as compared to the general community. The D.C. Circuit Court of Appeals found the EEO recruitment requirements were unconstitutional since the licensees were obligated, under the regulations, to grant preferences of some degree to minorities.[2] It was the Court's belief that the

> crucial point is not ... whether they require hiring in accordance with fixed quotas; rather, it is whether they oblige stations to grant some degree of preference to minorities in hiring. We think the regulations do just that.

Basically, the Court found that the rules were not merely requirements, but, instead, put pressure on broadcasters to make hiring decisions based on the candidates' race.

After the Court's decision in *Lutheran*, the FCC again attempted to adopt rules that would

[2] The Court did not decide the issue as to whether the regulations pressured broadcasters to *hire* minority candidates.

preserve the public interest and would be consistent with the *Lutheran* decision. The new rules, adopted in 2000, maintained the prohibition on discrimination. In addition to the prohibition on discrimination, the rules provided licensees with discretion in establishing recruitment efforts which would ensure all qualified candidates had an opportunity to apply for open positions. The rules encompassed a basic goal and supplementary goals. The basic goal involved wide dissemination regarding job openings. In addition, the new rules provided for two supplemental recruitment options:

> (1) Option A required licensees to undertake supplemental recruiting measures, i.e., job notifications with organizations that requested such notices and recruitment via non-traditional measure; and/or
>
> (2) Option B allowed the licensee to design its own recruitment program, so long as the program provided for wide dissemination of the available job opportunities. Under this option, the licensee was also required to report the race or sex of job applicants.

However, in *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13 (D.C. Cir. 2001), an unsympathetic appeals court ruled that Option B of the EEO Rules was unconstitutional since Option B "clearly does create pressure to focus recruiting efforts upon women and minorities in order to include more applications from these groups" since "Licensees selecting Option B must report the race, sex, and source referral for each applicant." The Court believed that an investigation by the FCC, resulting from the noncompliance of Option B "is a powerful threat, almost guaranteed to induce the desired conduct" and "[m]easuring outputs to determine whether readily measurable inputs were used is more than self-evidently illogical; it is evidence that the agency with life and death power over the licensee is interested in results, not process, and is determined to get them." Option A was not considered unconstitutional since the licensee was not required to report the race or sex of the job applicant, thus, since "licensees remain free under Option A to select recruitment measures that do

not place a special emphasis upon the presence of women and minorities...the Broadcasters are [not] meaningfully pressured under Option A to recruit women and minorities."

In continually finding the FCC's EEO rules to be unconstitutional, the D.C. Circuit appears to be marching to its own tune. As recently as 2003, in the well-documented case arising out of the admission practices of University of Michigan's law school, *Grutter v. Bollinger*, 539 U.S. 244 (2003), the U.S. Supreme Court took a different and much more receptive view of affirmative action policies. There, the Court has held that the consideration of race as one of various other factors in the admission process is constitutional. The disconnect with the D.C. Circuit is especially frustrating, as the likelihood of getting the Supreme Court to hear any of the EEO cases is remote.

Current Status

Since the *MD/DC/DE Broadcasters Association* decision, the FCC has once again issued new recruitment rules, while retaining the nondiscrimination rules. The FCC's goal with the new rules was to provide flexible rules that did not impose undue burdens on broadcasters. The new recruitment rule takes a three-pronged approach and requires:

> Wide dissemination of job vacancy information for every vacant full-time position, without the expectation that broadcasters target or confirm that a certain segment of society was informed of the vacancy;
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> Vacancy information to be provided for full-time positions to organizations that have requested such information; and
>
> Employment of various outreach initiatives provided by the FCC, which initiatives go beyond standard recruitment activities.

The new regulations do not require reporting of the race or sex of the candidate. In essence, the lack of reporting does not provide a means for determining whether broadcasters are complying with the regulations or whether the licensee has considered minority applicants for the open position.

No party has challenged the latest rules as of yet, although, based on history, it is likely the FCC's most recent rules will inevitably be challenged.

MEDIA OWNERSHIP: TAX CERTIFICATES AND DISTRESS SALES

During the Carter administration, a more friendly administration towards the progress of equal rights for minorities and women, the FCC acknowledged that despite the policies then in place, *i.e.*, EEO regulations, additional policies were needed to further and continue the strides that had been made in equal opportunities. After holding a conference on minority broadcast ownership in 1977 and evaluating a report authored by the FCC's Minority Ownership Task Force, the FCC issued a policy statement on minority ownership in 1978. In the statement, the FCC observed

> that the views of racial minorities continue to be inadequately represented in the broadcast media. This situation is detrimental not only to the minority audience but to all of the viewing and listening public ... [and] ownership of broadcast facilities by minorities is another significant way of fostering the inclusion of minority views in the area of programming.

Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC 2d 979, 981 (1978). In an effort to increase broadcast ownership by minorities, the FCC adopted two policies to aid and encourage minorities to pursue ownership opportunities: tax certificates and distress sales.

Tax Certificates

The tax certificate policy, carried out under the Internal Revenue Code, allowed the FCC to provide financial benefits in the sale or assignment of a broadcast license to a minority. Under the policy, a tax certificate would be issued if the FCC certified that the sale or assignment, whether voluntary or involuntary, of a license was "necessary or appropriate to effectuate a change in a policy of or the adoption of a new policy by the FCC with respect to the ownership and control of radio broadcasting stations." Once issued, the tax certificate holder could defer tax capital gains realized

on the sale of the broadcast license. In practice, this reduced the sales price of the station by about 50% of the value of the tax certificate; although the tax certificate was provided to the seller, the buyer and seller usually shared the benefit through a reduction in sales price, thereby assisting the buyer in accessing the necessary capital.

Despite the barrage of attacks on affirmative action by the Reagan administration, the 1978 Policy Statement was expanded in 1982 due to "the ever-present 'dearth of minority ownership' in the telecommunications industry." *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 FCC 2d 849 (1982) ("1982 Tax Certificate Policy"). The 1982 Tax Certificate Policy allowed limited partnerships with minority investors to take advantage of the minority ownership policies. For example, the policy made the certificates available to investors upon actual divestiture of the shares, rather that upon completion of the sale. Additionally, tax certificates would be considered where the general partner(s) was a minority and owned more than 20 percent of the broadcasting company (as long as the minority general partner(s) had complete control over the licensee's operation). Finally, the 1982 Tax Certificate Policy provided tax certificates to initial investors who purchased shares in entities controlled by minorities or investors who purchased shares within one year after the issuance of the broadcast license.

This policy was the most frequently used in the transfer of licenses to minorities and by 1995 the number of stations owned by minorities increased from 40 in 1978 to 350.

Distress sales

The distress sale policy allows minority owned companies to obtain financial incentives in the

transfer of broadcast licenses that are either being subject to a revocation hearing or a renewal application has been designated for a hearing due to qualification issues. The policy allows for the transfer or assignment of licenses at a distress sale price (of no more than 75% of fair market value) to those with significant minority ownership interests. Prior to the adoption of the distress sale policy, a licensee subject to a hearing was prohibited from selling or assigning the license until the issue had been resolved in the licensee's favor. The distress sale policy did create some ownership opportunities for minorities. In reality, though, rarely did stations become available under the policy and those stations that did become available were, in many cases, marginal stations.

> [W]e conclude that the interest in enhancing broadcast diversity is, at the very least, an important governmental objective and is therefore a sufficient basis for the Commission's minority ownership policies. Just as a "diverse student body" contributing to a " 'robust exchange of ideas' " is a "constitutionally permissible goal" on which a race-conscious university admissions program may be predicated, the diversity of views and information on the airwaves serves important First Amendment values. The benefits of such diversity are not limited to the members of minority groups who gain access to the broadcasting industry by virtue of the ownership policies; rather, the benefits redound to all members of the viewing and listening audience. As Congress found, "the American public will benefit by having access to a wider diversity of information sources.
> ***Metro Broadcasting, Inc. v. FCC (1990)(footnote and citations omitted)***

Current Status

In 1994, after 40 years, Republicans gained a majority in the House of Representatives and adopted the "Contract With America." This was advertised as a 10-point plan to balance the budget, reduce the power of the federal government and eliminate the deficit. Bills to meet these goals were to be pushed through the House within the first 100 days of Congress. In actuality, some of proposed bills reversed the efforts of the civil right community to reduce discrimination. The tax certificate policy was one victim of this, when in early 1995, Congress repealed the tax certificate policy. The tax certificate policy was attacked as an affirmative action policy and an unjustifiable subsidy for big

business. Little discussion took place as to the merits of these attacks, and the policy was repealed in an unrelated bill.

There is some hope that the tax certificate policy will be reinstated. In 2003, Senator McCain proposed legislation that would provide tax incentives to those selling broadcast stations to disadvantaged small businesses. However, this Bill has not yet become law.

The Distress Sale Policy was challenged and upheld by the Supreme Court in *Metro Broadcasting, Inc. v. FCC.*, 497 U.S. 547 (1990). The distress sale policy is the only policy currently in existence, in the realm of broadcasting, which promotes minority ownership. Although there were some 40 distress sales prior to 1990, this option is now rarely available due to the limited number of stations subject to distress sales. As such, distress sales were and are a relatively rare phenomenon.

BROADCAST OWNERSHIP AND CONSOLIDATION: THE VARIABLE NATURE OF REGULATION

Within a few years after the Communications Act became law in 1934, the FCC had adopted "Chain Broadcasting Rules" limiting the power of national radio networks (which were often called "chains"), including restrictions on how many radio stations they could own. National television limits were established soon after TV service started, so that broadcasters could not own more than 7 AM, 7 FM and 7 TV stations (the "7-7-7 rule"). Local ownership was also capped so that broadcasters could not own a VHF TV station and a radio station in the same community. In 1974, the FCC barred broadcast licensees from owning or controlling newspapers in the same geographic market. All of these rules, including the newspaper broadcast ownership prohibition, were affirmed by the courts..

Under the Reagan Administration, the FCC began to reverse direction, overturning or scaling

back a series of ownership-related rules, such as the financial interest and syndication rules, which had served to limit the economic power of the national networks by constraining network-produced content. But the FCC's attempts to act directly on broadcast media concentration faced strong Congressional resistance. In 1984, the FCC proposed to repeal all national broadcast limits after a six-year transitional period. Congress reacted promptly by adopting an appropriations rider which placed a six month moratorium on the new rules. During the interregnum, the FCC scrapped its plans and instituted somewhat liberalized rules, including a new TV "audience reach" limit, under which no licensee could operate TV stations reaching more than 25% of the nation's TV households. The FCC afforded less weight to audiences for UHF stations (that is, channels 14-67). Because of "the inherent physical limitations of this medium," their audiences were "discounted" by 50% in calculating an owner's audience reach.

In 1989, the FCC eased its "one to a market" radio rule, allowing waiver requests for TV-radio combinations in the largest 25 TV markets. For the first time, these cross-ownership revisions introduced the concept of market "voices," permitting some consolidation so long as there were 30 independently-owned broadcast "voices" in the market. In 1992, the FCC went farther, allowing ownership of two AM and two FM stations in the largest markets.

Current Status

As noted above, the 1996 Communications Act substantially deregulated national radio ownership rules and eased national TV ownership limits, i.e., the total number of stations one company can own. The law also forced the FCC to consider whether to revise local rules on how many media properties one company can operate in any one community. Most importantly, as a sop to broadcasters, the 1996 Act also included a directive requiring the FCC to conduct biennial (now quadrennial)

reviews of all remaining broadcast ownership rules "to determine whether any of such rules are necessary in the public interest as a result of competition." These reviews have become the battle-ground for intense fights at the FCC, Congress and the courts for the last three years.

The biennial review initiated in 2002 was one of the largest and most complex proceedings the FCC has ever conducted. The FCC consolidated all of its pending broadcast ownership proceedings so that it could review every single broadcast ownership rule. Despite broad public outcry over the plan to lift ownership limits, in June, 2003, the FCC voted 3-2 to ease local and national limits.

Congress reacted negatively. Resolutions of disapproval were introduced, and could well have been enacted had the courts not acted first. The House of Representatives voted against the leadership to adopt an appropriations rider that would have restricted some of the new rules to go into effect and in January, 2004, Congress adopted an appropriations bill which partially rolled back the new national TV ownership limits.[3] Congress also changed the biennial review provision to a once every four year review.

Fortunately, the U.S. Court of Appeals for the Third Circuit in Philadelphia, proved to be a sympathetic forum for minority and consumer groups. The Court first issued a stay keeping the new rules from going into effect and then, in June, 2004, it reversed the FCC's decision and directed the FCC to conduct a new review, this time under a different, and more favorable, legal standard. Among other criticisms of the FCC's action, the opinion singled out the FCC's failure to pay meaningful attention to 13 specific proposals for promoting diversity in ownership which had been propounded by the Minority Media Telecommunications Coalition (MMTC).[4]

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[3]The FCC had voted to lift the 35% national ownership limits so that one company could own TV stations reaching 45% of the nation's TV homes. Congress rolled the limit back to 39%.

[4]Most of MMTC's proposals relate to TV. Radio is traditionally a much more narrowly targeted medium than television. While some blocks of English language TV programming are aimed

The following measures will be the subject of the FCC's new ownership review:

- Local TV ownership rules - the FCC had attempted to allow broadcasters to own two TV stations in most markets and three stations in larger communities.
- Local Cross-ownership rules - the FCC had attempted to introduce a complicated formula which would have allowed broadcasters to own much larger combinations of radio and TV stations and newspapers in the same community.
- UHF discount - this seemingly minor provision which treats the audience of UHF stations (over the air channels 14-67) as being half the size of other stations has had the effect of vastly increasing the size of several national networks. The FCC will reconsider requests to repeal this provision.
- Minority ownership- in addition to considering the MMTC's 13 proposals, the FCC must also reconsider its repeal of the "failed station solicitation rule" which, in certain situations, requires broadcasters to notify potential buyers of their intent to sell. This rule was adopted to ensure that qualified minority purchasers receive a fair chance to bid on these properties.

IMPACT OF DIGITAL TV

Congress is about to adopt legislation which sets a "hard date" for the complete conversion of domestic U.S. TV stations to digital-only transmission. This will not have an immediate or direct impact on minority ownership and employment.

However, it bears mention that conversion to digital TV means that over-the-air TV stations will receive exclusive access to spectrum which will permit them to "multi-cast," *i.e.*, carry several (perhaps up to 6 or 7) program feeds simultaneously. Multi-casting potentially offers the chance for much greater program diversity. Unfortunately, current FCC plans do not contemplate taking advantage of this opportunity.

CABLE OWNERSHIP: DECREASED REGULATION, INCREASED CONSOLIDATION

Cable television is subject to far less rigorous regulation than broadcasting. Thus, while it

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at minority audiences, it is radio which often provides the main outlets for minority communities. Despite this fact, and the emergence of several minority owned radio groups (such as RadioOne and Inner City), the 1996 Communications Act has essentially blocked creation of new minority ownership in radio.

offers potentially greater opportunity for increased programing diversity, cable has generally failed to live up to its promise.

Cable TV system ownership is highly concentrated. Five companies control more than 80% of the national cable TV market, and two of those companies (Comcast and Time Warner) are in the process of acquiring the fifth largest company (Adelphia) out of bankruptcy.

The structure of the cable TV industry has given those few companies the power to function as a "bottleneck." It is not a coincidence that most minority oriented program networks are controlled by those companies. (Notably, both BET and Cable One were financed by large cable companies which maintained ultimate control over their African-American partners. The same is essentially the case for the women-owned Oxygen network.)

In addition to the Comcast/Time Warner/Adelphia merger, the FCC is currently considering what limits to put on the size of cable systems. As a practical matter, however, these rules would not undo the damage or create significant new opportunities for minorities and women.

RECOMMENDATIONS

To ensure that women and minorities are able to participate effectively in the democratic process through media opportunities, the following policies should be adopted:

Congress should reinstatement of the Tax Certificate Policy, which would provide minorities and women ownership opportunities;

The FCC should decline to eliminate existing broadcast ownership rules; instead, it should initiate a proceeding to strengthen them;

Congress should reimpose a limit on the number of radio stations any one company can own;

The FCC should adopt rules limiting ownership of cable television systems to no more than 25% of the nation's cable TV homes; and

The FCC should reaffirm and strengthen enforcement of its broadcast EEO rules.

CONCLUSION

Communications policy, seen by some as involving only arcane rules and license renewals, is really about control over the flow and exchange of ideas in the public arena. The civil rights community has long recognized the important role the media plays in creating a more equitable and just society. Some of the civil rights community's earliest efforts in this area resulted from the failure of local media to accurately represent their community. Today, our goals remain the same.

Communications Policy is a Civil Rights Issue

Community Technology Center Review

Mark Llyod

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Communications Policy is a Civil Rights Issue

by Mark Lloyd

This essay is about the relationship between civil rights and communications policy, the interplay between that set of rights we hold because we are citizens and the rules our representatives create which direct the activity of communications companies such as AT&T, TimeWarner/Turner, and Disney/ABC. It is also an argument that communications policy is of central importance to all Americans, that it touches on our fundamental rights, that communications policy is a civil rights issue.

The historical relationship between the civil rights movement and communications policy provides a useful perspective to present and future challenges. Indeed, it is those challenges which make the ideas and passions of the civil rights movement so necessary in the debate over communications policy today, for this is the arena in which so many of our basic rights appear and are given meaning—the right to speak, the right to know, the right to information, the right to privacy, the right to equal economic opportunity, the right to equal educational opportunity, and the right to meaningful participation in the political process. The historic struggle to preserve and defend these rights is the prelude to our future.

The Past is Prologue

Fifty years ago, as Jackie Robinson began his historic sojourn across the for-whites-only baseball playgrounds, the modern civil rights movement was on the verge of critical victories, although public attention and interest was not immediately apparent. The nation was prosperous and heady with its new position of leadership after World War II. If the leaders of the nation agreed about which issues of the day required attention, that attention was focused on imagined internal and external threats posed by communism. The pages of *Time Magazine,* the *New York Times,* and the radio and television newscasts paid rare attention to what was then called "the Negro problem." Television sets went on sale only a year earlier, and black Americans were viewed through the voices and images of white Americans through popular programs such as "Amos and Andy" and "The Jack Benny Show," featuring Rochester. The first black-owned radio station, WERD in Atlanta, was not on the air until 1949. Few cameras ventured south to capture the violence of the non-violent civil rights movement. When the networks did produce documentaries about what was going on down south, those programs were not shown in the south.

The civil rights leader, the Reverend Everett C. Parker, the head of the United Church of Christ, decided something had to be done about television's treatment of blacks. He started an office of communications at the church and in March of 1964 began tape recording the broadcasts of the two television stations in Jackson, Mississippi, WLBT —the NBC affiliate, and WJTV—the ABC affiliate. You know what he found.

Though blacks comprised 45 percent of the audience, the stations ignored them, and eliminated any of the networks' coverage of blacks. The White Citizens Council could express its opinion but local black ministers were not allowed on the air. Most black folk in Jackson, Mississippi never complained about this, they took it for granted that that's the way things were. The United Church of Christ along with local NAACP officials confronted the Federal Communications Commission with a long list of violations, and by a four to two decision, the FCC renewed the licenses of the Jackson stations for one year—pending good behavior. Reverend Parker was not satisfied. The church challenged the FCC in the U.S. Circuit Court of Appeals for the District of Columbia. The church argued that the white-only programming of the stations violated the Fairness Doctrine, and was not "in the public interest" of either black or white viewers in Jackson, Mississippi. The court overruled the FCC. That ruling ultimately led to the loss of WLBT's license.

Because it recognized the power of viewers to petition the FCC and take it to court, the United Church of Christ decision has been aptly characterized as the "Magna Carta for active public participation in broadcast regulation." This newly recognized power spurred citizen engagement with communications policy, and led to a process whereby stations were required to ascertain the issues of interest to the community they were licensed to serve by interviewing a wide range of local leaders. The station then had to report to the FCC, showing both the results of its ascertainment survey and how the community interests were reflected in programming. This ascertainment process clarified the political relationship between community and broadcast station, and it empowered local activists. Stations were forced to respond to local concerns about news and public affairs coverage, and to some extent even prime time entertainment programming. The FCC was finally hearing from the communities the licensees were obligated to serve. The result was more news and public affairs programming, more diversity of views expressed, and arguably better television and radio service—an outcome the market failed to create.

The civil rights movement continued to work in the vineyard of communications policy, and continued to have success. Protests over the lack of minorities on staff at the broadcast stations led the Kerner Commission to examine the role of media in exacerbating the racial tensions that ultimately resulted in the widespread urban rioting in the late 1960's. The Kerner Commission warned that newspapers and television "have not communicated to whites a feeling for the difficulties and frustrations of being a Negro in the United States... The world that television and newspapers offer to their black audience is almost totally white..." Protests by civil rights groups and the Kerner report led to FCC adoption of equal employment opportunity provisions. Those provisions called for an accounting of minorities employed at the stations and asked the stations to compare the numbers of minorities and women on staff to the number of minorities and women in the station's service area. The FCC also asked stations to send job announcements to places where likely candidates might be found. Many of those places were the offices of the local NAACP or Urban League.

In the late Seventies, in recognition of the lack of progress made with these employment policies, the FCC ruled that minority ownership was essential to create a diverse range of messages over the public's airwaves. Once again, civil rights leaders

were at the forefront of the battle for rules to promote minority ownership. Among those testifying before Congress in support of such rules in 1974 were Ron Brown, on behalf of the National Urban League, and Joseph Rauh, Jr., on behalf of the Leadership Conference on Civil Rights. Policies promoting minority ownership were established by the FCC, and reaffirmed by the Supreme Court in the Metro Broadcasting decision of 1990.

But now, the great progress made by the civil rights communities in the communications policy arena has been rolled back. The Reagan-dominated FCC destroyed the ascertainment process, arguing that it was too much of an administrative burden on the stations and on the FCC.

Licensing renewal now can be accomplished with a postcard, certifying that the station can meet some stringent financial requirements, but that is about it. The Reagan-Bush FCC tried to destroy the affirmative action/EEO guidelines and the ownership diversity programs, but the Democrats in Congress prevented FCC action.

In April 1995, however, the Republican Congress teamed up with President Clinton to kill the most effective method for increasing minority ownership, the tax certificate. With minority-owned broadcast licenses stuck at around 3 percent, loss of the tax certificate makes any progress beyond that invisible ceiling impossible. And in June 1995, in reaction to the Supreme Court's Adarand decision, the FCC rescinded rules designed to help women and minorities participate effectively in the spectrum auctions for PCS licenses.

Then Came the Telecommunications Act of 1996 or Show Me the Money

On February 8, 1996, a week after extended support in the House and Senate was vocalized, President Clinton signed the Telecommunications Act of 1996. While touted as a landmark bill updating the sixty-year-old Communications Act for the benefit of U.S. consumers, the T96 Act was created by and for a communications industry dominated by global conglomerates. The influence of this global industry over the national legislative process was hinted at in the scandal over the Speaker of the House's much publicized book deal with the international media magnate Rupert Murdoch. But the book deal was the tip of the iceberg. According to Charles Lewis of the Center for Public Integrity, Senate Leader Bob Dole received hundreds of thousands of dollars before the T96 Act from communications companies such as TCI and Time/Warner in direct contributions and through support of Dole fronts such as the Better America Foundation. As Ken Auletta reported in the *New Yorker,* AT&T spent nearly $1.3 million in soft-money contributions to both parties in 1994 alone. And the political action committees of the broadcasting industry, long considered the most powerful special interest group in the country, contributed over $ 1.3 million during the 1995-96 election cycle. For the first six months of 1996, the broadcast industry spent at least $10.7 million dollars in lobbying Congress, the Clinton Administration, and the FCC.

The question must be asked: Whose interests were our representatives representing when they passed this legislation? In the absence of a strong public interest presence, the money spent by private industry in the political process reflected major distortion

in the public debate. A good example of this distortion can be seen in the statements of the Clinton administration's point man on communications issues, Vice-President Gore.

In 1992, while campaigning for office, Senator Al Gore introduced the idea of the "information superhighway." Perhaps as a defense of public investment, Gore said the information highway "ought to be built by the federal government" much like the interstate highway system. In fact, the high-risk and hard work of research and development of the high-capacity data link between academic institutions and military bases was made possible through federal funding. This link later became known as the Internet. The development of the Internet is a good example of government generating benefits for the public at large; a rich story for public interest advocates to tell. However, a year after extolling the federal government's role in building the information superhighway, and many campaign contributions later with, no doubt, hopes of more to come, the Vice-President announced that "unlike the interstates, the information highways will be built, paid for, and funded by the private sector." He announced the administration's support of removal of "judicial and legislative restrictions on all types of telecommunications companies: cable, telephone, utilities, television, and satellite."

The Vice-President's representatives denied any connection between the financial largess of the communications industry and the Vice-President's 180-degree turnaround on the role of private industry, but he now ignores past and present public and government support (i.e., the tax dollars of ordinary citizens) in favor of making private industry's contribution seem dominant and therefore controlling. As private industry is given credit for building the road, so private industry dominates discussion about the rules of that road. While citizens are blinded to the government support that makes the road possible, they remain blind to their right to benefit from their contribution.

The industry compromise that became the Telecommunications Act of 1996 was sold to the American public as a great consumer victory. Competition, it was reported, would reduce prices and provide more services. Despite the promise of greater competition, the effect of the Act has been an unprecedented wave of consolidation and partnerships of mutual interest among potential competitors. Less than a half-dozen communications corporations now control more than 90 percent of the communications companies in the U.S., because of the record-setting mergers and acquisitions, and the destruction of regulations that once encouraged new market entrants. Local telephone companies were allowed to combine and provide long distance service. National broadcast ownership limits were increased to 35 percent. Prohibitions limiting the ownership of radio, television, and newspapers by one company in the same market were lifted, thus encouraging media consolidation and the crowding out of independent voices. Broadcast license periods were increased, making it virtually impossible for local communities to exercise any control over the stations licensed to serve them. And only existing broadcasters will be given additional spectrum to broadcast high definition digital signals, creating a further barrier to competition and new voices. The early promises of competition and reduced prices have failed to materialize, as has the promise of new jobs. Prices,

particularly cable prices, have gone up. Employment growth is negligible and wages are depressed, particularly in the telephone industry. And something even more fundamental and dangerous has occurred.

Far more troubling than the broken promises to consumers has been the shift in the public debate. That shift began during the Reagan years of the 1980's, with the crude pronouncements of Chairman Mark Fowler, when the FCC moved quickly to merge the concept of the public interest with the myth of the market. This shift in the public interest standard peaked in the 90's, perhaps best demonstrated by the essays of Nicholas Negroponte in *Wired* magazine (who asserted "there will be no information have nots, only information want-nots") and a manifesto funded by Newt Gingrich's Progress and Freedom Foundation, "Cyberspace and the American Dream: A Magna Carta for the Knowledge Age." Under the signatures of Esther Dyson, Alvin Toffler, George Keyworth, and George Gilder, the "Magna Carta" is a relentlessly upbeat stew of cyberspeak, utopian fantasy, and laissez-faire economics. Unlike the Magna Carta-like United Church of Christ case, this new "Magna Carta" left the determination of the public interest to the not-so-invisible hand of a market dominated by international conglomerates, not the direct engagement of the local community.

Those voices that once called for equality and public responsibility in the communications arena were unprepared for the strategic shift in the terms of the communications debate. That shift asserted that something new was happening around digital technologies and fiber optics, and the old problems of monopolistic behavior and the market's inability to correct human bigotry somehow did not matter anymore. And the civil rights community was largely silent. As a result, the conversation is now centered on the citizen as "consumer," who will be provided cheap costs, and dazzling choices in entertainment services and technology. The civil rights agenda has given way to the agenda of the commercial market. The stirring call to community is no longer "We Shall Overcome" but "Show Me The Money."

The work of the civil rights community has suffered through a sustained assault by the right. The core of that assault is to deny funding to civil rights work, silence liberal voices, and set the agenda of public debate by an opposition that is better funded, more organized, and more savvy about strategic communications. The assault on affirmative action, welfare, multi-cultural studies, immigration, and foundations supporting progressive causes has been carefully orchestrated. Combined with this assault is a relentless marketing of the failed dogma of laissez-faire economics.

Long removed from the experience of the Great Depression, America's latest romance with the neat theories of unfettered markets has infiltrated every discussion of national policy with disastrous consequences in nearly every field including law, health care, and communications. This "market" or "laissez-faire" capitalist vision of society holds that the common good is best understood as an unchecked individual pursuit of economic self-interest. This "market" vision has a particularly invidious effect on communications policy where commercial communications interests have long been formidable adversaries, adept at co-opting government and, more important, shaping public opinion.

A Civil Rights Vision of America

The failure of laissez-faire economics as a foundation for communications policy is made most clear in the arena of children's programming. Despite countless studies demonstrating that people mimic behaviors shown on television, despite the 1972 Surgeon General's report, "Television and Growing Up: the Impact of Televised Violence," the Reagan FCC effectively destroyed regulations that called for educational programming for children and limited the number of commercials that could run during children's shows. Not content with jettisoning the government's public interest standard, the Reagan Justice Department forced the National Association of Broadcasters to eliminate its own code of conduct in 1982. The result, of course, was an unfettered market, and a dramatic increase in the level of violence and sexual behavior and commercials children were exposed to on television. So upset about the result of this free market mania, Congress passed, without President Bush's signature and after an earlier veto by President Reagan, the Children's Television Act of 1990. The commercial television industry made a mockery of that Act, as has been made clear by the work of the Center for Media Education which, in 1992, showed that dozens of broadcasters had listed cartoons such as <">The Jetsons<"> as educational children's programming. Clearly, the market fails to provide for children's needs. Media activists and children's rights advocates and ordinary concerned parents joined to battle for enforceable rules based upon an alternative vision of what should drive policy, a vision based upon the needs of children, a vision that puts a healthy community before the avarice of broadcasters.

For the far right to argue that getting out of the business of regulation is the only constructive role for government to play is as blind as it is disingenuous. The challenge is to create a set of rules that reflects the best nature of our society. As Newton Minow makes clear in *Abandoned in the Wasteland,* the issue is not really whether the market provides good choices, but whether citizens have a real say in what those choices are. The issue is whether the parent must let his child be a consumer, or, more to the point, a product to be sold to advertisers, or whether the parent has a right as a citizen to demand more. As demonstrated above, one of the few actors influential enough to overcome the prerogatives of the commercial interests and assert the needs of communities in the field of communications policy has been the civil rights groups.

The civil rights community has been in the vanguard of progressive action in the U.S. for many years. The work of the NAACP, the Urban League, the Leadership Conference for Civil Rights, and others have demonstrated effective strategies for civil action to other minorities, women's groups, children's advocates, environmentalists, and gays. Undergirding those strategies has been an articulate vision of a society of decent people who understand that we make a nation together. This vision lives in the work of thousands of community organizations, full of smart and talented people who are paid a relative pittance to help create better neighborhoods. It lives in the new "volunteer" movement.

Moreover, the civil rights vision of America, the dream, as King argued, is deeply rooted in the American dream. It is the dream of America as a principled democratic

community embodying the spirit of brotherhood and equality. It is a vision of America as a place of sanctuary and celebration of that portion of humanity cast off from less-closed societies. As King argued in his famous Letter from the Birmingham Jail, the civil rights movement is not the creator of tension, but seeks "to bring to the surface the hidden tension that is already alive. We bring it out in the open, where it can be seen and dealt with. Like a boil that can never be cured so long as it is covered up but must be opened with all its ugliness to the natural medicines of air and light, injustice must be exposed, with all the tension its exposure creates, to the light of human conscience and the air of national opinion before it can be cured."

And the cure was only that America live up to "the real promise of democracy." The philosopher Karl Popper called this promise an "open society," a society where all boils could be exposed to the crucible of public discussion and debate. In a similar vein, Robert McChesney and others make the point that a critical factor in the rise and success of democratic movements is the existence of a public sphere for democratic deliberation. The public sphere is a place where citizens can interact, study, and debate the issues of the day, a place dominated by neither government nor corporate interests. This shining civil rights vision of a democratic helping community is untarnished by conservative business propaganda.

The language of equality and citizenship rights and community needs, about which civil rights advocates speak so potently, is embedded in the concepts of public trusteeship and diversity of expression made explicit in the 1934 Communications Act and the subsequent amendments to that Act. Broadcasters (to whom the public airwaves are licensed), telephone and cable and satellite oligopolies (which benefit from government regulation, support, and public rights-of-way) are all responsible for acting in "the public interest, convenience, and necessity." The failure of our representatives (and the expert regulators they appoint) in federal and state offices is not a failure of the public interest standard as such, but a failure of the public to demand a public-oriented definition of that standard and its enforcement. Just as the poor black and white folk of Jackson, Mississippi had no idea they had a right to service from their local television stations, most Americans have no idea they have rights with respect to the commercial communications companies that dominate their environment. Just as the civil rights community stepped in in Jackson, the civil rights community needs to step in today.

History shows that civil rights advocates have been effective actors in the communications policy debates. Former FCC Commissioners Ben Hooks, Tyrone Brown, Henry Rivera, and Andrew Barrett especially, successfully linked civil rights interests to communications policies. Though communications policy has been reduced and marginalized to a debate over the proper mechanisms to induce competition, and hype about which new gadgets will create the new consumer utopia, the civil rights community has shown that communications policy is really about determining those rules that will establish equality in a free, plural, and democratic society. The civil rights community has demonstrated that the communications policy debate is really about free speech and equality of voice in the public debate, the right to know and equality of access to public information and resources, equality of economic and educational opportunity and the right to meaningful democratic participation in the political process.

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This is an edited version of the first part of an extensive analysis that may be obtained from the author.

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[Editors' Notes: 1) Consider learning more about the National Urban League, one of the partners in the Civil Rights Telecommmuncations Forum, by visiting its web site at: http://www.nul.org. 2) Of potential tangential interest to the article above is a historical analysis by Abdul Alkalimat, which was published in CyRev: *Technological Revolution And Prospects for Black Liberation in the 21st Century*.]

The Communications Media, Ironically,
Have Failed to Communicate
The Kerner Report
1968

"The Communications Media, Ironically, Have Failed to Communicate": The Kerner Report Assesses Media Coverage of Riots and Race Relations

President Lyndon Johnson formed an 11-member National Advisory Commission on Civil Disorders in July 1967 to explain the riots that plagued cities each summer since 1964 and to provide recommendations for the future. The Commission's 1968 report, informally known as the Kerner Report, concluded that the nation was "moving toward two societies, one black, one white—separate and unequal." Unless conditions were remedied, the Commission warned, the country faced a "system of 'apartheid'" in its major cities. The Kerner report delivered an indictment of "white society" for isolating and neglecting African Americans and urged legislation to promote racial integration and to enrich slums—primarily through the creation of jobs, job training programs, and decent housing. President Johnson, however, rejected the recommendations. In April 1968, one month after the release of the Kerner report, rioting broke out in more than 100 cities following the assassination of civil rights leader Martin Luther King, Jr. In the following excerpt from the Kerner Report, the Commission assessed media coverage of the riots and criticized newspapers and television for failing to adequately report on African-American life or to employ more than a token number of blacks. In 1998, 30 years after the issuance of the Report, former Senator and Commission member Fred R. Harris co-authored a study that found the racial divide had grown in the ensuing years with inner-city unemployment at crisis levels. Opposing voices argued that the Commission's prediction of separate societies had failed to materialize due to a marked increase in the number of African Americans living in suburbs.

Coverage of the 1967 Disturbances

We have found a significant imbalance between what actually happened in our cities and what the newspaper, radio and television coverage of the riots told us happened. The Commission, in studying last summer's disturbances, visited many of the cities and interviewed participants and observers. We fould that the disorders, as serious as they were, were less destructive, less widespread, and less a black-white confrontation than most people believed.

Lacking other sources of information, we formed our original impressions and beliefs from what we saw on television, heard on the radio, and read in newspapers and magazines. We are deeply concerned that millions of other Americans, who must rely on the mass media, likewise formed incorrect impressions and judgments about what went on in many American cities last summer.

As we started to probe the reasons for this imbalance between reality and impression, we first believed that the media had sensationalized the disturbances, consistently overplaying violence and giving disproportionate amounts of time to emotional events and "militant" leaders. To test this theory, we commissioned a systematic, quantitative analysis, covering the content of newspaper and television reporting in 15 cities where disorders occurred. The results of this analysis do not support our early belief. Of 955 television sequences of riot and racial news examined, 837 could be classified for predominant atmosphere as either "emotional," "calm," or "normal." Of these, 494 were classified as calm, 262 as emotional, and 81 as normal. Only a small proportion of all scenes analyzed showed actual mob action, people looting, sniping, setting fires, or being injured, or killed. Moderate Negro leaders were shown more frequently than militant leaders on television news broadcasts.

Of 3,779 newspaper articles analyzed, more focused on legislation which should be sought and planning which should be done to control ongoing riots and prevent future riots than on any other topic. The findings of this content analysis are explained in greater detail in Section I. They make it clear that the imbalance between actual events and the portrayal of those events in the press and on the air cannot be attributed solely to sensationalism in reporting and presentation.

We have, however, identified several factors which, it seems to us, did work to create incorrect and exaggerated impressions about the scope and intensity of the disorders.

First, despite the overall statistical picture, there were instances of gross flaws in presenting news of the 1967 riots. Some newspapers printed "scare" headlines unsupported by the mild stories that followed. All media reported rumors that had no basis in fact. Some newsmen staged "riot" events for the cameras. Examples are included in the next section.

Second, the press obtained much factual information about the scale of the disorders—property damage, personal injury, and deaths—from local officials, who often were inexperienced in dealing with civil disorders and not always able to sort out fact from rumor in the confusion. At the height of the Detroit riot, some news reports of property damage put the figure in excess of $500 million.[1] Subsequent investigation shows it to be $40 to $45 million.[2]

The initial estimates were not the independent judgment of reporters or editors. They came from beleaguered government officials. But the news media gave currency to these errors. Reporters uncritically accepted, and editors uncritically published, the inflated figures, leaving an indelible impression of damage up to more than ten times greater than actually occurred.

Third, the coverage of the disorders—particularly on television—tended to define the events as black-white confrontations. In fact almost all of the deaths, injuries and property damage occurred in all-Negro neighborhoods, and thus the disorders were not "race riots" as that term is generally understood.

Closely linked to these problems is the phenomenon of cumulative effect. As the summer of 1967 progressed, we think Americans often began to associate more or less neutral sights and sounds (like a squad car with flashing red lights, a burning building, a suspect in police custody) with racial disorders, so that the appearance of any particular item, itself hardly inflammatory, set off a whole sequence of association with riot events. Moreover, the summer's news was not seen and heard in isolation. Events of these past few years—the Watts riot, other disorders, and the growing momentum of the civil rights

movement—conditioned the responses of readers and viewers and heightened their reactions. What the public saw and read last summer thus produced emotional reactions and left vivid impressions not wholly attributable to the material itself.

Fear and apprehension of racial unrest and violence are deeply rooted in American society. They color and intensify reactions to news of racial trouble and threats of racial conflict. Those who report and disseminate news must be conscious of the background of anxieties and apprehension against which their stories are projected. This does not mean that the media should manage the news or tell less than the truth. Indeed, we believe that it would be imprudent and even dangerous to downplay coverage in the hope that censored reporting of inflammatory incidents somehow will diminish violence. Once a disturbance occurs, the word will spread independently of newspapers and television. To attempt to ignore these events or portray them as something other than what they are, can only diminish confidence in the media and increase the effectiveness of those who monger rumors and the fears of those who listen.

But to be complete, the coverage must be representative. We suggest that the main failure of the media last summer was that the totality of its coverage was not as representative as it should have been to be accurate. We believe that to live up to their own professed standards, the media simply must exercise a higher degree of care and a greater level of sophistication than they have yet shown in this area—higher, perhaps, than the level ordinarily acceptable with other stories.

This is not "just another story." It should not be treated like one. Admittedly, some of what disturbs us about riot coverage last summer stems from circumstances beyond media control. But many of the inaccuracies of fact, tone and mood were due to the failure of reporters and editors to ask tough enough questions about official reports, and to apply the most rigorous standards possible in evaluating and presenting the news. Reporters and editors must be sure that descriptions and pictures of violence, and emotional or inflammatory sequences or articles, even though "true" in isolation, are really representative and do not convey an impression at odds with the overall reality of events. The media too often did not achieve this level of sophisticated, skeptical, careful news judgment during last summer's riots.

The Media and Race Relations

Our second and fundamental criticism is that the news media have failed to analyze and report adequately on racial problems in the United States and, as a related matter, to meet the Negro's legitimate expectations in journalism. By and large, news organizations have failed to communicate to both their black and white audiences a sense of the problems America faces and the sources of potential solutions. The media report and write from the standpoint of a white man's world. The ills of the ghetto, the difficulties of life there, the Negro's burning sense of grievance, are seldom conveyed. Slights and indignities are part of the Negro's daily life, and many of them come from what he now calls "the white press"—a press that repeatedly, if unconsciously, reflects the biases, the paternalism, the indifference of white America. This may be understandable, but it is not excusable in an institution that has the mission to inform and educate the whole of our society.

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Ghetto Reactions to the Media Coverage

The Commission was particularly interested in public reaction to media coverage; specifically, what people in the ghetto look at and read and how it affects them. The Commission has drawn upon reports from special teams of researchers who visited various cities where outbreaks occurred last summer.

Members of these teams interviewed ghetto dwellers and middle-class Negroes on their responses to news media. In addition, we have used information from a statistical study of the mass media in the Negro ghetto in Pittsburgh.[8]

These interviews and surveys, though by no means a complete study of the subject, lead to four broad conclusions about ghetto, and to a lesser degree middle-class Negro, reactions to the media.

Most Negroes distrust what they refer to as the "white press." As one interviewer reported:

The average black person couldn't give less of a damn about what the media say. The intelligent black person is resentful at what he considers to be a totally false portrayal of what goes on in the ghetto. Most black people see the newspapers as mouthpieces of the "power structure."

These comments are echoed in most interview reports the Commission has read. Distrust and dislike of the media among ghetto Negroes encompass *all* the media, though in general, the newspapers are mistrusted more than the television. This is not because television is thought to be more sensitive or responsive to Negro needs and aspirations, but because ghetto residents believe that television at least lets them see the actual events for themselves. Even so, many Negroes, particularly teenagers, told researchers that they noted a pronounced discrepancy between what they saw in the riots and what television broadcast.

Persons interviewed offered three chief reasons for their attitude. First, they believed, as suggested in the quotation above, that the media are instruments of the white power structure. They thought that these white interests guide the entire white community, from the journalists' friends and neighbors to city officials, police officers, and department store owners. Publishers and editors, if not white reporters, supported and defended these interests with enthusiasm and dedication.

Second, many people in the ghettos apparently believe that newsmen rely on the police for most of their information about what is happening during a disorder and tend to report much more of what the officials are doing and saying than what Negro citizens or leaders in the city are doing and saying. Editors and reporters at the Poughkeepsie conference acknowledged that the police and city officials are their main—and sometimes their only—source of information. It was also noted that most reporters who cover civil disturbances tend to arrive with the police and stay close to them—often for safety, and often because they learn where the action is at the same time as the authorities—and thus buttress the ghetto impression that police and press work together and toward the same ends (an impression that may come as a surprise to many within the ranks of police and press).

Third, Negro residents in several cities surveyed cited as specific examples of media unfairness what they considered the failure of the media:

To report the many examples of Negroes helping law enforcement officers and assisting in the treatment of the wounded during disorders;

To report adequately about false arrests;

To report instances of excessive force by the National Guard;

To explore and interpret the background conditions leading to disturbances;

To expose, except in Detroit, what they regarded as instances of police brutality;

To report on white vigilante groups which allegedly came into some disorder areas and molested innocent Negro residents.

Some of these problems are insoluble. But more first-hand reporting in the diffuse and fragmented riot area should temper any reliance on police information and announcements. There is a special need for news media to cover "positive" news stories in the ghetto before and after riots with concern and enthusiasm.

A multitude of news and information sources other than the established news media are relied upon in the ghetto. One of our studies found that 79 percent of a total of 567 ghetto residents interviewed in seven cities[9] first heard about the outbreak in their own city by word of mouth. Telephone and word of mouth exchanges on the streets, in churches, stores, pool halls, and bars, provide more information—and rumors —about events of direct concern to ghetto residents than the more conventional news media.

Among the established media, television and radio are far more popular in the ghetto than newspapers. Radios there, apparently, are ordinarily listened to less for news than for music and other programs. One survey showed that an overwhelmingly large number of Negro children and teenagers (like their white counterparts) listen to the radio for music alone, interspersed by disc jockey chatter. In other age groups, the response of most people about what they listen to on the radio was "anything," leading to the conclusion that radio in the ghetto is basically a background accompaniment.

But the fact that radio is such a constant background accompaniment can make it an important influence on people's attitudes, and perhaps on their actions once trouble develops. This is true for several reasons. News presented on local "rock" stations seldom constitutes much more than terse headline items which may startle or frighten but seldom inform. Radio disk jockeys and those who preside over the popular "talk shows" keep a steady patter of information going over the air. When a city is beset by civil strife, this patter can both inform transistor radio-carrying young people where the actions is [sic], and terrify their elders and much of the white community. "Burn, baby, burn," the slogan of the Watts riot, was inadvertently originated by a radio disc jockey.

Thus, radio can be an instrument of trouble and tension in a community threatened or inundated with civil disorder. It can also do much to minimize fear by putting fast-paced events into proper perspective. We have found commendable instances, for example, in Detroit, Milwaukee, and New Brunswick, of radio stations and personalities using their air time and influence to try to calm potential rioters. In Section II, we recommend procedures for meetings and consultations for advance planning among those who will cover civil disorders. It is important that radio personnel, and especially disc jockeys and talk show hosts, be included in such pre-planning.

Television is the formal news source most relied upon in the ghetto. According to one report, more than 75 percent of the sample turned to television for national and international news, and a larger percentage of the sample (86 percent) regularly watched television from 5 to 7 p.m., the dinner hours when the evening news programs are broadcast.

The significance of broadcasting in news dissemination is seen in Census Bureau estimates that in June 1967, 87.7 percent of nonwhite households and 94.8 percent of white households had television sets.

When ghetto residents do turn to newspapers, most read tabloids, if available, far more frequently than standard size newspapers and rely on the tabloids primarily for light features, racing charts, comic strips, fashion news and display advertising. . . .

Negroes in Journalism

The journalistic profession has been shockingly backward in seeking out, hiring, training, and promoting Negroes. Fewer than 5 percent of the people employed by the news business in editorial jobs in the United States today are Negroes. Fewer than 1 percent of editors and supervisors are Negroes, and most of them work for Negro-owned organizations, The lines of various news organizations to the militant blacks are, by admission of the newsmen themselves, almost nonexistent. The plaint is "We can't find qualified Negroes." But this rings hollow from an industry where, only yesterday, jobs were scarce and promotion unthinkable for a man whose skin was black. Even today, there are virtually no Negroes in positions of editorial or executive responsibility and there is only one Negro newsman with a nationally syndicated column.

News organizations must employ enough Negroes in positions of significant responsibility to establish an effective link to Negro actions and ideas and to meet legitimate employment expectations. Tokenism—the hiring of one Negro reporter, or even two or three—is no longer enough. Negro reporters are essential, but so are Negro editors, writers and commentators. Newspaper and television policies are, generally speaking, not set by reporters. Editorial decisions about which stories to cover and which to use are made by editors. Yet, very few Negroes in this country are involved in making these decisions, because very few, if any, supervisory editorial jobs are held by Negroes. We urge the news media to do everything possible to train and promote their Negro reporters to positions where those who are qualified can contribute to and have an effect on policy decisions. . . .

The Negro in the Media

Finally, the news media must publish newspapers and produce programs that recognize the existence and activities of the Negro, both as a Negro and as part of the community. It would be a contribution of inestimable importance to race relations in the United States simply to treat ordinary news about Negroes as news of other groups is now treated.

Specifically, newspapers should integrate Negroes and Negro activities into all parts of the paper, from the news, society and club pages to the comic strips. Television should develop programming which integrates Negroes into all aspects of televised presentations. Television is such a visible medium that some constructive steps are easy and obvious. While some of these steps are being taken, they are still largely neglected. For example, Negro reporters and performers should appear more frequently—and at prime time—in news broadcasts, on weather shows, in documentaries, and in advertisements. Some effort already has been made to use Negroes in television commercials. Any initial surprise at seeing a Negro selling a sponsor's product will eventually fade into routine acceptance, an attitude that white society must ultimately develop toward all Negroes.

In addition to news-related programming, we think that Negroes should appear more frequently in dramatic and comedy series. Moreover, networks and local stations should present plays and other programs whose subjects are rooted in the ghetto and its problems.

[1] As recently as February 9, 1968, an Associated Press dispatch from Philadelphia said "damage exceeded $1 billion" in Detroit. Back to text

[2] Michigan State Insurance Commission Estimate, December, 1967. See also *Meeting the Insurance Crisis of Our Cities*, a Report by the President's National Advisory Panel on Insurance in Riot-Affected Areas, January, 1968. Back to text.

[8] The Commission is indebted, in this regard, to M. Thomas Allen for his document on *Mass Media Use Patterns and Functions in the Negro Ghetto in Pittsburgh*. Back to text.

[9] Detroit, Newark, Atlanta, Tampa, New Haven, Cincinnati, Milwaukee. Back to text.

Source: United States. Kerner Commission, *Report of the National Advisory Commission on Civil Disorders* (Washington: U.S. Government Printing Office, 1968).

Statement of Policy on Minority Ownership of Broadcasting Facilities

Federal Communications Commission

May 1978

Minority Ownership Of B/c Facilities
Tax Certificate
Ownership Minority

Public Notice re policy statement of minority ownership of b/c facilities, issued. In assignment and transfer matters, tax certificates will be granted to the assignors of b/c facilities to parties with significant minority interest. Licensees whose licenses have been designated for revocation hearings encouraged to transfer to minority applicants, i.e. "distress sales."

F.C.C. 78-322

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

Statement of Policy on Minority Ownership of Broadcasting Facilities

May 25, 1978

One decade ago, as a partial response to the concerns expressed in the *Report of the National Advisory Committee on Civil Disorders* ("The Kerner Report"),[1] the Commission articulated policies and principles which would guide it in its consideration of complaints that its licensees—or those who would be its licensees—had discriminated against minorities in their employment practices.[2] We observed that "we simply do not see how the Commission could make the public interest findings as to a broadcast applicant who is deliberately pursuing or preparing to pursue a policy of discrimination—of violating the National Policy."[3]

One year later, July 16, 1969, the Commission adopted rules which, in addition to forbidding discrimination on the basis of race, color, religion or national origin, also required that "equal opportunity in employment . . . be afforded by all licensees or permittees . . . to all qualified persons."[4] To meet this goal, licensees were required to develop a program of specific practices designed to assure equal opportunity in every aspect of station employment policy and practice. On May 20, 1970, the Commission adopted rules requiring most of the licensees within its jurisdiction to file annual employment reports and a written equal employment opportunity program with certain application forms.

Just two years ago, we reiterated and clarified our policy on employment discrimination. We emphasized that our rules embodied the concepts of nondiscrimination and affirmative action, observing that:

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[1] *Report of the National Advisory Commission on Civil Disorders* (New York: Bantam Books, 1968).

[2] *Petition for Rulemaking to Request Licensees to Show Non-discrimination in Their Employment Practices*, 13 FCC 2d 766 (1968). ("(A) petition or complaint raising substantial issues of fact concerning discrimination in employment practices calls for full exploration by the Commission before the grant of the broadcast application before it.")

[3] *Id.* at 769.

[4] *Nondiscrimination Employment Practices of Broadcast Licensees*, 13 FCC 2d 240 (1969). "Sex" was added as an impermissible basis for discrimination in May, 1970. *Nondiscrimination Employment Practices of Broadcast Licensees*, 23 FCC 2d 430 (1970).

> An Affirmative Action Plan is a set of specific and result-oriented procedures which broadcasters must follow to assure that minorities and women are given equal and full consideration for job opportunities. [5]

In adopting the Model EEO Program proposed in 1975, the Commission noted that:

> As we have moved with steadily increasing actions to strengthen our rules and policies in the area of nondiscrimination in the employment policies and practices of broadcast station licensees, we have attempted to do so in line with our primary statutory mandate—the regulation of communication by wire and radio in the public interest. . . .
>
> [W]e have sought to limit our role to that of assuring on an overall basis that stations are engaging in employment practices which are compatible with their responsibilities in the field of public service broadcasting. [6]

The Supreme Court has spoken favorably of such Commission actions. In *NAACP* v *FPC*, 425 US 662, 670 n. 7 (1976) the Court observed:

> The Federal Communications Commission has adopted regulations dealing with the employment practices of its regulatees. . . . These regulations can be justified as necessary to enable the FCC to satisfy its obligation under the Communications Act of 1934 . . . to ensure that its licensees' programming fairly reflects the tastes and viewpoints of minority groups.

The Commission has taken action on other fronts as well to assure that the needs, interests and problems of a licensee's community (including minorities within that community) are both ascertained and treated in the programming of the licensee. Under our ascertainment requirements [7] licensees are required to contact community leaders and members of the general public to obtain information about community interests and to present programming responsive to those interests. To aid licensees in these efforts, we have developed a community leader checklist consisting of 20 groupings or institutions which we believe are found in most communities. Reflecting our commitment to the expression of minority viewpoints, we have required that licensees specifically contact minorities in a community as a distinct grouping or institution (among the 20 groupings outlined by the Commission) from which representative leaders are to be drawn. Moreover, the Commission requires that the licensee interview minorities and women within the 19 "non-minority" institutions or groupings which it also expects the licensee to contact as part of its ascertainment procedure.

While the broadcasting industry has on the whole responded positively to its ascertainment obligations and has made significant strides in its employment practices, we are compelled to observe that the views of racial minorities [8] continue to be inadequately represented in the broadcast media. [9] This situation is detrimental not only to the

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[5] *Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees*, 54 FCC 2d 354, 358 (1975).

[6] *Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees*, 60 FCC 2d 226, 229-230 (1976).

[7] *Ascertainment of Community Problems by Broadcast Applicants*, 57 FCC 2d 418 (1976).

[8] For purposes of this statement, minorities include those of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction.

[9] See *Federal Communications Commission's Minority Ownership Task Force, Minority Ownership Report* (1978); *U.S. Commission on Civil Rights, Window Dressing on the Set* (1977); See also *The Kerner Report, supra* at 207, 208, 210.

minority audience but to all of the viewing and listening public. Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment.

Thus, despite the importance of our equal employment opportunity rules and ascertainment policies in assuring diversity of programming it appears that additional measures are necessary and appropriate. In this regard, the Commission believes that ownership of broadcast facilities by minorities is another significant way of fostering the inclusion of minority views in the area of programming.

As the Commission's *Minority Ownership Task Force Report* recounts:

> Despite the fact that minorities constitute approximately 20 percent of the population, they control fewer than *one percent* of the 8,500 commercial radio and television stations currently operating in this country. Acute underrepresentation of minorities among the owners of broadcast properties is troublesome in that it is the licensee who is ultimately responsible for identifying and serving the needs and interests of his audience. Unless minorities are encouraged to enter the mainstream of the commercial broadcasting business, a substantial proportion of our citizenry will remain underserved, and the larger non-minority audience will be deprived of the views of minorities. [10]

It is apparent that there is a dearth of minority ownership in the broadcast industry. Full minority participation in the ownership and management of broadcast facilities results in a more diverse selection of programming. In addition, an increase in ownership by minorities will inevitably enhance the diversity of control of a limited resource, the spectrum. And, of course, we have long been committed to the concept of diversity of control because "diversification . . . is a public good in a free society, and is additionally desirable where a government licensing system limits access by the public to the use of radio and television facilities." [11] What is more, affecting programming by means of increased minority ownership—as is also the case both with respect to our equal employment opportunity and ascertainment policies—avoids direct government intrusion into programming decisions.

Hence, the present lack of minority representation in the ownership of broadcast properties is a concern to us. We believe that diversification in the areas of programming and ownership—legitimate public interest objectives of this Commission—can be more fully developed through our encouragement of minority ownership of broadcast properties. In this regard, the Commission is aware of and relies upon court pronouncements on this subject.

The United States Court of Appeals for the District of Columbia observed in *Citizens Communications Center* v. *FCC*, 447 F.2d 1201 (D.C. Cir. 1971):

> Since one very significant aspect of the 'public interest, convenience, and necessity' is the need for diverse and antagonistic sources of information, the Commission simply cannot make a valid public interest determination without considering the extent to which the ownership of the media will be concentrated or diversified by the grant of one or another of the applications before it.
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> * * *

[10] *Minority Ownership Report, supra.*
[11] *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 394 (1965).

> As new interest groups and hitherto silent minorities emerge in our society, they should be given the same stake in the chance to broadcast on our radio and television frequencies. [12]

In *TV 9 Inc.* v. *FCC*, 495 F.2d 929 (D.C. Cir. 1973), *cert. denied*, 418 U.S. 986 (1974), the Court again dealt with the issue of minority ownership. In reversing a decision where the Commission had refused to award merit to an applicant in a comparative proceeding based upon minority ownership and participation the Court emphasized:

> It is consistent with the primary objective of *maximum diversification of ownership of mass communications media* for the Commission in a comparative license proceeding to afford favorable consideration to an applicant who, not as a mere token but in good faith, as broadening community representation, gives a local minority group media entrepreneurship. . . .
>
> We hold only that when minority ownership is likely to *increase diversity of content*, especially on opinion and viewpoint, merit should be awarded.
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> * * *
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> The fact that other applicants propose to present the views of such minority groups in their programming, although relevant, does not offset the fact that it is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proved to be significantly influential with respect to editorial comment and the presentation of news. [13]

The Court made plain that minority ownership and participation in station management is in the public interest both because it would inevitably increase the diversification of control of the media and because it could be expected to increase the diversity of program content. [14]

The Commission has acted in accordance with these judicial expressions. Its Administrative Law Judges have afforded comparative merit to applicants for construction permits where minority owners were to participate in the operation of the station. [15] The Commission itself has ordered the expedited processing of several applications filed by applicants with significant minority ownership interests. [16]

Nevertheless, the continuation of an extreme disparity between the representation of minorities in our population and in the broadcasting industry requires further Commission action. [17] Accordingly, in issuing this statement of policy, we today endorse our commitment to increasing significantly minority ownership of broadcast facilities.

To implement our policy we initiate the first of several steps we expect to consider in fostering the growth of minority ownership.

In conjunction with our customary examination of assignment and transfer applications, [18] we intend to examine such applications where

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[12] 447 F.2d at 1213 n. 36.

[13] 495 F.2d at 937-38 (emphasis added).

[14] As the Court observed in a subsequent opinion: "The entire thrust of *TV 9* is that Black ownership and participation together are themselves likely to bring about programming that is responsive to the needs of the black citizenry, and that that reasonable expectation without 'advance demonstration' gives them relevance." *Garrett* v. *FCC*, 168 U.S. App. D.C. 266, 273, 513 F.2d 1056, 1063 (1975), 1056, 1063 (D.C. Cir. 1975) (footnote omitted).

[15] *Berryville Broadcasting Co.*, Docket 21185, FCC 78D-16 (1978); *Roseman Broadcasting Co., Inc.*, Docket Nos. 19887-8, 54 FCC 2d 394 (1976); *Robert M. Zitter and Hillary E. Zitter*, Docket 20243, FCC 75D-43 (1975).

[16] *Atlass Communications, Inc.* (WJPC), 61 FCC 2d 995 (1976); *Hagadone Capital Corporation*, FCC 78-123, 42 P&F Radio Reg. 2d 632 (1978); *Letter to Messrs. L. Glaser and Francis E. Fletcher, Jr.* FCC 78-167, adopted February 22, 1978; *Letter to Ken Goodman*, FCC 78-279, adopted April 20, 1978; *Letter to Terry E. Tyler*, FCC 78-280, adopted April 20, 1978.

[17] For a general treatment of the growth of Black-owned radio, see *Bachman, Dynamics of Black Radio*, (1977).

[18] See Section 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b).

a sale is proposed to parties with a significant minority interest to determine whether there is a substantial likelihood that diversity of programming will be increased. In such circumstances, we will make use of our authority to grant tax certificates [19] to the assignors or transferors where we find it appropriate to advance our policy of increasing minority ownership. [20] A similar proposal was advanced to us by the National Association of Broadcasters and has won the endorsement of, among others, the Carter Administration, the American Broadcasting Companies, General Electric Broadcasting Company and the National Black Media Coalition.

Moreover, in order to further encourage broadcasters to seek out minority purchasers, we will permit licensees whose licenses have been designated for revocation hearing, or whose renewal applications have been designated for hearing on basic qualification issues, but before the hearing is initiated, to transfer or assign their licenses at a "distress sale" price [21] to applicants with a significant minority ownership interest, assuming the proposed assignee or transferee meets our other qualifications.

While we normally permit distress sales when the licensee is either bankrupt or physically or mentally disabled, there is precedent for such sales based on other grounds. See e.g. *Radio San Juan*, 29 P&F Radio Reg. 2d 607 (1974). The avoidance of time consuming and expensive hearings will more than compensate for any diminution in the license revocation process as a deterrent to wrongdoing. We contemplate grants of distress sales in circumstances similar to those now obtaining except that the minority ownership interests in the prospective purchaser will be a significant factor. The parties involved in each proposed transaction will be expected to demonstrate to us how the sale would further the goals on which we are today basing the extension of our distress sale policy. All such transactions will be scrutinized closely to avoid abuses.

The Congressional Black Caucus has petitioned for rulemaking to permit distress sales to minorities. While we endorse the goal of such a proposal we have concluded that cases should be reviewed as they arise to determine that the objectives of our policies will be met. Consequently, for the present a rigid rule on such sales will not be adopted.

Applications by parties seeking relief under our tax certificate and distress sale policies can be expected to receive expeditious processing.

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[19] Under 26 U.S.C.A. Section 1071, the Commission can permit sellers of broadcast properties to defer capital gains taxation on a sale whenever it is deemed "necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations. . . ." Originally tax certification was used to remove the hardship of involuntary transfer as a result of divestiture imposed by the Commission's multiple ownership rules. Now, however, tax certificates are routinely approved in voluntary sales as an incentive to licensees to divest themselves of communications properties grandfathered under the multiple ownership rules. *Issuance of Tax Certificates*, 19 P&F Radio Reg. 2d 1831 (1970).

[20] We currently contemplate issuing a certificate where minority ownership is in excess of 50% or controlling. Whether certificates would be granted in other cases will depend on whether minority involvement is significant enough to justify the certificate in light of the purpose of the policy announced herein.

[21] In order to provide incentive for broadcasters opting for this approach, we would expect that the distress price would be somewhat greater than the value of the unlicensed equipment, which could be realized even in the event of revocation. See *Second Thursday Corporation*, 22 FCC 2d 515 (1970) recon. granted 25 FCC 2d 112 (1970); *Northwestern Broadcasting Corporation* (WLTH), 65 FCC 2d 66 (1977).

We are keenly aware that the first steps we announce today do not approach a total solution to the acute underrepresentation problem. They are made possible because proposals raising these issues have been submitted to us and these proposals, the collective comments received thereon, and the findings of our Minority Ownership Task Force provide us with a compelling record upon which to base our action.

Beyond the steps taken today, we intend to examine, among other things, the recommendations set forth in the *Minority Ownership Report*. Also, while the immediate area of concern of this statement has been broadcasting, it is expected that in the future attention will also be directed towards improving minority participation in such services as cable television and common carrier. Finally, as was concluded in our *Minority Ownership Report*, if the goal of significant minority ownership is to be reached, Congress, other governmental agencies, and the private sector must join in these efforts. We welcome petitions for rulemaking or other submissions from concerned parties as to other actions we might take to reach our objectives. [22]

Action by the Commission May 17, 1978. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty, White and Brown.

FEDERAL COMMUNICATIONS COMMISSION

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[22] For example, while today's actions are limited to minority ownership because of the weight of the evidence on this issue, other clearly definable groups, such as women, may be able to demonstrate that they are eligible for similar treatment.

Dissenting Statement of Commissioner Michael J. Copps
2002 Biennial Regulatory Review
June 2003

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
DISSENTING

Re: *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*

I dissent to this decision. I dissent on grounds of substance. I dissent on grounds of process. I dissent because today the Federal Communications Commission empowers America's new Media Elite with unacceptable levels of influence over the media on which our society and our democracy so heavily depend.

This morning we are at a crossroads – for the Federal Communications Commission, for television, radio, and newspapers, and for the American people. The decision we five make today will recast our entire media landscape for years to come. At issue is whether a few corporations will be ceded gatekeeper control over the civil dialogue of our country; content control over our music, entertainment and information; and veto power over the majority of what we and our families watch, hear and read.

Two very divergent paths beckon us forward.

Down one road is a reaffirmation of America's commitment to local control of our media, diversity in news and editorial viewpoint, and the importance of competition. This path beckons us to update our rules to account for technological and marketplace changes, but without abandoning core values going to the heart of what the media mean in our country. On this path we also reaffirm that FCC licensees have been given very special privileges and that they have very special responsibilities to serve the public interest.

Down the other road is more media control by ever fewer corporate giants. This path surrenders to a handful of corporations awesome powers over our news, information and entertainment. Here we treat the media like any other big business, trusting that in the unforgiving environment of the market, the public interest will somehow magically trump the urge to build power and profit for a privileged few. On this path we endanger time-honored safeguards and time-proven values that have strengthened the country as well as the media.

So the stakes are high – higher than they have been for any decision the five people sitting here today have ever made at this Commission. How do we decide which path to choose?

I start with three principles. First, look at the law and see what Congress instructs us to achieve. Second, look at practical, real world experience rather than cling to some prefabricated mind-set or ideology. And third, when faced with the automatic

consequences that will follow such a far-reaching decision, act cautiously rather than rashly, and trust in the wisdom of the American people.

What does the law tell us? The Communications Act tells us, very clearly, to use our rules to promote the public interest, and to that end, for decades we have promoted the goals of localism, diversity and competition. The statute tells us that the airwaves belong to the American people, and that corporations are given a temporary right to use this public asset only in return for their pledge to use it in the public interest. No broadcast station, no company, no single individual owns an airwave in America; the airwaves belong to all the people. The law tells us that the last time Congress legislated on this topic, it thought that restrictions on how big a single media corporation could get and how much power one company could amass were important and necessary. And the Supreme Court has upheld media protections, stating that "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee."[1] Finally, on the larger issue of media power, Judge Learned Hand instructed us that "The hand that rules the press, the radio, the screen, and the far-spread magazine, rules the country."[2] His words remain true today.

What practical, real world experience do we have to guide us? Radio deregulation gives us powerful and relevant lessons. When Congress and the Commission removed some of the radio concentration protections, we experienced massive, and largely unforeseen, consolidation. Very quickly after taking actions for radio like those we will take today for television and newspapers, there was a 34 percent reduction in the number of radio station owners. Diversity of programming suffered. Homogenized music and standardized programming crowded out local and regional talent. Creative local artists found it evermore difficult to obtain play time on the air. Editorial opinion polarized. Competition in many towns became non-existent as a few companies -- in some cases a single company -- bought up virtually every station in the market. This experience should ***terrify*** us as we consider visiting upon television and newspapers what we have inflicted upon radio. "Clear Channelization" of the rest of the American media will harm our country.

What about seeking out the counsel and trusting in the wisdom of the American people? Begin by realizing that every American has a stake in this decision. ***Every American***, not just the companies that have temporary license to use the public's spectrum. Commissioner Adelstein and I have attended public hearings in many cities across the country. We have met with conservatives and liberals, broadcasters and creative artists, concerned parents and civil rights activists, church leaders and educators. Our Commission has seen a flood of opinions from every state in the nation. Close to three quarters of a million people have registered their views now – more than for any proceeding in Commission history. And in a nation that can be deeply divided on

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[1] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

[2] Learned Hand, Memorial Service for Justice Brandeis, December 21, 1942.

important issues, these citizens are almost unanimous on the question of whether this Commission should allow further media concentration. They are imploring us to protect local broadcasting, diversity of programming and opinion, and the ability to compete with the huge companies. We should heed their conservatism – their urgent call to refrain from abandoning time-honored protections when so much is at stake and so much is unknown about the consequences of what we are doing here today.

The majority instead chooses radical deregulation – perhaps not quite so radical as originally intended a year ago before so much pressure was brought to bear upon them – but radical nevertheless. This decision allows a corporation to control three television stations in a single city. Why does any corporate interest need to own three stations in ***any*** city, other than to enjoy the 40-50 percent profit margins most consolidated stations are racking up? What public interest, what diversity, does that serve? This decision also allows the giant media companies to buy up the remaining local newspaper and exert massive influence over some communities by wielding three TV stations, eight radio stations, the cable operator, and the already monopolistic newspaper. What public interest, what new competition, is enabled by encouraging the newspaper monopoly and the broadcasting oligopoly to combine? This decision further allows the already massive television networks to buy up even more local TV stations, so that they control up to an unbelievable 80 or 90 percent of the national television audience. Where are the blessings of localism, diversity and competition here? ***I see centralization, not localism; I see uniformity, not diversity; I see monopoly and oligopoly, not competition.***

Take away the protections against concentration that still remain and one company could dominate a region's access to information by controlling its radio stations, television stations, newspapers and cable system. Where once it was commonplace to have two, three, or more daily newspapers in a city, today most communities are one-paper monopoly towns. Local broadcast television and radio are both concentrated oligopolies in communities across this country. And the story is not much better on a national level. The conglomerates that own the networks control 70 percent of the prime-time audience. Their audience share of television households is approaching – and could soon surpass according to analysts – the share the three networks had during the 1960s and 1970s. And today, those conglomerates are more vertically integrated, controlling the production of most of their programs as well.

What about the vaunted 500-channel universe of cable TV saving us? Well, 90 percent of the top cable channels are owned by the same giants that own the TV networks and the cable systems. More channels are great. But when they're all owned by the same people, cable doesn't protect localism, editorial diversity, or competition. And those who believe the Internet alone will save us from this fate should realize that the dominating Internet news sources are controlled by the same media giants who control radio, TV, newspapers, and cable. So, how does it promote localism, diversity and competition to allow, as we will allow by our action today, more media concentration in the more than 175 markets with over 90 percent of the American population?

If we were just starting down the road to media concentration, maybe we could have a different kind of discussion today. But we have already traveled dangerously far

down that road, and the need now is to slow the headlong rush to media monopoly until someone can prove it is taking the media, and the country, anywhere worth going. This is a huge and foolhardy gamble with the future – every American's future.

Let us remember that this is only the latest, most radical step in a twenty-year history of undermining the public interest. Step by step, rule by rule, bit by bit, we have allowed the dismantling of public interest protections and given a green light to the forces of consolidation, until now a handful of giant conglomerates are in the saddle.

The Commission has allowed fundamental protections of the public interest to wither and die – requirements like ascertaining the needs of the local audience, the Fairness Doctrine, teeing up controversial issues, providing demonstrated diversity in programming, ensuring decent quality programming for our children, to name a few of the safeguards we had once but have abandoned.

At the same time, the Commission has pared back its license renewal process from one in which it examined whether the broadcaster was actually serving the public interest to one where companies need only send us a postcard every eight years and nothing more. Unless there is a major complaint pending against a station, the license is almost automatically renewed.

The Commission cut back on its structural regulations that limited both horizontal (or distributional) concentration ***and*** vertical (or production) concentration, so that the same network distributing programs increasingly owned them. The worst monopolies in American history were built on this model. Then the Commission went further, eliminating outright the vertical safeguards that protected against a few conglomerates controlling all of the creative entertainment that we see.

Over the years, the Commission has dismantled all of these provisions and more, relying instead on marketplace forces as a proxy for serving the public interest. Along the way, make no mistake about it, localism, diversity and competition suffered grievous wounds. Worse, the heart and soul went out of much of our media. And we are left with only the current rules governing control of ownership structure as a means to safeguard our public interest obligations. They can't do the job by themselves, even if we were to keep them as they are. By emasculating them today, we only make the problem worse. And by neglecting to do justice to proposals that could supplement our ownership rules, such as requiring more independently produced programs and enforcing real public interest performance standards on our stations, we come perilously close to taking the "public" out of the public airwaves.

Don't tell me that those of us who feel strongly about this are being too emotional or are laying too much on one set of decisions. Some would have us believe that this is merely an ordinary examination of our rules that we conduct every two years. Let's not kid ourselves. This is the granddaddy of all reviews. It sets the direction for how the next review will get done and for how the media will look for many years to come. As for the emotion, I have seen the concern, the deep feeling and outright alarm on the faces

of people who have come out to talk to Commissioner Adelstein and me all across this broad land. Are they emotional? You bet. And I think they are going to stay that way until we get this right.

I. The Commission's Decision-Making Process and Record Development Was Deeply Flawed.

Good, sustainable rules are the result of an open administrative process and a serious attempt to gather all the relevant facts. Bad rules and legal vulnerability result from an opaque regulatory process and inadequate data. Unfortunately, today's rules fall into the latter camp.

The Commission launched this biennial review proceeding in September 2002. I went into this last year believing that if the Commission really worked at it, got around the country looking at various markets, talking to people, collecting data and really reaching out, we had a shot at building an adequate record for today's vote.

Unfortunately, we have not succeeded. I am concerned that this proceeding has been run as a classic inside-the-Beltway process with too little outreach from the Commission and too little opportunity for public participation in this far-reaching review of critical media concentration protections. This is the way the Commission usually does business, we are told. Well, I submit this is too important to be treated on a business-as-usual basis.

Let's look at the facts. In October, we released the results of a dozen FCC-sponsored studies. We gave commenters a mere 60 days to analyze the six separate media consolidation rules and to sift through the twelve studies. A number of these studies are incomplete and contested, criticized because of allegedly faulty methodologies and unwarranted conclusions. Yet today's item returns to them again and again, according them what I believe is more deference than merited, to the exclusion of other expert studies. I criticize the studies no more than the Commission's operating premise that in this far-reaching rulemaking that will affect tens of billions of dollars in industry business, we could understand its implications and its consequences through a small number of meagerly financed inquiries that ignored many of the most critical questions.

I was also saddened last Fall that we failed to open our own studies to public scrutiny by not releasing the methodology or underlying data, notwithstanding that some of the studies were based on proprietary data that parties criticized as being created for and manipulated by the media industry. Finally, a month later, while the clock for comments continued to run, we provided limited release of the underlying data, but only to those who could come to our headquarters in Washington, D.C. Requests for further extensions of time to assess these studies and provide additional record data were denied.

We then sought to promote the broader national dialogue and debate that these issues so clearly merit. Proceeding on an assumption that all expertise does not reside

within the Beltway, I sought to have the Commission hold a series of forums and roundtables around the country that would include significant input from both traditional and non-traditional stakeholders. After an initial flat denial we were given only one official hearing, and it was less than 100 miles outside the Beltway in Richmond, Virginia.

That was a start, but at the time we held that hearing, a survey indicated that three-quarters of all Americans were not aware that this critical issue was being decided at the FCC. We had not told them, nor had Big Media told them. I sought additional hearings and forums. Again, no success. I sought resources to hold my own hearings and to attend forums. Again, requests for both staff assistance and funding were denied.

Using my limited office resources, I have traveled across the country to attend as many hearings and forums as I could. I commend Commissioner Adelstein for his very active participation in this hearing process. Between us, we have held hearings and attended forums in New York, Seattle, Austin, Durham, Phoenix, Chicago, Burlington, San Francisco, Los Angeles, Philadelphia, Marin County, Detroit and Atlanta. All told, there have been over a dozen gatherings to discuss media ownership.

With resources and institutional dedication, a full-fledged process involving more Commissioners could have given us the information and insight needed to craft rules that both took account of technological and market changes and fulfilled our responsibility to protect localism, diversity and competition. But we had too few resources and too little dedication. So, we are left, unsurprisingly, without the record or new ideas we need to do our job well.

More recently, the Commission has even refused to publicly disclose the rules we are voting on today. What possible harm come from transparency? How can telling Congress and the public what we plan to do possibly be bad? I see no legitimate purpose for casting our votes in a shroud of secrecy except to insulate the FCC from public scrutiny.

Therefore, Commissioner Adelstein and I sought to have the specific proposals put out for public notice and comment. We believed that the country would be much better served by putting the proposals out for comment for a limited period, say 60 or 90 days, so we could get it right, understand the consequences of the new rules (both the intended consequences and those invariably more troubling unintended ones) and let these ideas bathe in the sunshine of national debate. Such discussion would have the important additional benefit of enhancing the sustainability of any Commission decision in court by providing concrete input, analysis, and testing on specific proposals. Sound policymaking, perhaps even the law, requires no less. But the request was denied.

When a draft proposal, ***not including the proposed text of the new rules themselves***, was circulated to Commissioners a mere three weeks before today's vote, we formally requested that the Commission postpone today's meeting to provide additional time to study more thoroughly the impact of the proposals and their interplay, and to see if common ground could be found. Under long-standing Commission practices, such

requests from Commissioners have generally been honored. That request was also denied.

And so, we arrive at today. Citizens across this country will hear for the first time the proposals that we are adopting. Some of the details of the rule changes have leaked to the press. Even with this incomplete information, the public reaction against the proposed changes has been unlike anything the FCC has ever experienced. This proceeding has generated three-quarters of a million comments now – more than any other proceeding that I am aware of in the history of the FCC. Of those comments, all but a few hundred are from individual citizens. And of those, nearly every one opposes increased media consolidation – over 99.9 percent!

We've heard bipartisan concern from more than 150 Members of Congress, including the Congressional Black Caucus, Congressional Hispanic Caucus, and the Congressional Asian Pacific American Caucus, asking us to slow down and put these proposals out for public comment before we vote. Some of those Members of Congress are here today.

Dozens of organizations have weighed in with their concerns about media concentration. Among others, we have heard from Children Now, the Writers Guild of America, the Parents Television Council, the Communications Workers of America, AFTRA. the National Association of Hispanic Journalists, the National Association of Black Journalists, the Conference of Catholic Bishops, the Center for the Creative Community, Common Cause, the American Civil Liberties Union, the National Rifle Association, the American Civil Liberties Union, the National Organization for Women, the Family Research Council, the National Association of Black Owned Broadcasters, Rainbow Push, the Media Access Project, Consumers Union, the Consumer Federation of America, Move On, the Center for Digital Democracy, United Church of Christ, the Minority and Media Telecommunications Council, the Leadership Conference on Civil Rights, and many, many more across a broad political and geographic spectrum. City councils across this country in such places as Chicago, Seattle, Philadelphia, San Francisco, Atlanta, and Buffalo, as well as a whole state -- Vermont -- have gone on record against media concentration. Note, please, that several of these are cities where Big Media would have us believe that all is well with the consolidation they have introduced.

As Brent Bozell of the Parents Television Council so aptly put it, "When all of us are united on an issue, then one of two things has happened. Either the Earth has spun off its axis and we have all lost our minds or there is universal support for a concept." Well, it's the concept – a transcending, nationwide concept. This issue is not Republican or Democratic. It is not liberal or conservative. Not North or South. Not young or old. It is an all-American issue.

The FCC is not, of course, a public opinion survey agency. Nor should we make our decisions by weighing the letters, cards and e-mails "for" and the letters, cards and e-mails "against" and awarding the victory to the side that tips the scale. But even this independent agency is part of our democratic system of government. And when there is

such an overwhelming response on the part of the American people and their representatives in Congress assembled, we ought to take notice. Here the right call is to take these proposals, put them out for comment and then -- only then -- call the vote. Plausible arguments have been put forward that the letter of the Administrative Procedure Act requires this. Other legal experts demur. I do know this: the spirit underlying notice and comment is that important proposed changes need to be seen and vetted before they are voted. Today we vote before we vet.

Now the only opportunity all these concerned citizens have to comment on the specific rules is to file reconsideration petitions after the decision is already made. Given that such petitions are unlikely to be resolved for months, the impact of this decision by then will likely be irreversible. In such a situation, we ought to establish a longer timetable and procedure for implementation of these changes to the rules, just as the Commission did when it dismantled the financial interest and syndication rules a decade ago. Such a procedure would allow the Commission to consider petitions for reconsideration on these specific rules to protect against irreversible, unintended and unforeseen negative consequences. This would also allow the Commission to examine its proposed rules and determine if additional measures are needed to protect the public interest before consolidation occurs, and it would allow Congress opportunity for any input that it may deem appropriate.

II. The Record Does Not Support the Majority's Decision To Undermine Media Concentration Protections.

In reviewing our first biennial review, the D.C. Circuit faulted the Commission for its failure to provide an adequate explanation for its rules.[3] Importantly, the court did not indicate that a relaxation of the concentration limits is warranted or required.[4] On the contrary, the Commission could choose, if so inclined, to ***tighten*** its ownership rules. What the court demands is that the Commission provide more analysis and empirical data to justify the rules it adopts. And I do not believe the courts want only granular, data-driven justifications; I think they would welcome justifications more deeply grounded in history, macroeconomics, political theory and the philosophy of democratic government. In any event, we are obligated to present reasoned rationales with more compelling explanations than we have thus far presented. But we are ***not*** instructed to radically restructure the rules.

My overarching reaction to the record before us is this: first, the evidence we have gathered does not justify such loosening of the rules as the majority approves today and, secondly, we have not asked a sufficiently diverse range of questions to do justice to so important a public issue. The evidence we have amassed points to the need for maintaining existing media concentration protections.

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[3] *Sinclair Broadcasting Group, Inc. v. FCC*, 284 F.3d 148, 168-69 (D.C. Cir. 2002); *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1041-45 (2002), *rehearing granted*, 293 F.3d 537 (D.C. Cir. 2002).

[4] *Sinclair*, 284 F.3d at 162.

The court was particularly troubled by inconsistencies in our previous decisions. Yet, in this Order, the majority once again fails to provide coherence and internal consistency to the rules and rationales we adopt. I am concerned that these inconsistencies will undermine the decision on appeal and will open the decision to the charge that it was made to reach the result sought by companies that want to consolidate. I provide below a few examples of these inconsistencies.

A. The Majority Ignores the Lessons of Radio Concentration.

In 1996 Congress and the FCC eliminated the national cap for radio concentration. Over the years the Commission has loosened its local radio concentration rules so that one corporation can now own up to eight stations in a market. These deregulatory changes provide the FCC with a record to study the impact of fewer media concentration protections on localism, diversity and competition.

The largest company owned less than 75 stations before deregulation. Today one company, Clear Channel, owns more than 1,200 stations. This company owns eight stations in many cities, and in some towns owns virtually all the stations available. The number of radio station owners has decreased by an incredible 34 percent since 1996. The number of minority owners has dropped by a shocking, and nationally embarrassing, 14 percent. A Future of Music Coalition study shows that music has become more homogenous and that many stations are now programmed by computers hundreds of miles away rather than by local DJs, leaving no local content. In our hearings around the country, Commissioner Adelstein and I have talked to many capable young musicians and creative artists who are simply unable to secure air time in the new consolidated radio environment. Real news radio is dying outside the largest cities, and viewpoint diversity has given way to a constant drumbeat of one-sided talk shows.

Even supporters of today's decision have been heard to say that the state of radio is troubling – yet the Commission charges ahead to deregulate TV and newspapers without comprehensively studying the results of radio concentration. The failure to do so ignores critical information that is both relevant to these rules and that suggests the rules we vote on today are a mistake.

Even worse, although the majority claims it is taking steps to limit radio concentration, in fact the majority today launches a new round of consolidation in radio. First, the majority eliminates the radio/TV cross-ownership rule which limited the number of commercial radio and television stations one company could own in a market. Without these cross-ownership limits, companies can expand their reach even further. In addition, in the name of helping small businesses, minorities, and women, the majority creates a huge new loophole for consolidation above even the limits set today. The majority grandfathers any clusters that are above the caps. It further allows a company to transfer those licenses to a small business. After only three years, the majority allows the small business to sell those stations to anyone else without restriction -- even if it is to Clear Channel or some other giant media conglomerate. This decision will encourage a regulatory shell game that threatens to make a mockery of the radio limits.

B. The Decision To Raise the National Ownership Cap to 45 Percent is Arbitrary.

Current protections limit TV networks to controlling 35 percent of the national TV audience. Today we increase this limit to 45 percent, encouraging what Merrill Lynch calls a "Gold Rush" of acquisitions of local stations by the big four networks. The Communications Act insists that the Commission protect localism, diversity and competition. In reviewing the last biennial review, the D.C. Circuit held that diversity and localism are valid public interest goals and that the Commission could determine that the national ownership cap is necessary in the public interest if it serves either interest. The court held, however, that the Commission had failed to provide sufficient evidence that either objective was served.[5] The majority today correctly determines that a national cap is needed to serve the statutory goal of having independently owned affiliates continue to serve local community needs and to act as a counter-balance to the national networks. The majority, however, arbitrarily determines that the cap should be raised from 35 percent to 45 percent without adequately justifying this new number, seeking comment on this specific number, or presenting their rationale for arriving at it. The courts may exact a heavy toll on the majority for these omissions.

The National Association of Broadcasters, the Network Affiliated Stations Alliance, and other parties favoring retention of the 35 percent cap submitted exhaustive and largely uncontested evidence including economic studies, station surveys, in-depth analyses, and numerous market-specific examples to justify retention of the 35 percent cap. The record evidence demonstrates, among other things, that independently owned affiliates are better able to preempt network programming networks based on community standards and needs; that the 35 percent cap ensures a critical mass of affiliates necessary to perform this role effectively; and that a substantial majority of affiliates are experiencing increasing pressure from the networks not to preempt network programming. Yet, the majority largely ignores this evidence and arbitrarily chooses a number that tips the balance further in favor of the national networks and away from the local stations. The majority fails to explain how a 45 percent cap – in reality a 90 percent national cap with the illogical UHF discount as discussed below – meets Congressional goals.

The majority justifies an increase in the cap to 45 percent based on the assertion that affiliates preempted networks with a national reach of over 35 percent as often as those with less than 35 percent. It does so without accounting for the weight of evidence in the record that supports retaining the 35 percent cap. The majority further reasons that the 45 percent cap could accommodate all existing combinations. But this goal could have been met with a 40 percent cap as well. Yet the majority concludes that it needs to allow conglomerates to grow further without any explanation for this particular number. I repeat: the prospects for successful judicial scrutiny are not well served by this approach.

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[5] *Fox*, 280 F.3d at 1042-43.

Some have argued that the only way to preserve free over-the-air television is to let the big conglomerates get even bigger. Unless we allow even more concentration, the argument posits, over-the-air television is doomed. I find the arguments regarding the networks' financial distress to be far-fetched, more likely totally ludicrous. The facts tell such a different story. The networks, with their ability to deliver a large number of viewers across the country, have become even more valuable. They not only reach consumers over the air through their own highly profitable stations and through affiliates, but they are also guaranteed carriage to cable subscribers. Indeed, they own much of cable. The record demonstrates that the top four networks maintain the greatest reach of any medium of mass communications. I find no convincing evidence in the record of network poverty or financial distress. Although it is difficult to break out a precise measure of one part of these large conglomerates' operations, it is clear that their broadcast operations are profitable. Moreover, the network operations enhance the profitability of other parts of the conglomerate. The Commission itself recently concluded that, "Broadcast television is certainly a survivor, even a vigorous survivor."[6] The networks command an enormous advertising premium. They recently received a record $9.4 billion in up-front prime-time advertising for the next season. They have ownership in most of their profitable programs, and these are subsequently put into syndication or "repurposed" – the fancy new term for a re-run. These companies know how to move costs around, shift assets and make things look good or bad as they need to do for various audiences. Sometimes regulators hear a very different story than Wall Street analysts hear. I believe the argument that the only way for the less well-off among our citizens to continue receiving free, over-the-air television is through allowing already powerful networks to grow more powerful would have been better left unsaid.

I would add a point on the much-touted economies of scale and the alleged efficiencies of bigness, because it may be that the networks do have a longer-term reason to worry. This country has witnessed the unraveling of huge mega mergers and acquisitions across economic sectors during the past couple of years, while other such ventures are struggling to make it. We should have learned by now that size is no guarantor of success, even though the urge to grow larger continues to motivate so many industries. Suppose we whittle down the media world to an even more precious few, and some of these begin to implode like other huge deals have imploded. Talk about stations going dark! Talk about striking at the heart of the country! Sometimes I think the networks need to be protected from themselves.

C. Maintaining the 50 Percent UHF Discount In the Face of Technological and Marketplace Changes Is Arbitrary.

Understanding the so-called "UHF Discount" is critical to understanding how the new 45 percent cap will actually work. Under the UHF Discount policy, UHF stations are considered to reach only 50 percent of the households that a VHF station reaches in a

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[6] Jonathan Levy, Marcelino Ford-Livene and Anne Levine, *Broadcast Television: Survivor in a Sea of Competition*, Federal Communications Commission, Office of Plans and Policy Working Paper 37, 309 (Sept. 2002).

market for purposes of determining whether a company has exceeded the national ownership cap. When established in the mid-1980's, this discount was designed to take into account the technical limitations of over-the-air UHF stations. The Commission found that over-the-air UHF stations reached fewer viewers than VHF stations because their signals were different and weaker. But UHF and VHF stations reach an identical number of viewers when delivered over cable TV facilities. The differences between UHF and VHF only manifest themselves when they are broadcast over the air. Why didn't the Commission consider this in the 1980's? Because at that time cable penetration was only around 35 percent, so the vast majority of Americans received their television signals over the air. Today over 85 percent of consumers receive their signals from cable and DBS. Cable signal carriage rules ensure that consumers receive the UHF signal, and DBS operators are required to carry all UHF stations in any market where they carry any local channel. According to the record, these changes in the market are reflected in the valuations of UHF licenses which are approximately 10-15 percent less than VHF licenses with similar affiliations. Indeed, the Commission itself in previous proceedings has recognized that the growth of Multichannel Video Programming Distributor (MVPD) subscribership has reduced the UHF signal handicap.[7]

With 85 percent of Americans experiencing no difference between UHF and VHF stations, the discount no longer makes sense. Eliminating the entire discount may be warranted, but at a minimum it requires replacement with a number that reflects the reality of today's technology and marketplace.

Notwithstanding the majority's repeated admonishments that the Commission must take into account changes in the marketplace and in technology and must provide empirical data for the rules it adopts, the majority inexplicably, and I believe wrongly, retains the UHF discount in its present form without performing the comprehensive review that is required.

Adding to the inconsistency in this decision, when the majority conducts its analysis of the cross-ownership and local television rules, it counts the number of television stations in the market. All stations – whether UHF or VHF -- are counted equally in this analysis and assumed to be available throughout the market. How can it be that, in one part of the decision, UHF stations are determined to reach the entire market, and in another part of the same decision, those stations are determined to reach only half the households?

Eliminating or changing rule after rule to allow further consolidation on the basis of changed technology and market conditions, yet refusing to change the one rule that the networks approve will lead many to believe that this decision is results-oriented, that it is designed to ensure that no station group exceeds the national cap, and that conglomerates may continue to grow no matter what technological or marketplace changes may occur.

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[7] *See, e.g.*, Review of the Prime Time Access Rules, 60 Fed. Reg. 44773 n.101 (1995).

III. The Majority's Rules and Reasoning are Arbitrary and Inconsistent.

As described above, I believe that the majority has made serious errors in its high-level decisions to restructure media concentration protections. It is also important to recognize that when one digs into the details of today's action, it becomes clear that it is riddled with arbitrary decisions and inconsistencies. I describe a few of them here.

A. The Majority Protects Against Mergers of the Top Four Television Stations in a Market but Inconsistently Allows a Monopoly Newspaper To Purchase Even the Top Television Station.

In the local television ownership rule, the majority recognizes that a single entity can achieve excessive market power through consolidation. The majority therefore precludes one company from owning two of the top four television stations in a market. The majority further treats news sources as interchangeable in its "Diversity Index" that counts different media news outlets available to consumers. Yet, although the majority constrains two of the larger local news voices in the market from combining in the local television rule, the majority arbitrarily provides no similar constraints in its cross-ownership rules. The Order allows a newspaper – clearly a significant news voice in the market – to purchase one of the top four television stations, thereby potentially harming consumer welfare and eliminating a voice just as surely as allowing two of the top four stations to merge. The majority does not explain this inconsistency. Nor does it explain how allowing a newspaper with say 80, 90, or even more of the circulation in a community to merge with the top station in that market would help a smaller newspaper or television station survive. Indeed, such a merger could allow the creation of a dominant news outlet in the market against which no other entity could compete. Yet, the majority does not explain how eliminating one strong local news voice through consolidation will benefit diversity, localism or competition in that market.

An additional problem concerns the majority's method of counting news voices in the market. The Diversity Index counts television, newspapers, radio, and the Internet as local news outlets. It weighs television most heavily, and gives Internet sites the least weight, based on where consumers ***actually*** obtain their news. The majority, however, then counts all outlets within a medium equally in assessing the level of consolidation allowed. This inconsistency between using actual news sources in one part of the Diversity Index and potential news sources in another leads the majority to count a television shopping channel as heavily as a station with local news programming when assessing news outlets within a community. In sum, the majority bases its Diversity Index on where consumers supposedly obtain news, but then arbitrarily allows cross-ownership based on all television stations, not just those providing news.

B. The Majority Inconsistently Accepts "Highly Concentrated" Markets and Arbitrarily Treats All Television Stations as Equals.

In its local television ownership rule, the majority allows one entity to own three stations when there are at least 18 stations in the market. The majority reasons that requiring 18 stations will preserve at least six independent voices and therefore, ensure

the market is at most moderately concentrated. The *Merger Guidelines* of the U.S. Department of Justice and the Federal Trade Commission categorize any market with fewer than the equivalent of 10 equal-sized independent entities as "concentrated," and any market with fewer than 6 such entities as "highly concentrated."[8]

But the new rules go even farther, permitting even more concentration by allowing duopolies in markets with as few as five stations. Thus, broadcast television in many markets across the country may be highly concentrated. Moreover, given that all stations do not provide local news, the market for broadcast television newscasts will be even more highly concentrated. The majority does not take account of this fact.

Why does the majority believe that allowing concentrated local markets is acceptable? Why does it believe that allowing even highly concentrated markets is acceptable in markets with 5 to 6 stations? Why does it treat all TV stations as equals, from the Home Shopping Network to the local NBC station, whether or not they have local news?

A similar problem of concentration occurs in the context of the local radio rule. At present, we not only limit the overall number of stations one entity can own, but we also flag mergers that will result in one or two entities dominating a market, thereby initiating a public interest review by the Commission. The majority would have the Commission rely only on a station limit, without any examination of the audience or advertising share. Without such limits, one company could acquire all of the top stations in the market, with the result being that one entity dominates, or even monopolizes, that market.

C. The Majority Arbitrarily Fails To Account for Local Market Conditions in its Bright-Line Rules Undermining Localism, Diversity and Competition.

The record demonstrates that every local newspaper market is "highly concentrated" according to the Department of Justice's Hirfindahl-Hirschman Index. Indeed, most communities have become one newspaper towns. The vast majority of local television and radio markets are tight oligopolies, with even higher levels of concentration for local news. I do not find that the majority accounts for this extreme level of concentration in its decision, ignoring quantifiable data in the process.

A rulemaking that met our statutory obligation to safeguard localism, diversity and competition would have examined the voices available in specific local markets and whether proposed transactions would undermine these principles in specific communities. The majority's reliance on national bright line rules does not allow us adequately to take into account different situations in local markets. The majority inconsistently allows parties to seek waivers of our rules where local conditions mean a transaction that violates the bright line rules would in fact not offend localism, diversity and competition; but it does not similarly accept petitions to deny transactions that undermine these core

[8] Horizontal Merger Guidelines, 57 Fed Reg. 41552 (1992).

principles even if they meet our bright line rules. This one way ratchet is arbitrary and irrational.

D. The Majority Arbitrarily Concludes that All Consolidation Will Enhance News and Informational Programming.

The majority arbitrarily concludes as a general nationwide matter that efficiencies created through consolidation will enhance news and informational programming. They therefore, *a priori*, determine that all mergers that cause concentration levels up to our bright line rules will serve the public interest, without any individualized examination of the facts of a particular merger. There is no record to support such a sweeping conclusion. The majority, without such support, bases its rules on the hope that companies will use some of the money they save through consolidation to invest in more news and informational programming. But the record shows that instances where companies have provided more news and informational programming following consolidation are overwhelmed by instances where news voices and news programming in a market were eliminated.

E. The Majority Arbitrarily Treats Television Stations, Newspapers, Radio Stations and Internet Sites Equally For Purposes of Analyzing Diversity and Competition in the Local Market.

The majority treats broadcasters as just one voice among many, no different from a website. The majority's analysis depends upon treating different types of media as equally important "voices" in the local market. Clearly, different types of media are not identical in providing localism, competition and diversity. This analysis ignores that broadcasters play a distinct role in our media. They are granted the right to use a public resource and, in exchange, they commit to serve their local communities. Notwithstanding the majority's assertions about new technologies and the availability of alternative sources of information, the fact remains that there is still an inadequate number of frequencies to accommodate all those who wish to broadcast to local communities.

We should recognize and reaffirm the proud heritage of local broadcasters, many of whom are strongly committed to serving the public interest. Unfortunately, consolidation has meant that broadcasters are less and less captains of their own fate and more and more captives to Wall Street and Madison Avenue expectations. One large station owner reportedly stated that, "We're not in the business of providing news and information. We're not in the business of providing well-researched music. We're simply in the business of selling our customers products." Another large station group's "local" news is actually "distance cast" from one central location hundreds of miles away. During the hearings and forums that Commissioner Adelstein and I attended, we heard time and again from small, local broadcasters that consolidation has had a direct and detrimental impact on their ability to compete against the large conglomerates that cut costs by consolidating operations outside of the community. Although there are few such

poignant examples, it is not only such places as Minot, North Dakota that are feeling the effects.

F. The Majority Arbitrarily Subordinates Diversity and Localism Concerns To Competitive Concerns.

The majority subordinates the statutory goals of localism and diversity to competition throughout its analysis. The principles of localism and diversity are deeply rooted in our history. Since the earliest days of our nation, access to a diversity of viewpoints on issues of public importance has been considered essential to democracy. Maximizing the number of independent owners increases the likelihood of a wider range of viewpoints. And Congress mandated that we protect localism because local media tailor their programming to the needs of their communities.

Yet, the majority time and again relies only on measures of economic efficiency to justify rule changes, but does so at the expense of viewpoint and ownership diversity. It is clear that it would be less expensive to have one owner control all of the news outlets and to have the local broadcaster merely act as a passive feed for a national network. But the American broadcast system is based on more than just market forces. Any rule changes must be evaluated in diversity and localism terms, and not just economic terms.

I am pleased that the majority at least acknowledges the important goal of having adequate minority and female ownership in the broadcast industry. But I am disappointed that it then fails to take well-considered action to try to achieve this goal. Minority ownership is vitally germane to this proceeding. I fail to see how we can perpetuate diversity of viewpoint, for example, without addressing minority ownership. Ownership matters to diversity. The issue of its impact on women and minorities should not be relegated to a Further Notice at some indeterminate time. It is not enough to allow dominant clusters that exceed our limits to be transferred to small businesses and then, after a few years, be transferred to a large media conglomerate. How does it benefit minorities and women to maintain such high levels of concentration in a market? How will minority- and female-owned businesses break into a market if the stations are already locked up? Wouldn't these businesses be better served if there were more opportunities for ownership and we addressed such problems as access to capital?

Other facets of diversity fare even less well. The majority concludes that market forces will ensure adequate program diversity, and it dismisses outlet diversity and source diversity as independent goals. There is inadequate record support for these sweeping decisions. Lacking record support, the majority merely offers us and unproven beliefs for comfort.

In the end, this decision also disserves competition. In a media world already well down the road toward high levels of consolidation, questions of preserving small, independent voices and of encouraging conditions conducive to new market entry should be a top Commission priority. Instead, I hear around the country, and I read in newspapers almost every day, the anguish of independent stations facing the prospect of

imminent absorption by one of the media Goliaths. Some of these independents serve very diverse audiences and what they fear most is that the first casualty of a buy-out would be their very diversity.

IV. The Order Fails To Consider Several Relevant Concerns and To Include Several Important Proposals.

The previous section describes a number of problems with the contents of the Order. But equally troubling are the Order's omissions. The Commission has not conducted adequate analysis to make an informed decision on the impact of the additional consolidation we allow today. The studies the Commission conducted are a start. But, even putting aside the myriad criticisms of the conclusions and methodology employed in these studies, the Commission only examined a few questions. Amazingly, we did not even attempt to consider the prospective impact of the consolidation that would occur following these rule changes. Nor have we ascertained how these rule changes interact and work in concert, instead apparently assuming that each rule is an island, and that the interactivity of rule changes will not have important effects on the media landscape. These studies also do not consider what the impact of these rule changes will be on local communities across this country.

This section details several relevant specific concerns that are not adequately addressed in the Order, and several important proposals that, if included in the Order, would have greatly improved it.

A. The Order Should Address the Impact of Undermining Concentration Protections on Independent Programmers.

Commenters addressed the need to require more independent programming on our airwaves so that a few conglomerates do not act anti-competitively to control all of the creative entertainment that we see. These proposals should have received the serious attention they deserve in ***this*** decision. Over the past decade, we have witnessed a substantial increase in the amount of programming owned by the networks. Where once independent production accounted for much of what we saw, we now have huge vertically-integrated conglomerates that own the vast majority of the programming they deliver.

As we loosen the concentration limits, we should have addressed whether there is a need for independent programming requirements to ensure that we do not end up with national vertically-integrated conglomerates that control the distribution channels ***and*** all of the content we see and hear. The powers of vertical concentration in today's broadcast industry are part and parcel of the power that accompanies ownership. Network ownership of the full range of prime time programming constrains competition, consigns independent production to oblivion or, at best, minor and marginal roles, and it cripples the production of diverse programming. It also entails serious job losses for thousands of workers, including creative artists, technicians and many, many others. I am disappointed that the majority dismisses out of hand the issues raised by independent

content producers. The majority expresses doubt that it had notice to act and then finds that changes to our rules are not warranted in any event.

B. The Order Should Establish a Legitimate License Renewal Process To Partially Protect Against the Risks of Further Consolidation.

Some commenters suggested the need for an effective license renewal process under which the Commission would once again actually consider the manner in which a station has served the public interest when it comes time to renew its license. The Commission formerly did exactly that. But the system has degenerated into one of basically post-card license renewal. Unless there is a major complaint pending against a station, its license is almost automatically renewed. A real, honest-to-goodness license renewal process, predicated on advancing the public interest, might do more for broadcasting than all these our other rules put together. Such a process, properly designed, would avoid micro-management on a day-to-day basis in favor of a comprehensive look at how a station has discharged its public responsibilities over the term of its license. Such an approach is most certainly within the scope of this proceeding, if for no other reason than the objective of our ownership rules is to benefit the public interest. It would certainly be a welcome supplement to achieving the goals Congress established for the ownership caps.

C. The Order Should Require Licensees and Those Seeking License Transfers To Periodically Report To the Public How They Serve the Public Interest.

From the earliest days of broadcasting, the Commission has sought to promote localism and obligated licensees to serve the needs and interests of the local communities. Why not require licensees to disclose more publicly how they are serving the public interest and the needs of their local communities? Such information, perhaps made available on the Internet, would give the public an overview of how its airwaves are being used and might provide incentives to produce more and better local news and community programming. At a minimum, it would allow us to analyze whether our rules are actually achieving their desired goals so that future Commissions can make better decisions.

In addition, as discussed above, special disclosure rules ought to apply to buyers and sellers seeking to transfer a license. They ought to specify the tangible, concrete ways in which the transaction would serve the public interest. The merged entity would then have to disclose after the transaction how it fulfilled its public interest benefits. Such a step would allow the Commission to identify those transactions that serve the public interest, convenience, and necessity, as required by the statute. The majority claims that consolidation could lead Big Media to produce more and better local news and community programming. Let's take some action to make sure this expectation is met and to hold conglomerates accountable after mergers. Moreover, this procedure would allow us to identify those transactions in all markets -- including smaller markets -- that serve the public interest.

D. The Order Fails To Analyze the Impact of Undermining Concentration Protections On Children, On Families, and on Indecent Programming.

In our hearings, we heard from parents fed up with the rising tide of indecency and violence on the airwaves and repulsed by programming's race to the bottom. We also heard from broadcasters who had managed network-owned and operated stations and were unable to preempt programming that they believed was not suitable for their community. These broadcasters told us that programming decisions were often made by distant network executives rather than by local station managers. In contrast, we heard from independent local broadcasters who had stood up to programming they and their communities found inappropriate.

Some have suggested that there may be a link between increasing consolidation and increasing indecency on our airwaves. Yet, the Commission failed to address this issue in its analysis. Has consolidation led to an increase in the amount of indecent programming? When programming decisions are made on Wall Street or Madison Avenue, rather than closer to the community, do indecency and excessive violence grow more pervasive? I do not know the answer to this question. I do know this: we have no business voting until we take a serious look at the matter and amass at least a credible body of evidence. We owe it to our children, and their parents, to explore this question before voting on whether to allow more consolidation.

I say again: ownership matters. If it is not germane for this proceeding to ascertain whether there is a possible relationship between indecent content and the fact that a shrinking Media Elite controls that content, then I do not know what is germane.

In addition to its failure to consider the impact of consolidation on indecency, the majority does not look at the relationship between concentration and ***positive*** children's programming. We now have some data on this subject in the record. The news unfortunately is not good. A recent study analyzed the market in Los Angeles and found that the number of broadcast TV programs for children dropped sharply after independent local stations were swallowed up in media mergers. This study found a 47 percent drop in children's programming with duopolies accounting for the largest decreases. Another recent survey found that 80 percent of parents think the FCC is doing a poor to fair job of protecting families and children. Unfortunately, we do not take actions today to gain their confidence. Although the Commission does take a positive step today to ensure that duopolies and triopolies will not merely rebroadcast the same children's programming, we do nothing to examine how Big Media will serve our youngest viewers and listeners before allowing further consolidation to take place.

Some believe that the First Amendment does not allow us to consider these subjects in relation to our concentration rules. But there are laws in force today on both of these subjects and courts have upheld special responsibilities for broadcasters related to these goals. If there is a question of whether the Commission can constitutionally try to use concentration restrictions to reduce indecency and increase children's

programming, let us have that debate on the record rather than ignore these clear Congressional goals.

E. The Order Fails To Analyze the Impact of Undermining Concentration Protections on Women and Minority Groups.

Twenty-five years ago, in the FCC's Statement of Policy on Minority Ownership of Broadcast Facilities, the Commission said, "It is apparent that there is a dearth of minority ownership in the broadcast industry." A quarter of a century later, there still is. Although today's Order recognizes the importance of minority and female participation, we fail to conduct rigorous analysis of the impact of today's rules on minorities and women.

We know that there are substantially fewer radio station owners today than there were before the rules were changed in 1996. People of color now make up less than four percent of radio and television owners. The National Association of Black Owned Broadcasters tells us that the number of minority owners of broadcast facilities has dropped by 14 percent since 1997. People of color are under-represented not only in boardrooms, but in newsrooms as well. Maybe that's why a study from Fairness and Accuracy in Reporting found that 92 percent of sources interviewed on the nightly network news were white and 85 percent were male. A handful of huge companies stand astride the media world and it is not helping diversity of viewpoint, diversity of ownership, or just plain old American diversity.

It is not surprising therefore that among those opposing the relaxation of ownership rules are the Congressional Black Caucus, the Congressional Hispanic Caucus, the Congressional Asian Pacific American Caucus, the Leadership Conference on Civil Rights, the National Organization for Women, the National Association of Black-Owned Broadcasters, the National Association of Hispanic Journalists, the National Association of Black Journalists, and many others who are afraid that additional media concentration wlll reduce opportunities for minorities and women.

We have not even attempted to understand what further consolidation means in terms of providing Hispanic Americans and African Americans and Asian-Pacific Americans and Native Americans and women and other groups the kinds of programs and access and viewpoint diversity and career opportunities and even advertising information about products and services that they need. America's strength is, after all, its diversity. America will succeed in the Twenty-first century not in spite of our diversity, but ***because*** of our diversity. Diversity is not a problem to be overcome. It is our greatest strength. ***And our media need to reflect this diversity and to nourish it.*** It takes no rocket scientist to understand that changing the rules of media consolidation is likely to have far-reaching effects on different groups.

The decision today states that we will address minority and female ownership proposals in the future once we have established a new Advisory Committee on Diversity. An advisory committee is a good step, but we should not be deflected from

tackling the ownership diversity questions that are central to the media concentration item before us now. I am reminded of that old bureaucratic sleight-of-hand of foisting controversial issues onto a new government commission or task force to get them out of the way. In any event, solutions to this problem will be harder to come by if media conglomerates proceed now to lock up control of the scarce licenses to use the public's airwaves. That is why these problems need solutions now, not somewhere far down future's road.

Where the Commission has acted in this decision, it is not to the benefit of minority communities. The majority even determines that those who speak Spanish or any language other than English do not deserve the limited protections the Commission adopts today. The cross-ownership rules apply only to English-language newspapers unless it can be demonstrated that another language is dominant in that market. Thus, these safeguards are not even triggered by a merger between a broadcaster and, for example, a Spanish-language newspaper in most communities in this country. This decision allows even higher levels of media concentration for the millions of Americans who depend on non-English media for their news and entertainment.

F. The Order Fails to Analyze the Impact of Consolidation on Small, Local Broadcasters.

Increasing consolidation threatens the very survival of small, local broadcasters. Media analysts expect that the only option for local broadcasters will now be to sell. They conclude that those that want to remain will face an extremely tough road. During our hearings, we heard from small broadcasters that had already been squeezed out of the market. These rule changes can only accelerate this trend. These changes could spell the end for such uniquely local stations as WCIU TV in Chicago and many other small, independent broadcasters. Yet, we have failed even to consider the impact on these local broadcasters.

G. The Order Fails To Analyze the Impact of Undermining Concentration Protections On Small Businesses and Advertisers.

Changes to media concentration rules also threaten small businesses. As fewer and fewer companies control our media outlets, small local broadcasters will find it harder and harder to compete. Other small businesses will find it harder to produce and sell programming as national vertically integrated conglomerates control local distribution.

Concern has been expressed in the hearings that Commissioner Adelstein and I conducted that consolidated media markets are more expensive for advertisers. We have also heard concerns relative to consolidated media companies forcing advertisers to run ads in all their media assets and stations, not just the ones the advertisers really want. This means that even if per-eyeball ad rates look stable in a market, real-life advertising expenses may be rising significantly. And small businesses may not be able to afford

advertising on multiple outlets, even if the rates in one particular market are not rising. This is another of those circumstances that need study before we proceed to vote.

Moreover, we have heard that consolidation may lead to homogenization and media geared to certain and limited demographics. Already, we have seen a reduction in children's programming due to consolidation. This means that advertisers who want to reach minority groups or niche communities may be stuck without a way to access them.

Small businesses have been, and will continue to be, the engine of growth in our country. Yet we fail here to analyze how media consolidation will affect small businesses. The Office of Advocacy of the Small Business Administration strongly urged the Commission to conduct such an analysis prior to rushing ahead with a decision.

V. Conclusion.

I began this proceeding hopeful that we would take a balanced, measured approach, engage in fact-finding and open discussion, and reach out to stakeholders across this land. Instead, in the face of (1) a record that simply does not support the changes being proposed, (2) a record that fails to do justice to the larger implications of these issues, (3) overwhelming public opposition, (4) widespread and bipartisan concern about both the substance and the process that have been followed here and (5) the potential for great and irreversible consolidation before we fully understand the consequences of our actions, I am convinced this is the wrong decision. It is wrong for the media industry, wrong for the public interest, and wrong for America.

All this means that I am deeply saddened by the Commission's actions today. Some have characterized the fight against this seemingly pre-ordained decision as quixotic and destined to defeat. But I think, instead, that we'll look back at this 3-2 vote as a pyrrhic victory.

This Commission's drive to loosen the rules and its reluctance to share its proposals with the people before we voted awoke a sleeping giant. American citizens are standing up in never-before-seen numbers to reclaim their airwaves and to call on those who are entrusted to use them to serve the public interest. In these times when many issues divide us, groups from right to left, Republicans and Democrats, concerned parents and creative artists, religious leaders, civil rights activists, and labor organizations have united to fight together on this issue. Senators and Congressmen from both parties and from all parts of the Country have called on the Commission to reconsider. The media concentration debate will never be the same. This Commission faces a far more informed and involved citizenry. The obscurity of this issue that many have relied upon in the past, where only a few dozen inside-the-Beltway lobbyists understood this issue, is gone forever.

I believe, after traveling the length and breadth of this country, that our citizens want, deserve, and are demanding a renewed discussion of how their airwaves are being used and how to ensure they are serving the public interest. I urge my colleagues to heed

the call. I want to thank the hundreds of thousands of people who have attended hearings, filed comments, written letters to the editor, and contacted the Commission. You have made a difference. And if you stay the course now, we have a chance to settle this issue of who will control our media and for what purposes, and to resolve it in favor of public airwaves of, by and for the people of this great country.

Section 257 Triennial Report to Congress
(executive summary)
February 2004

Dissenting Statement of Commissioner Copps

Dissenting Statement of Commissioner Adelstein

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)
	)
Section 257 Triennial Report to Congress	)
	)
Identifying and Eliminating	)
Market Entry Barriers	)
For Entrepreneurs and Other Small Businesses	)

REPORT

Adopted: December 31, 2003 **Released: February 12, 2004**

By the Commission: Commissioner Abernathy issuing a separate statement; Commissioner Martin approving in part, concurring in part, and issuing a separate statement; Commissioner Adelstein approving in part, dissenting in part, and issuing a separate statement; and Commissioner Copps dissenting and issuing a separate statement

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. We submit this Report (*2003 Report*) to Congress per its directions in Section 257 of the Communications Act of 1934, as amended (Communications Act).[1] As Congress articulated in Section 257, our mandate is:

> [T]o promote the policies and purposes of this [Communications] Act favoring a diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.[2]

To attain these goals, Congress directed us to identify and eliminate, through regulatory action, "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of

[1] 47 U.S.C. § 257. Congress added Section 257 to the Communications Act through the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996) (Telecommunications Act of 1996).

[2] 47 U.S.C. § 257(b).

telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services."[3]

2. To gauge our progress, Congress requires us to submit, every three years, a Report that details our regulatory activity in these areas and that identifies statutory barriers to entry for entrepreneurs and other small businesses.[4] This *2003 Report* is our third submission pursuant to Section 257.[5]

3. The Commission proactively continues to meet its obligations under Section 257 of the Act. We refine our polices and regulations, on a dynamic basis, through, among other things, biennial regulatory reviews and administrative streamlining, to eliminate market entry barriers for entrepreneurs and small businesses. In addition, we meet with members of the small business community and other governmental entities, such as the Small Business Administration, to share information and to learn how we can act, consistent with the public interest, convenience, and necessity, to eliminate market entry barriers for entrepreneurs and small businesses. Through our web portal, which hosts approximately 20 million page views a month,[6] personal contacts, and hardcopy publications, we keep entrepreneurs and the small business community apprised of developments in the telecommunications field germane to their interests.

4. On the legislative front, where we find statutorily created market entry barriers for entrepreneurs and small businesses, we bring them to Congress' attention. Our Office of Legislative Affairs periodically submits proposals for Congress' consideration. In Section III of this 2003 Report, we provide a set of legislative proposals that, if enacted, will either eliminate or lower statutory barriers to market entry for entrepreneurs and small businesses.

5. In this *2003 Report*, we provide information from each Commission Bureau and Office that either conducts substantive rulemakings relevant to entrepreneurs and small businesses or that is directly engaged with the small business community. We report the activities as taking place during the last three years.

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[3] *Id.* § 257(a).

[4] Subsection (c) states: PERIODIC REVIEW.—Every 3 years following the completion of the proceeding required by subsection (a), the Commission shall review and report to Congress on—

> (1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) and that can be prescribed consistent with the public interest, convenience, and necessity; and
>
> (2) the statutory barriers identified under subsection (a) that the Commission recommends be eliminated consistent with the public interest, convenience, and necessity.

47 U.S.C. § 257(c).

[5] *See Section 257 Report to Congress*, 15 FCC Rcd 15,376 (2000) (*2000 Report*); *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 12 FCC Rcd 16,802 (1997) (*1997 Report*).

[6] In 2003, as evaluated by Brown University researchers, the Commission's website ranked 2nd among federal websites. The previous year, it ranked 1st, and in 2001 it ranked 3rd, which was up from the 4th place ranking Brown University researchers gave it in 2000. The researchers used such measures as online services, attention to privacy and security, disability access, foreign language translation, website personalization, and e-mail responsiveness to rate the various websites.

A. Consumer & Governmental Affairs Bureau

- Further streamlining and simplifying the consumer inquiry and complaint process by replacing the paper-based process with an online system from which carriers can access digital images of complaints and respond to the same electronically.

- Promoting deployment of telecommunications services among the nation's sovereign Native American tribes, often through small, tribally-owned and operated entities.

- Developing consumer policy concerning Commission-regulated entities, including common carrier, broadcast, wireless, satellite, and cable companies.

- Reviewing and developing consumer policy to ensure that persons with disabilities have access to telecommunications products and services.

B. Enforcement Bureau

- Mediated (informally) most formal complaints and pre-complaint disputes.

- Sharing jurisdiction with the states to resolve disputes arising from interconnection agreements.

- Investigating allegations of anticompetitive or discriminatory conduct by telecommunications carriers, which could result in barriers to market entry by small competitors.

- Issued more than 280 orders granting small cable television systems temporary waivers of the requirement to install Emergency Alert System (EAS) equipment and begin transmitting national EAS alerts and weekly and monthly EAS tests by October 1, 2002.

- Reduced numerous proposed monetary forfeitures on the basis of inability to pay.

C. International Bureau

- Continued streamlining of earth station licensing, including rulemakings not yet completed, of direct benefit to thousands of small businesses dependent on such stations.

- Completed additional streamlining of the international Section 214 process, thereby lowering costs, further eliminating delays in the authorization of entry, increasing the availability of capital by eliminating unnecessary limits on foreign investment, and reducing reporting burdens.

- Continued, through participation in International Telecommunication Union (ITU) activities, seeking ways to make more spectrum available for small businesses interested in innovative telecommunications enterprises.

- Continuing implementation of the International Bureau's consolidated licensing and application processing system (IBFS), which we designed to lower costs for applicants, and thereby lower barriers to entry for small business.

D. Media Bureau

- Developed transferability procedures to allow small businesses that qualify as eligible entities to acquire existing radio and television broadcast combinations that exceed the new multiple ownership limits in order to encourage new entry.

- Relaxed initial digital television (DTV) build-out requirements for smaller market broadcasters in view of financing concerns regarding construction of DTV facilities.

- Sought public comment on what additional steps may be needed to assist noncommercial stations in the transition to DTV transmission.

- Initiated a proceeding to establish rules, policies, and procedures for the digital conversion of Low Power Television (LPTV), Class A TV, TV translator, and TV booster stations.

- Expanded the electronic filing capability by adding additional forms through the Consolidated Database System (CDBS), thereby helping small entities to obtain Commission authorizations and approvals more independently and access information more readily.

E. The Office of Communications Business Opportunities

- Oversees and assists with Regulatory Flexibility Act (RFA) analyses and certifications for the 100 or more rulemaking items the Commission adopts each year.

- Between March 2002 and April 2003, trained 263 Commission staff members in RFA analyses.

- Partnered with the Small Business Administration (SBA) on November 6, 2003 to offer additional RFA training to Commission staff.

- Training Commission staff who engage in rulemakings to create and publish *Small Entity Compliance Guides*, which will help small businesses understand how our newly released rules apply to them.

- Conducts "ten-year review of rules" per RFA mandate (most recently published 2002 in the *Federal Register*).

- Works with the SBA's Office of Size Standards to adopt appropriate size standards to ensure that Commission initiatives accurately target small entity participation in the telecommunications sector.

- Submits reports for publication in the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions (a General Services Administration publication). Our Fall 2003 Report listed and described 134 ongoing rulemakings, which provides information to the public regarding regulations under development.

- Maintains a database of approximately 3,000 small businesses to which it sends information regarding Commission actions, including new service opportunities.

F. The Office of Engineering and Technology

- Further streamlining and simplifying the authorization of equipment process, both domestically and internationally, and easing the regulatory burdens of import and export of regulated equipment.

- Promoting new and innovative services by entrepreneurs and small entities in the unlicensed spectrum market, including additional services that promote application of broadband access, wireless local area networks (WLAN), and several ultra-wideband (UWB) technologies.

- Developing policies to guide the Commission's future reallocation of spectrum and improved use of spectrum by a wider variety of users, including start-up, small equipment, and service providers.

- Conducting studies to support and promote new technologies.

G. Wireless Telecommunications Bureau

- Adopted rules to implement a framework for the development of secondary markets in spectrum usage rights.

- Sought comment on the effectiveness of the Commission's current regulatory tools in facilitating the delivery of spectrum-based services to rural areas, including the value of small business bidding credits in enhancing access to spectrum by entities seeking to serve rural areas, such as rural telecommunications companies.

- Adopted a provision that will increase the number of rural telephone cooperatives that are eligible for small business preferences in competitive bidding for licenses.

- Streamlined competitive bidding procedures by making conforming edits to service-specific competitive bidding rules and portions of the Part 1 general competitive bidding rules.

H. Wireline Competition Bureau

- Released an order that reviewed the state of competition in the customer premises equipment (CPE) and enhanced services markets and ultimately eliminated the CPE bundling restriction for all carriers.

- Adopted an order to clarify the status of customer proprietary network information (CPNI) and streamlined the notice requirements for carriers to obtain limited, one-time use of consumers' CPNI for the duration of an inbound or outbound call with the customer.

- Adopted rules to govern and streamline review of domestic section 214 transfer of control applications.

- Adopted new rules to streamline and privatize the standards development and approval process for terminal equipment (TE).

- Concluded that local exchange carriers (LECs) must provide competing directory assistance (DA) providers that qualify under section 251(b)(3) of the Telecommunications Act of 1996 with nondiscriminatory access to the LECs' local directory assistance databases, and must do so at nondiscriminatory and reasonable rates.

- Adopted rules to determine which equipment a competitive LEC may collocate at an incumbent LEC's premises.

- Required incumbent LECs, including those classified as small entities, to include their cross-connect offerings in their federal tariffs.

- Adopted rules with respect to the unbundling of network elements.

- Developed, adopted, and implemented a number of strategies to ensure that the numbering resources of the North American Numbering Plan (NANP) are used efficiently, and that all carriers have the numbering resources they need to compete.

- Reaffirmed that carriers need only deploy local number portability (LNP) in switches within the 100 largest metropolitan statistical areas (MSAs) for which another carrier has made a specific request for the provision of LNP.

- Adopted rules related to the revenue-based methodology for assessing and recovering contributions to the federal Universal Service mechanisms.

- Adopted rules to provide additional time for recipients under the Schools and Libraries Universal Service Support Mechanism (Support Mechanism) to implement contracts or agreements with service providers for non-recurring services.

- Revised rules to provide that unused funds from the Support Mechanism may be applied to stabilize the amount of contributions to the Universal Service fund for no more than the next three quarters, beginning with the third quarter of 2002.

- Streamlined the operation of the Support Mechanism .

- Modified the interstate access charge and Universal Service support system for incumbent LECs subject to rate-of-return regulation.

- Adopted rules to promote competition among payphone services.

- Adopted rules to establish a reporting program to collect basic information about the deployment of broadband services and the development of local telephone service competition.

- Addressed competitive LEC charges for interstate switched access services and the obligations of interexchange carriers (IXCs) to exchange access traffic with competitive LECs.

- Completed the steps to implement detariffing of the provision of interstate long distance services by non-dominant IXCs.

- Completed the second phase of a comprehensive, biennial review of the accounting and reporting rules prescribed for incumbent LECs.

II. REGULATORY ACTIONS

A. Consumer & Governmental Affairs Bureau

6. In the *2000 Report*, the Commission noted that it created the Consumer Information Bureau (CIB) in 1999 to address the difficulties of obtaining access to information regarding new communications services and related regulated matters. The Commission's creation of the CIB was a significant step towards ensuring the availability of information regarding new services and regulatory proceedings. The CIB, which was a consolidation of the Commission-wide consumer information functions, enhanced efficiencies in providing consumers a single point of contact for obtaining the information they need to make wise choices in a robust and competitive market environment.

7. In an effort to extend further these efforts to address consumer issues, the Commission approved a reorganization of the CIB into the Consumer & Governmental Affairs Bureau (CGB) on

SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
Approving in Part, Dissenting in Part

Re: Section 257 Triennial Report to Congress

This Triennial Report requires the Commission to identify and report to Congress on how it eliminated market entry barriers for entrepreneurs and other small businesses. The purpose of our exercise is clear from the statute – to promote the policies and purposes of the Communications Act "favoring diversity of media voices, vigorous economic competition, technological advancement, and the promotion of the public interest, convenience, and necessity."

I share a strong commitment to these Congressional goals. Entrepreneurs and small businesses play a crucial role in communications industries, from providing service in rural and underserved areas, to encouraging innovation and niche operations, to bringing a unique and diverse voice to the public airwaves, and countless other examples.

I support most of the Report and the legislative recommendations. I commend the Bureaus involved for the dedication to small business interests evidenced in the actions and legislative proposals described in the Report. In particular, a tax incentive program benefiting small communications businesses, including disadvantaged firms and those owned by women or minorities, could help create greatly-needed diversity of ownership in the media and other communications industries. Yet, there is more that we can do on the regulatory front, and I challenge the Bureaus to stay vigilant in identifying and eliminating market entry barriers.

I dissent, however, to any suggestion that the Commission's new broadcast ownership rules will promote "diversity of media voices" or eliminate market entry barriers for entrepreneurs and other small businesses. I believe they will have the opposite effect. Entrepreneurs and small businesses, as well as the general public, are in no way better served by slashing media ownership protections and thereby allowing fewer media companies to control what Americans see, hear and read.

A license to use the public airwaves means the ability to promote the ideas, news, culture, and language of the owner's choosing. Unfortunately, females and minorities historically have been, and continue to be, underrepresented in media ownership. As reported by NTIA, in 2000, minority broadcasters owned a mere 4 percent of the nation's commercial radio stations and 1.9 percent of the nation's commercial television stations – the lowest level of minority television ownership since the tracking of such data began in 1990. Minority ownership of broadcast stations has fallen by 14 percent since 1997.

The June 2003 Biennial Regulatory Review of Broadcast Ownership Rules will only exacerbate this worrisome trend. The new rules allow a massive increase in consolidation which will raise the already high entry barriers for smaller market participants or new entrants in the media industry. Small or single-station entrants will find themselves increasingly competing with large, consolidated group owners. In more concentrated and more expensive media markets, entrepreneurs will face even more difficulties raising capital, owning outlets, or having their unique voices heard.

Today's Report describes new transferability procedures that, in my view, are too little and too late. The transfer of entire grandfathered clusters to small entities will rarely, if ever, happen. If they ever come on the market at all, small businesses may have difficulty raising the capital needed to buy the expensive, large clusters rather than single stations or smaller clusters. Even under the new procedures, the small business can flip the grandfathered cluster to any large radio or media conglomerate after only three years, leaving little protection against a front company buying a cluster and later selling it to further

increase the bulk of well-capitalized radio giants. So these new procedures in no way offset the damage to new entrants caused by the overall slashing of media ownership protections.

I hope that I am proven wrong. Nevertheless, no entrepreneur or small business should take comfort that this transferability exception will come anywhere close to counteracting the damage done by loosening the media ownership protections.

DISSENTING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

RE: Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses

Congress understands the importance of small business to our country. But the Commission's 2003 Small Business Report will lead many to believe that the FCC does not. In Section 257 of the Telecommunications Act, which contains the mandate to produce this report, Congress told the FCC to start taking small business concerns seriously. Every three years we must identify the market entry barriers faced by small businesses in the communications industry and report on the specific regulations we have prescribed to eliminate those barriers. Despite this Congressional clarity, today's Report does not fulfill our statutory obligation. Instead, I fear that the Report will undermine our credibility with the small business community. To me, that is unacceptable. So I find myself forced to dissent.

Section 257 creates a critical reporting requirement for the Commission. It is critical because small business is the engine that drives America's economy. Small businesses generate two-thirds to three-quarters of new jobs annually in the United States. Almost 98 percent of U.S. telecommunications field employers are small businesses. Much of the future of the telecommunications industry hinges on how well our small to medium-sized businesses do in the national and international economy. This is not only because of the huge number of jobs involved, but also because small business is the source of much of the innovation and energy for the economy in general and for the communications sector in particular, developing 13 to 14 times more patents per employee than larger firms.

Recognizing this, Congress directed the FCC to examine the market entry barriers faced by small businesses and entrepreneurs and then to detail the efforts the FCC has taken to eliminate those market barriers. Congress created this requirement to force the Commission to explain what it was actively doing to promote entrepreneurship and to prevent the Commission from catering to industry giants at the expense of small business.

But today the Commission sends Congress a report that: (1) does not meet the specific requirements of the statute, and (2) for the most part blithely claims that three years of proceedings leading to the removal of competition and consumer protections were really designed to help entrepreneurs all along. American small businesses deserve better than this.

The Report Fails to Meet Section 257's Statutory Requirements

Section 257 states that the Commission must report to Congress every three years on "any regulations prescribed to eliminate barriers within its jurisdiction that are identified by subsection (a) and that can be prescribed consistent with the public interest, convenience and necessity."[1] The "barriers" identified by subsection (a) include "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and services and information services, or in the provision of parts or services to providers of telecommunications services and information services."[2]

Section 257 thereby clearly requires the Commission to identify market entry barriers faced by small business and to report on new rules that it has promulgated to eliminate those barriers. Instead, we have a slapdash cataloging of miscellaneous Commission actions over the past three years that fails to

[1] 47 U.S.C. § 257(c)(1).

[2] 47 U.S.C. § 257(a).

comply with the requirements of Section 257. If Congress had wanted the Commission merely to list its proceedings and the general regulations that it had eliminated, it would have said so. In this particular report, the importance of small businesses to the economy and the legacy of small businesses facing market barriers in the communications industry led Congress to ask the Commission to report on ***proactive steps*** it had taken to establish new rules to help small business.

So why did the Commission fail to report on new initiatives designed to eliminate market barriers for small businesses, and thereby fail to comply with the statute? It may be because this Commission does not have a small business record to brag about.

We should be more forthright with Congress. We should admit that the Commission has not articulated a plan for how to eliminate market barriers for small business. We should recognize that we have created too few new rules designed specifically to help small businesses. And maybe most importantly, we should realize that some of this Commission's actions – indeed more than a few – have harmed small businesses.

I have supported some of the decisions made by this Commission and opposed others. Although I could give numerous examples raised in this Report, let me highlight just two of the major actions that increase market barriers for small businesses and that I opposed: (1) eliminating media consolidation protections, and (2) undermining broadband competition.

Eliminating Media Consolidation Protections Hurt Small Businesses

On June 2, the Commission voted to weaken its media ownership rules and open the door to more media control by ever fewer corporate giants. In Section 257 Congress expressly commands the Commission to "seek to promote the policies and purposes of this Act favoring diversity of media voices," but instead the Commission surrendered enormous powers over our news, information and entertainment to a handful of corporations.

In adopting this decision, the Commission failed to analyze how the media consolidation it allowed affects small businesses. The Office of Advocacy of the Small Business Administration strongly urged the Commission to conduct such an analysis prior to rushing ahead with a decision. We failed do so then, and we fail to do so in this Report.

Across this country, in the many hearings and forums that Commissioner Adelstein and I attended, we heard that weakening media concentration rules threatens the very survival of small businesses. As fewer and fewer companies control our media outlets, small local broadcasters will find it harder and harder to compete. Media analysts expect that the only option for small broadcasters will now be to sell. They conclude that those that want to remain will face an extremely tough road. During our hearings, we heard from small broadcasters that had already been squeezed out of the market, who explained that the Commission's decision will only accelerate this trend. Yet, we failed even to consider the impact of our decision on small broadcasters.

In addition, other small businesses will find it harder to produce and sell programming as national vertically integrated conglomerates control local distribution. We also heard from small businesses that consolidated media markets are more expensive for advertisers, and that this may hurt small businesses' ability to advertise their products and services, particularly if they seek to reach niche communities or minority groups.

Amazingly, the Commission states that only one aspect of its biggest decision of 2003 affects small businesses. The June 2 decision grandfathered any radio ownership clusters that exceed our ownership limits. But it also allows the grandfathered owners to sell the entire cluster to a small business,

which can turn around and re-sell the cluster, after only a few years, to anyone -- even to a media conglomerate. The Small Business Report, like the June 2 decision, claims that this will help small businesses, but fails to analyze such questions as whether this decision will encourage a regulatory shell game that threatens to make a mockery of the radio limits. And it fails to address the harms to small businesses of eliminating media concentration protections and allowing large conglomerates to lock up the available stations in a market.

The June 2 decision further relegated to some indeterminate future Notice of Proposed Rulemaking the critical question of how access to capital in the media industry acts as a barrier to entry for small businesses. This Report again fails to indicate when the Commission will take up this important issue.

Undermining Broadband Competition Hurt Small Businesses

The Report also fails to recognize that many of the FCC's recent telecom competition and broadband decisions will create new barriers to entry for small businesses, and that these decisions have eliminated earlier Commission efforts to break barriers down. More than 26 million access lines are provided by competitive carriers today, many of which are entrepreneurial upstarts. Yet when it comes to "promoting vigorous economic competition," we have failed these new entrants by closing off access to key facilities and raising barriers for entry into the telecommunications service market.

Last year, in the *Triennial Review Order*, the Commission undermined competition in the market for telecommunications services by limiting—on a nationwide basis in all markets for all customers—competitors' access to broadband loop facilities whenever an incumbent deploys a mixed fiber/copper loop. So as incumbents deploy fiber anywhere in their loop plant, they are relieved of the unbundling obligations that Congress imposed to ensure adequate competition in the local market. This can only make it more difficult for small businesses to get into the business of providing telecommunications services. With decisions like this, the Commission constructs barriers to vigorous economic competition by small entities, when it should be eliminating them.

The story is also ominous when it comes to the market for broadband information services. For years, the Commission has had in place policies that make it possible for information services entrepreneurs to access incumbent networks on nondiscriminatory terms. This has made it possible for small businesses like independent ISPs to provide service to customers. But two years ago, in the *Wireline Broadband NPRM*, the Commission suggested that these rules that keep the roads of the Internet open to all are no longer necessary. Should the Commission follow through with this proceeding, it will allow those who own and control networks to set up toll booths on the onramps to the Internet. This will prevent tomorrow's entrepreneurs—who are today tinkering away in garages and laboratories and office cubicles—from getting nondiscriminatory access to the transmission facilities they need to bring their innovations to market. By dismantling these rules, the Commission will raise barriers for small businesses and innovators interested in providing Internet-based information services.

Conclusion

As a final matter, let me just add that, although this Report highlights the entry barriers faced by small businesses that seek to provide telecommunications or information services, this Commission has failed to address the challenges faced by ***small businesses as consumers*** of telecommunications. As competition falls prey to consolidation and competitive and consumer protections are eliminated, small businesses will see prices rise and choices vanish. Today's small business men and women face limited or no choice for many services, they receive the same kind of confusing and misleading bills that individual consumers receive, and they have nowhere to turn if they are dissatisfied. While this is not the subject of this Report, it needs to be a central focus of Commission attention.

Remove the Barriers to Minorities in Media

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by Mark Lloyd
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In mid-summer I met with a group of progressive black ministers to discuss what they called a crisis involving African Americans and the media. They were concerned about the violent and sexually suggestive images on Viacom's BET, and the glorification of gangsters and the denigration of black women that seem to be a staple of rap music. They were also concerned about the lack of voice for people of faith who were more concerned about poverty and war than the debate over evolution or whether homosexuals should be allowed to marry. Adding to these concerns, our hosts Hazel Ross Robinson and Randall Robinson noted the distorted or entirely missing media coverage of Africa and the Caribbean.

There has been notable progress for racial and ethnic minorities in the United States in the media since the 1960s. Back then the Kerner Commission was right on target when it charged that "important segments of the media failed to report . . . on the underlying problems of race relations. They have not communicated to the majority of their audience – which is white – a sense of the degradation, misery, and hopelessness of life in the ghetto." Many of that commission's recommendations of expanded coverage, integration of the news staffs, and training and recruitment of black journalists were implemented in the years immediately after the riots.

But as the FCC understood during the Carter administration, the voice of minority groups in the media is limited by the severe under-representation of minorities among broadcast licensees. Not only do owners tend to hire employees who come from their same ethnic group, they also tend to serve those audiences they are most familiar with.

A recent American Society of Newspaper Editors study found that minorities made up 13.42 percent of employees at daily papers in 2004, as compared to 12.95 in 2003. And according to the latest RTNDA/Ball State University Annual Survey, minorities comprised 21.2 percent of local television news staffs in 2004, compared with 21.8 percent in 2003. But the local radio minority workforce fell to 7.9 percent in 2004 from 11.8 percent in 2003.

The percentage of minorities in radio dropped in large part because of the significant consolidation in the radio industry and the decimation of local radio newsrooms even among black owners. For example, Cathy Liggins Hughes has copied her white peers in establishing an African-American-owned broadcast conglomerate, Radio One. The 66-station chain is the dominant influence in at least 13 of the 22 cities in which Radio One operates. Radio One is valued at $2 billion, yet even with these resources Hughes employs not one newsperson at her four Washington stations. And this policy is reflected throughout Radio One. Ownership is clearly not enough in a market culture that puts profit over every consideration. But ownership, particularly over television, is a start.

Congress repeated this concern over ownership when it passed Section 257 of the 1996 Telecommunications Act. That section requires the FCC to examine and create regulations to remove

the barriers to participation by minorities in the communications industry. However, while the Bush FCC has worked mightily to increase the number of stations one corporation can control, it has ignored its obligation to correct a history of discriminatory FCC licensing practices.

Since 1990, when the Minority Telecommunications Development Program at the Department of Commerce began issuing reports on minority commercial broadcast ownership in the U.S., African Americans, Asian Americans, Hispanic Americans, and Native Americans, roughly a third of the U.S. population, have consistently been under-represented among the nation's commercial broadcast owners. In 2000, 187 minority broadcasters owned 449 full power commercial radio and television stations, or 3.8 percent of the 11,865 such stations licensed in the United States. The 23 full power commercial television stations owned by all minorities combined in 2000 represented 1.9 percent of the country's 1,288 such licensed stations. This is the lowest level of minority full power television ownership since reports began in 1990.

There are more than a few experts who think television will not matter in the future. They argue that the power and influence of television will wane and will be replaced by the Internet. Others of us think television will simply migrate to the Internet, the way it migrated to cable, and that neither the method of delivery nor the potential interactivity of digital media will destroy the lure of the boob tube: blackplanet.com will not overwhelm either local television news or BET.

Americans will never be able to speak clearly and honestly with each other if one group of Americans continues to control 98 percent of the federal licenses to the most dominant form of local communication. Ethnic media will not be empowered to speak to and for the communities it serves if the FCC does not take seriously its obligation to remove the barriers that block minority participation in the communications industry. How long do we have to wait for the FCC to act on Section 257?

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