Hearing on "Broadcasting Ownership in the 21st Century"

United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

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Statement of Gerard J. Waldron
on behalf of the National Association of Broadcasters

Good morning and thank you for the opportunity to address the Subcommittee today. My name is Gerry Waldron. I am a partner at Covington & Burling LLP and counsel to the National Association of Broadcasters. NAB represents more than 8,000 free and local radio and television broadcasters who serve communities large and small across the country.

The FCC's broadcast ownership rules are intended to foster three long-standing policy goals: competition, localism, and diversity of voices. Yet the current rules are outdated and fail to serve any of these objectives. Congress emphasized this purpose when it instructed the FCC to conduct a quadrennial review of its broadcast ownership rules in the Telecommunications Act of 1996. The FCC has failed to live up to its statutory obligation, and as a result, broadcasters and the local communities they are tasked to serve suffer.

My remarks today focus on three key points. ***First***, the video industry today has changed dramatically this decade—even over the past twelve months—such that there has never been a better time to be a consumer of video programming. The level of *competition* for viewers ("eyeballs") is at an all-time high with new competitors such as Apple and Sony looking to take on "established" online video providers such as Netflix and Hulu, who of course for several years have been challenging traditional cable and broadcast channels. Against, this backdrop, the FCC's broadcast ownership rules—which presume that broadcasters compete only against one another for both advertising dollars and eyeballs—are not only out of place, they stifle broadcasters' ability to compete on a level playing field with the rest of the video marketplace and thus fail to serve the public interest.

Second, as a result, while the FCC's rules should be designed to promote *localism,* they have had the opposite effect. A healthy, vibrant broadcast industry serves the public interest through locally-focused news, sports, public affairs programming and emergency services. No other industry has the responsibility—and most importantly, the ability or incentive—to serve the needs of the public in communities across the nation. Yet the broadcast ownership rules act to inhibit broadcasters' ability to serve this basic responsibility by limiting investment and synergies that could otherwise fuel locally-focused programming.

<u>*Third*</u>, the record is clear that the current rules have failed to enable minority ownership in broadcast television, and yet support for these rules is sometimes justified on *diversity* grounds. NAB supports the goal of diversity among broadcast station owners, and we recognize that the broadcast industry has a great deal of room for improvement in this area. However, ownership rules that are out of step with today's competitive reality only suffocate smaller broadcasters and limit new entrants.

The Current Ownership Rules Inhibit Broadcasters' Ability To Compete In An Otherwise Vibrant Video Marketplace

The current broadcast ownership rules do not serve the public interest because they are out of touch with the reality of the current media marketplace. These days, "watching TV" frequently does not mean watching a television set; consumers are increasingly likely to turn instead to their laptops or tablets. Millennials do not necessarily watch channels; they consume programs wherever they may be and whenever they want. They receive those programs frequently not through a cable or satellite service, or through antennas alone (although that number is on the upswing); they create their own content packages through subscriptions to services such as Amazon Instant Video, Hulu, and Netflix. And companies like DISH, CBS, and HBO are responding to consumers' changing demands with new offerings such as Sling TV, CBS All-Access, and HBO Now. The reality is that the risk of a powerful broadcast owner that drove the creation of the broadcast ownership rules in the 1970s is not just unlikely, it is almost non-existent. The media landscape is simply too diverse and evolving too quickly, both with regard to content creation and content distribution, to justify the current rules.

In fact, the current FCC rules distort broadcast competition in this new media landscape. They limit broadcasters' ability to respond to market forces, while cable, satellite and Internet-based media outlets without comparable restrictions proliferate and take away both audience share and advertising revenues from traditional broadcasters. The reality is that today, broadcasters' main competition for advertising dollars comes from the cable industry, and increasingly from the Internet, yet the broadcast ownership rules have not adapted to account for this progressively more competitive playing field.

The television duopoly rule, for example, which prohibits common ownership of two television stations in many markets, assumes that television broadcasters compete against only other television broadcasters. *That assumption is demonstrably false.* One need only look at the ever-growing presence of cable "interconnects," which sell local advertising for placement across hundreds of cable programs distributed locally, to understand that there is real and direct competition between broadcast and cable channels. And while the FCC has effectively prohibited even two broadcast TV stations from engaging in the joint sale of advertising, the largest pay-tv companies in the country have merged (AT&T/DirecTV) or are merging (Charter/TWC), and these companies along with other cable companies, satellite TV companies, and the telcos, have joined forces to create a single interconnected platform for local and national TV advertisers. That is not some mythical future: that conglomeration of MVPDs to jointly sell local advertising spots exists today.

To illustrate: Cable operators alone earned over $1.7 billion in local ad revenues in the Top 10 markets in 2012. That equals the same revenue generated by three broadcast TV stations in each of those markets. A broadcaster in a small California market (Chico, DMA #132) estimates that the cable interconnect there takes around $3 to $4 million in local advertising that formerly would likely have gone to local TV stations. I bring this information to the Committee's attention not to complain about competition, but rather to underscore that the FCC's rules pretend this competition does not exist and inhibit broadcasters' ability to compete. It is advertisers and consumers who pay the price.

Similarly, the shift of local advertising to Internet-based services also presents real competition for television broadcasting, and this competition only grows as broadband expands. Industry expert BIA projects that from 2013 to 2017, online ad revenues will rise from $26.5 billion to $44.5 billion, while location-targeted mobile ad revenues will increase from $2.9 billion to $10.8 billion. With regard to local ad revenue specifically, SNL Kagan found that Internet advertising had a compound annual growth rate (CAGR) of 24.7% from 2003 to 2012, while broadcast TV ad revenue had a negative CAGR (0.1%) over that same period. And last year, online media appealed to the largest percentage of local advertisers and took the largest share of ad budget, according to a report issued by Borrell Associates. Some analysts have even declared *2015 as the year when online will finally overtake traditional local media.* Despite this massive increase in competition directly relevant to broadcast ownership considerations, the FCC continues to insist that cable and online video do not provide "meaningful" competition for ad dollars.

The public interest is best served by broadcast ownership rules that permit radio and television stations to compete effectively in the broader media landscape to the benefit of both advertisers and consumers. The FCC began its last media ownership proceeding in 2009, but nothing has come of it. Yet, in that time, the Commission has managed to work heavily on measures that benefit the cable industry, while the broadcast ownership rules have not been adapted to account for today's competitive realities.

The Current Ownership Rules Undermine Broadcasters' Uniquely Local Focus

That leads to my second point. A healthy, vibrant broadcast industry serves the public interest through locally-focused news, sports, public affairs programming and emergency services. No other industry has the responsibility—and frankly, ability or incentive—to serve the needs of the public. Broadcasters have this obligation in 210 distinct media markets, yet the broadcast ownership rules act to inhibit broadcasters' ability to serve this basic responsibility.

The cross ownership rules and television duopoly rule undermine the ability of these industries to leverage joint resources for the benefit of local communities, while competing industries—those without public interest obligations and community focus—consolidate and innovate outside of regulatory scrutiny. It is beyond question that the content distribution industry has consolidated significantly in recent years, both on the MVPD side and on the broadband side. But those industries have no incentive or ability to take any efficiency savings and invest in the needs of a community. By contrast, that is how broadcasters succeed in a market and win audience share: by investing in the community and local news, weather, sports and public affairs. So any efficiency gains for broadcasters will benefit the important goal of localism. Clearly, the broadcast industry is undergoing dramatic changes, and the competition I mentioned earlier is having a profound effect on the industry. But one truth is emerging out of this swirl: local content remains important. Local content serves communities and benefits the public. Localism is a value that is at the core of the American broadcast system, and we believe it remains vital today. One could argue that as the media landscape becomes more fractured and narrowed, local content—the kind that promotes civil discourse on matters of local importance—

actually becomes *more important*. That is why the FCC's rules are so counterproductive: they discourage investment in localism when it is needed the most.

To maintain the ability to provide quality local service, the broadcast ownership rules must permit reasonable combinations of station ownership. Broadcasters are a critical source of information and entertainment in every community across this country. One need look no further than the life-saving role that broadcasters play in times of emergency to understand the importance of a strong, vibrant broadcasting system. But it takes significant resources to provide up-to-the minute news, local and national emergency information and highly-valued entertainment programming. Stations therefore must be able to operate under policies that make sense in today's world. To compete and serve their communities successfully, broadcasters should be governed by regulations that at least account for the new and varied competitors that are all around us. Instead, broadcasters are subject to outdated ownership constraints that stifle their ability to compete with other content providers and distributors. In light of current competitive realities, the Commission must do what is required by law, and critically evaluate and update its broadcast ownership rules.

The Current Ownership Rules Fail To Promote Diversity

My last point is that the FCC's rules also do not serve the goal of promoting diversity. The record is clear that the current rules have failed to promote minority ownership in broadcast television. Additional prophylactic rules will only further suffocate the industry, preventing it from having a sustainable business model. The FCC is on the verge of making diversity even harder to achieve in the broadcast space as it recently, over vigorous dissents, proposed to take so-called "vacant" channels away from broadcasters. If adopted, this measure will eliminate a key avenue for minority broadcasters to break into the business. And, this measure will follow the broadcast incentive auction, which itself is likely to lead to a sizable portion of the existing minority broadcasters going off the air.

NAB has a deep record of supporting initiatives to promote diversity. It has long supported and advocated for a minority tax certificate, though this idea has languished. NAB also supports an exclusive filing window for an AM radio station to file for FM translators to make the AM band more desirable and an entryway into radio station ownership. In addition, the NAB Educational Foundation promotes minorities in broadcasting through ownership and management training programs. The industry is also working to better understand how it covers issues of race throughout its news and information platforms. But clearly more needs to be done, and we stand ready to work with this Committee to pursue other innovative strategies to address this significant issue.

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The FCC's failure to closely examine the evolution of the media landscape and update its broadcast ownership rules accordingly discourages investment and opportunities in broadcasting, and that undermines Congress's long-standing objectives of competition, localism and diversity. We are asking Congress for help to hold the FCC accountable for completing its review of the rules, and making the necessary changes to the benefit of both communities and consumers across the country.