

TRANSCRIPT OF FCC PANEL DISCUSSION

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Moderator: Craig Parshall, NRB Senior Vice-President and General Counsel

Participants:

FCC Commissioner Jonathan Adelstein

FCC Commissioner Deborah Tate

FCC Commissioner Robert McDowell

[note: *** indicates an inaudible comment]

PARSHALL: I hope you're all enjoying your lunch, but we are now ready to launch into our program. Let me tell you a little bit about format before I have a chance to introduce our distinguished guests today. The format will be this: we are honored to have three of the five Federal Communication Commissioners with us today and I will be introducing them individually. I have had a chance to collect questions from you. We won't be taking questions from the floor I will be regulating the question process but hopefully I will be able to incorporate some of your questions that you have given to me into some of the topics that we are talking about. We will be giving each of them, as they come up to the dais, a three minute opening statement. Now, I'm not worried about them keeping within the confines of the three minutes. My wife, as you know is a radio broadcaster, and my background is as a trial attorney. Those are the kinds of people you don't want to give unregulated periods of time to. However we have regulators here today, people who exercise regulatory authority and I am confident that they will be able to regulate themselves within the three minute that we have allotted.

First it is my distinct privilege to introduce to Commissioner Jonathan Adelstein. He is a second term FCC Commissioner. He began his first term in December 2002 and his second term in December 2004. He is a graduate of Stanford University. He has a master's degree in history and a BA in political science. He was also a teaching assistant there and later was the teaching fellow at Harvard University where he studied at the Kennedy School of Government. His work in the U.S. Senate included his work as the legislative assistant to Senator Donald Riegel, liaison to Senator Harry Reid, and a Legislative Aid to former Majority Leader Tom Daschle. He has acquitted himself in a number of areas conspicuously in terms of his particular emphasis and broadcasting worldview. He is a very vociferous proponent of the concept of public interest. He believes in media diversity. He is a proponent of localism. He is also someone who has argued for universal access of all consumers to the very highest level of telecommunication systems. Commissioner Adelstein it is a privilege. I'd ask that you come up to our dais and address us for three minutes if you would.

ADELSTEIN: Well thank you Craig. When it comes to regulation we regulate others, not ourselves. Not sure I can be counted on to stick to the three minutes. It's so good to see a lot of you we haven't seen each other for a while. We were at Nashville together, my colleague Debby Tate's home state where we really had a wonderful gathering at the Opryland Hotel and of course later we had President Bush himself come and regale us for awhile about his worldview. That was a tremendous event. I'm glad to see you in Washington as well. You really serve a very effective role as the voice of Christian broadcasters in Washington and I think your organization does a fantastic job of making sure you have a strong voice here in Washington. You've really been at the forefront of this battle to keep the electronic media open to Christian broadcasters, making sure that religious freedom is preserved, one of the great freedoms that we all cherish in this great country. You really represent the highest ethical standards in professionalism in broadcasting so it's always a pleasure to talk to all of you about these issues particularly in this age of excessive violence, sexual content and profanity. On the airwaves it's nice that there are broadcasters who are seeking to provide an uplifting message one of guidance for members of your audience. As you know, during my time at the FCC, as Craig mentioned, I have really been concerned about diversity and ownership limits and I have supported rules to promote more diverse voices on radio and TV.

Of course Christian broadcasting is one of those diverse voices that we seek to preserve. That is why I was so pleased that we were able to work together on the media ownership proceeding. I think you understood in a very profound way that religious broadcasting gives the nation alternative choice that really is contrary to the homogenization that plagues the more general public airwaves. You provide families and children with a safe place to be entertained, a safe place to know their not going to be offended, a place where the love of faith is supreme. People have a chance to have their hearts consoled it's really a special undertaking that your involved in and I think you understood more than other broadcasters that the relationship and inappropriate programming for children such as excessively sexual or violate programming and the concentration of media ownership.

A 2005 report found that 96% of the indecencies found in radio broadcasts were attributed to the top 4 biggest radio broadcasters. The rest of the country, the other eleven thousand stations, were responsible for less than 5% of those violations so you saw certainly a connection, whether it's a causal relationship there is no proof, but you be the judge. I certainly appreciate your leadership role because it's consistent with my view that we needed to set reasonable limits on media ownership to ensure access and positive programming and to promote local control and not have just a lot of national companies buying up all of these local media outlets. I also think there is a lot more the FCC needs to do to empower parents. About a couple months ago I gave a major speech to the Media Institute I went right to the heart of the industry with all the representatives of the major commercial media companies and I told them that parents are feeling inundated by the array of companies that are flooding their children's minds with inappropriate material. Too many parents fell like they are losing control. They are so frustrated by the relentless march of excessively inappropriate material that is really too commercial, too sexual, too violent or just unhealthy for their kids. I know that as a parent myself, the messages or images that children see that their parents don't want them to hear are popping up in so

many places it's hard for parents to control. We kind of feel sometimes like you have commercials that come on during otherwise family friendly programming that are inappropriate and of course the Internet is a whole other world of things being completely out of control, and kids see these unhealthy messages. We have this epidemic of childhood obesity that my colleague Commissioner Tate has done so much to focus our attention on, but look at all these unhelpful products that are being sold to kids during children's programming. We need to focus on that.

A lot of studies have shown the damaging effects of this kind of advertising on kids' food choices and there are a lot of steps we need to take. For us parents it kind of feels like a game of Wac-A Mole only the moles are jumping up faster and faster and we can't keep up with them. You get a sense of exhaustion and futility as a parent after a while. I think the Commission needs to step up and play a more effective role working with you and also helping parents to insulate their children from, not only indecent or profane programming but also violent or unhelpful content. We haven't done all that we can to promote the protection of children and the legally sustainable and constitutionally permissible manner. We have a lot of basic steps we still need to take and I think to do it we will still need and active partnership with all of you to get the word out about what it is we need to do to protect our kids. Just real quick, I know we don't have much time here, I have a big agenda that we laid out at that meeting at the media institute speech; just a few of the steps I think we could take in partnership with industry and with public interest groups: first of all we should examine existence and availability of advanced blocking technology. Senator Pryor had a bill pass by the Commerce Committee on a unanimous basis, the Child Save Viewing Act, that the FCC should launch a proceeding to examine the existence and availability of advanced blocking technologies and encouraging parents to use them. We still haven't launched that proceeding.

Another issue: we need to develop a national media literacy campaign. I think we need to update and clarify the TV ratings and content labels. Ratings and parental controls ought to be simple. We get a lot of complaints from parents that they don't know how they work or they haven't really looked at them but I think that we need to get the TV Parental Guidelines Monitoring Board to update and clarify the current rating system and content labels. Even a lot of parents who are aware of the V-Chip find the technology sometimes confusing or unhelpful. And if we can come up with a standard that is more simple we can use it across different platforms not just television but also the Internet. I think we need to rate entertainment programming, promotions and commercials. I mentioned the commercials that pop up that are inappropriate. If the broadcasters aren't going to make sure that they have appropriate content during programming that children may be watching, then it's up to the government to rate those commercials, so that parents that have a parental control on can filter out inappropriate material during times when they are watching with their family. A unified rating system is another idea I had which is a comprehensive approach that would include using the V-Chip as a basis for this more comprehensive approach. Our authority really goes to the V-Chip, but it's limited. We have to work with all of you in the industry because when it comes to cable and the Internet we don't have a lot of authority. So let's use our platform in the V-Chip to launch more broadly the idea of something that is unified across these different platforms.

One other idea is to promote third party rating systems, whether it's the Parents Television Council, or the common sense media, the rating information isn't enough for parents. If they could just write on the interactive program guide, click on their remote control and see some of the independent ratings with maybe a few more words about what this means to their kids and what might be appropriate and inappropriate. Some parents are more concerned about violence than sex; well, they can see what's in that program in more detail if we can get independent with some description of what's in there so that parents can target what their kids are watching to their own values and what they want to try to control. Also we need to finalize the ban on interactive advertising targeting kids. One way that kids get into this on the Internet is through interactive advertising. Big commercial broadcasters are looking at this as a major new portal for advertising, but children don't know the difference between advertising and programming. I just think we need to ban interactive programming that is targeted at children. I mean let it flourish in the commercial market for older people who can make the decisions themselves, but we don't want an established business model. Finally something that Commissioner Tate has talked about and is actively working on is getting a summit together with all the Commissioners and the public interest groups and others to talk about children's issues. We ought to do that. These are just a few of the ideas there are so many ideas but we need to sort of get off the dime I think and really promote this and we need your help in doing it. I appreciate you having use here today and I appreciate all you do to provide uplifting programming for America's families.

PARSHALL: Thank you Commissioner. Next is Commissioner Robert McDowell. He was appointed to the FCC in June 2006. He is a graduate of Duke University and also a graduate of the School of Law at the College of William and Mary where he got his JD degree. He was a Legislative Aid to a Member of the Virginia House of Delegates and a former partner, past partner of the law firm of Arter and Hadden. He is the past Senior VP and General Counsel of Com Tel, a national association of telecom service providers, IP providers and integrated communications companies. He has a history of being appointed to several advisory regulatory boards by two separate governors of the State of Virginia. It's our distinct privilege to invite Commissioner McDowell for his comments.

MCDOWELL: Thanks so much Craig, very kind introduction. I am honored to be here today. Thank you all for hosting us. I would like give my thanks to NRB and all of your members for all of your efforts in helping to educate the American public on the DTV transition. During the FCC's DTV blitz that was announced back in August I have been reaching out to religious broadcasters to help increase awareness and I have been really heartened by religious broadcasters diligence related to the DTV transition. I look forward to working with you and with all broadcasters in this endeavor as we all travel through out the county we were comparing notes a minute ago about all the places we are going. It's very, very exiting, it's a great opportunity to see America as well and I will talk more about that in a minute. Now serendipitously today is Constitution Day, so on September 17, 1787 the U.S. Constitution was ratified and it took until 1791 to ratify the Bill of Rights of course, and first among those rights are those embodied in the first amendment, the freedom of speech and the freedom to exercise our religious prerogatives. It is these unalienable rights that lie at the heart of your missions, as

religious broadcasters. The freedom to worship without government interference is a right that continues to set us apart from some many other societies around the globe and we are truly blessed to live in the greatest country on earth. As a result of being able to blossom under these freedoms America's media environment is more robust and competitive than ever before and you don't need me to tell you just how exciting and challenging it is for me apart of the modern day media cacophony. At time the explosion of new content appears to be overwhelming. Billions of new sources connected through that network of networks, called the Internet. Hundreds of cable channels, even more content on satellite TV and radio, mp3 players and of course thousands and thousands of radio and TV stations plus much, much more.

In fact, there is so much content out there that teenagers created a text messaging acronym to describe this flood of information, TMI, or "too much information." Religious broadcasters are at the forefront of innovation when it comes to new media most religious radio and TV stations now also operate websites and many stream programming to computers or deliver downloadable content for portable devices. And I note that the NRB Tech Lab series of seminars slated for your 2009 convention will be devoted to analysis of the latest new media models for strengthening your ministries. So in the context of this new media world, why are policy makers like us at the FCC unearthing decades old mandates to reimpose on radio an TV stations? Didn't we think that they were safely slumbering away in their crypts for all eternity? Why is the FCC considering overburdening the traditional electronic media precisely at this crucial moment in history when broadcasters face more competition now than ever before? This apparent new era of new media reregulation is troubling to me in several respects. For starters top line revenue for most broadcasters is falling I know that many small broadcasters can ill afford to shoulder the cost of obligations that were deemed obsolete years and years ago. In fact just last month I had the pleasure of traveling to North Pole, Alaska, where I spent some time with a small broadcaster the Evangelistic Alaska Missionary Fellowship, licensee of KJNP TV which kindly hosted me on one of its talk shows to discuss the upcoming DTV transition. And KJNB also operates an AM and FM radio station. It has to be the most northern religious broadcaster in the country and if not, please let me know who else there is.

I was just explaining to Frank and Craig about when we divided up some of these markets for the DTV consumer education campaign I wanted to go to Alaska very much. A little secret there it's just absolutely stunning and this was before Alaska was cool. Now, Alaska has always been cold, but now Alaska is cool. And it was just before, because the big announcement was just before I was on a plane leaving so I was delighted that the big announcement was as I was leaving, because this was an earned media campaign and I wouldn't have gotten any press at all on the DTV transition. But it was great going to North Pole, Alaska. If no one has ever been there you should go. The street lights are shaped like candy canes and Santa's house is very fun. But it's got to be the most northern religious broadcaster of any kind. I wanted to go to Barrow, Alaska but it turns out there are no full power TV stations in Barrow, only translators. But what's more impressive than being the most northern religious broadcaster is that it operates its three stations, as many of you do, almost exclusively with volunteers. Its TV station has

been digital for some time and its radio operation is moving towards digital very briskly. But I have to ask in the era of a seemingly infinite number of new media voices: why should KJNP or any other broadcaster that struggles to remain viable in the digital age be required to shoulder regulatory burdens that no longer serve their original purpose? Perhaps the case could have been made decades ago for thinking that each broadcast station should broadly serve all the content needs of all listeners and viewers in its community at some point during the broadcast day.

But even if that notion made sense back then, how could the return of old mandates like ascertainment and exhaustively categorized program reporting, ensure that consumers today that the government thinks they need to see and hear, when consumers now have so many more media options other than broadcasting? And I know that during our panel discussion we will discuss several of these troubling initiatives that the Commission has before it such as the enhanced disclosure and localism proceedings. I've tried to stay within three minutes, I am probably a little bit over, so I will wrap it up. I will talk more about it in our panel. But I will note now that these proceedings and several others seem based on the premise that broadcasters have more power today and therefore need more regulation than ever before. And I disagree with that premise. But thank you again very much for having me and a look forward to our dialogue.

PARSHALL: Well I knew that regulators were regulatory, but I didn't know they were sacrificial. Commissioner Tate has suggested that I skip her bio so she can come up and save time. Let me just say one of the greatest accolades I could give is that from the State of Tennessee, where she was involved in regulatory issues before she came to Washington, the Tennessee Supreme Court certified her to be a litigation mediator. If you can mediate and between hard-headed litigators and their angry opponent parties in that kind of hotly contested litigation, than you are somebody who really knows how to come to Washington DC and help regulate some of the problems that we see in telecommunications. It's my distinct privilege to introduce Commissioner Debora Tate.

TATE: Thank you all some much it's really, really great to be back with you all and I want to say amen to both Brother Adelstein and Brother McDowell for what they said and that's going to short circuit a lot of my remarks because I wanted to spend a lot of time on children's issues and Jonathan talked a lot about those. And then of course we are going to get more into the issues about localism and some of the other items that are on our docket before the FCC. And we certainly want to leave some time so that we can have some of this give and take with you all this afternoon. It really was great to see you all in Nashville and I am so glad that you all decided to have your convention there and of course to be with the President. It was just such a thrill and you can actually see how thrilled I was because I just got my picture from Bob, and I am so excited about it and I am just like *** jumping up and down ... so anyway, Robert covered so much of the explosive growth. When you just think about all the new words in our language: e-commerce, e-health, e-government and so much of this helps us all be more productive and safer and even healthier and even set the stage for billions of dollars in investment which right now is a pretty important thing. We've been at the forefront for the most part, I might add, of trying to level the playing field across all of these platforms in a

technology agnostic way. You know, I think that we have tried to continue down the path of deregulation rather than, as commissioner McDowell was suggesting, reregulation. So we'll talk more about that in a moment. It's really hard to imagine that there are 260 million cell phone users and that ringtones alone, ringtones are a 3 billion dollar business. I mean it's just hard to imagine how much things have changed. Jonathan mentioned and I have been out talking about this, not only all across America but really around the world, about the risks that our children do face online. So with all of these unbelievable innovations, there are also risks that we need to talk about. They are real and they are dangerous, from predators to pornography, child pornography to Cyber bullying. And these effects aren't just felt by our children, they are also felt by our economy. Being from Nashville I can never give a speech without talking about piracy and what it cost not only musicians but also many other sectors of our society which the U.S. Chamber says piracy costs our country 12.5 billion dollars. So it's something that it's not just about my neighbors who happen to be songwriters, it's really about all the business in America.

Obviously, one of the topics that Jonathan talked about was broadcast decency and obviously as you all know continued increasing coarse language, sex and violence during what used to be termed the family hour. It is amazing that children and adolescence spend from 22 to 28 hours a week on television and that is just one of there three screens. It's just frankly amazing. I wanted to share one other statistic about that and that is that 90% of programs contain some type of objectionable content. 79% of respondents parents, families you all respond that there is too much sex, violence and coarse language on television. Nothing new for any one in this room, but have you ever heard of one other national issue that almost 80% of America agrees on. I think that it's time that we need to something about it. Another issue that I have been talking about at home and abroad is Internet safety. Obviously it has absolutely changed our lives in the way we conducted business and the way we get our information. What's amazing is that when my children were growing up, I kind of thought about it as an encyclopedia on a screen and now what we really don't understand is that the virtual world is our children's very real world 24/7. 27% of kids maintain their own web page. 39% share photos and videos online much of which, you all know, is very very personal information. There are a lot of statistics out there I really don't care whether it's one in seven children or one in twenty-five that has been solicited online, I think that's one too many. And so, I think that it's time that we try to educate parents and call the industries to be part of this continuing dialogue and help us solve these problems. 5.3 million tweens, those are middle schoolers, have wireless phones and those are taking them on to the Internet.

Lastly, I just want to put in a plug for another issue that I have worked a lot on that is childhood obesity. If I stood up here today and told you that there was a disease that has been discovered that was affecting 10 million children, everyone in this room would be standing up and saying what can we do to help. And you all do help. When I talk to CEOs of major media companies I say this exact same thing. When I go to the advertisers' national conference in New York I say this same thing. If I told you that there were 10 million children you all would stand up and say what can we do. So be part of this solution and solve this problem. The *** study: I really felt a calling the night that I sat and read this study in my office. It says that this will be the first generation that will

not outlive their parents. The major cause is all of the disorders and co-morbidity that go along with obesity. Not just the obesity, but all the other diseases. And what's amazing to me is that all this advertising is going on for unhealthy food products to our children and beverages and candies or whatever and children under 8 can't understand the concept of persuasion. So why are they advertising to them? We all know, it's all about money. So I'm excited that we have all been part of a joint taskforce on childhood obesity. Vanderbilt is going to host a national forum in a few weeks and the children's advertising review unit, you may know this was set up for the food companies to pledge that they would start creating healthier foods which they are doing, and what's so important about that is the 13 companies or 14 now that have signed these pledges actually represent more than two-thirds of the total of the advertising dollars that are aimed at children. So hopefully through both of these directions the food companies and the media and advertising we will be able to make a difference. There are a lot of companies that are doing the right thing. Their not allowing their host characters anymore to be advertised for unhealthy foods. Why would they have had Cinderella advertising something unhealthy is beyond me. Many of the companies have pledged that. I say in a lot of my speeches that I truly believe it, that our children are our nation's greatest natural resource. So, thank you all again for all you are all ready doing, but I hope that you will really take the message about internet safety and childhood obesity to all of your listeners and viewers. Thank you.

PARSHALL: Thank you Commissioner. What I've tried to do is codify into a number of limited questions a wide variety of concerns that our NRB members, and broadcasters and broadcast partners, have voiced to us; and also concerns that we've seen on Capitol Hill and before the FCC as well. I'm going to try to be as fair as I can in terms of alternating the questions. Each Commissioner, I'd like to give some kind of response to these questions if they can, and try, if at all possible, to limit your answers to the questions, and to be as concise as possible. We're not talking about specific regulatory issues, we're talking about broad trends, a general broadcasting worldview of what the future may hold and some of the concerns we have here about our freedom to broadcast. So, a lot of these questions will be content-driven and control-of-content-related.

First of all, let me address the first question to you, Commissioner Adelstein. By way of background, all of us who are involved in broadcasting understand that there is a generalized public interest obligation. That is to say, when we broadcast, we must broadcast in the public interest. And you, Commissioner, have been an advocate of the concept of public interest and perhaps putting shoe leather to this concept. On the other hand, as broadcasters, we see concerns such as the current localism initiative that is currently pending before the FCC as getting into content and programming decision-making, which concerns us. Is there a risk that the more you begin defining public interest ... is there a risk that the more "*public interest*" finds its way into a set of complicated regulatory measures from the FCC, that the freedom to broadcast and freedom to make programming decisions by broadcasters will be imperiled?

ADELSTEIN: Well as you point out, the public interest has been a fundamental part of the legal underpinnings of broadcasting since the very beginning of 1927 the Radio Act, 1934 the Communications Act, there's always been a compact between broadcasters and the public that, in exchange for free use of the public airwaves, broadcasters would serve the public interest. Congress gave to the FCC broad authority to define the public interests. I don't think we have the ability to get into a lot of content under the First Amendment, it's very limited, but we have had the ability to ensure that our authority has been upheld by the court, to make sure that the community is served and the local community of license. In the United States we license broadcasters to local communities, not nationwide, as they have in other countries, particularly in Europe. The courts have made clear, in fact, that the First Amendment gives rights to the public vis-a-vie broadcasters as well as to broadcasters themselves.

In terms of the public's right to a variety of aesthetic, moral, and other types of programming which is the reason we've had our, I think, letting the market alone drive this, Commissioner Tate talked about how the market drives advertising to kids. And think about our great heroes! I was thinking about Michael Phelps when you were saying that. Michael Phelps of all the things that he could endorse with all the good will that he has, he decided to endorse Frosted Flakes. That's the market at its worst. That's where conscience is gone and money is all that matters. Now he's our great American hero, but I don't think people are fully cognizant of the fact that he's sold that out to something that's killing our kids. So what happens when the market alone dictates, where's the public interest? He has the right to do that, but there's a moral responsibility I think, for broadcasters to serve the public and not just chase the bottom line ahead of all else, and that is the compact that is ensconced in the Communications Act.

PARSHALL: Commissioner, let me just follow up with one question, you made an interesting observation about serious limitations being placed on the FCC with regard to control or regulation of content, would you differentiate control of content and control of categories of content? Some would argue that the current localism notice of proposed rulemaking and order envisions requiring that certain categories of content be implemented, so would you say that that should be treated differently? Does the FCC have more power to regulate categories of content rather than specific content ideas?

ADELSTEIN: Well *** isn't really regulating content but establishing guidelines by which the broadcaster can say whether or not they were serving certain types of content to their customers, to their viewers. It isn't saying they have to do x amount, but rather, what amount are they doing so the public has a way of quantifying and establishing how their needs are being served. Broadcasters give quarterly reports to Wall Street; they give extreme detail to their investors as to how their investment dollars are being handled. The public is also a partner and really an investor with the airwaves themselves in the broadcasting industry, so they have a right also to some type of accountability and some type of explanation as to how their airwaves are being used to promote their interests.

PARSHALL: Good, thank you Commissioner. I'll go to Commissioner McDowell and I would note the same question with this enhancement, I noticed in your concurring

opinion, and it almost read like a dissent in the localism proceeding *** ... then my impression was in fact more accurate than I believed, you had been very articulate about your concerns about the First Amendment in the localism proceeding and in fact you indicated that there would be a risk of First Amendment violation if it became an order, and that, if it became an order, that it “will be overturned in court,” so I take it you have a little bit different take and I’d like to hear your thoughts on that.

MCDOWELL: It was a dissent, it was actually the only *** making I’ve ever dissented from, I usually have a very high pain threshold for NPRM’s soliciting ideas on proposed rules/comment. But this is too much, too much for my high pain threshold, I had to dissent. I had a number of concerns, which, of course, are outlined in my dissenting statement, but to pick-up on a thread of what Commissioner Adelstein is talking about, as broadcasters, maybe unlike some industries, your product is not supposed to be kept a secret. You are busy airing that out to the public, for public view, and, in fact, you’re better off if more people watch and hear your material. So I just wanted to make sure that was clear, because there seems to be a premise there in that localism proceeding and some of these other proceedings that you’re keeping it all secret and that the government needs to know in granular detail what you’re doing. When we have a very competitive media market place and if you’re providing something that’s not compelling to the public, nobody’s going to watch or listen to you. So a way you carve out a niche (and we can talk about millions of websites on the Internet...) but the way you carve out a niche for yourself is to serve your local community license. So I think there are new pressures there.

After the ‘96 Act, as a result of the 1996 Act, of course, there were local caps, and such, that were lifted and we did see media consolidation. We saw a big buying spree and I think that that did result in some homogenization and some overly centralized command and control over local stations, but the pendulum in the past two or three years has started to swing back in the other direction. What used to be media consolidation, we’re now seeing as big media getting smaller, whether that’s Clear Channel, or Citadel, or Disney, or ***, or Time Warner, (ok we could go on and on, and use up more than my three minutes, whatever it is, I’ve already gone over). But I think we’re in a new market now differentiate that product. And, of course, religious broadcasters have an unusual and unique product; this is not commercial broadcasting. So, but to go back to the heart of your question Craig which is, are some of these proposals potentially, either explicitly or implicitly, proposals for content regulation, I think the answer is yes. If we look at *** and the way it asks for granular detail of what you’re airing out to the public in a not-so-secret fashion, and, if you look at, stitch that together with some of the concepts raised in the localism NPRM, we start to see what looks an awful lot like ascertainment. That was put to bed an long time ago, right? And back in those days, when it came to license renewal time, you might get suggestions, a call from an FCC attorney suggesting that you might want to air different kinds of content at certain hours, and that is content regulation with the quid pro quo being “you’re not going to get your license unless you do this.” So I think there is a huge First Amendment concern there. I would like to think that if it crosses that line, that it would fail in court but there’s lots of talk about *** and I’ll be quiet now...”

PARSHALL: Thank you Commissioner. Commissioner Tate, I'd ask the same question of you with this further prelude: I noticed in your statement accompanying the notice of proposed rule making the localism proceeding, you warned about the need to give broadcasters flexibility in terms of meeting local media needs and of course that was the issue in the localism proceeding, but in terms of public interest we could apply it perhaps to that issue as well. Is it necessarily two opposing forces, that of determining what is or is not localism, what is or is not public interest and flexibility, are those mutually exclusive concepts or can they peaceably abide together?

TATE: Thank you. The first thing I didn't say in my remarks was thank you all for all you're doing in DTV which leads me to the fact that overall the industry is spending a billion dollars to get the word out. I think we have an awful lot of really huge issues before us right now that we might want to work through before we reach some of these others just philosophically. Why are we entering into a certain arena to regulate? What's the problem that we are trying to fix? So, if the problem is a few errant broadcasters, then we need to deal with that. If there are complaints at the FCC about broadcasters, we need to deal with those. And the other part of my philosophy, generally, (and this goes across every issue in government,) and that is, for the most part, most of the answers aren't here in Washington, (and I'm not very popular for saying this,) but they're really found at a more local level. So it really doesn't matter what the particular issue is, if it's a health issue or a safety issue or, in this case, localism because, if you all aren't acting in the public interest, then you're not going to have a business much longer. So my philosophy is really what kind of guides me in this.

PARSHALL: Let me continue the same question but with a little different direction. I want us to exclude TV violence and indecency for the moment for the purpose of this next question. By way of background, for those of you who are broadcasters, you know that the FCC did render a report with regard to TV violence and it suggested that it is an area that could be regulated. It's fraught with definitional issues, how do you define violence and what's excessive and so forth, but in principle it may be an area that, like indecency, can be regulated by the FCC. Of course, we know that indecency has been regulated and I think the actions of the FCC in sanctioning some of these atrocious and obvious examples of indecency will find wide support and hearty support in NRB. We filled an *amicus* brief with the US Supreme Court in the pending FCC vs. FOX case on that exact issue. Those are two examples of things we say, those are objectionable, even though they're content, indecency is a certain kind of content and violence is a certain kind of content. There are certain exceptions to free speech in the First Amendment, as we well know, obscenity has long been an exception under the First Amendment. So let's exclude TV violence and indecency, let's talk about whether or not the FCC should ever consider regulating socially objection content, hate speech, personal attacks, that fall short of TV violence and indecency but the culture believes or members of Congress or members of the FCC believes are socially objectionable and bad for the culture in general. Let me start with Commissioner McDowell with this question.

MCDOWELL: Well, first of all, as the father of three young children, a 9-year old, a 7-year old, a 17-month old, these issues are very, very important to us. We have a number of rules at home, just so you know a little bit about me: no TV on school nights, we ration the amount of TV that's allowed to be watched, the computer is in a common area where we can all see who's on the computer and there's no computer access on school nights unless it's for school and we know what you're looking at, things of that nature. That's actually how I grew up (of course, without the computer part, but anyway...) so the first and last line of defense, of course, is with parents. The issue of socially objectionable content outside of violence and indecency, I think that is a noble endeavor for us to pursue. Of course, the FCC, just to reiterate, doesn't have the statutory authority to regulate that or violence, so we need to get that from Congress. Should it ever come, let's talk about that for a minute. Should Congress ever pass that, that could be years away. Industry will litigate it as they do everything we do right, so that will be a few more years away. So in the interim what can be done? And I think that both Commissioner Adelstein and Commissioner Tate have also touched on this, which is for us to all to continue to raise the awareness and continue to give parents every tool that we can possibly find to shield their kids. Not every household in America, in fact, probably 99% of households in America don't have the same rules we have in the McDowell household, but we need to start there and that's a cultural issue. These are issues that are bigger than just what goes on at the FCC. These are cultural issues regarding what's going on, or not going on, in America. So yes, I think there is plenty we can do currently without statutory authority and that really centers around raising awareness and educating parents as to what they can do today.

PARSHALL: One follow-up question, for those of us who have been up to Canada and who have been interviewed in media television radio up in Canada and as Christian public policy persons or Christian broadcasters, we know that there's a different standard up there. As a matter of fact, when Janet and I went up to be interviewed on a book we had written a number of years ago that talked about the intersection of faith and culture, we said some fairly controversial, (well not tremendously controversial,) things. We were told a list of things by a Christian broadcaster that we could not talk about. For instance, we could not criticize another religious belief system from our position as a Christian. We could say "here's what's great about Christianity", but we couldn't say "here's what's false about a certain cult or other world religion." Is it possible, Commissioner McDowell that in the noble pursuit of removing objectionable content under the guise of things like hate speech, we might see some Christian broadcasters have their rights chilled? For instance, by talking, comparatively speaking, between what the gospel provides about truth in God and what Islam might provide. Is there a risk that, if we're on that road, it might lead to some censure against Christian broadcasting?

MCDOWELL: Well you're putting your finger right on what can be perceived as the double edged sword of the First Amendment. That if we don't want, if I can *** your initial premise and go back to violence and indecency, if we want to keep that off the airways, we'll be finding out more from the court what the parameters are, and I welcome that guidance, but that might end up being a decision that we don't like as people who want to protect our kids from indecent content. I would hope that the expression of

religious views and the practice of religion and the expression of political views and as those might be intertwined by private citizens, would always be viewed by the court as core, protected speech. And so I hope that day does not come where, all the sudden, there's overly broad restrictions on what you can and cannot say contrasting your beliefs with others.

PARSHALL: Thank you, thank you Commissioner. Commissioner Tate following up with the same question, you had indicated in one of your speeches that you noted a half a million complaints had hit the FCC following Janet Jackson's wardrobe, so-called wardrobe malfunction issue, again that was indecency. I think that's one you'll have a wide agreement among our members that, in fact, it was significant in that you have those number of complaints. But what if we have a half a million complaints two or three years from now saying that some of these TV preachers are just driving us crazy; they're too extreme, we really have to moderate them? An official in England, recently talking about their hate speech law said, to the Church of England, *you have nothing to worry about as long as you're courteous in what you say, if you are, we will not prosecute you.* So there's that concern. So how do we balance what the public is demanding or may demand in a few years, and what is the black letter line that we will not cross in terms of regulation of content?

TATE: Well, I think as you all know, you know, times change and culture changes, so I don't think this is a "yes" or "no" or a "black" or "white." I think it's always kind of an evolutionary phase for all of us. We have all become much more tolerant on many issues, in a positive way, and then, unfortunately, our families, I guess, have had to tolerate other things like coarse language and sex on television more than we would probably like. But back to something that Commissioner McDowell said, yes I think that we should be enforcing the law of the land, but secondly we have to see what the specific authority is that Congress has given us and make sure we're not going beyond that. You know, we have people who file lots of complaints about lots of things and it doesn't necessarily mean that we always take action, or even take any regulatory type action. Those are issues that you look at each issue on its own merits.

PARSHALL: Commissioner Adelstein?

ADELSTEIN: Well you know the difference between the United States and the other countries you refer to (this is really working well) is the First Amendment. I mean, this is a fundamental difference, where those kind of discussions aren't even entertained in the United States about courteousness or the nature of the speech outside of very narrow boundaries that the Congress charges us with which is indecency and profanity. And, of course, they've given us leeway to actually regulate First Amendment-protected speech. We really don't have the ability to get into these issues at all and I think religious freedom is something that is explicitly enshrined in the First Amendment, is particularly protected by the First Amendment. We can't start having any government agency talk about any discussion of religion or politics on the air and do our job consistent with the First Amendment.

PARSHALL: Commissioner, during the hay-day of the fairness doctrine, a doctrine that's generally viewed by our members as one that was *happily* disbanded by the FCC in the 1980's, there was a personal attack provision. Personal attack, from my perspective, would be on the same basis as hate-speech, saying that the role, ultimately, is to minimize the amount of personal attack against a person or recognized group, through the communication media. Can you foresee, consistent with the First Amendment, any future regulation by the FCC that would go back to personal attack or hate speech?

ADELSTEIN: Well, you notice slander and liable laws that also pertain to any speech, be it over the airwaves or anywhere else, that aren't protected by the First Amendment, personal attacks that are of that nature. Of course, they don't apply to public figures so you know there's been, historically, rules on the books that are no longer on the books at the FCC. My hope is that, rather than content regulation, I think we need structural regulation, which is if we have a diversity of viewpoints over the airwaves, if we ensure that, in fact, religious broadcasters, minority broadcasters, a lot of different viewpoints, can be heard over the airwaves by limiting the amount of media outlets that a single owner can control in a given community or nationwide, that that diversity is what the First Amendment really conceives of as the protection to ensure that the truth gets out, that there should be an uninhibited marketplace of ideas. And through that kind of diversity with different viewpoints, the public can make up its own mind about the issues of the day and not have them disproportionately influenced by excessive concentrations of power in the media.

PARSHALL: That actually is a wonderful lead-in to my next question and I'll pose this first to Commissioner Tate, and that is this: the whole issue of media ownership, the structural changes in the way in which media is owned and operated. There was a long media ownership series of field hearings recently this year, and a Media Diversification Notice of Proposed Rule-Making and Order was issued. By way of background, one of our concerns at NRB was a report that came out from the Center for American Progress - Free Press in June of 2007. That particular think tank was complaining about the so-called "gap" between conservative and progressive talk radio and they indicated that, "conservative talk radio is pushed out over the air ways in greater multiples than progressive talk." Which, I guess, is self-evident to most of us who listen to radio. Their solution to this, because they felt that was a problem that needed a solution, they said "we believe that minority and female owners are more responsive to the needs of their communities and less likely to air the conservative hosts." So their suggestion was, *let's restructure ownership and therefore create a different result in different viewpoints being aired*. Now that's the background of the problem we see. Do you see the same problem, or are we blowing this out of proportion in terms of restructuring media ownership?

TATE: Well, once again, what is the problem that we are trying to resolve? When you look at the numbers (and I just happened to look across here,) the numbers of women are very small in this room. The numbers of women owners are at 3% and, I think, 5% for radio and television across this country. So, as the only female on the commission, I feel a heavy burden to at least talk about this. I'm not necessarily to the point of moving toward regulatory action. But instead, and you all may not know this, but one of the

concepts that was brought forward from our own FCC minority and diversity committee was to host some kind of access to capital conference because the real problem that women and minorities seem to be having was access to conference, to capital. So we all went to NY together and held a conference. We had representatives from Wall Street, big financial institutions (I hope they're still ok,) and along with a number of women and broadcasters who both had experience, and who were interested in actually purchasing. So instead of through regulation or quotas, we were trying to link the people who were interested in buying entities, with capital, and that's what I'm hoping we will try to do. I mean, I was really thrilled that we moved forward on that. And ... I guess we adopted 13 different items. Some of them just had to do with extending the construction permit time and some other things that we thought would be helpful. So this is less about regulating and more about figuring out what is the problem and what can we do to resolve it, and, by the way, the other thing that I always say, is this isn't just broadcasters, this is across all Fortune 500 Companies, so, you know, I could just as easily be talking about the banking, or the insurance, large corporations as well. And then I want to reiterate what Commissioner McDowell said, we're in a deregulatory phase. Every single large radio conglomerate is selling off hundreds of stations. So one, that's great for getting the stations out so that hopefully more women and minorities could possibly buy them, but it is also meeting Commissioner Adelstein's problems about having the concentration in fewer voices.

PARSHALL: Thank you. We only have about two or three more minutes left, Commissioner Adelstein, if you could give us a summary of your response on the media ownership and restructuring issue.

ADELSTEIN: Well I certainly share Commissioner Tate's concern about female ownership even if I don't share her chromosomes. You know, she talked about the numbers there, it's the same with minorities, I mean women are over half the population, she said less than 5% of the TV stations. Minorities are about a third of the population of this country and about 3.3% of the TV stations. So the airwaves don't really look like America and as a result they don't reflect the diversity and richness that is the strength of this country. So we need to ensure that fewer and fewer companies don't gain more and more control, the means of distributing ideas. This organization really represents that kind of diversity. I mean, a lot of you are based in your communities, you really serve the community, but you won't have opportunities to have access to these licenses if they get swallowed up by these big national media conglomerates, which we've seen over recent years. That also, of course, increases the prices of the media outlets, taking them further out of reach of everybody's small, local broadcasters, women, people of color. So it's a major responsibility, I think, of ours to try to keep those limits on media consolidation, so that there can be more diversity, so that these issues of content control don't become relevant so we deal with it on a structural basis and just let the marketplace of ideas under the principle of the First Amendment really thrive.

PARSHALL: Commissioner McDowell?

MCDOWELL: I'll incorporate a *** many of the remarks of my colleagues, in the observance of time. I do think they're related but they're also separate, the idea of diversity, diversity actually means a number of different things, including diversity of viewpoint, but diversity of ownership as well. And I've been very troubled by the low level of minority- and women-owned broadcast properties and we need to focus on that, as Commissioner Tate said, through, I think, the access to capital, first, it's the beginning of the process. But, I understand where you are going with the issue of content control, through that avenue and that's something we need to be vigilant to watch over and try to fight against if that's the case...

PARSHALL: As I read the Diversification preceeding, where we are right now, at least the majority vote of the FCC is to use a kind of a small business model to encourage broadcaster diversity in the way in which Commissioner Tate said, rather than starting with the top down, quota system, or the requirement that we give specific inducements to certain categories of ownership.

While we'd love to continue with the series of questions that a lot of our members had, unfortunately, and I will say this, almost all the questions that were given to me that we weren't able to get to dealt with the digital conversion, everything from do we have enough power, to concerns about the fact that the new digital conversion is going to be an all or nothing ... you don't have a fuzzy signal, you simply have no signal at all, to do we really have the horses to make sure that the signal gets out to the areas where the analog used to be, and alternatives ... so I have to say that this is really one of the front-burner issues among our members. We're well aware of the Wilmington test results and we're hoping with bated breath and a great deal of prayer that this works out well and it may be another one of those Y2K concerns that ends up to be the lion that squeaked rather than the mouse that roared, in terms of a problem. Thank you, each of you Commissioners, for your boldness and your willingness to come and face these questions and share your time with us. Why don't you give all of our three Commissioners a hand? [applause]

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