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To: Susan Crawford and Kevin Werbach
From: Angela J. Campbell
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Re: Improving Structures and Processes at the FCC

I have been representing public interest organizations before the FCC for over twenty years, spending a large amount of time over the past decade on media ownership issues.

Based on this experience, I urge prompt repeal of Section 202(h) of the 1996 Telecommunications Act, which requires the FCC to reassess the need for all of its broadcast ownership limits every four years (originally it was every two years). It is simply not practical or necessary for the FCC to constantly review its rules. In each case, the FCC has been unable to complete action on remand before it was time to start the next review. Indeed, if this statute is not repealed, it seems likely that the FCC will have to begin the 2010 quadrennial review before completing the 2002 review.

Nor is the problem merely FCC inefficiency. Such frequent review of the rules creates uncertainty and incentives for companies to seek waivers of the rules in hopes that the rules will be relaxed. The ownership limits promote diversity and competition and should be reviewed only when it can be demonstrated that a change would benefit the public.

My experience representing public interest groups in FCC proceedings has also highlighted other problems with FCC practice and procedure. First, the FCC lacks sufficient relevant data to analyze the effectiveness of its existing rules and to modify or adopt new rules as well as to determine whether the grant of licenses meets the statutory public interest standard.

Starting during the Reagan administration, the FCC eliminated virtually all collection of information from broadcast licensees. It does not know, for example, whether television and radio stations provide news, cover local elections, or have employees that are women or persons of color. Even when the FCC does collect information, for example, as it does with regard to the race and gender of broadcast station owners, it has failed to ensure that the data is accurate, complete, and provided in a usable form. Although these examples concern broadcasting, the FCC lacks insufficient data about other issues as well.

A year ago, the FCC adopted a rule requiring that digital television stations report the quantity of news, local civic programming, public service announcements and certain other types of programming they aired. These rules have never gone into effect however because broadcasters oppose them and OMB has not approved the form. At a minimum, the FCC should take action so that the rules adopted can take effect. In addition, the FCC should comprehensively review its information collection practices to ensure that it has the data necessary to meet its statutory obligations and that such information is accurate and available to the public.

Another problem is that the FCC has been more responsive to industry demands than to the public it is supposed to serve. In part, this results from industry's greater resources and incentives to influence policy. However, this imbalance in power is exacerbated by the FCC in many ways. Often the public is unaware of proposed rule changes or licensing decisions because the FCC fails to give meaningful notice, or in some cases, any public notice at all. It is rare that the FCC holds public meetings outside of Washington, DC. Getting information from the FCC website is extremely difficult. The decision making process lacks transparency. Industry participants lobby the Commission without meaningful disclosure, while public interest groups may not even be aware that the FCC is about to decide an issue. Even when the public does participate in FCC proceedings, the FCC is often slow to respond, thus discouraging further public participation. For example, one of my clients challenged the license renewals of several television stations in 2004 for failing to provide educational programming for children as required by the Children's Television Act, and the FCC still has not acted on those petitions.

Here are some actions that the FCC should take to address these problems:

- Designate staff responsible for seeking out and facilitating public participation.
- Make sure the public notice is written in a comprehensible manner that makes clear to the average person the relevance and possible consequences of the proposed actions.
- Ensure that public notice is given in such a way that it reaches the intended public. For example, notice that a television station is seeking a waiver of an FCC ownership rule should be directed to the community served by the licensee.
- Make the FCC's website more user-friendly.
- Enforce existing *ex parte* restrictions.
- Act on public complaints and petitions within a reasonable period of time.
- Hold hearings outside of Washington, DC and take other actions to facilitate public debate and participation in important policy decisions.