Remarks by FCC Commissioner Jonathan S. Adelstein
Before The Media Institute

May 20, 2003

"Big Macs and Big Media: The Decision to Supersize"

This is a great day to speak at The Media Institute. We're on the eve of the most sweeping and potentially destructive overhaul of the FCC's media rules in the history of American broadcasting. But I'm not sure we really know what we're about to unleash.

I'm fresh off the trail of media ownership hearings Commissioner Copps and I held across the country – the so-called Magical Mystery Tour. One of our participants, Ben Bagdikian, former dean of the School of Journalism at UC Berkeley, spoke before a packed audience at San Francisco's City Hall. In 1983, when the first edition of his book The Media Monopoly was released, he wrote that, "50 corporations dominated most of every mass medium." The number then dropped with each new edition – to 29 firms in 1987, 23 in 1990, 14 in 1992 down to 10 in 1997. The 2000 edition found that just six conglomerates were supplying most of America's media.

This trend will only accelerate after June 2nd. In fact, we're likely to witness a tsunami of mergers – an unprecedented wave of consolidation. When this wave recedes, we'll find far fewer media companies left standing. Some of you in this room today may be swept away by that wave. But its principal victim may be our democracy.

Lou Dobbs' Moneyline last week ran an online poll asking whether "too few corporations own too many media outlets." Now this show's audience has a high-end demographic. Yet ninety-eight percent said yes – ninety-eight percent. I wonder who the other two percent were?

I would guess that one percent were investment bankers salivating at the prospect of getting a piece of the action. After all, during the first month after the 1996 Act, more than $2 billion in radio transactions took place, and I've heard a lot more than that are in the wings today. In fact, Merrill Lynch says the "Gold Rush" has already begun. Deutsche Bank predicts that hundreds of TV stations will be sold or swapped.

And the other one percent of Moneyline viewers? They probably already work for the big media companies that hope to come out on top. That leaves about 100 percent of the general audience – the citizens whose interests the Commission is sworn to protect – opposed to today's concentration levels, let alone the more powerful media empires to come.

That fits with what I witnessed at hearings across the country. Of the hundreds of citizens I heard from, many extremely articulate, not one person stood up to say, "I want to see even more concentration in our media ownership." Not one. And that's what we see in the comments pouring in to the FCC – virtually none from the public say "please, let big media companies get bigger – I can't wait to see what they'll produce with all those economies of scale." The Free Press and the Future of Music recently surveyed about 10,000 citizen comments and found that only 11 people supported relaxing the rules – about 1/10 of one percent. Aside from these 11 people, the only other proponents for further media consolidation appear to be companies in deal-making mode or their advocates.

We heard opposition from the NRA to Tom Petty, from Barry Diller to Pearl Jam, from Norman Lear to Ted Turner. Why is this chorus so in tune? Americans instinctively hold a deep hostility to big media. It violates every tenet of a free democratic society to let a handful of powerful companies control our media.

FCC proceedings typically generate comment from a handful of affected companies and inside-the-Beltway types. But this one is radically different. Now, we're getting tens of thousands of comments weekly, which is unprecedented – and nearly all in one direction. More than 137,000 citizens have weighed in so far.

I've heard the argument, "What does public outrage matter? The FCC's got a job to do, spurred on by Congress and the courts, and we can't make these decisions by popular vote."

Let me tell you why I believe it matters. The FCC is charged by law to serve the public interest. And the public has zero interest in seeing media conglomerates grow bigger. The public knows instinctively what the FCC is supposed to do – protect them from large entities gaining too much control over critical channels of communication. A majority of five unelected bureaucrats shouldn't substitute their own judgment – or the judgment of self-interested corporate CEOs – for the protection of the American people.

Americans take this matter – the media that they watch, listen to and read every day – very personally. That became clear to me as I listened to hundreds of them express profound insights in passionate one- or two-minute statements. In a nutshell, people think further media consolidation will only accelerate trends they already find alarming. They think it will only increase sensationalism, crassness, violence, homogenization and lack of serious news coverage across the public airwaves.

Dismissing the public's views is a recipe for disaster, and it will have consequences we're already beginning to see. We have in our hands a lit match, and we're moving closer to a powder keg of public anger that may be about to explode.

Could that explain why the Commission shied away from floating specific proposals for public comment? We can predict the outcome: the public outcry would be deafening. To

borrow an image from a recent speech by the Chairman, in this case the penguins aren't just swimming, they're screeching loudly. And it's tough to sneak a smelly dead fish past a bunch of angry penguins.

People always notice what happens to their media, even if they don't always know why. Many will notice the results from relaxing the rules whether or not they complained in advance. So what kind of backlash might result if the FCC pushes this too far?

One of my neighbors stopped me this weekend and asked if I had any part in this media debate. He wanted to know if the "fix is in" for even greater consolidation. He concluded, "well, if you can't do anything to stop it, you'd better regulate the hell out of the few left standing."

One very possible backlash is that the public may someday soon demand more intrusive content regulation or a return to the prescriptive solutions of the past. Most people agree with my view that content-neutral structural regulation is highly preferable to content regulation. But if the FCC whittles away the last vestiges of structural regulation, pressure for more intrusive regulation may boil over, threatening the First Amendment values The Media Institute holds so dear.

We're already hearing a growing refrain for media reform from people upset by the content of today's programming – by the rampant bad taste, sensationalism, sex, violence and lack of positive family programming on TV; by the explicit language and homogenization on the radio dial; by the stories not being covered in the news media, particularly when the media's corporate self-interests are at stake – which we have seen in this very proceeding. People all over, not just in Minot, North Dakota, have drawn a direct link between consolidation, with its absentee ownership, and the failure to meet the needs of local communities.

So I caution those seeking further consolidation, including many of you in this room: use any increased efficiencies you may gain wisely. For if not, people might very well demand to see in license renewal proceedings or in quarterly reports more specific evidence of how owners are meeting the needs of local communities. They might try to return to a world where license renewals bring an opportunity for others to show how they would serve the public interest better. They might demand ascertainment studies or more rigid standards for broadcast decency. They might also seek to force a more balanced perspective of viewpoints on the airwaves or the labeling of corporate cross-promotions. I'm not saying I support these measures, but the public may call for more oversight if they become frustrated by consolidation.

Now, I try to remain the eternal optimist, and hold out hope, even as time fades, that extremist proposals can still be moderated. There are yet some ways of moving the match away from the powder keg. Reasoned compromise can diffuse this issue. Rather than allowing massive consolidation, we should take a conservative approach that gradually

permits additional mergers we can evaluate before completely unleashing the industry.

But hopes fade with time and with setbacks in the opposite direction. Commissioner Copps and I were refused the traditional courtesy we requested of a few more weeks time to seek common ground – and to study more thoroughly the impact of the proposals before we vote on them. And we were denied the opportunity to air the specific proposals publicly, which would have assisted us in avoiding unintended consequences and sustaining the order in court.

Despite these setbacks, the Chairman has challenged us to join in a commitment to finding solutions. So today I would like to offer some thoughts on at least some aspects of the issues raised in the proceeding.

At the outset, let me say that I cannot support any part of an order that fails to reaffirm the most basic tenet of our 70 years of American broadcast regulation: that in return for the free and exclusive use of valuable and scarce public spectrum, broadcasters have a special obligation to serve the public interest. Nor could I support an order that finds that broadcasters are just another voice in a crowd of ever-expanding and fungible media channels. And I wouldn't think that broadcasters would cozy up to this "just another voice" characterization either. For if broadcasters are no different from cable channels or web sites in the grand media scheme, what's the basis for the must carry rules and the "free" digital television channels broadcasters were awarded?

Despite the oft-repeated exhortation that technology has changed everything, a simple fact remains. No technological advances have made it possible for every person who wants to broadcast in a local community to do so. We therefore must reaffirm that the public interest is served by promoting all three of the basic principles that form the foundation of American broadcasting system: localism, diversity, and competition – not just competition alone.

First, we must consider how to hold broadcasters accountable to the public for the benefits they claim will result from consolidation. Proponents of relaxing the rules tout efficiencies as justifying newspaper-TV combinations, or TV duopolies and triopolies. So let the buyer disclose upfront what he or she commits to do with those efficiencies.

What better programming, particularly locally-originated and oriented programming, will the buyer produce? Will they hire additional reporters to investigate local news stories? What better coverage will result of local events and local artists? Will each entity retain separate editorial discretion, and will the overall editorial budget be increased? How will the owner treat complaints of stories not being covered? Will the broadcaster improve its emergency broadcasting capabilities, or invest in better technology to alert the community to dangerous conditions? Before allowing media companies to expand into traditionally-protected areas, the public should know how it will benefit them.

The FCC should then require an annual showing from the consolidated broadcaster that it met its commitments. Were efficiencies channeled into meeting the localism and diversity needs of the community, or did they go straight to the bottom line? The Commission has consistently required broadcasters seeking waivers of ownership rules to make specific, tangible representations of the benefits of consolidation. So given all the benefits claimed in this proceeding, this should be an easy showing for merging parties. And it will allow the FCC and the Congress to make more informed decisions on future levels of concentration.

Second, diversity concerns stemming from cross-ownership of a broadcast station with other media outlets like newspapers or cable should be addressed based upon a specific showing of the diverse voices available in individual local markets and the power of the proposed combination to undermine diverse viewpoints. The Supreme Court has said that "promoting the widespread dissemination of information from a multiplicity of sources" is of the highest order. So safeguarding diversity should not be subject to abstract diversity scenarios that hypothetical markets of certain sizes may engender. Given diversity's paramount position in our democracy, it shouldn't be given short shrift by rules that neither reflect the realities of available viewpoints nor the power of particular combinations.

Third, with respect to the national cap, while I clearly prefer to keep the cap at the 35% level that Congress established, in my opinion, the only other number that makes legal and policy sense is 40%, the number the market is at today. Before we increase the national cap, however, we must examine whether UHF stations should continue to retain a 50% discount and whether the increased power of the broadcast networks should be offset by safeguards for the retention of independently-produced content. Both of these issues are inextricably linked to an increase in the cap, and should be considered in further detail before any increase in the national cap takes effect.

The UHF discount was put in place to reflect technical limits of the UHF signal in reaching the full audience of a VHF station. Today, however, 85% of the population is receiving broadcast television stations through cable or DBS. If restraints on the ability to reach a full audience have eroded due to cable carriage, so too should the UHF discount. If the whole purpose of this exercise is to update our rules in light of technological developments, we cannot ignore some just because we don't like the outcome of more stringent limits.

Likewise, with the change in the network cap from 25% to 35% and the repeal of the Financial Interest and Syndication Rules and the Prime Time Access Rule, we have seen the near extinction of independent production companies and independent creative entrepreneurs. Whereas 10 years ago, 85% of the programs on television were created and produced by entities independent of the networks, today only 15% to 20% are independently produced. Does network ownership restrain competition and diversity of content production? How have the trends over the past decade affected the diversity of viewpoints from different sources and encouraged competition from small businesses?

Without the answers to questions like these in this or a further rulemaking proceeding, it's difficult to move forward with confidence that we know the full impact of our decisions. I'm not saying I know the final answers. At a minimum, though, we should have well thought out and intellectually-coherent answers to these questions before we raise the network ownership cap.

From the outset of broadcasting, policymakers have always understood that localism and diversity are inefficient. If efficiencies were all that mattered, Congress would have told the FCC to give out national or regional broadcast licenses. After all, the most efficient possible structure is for one large company, let's call it Pravda, to gather the news for everyone. American broadcasting has never been about maximizing bottom-line efficiencies over all else. Going back to 1927, the Federal Radio Commission reported to Congress that it would assign station frequencies to serve as many communities as possible. It specifically sought to prevent New York and Chicago stations from dominating the airwaves. Today our inquiry should not veer off this course.

Localism continues to be the core organizational principle of the Commission's dispersal of valuable spectrum rights. Nothing in the 1996 Act jettisoned this core principle. In fact, the 1996 Act's legislative history strongly reaffirms localism over efficiencies, saying "Localism is an expensive value. We believe it is a vitally important value, however, [and] should be preserved and enhanced."

So to avoid backlash from the public and its representatives, it will be up to many of you in the room today to prove that efficiencies gained by any relaxation of broadcast ownership rules are channeled in the direction of serving local communities and local residents.

I often hear from industry sources, "we're just giving people what they want. After all, that's our business. And as we get bigger, we just have more resources and ability to deliver a better quality product."

This is certainly true to some extent. But let me extend a warning about this. You might call it the "McDonaldization" of the American media. McDonald's spends a lot trying to give people what they want. They only put products out after expensive field testing. Every product is analyzed to satisfy the greatest number of people, even if the local community may have its own unique tastes. Don't get me wrong, I like McDonald's, and eat there sometimes. But I don't eat there every day. And even if I did, I know it wouldn't be very healthy.

The same goes for the media. People also need a balanced media diet – a diverse menu, if you will. But it's a lot harder to set up a broadcast station than a new restaurant. Any of us with a few resources can open an alternative, say a health food store, right next to a fast food restaurant. But not just anybody can open a TV or radio station. In fact, those are nearly

impossible businesses for upstarts to break into, and the barriers to entry may rise even higher after June 2nd. The spectrum can't support everyone deciding to start their own TV and radio station. Neither cable nor the Internet has changed the huge market power granted by federal license to use scarce broadcast spectrum, particularly when that license comes with the requirement to be carried on cable. If these scarce licenses weren't valuable, their price wouldn't continue to skyrocket as they have in recent years.

The scarcity of the public's airwaves is the very reason it's up to the FCC to ensure a diversity of owners and viewpoints. Fast food chains are welcome to spread as fast as the market will bear. People will always find another place to eat. But they won't always find a diversity of viewpoints in their media unless we do our jobs. And we won't be fulfilling our duties if we treat the media like we treat fast food.

Unlike typical consumer products, the media produces significant positive and negative externalities. The media is where people receive information and guidance for their democracy and their way of life. A broadcaster is still in some senses a gatekeeper – deciding which issues are important to a community, whether any particular speaker gains access to the airwaves, and how various sides of an issue are presented. So while mass-produced media may be more efficient, it may have disastrous results for our democracy.

Put simply, Big Macs and big media don't have the same repercussions for our communities. And while a person may decide Supersizing their Big Mac meal sounds good in the short term, they may find it leads to damaging results in the long term.

I'm afraid that the FCC isn't only about to further McDonaldize the media – it's about to Supersize it. Once we place our order on June 2nd, we'll all have to digest what comes our way. And the public may be about to experience a giant "Maalox moment." I, for one, hope that we take it slowly and avoid indigestion.

Thank you, and I would be happy to take a few questions or comments.