

come to this meeting, we received an e-mail containing additional changes. The gist of one of these seems to be that the Commission need not consider all of the "four factors" in all circumstances.

This is not the way to do rational, fact-based, and public interest-minded policy making. It's actually a great illustration of why administrative agencies are required to operate under the constraints of administrative process—and the problems that occur when they ignore that duty. At the end of the day, process matters. Public comment matters. Taking the time to do things right matters. A rule reached through a slipshod process, and capped by a mad rush to the finish line, will—purely on the merits—simply not pass the red face test. Not with Congress. Not with the courts. Not with the American people.

It's worth stepping back for a moment from all the detail here to look at the fundamental rationale behind today's terrible decision. Newspapers need all the help they can get, we are told. A merger with a broadcast station in the same city will give them access to a revenue stream that will let them better fulfill their newsgathering mission. At the same time, we are also assured, our rules will require "independent news judgment" (at least among consolidators outside the top 20 markets). In other words, we can have our cake and eat it too—the economic benefits of consolidation without the reduction of voices that one would ordinarily expect when two news entities combine.

But how on earth can this be? To begin with, to the extent that the two merged entities remain truly "independent," then there won't be the cost savings that were supposed to justify the merger in the first place. On the other hand, if independence merely means maintaining two organizational charts for the same newsroom, then we won't have any more reporters on the ground keeping an eye on government. Either way, we can't have our cake and eat it, too.

Also, since when do unprofitable businesses support themselves by merging with profitable ones—and then sink *more* resources into the money-losing division simply as a public service? Think about it this way. If any of us were employed by a struggling company, and we suddenly learned that a Wall Street financier had obtained control, would we (1) clap our hands with joy because we expect the new owner is going to throw a bunch of cash our way and tell us to keep on doing what we'd been doing, except more lavishly or (2) start to fear for our jobs and brace for a steady diet of cost cutting?

Here's my prediction on how it will really work. Mergers will be approved in both the top 20 and non-top-20 markets—towns big and small—because the set of exceptions we announce today have all the firmness of a bowl of Jell-O. Regardless of our supposed commitment to "independent news judgment" the two entities' newsrooms will be almost completely combined, with round after round of job cuts in order to cut costs. It's interesting to hear the few proponents of this rule bemoan the lost jobs that they say result from failing newspapers. Ask them this: in this era of consolidation in so many industries, isn't cutting jobs about the first thing a merged entity almost always does so it can show Wall Street it is really serious about cutting costs and polishing up the next quarterly report? These job losses are the *result* of consolidation. And more consolidation will mean more lost jobs. Newly-merged entities will attempt to increase their profit margins by raising advertising rates and relentless cost-cutting. Herein is the *real* economic justification for media consolidation within a single market.

The news isn't so good for other businesses in the consolidated market, either. Think about the other broadcast stations there. It's just like Wal-Mart coming to town—the existing news providers look around at the new reality and figure out pretty fast that they ought to head for the exit when it comes to producing news. Now, it may not be as stark as actually cancelling the evening news—it could just mean doing more sports or more weather or more ads during that half hour. But at the end of the day, the combined entity is going to have a huge advantage in producing news—and the other stations will make a reasonable calculation to substantially reduce their investment in the business. This is why, by the way, experts have been able to demonstrate—in the record before the FCC, using the FCC's own data—that cross ownership leads to *less* total newsgathering in a local market. And that has large and devastating

effects on the diversity and vitality of our civic dialogue.

*Let's also be careful not get too carried away with the supposed premise for all this contortionism, namely the poor state of local newspapers. The death of the traditional news business is often greatly exaggerated. The truth remains that the profit margins for the newspaper industry last year averaged around 17.8%; the figure is even higher for broadcast stations. As the head of the Newspaper Association of America put it in a Letter to the Editor of the *Washington Post* on July 2 of this year: "The reality is that newspaper companies remain solidly profitable and significant generators of free cash flow." And as Member after Member Congress has reminded us, our job is not to ensure that newspapers are profitable—which they mostly are. Our job is to protect the principles of localism, diversity and competition in our media.*

Were newspapers momentarily discombobulated by the rise of the Internet? Probably so. Are they moving now to turn threat into opportunity? Yes, and with signs of success. Far from newspapers being gobbled up by the Internet, we ought to be far more concerned with the threat of big media joining forces with big broadband providers to take the wonderful Internet we know down the same road of consolidation and control by the few that has already inflicted such heavy damage on our traditional media.

In the final analysis, the real winners today are businesses that are in many cases quite healthy, and the real losers are going to be all of us who depend on the news media to learn what's happening in our communities and to keep an eye on local government. Despite all the talk you may hear today about the threat to newspapers from the Internet and new technologies, today's *Order* actually deals with something quite old-fashioned. Powerful companies are using political muscle to sneak through rule changes that let them profit at the expense of the public interest. They are seeking to improve their economic prospects by capturing a larger percentage of the news business in communities all across the United States.

Let's get beyond the weeds of corporate jockeying and inking up our rubber stamps for a new round of media consolidation to look for a moment at what we are *not* doing today. That's the real story, I think—that the important issues of minority and female ownership and broadcast localism and how they are being short-changed by today's rush to judgment.

Minority and Female Ownership

Racial and ethnic minorities make up 33 percent of our population. They own a scant 3 percent of all full-power commercial TV stations. And that number is plummeting. Free Press recently released a study showing that during just 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.

In most places there is something approaching unanimity that this has to change. Broadcasters, citizens, Members of Congress, and every leading civil rights organization agree that the status quo is not acceptable. Each of my colleagues has recognized, I believe, that paltry levels of minority and female ownership are a reality—which makes today's decision all the more disappointing. There was a real opportunity to do something meaningful today after years of neglect, and we blew it.

It didn't have to be this way. I proposed both a process and a solution. We should have started by getting an accurate count of minority and female ownership—the one that the Congressional Research Service and the Government Accountability Office both just found that we didn't have. The fact that we don't even know how many minority and female owners there are is indicative of how low this issue is on the FCC's list of priorities. We also should have convened an independent panel proposed by

Commissioner Adelstein, and endorsed by many, that would have reviewed all of the proposals before us, prioritized them, and made recommendations for implementation. We could have completed this process in ninety days or less and then would have been ready to act.

Today's item ignores the pleas of the minority community to adopt a definition of "Eligible Entity" that could actually help their plight. Instead, the majority directs their policies at general "small businesses"—a decision that groups like Rainbow/Push and the National Association of Black Owned Broadcasters assert will do little or nothing for minority owners. Similarly, MMTC and the Diversity and Competition Supporters conclude that they would rather have no package at all than one that includes this definition. Lack of a viable definition poisons the headwaters. Should we wonder why the fish are dying downstream?

So while I can certainly support the few positive changes in this item that do not depend on the definitional issue—such as the adoption of a clear non-discrimination rule—these are overshadowed by the truly wasted opportunity to give potential minority and female owners a seat at the table they have been waiting for and have deserved for far too long. My fear now is that with cross ownership done, the attentions of this Commission will turn elsewhere.

Localism

At the same time that we have shamefully ignored the need to encourage media ownership by women and minorities, we have also witnessed a dramatic deterioration of the public interest performance of all our licensees. We have witnessed the number of statehouse and city hall reporters declining decade after decade, despite an explosion in state and local lobbying. The number of channels have indeed multiplied, but there is far less local programming and reporting being produced.

Are you interested in learning about local politics from the evening news? About 8 percent of such broadcasts contain any local political coverage at all, including races for the House of Representatives, and that was during the 30 days before the last presidential election. Interested in how TV reinforces stereotypes? Consider that the local news is four times more likely to show a mug shot during a crime story if the suspect is black rather than white.

The loss of localism impacts our music and entertainment, too. Just this morning, I had an e-mail from a musician who took a trip of several hundred miles and heard the same songs played on the car radio everywhere he traveled. Local artists, independent creative artists and small businesses are paying a frightful price in lost opportunity. Big consolidated media dampens local and regional creativity, and that begins to mess around pretty seriously with the genius of our nation.

All this is a travesty. We allow the nation's broadcasters to use half a trillion dollars of spectrum—for free. In return, we require that they serve the public interest: devoting at least some airtime for worthy programs that inform viewers, support local arts and culture, and educate our children—in other words, that aspire to something beyond just minimizing costs and maximizing revenue.

Once upon a time, the FCC actually enforced this bargain by requiring a thorough review of a licensee's performance every three years before renewing the license. But during decades of market absolutism, we pared that down to "postcard renewal," a rubber stamp every eight years with no substantive review.

To begin with, the FCC needs to reinvigorate the license-renewal process. We need to look at a station's record every three or four years. I am disappointed that the majority so cavalierly dismisses this idea. And we should be actually *looking* at this record. Did the station show original programs on local civic affairs? Did it broadcast political conventions? In an era where too many owners live thousands of miles away from the communities they allegedly serve, do these owners meet regularly with local leaders

and the public to receive feedback? Why don't we make sure that's done *before* we allow more consolidation?

In 2004, the Commission opened up a Notice of Inquiry to consider ways to improve localism by better enforcing the *quid pro quo* between the nation's broadcasters and the public. The Notice addressed many of the questions raised by earlier, dormant proceedings dating from years before. Today's Localism Notice asks more questions and tees up meritorious ideas—but again my question: why the rush to vote more consolidation now, consolidation that has been the bane of localism, and why put off systematic actions to redress the harms consolidation has inflicted?

Our FCC cart is ahead of our horse. Before allowing Big Media to get even bigger—and to start the predictable cycle of layoffs and downsizing that is the inevitable result of, indeed the economic rationale for, many types of mergers—we should be enforcing clear obligations for each and every FCC licensee.

Conclusion

Those who look for substantive action on these important issues concerning localism and minorities will look in vain, I predict, once the majority works its way on cross ownership. We are told that we cannot deal with localism and minority ownership because that would require *delay*. But these questions have been before the Commission for almost a decade—and they have been ignored year after year. These issues could have been—should have been—teed up years ago. We begged for that in 2003 when we sailed off on the calamitous rules proposed by Chairman Powell and pushed through in another mad rush to judgment. Don't tell me it can't be done. It should have been done years ago. And we had the chance again this time around. Now, because of a situation not of Commissioner Adelstein's or my making, we are accused of delaying just because we want to make things better before the majority makes them far worse. I see.

When I think about where the FCC has been and where it is today, two conclusions:

First, the consolidation we have seen so far and the decision to treat broadcasting as just another business has *not* produced a media system that does a better job serving most Americans. Quite the opposite. Rather than reviving the news business, it has led to *less* localism, *less* diversity of opinion and ownership, *less* serious political coverage, *fewer* jobs for journalists, and the list goes on.

Second, I think we have learned that the purest form of commercialism and high quality news make uneasy bedfellows. As my own hero, Franklin Delano Roosevelt, put it in a letter to Joseph Pulitzer, "I have always been firmly persuaded that our newspapers cannot be edited in the interests of the general public from the counting room." So, too, for broadcast journalism. This is not to say that good journalism is incompatible with making a profit—I believe that both interests can and must be balanced. But when TV and radio stations are no longer required by law to serve their local communities, and are owned by huge national corporations dedicated to cutting costs through economies of scale, it should be no surprise that, in essence, viewers and listeners have become the products that broadcasters sell to advertisers.

We could have been—should have been—here today lauding the best efforts of government to reverse these trends and to promote a media environment that actually strengthens American democracy rather than weakens it. Instead, we are marking not just a lost opportunity but the allowance of new rules that head media democracy in exactly the wrong direction.

I take great comfort from the conclusion of another critic of the current media system, Walter Cronkite, who said, "America is a powerful and prosperous nation. We certainly should insist upon, and can afford to sustain, a media system of which we can be proud."

Now it's up to the rest of us. The situation isn't going to repair itself. Big media is not going to repair it. This Commission is not going to repair it. But the people, their elected representatives, and attentive courts *can* repair it. Last time the Commission went down this road, the majority heard and felt the outrage of millions of citizens and Congress and then the court. *Today's decision is just as dismissive of good process as that earlier one, just as unconcerned with what the people have said, just as heedless of the advice of our oversight committees and many other Members of Congress, and just as stubborn—perhaps even more stubborn—because this time it knows, or should know, what's coming.* Last time a lot of insiders were surprised by the country's reaction. This time they should be forewarned. I hope, I really hope, that today's majority decision will be consigned to the fate it deserves and that one day in the not too distant future we can look back upon it as an aberration from which we eventually recovered. We have had a dangerous, decades-long flirtation with media consolidation. I would welcome a little romance with the public interest for a change.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
CONCUR IN PART, DISSENT IN PART**

Re: Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking.

After four and a half years, during three of which the Commission did nothing on this proceeding, today we finally adopt this *Report and Notice of Proposed Rulemaking*. Regrettably, it merely recites the issues of public concern, repackages previous Commission actions, and proffers yet another set of proposals. There are no final rules – nothing concrete to foster a better relationship between broadcast licensees and the public they are licensed to serve.

Today's item literally does nothing meaningful to promote localism. It is as if we promised to deliver a book but produced only the cover. While some may contend that this *Report and Notice* is the conclusion of the 2003 localism proceeding, in meeting the Commission's commitment to Congress and the American people, it is really only the beginning. We have not met the demand from leading members of Congress that we conclude our localism proceeding before acting on media ownership.

When the Localism Task Force was launched, we were promised "rigorous studies" and legislative recommendations. We have seen neither studies nor any recommendations to Congress. After the expenditure of over \$350,000 of taxpayer funds and valuable staff resources, the Task Force – if it still exists – owes the American people and Congress completed studies and solid recommendations on which to base immediate action by the Commission and Congress.

We heard from citizens at hearings across the country that there is a real urgency to improve the responsiveness of local broadcast stations to the needs, interests, tastes and values of local communities. Rather than a serious effort to address these concerns, the localism proceeding from its inception in 2003 appears to have been a political tactic – a means to deflect attention away from the fact that the Commission, in spite of strong public and congressional opposition, had just passed the most reckless set of media ownership rules in history. Sadly, today the Commission is paving the same road towards consolidation. This localism proceeding continues to be used as political cover for the Commission to weaken broadcast ownership rules and permit more media consolidation. Make no mistake, the only real actions we are taking today will undercut localism, diversity and competition.

I concur in part to this *Report and Notice* because – in word, if not in deed -- it represents a shift from the Commission's earlier miscalculation that market forces alone will ensure broadcasters promote quality local news, local artists, and informative local political and civic affairs programming. For over a quarter century, the Commission has outsourced its obligation to ensure that broadcasters will address the programming needs and interests of the people in their communities of license. Today, we take a small step towards correcting the Commission's past failings that produced a regulatory environment that limited citizen involvement and participation, provided broadcasters with virtually no guidance, and expected little, if any, accountability.

We learned from our localism hearings that there is far too little coverage of local issues voters need to know about in a way that prepares them to make educated decisions. We heard that "breaking news" is being replaced with "breaking gossip." In community after community, we heard from citizens that serious coverage of local and state government has diminished. In many respects, there was a virtual blackout of coverage of state and local elections. And while networks and stations say they have to slash news resources, some were offering up to one million dollars for an interview with Paris Hilton. Real investigative journalism and thoughtful reporting have given way to an "if it bleeds, it leads" mentality.

Sadly, today, quality journalism is too often sacrificed to meet quarterly earnings numbers for Wall Street. Owners of multiple media outlets lose incentive to invest in independent and competitive news operations in the same market. The Commission's own study, which was originally buried until *Senator Boxer demanded that the FCC publicly release it*, shows that locally owned TV stations provide more local news. And while the Commission has failed to complete a similar study of radio, we have heard across the country that homogenized playlists and payola are shutting out local musicians, and unmanned radio stations have replaced local DJs.

Historically, the Commission had looked for ways to promote localism in broadcasting to ensure that broadcasters were accountable and serving the public interest. Since the 1980s, however, the Commission has gutted those protections and embarked on a destructive path to treat television like "a toaster with pictures."

With the encouragement of the broadcasting industry, the Commission has systematically removed the public from meaningful points of interaction between broadcasters and the communities that they are licensed to serve. For example, broadcast stations are permitted to maintain main studios and their public files well beyond communities of license, so the public cannot effectively monitor the programming of local broadcasters. Today, few broadcasters have citizen agreements with local community organizations. Few broadcasters hold meetings with members of the community to determine the community's interests and needs. Enforceable public interest obligations that required broadcasters to maintain logs of programming that are responsive to local, civic, national or religious concerns have been decimated. And, the once-substantive license renewal process conducted by the FCC has been ratcheted down to a postcard, rubber-stamp process.

The end result is that today many stations are unattended and operated from remote locations, residents are discouraged from monitoring a station's performance, and dialogue between the station and its community is often non-existent. Simply put, the FCC has failed to protect the interests of the American people.

While few Americans are familiar with the term "localism," most understand that providing "local" service to a "local" community is the essential purpose of broadcast radio and TV. Broadcasting in America is and will always be a local medium. Many broadcasters understand that and often deliver critical service to local communities. Even today, the FCC continues to license valuable public airwaves — for free — to broadcasters, in exchange for service to local communities. Localism is, therefore, the central obligation of every broadcast licensee to air programming that is relevant and responsive to the local community's interests, tastes and needs. As this Commission moves forward in the proceeding, it is important that we remember that localism is the cornerstone of American broadcasting and the Commission has an unquestionable obligation to protect the needs and interests of local communities.

While there are no new rules established in this Notice, there are proposals worthy of adoption. I fully support the tentative conclusion in this Notice that each licensee should establish a permanent community advisory board. This approach would help broadcasters determine the local needs and interests of their communities, and should be an integral part of a final plan for addressing localism. I also support the Notice's tentative conclusion that specific procedural guidelines for processing broadcasters' license renewal applications. Assessing licensees' local programming performance would provide additional incentive for broadcasters to meet this fundamental obligation. Although I and others will once again encourage the Commission to act immediately on these proposals, one can't help but regard the prospects for quick implementation with a healthy degree of skepticism. If history is any guide, the odds are that the Commission will either neglect to finalize these proposals, or when it comes time to finalize them, they may be so diluted as to render them meaningless.

We need to put the meat in the sandwich we promised to deliver. It is high time we put this notice out for comment, but we should have actually implemented improvements to localism before we

completed the media ownership item. Now that the Commission has acted to loosen the media ownership rules, it is all the more imperative we move immediately to implement some of the useful ideas broached here and others that we learn about in the comment period. We are already too late to have done this right.

STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE

Re: Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking.

In today's cross-platform, convergent mass media environment, ownership may be an imprecise measure of the Commission's major policy goals—competition, diversity, and localism. With the explosion of online news and information, diversity of voices no longer depends solely on the number of broadcasting companies or media outlets in a certain DMA. The Internet allows residents of even the smallest towns, with perhaps only one daily newspaper, to have access to hundreds of news outlets, twenty-four hours a day. In terms of purely local news and information, the opportunities for resource-sharing and capital investment that occur when a broadcaster purchases a newspaper, in fact often lead to more local news—not less. Specifically, three of the studies commissioned by the FCC in our media ownership proceeding, which were based on actual evidence from various areas of the country, showed that cross-ownership of broadcast and newspaper results in *more* local news.

However, as public servants we hold positions of public trust, and it is our responsibility to take heed of the public interest. Over the past four years, from October 2003 to October 2007, the FCC heard from citizens across this entire country, during 6 localism hearings in which hundreds of thousands of comments were compiled. Overwhelming concern about the lack of what is generally known as “localism” was expressed. This concept of “localism” has come to mean many things to many people. Historically, the FCC sought to preserve what we believe is true “localism,” by imposing public interest obligations on broadcasters, making license renewals contingent on fulfilling these obligations, and protecting the rights of local stations to air “programming that is responsive to the needs and interests of their local communities of license.”

In addition, many local broadcasters already seek regular public input and provide substantial hours each week for local programming, ostensibly based on dialogue with their local communities. In my hometown, *The Tennessean* announced just last week that it is forming several advisory groups to help better understand the news and information needs of the local community. Some of these groups will be organized by geography and some by subject. Much of the groups' discussions will take place online, allowing advisory group members to participate more easily, at any time and any place they are available. *The Tennessean* is also convening a group of local citizens with specific expertise in areas like urban planning, accounting, and the law, to provide advice on how to broaden and deepen their investigations and reporting.

In addition, local Tennessee broadcasters have also demonstrated interest in the needs of the community. They have hosted numerous debates—most recently in our mayoral election – and local political experts have regular shows to discuss issues facing the community. As a state official, I often participated in these “open mic” sessions in order to discuss consumer protection issues such as phone scams, or to educate our citizens on new programs like the Do Not Call or Do Not Fax registries.

The FCC should encourage local broadcasters to continue these practices and require those that do not, to start. However, I also think it is important for local news outlets to establish processes that work best in their own communities, rather than being forced to implement an edict from Washington, DC.

In addition to these outreach measures broadcasters have undertaken to connect with their local community, the FCC just last month passed an order requiring that all television broadcasters make their public inspection files available online. This will allow citizens to get information about a broadcaster's community service efforts with just the click of a mouse, and will also save broadcasters time and energy

in responding to in-person requests for station information.

The FCC has also expedited the settlement window for low power FM applications and continues to resolve pending applications to further their construction and broadcasting to local communities. *This promotes a community presence which can provide daily locally produced programming at costs far below those of starting a full-power broadcasting station. I hope this will not only impact localism, but also provide opportunities for female and minority ownership.*

Despite all that broadcasters are already doing, and the new requirements we impose today, this Order should not be viewed as a final step, but a progression. The Commission is **always** seeking public input and listening to public comment regarding how local broadcasters are meeting their goals. The use of the public's airwaves comes with weighty responsibilities and I will continue to encourage the furtherance of the goals of competition, diversity, and localism.

Thank you to all those citizens in every corner of America who have voiced their opinions on how to best achieve these goals, especially those in Charlotte, San Antonio, Rapid City, Monterey, Portland, and right here in Washington, D.C., both experts and laypersons. Thank you especially to those individuals who have served on our Localism Task Force during Chairman Powell's tenure, particularly co-chairs Michele Ellison and Robert Ratcliffe. Thank you also to the Media Bureau staff for organizing our localism hearings, and for continuing to focus our attention on what has been a cornerstone of broadcast regulation for decades.

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL
CONCURRING IN PART**

Re: Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking.

I support today's report, which provides a comprehensive overview of the issues raised by commenters, and the public at our field hearings regarding how broadcasters address the needs of their local communities. In reaction to their data and opinions, today we decide to make some improvements. Specifically, in the report we commit to:

- better inform the public about our broadcast renewal process;
- encourage our Diversity Committee to work with industry trade associations to learn of emerging ownership opportunities, and to create educational conferences regarding broadcast transactions; and
- investigate technical options for potential radio applicants to find available FM spectrum.

I am pleased that we are moving forward to encourage public participation in our license renewal process, and providing opportunities for people of color and women to learn more about emerging broadcast transactions, as well as access to more FM spectrum.

I have concerns, however, about the Notice of Proposed Rulemaking. There, we tentatively conclude that broadcast licensees should convene permanent advisory boards made up of community officials and leaders to help the licensees ascertain the programming needs of the community. We also tentatively conclude that the Commission should adopt processing guidelines, such as minimum percentages to ensure that stations produce a certain amount of locally-oriented programming.

As I noted when the majority adopted the Enhanced Disclosure order at last month's agenda meeting, the Commission eliminated ascertainment requirements for television and radio stations in 1984 after a thorough examination of the broadcast market. Today, we are again heading back in time -- in the wrong direction. Vigorous competition motivates broadcasters to serve their local communities. I do not believe that government needs to, or should, foist upon local stations its preferences regarding categories of programming. We risk treading on the First Amendment rights of broadcasters with unnecessary regulation. An order reflecting these conclusions will be overturned in court.

Finally, I am also concerned about the tentative conclusion that we should grant Class A status to certain LPTV stations. While this idea may be beneficial, the conclusion is premature without closer examination. Accordingly, I concur with the NPRM section of today's item, and look forward to reviewing these issues carefully after receiving public comment.