Chancellor

MEDIA CORPORATION

Jeffrey A. Marcus
Biography

Jeffrey A. Marcus (52) is President and Chief Executive Officer of Chancellor Media Corporation (Chancellor). Chancellor is the nation's largest radio broadcasting company, operating 474 stations in approximately 106 markets across the country that reach a weekly listener base of over 66 million people. Prior to assuming his current position at Chancellor, Mr. Marcus was Chairman, President, and Chief Executive Officer of Marcus Cable Company, the nation's largest privately held cable company, serving over 1.2 million customers.

Mr. Marcus founded Marcus Cable in 1990 with 15,000 customers. Through a series of acquisitions, the company grew to serve over 1.2 million customers, and in April 1998, Microsoft co-founder Paul G. Allen purchased all the limited partnership interests of Marcus Cable in a transaction valued at $2.775 billion.

Over the course of his 31 year media career, Mr. Marcus has also co-founded Communications Equity Associates, a media brokerage company (1976), and Marcus Communications, Inc. (Marcus), a cable television company (1982). In 1987, he merged Marcus into publicly held Western Tele-Communications, a microwave transmission/cable company, and he became Chairman and Chief Executive Officer of the merged and renamed company, WestMarc Communications, Inc. (WestMarc). He stepped down from his position at WestMarc in 1988, having built the company to serve over 550,000 customers.

Mr. Marcus, his wife Nancy and their two children live in Dallas, Texas. Mr. Marcus serves on the boards of The Dallas Museum of Art, The Dallas Institute of Humanities and Culture, Southern Methodist University Edwin L. Cox School of Business, St. Mark's School of Texas, and Southwestern Medical Foundation. He is also a member of the State of Texas Governor's Business Council, as well as the Southern Methodist University Willis M. Tate Lecture Series Board. Mr. Marcus also serves on the boards of Brinker International, Inc. (chairing its Executive Committee), and Chancellor Media (including its Executive and Nominating Committees), and CEI Argentina. Mr. Marcus formerly served on the boards of the National Cable Television Association (serving as Treasurer and including its Executive and Public Affairs Committees), C-Span (including its Executive Committee), Cable Telecommunications Association (CATA), the Cable Television Advertising Bureau (CAB), Cable in the Classroom (including its Executive Committee) and Cable Labs.

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En Banc Hearing on Broadcast Ownership Regulation

Testimony of
Jeffrey A. Marcus
President and Chief Executive Officer
Chancellor Media Corporation

February 12, 1999

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It is both ironic and apt that I am here today representing the National Association of Broadcasters. It is ironic because until last summer I had spent my entire career, 31 years, in the cable industry, building cable systems which competed with broadcasters. It is apt because the subject of this hearing is media competition. There can be no better informed witness on this subject than someone who has helped build the most successful and relentless competitor the broadcast industry has ever faced, one which has completely transformed the competitive media landscape.

The pace of change in media competition is nothing short of breathtaking. When Congress passed the Telecommunications Act three years ago, Senator Inouye said "[t]oday's local marketplace is characterized by an abundance of media outlets that were not present or contemplated when the [duopoly] rule was last revised." Since then, the Senator's perception has been confirmed over and over. A then-nascent satellite industry has become a major provider of video. The internet has exploded, and the ability to deliver audio and video signals over computers is growing ever-greater. The cable industry is changing to digital technology that will dwarf today's channel capacity. And

telephone companies and cable operators are merging or entering into alliances that will accelerate the spread of digital networks.

To negotiate these developments successfully will require extraordinary agility and flexibility, the resources and the ability to conceive and implement creative strategic initiatives and alliances, and, in most cases, to scrap them and start over again. It is in the context of this volatile, tumultuous and demanding environment that we must examine the two venerable regulations, the television duopoly and one-to-a-market rules, which are the subject of this hearing.

These two rules are glacial remnants of a regulatory Ice Age. They stem from an almost forgotten time when a few TV and radio stations were the electronic media. They are the product of regulatory fears that have no place in today's market.

Eight years ago, the Commission's own Office of Plans and Policy studied the emerging media market and found that the irreversible growth of multichannel competitors to broadcasting would lead – without a change in the regulatory environment – to "a reduction in the quantity and quality of broadcast service." The OPP concluded:

> "Many of the FCC's broadcasting rules were adopted when there were far fewer channels per market . . .. Much of the FCC's broadcast regulation was motivated by a desire to limit economic market power and concentration of control over program content . . .. These concerns appear misplaced, or at best of greatly diminished importance, in a world where broadcast stations and networks face dozens of cable channels and program networks."

Again, what has happened since 1991 only confirms OPP's predictions.

In addition to the revolution in the media marketplace, the record before you shows that the duopoly and one-to-a-market rules are counterproductive, and destroy – not advance – your goals of competition and diversity. The duopoly rule has prevented dozens of stations from being launched, and condemned others to broadcasting with second-class signals and even worse programming. We know this because we can see the results of the Commission's limited but highly successful nine-year experiment with two-station operations under local marketing agreements or LMAs.

Of the approximately 70 television LMAs on the air a year ago, nearly two-thirds involved failing or struggling stations. Nearly all the others put new stations on the air. Nearly two-thirds of the LMAs provided outlets for the

emerging WB and UPN networks, with the remaining one-third either independents or Fox affiliates. Over half the LMAs were carrying new local news programs (and local sports and public affairs). Nearly half resulted in a substantial upgrade in technical facilities.

The efforts of LIN Television, soon to be a subsidiary of Chancellor Media, are typical of these LMA pioneers. Through an LMA, LIN saved a failing station in Battle Creek, Michigan, restoring the only local news programming for the cities of Battle Creek and Kalamazoo, and preserving a local outlet which even today would not be viable on a stand-alone basis. In Norfolk, Virginia, a LIN LMA enabled the transformation of a minimum facility home-shopping channel to a full-service WB affiliate and then, last fall, by agreeing to carry the first 10 p.m. newscast in the market, landed the Fox affiliation. In Austin, Texas, and New Haven, Connecticut, LIN LMAs launched stations which had been unable to obtain adequate financing (in one legendary instance, for more than 40 years), providing outlets for the WB network and providing additional local news and sports programming.

Because LMAs have allowed stations to share costs between two facilities, viewers have benefitted from the launch of new broadcast networks, the creation of new outlets for syndicated programming and the addition of countless hours of

local news programming. These same stations have provided additional competition for both advertising dollars and syndicated programming, benefitting both advertisers and programmers.

Perhaps most important, LMAs show how changing the duopoly rule can strengthen broadcasting as a competitor to multi-channel providers such as cable and satellite. When I ran a cable company, it seemed to me that cable had two main advantages over broadcasting: (1) dual revenue streams; and (2) the ability to spread programming and other costs over multiple channels. Now that I'm in broadcasting, I see how hard it is to overcome these barriers. And while I'm proud of our free over-the-air system, I don't understand why the FCC should restrict free broadcasters' ability to compete with pay competitors who do not face these restrictions.

The one-to-a-market rule has no better justification. Even when it was adopted, the Commission could not point to any actual problems that the rule would remedy. The many grandfathered radio-TV combinations, and the waivers that the FCC has granted since 1996 – like LMAs – allow us to look into what a world without the rule would be. And the answer is that no reduction in service or diversity has been caused by radio-TV cross-ownership. Instead, radio and TV

stations have strengthened their service to the public by realizing efficiencies from joint operations.

Moreover, as the Commission recognized in the *Second Further Notice* in this proceeding, if radio and television stations do not compete, there is little justification for a cross-ownership rule. And on that issue, the government has hardly been consistent. The Department of Justice has insisted that radio is a separate market from television and other media. While the FCC has sometimes reached a different conclusion, in recent months you have raised questions about certain transactions based on stations' share of the radio advertising market only. Surely, the Commission cannot have it both ways – restricting radio ownership by looking at the radio market only, but barring cross-ownership based on an entirely different view of the market.

Further, economic studies in the record show that, if the rule were repealed, and every possible radio-TV combination would occur in all of the top 50 markets, they would all still be competitive under the standards used by the Department of Justice. Each of the top 25 markets would have no fewer than 20 independent *broadcast* voices remaining after all possible combinations, and that does not even take into consideration the multitude of other competing media voices that would still be available to viewers, listeners, and advertisers.

Certainly, there is no evidence – nor could there be – that the one-to-a-market rule in operation results in greater competition or diversity of programming in any market.

The Commission should, therefore, head the advice the OPP gave it years ago and get rid of rules that reflect only a bygone era of media competition. The FCC should repeal the one-to-a-market rule, and permit ownership of radio and TV stations up to the limits set for each service. It should reform the TV duopoly rule to permit common ownership of two TV stations where at least one is a UHF station, or where the combination has no likelihood of diminishing competition. However, if you should not take this course, the investments broadcasters made to improve service to the public should not be jeopardized, and the existing LMAs and one-to-a-market waivers should be grandfathered.

Thank you for your attention. I will be happy to answer any questions.