



Department of Justice

STATEMENT

OF

J. PAUL McGRATH
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

BEFORE THE

FEDERAL COMMUNICATIONS BAR ASSOCIATION

CONCERNING

PROPOSED ELIMINATION OF THE
FEDERAL COMMUNICATIONS COMMISSION'S
SEVEN-STATION RULE

ON

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WASHINGTON, D.C.

The FCC's seven-station rule is 31 years old, and it restricts one person or firm from owning more than seven television or AM or FM stations. When it promulgated the rule back in 1953, the Commission said its goal was to

"promote diversification of program and service viewpoints as well as to prevent any undue concentration of economic power . . ."

Thus, the FCC felt diversity of ownership would enhance diversity of ideas. As a matter of national policy, there is no more important goal than permitting the airing of diverse ideas -- and in radio and television this means the airing of high quality programs expounding views across the political and philosophical spectrum. The FCC was also concerned about economic power -- concerned that broad ownership of television or radio stations might give the station owners a troublesome level of power over the economics of television or radio broadcasting.

Three months ago the Commission decided to terminate the seven-station rule by adopting an interim rule permitting the ownership of twelve stations and by providing for elimination of any numerical restrictions in 1990. The FCC's local ownership rules, which bar ownership of more than one station in a local area, would remain in effect, as would rules that

restrict the operations of networks, such as the financial interest and syndication rules. When the part of its decision relating to TV stations generated a political fire storm, the Commission stayed the effective date of that change until next spring to give Congress a chance to study the matter. Congress has already moved into high gear.

The debate over the seven-station rule has focused on both of the concerns that led to the seven-station rule in the first place -- diversity of ideas and economic power. In this debate, we have expressed our views on the second issue, the economic issue -- namely, will a relaxation or elimination of the seven-station rule create a risk that large firms, particularly the television networks, will obtain economic power or market power over some aspects of television or radio broadcasting. Our answer before the FCC and before Congress and this afternoon is that relaxation or elimination of the seven-station rule will not create any risk that the networks or any other potential owner of more than seven stations will obtain market power through such ownership. That conclusion is based on a careful economic analysis of this market, and I am not aware of any persuasive evidence refuting our conclusions.

Let me briefly summarize our economic conclusions.

In economic terms the product of commercial television is access to program viewers. Television stations charge

advertisers for the right to beam their message into our homes, and advertising rates are based on the number of people expected to watch the advertisement. Accordingly, our competitive analysis focused on whether increased ownership of television stations would adversely affect competition for the sale of advertising in any market.

Our first step was to describe the product and geographic markets in which advertising is offered. As for the product market, we assumed that television advertising is a separate market -- that it does not compete with other forms of advertising. Obviously, if this assumption is not valid, the relevant market would be broader and our analysis would tend to exaggerate any anticompetitive threat from the elimination of the seven-station rule.

As for geographic markets, television advertising consists of two markets. Advertising is delivered on a national basis by the networks. In addition, local spot advertising can be targeted to local audiences and is sold by local broadcast stations. Since advertisers generally do not view one local broadcast market as a substitute for other local markets, spot advertising in each locality is a separate geographic market.

We then analyzed whether elimination of the FCC's seven-station rule would have any adverse effect in either the national or in any local spot advertising markets. We

concluded that it would not. As for the national market, network-owned or affiliated stations already air more than 90 percent of network provided programming, and thus of network advertising. As a consequence, even if the unlikely happened and the networks bought all their affiliates and required them to run all network programming, as a matter of simple mathematics, the incremental amount of national advertising that could be affected is very small. Thus, even in the worst case, the affect on competition would be slight. Since there appeared to be no showing that the current situation raises any competitive concerns, we saw no way that such a slight change could adversely affect competition.

Likewise, our analysis led us to conclude that spot advertising sold in local geographic markets would likewise be unaffected if the seven-station ownership restrictions were eliminated. For one thing, the Commission's local ownership rules would continue to prevent a single entity from owning more than one television station in any local market. In addition, the antitrust laws would prohibit any acquisition by a network of a non-affiliated station that significantly threatened competition in a local market. Thus, as a practical matter, the Commission's seven-station rule currently plays no role in preventing concentration in local markets, and is not needed to protect healthy local competition. We might have

been shaken in this conclusion if someone had presented a convincing study showing that the market for spot advertising had behaved quite differently in cities where networks owned stations than in other cities. Significantly, no such showing was made.

A few questions have been raised about our analysis. Let me address some of those.

First, based on our analysis, we concluded that repeal of the seven-station rule would not make it more difficult for non-network broadcasters to assemble ad hoc or informal networks of sufficient size to promote new video programming, thus foreclosing competitive benefits that might result from additional station ownership by non-network group station owners. Even after repeal of the seven-station rule, the local broadcast cross-ownership rules would continue to prevent a significant reduction in the number of non-network stations available for distributing programs. Thus, in the extreme case, even if each network acquired ownership of each of its affiliates, the number of unaffiliated stations available for other "networks" would not be decreased (especially since acquisition of non-affiliated stations in markets where networks already have affiliated stations would raise serious antitrust questions).

Second, some have argued that if the networks acquired more of their affiliates, this would enable them to exercise market power against program producers. The problem with this argument is that under existing rules network affiliates already air more than 90 percent of network offerings and thus mathematically the amount of programming that could be aired by network-owned stations could not increase substantially. In fact, a good case can be made for the proposition that elimination of the seven-station rule would increase competition for network quality programming by permitting common ownership of larger groups of stations by non-network owners. In addition, repealing the seven-station rule should not affect competition for syndicated programs, which are sold on an individual station-by-station basis, because competition for such programs is local in nature. The price syndicators receive from each market would continue to be set by competition among stations in each market. As I have already indicated, repeal of the seven-station rule would not affect local concentration or local competition.

Our analysis was a detailed one, based on the facts available to us. In addition to studying each of the trees in the forest, however, we have also stood back and taken a broader view of the industry to see whether our analysis makes overall sense. Our economic analysis was based on past

history, and no lesson of the past seemed to indicate that a change from ownership to affiliation would create a competitive problem. If you look at the present and the likely future, there is a strong, undeniable trend toward greater competition in television broadcasting -- competition from non-network companies that own stations and competition from cable television networks for programming and advertisers. The industry is experiencing massive change, and that change is in the direction of more competition rather than less competition. Thus, it would seem that our conclusions based on past competitive realities are buttressed by this trend.

One last point. None of what I have said addresses the question of diversity in programming. Will repeal of the seven-station rule reduce competition for diverse programming -- competition for ideas? As an agency whose role is limited to views on economic or competitive issues, we did not express our view on this question before the FCC or in our formal filings before Congress. As a personal matter, however, I am doubtful that elimination of the seven-station rule will lessen competition for programming. For one thing, elimination of that rule alone, as a matter of simple mathematics, cannot drastically change the percentage of programs offered by the networks that are aired on network on network-owned or

affiliated stations. In addition, even if this were not the case, the track records of the networks tend to allay any concern that network programming is more homogeneous or less effective than programming by completely independent commercial stations. Whatever one's views of the absolute quality level of network programming, it is difficult to argue that it has generally been at a lower level than the programming of independent commercial stations.

We have not heard the last of this matter. We can anticipate more hearings and more argument on this subject next year before it is resolved.