TESTIMONY OF FCC COMMISSIONER MICHAEL J. COPPS
U.S. SENATE COMMITTEE ON
COMMERCE, SCIENCE AND TRANSPORTATION
FEDERAL COMMUNICATIONS COMMISSION OVERSIGHT HEARING
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Good morning Chairman Inouye, Vice-Chairman Stevens and Members of the Committee.

This oversight hearing could not be timelier. The Commission's priorities are dangerously out-of-whack, and we urgently need this Committee's help to save us from ourselves. We have a proposal before us at the Commission to open the door to newspaper-broadcast combinations in every market in the country and the drive is on to rush this to a vote next week. Meanwhile we have given short shrift to pressing problems like the sad state of minority ownership of U.S. media properties and the obvious decline of localism in our broadcast programming. We have also neglected the DTV transition, and have not done nearly enough to prepare consumers and broadcast stations for the rapidly approaching deadline. If we don't turn this around quickly, the DTV transition will result in widespread television outages and a consumer backlash the likes of which you and I haven't seen for a long, long time. On universal service, the Commission has before it a choice: down one road is action on a holistic set of recommendations that for the first time includes broadband deployment essential to the mission of universal service; down the other is approval of a cap on high-cost support to competitive eligible telecommunications carriers (CETCs) that has the very real potential of being the only action the FCC takes to reform the system. What a lost opportunity that would be. I fear the Commission is not going to choose wisely.

Let me begin with media ownership. The proposal in front of the Commission has been portrayed as a "moderate" relaxation of the newspaper-broadcast cross-ownership ban in the 20 largest markets. But look carefully at the fine print. The proposal would actually apply the ***same test in every market in the country***. That's right—***any*** station can merge with ***any*** newspaper in ***any*** market in the country. The only difference is that in the top 20 markets you start with a presumption that you meet the test, while in the other markets you don't.

And there's the rub. The four factors proposed by the Chairman are so riddled with holes that they are essentially meaningless. You don't even have to meet them all—it's just a list of things the FCC will "consider." Given how the FCC has "considered" media regulation in recent years, I don't have much confidence that any proposed combination will be turned down. In fact, I can predict the boilerplate language that will accompany such approvals: "Although applicants starting with a negative presumption face a high hurdle, in this case we find the applicant has met its burden by [fill in the blanks]."

This is not the only example of media regulation that seems like a chapter out of Alice in Wonderland. Just two weeks ago, an FCC majority ostensibly "denied" Tribune a waiver before turning around and granting a two-year waiver were Tribune to file an

appeal. The majority turned these unprecedented legal summersaults to push Tribune to challenge the newspaper-broadcast cross ownership ban in a court they think may be more sympathetic to their cause than the Third Circuit. To no one's surprise, Tribune filed an appeal the very next business day.

There's still more evidence of the real agenda at play. I've given Chairman Martin credit for holding six media hearings around the country, although I would have preferred more. No one knows better than the American people whether they are being served by their local media. And at each stop, all of the Commissioners seemed to agree—the public needs to be heard before the FCC acts on a subject as important as the American media.

Thousands of citizens came out at great inconvenience to themselves—and often waited for hours—to provide their testimony. Throughout the process, many openly questioned whether the hearings were real or just cover for a pre-determined outcome. This skepticism gained credence last month when our last media ownership meeting was announced for Seattle with only one week's notice. Listening to people or checking a box? Well, we may have our answer. I went through the draft Order to see how it handled the hundreds of public statements at these hearings. While there is a passing reference to the public hearings, ***not a single citizen's testimony is specifically cited or discussed.*** I was flabbergasted. The whole point of these hearings was to gather evidence from the American people—and the Order does not find a single comment worthy of mention?

So then I went through the draft to look for the public input from our six separate ***localism*** field hearings, which the *Further Notice* stated would be considered as part of the media ownership record. ***Again, not a single citizen's testimony is specifically cited or discussed.*** It's hard to reach any conclusion other than public comment is largely extraneous to the process. What else are we to think when a draft Order is circulated two weeks ***before*** public comment is due on the proposal?

I realize we are not taking a public opinion poll in this proceeding. But surely public comment deserves more respect than this. As anyone who attended these hearings can tell you, calls for more media consolidation were few and far between. That's not surprising—a recent survey finds that 70 percent of Americans view media consolidation as a problem. And by an almost two-to-one margin, they believe newspapers should not own TV stations in the same market and they favor Congress passing laws to make sure that can't happen. Those poll numbers are consistent across the political spectrum. So this is no red state-blue state issue. It is an all-American grassroots issue. This doesn't surprise Commissioner Adelstein or me because that's exactly what we have seen in the scores of town meetings and forums we have attended around the country since 2002.

I recognize that there is another possibility—that this is simply a rush job to be completed any way possible by December 18, so there just wasn't enough time to consider the full record. Whatever the reason, there is only one way to do this job and that is to do it right. The issues are too important to address in the current slapdash manner.

No one on this Commission, even if some feel differently about the pros and cons of changing the ownership rules, should want to perpetuate those kinds of appearance issues about the FCC. The Commission is in dire need of a process that allays fears rather than one that creates them.

In the meantime—and before we vote to further loosen our rules—there are two policy goals on which we need to make real progress—minority and female ownership is one, localism is the other. These issues have been languishing for years at the FCC. We always seem to be running a fast-break when it comes to approving more media consolidation, but it's the four-corner stall when it comes to minority and female ownership and ensuring that broadcasters serve their local communities.

Racial and ethnic minorities make up 33 percent of our population but they own a scant 3 percent of all full-power commercial TV stations. And that number is plummeting. Free Press just recently released a study showing that during the past year the number of minority-owned full-power commercial television stations declined by 8.5%, and the number of African American-owned stations decreased ***by nearly 60%***. It is almost inconceivable that this shameful state of affairs could be getting worse; yet here we are.

There are recommendations that have been presented to address the issue, both by outside commenters and our own Diversity Committee. These need to be put together in a comprehensive, systematic and prioritized response to a problem that is a national disgrace. I say that advisedly—it ***is*** a national disgrace to have a media environment that is so blatantly unreflective of how we look as a nation. I support Commissioner Adelstein's call, joined by many others, for an independent panel to review the dozens of proposals before us. We need to fix this problem ***before*** voting on any proposals permitting big media to get even bigger. Consolidation has made it infinitely tougher for women and minorities to own stations, so why would we give the green light to more consolidation before coming up with programs to give women and minorities a chance to compete? And why should we put into play, as Chairman Martin's proposal does, the very stations that small, independent, minority broadcasters could have a shot at if they had the proper incentives? Why would we even consider that?

It may be difficult for you to believe, but the Commission doesn't even have an accurate count of how many minority and female owners there are. Just last week, the Congressional Research Service issued a report on the FCC's 10 media ownership studies and it paints an anything-but-rosy picture of the record on which the Chairman proposes to act. The report raises questions about the underlying data and technical analyses used for several of the studies. In particular, it points to the lack of accurate data on minority and female media ownership. As CRS points out, the Third Circuit instructed the Commission on remand to consider the impact of any media ownership rule changes on minority ownership. CRS finds, however, that the FCC has failed to collect accurate data on minority and female ownership, and that without such data, "it is impossible to perform" the analysis required by the Third Circuit. Indeed, CRS notes that all of the researchers and peer reviewers agree that the Commission's data bases on minority and female ownership "are inaccurate and incomplete and their use for policy analysis would

be fraught with risk." I agree. The Commission is courting another unfavorable ruling from the Third Circuit, proving once again that the impact of further media consolidation on minority and female ownership is simply not a priority.

It's the same story on localism. A draft Notice of Proposed Rulemaking was recently circulated, apparently on the premise that asking questions is sufficient to "check the box" so a Commission majority can move forward to loosen the newspaper-broadcast cross-ownership ban. But localism should never be seen as a means to an end—it is an end in itself. It is at the heart of what the public interest is all about. All deliberate speed in getting some localism back? By all means. A rush to judgment to clear the way for more big media mergers? No way.

For today, our conversation on media ownership should start and end with the requirements of S. 2332, the "Media Ownership Act of 2007." Senator Dorgan, Senator Lott and the other co-sponsors, thank you for your leadership and for your understanding that unless we have a credible process, we cannot have a credible result. Right now, the Chairman is ready to relax the newspaper-broadcast cross-ownership ban without completing 90 days of public comment on the proposed rule; before completing a separate rulemaking to promote localism that includes a 90 day comment period; before collecting accurate data on female and minority ownership; and before convening and acting comprehensively upon recommendations by an independent panel on minority and female ownership.

These fundamental procedural requirements are the heart of S. 2332. Last week, the full Commission testified before the House Telecommunications Subcommittee on this topic, and Chairman Dingell passed on some advice he received from his father: if given a choice between controlling the process and controlling the substance, his father told him, choose the process and you'll win every time. The same is true here. As minority Commissioners, we cannot control process. However, your legislation would ensure that the substance is debated fairly and transparently. Were the Commission to abide by the criteria in the Dorgan-Lott bill, I certainly would support bringing the Chairman's proposal to a vote. The bill should be the guiding principles for completing the media ownership proceeding.

I also want to point out that in all this haste to give big media a huge gift for the holidays, another critical issue is not receiving its due—the DTV transition. We are 14 short months from a massive switch-over that will directly affect millions of American households. We have just one chance to get this right. Unlike many countries that are taking a phased approach, we are turning off analog signals in every market in the country on a single date—February 17, 2009.

I recently traveled to the United Kingdom to witness the first stage of their DTV transition. I was concerned before going over there; now I am thoroughly alarmed. The UK is taking the transition seriously, and has put together the kind of well-funded and well-coordinated public-private partnership that I, and many of you, have been calling for over here.

There are two basic things that need to happen for a successful transition. Number one, consumers have to be prepared. We have a pending consumer education proceeding that could help ensure that the message is getting out in a coordinated and effective way. But no vote has been scheduled to get it done.

The second thing that has to happen is broadcasters need to prepare. Hundreds of stations must take significant actions over the next 14 months. Things like new antennas and transmitters, new tower construction and new transmission lines—all of which can require financing, zoning approvals, tower crews, or international coordination. But many broadcasters need to know what the technical rules of the road are going to be before they can move forward. Those issues are teed up in a proceeding called the "Third DTV Periodic Review." Although the record has been closed for months, a draft Order was just circulated to the Commission last week. Already, I fear that many broadcasters simply aren't going to make it. If we don't start making the DTV transition a national priority, we will almost certainly have a 9-car train wreck on our hands. And the American people will be looking for someone to blame. Those of us who plan to be on duty in February 2009 are going to need some real good answers.

Finally, let me turn to Universal Service. As a member of the Federal-State Joint Board on Universal Service, I have participated in the Board's two recent recommendations to the FCC. In May, I dissented from a recommendation that the FCC place an "interim" cap on the high-cost support received by CETCs based on my strong belief that it solves no enduring problem and that it will be interpreted by many as movement enough to justify putting the larger universal service reform imperative on the back-burner. As a result, it would diminish rather than enhance the prospects for near or even mid-term reform. I continue to believe that this is the case.

However, to its credit the Joint Board did not rest and last month it recommended a far more comprehensive plan for overhauling the high-cost fund. Most notable is its recommendation, for the first time, to include broadband as a supported system within the Universal Service system. While I would have acted more boldly on how to ensure that the Commission makes good on this commitment, I was enormously pleased to approve this historic finding by the Joint Board because it establishes for the first time the right mission for Universal Service in the 21st century. Congress concluded many years ago that a core principle of federal telecommunications policy is that all Americans, no matter who they are or where they live, should have access to reasonably comparable services at reasonably comparable rates. Congress wisely anticipated that the definition of Universal Service would evolve and advance over time. The Joint Board's recommendation to include broadband in the definition of Universal Service finally puts the program in sync with the intent of the Act.

I continue to believe there are a variety of ways to promote Universal Service and at the same time ensure the sustainability and integrity of the fund. As I testified earlier this year, much would be accomplished if the Commission were to include broadband on both the distribution and contribution side of the ledger; eliminate the Identical Support rule; and increase its oversight and auditing of the high-cost fund. Additionally, Congressional authorization to permit the assessment of Universal Service contributions

on intrastate as well as interstate revenue would be a valuable tool for supporting broadband. That being said, the Joint Board made an assortment of recommendations of its own. I agreed with some of them and not with others. Nevertheless, the FCC has before it a recommendation that I believe merits further action rather than taking an interim step that could very well short-circuit the larger discussion.

Thank you for the opportunity to testify and I look forward to your comments about these and other of the many issues before us.