

REMARKS
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EVERETT PARKER ETHICS IN COMMUNICATIONS LECTURE
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I am truly and deeply honored to deliver the Everett C. Parker Ethics in Communications Lecture this year. I feel twice humbled. First because Dr. Parker did his communications ethics out on the front lines, battling for civil rights back in the difficult and dangerous days of the 1950s and 1960s, when many of us were only beginning to awaken to the horrid injustice of racial intolerance and to the moral justice of America's civil rights movement. A lecturer can get by with talking the talk, but Dr. Parker was walking the walk -- and what a daunting walk it must have been -- so many decades ago. The second humbling challenge is that we meet at something of another ethical crossroads this year, and we feel the need for reflection and correction in numerous spheres of our nation's life -- including some that involve very directly our communications industries and how their evolution will affect each of our lives. Dr. Parker was in the vanguard leading us out of those earlier and doubtless more dramatic challenges, but I submit, first, that the current challenges are serious onto themselves and, secondly, that the same ethics and vision that he brought to those earlier front lines are equally imperative today.

Most of us assembled here today are familiar with what is arguably Dr. Parker's most famous crusade -- the WLBT case. We know how, in March of 1964, he and the United Church of Christ went to Jackson, Mississippi to look at the media there and how they found that although African-Americans comprised 45 percent of the TV audience,

their concerns were completely ignored by the local stations. We know how the local station blocked the network feed whenever the national network ran a documentary about the civil rights movement or an interview with Dr. Martin Luther King. So, joining with the local NAACP, the group went to the Federal Communications Commission and challenged the license of the Jackson stations. And the FCC turned them down, concluding instead that viewers did not have the right to challenge the license of the local station. What a cold, bleak day that was for the FCC. Not to be denied, Dr. Parker went to the D.C. Circuit Court – and the Court, thank God, overturned the Commission. Even then, the Commission was slow to understand and it voted a second time in favor of the recalcitrant station. Finally, with then-future Chief Justice Warren Burger in the lead, the Court simply took the license away itself, Judge Burger noting that the Commission was “beyond repair.”

A lot was won that day. First the Court had found that by not fully airing issues of public importance, the station failed *all* of the citizens of Jackson, and that in renewing the license, the FCC failed in its duty to protect the interests of the community. But that wasn't all, because this case also established the right of plain American citizens to petition the Commission instead of limiting such petitions to commercial interests only. The court visited and rejected the FCC's traditional premise that a petitioner achieved standing only if direct economic injury in a commercial sense was involved and found instead that there was “no reason to exclude those with such an obvious and acute concern as the listening audience.” In short, viewers and listeners had rights too, including the right to challenge broadcast licensees. With that right established, the public

dialogue was forever enhanced. The Commission could get on, albeit belatedly, with what it had been charged to be in the first place -- a forum to ensure that *all* Americans are served by communications. And a host of public interest and advocacy groups sprang up to fight for the rights of women, minorities, consumers, the disabled and the whole magnificent tapestry that comprises the diversity of America.

In looking back over the years, I found another case for which Dr. Parker was responsible that also has particular resonance for me. In this case, in 1973, he and his colleagues challenged a number of *non-commercial* licenses held by the Alabama Educational Television Commission. These stations had systematically refused to carry PBS programs that included African American actors and news stories involving African American citizens. During the license period in question, some stations had even refused to carry Sesame Street, insidious and subversive program that it was! In addition, there was only one African American employee to be found on the premises, and he was a janitor.

So Dr. Parker and friends filed a petition with the FCC to deny renewal of the licenses. The petition was granted a hearing before an Administrative Law Judge. At the hearing, the ALJ granted renewal of all of the licenses. Dr. Parker's group appealed to the full Commission. Finally emerging from its "beyond repair" mode, the full Commission held an unprecedented, truly historic oral argument on the matter, and then voted to deny the AETC licenses.

What resonated with me about this particular story is that Dr. Parker was not afraid to do what is right, even if it meant challenging *public* broadcasting, when he believed its stations were not acting in the public interest.

In my short time at the Commission, I have already learned that hard as it may be to challenge commercial broadcasters, it can be even harder to challenge *public* broadcasters because their commitment is so obviously to the public interest. But Dr. Parker did not excuse public broadcasters from the ethical standards he expected of others or from their special obligation to safeguard the integrity of the public trust they had been given. That kind of ethical consistency is not only chicken soup for the soul; it's nourishment for the future of public broadcasting, too. That future shines brighter than ever with digital broadcasting and new educational program opportunities coming our way, but with new opportunities come new temptations, and we must always be on guard lest public broadcast lose its special identity and integrity and wide base of support.

EEO

Running through and stitching together the fabric of Everett Parker's illustrious career is the strong, unbroken thread of equal opportunity. Indeed, the Commission's Equal Employment Opportunity rules are one more contribution for which we are eternally in his debt.

After the United Church of Christ's second win in the Court of Appeals on the WLBT decision, the Church petitioned the FCC to issue equal employment opportunity

rules requiring all stations to develop affirmative action programs and to hire, train, and promote minorities and women, under ultimate penalty of license revocation. It was this petition that gave rise to the rules we are still struggling with today.

As many of you know – and some of you know all too well – the Commission’s EEO rules were promulgated, struck down by the Court of Appeals, rewritten, readopted and struck down again. Last winter, we commenced a proceeding to put in place new, and I hope effective and sustainable, EEO rules.

While we work to put these rules in place, we still have a long way to go and a lot of working and pushing and shoving to make it happen. We’re a long way from equal opportunity for minority groups, a long way from equal opportunity for women, a long way from understanding that America’s strength *is* its diversity. Diversity is not a problem for an industry or a country to overcome – it is an opportunity to be taken advantage of. America will succeed in the Twenty first century not in spite of our diversity, but *because* of our diversity. It’s our special strength, our leg up on the rest of the world. But there is still too much caution in the industry and even at the Commission, to be frank -- skittishness about getting too close to the boundaries that the court established in striking down the last set of EEO rules. We can do better. We can push the envelope farther and still be within the safe harbor of legal and judicial boundaries. The Constitution has brought us a long way in civil rights and equal opportunity in the past half century, and I just don’t believe it’s out of gas yet. There’s a bottom line here, and that bottom line must be to put in place strong and effective equal employment

opportunity rules. Such rules are, to me, an essential part of broadcasters' obligation -- every broadcaster's obligation --to serve the public interest.

We need strong rules to pry open and keep open the doors of opportunity that advanced communications are unlocking. Communications technologies are remaking our world, and there is no doubt in my mind that just about everything we do is going to be transformed by communications technologies in this new century. How we work, how we care for ourselves, how we play, even how we govern ourselves, perhaps even how we worship, are going to be different in the Twenty first century. While many of the so-called analysts and experts are still mired in depression about anything even remotely related to communications, I think it's an eminently safe bet that telecom and communications generally will soon be back at the forefront of those forces propelling our economy forward and transforming people's lives. Those who have access to advanced communications like broadband in this new century will win. Those who don't will lose. For my part, I don't think it exaggerates a bit to characterize access to modern communications in this modern age as a civil right. But civil rights always have to be won, don't they? Herein, perhaps, is our next great challenge.

Most of us here today understand that we are nowhere near the objective of equal opportunity in communications today -- not that we've reached that happy summit in too many other areas of our national life. Just two years ago, a FCC-commissioned study by the Ivy Group documented what many of you already knew -- that minorities and women have faced pervasive discrimination in the media industry since its beginnings. The study

found that government actions and inaction, including the loosening of the ownership caps that I will talk about next, made the barriers to advancement nearly insurmountable for small, minority- and women-owned businesses attempting to thrive, or even to enter, the broadcast industry. A more recent study from the Annenberg Public Policy Center found little change in the glass ceiling that denies women positions of industry leadership. The results of the study, noted my friend and former FCC Commissioner Susan Ness, are “appalling.” I’ve heard bad news in my conversations with numerous African American broadcasters – that even though some of them have done pretty well in this industry, they didn’t think they could repeat that success the way things are going, and particularly in a more highly consolidated industry environment.

This is not an area in wherein we can afford to be timid, because there is nothing less than people’s civil rights at stake. Too much blood, sweat, toil and tears -- some of it shed by folks in this room today -- have gone into that long crusade to let us step back now or to bend to the counsels of caution.

So keep pushing, because decision-time draws closer and, as the old saying goes, decisions without you are usually decisions against you. The Commission needs to keep hearing from you regularly, constantly, early and often to push us toward a decent and effective set of EEO rules. Come visit with my colleagues and me because we could be voting on a new set of rules before the end of this year.

Also, I want to thank so many people gathered here in this church for the insight and the help you gave me in pushing for the Equal Employment Opportunity *en banc* hearing that we held at the Commission on June 24. That hearing did help focus Commission attention, and I hope industry's too, on the important issues of equal opportunity in the broadcast media. But we need to keep in mind that a hearing is only one step toward crafting a successful EEO program.

OWNERSHIP

There is another challenge before the Commission, fraught with significance for our economy, our media industries, our people, our values and, yes, for our ethics. Two weeks ago the Commission commenced a far-reaching review of all our media ownership rules. This was done in the context of the Congressionally mandated biennial review of FCC ownership rules, and also as a result of some occasionally curious court decisions mandating further review of these rules. But a lot more is at stake here than just satisfying a requirement for periodic review of an industry or even satisfying the demands of a particular court. At stake is how this industry is going to look in the next generation and beyond. At stake are core values of localism, diversity, competition and maintaining the multiplicity of voices and choices that undergird our precious marketplace of ideas and that sustain American democracy. At stake, as Dr. Parker's life work emphasizes again and again, is equal opportunity writ large – the opportunity to hear and be heard; the opportunity to make this country as open and diverse and creative as it can possibly be; and the opportunity for jobs, career advancement, promotion and ownership in our media industries.

I'm frankly concerned about consolidation in the media, concerned that we are on the verge of dramatically altering our nation's media landscape without the kind of national dialogue and debate these issues so clearly merit. The Nineties brought new rules permitting increased consolidation in the broadcasting industry, on the premise that broadcasters needed more flexibility in order to compete effectively. These rules paved the way for tremendous consolidation in the industry -- going far beyond, I think, what anyone expected at the time. In radio, many stations are now part of conglomerates owning dozens, even hundreds and more, stations all across the country. More and more of their programming originates outside the station's studio. These changes create efficiencies that allow broadcast media companies to operate more profitably and on a scale unimaginable just a few years ago. They may even have kept some stations in business, allowing them to remain on the air when they otherwise might have gone dark. But they also raise profound questions of public policy. How far should such combinations be allowed to go? What is their impact on localism, diversity and the availability of choices to consumers? Do they generally, just occasionally or almost never serve the interests of the citizenry? How do we judge these things?

We all realize that the world has changed. That bigness is not necessarily badness. That we live in a global economy where the pressures of competition are extreme. We cannot just turn the clock back to some simpler past which, truth be told, never existed in the first place. So mergers and acquisitions are not inherently bad. That being said, however, the American people have always harbored a deep distrust of

excessive industrial consolidation, and they have always posted sentinels at the gate to guard against it. This skepticism persists. As I talk to Members of Congress, I hear widespread, and surprisingly bipartisan, concern about consolidation. There is concern about too much economic power. And there is concern that diversity in the marketplace of ideas is threatened.

So it strikes me as bedrock that our review of proposed consolidations must venture beyond economic efficiencies if we are to ensure that combinations serve the public interest. I believe that each proposed combination needs to be looked at on its own merits within its own individual set of circumstances. I also believe that the public interest test must be rigorously applied to each proposed transaction, and this is what I have attempted to do in my first year at the Commission. With this approach, I have voted to approve some merger agreements and to deny others. I would add that these are especially critical times for this whole issue of industry consolidation because an economy in recession usually gives rise to more voices advocating consolidation in the name of economic recovery. I'm hearing these voices every day. I'll bet you are, too. Last year there were over 330 such consolidations, to the tune of more than \$110 billion. Adding fuel to the fire is the current deregulatory climate that is increasingly obvious to most of us in Washington. Some of those analysts I talked about earlier have already concluded – prematurely, I may add – that the ownership caps and limits are history.

But it is all up for grabs now. Next Spring, Chairman Powell tells us, he will call the vote on these rules – deciding whether to keep them, modify them or scrap them

altogether. Talk about important decisions – there is the potential here to remake our entire media landscape, for better or for worse, for a long, long time to come. The stakes are incredibly enormous. All those qualities I mentioned earlier -- localism, diversity, competition, voices and choices -- all of them ride on the outcome.

We need to get this right. In figuring out where to go, we first need to understand where we are. What has consolidation meant in specific markets? Are there more or fewer real choices, more or less real diversity, now than six or 10 or 15 years ago? Has localism endured and prospered? Is the public interest being served? Answering such questions requires more than just personal impressions or ideologies about government regulation or deregulation. It demands detailed information on current realities in specific media markets. It demands some far-ranging and not inexpensive economic and market structure surveys. It demands focused study of consumer consumption habits. The list goes on, but in a matter of such importance as this, we absolutely must have all the detailed data and granular evidence and studied analysis that we need in order to make an informed decision and then to make certain our decisions can withstand court scrutiny and, more importantly, the scrutiny of the American people.

I am encouraged that Chairman Powell formed a Media Ownership Task Force to study numerous ramifications of this issue. But it's a lot to study and it requires considerable resources of labor and money and time. I hope this Task Force will have the resources of labor and money and time that it needs to conduct studies that must be both broad and deep. Then I would hope the Task Force, or even better the Commission,

would go out and hold hearings and speak with as many stakeholders as we can convene, and consider – really consider – their input. The jury is still out on whether we will do all this. I'll tell you one thing. If we don't have this kind of input and data and analysis, I would be reluctant to see the roll called. These issues are just too important for us to consider proceeding without a major data-gathering and analytical effort. I expect no less. I believe most Members of Congress expect no less. The courts expect no less.

The Task Force, and ultimately the Commission, are going to need a lot of help in this endeavor. All of you can help by giving us the best and most comprehensive responses you can possibly put together to the ownership rules review we commenced two weeks ago and to the upcoming Commission studies on various aspects of ownership that will be released throughout the fall. The decisions we make on these issues are going to affect you where you live, be you businessperson, community leader, advocate, or just plain consumer. We need your thoughts not just on the overall economic effects of consolidation in the media, but also on its social, cultural, political and diversity effects, too.

I keep going back to what is at stake. Suppose for a moment that the Commission votes to remove or significantly modify the ownership limits and suppose it turns out to be a mistake -- how would we ever put that genie back in the bottle? The answer is that we could not. That's why we need -- truly *need* -- a national dialogue on the issue. We need it in Congress, at the Commission, among concerned industries, and all across America with as many stakeholders as possible taking part. In my book, *every* American

is a stakeholder in the great communications revolution of our time. Some just don't realize it. I was struck to read a poll recently that a majority of people didn't realize the airwaves were public property. They belong to the American people. Maybe the fact that this is not more widely known derives from too much talk by the analysts, by industry and even by the media that spectrum is something that should be traded like pork bellies on the commodity exchanges. I suspect that more people will get involved when they realize they really *are* stakeholders. There is already some evidence they are starting to get interested. A recent survey by the Future of Music Coalition found that eight of every ten people surveyed favor action – up to and including Congressional action – to protect or expand the number of independently-owned local stations.

If we can get the media itself to begin covering these ownership issues, I think we can spark the kind of dialogue the country needs. That won't be easy. Some very important media enterprises have financial interests riding on the outcome of the ownership proceedings. The very institutions we rely on as a forum for this debate are the very institutions most affected by its outcome. The media are at pains to assure us their news gathering operations are independent of their corporate interests. Here is an excellent opportunity to test that proposition. I hope they will.

But I want to go beyond just “hoping.” Today I am challenging our media industries to take up this issue, highlight it, give it the attention it merits, inform the debate, spark a national conversation on these issues all across this broad land of ours, and thereby discharge an important public interest obligation. I don't think this is

something that would simply be “nice” to do. I think it is something incumbent and pressing and urgent for the media to do. Some might argue that ethics are not a part of the debate itself; and we can argue that another day, but I don’t see how anyone can contest the proposition that ethics compels at least holding the debate.

PUBLIC INTEREST OBLIGATIONS OF DTV

There is one other area that I think cries out for our attention this year, beginning right now. It concerns the public interest obligations of digital television broadcasters.

Those of you who know me know that I put a lot of stock in the public interest standard when I look at all the matters coming before us for decision. I’m going to spare you my public interest speech today, in the interests of time, but I think the standard is important not just because I find it personally appealing. It is important because it permeates the very legislation under which we operate. We did a quick count and found that the term “public interest” appears 112 times in the Communications Act. So it’s not a concept that was slipped in during dark of night by some power-grabbing regulator gone wild; it is instead the cornerstone of the law of the land.

I believe this hallowed old concept needs to be dusted off to deal with some of the central challenges of digital television. We appear -- industry and government both -- to be getting, at long last, more serious about making the transition to digital TV actually happen. We *should* make it happen. DTV holds the promise of reinventing free, over-the-air television by providing consumers new and valuable services and offering

broadcasters new and valuable business opportunities. High definition programming, multicasting and datacasting will literally transform the television experience and dramatically alter the way consumers use their receivers. The potentials are enormous and I believe the rewards, for everyone, can be enormous, too.

The transition still has a long ways to go, but there does seem to be some movement now with new broadcaster and cable commitments to digital programming; with last month's Commission action requiring a phase-in of digital television tuners; and, hopefully, with action soon on the set-top boxes issue. We still have to resolve must-carry, the definition of "primary video" and "program-related" and so on, but my sense is we're moving faster now than we were a year ago. Part of the credit goes to Congress, where Senate and House leadership have made it clear for one and all to understand that Congress is dead serious about moving beyond the blame game and into getting this job done. And part of the credit goes to Chairman Powell for his leadership in recent months to encourage the many players involved in the transition to step up to the plate, put the blame-game behind, and get the job done.

But something is missing. Here is my concern. Amidst all the many conversations about tuners and boxes and antennas and signal replication and all the rest, there exists a great big digital gap: how is digital television going to serve the public interest? What obligations do broadcasters have as they deploy hundreds of new channels over the next decade? How is DTV going to enhance the public interest and advance the American people? It's another great debate that we're not having.

There are so many questions that need answers. What must a broadcaster do to discharge his or her obligations in light of broadcasting not just one, but five or six signals? If a station carries programming that serves the needs of the community on one of its multicast channels, has it met its obligation to serve the needs of its local community even if other multicast channels carry no such programming? Can a station carry its weekly three hours of children's programming exclusively on one multicast channel? What if it carries a total of three hours for each multicast channel, but none of it on the primary channel? How do the statutory political broadcasting rules apply in a multicast environment? What are the implications for cable with its digital capacity and its responsibilities in carrying broadcast programming? The list goes on. And going beyond the specific questions, how do we use this promising technology for the greater benefit and the greater opportunity of our people – *all* of our people?

We actually started having a discussion, and a pretty good one at that, on digital television and the public interest a few years ago, but it got derailed. Congress established the statutory framework for the transition to digital television in the 1996 Act, making it clear that public interest obligations would continue for broadcasters in the new digital world. In March 1997, President Clinton ordered the creation of an Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters, comprised of commercial and noncommercial broadcasters, producers, academics, representatives of public interest organizations, and the advertising community. In December 1998, the Advisory Committee submitted its report. The report contained ten

separate recommendations on public interest obligations that digital television broadcasters could assume. These included enhanced disclosure of broadcasters' public interest activities, a voluntary code of broadcaster conduct, improving education through the enhanced capacity of digital TV, encouraging diversity, and developing a set of minimum public interest requirements for digital broadcasters, such as significantly more public service announcements.

The Commission issued a formal Notice of Inquiry in December 1999, followed by two Notices of Proposed Rulemaking the following year. One of the Notices proposed that we adopt rules regarding the disclosure of broadcaster activities in the public interest, essentially putting the contents of the public file on the Internet to make it more accessible to viewers. The Second Notice proposed clarifying broadcaster obligations under the Children's Television Act and related Commission guidelines in a digital television environment.

And there, my friends, the matter rests. The issue has seemingly gotten lost. As we finally begin to make progress on the mechanics of the digital transition, it is time to call the public interest issue forward and accord it the high priority it deserves, and must have, if DTV is to serve the interests of the American people. I want you to think about it, too, and give us the benefit of your thoughts on how, together, we can make digital television the boon it can be for all our citizens, and particularly our children.

Take the pending proceeding on disclosing the public files of stations on the Internet. The public file requirement was designed to allow broadcasters to be accountable to their communities. Doesn't the advent of the Internet change the stations' ethical – if not yet their legal obligations – to put this information on a web site where it is accessible to the larger community?

And in the pending proceeding on children's television, the Commission asks how the enhanced capabilities of digital technology can be used to better serve our children. Rules or no rules, wouldn't we all be better off if stations were thinking now about how to better serve our children? Isn't this what ethics in communications is about?

While I call on the media and call upon you to do your part, I also call upon the Commission to do our part. The two pending proceedings should be reactivated and made priority proceedings and brought to conclusion. They are entitled to every bit as much attention as that being devoted to digital tuners and set-top boxes. At the same time, the Commission should move forward to answer the critical public interest questions raised by the Advisory Committee Report and by others in the aftermath of that Report. We need to determine what *additional* proceedings on DTV's public interest obligations might be appropriate.

CONCLUSION

Since the time several months ago when I was asked to give this address, the issues of ethics in communications, ethics in business and ethics in government have

moved from the back pages to the front page. Business schools are dusting off their ethics curricula. Corporations are establishing or articulating new standards for their executives. Accounting standards whose only reason for being was to cut corners and defraud consumers and the investing public alike are, we hope, being eradicated. Obscene severance payments in the tens of millions of dollars and retirement perks replete with corporate jets and guaranteed years of wine and roses are coming in for the public ridicule they so richly deserve. And government is looking anew at its obligations. Hopefully each of us is using the occasion to look inward and to secure our own ethical base.

Challenge brings opportunity, and the recent revelations of ethical challenge bring a national opportunity for ethical renewal. In a recent issue of *The Washingtonian*, former National Security Advisor and long-time Washington observer Zbigniew Brzezinski argued that a society's well-being is jeopardized without a widely shared and clearly defined ethical compass. When that compass is blurred, he said, we "have a situation of ambiguity in which poor ethics push out good ethics." What we need in order to build a healthy society, Brzezinski concluded, is "some public discussion of what is appropriate."

Bull's eye! "...some public discussion of what it appropriate." I may be from the old school, but I still hold fast to the idea that the American people, if informed of the facts and given the chance to debate them, will generally arrive at right conclusions about matters affecting the public interest. In communications, now more than ever, our future

depends upon “some public discussion of what is appropriate.” Not just what is legal, mind you, although that is always critical, but what is right and in the interest of our people and our country.

None of the issues I have discussed today is easy. Such issues as media ownership and digital TV broadcaster obligations can be highly technical, convoluted and laced with every legalism imaginable. But these issues are disserved if the debate is confined to the experts and to the technicalities, because each goes so far beyond the experts and the technicalities to the public interest itself – to Ethics in Communications. You know, in one way the Commission and the industries it regulates are blessed, because we have been given a clear and unambiguous charge to protect and advance the public interest, an imperative that is not simply political or economic, but ethical, too. We don’t have to ask every morning what our lodestar is. It’s been handed to us in our very enabling statute. We already know.

Dr. Parker has known all along. He knew and knows full well the importance of the public dialogue, the necessity to guarantee the public’s right to participate in public decisions, and then putting that right to work in the public interest. Everett Parker helped win every person in this audience that right. But to fully vindicate his victory, we have to *exercise that right*, be a participant, get into these debates which will shape so fundamentally the world in which you and I and our children are going to live, and then we have to fight with everything we have to preserve and expand opportunity for every American. Everett Parker has spent his life doing exactly this. His biography is the best

“Ethics in Communications Lecture” I can imagine. It’s a validation of what a good person can do. And in it is the promise of what we all can yet become.

Thank you very much.