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My name is Frank Wright, and I serve as president and chief executive officer of the National Religious Broadcasters (NRB), the largest association of Christian broadcasters and programmers in the world. My written testimony is supplied on behalf of the more than 1400 member organizations comprising the NRB to encourage the Federal Communications Commission to responsibly limit the concentration of ownership of media entities.

NRB believes that responsibly limiting media ownership is the best public policy for three reasons: 1) ensuring media access; 2) positively impacting programming content; and 3) preserving local control.

OVERVIEW

On June 2, 2003, the Federal Communications Commission (FCC) issued new "Broadcast Ownership Rules" related to media concentration. Among other things, these new regulations included a change in the national television ownership limit.

Prior to this rule change, no single entity could own television stations that reached more than a 35% share of U.S. (television) households. The FCC determined that 35% was too low, and raised this media ownership cap to 45%. Something of a firestorm ensued.

Citizen groups and broadcasters around the nation jumped into the fray. While a variety of issues were at stake, NRB opposed raising the cap to 45% for two reasons: content and local control. If fewer broadcasters have more power, content will diminish at a higher rate. That will, in turn, force local affiliates to ignore the wishes of their local audience in order to keep pace with the more powerful networks.

It seemed that everyone in Washington weighed-in on the FCC rule. The White House supported the change to 45%. Meanwhile, the U.S. 3rd Circuit Court of Appeals issued an emergency order that temporarily blocked the rule from taking effect.

Congress was not to be outdone. Members of Congress who opposed the change to 45% pursued three distinct legislative strategies in an effort to remand the cap to the previous 35%. Ultimately, one of those strategies proved successful. Through political wheeling and dealing,

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Congress used a spending bill to request the FCC change the media ownership cap to 39%. That bill was signed into law on January 23, 2004.

BACKGROUND

Change has been a byword in American history. Perhaps nowhere has this change been more apparent than in the realm of what we now call technology. Even 20 years ago, few people could have envisioned a nation where most homes are linked via computers to the Internet and practically every American has a cell phone, seemingly stuck to their ears. Media technologies have developed beyond people's wildest dreams, and the best is probably yet to come.

In such an environment, government regulations are viewed sometimes as an outdated dinosaur that needs to be reconfigured. The challenge is to maintain regulations that serve an appropriate purpose, while not impinging upon free speech as our Founders intended it, or stifling the creativity of future generations. Such is the duty that has been given to the Federal Communications Commission (FCC).

An example of that responsibility is the *Telecommunications Act of 1996* (PL 104-104), which determined that the FCC must review its media ownership rules every two years. This was mandated to ensure that the government regulations keep pace with the realities of competition in the industry, an attempt to keep the government current. In 2001, the FCC began a 20-month review that included a public record of more than 520,000 comments.¹ On June 2, 2003, it released the results of its review.

THE FCC CHANGES THE PLAYING FIELD

The FCC referred to its new rule as the "Broadcast Ownership Rules" or the "FCC Limits on Media Concentration." Popularly, the issues surrounding the rule came to be known as "media ownership."

The June 2nd FCC ruling on media ownership, which passed by a vote of 3-2, was extensive. For example, the Commission retained the ban on mergers among any of the top four national broadcast networks.² It changed the rules that determined how many television stations could be owned by one individual or corporation in certain markets.³ The Commission also changed the "broadcast-newspaper" and "radio-television" cross-ownership rules to allow the same entity to own a television station and a newspaper, with certain restrictions. And the FCC rule changed the national television ownership limit. This was the provision that garnered the most attention, and the provision with which NRB has been most concerned.⁴

¹ FCC News Release, *FCC Sets Limits On Media Concentration*, 2 June 2003, p. 1.

² This ban was originally adopted in 1946. Ibid, p. 2.

³ This portion of the rule was originally adopted in 1964. Ibid.

⁴ There were many other media issues covered by the June 2, 2003, FCC ruling. This paper presents only a small sampling of those issues.

Prior to June 2, 2003, no single entity could own television stations that reached more than a 35% share of U.S. (television) households.⁵ Then, as part of its most recent review of rules, the FCC determined that 35% was too low and raised this media ownership cap to 45%.

Members of Congress, broadcasters around the nation, and citizen groups jumped into the fray. One side claimed that the FCC was pandering to media interests who already owned stations that gave them more than a 35% share, and would have to divest resources if the cap were not increased. Others claimed that the FCC was opening the door to media consolidation and that true broadcasting freedom would soon end. Still others claimed that the 35% cap was a repressive regulation and the limit needed to be raised in order for the free market to work properly. So, who was right?

NRB'S PERSPECTIVE

As with many issues, there are kernels of truth on all sides. NRB is committed to free-market principles and to the economic policies that allow competition. Yet, sometimes in public policy decisions one encounters an abundance of important principles that must be weighed; then a single standard must be chosen above the rest. This is such a situation.

NRB believes that responsibly limiting media ownership is the best public policy position for three reasons: 1) ensuring media access; 2) positively impacting programming content; and 3) preserving local control.

Access

The increase of media concentration brings with it unintended consequences. One significant consequence is a reduction in access to electronic media that ultimately stifles both diversity and competition. This flows from the simple logic that fewer media entities represent fewer potential outlets for programming, and more programming content decisions are being made by a select few.

Content

It is no secret that the content of television programs has been rapidly deteriorating. Our culture seems to be decaying, in many ways, from the bottom up. Children around the nation are exposed to a litany of things that, at best, compete for their time or attention and, at worst, corrode their minds and harden their souls. Television is primary among them. The statistics revealing the vast amounts of time that children spend watching television are widely known.

Sadly, these high levels of media consumption make children vulnerable to programming that is violent, profane and often morally questionable. To add insult to injury, certain networks have a reputation for always being on the cutting edge of degradation, with explicit and excessive violence, graphic sexual content, and abundant profanity as normal programming fare. If such a

⁵ According to the FCC, the "share of U.S. TV households is calculated by adding the number of TV households in each market where the company owns a station. Regardless of the station's ratings, it is counted for all of the potential viewers in the markets. Therefore a 45% share of U.S. TV households is not equal to a 45% share of TV stations in the U.S." News Release, *FCC Sets Limits On Media Concentration*, 2 June 2003, p. 5.

network is able to own substantially larger percentages of stations, content will continue its downward spiral at a faster rate.

As religious programmers and broadcasters who are primarily concerned with spreading the Gospel of Jesus Christ, NRB members have a vested interest in promoting clean programming. Yet, one of the saddest facts of the media consolidation we have seen thus far is that the media entities that are the most consistent violators of federal indecency standards are those with the largest media platforms. Thus the media concentration issue is inevitably linked to adverse effects on programming content.

Local Control

Content, in turn, is closely linked with the principle of local control. When a local broadcaster sees a program from its affiliated parent network and believes that program is inappropriate for his viewers, the broadcaster should, in theory, be able to refuse that particular program. To date, there are still some courageous local broadcasters who pre-empt programs with a high vulgarity quotient. However, if the media ownership cap continues to rise, fewer and fewer broadcasters can literally afford to make decisions that are in the best interest of their local areas. If they want to survive, they have to go along with the wishes of the behemoth network. That not only would violate the important principle of local control, but also would ultimately diminish competition and diversity in programming – an ironic twist of events that would violate the very “free-market” reasoning that led the FCC to increase the media ownership cap to 45%.

CONGRESS ENTERS THE FRAY

So how has this issue been resolved? The White House supported the FCC Rule keeping the cap at 45%. Yet in a surprising move, the U.S. 3rd Circuit Court of Appeals issued an emergency order on September 3, 2003 (later made permanent), blocking the entire media ownership rule from taking effect. Congress, also expressed strong feelings about the FCC Rule change. Some hailed the higher limits as a symbol of trust in market forces, but those Members of Congress who wanted to keep the cap at 35% pursued three concurrent legislative strategies to stop it.

Strategy #1: Express Disapproval for the Entire FCC Rule Change

Senator Byron Dorgan (D-ND) introduced S.J.Res. 17, a Senate Resolution “disapproving the rule submitted by the Federal Communications Commission with respect to broadcast media ownership.”⁶ This resolution was originally cosponsored by Republican Senators Lott (MS), Collins (ME), Snowe (ME) and Hutchison (TX), and Democratic Senators Hollings (SC), Feingold (WI), Kerry (MA) and Wyden (OR); an eclectic mix of personalities and politics, to say the least. The resolution simply stated that the FCC rule related to broadcast media ownership should have “no force or effect.”⁷

Senate Resolution 17 was introduced on July 15, 2003, and was immediately sent to the committee that would have oversight over FCC issues – the Senate Committee on Commerce, Science and Transportation. Such resolutions often die a quiet death in committee, but this one

⁶ *S.J.Res. 17*, 15 July 2003, United States Senate, 108th Congress, First Session.

⁷ *Ibid.*

took on a life of its own. Not only did an additional 14 Senators co-sponsor it, but a “discharge petition” was circulated to boost the resolution out of committee without any hearings or a committee vote. This is a procedural maneuver that is allowed under the terms of the *1996 Congressional Review Act* (PL 104-121),⁸ a law that was created to allow Congress to overturn new federal rules.⁹ However, it is an extremely rare strategy, particularly because of its potential to alienate committee chairmen and other Members of Congress. Despite its detractors, S.J.Res. 17 garnered 35 signatures from committee members who were willing to “discharge” it from the committee.¹⁰ It was then sent to the Senate Floor where it had to be addressed.

On September 16, 2003, S.J.Res. 17 passed in the full Senate by a vote of 55-40.¹¹ Legislatively speaking, it was a shocking slap in the face to the FCC – a bold statement that the majority of the Senate opposed the recent FCC rule. And the caveat was that the S.J.Res. 17 did not deal with just a piece of the FCC rule, such as media ownership, but voiced disapproval of the *entire* 256-page ruling. This turn of events indicated to both the House of Representatives and the White House that some compromise would have to be reached.

In the House of Representatives, the same bill was introduced as H.J. Res. 72 by Representative Maurice Hinchey (D-NY). It was co-sponsored by Representatives Sanders (VT) and Markey (MA) and referred to the House Committee on Energy and Commerce where it saw no further action.

Strategy #2: Codify the Previous Media Ownership Cap

In a pre-emptive strategy, on May 9, 2003, Representative Richard Burr (R-NC) introduced H.R. 2052, the *Preservation of Localism, Program Diversity and Competition in Television Broadcast Service Act of 2003*. This legislation would, among other things, codify a national ownership cap of 35%. This legislation had 194 co-sponsors.

The Senate version of this legislation, S. 1046, was reportedly the strategy favored by Senate Commerce Committee Chairman McCain (R-AZ). Key sources report that he preferred allowing this legislation to go through the committee process, rather than the discharge petition of S.J.Res. 17. “If the Congress is unsatisfied with the result of the FCC review, it should step in to provide new direction. Simply saying, ‘You got it wrong, try again,’ in my view, is not an appropriate response,” said Senator McCain.¹²

Strategy #3: Tie the Media Ownership Cap to Funding

The third legislative strategy was, in many ways, the most creative. Each year, Congress determines how much money will be given to every Executive department, agency, bureau, etc.

⁸ Interview with the Senate Parliamentarian’s office, September 11, 2003.

⁹ Andrew Freedman, *Congressional Quarterly Bill Analysis Brief* for S.J.Res.17.

¹⁰ That is why resolutions of this nature are called a “discharge petition.”

¹¹ Recorded Vote No. 348, 16 September 2003, United States Senate, 108th Congress, First Session.

¹² Andrew Freedman, *Congressional Quarterly Bill Analysis Brief* for S.J.Res. 17.

This is called the “appropriations process.” There are 13 bills that determine all of this spending, and ideally, each bill is passed by the House, then the Senate, and finally signed by the President.

In the fall of 2003, seven of those 13 bills did not make it out of the Senate, for a variety of reasons. One of those was the Commerce/Justice/State/Judiciary (C/J/S/J) Appropriations bill (H.R. 2799), where the FCC is funded. It was passed by the House and had been passed by the Senate Appropriations Committee, but it was never passed by the full Senate, and so was ineligible for Presidential signature.

During both House and Senate committee mark-ups,¹³ amendments were added to this bill to reduce the new FCC media ownership cap from 45% to 35%. This was important because, unlike normal pieces of legislation, appropriations bills are considered “must pass” legislative vehicles. In addition, the media ownership cap was the only piece of the FCC media ownership rule change that was successfully addressed in the bill. So Congress was not changing the entire FCC rule – only picking out this one small portion to change.

This was also significant because, when the House and Senate are agreed on a specific line-item, that provision usually stays in the bill. There would be no reason to change it or eliminate it. However, when the C/J/S/J Appropriations bill was not brought to the Senate floor, the decision was made to put or “roll” this bill, along with the other six appropriations bills, into one huge bill that is commonly referred to as “the Omnibus.” This particular Omnibus bill, the Conference Report for H.R. 2673, provided \$820 billion dollars in funding.¹⁴

There was, however, one very critical change in this large Omnibus bill. The language regarding media ownership was changed, and the bill stated that the cap should be 39% – not 45%, as the FCC wanted, nor 35%, as both Houses of Congress had agreed. Speculation was that the change was a giant concession to the White House, which had worked hard for a compromise between the two positions.

Prior to the Christmas 2003 Congressional recess, the Senate could not come to agreement about the Omnibus. It was put off until late January 2004. It was brought to the Senate floor on January 20, 2004, where the Democrats launched a filibuster. Senate Majority Leader Frist was not able to get the 60 procedural votes he needed to “invoke cloture,”¹⁵ and bring a final floor vote of the Omnibus bill. Everyone held their breath and waited. Two days later, cloture was invoked by a vote of 61-32.¹⁶ Then, when the vote on final passage was taken, 65 Senators voted

¹³A “mark-up” is when a House or Senate committee meets to debate and make changes to, or “mark up,” a piece of legislation. Mark-up sessions occur before the final committee vote on a bill.

¹⁴The official title for the Omnibus is the *Consolidated Appropriations for FY 2004*, H.R. 2673.

¹⁵When thorny issues arise in the Senate, any one Senator can launch a “filibuster” against the piece of legislation in question. A filibuster is a procedural move to keep talking and hold up Senate business so that a vote cannot be taken on the legislation. According to Senate rules, the only way to stop a filibuster is by taking a special vote to stop it. This special vote, called a “cloture vote,” requires 61 votes, not the usual simple majority of 51. When a cloture vote is taken and the matter receives the necessary 61 votes, it is said that “cloture is invoked.” The filibuster is then stopped, and the Senator managing the bill on the Floor can then move to take a vote on final passage.

¹⁶Recorded Vote No. 2, 22 January 2004, 108th Congress, Second Session.

to pass the Omnibus Conference Report with 28 Senators voting against it.¹⁷ It was signed by President Bush on January 23, 2004.

CONCLUSION & RECOMMENDATIONS:

While recognizing the difficulty the Commission faces in determining the appropriate level of media concentration and recognizing that this entails a balancing of interests, NRB strongly encourages the Commission to limit media ownership to the levels approved in the legislation passed by Congress and signed by the President on January 23, 2004.

NRB believes that responsibly limiting media ownership is the best policy, because it provides greater opportunities for media access, thus supporting diversity and the beneficial effects of competition in the media marketplace. Limiting media concentration also allows local broadcasters to maintain a greater measure of control over the programming they deliver to their respective communities. This local control and accountability has the further positive effect of limiting the kind of indecent and offensive programming that has so many American families concerned.

NRB recommends that the FCC consider additional regulations that will render those media entities that are consistent violators of federal indecency standards ineligible to expand their media ownership beyond current levels. This step would send a much-needed message to those programmers and broadcasters who seem to consider their public interest obligations more of an inconvenience than a public duty.

¹⁷ Recorded Vote No. 3, 22 January 2004, 108th Congress, Second Session.