

**Remarks of Hon. Fred Upton  
Chairman  
House Energy and Commerce  
Subcommittee on Telecommunications and the Internet**

**Remarks to the Media Institute  
February 16, 2006**

**I'd like to start off today with a few facts surrounding the state of media in the United States.**

- A weekday edition of the New York Times, excuse me, Chicago Tribune, sorry Shaun, contains more information than the average person was likely to come across in a lifetime in 17<sup>th</sup> century England.**
- In 1979, the vast majority of households had six or fewer local television stations to choose from, three of which were typically affiliated with a broadcast network. Today, the average U.S. household receives seven broadcast television networks and an average of 102 channels per home.**

- **In 1900, the average newspaper had only 8 pages. In the year 2000, by contrast, daily general-circulation newspapers averaged about 65 pages during the week and more than 200 pages in the weekend edition.**
- **The number of radio stations in America has roughly doubled since 1970. Satellite radio (XM and Sirius) did not even exist in 2001, but now has millions of customers.**
- **Almost 75% of Americans are now on-line and spend an average of nine hours weekly on the Internet. The World Wide Web contains about 170 terabytes of information on its surface; in volume this is 17 times the size of the Library of Congress print collections.**
- **It has been reported that, as of 2005, there were over 5 million weblogs, up from 100,000 two years prior. This means that a new blog is created every 7.4 seconds.**

**While these examples reflect the tremendous growth and advances that have been made in the world of media over the years, the unfortunate reality**

is that our nation's media ownership laws do not reflect, or even acknowledge, such great advancement.

As you all know, both the House Energy and Commerce Committee and the Senate Commerce Committee are working very hard to update the nation's telecom laws. I'd like to think the House is a little further along than the Senate... but that's a topic for another day. If all goes according to plan, there should be markups this spring on both sides of the Hill.

This year, we celebrate the 10<sup>th</sup> anniversary of the 1996 Telecommunications Act. Indeed, it is fair to say that there has been more dramatic changes in the last 10 years in the world of communications than in the 62 years between enactment of the Communications Act of 1934 and the '96 Act. Convergence was a dream 10 years ago. Today, it is a reality. Telephone, cable, satellite and Internet companies are all competing head to head to provide greater amounts at vastly faster speeds of voice, data, video and audio services to consumers. The Internet has moved from a footnote in the '96 Act to a fundamental component of our diverse media landscape. 10 years ago, the blackberry was just a fruit. Who knows what the blackberry of tomorrow will be.

**The challenge for Congress and the FCC is to take stock of the changes which broadband brings to the media marketplace and make adjustments to the media ownership rules accordingly, so that broadcasting is not unfairly cobbled competitively. We must seize this opportunity to modernize the regulations governing ownership to enable broadcasters to have a fair chance of competing for the attention of our fellow Americans. Broadcasting will have to be more creative, more innovative, more dynamic than ever in its illustrious history to remain a competitive electronic communications medium. But the government has a responsibility to ensure that broadcasting is not so shackled by outdated ownership that it is shot dead before the duel.**

**Let me address two broadcasting regulations in particular that must be modernized right now: local radio ownership rules and the newspaper-broadcast cross-ownership rules. I single them out for two reasons. First, they are especially destructive of the ability of broadcasters to compete because they freeze growth, stifle experimentation and innovation and perversely diminish diversity of viewpoints. Second, they are so out of place as to be absurd in today's marketplace of 300 satellite radio channels, hundreds of satellite, cable and some telecom audio and video channels and**

**almost limitless Internet-based content delivered over iPods, computers, and soon, Wi-Max networks. Antiquated regulation is bad enough. Absurd regulation is intolerable.**

**Without a doubt, there have been dramatic changes in the media marketplace since 1975 when the newspaper-broadcast cross ownership rule was adopted by the Commission. When the rule was first adopted, there were 7,785 radio stations, 952 television stations, and three major broadcast networks (ABC, CBS, and NBC); cable television systems served 13 percent of television households; direct broadcast satellite (DBS) providers were nonexistent; and the Internet was in its embryonic stages and almost a decade from being commercially available.**

**Today, there are approximately 13,500 radio stations and 1,700 full power television stations, and there are now four major broadcast networks, along with other emerging broadcast networks. Today, cable television systems serve approximately 60 percent of television households, with many systems offering hundreds of channels, including significant news programming. Today, DBS is serving approximately 24 percent of television households, also with hundreds of channels available, including significant**

news programming. Moreover, today, the Internet also has become a significant source of local and national news for many Americans.

Common sense tells us that this explosion of media sources should eliminate any concern over a lack of diversity of views in the marketplace and competition, which have been the principal justifications for the rule. This growth remains unabated and more than makes the case for regulatory relief in the broadcast sector. Yet from the enactment of the '96 Act to the present, the FCC's ban on common ownership of a newspaper and broadcast facility remains in place. The perverse net effect is that although a cable system can own a local broadcast station, or a national television network can own two stations in most markets, the newspaper, which has First Amendment protection, is precluded from local broadcast ownership. It further means that a newspaper, with its enormous investment in local newsgathering, is limited in how it can reach local citizens, which diminishes the news and information available in the marketplace.

In its Biennial Review Order released in July 2003, the FCC, among other things, repealed the newspaper/broadcast cross-ownership rule. As many of you know, I am not a lawyer, but allow me to digress into a bit of

legalese. While the U.S. Court of Appeals for the Third Circuit remanded the 2003 Order, it acknowledged that “[t]he Commission’s decision not to retain a ban on newspaper/broadcast cross ownership is justified under 202(h) and is supported by record evidence.” The Court further decided that “newspaper/broadcast combinations can promote localism” and “a blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity”. Those are strong statements.

Now, let’s look at local broadcast radio ownership rules. In a market of 45 stations, the most a single company can own is 8 stations. In a market with 145 stations, a single company can own 8 stations. Where is the logic? Even setting aside for just a moment the competition from other media, especially satellite radio, there is absolutely no public policy good to justify the same local radio ownership cap for Cincinnati as for New York City, Chicago and Los Angeles. Let’s remember that ownership diversity is only a proxy for viewpoint diversity. America’s largest markets are certainly not lacking in diversity of perspective and entertainment. Indeed, one of the few lessons of the ’96 Act is that relaxing ownership limits increases diversity. In 1993, there were only 31 formats. Today, there are more than 70. Easing the caps has allowed one company to offer both conservative and liberal talk shows to its

**audiences in the same market. We need to reintroduce a little common sense to ownership rules.**

**Now, let's add satellite radio to the equation. Satellite radio did not exist in 1996. Today, between XM and Sirius, roughly 300 channels of satellite radio programming pour into virtually every local radio market in the country. Terrestrial broadcast radio relies exclusively on advertising revenue. Satellite radio has an ever growing revenue stream from monthly subscriber fees, and some from advertising. Check out the massive sports package on XM. Just as sports has migrated markedly to pay television, perhaps highlighted by Monday Night Football moving to ESPN next fall, who believes we will not witness a comparable migration of sports to satellite radio?**

**If I owned terrestrial broadcast radio stations, would I think it fair to field 8 stations in a major market against 300 satellite channels and another 70 to 140 local broadcast radio stations? Not even a Senate filibuster could persuade me that those were fair odds.**

**Now, let's add to the mix the audio channels offered by cable, satellite and telecom providers, Internet radio stations, iPods, Wi-Max and the next 10 inventions or technologies that we have not yet created or discovered. It's no wonder that analyst after analyst forecasts anemic growth for broadcast radio for the foreseeable future.**

**Today's marketplace makes a compelling argument for simply eliminating local terrestrial broadcast ownership caps, except perhaps in small markets. But those of you who know me understand that I am a pragmatist. Such a decisive step will not pass the test of politics in Washington, D.C. today. I am making a far more targeted proposal because modernization can and should get done this year.**

**Our role in Congress should be as a partner, encouraging growth for the "old media" – newspapers, radio and television, rather than the executioner, carrying out a death sentence. We cannot have an industry guided by a 1920's playbook. Although the term "level playing field" has become a cliché – that is exactly what we must strive for.**

**Last week, I sent a letter to FCC Chairman Martin urging the Commission to issue quickly an NPRM to consider raising the 8 station limit to 10 in markets with 60 or more radio outlets and to 12 in markets with 75 or more radio outlets. This is almost embarrassingly modest, but it is achievable. I ask that all of you assembled here today support that proposal as one small step toward the continued viability of free over-the-air radio in the digital, broadband era and one giant step toward consumers' ability to receive free the local news weather, sports and information so vital to their lives and the life of the communities in which we all live.**

**In an op-ed that appeared in this week's Broadcasting & Cable, your very own Patrick Maines asked a few simple questions related to updating the nations telecom laws. Do policymakers see the big picture? Do they get it? Or are their perceptions about today's media industry (and its relation to government) mired in another era? Patrick, I am here today to tell you and your audience that "some folks get it." I know I do.**

**Thank you – and thank you to the Media Institute for all that you do in the world of communications.**

**I'd be happy to answer any questions.**