STATEMENT OF COMMISSIONER KEVIN J. MARTIN

Re: 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, MB Docket Nos. 02-277 and 03-130 (rel. July 2, 2003).

This proceeding required each of us to make decisions that were as difficult as they were important. The media touches almost every aspect of our lives. We are dependent on the media for our news, information, and entertainment. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democratic system. I agree with many of the concerns about consolidation and preservation of diversity that have been expressed by my colleagues.

I also believe that the FCC must respond to congressional and judicial calls to update our rules for the 21st century. We are under a legal mandate to review our broadcast ownership rules and determine whether they are still "necessary" in today's marketplace. If they are not, we must repeal or modify the rules. The courts have interpreted this provision, Section 202(h) of the Telecommunications Act of 1996, as placing a substantial burden on the Commission and creating a presumption in favor of deregulation. Since 1996, the courts repeatedly have found the Commission's reasoning insufficient to justify retaining media ownership regulations. In large part, the courts' criticism focused on the Commission's failure to recognize the impact of new voices present in the current marketplace.

Particularly after the courts' specific admonitions, I believe our statutory obligation requires that we review our rules in light of the current media landscape. The media marketplace is not stagnant. Factors such as rapidly improving technology and innovation have contributed to a media environment that is continually evolving—and considerably different from the one when most of the broadcast ownership rules were first adopted.

Indeed, we have progressed far from a world in which consumers received their news and entertainment from 3 or 4 television stations, a handful of radio stations, and a local newspaper. The number of broadcast networks has doubled, and we now have cable networks that regularly rival the broadcast networks in audience share. Indeed, over 85% of households receive their video programming via satellite or cable. Consumers today can choose from hundreds of televisions stations for their news and entertainment, often including a channel devoted entirely to local news. There also are more radio stations and more local weekly newspapers. In addition, the growth and popularization of the Internet has dramatically changed how people receive and distribute information. The Internet represents a significant outlet for diverse views, as well as an important source of news and information to consumers. As a result, people today have access to more information than at any time in our history.

It is important to appreciate, however, that while the media landscape has changed significantly, the three principles our original rules were intended to promote—competition, localism, and diversity—remain critical. Fundamentally, I believe our rules must continue to promote these core goals to nourish a vibrant media marketplace that functions in the public interest. The Order we adopt today attempts to respond to the courts' admonitions and our Congressional mandate by recognizing the availability of new media outlets, evaluating their impact on competition, localism, and diversity, and modifying our rules as appropriate.

I am particularly pleased that, for the first time in 28 years, the Order we adopt today finally concludes a review of the newspaper/broadcast cross-ownership rule. Adopted in an era with little cable penetration, no local cable news channels, few broadcast stations, and no Internet, the rule was based on a market structure that bears almost no resemblance to the current environment. Indeed, because of these marketplace changes, we have revised all our other media rules at least once since the ban's adoption. As a result, newspapers have been the *only* media entities prohibited from owning a broadcast station in the markets they serve, regardless of how large the market was or how many newspapers or broadcast stations were present. For example, in the large markets, two broadcast television stations have been permitted to combine and could own up to six radio stations, as well. Yet, newspapers remained prohibited from owning even a single radio station. Today we correct this imbalance, finally giving newspapers the same opportunities other media entities enjoy in medium and large markets. In so doing, we recognize that newspaper/broadcast combinations may result in a significant increase in the production of local news and current affairs, as well as an improvement in the quality of programming provided to their communities.

I also am pleased that, where the Commission determines that existing rules should be modified, we have crafted simple, clear rules. I remain skeptical of overly complicated mathematical formulas and the uncertainty they can beget in the marketplace. I therefore appreciate my colleagues' recognition that the diversity index cannot be used in particular transactions. I commend the staff for their hard work in developing this index, and I found much of their analysis helpful in informing us of general trends in the "market" for viewpoint diversity. Accordingly, the index was used to help design simple, clear cross-ownership limits. Ultimately, I found it important to acknowledge that a concept as complex as diversity cannot be quantified with mathematical precision.

Finally, I note that this proceeding – like other large, contentious proceedings at the Commission – involved a great deal of compromise to create a majority.[1] Indeed, it is

[1] Not surprisingly, it also involved a substantial post-adoption editing process. Dozens of changes have been made to this item since this item was adopted on June 2; some are clarifying, most are clearly substantive, and a few are "bottom-line" changes. Many of these edits were intended to respond to weaknesses in reasoning and outcomes identified by the dissents. For instance, we made five separate changes to significantly narrow the exception that permits grandfathered clusters to be transferred intact, including adding a new prohibition on the granting of an option to purchase or right of first refusal; we significantly reduced the time frame a party with an LMA or JSA has to comply with our new rules; we

widely observed that the review of all these ownership rules were placed together in one proceeding intentionally to facilitate just these kinds of compromises. I am very comfortable with some of the decisions, such as those I reference above. Others, however, quite frankly give me pause. The decision regarding the national ownership cap was particularly difficult. The record contained evidence on both sides of this issue. I believe the affiliates made a compelling case as to why a national limit needs to be retained, and thus I did not support proposals to eliminate the cap altogether. I agree that a balance between the affiliates and the networks is important to maintaining localism. Yet, the networks also made persuasive arguments that a 35% cap may not be necessary—in particular, that we do not have sufficient evidence to conclude that the two networks currently reaching 40% of the country have caused actual and significant harm.

Without question, this biennial review has been among the most comprehensive and contentious undertakings the Commission has attempted in recent years. This Order endeavors to implement our statutory obligation while continuing to promote competition, localism, and diversity in the modern media marketplace.

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broadened the application of all our rules to any entity that has a "cognizable" interest in a media property; and we added discussions further justifying our top-4 restriction and the disparate treatment of UHF stations in our local and national ownership rules. We also found dramatic inconsistencies in the rules adopted June 2 regarding how we defined markets and therefore made changes to our rules such that, where possible, all markets are defined based on geography. We also broadened the application of our grandfathering provision to radio clusters. Finally, we changed whether Puerto Rico should be considered one radio market.