

**TESTIMONY BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
PUBLIC HEARING ON MEDIA OWNERSHIP
Los Angeles, CA
by
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Good day to you, Chairman Martin, and good day to you, Commissioners Adelstein, Copps, McDowell and Tate. Welcome to Los Angeles. It is an honor and a pleasure to have you all here today as we work together to explore the myriad issues surrounding Media Ownership.

My name is Tim Winter and I am the executive director of the Parents Television Council; and as the Agenda accurately states, I will be assuming the title of President on January 1st. Headquartered here in Los Angeles, the PTC is a non-partisan, non-profit organization dedicated to protecting children and families from graphic sex, violence and profanity in entertainment.

Looking at the other panelists here today, I feel a bit like a skunk at a picnic. Producers. Writers. Actors. Directors. Recording Artists. And the Parents Television Council?!?! What's wrong with this picture?!

The answer is: nothing is wrong with this picture. All of us are here today to express our thoughts and concerns about the effects of media consolidation, particularly as it relates to programming. Certainly we bring differing perspectives and points of view, but I believe there is far more common ground than what one might suspect.

Over the past decade, all of us here on this panel have witnessed – first-hand – the harmful effects of media consolidation on programming. My perspective is as a parent and as an advocate for more and better family programming. And from where I sit, media consolidation has dealt a devastating blow.

Los Angeles is one of the world's great communities. Indeed, it has one of the most diverse populations of any city in world, having no ethnic or racial majority and where an astounding 224 different languages are spoken. And speaking of population, if the County of Los Angeles were its own US state, it would be the 8th largest with its 10-plus million residents.

But if you were to use Los Angeles as a case study for the effects of Media Consolidation – taking the lessons learned here over the past decade and extending the likely effects across our nation and into the future – the results would show a dismal outlook for a

robust media and communications policy. Before I provide details to support this opinion, please allow me a moment first to provide some overall context.

As we sit here in this room today, the air around us is saturated with communication signals. There are low frequency waves and high frequency waves. Television signals. Radio signals. Cell phone signals. And so many other electronic signals that they would be nearly impossible to count. But regardless of their source and regardless of their intended destination, the airwaves through which those signals travel belong to all of us here in this room. The airwaves are public property. And as such, Congress gave the FCC the authority to use this public property in order to best serve the public interest. I heard Commissioner Copps testify before a Senate hearing a few years ago in Washington, and he told the Senators in that hearing room that, by his count, the term “public interest” appeared no less than 112 times in the original congressional legislation establishing the role of this Commission. But by my count, the terms “corporate interest” or “broadcaster’s return on investment” or “earnings per share” or “profit margin” never once appeared. I have publicly stated a number of times that “public interest” and “corporate interest” are not mutually exclusive. But sometimes the two do not see eye-to-eye, and when they don’t, it is the public interest which must prevail.

I am still relatively new to the field of public policy, having spent all but three of my 25 year career in the private sector, the vast majority of which was in the broadcasting and cable industry. I love the industry with every fiber of my being. It can be a good and honorable business, and it is an extremely profitable business with profit margins that are unheard of in most other industry sectors. But with immense pressure from Wall Street, it is Main Street – the public interest – which has drawn the short end of the stick with media ownership consolidation.

But let’s begin with 90-plus percent of parents who feel there is too much sex and violence on TV, half of whom allow a TV set in their child’s bedroom. But parents complain that Hollywood is out of touch with the wants and needs of the mainstream. Hollywood insists that they are only providing what the network executives want, and in fact independent producers have told us privately that they want to produce more family material but the networks won’t let them. Network executives point to the advertisers’ demand for edgy programming that will hit a desired demographic. But advertisers have told us repeatedly that if there were good, quality, family programs that they would be quick to support them with their advertising dollars.

So it seems we’re all to blame, at least at some level. But in bringing the conversation back to the purpose of this particular hearing, there is one common influence on all of us: Fewer people are making programming decisions. Even in our 500-channel universe, a hand-full of corporations control most of what we see on television.

The principle upon which I base my testimony today, and the principle upon which I implore the Commission to base its Media Ownership decisions, is simply this: Have the corporate interests behaved in a manner that truly serves the public interest, so that they

should be given the additional public trust to hold even more broadcast licenses than they do today?

My answer to this question is an emphatic NO, they have not. In fact the major media conglomerates which now hold so many broadcast licenses have not only failed to act in the public interest, they have repeatedly acted with complete and utter disregard for the public interest. Many have acted, and continue to act, in such a manner as to be denied any additional licenses. And some have acted, and continue to act, in such a manner as to warrant the suspension or revocation of their existing licenses. Remember, Congress gave you the ability to take a broadcast license away from a licensee if they did not abide by the terms of the license. And the Supreme Court has repeatedly upheld the congressional intent behind the licensing process.

Perhaps just as important, the public would support your decision to revoke a broadcast license. The PTC recently engaged the independent and highly respected research firm, Zogby International, to ask a few questions in their weekly national opinion poll. We asked the following specific question: *Do you agree or disagree that television stations that repeatedly ignore the broadcast decency law should lose their licenses to broadcast over the public airwaves?* An astounding 72% of Americans surveyed agreed that yes, the broadcaster should lose its license. Let me be absolutely precise on this point: This was a Zogby poll; a statistically significant, national omnibus poll of 1,000 Americans. We've seen special interest groups of all stripes misuse or abuse survey data to achieve a desired outcome. But this was not a PTC poll or a question asked of PTC members; nor was it targeted to any sub-section of the American public or phrased in such a way as to yield a particular answer. Even Zogby called the results "overwhelming, as more than three-fifths of people in just about every sub-group agree that these stations should lose their licenses to broadcast over public airwaves."

In its landmark *Pacifica* opinion which upheld the broadcast decency regulations, the Supreme Court used a powerful but precise term in describing the public's access to material broadcast over the public airwaves: "Uniquely pervasive." Even though that court ruling happened nearly three decades ago, the term "uniquely pervasive" still applies today. How pervasive is broadcast television? Last year, the most-watched TV programs were all on broadcast television. In fact 485 out of the top-rated 495 programs were aired on broadcast TV rather than cable. And according to Nielsen data, last week each of the top-ten programs on broadcast TV garnered more than 15 million viewers. But the highest rated program on cable had only about 5 million viewers. This shows just how pervasive the broadcast medium continues to be, even with the documented growth in cable network viewing.

So how, exactly, are the broadcast licensees behaving, and in particular, are the media conglomerates using their broadcast licenses to serve the public interest?

Since the Commission last dealt with the issue of media ownership three years ago, millions of Americans have filed formal complaints about broadcast indecency

violations. All but a handful of those complaints reflect national network television broadcasts.

In spite of the congressional authority for the FCC to enforce broadcast decency on the public airwaves between 6am and 10pm, and in spite of the Commission's clear warnings to broadcast licensees that the law would be vigorously enforced, and in spite of Supreme Court decisions affirming the constitutionality of the decency law, some of the major television networks continue to act with complete and utter disregard for the law.

When Viacom-owned CBS turned a Super Bowl broadcast – the single most-watched television program every year – into a sexually-charged striptease, the American public was shocked and outraged. CBS apologized to the public and testified before Congress that it was instituting a zero-tolerance policy for indecent broadcasts. They also entered into a consent decree with this Commission, admitting that they had aired indecent material over the public airwaves but promising not to do it again. But either their promise was hollow or their memories were short, because they aired a graphic teen sex orgy scene just a month after the consent decree was announced. And when CBS was fined by the Commission for the broadcast, they didn't do as they had agreed in their consent decree. Instead they filed lawsuits declaring their right not to abide by the terms of the broadcast licenses to which they had earlier agreed to be bound. This does not serve the public interest, and not only should this corporation be denied any additional broadcast licenses, but the Commission should determine whether they are entitled to keep the licenses they currently hold. And in Los Angeles the CBS network currently holds the broadcast licenses for channel 2, KCBS; and channel 9, KCAL. They also hold the broadcast licenses for both KFWB-980 and KNX-1070, the two most prominent all-news radio stations in Los Angeles.

Over at NBC, profanity seems to rule the day. They can't seem to wait until the 10pm hour to use words like 'sh**' and 'fu**', two of the most patently offensive words in the English language. I don't need to remind you that these words may be used by broadcasters after 10pm. But the network has filed suit to use those words at any time of the day or night. And they adhere to this position while removing references to God in their broadcast of the children's program, *Veggie Tales*. They felt God would offend viewers, but 'sh**' and 'fu**' are OK. Such complete and utter hypocrisy does not serve the public interest. And in Los Angeles, the NBC network currently holds three broadcast licenses: channel 4, KNBC; channel 22, KWHY; and channel 52, KVEA.

And then there is Fox broadcasting, the network which assembled all its creative executives into one room with former Commissioner Kathleen Abernathy so they could hear her personally present the broadcast indecency standard; yet it was also the network which aired the episode of *Keen Eddie* where a prostitute was hired to have sex with a horse. This is the same network which decried that it couldn't possibly know what was indecent, so it pixilated an animated baby's bottom; but then it aired graphic scenes of prostitutes at bachelor and bachelorette parties licking whipped cream off of each other's body parts. And when they were fined by the FCC for airing indecent material before

10pm, they too filed a lawsuit. In Los Angeles, the Fox network currently holds the broadcast licenses for channel 11, KTTV; and channel 13, KCOP.

With very few exceptions, network-owned television stations do not consider community decency standards, even though this violates the terms of its stations' broadcast licenses. This is not just a problem here in Los Angeles, it is a problem across this nation. In May of 2003 the PTC conducted a survey of approximately a hundred television stations around the United States which were owned and operated by one of the four major television networks. That survey concluded that only one station – in one instance – had ever preempted a network program based on community standards of decency, and that one instance occurred over a decade ago. Because station general managers take their orders directly from the network headquarters, it comes as no surprise that they would toe the company line on programming directives issued by their corporate superiors. During the course of that station survey, the President and General Manager of the Fox-owned affiliate in Kansas City actually wrote a letter to a PTC member admitting that the network, not the station, made the programming decisions. We have heard this same complaint privately from local broadcasters around the country who continue to be threatened by the networks that they will lose their affiliate status if they preempt network programming. When local programming decisions are prohibited by a remote corporate parent, the public interest is not served.

We have also seen instances of bad faith by TV Station duopolies, i.e. where one company owns two (or more) TV stations in the same city. In those instances, network affiliates preempted programs based on indecent content, but those very same programs aired in their entirety on the other station in the same city owned by the same parent company. This programming sleight-of-hand is nothing more than a publicity stunt, intended to garner higher ratings for the non-network-affiliated station. This does not serve the public interest; it exploits the public interest.

Broadcasters of all shapes and sizes have filed lawsuits against the Commission and its indecency rulings. They say that the Supreme Court precedent is no longer valid due to technology solutions like the v-chip. But the v-chip relies on a ratings system in order to function properly. In the aforementioned Zogby poll, we asked the public to identify the ratings content descriptors: D for suggestive dialogue, L for coarse language, S for sexual content and V for violence; but 93% of those surveyed could not do so. But beyond the public knowing what the ratings mean, the accuracy of the ratings is just as important. A recent study by this organization found that television program ratings are arbitrary, capricious and inaccurate – inaccurate in fact up to 60%-80% of the time. Ratings were not just inconsistent across the various television networks, but individual networks actually rated similar content differently. One reason why the rating system is unreliable is that the networks, themselves, rate their programs. The advertisers, who are the networks' true customers, often choose not to sponsor maturely-rated programs, so the networks face a financial conflict-of-interest to rate programs accurately. The networks' decision is clear: they rate a program inaccurately and keep the advertisers' money. Both the public and the advertisers lose. This behavior, which in my opinion borders on fraud, runs counter to broadcast licensees' requirement to serve the public interest.

Sadly, the effects of media consolidation do not end here. The media mega-conglomerates use the “must carry” and “retransmission consent” rules to force their cable network properties onto cable and satellite programming bundles. Cable and satellite executives have testified before congress that the media conglomerates, and in particular, the conglomerates holding broadcast licenses, force an all-or-nothing ultimatum on the distributors. If cable subscribers want to watch the Olympics on NBC, the cable operator is forced to carry NBC’s cable networks.

If you think media consolidation has stifled the broadcast industry, please listen carefully to the following statistics on cable. There are 48 cable networks bundled together on the expanded basic cable tier here in Los Angeles. Of those 48 cable networks, Viacom owns all or part of 8 of them; NBC owns all or part of 8; Disney owns all or part of 8; News Corp. owns all or part of 6; Liberty Media owns all or part of 6; oh, and the local cable operator, Time-Warner, owns all or part of 7 of those networks. To borrow a phrase from Henry Ford, you can have any cable programming you want, just so long as it is owned by one of the big media mega-conglomerates. This does not serve the public interest.

And when a handful of executives control both the broadcast networks and the cable networks, what do you think is the result on programming? Viacom’s infamous Super Bowl halftime show was produced by Viacom’s MTV unit, which the PTC watched for a one-week period last year and recorded 6,000 sexual references and 4,500 profanities. Over at Fox the programmers thought so much of their prostitute-horse bestiality theme that last week they gave their cable network a bestiality program: a woman satisfied her sexual desires with her dog while her husband was away, fighting in Iraq. The dog must have gotten a little rough, because we saw that it had chewed the nipple off one of her breasts, and she needed to find a plastic surgeon to fix it before her husband returned home from the war. This was not a premium channel or pay-per-view. This was on advertiser-supported basic cable. NBC is so proud of their last-place programming that they are airing reruns of it across their cable properties, including repeat broadcasts of Dateline NBC on its newest cable network called Sleuth, which it is now forcing its way onto cable systems around the country.

If the American public wants to pay a monthly fee to watch reruns of Dateline NBC, or teen-themed sex and profanity, or even a woman and her pit bull, then by-gosh the industry can offer networks to fill those needs. But they should not and must not be able to force this programming into 80-plus million homes without the consumer deciding to select and pay for that network. And for the broadcast network conglomerates to use their local broadcast licenses as a weapon to force cable and satellite operators to carry their programming is an outright affront to the public interest.

The vise-grip that the networks have on the distributors is evident from the recent entry of telephone companies into the video delivery business. There was much fanfare over the new choice that video consumers would have between a cable company and a telephone company, but neither alternative allows the consumer to select which networks

he or she wants or pays for. The anti-competitive forces facing the cable and satellite providers now appear to be firmly rooted with the telephone company alternative as well.

If some cable operators want, but are prevented, from offering consumers the ability to choose their cable network lineup; and if some satellite operators want, but are prevented, from offering consumers the ability to choose their cable network lineup; and now telephone companies want, but are prevented, from offering consumers the ability to choose their cable network lineup; then clearly there is a choke-hold on the free market. If the cable industry does not immediately move to allow consumers an ability to determine which networks they take and pay for, then we formally ask you to engage the Federal Trade Commission in an antitrust investigation over these brazen anti-competitive practices.

Chairman Martin and FCC Commissioners, obviously the news isn't all bad, and I don't mean to paint such a bleak picture. Over the course of your two sessions today, you will no doubt hear passionate and compelling testimony, questions and comments on the positive aspects – and the negative aspects – about media ownership. You will hear about the need for multiple, independent sources for news, so that differing perspectives and points of view are offered. You will hear about the immense value and need for creative and artistic expression. You will hear about the many public service efforts of radio and television stations, which will likely include sponsorship and promotion of worthy, charitable, community events. You will hear from both sides of the debate where corporate profit and public interest seem to collide. And you will hear different perspectives on the issue of broadcast decency. While I'm sure you will take each and every comment to heart when determining the Commission's media ownership policies, I urge you – urge you – not to be deceived or distracted by slick, expensive, PR-spun sound bites. Listen to everything, and base your policy decisions on what best serves the public interest.

Thank you.