

STATEMENT OF COMMISSIONER
JONATHAN S. ADELSTEIN
APPROVING IN PART & DISSENTING IN PART

Re: Digital Audio Broadcasting Systems and their Impact on the Terrestrial Radio Broadcast Service, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking in MM Docket No. 99-325.

Today, the radio industry is at a challenging crossroads. With the emergence of different platforms such as broadband, MP3, and satellite radio, there is increased pressure on terrestrial radio to digitize and to expand its delivery capacity and capability over the most ubiquitous of all platforms – over-the-air broadcasting.

The transition from analog to digital radio will undoubtedly create many new and exciting opportunities for the radio broadcasting industry and for the listening public. Digital radio is after all the natural evolution of radio, bringing CD quality sound to FM and FM quality to AM. It promises many new service offerings to eager listeners. I wholeheartedly support the transition, and the Commission should do everything it can to encourage it.

In supporting digital radio, I cast a vote for the future – a future where terrestrial radio will become an even fiercer competitive source of news, information, and entertainment, and where a diverse group of commercial radio broadcasters will serve the public interest, in exchange for the free use of additional spectrum made possible by digital technology.

Unfortunately, I cannot fully support today's item because it is another missed opportunity for Commission to promote diversity, another dream deferred. After years of ignoring the issue, punting the question, and delaying a constructive dialogue to develop meaningful solutions, it is really disappointing that the Commission has once again failed to step up to the plate. There is no justification for the Commission's outright refusal to "encourage digital audio broadcasters to enter into time brokerage agreements with women and minority broadcasters or new entrants." It is not asking a lot for us to simply encourage positive action, but apparently it was too much for a majority of the Commission.

It seems to have been forgotten that Commission data reveals that ownership of broadcast properties among a majority of Americans – women, African Americans, Hispanics, Asians, and Native Americans – is embarrassingly and unjustifiably low. Women own or control only 3.4 percent of all broadcasting stations; and, minorities own or control only 3.6 percent of all broadcasting stations. And it is forgotten that nearly thirty years ago the Commission said that the improvement of women and minority participation in the broadcasting industry was an important Commission objective. *See e.g.*, Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC 2d 979 (1978).

Clearly, the transition to digital radio, which allows for new audio broadcast streams, provides one means for the Commission to promote diversity. By specifically refusing to encourage commercial radio broadcasters to enter into time brokerage agreements with “women and minorities,” the Commission has failed to live up to its charter to promote diversity of sources.¹

In addition to diversity concerns, localism and public interest obligations are other concerns of mine that this item either ignores or glosses over. In 2003, the Commission initiated a Localism Task Force to discover the most direct way to promote localism in broadcasting. The Task Force was to study and advise the Commission on public interest obligations, license renewals and how to protect the rights of local stations to make programming decisions for their communities. Nearly four years and hundreds of thousands of dollars later, this study has not been completed.

At the launch of the Task Force, Chairman Powell stressed that the Commission had “heard the voice of public concern about the media loud and clear” and that “[l]ocalism is at the core of these concerns.”² These concerns of the American people have not changed. It is important to find out what types of services radio broadcasters are offering to the communities they serve and how broadcasters are living up to their localism obligations. It is important that we take this study seriously and encourage its completion. In developing today’s decision, such a study would have been immensely useful and we could have better served the American public by first understanding the current status of localism in radio broadcasting.

Finally, I find it unacceptable that, in the *Second Further Notice* portion of today’s item, the Commission is unwilling to ask general and open questions how the “public interest, convenience and necessity” can best be served by radio broadcasters in the digital age. As the Commission recognizes in the item, “the potential for a more flexible and dynamic use of the radio spectrum … gives rise to important questions about the nature of program-related … obligations in digital broadcasting because the scope of those responsibilities has not been defined.”³ Again later in the item, the Commission observes that “commenters have raised important and complex issues concerning how broadcasters’ public interest obligations should be tailored to the new radio services made possible through digital technology.”⁴ Yet, the majority refuses to permit questions about

¹ The Commission has also failed to follow its own precedents. In Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies (Second Report and Order and Third Notice of Proposed Rulemaking), the Commission noted that one recruitment option available to broadcasters would have them recruit for “each upper-level job opening in a job bank or newsletter of a media trade group with a broad-based membership, including participation of women and minorities.” 17 FCC Rcd 24018, 24056 (2003). Commission EEO rules, codified in 47 C.F.R. §73.2080(c)(2)(iii) and 47 C.F.R. §73.2080(c)(2)(xii) (2003), make specific reference to “women and minorities.”

² Press Release. Federal Communications Commission, Media Bureau, Audio Division, FCC Chairman Powell Launches “Localism in Broadcasting” Initiative. (August 20, 2003).

³ *Order* at ¶ 62.

⁴ *Order* at ¶ 68.

how digital spectrum in particular presents new opportunities in the *Second Further Notice*.

In a better constructed *Notice*, the Commission could have asked directed questions to the digital radio broadcasting industry and to the public in order to better understand how to implement public interest obligations in digital radio and to establish the best policy that enforces the obligations while serving both the broadcasters and the American public. It is imperative that the Commission advise digital radio broadcasters on what their public interest obligations are in the digital age, similar to way the Commission, broadcasters and public interest groups developed children's programming rules for digital broadcasters.

Notwithstanding these shortcomings, I support in part this item because it facilitates the analog to digital radio transition and a modicum of progress towards examining whether we should adopt any new public interest requirements for digital audio broadcasters, and if so, what those new requirements should be. Considering the importance of these questions, it is my hope that after the pleading cycle, we will seriously consider the public's comments, and be poised to clarify our existing public interest obligations and develop better rules. The public cannot afford to let this rulemaking be forgotten and buried.