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RPTR BAKER

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BROADCASTING OWNERSHIP IN THE 21ST CENTURY (CONTINUED)

THURSDAY, DECEMBER 3, 2015

House of Representatives,

Subcommittee on Communications and Technology,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to notice, at 10:17 a.m., in Room 2123, Rayburn House Office Building, Hon. Greg Walden [chairman of the subcommittee] presiding.

Present: Representatives Walden, Latta, Lance, Johnson, Ellmers, Eshoo, and Pallone (ex officio).

Staff Present: Ray Baum, Senior Policy Advisor for Communications and Technology; Andy Duberstein, Deputy Press

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Secretary; Kelsey Guyselman, Counsel, Telecom; Grace Koh, Counsel, Telecom; Charlotte Savercool, Professional Staff, Communications and Technology; Gregory Watson, Legislative Clerk, Communications and Technology; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; Ashley Jones, Minority Director of Communications, Member Services and Outreach; Jerry Leverich, Minority Counsel; Lori Maarbjerg, Minority FCC Detailee; and Ryan Skukowski, Minority Policy Analyst.

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Mr. Walden. We will call the Subcommittee on Communications and Technology to order.

And, by unanimous consent, Ms. Eshoo and I would like to ask our colleagues to waive opening statements so that we can actually resume this hearing or have the new hearing of the resumption of the hearing going forward.

And I would suggest that if the panel members, who had the opportunity to give your opening statements before, if you want to share a few comments, that would be fine, but if you want to kind of move through them rapidly, that would be fine. I tell you all that because they just called votes on the House floor. So best laid plans. There will be seven votes.

And I understand you all have agreed to waive statements, so thank you. We could just pass bills and get everything done this morning at this rate.

So, with that, thank you for returning. As you know, this is a resumption of the hearing on ownership. And so, with that, I guess we go right into Q&A then, right?

So let me start with a question to Mr. Waldron.

Tax incentives are generally considered a relatively efficient way for the government to encourage certain policies. The minority tax certificate is a voluntary instrument that entities can take advantage of or not, depending on whether the situation is appropriate.

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Do you think the FCC would be able to structure a program around the minority tax certificate that would prevent arbitrage?

And then I would like to get the views of the other panel members as well.

So, Mr. Waldron, what do you think of that?

Mr. Waldron. Thank you, Mr. Chairman.

Yes, NAB has long supported tax certificates, and we think they can be structured in a fair and balanced way. I do want to emphasize that tax certificates did exist, and there were more than 50 tax certificates that were done. And so we think it can be structured.

And, as you point out, it is a voluntary program, really a market-based program, to incentivize minorities to get into the business. So we think it is an excellent idea and a step that the Commission and the Congress should take.

Mr. Walden. Mr. Boyle?

Mr. Boyle. Mr. Chairman, NAA has supported the tax certificate and some other proposals that the MMTC has put forward to increase diversity of ownership. So we think it can be done, and we hope Congress would enact it.

Mr. Walden. Ms. Keenan?

Ms. Keenan. Hello.

Mr. Walden. Good morning.

Ms. Keenan. I am president and CEO of MMTC, Multicultural Media,

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Telecom, and Internet Council.

I absolutely concur with what has been said. MMTC has long been in the forefront of pushing for these tax certificates. They are the right way to handle this at the right time.

If you were to do a bar graph of what it looks like when you have tax certificates and when you don't, this is what it looks like when you don't. Imagine the bottom. But when you have it, this is what it looked like. If you were to go back, you would see that the highest period of growth in ownership by women and people of color was under the tax certificate program. And those were bona fide people who entered at that level. But, once that program was taken away, we are back at those levels that were negative.

So, absolutely, this is the right way, and it is the right time.

Mr. Walden. Thank you.

Mr. Scurato?

Mr. Scurato. Yes, the National Hispanic Media Coalition, we support the idea of reinstating the minority tax certificate. Moreover, we would hope that Congress could reinstate it in a way that is race-conscious, as the prior tax certificate was. We think that would have the most impact on ownership diversity.

Mr. Walden. Okay.

Mr. O'Boyle?

Mr. O'Boyle. Common Cause also supports the reinstatement of the

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minority tax certificate program. I think this is a consensus position, not only because raising diverse ownership, increasing diverse ownership is an important public interest goal, but because we believe the evidence shows that female and diverse ownership drives more and better representative content of female and minority populations and that there is a problem with misogynistic and racist characterizations in the media because there is such a limited ownership of the media by females and minorities.

Mr. Walden. Got it.

Mr. Kint?

Mr. Kint. My name is Jason Kint. As CEO of Digital Content Next and kind of representing the future of digital media, any issue around promoting the voice of minorities is of paramount importance to us. And the details on that, I would like to follow up with you, if that would be all right.

Mr. Walden. All right. Thank you.

I am going to yield back the balance of my time so we can get to Ms. Eshoo for her questions, as well, and to Mr. Latta.

Ms. Eshoo. Thank you, Mr. Chairman.

First, I would like to ask for unanimous consent to place two pieces in the record.

Mr. Walden. Without objection.

[The information follows:]

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Ms. Eshoo. Thank you. Do I need to name them?

Mr. Walden. No.

Ms. Eshoo. No. Okay. Save that time. All right.

Thank you to all the witnesses.

And I want to thank the chairman for agreeing to reschedule the rest of this hearing. I thought that it was important, and I thank him for agreeing and doing so.

To Mr. O'Boyle, can you tell me how many shared services agreements, the SSAs, and joint sales agreements still remain in place today? And does the Commission require broadcasters to disclose the existence of such agreements?

Mr. O'Boyle. Thank you for the question.

Determining the precise number of these arrangements is surprisingly difficult. Credit to Free Press for doing some good research to try and infer, by looking through SEC filings, the exact number. But it should not be this hard.

The FCC's Form 323 is a problematic reporting tool. It is complex and cumbersome. And noncompliance is also an issue. So there are issues with the reporting tool itself.

But, more broadly, to take another issue, the 2014 JSA Reform Order, which Common Cause supported, did not actually require broadcasters to disclose SSAs. So we feel the most direct and easiest way for us to get a handle on a census, the number of arrangements out

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there, is to require they be disclosed.

And I would offer that this bespeaks the bigger problem, that we need better data, and that regardless of where panelists --

Ms. Eshoo. Sounds like it is an area that really needs some work --

Mr. O'Boyle. Yes, ma'am.

Ms. Eshoo. -- from what you have said.

To Mr. Scurato, how do you respond to those that suggest that the JSAs and the SSAs actually increase broadcast ownership diversity?

And I appreciate the comments, the responses to the chairman's question a moment ago. That was terrific.

Mr. Scurato. So, looking at the available data, we don't actually think that the advent and rise of these types of sharing arrangements do anything to help support greater ownership diversity. In fact, if you look at the data, you know, these agreements have really come to prominence over the last 10 years or so, going from about 37 agreements --

Ms. Eshoo. What do you think, shorthand, they actually produce?

Mr. Scurato. Well, what they do is they allow current owners in the market to circumvent media ownership rules and own more. And that is at the expense of opportunities for people of color and women that may want to enter the market.

Ms. Eshoo. To Mr. O'Boyle, I know that you know that there have

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been efforts from this side of the aisle, led by Mr. Yarmuth, earlier this year in introducing legislation to require the disclosure of the true sponsors of political ads on the public airwaves. We have a huge problem in our country, obviously, especially on the heels of Citizens United.

Now, in the absence of any newly enacted law -- which, obviously, is not going to take place, I mean, because there is opposition from our friends on the other side of the aisle -- what do you think the FCC can do? What steps do you think they should take, in terms of disclosure relative to the airwaves?

Mr. O'Boyle. Well, section 317 of the Telecommunications Act empowers the FCC to write sponsorship identification rules -- that is, to write rules requiring the disclosure of the, quote, "true identity" of that sponsor. And the FCC, in interpreting its own authority decades ago, said that the name of the sponsoring committee was --

Ms. Eshoo. How long ago was that?

Mr. O'Boyle. I can get the exact year, but I think it was in the seventies. At the time, that may have --

Ms. Eshoo. Almost a half-century ago.

Mr. O'Boyle. But times and circumstances have changed.

Ms. Eshoo. I think so.

Mr. O'Boyle. And in the post-Citizens United world, we have unprecedented amounts of unaccountable spending. Voters don't know

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who is trying to persuade them.

Ms. Eshoo. Well, that is the problem. What would you recommend?

Mr. O'Boyle. I would recommend that the FCC undertake a notice of proposed rulemaking to begin to rewrite the sponsorship identification rules, updating them for --

Ms. Eshoo. So an update of that section.

Mr. O'Boyle. That is right. And we could do that in time for the 2016 general election.

Ms. Eshoo. I will yield back, Mr. Chairman. Thank you.

Mr. Walden. The gentlelady yields back the time.

And we now go to Mr. Latta.

Mr. Latta. Well, thank you, Mr. Chairman.

And, Mr. Waldron, in your testimony, you noted that the FCC has not completed its statutorily mandated quadrennial review of ownership rules in a timely manner.

Can you explain how the FCC's failure to complete its quadrennial review affects the ability of broadcasters to effectively compete in the marketplace and why it is important to get this done?

Mr. Waldron. Thank you, Mr. Latta.

It has been more than 12 years since the FCC actually has given a thorough look at ownership. Think about how the landscape has changed in that time. We have Facebook and Google that are a significant source of competing ad space for local broadcasters. We

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have cable companies that have formed interconnected pacts, so they compete against broadcasters for advertising, for audience and eyeballs.

And, in that environment, we still have an ownership rule which exists as if a broadcaster only competes with broadcasters. It does not acknowledge that your local car company can go place an ad on Facebook or they can place an ad with Google or they can place an ad with other broadcasters or they can place an ad with every cable company.

And so we think if the FCC actually did the job that Congress gave it, to look at its ownership rules and look at the current environment today, we think that they would actually come out with a sensible rule that would allow reasonable combinations of TV stations. But looking at the prism through 2003 distorts what the rules should be.

Mr. Latta. Thank you.

Mr. Chairman, I think I am going to yield so maybe the gentleman from New Jersey can get his questions in. Thank you.

Mr. Walden. The chair recognizes the gentleman from New Jersey.

Mr. Pallone. Thank you.

Mr. Chairman, I just wanted to follow up to some extent on what Ms. Eshoo was asking, because the broadcasting industry, particularly TV stations, have benefited greatly from billions of dollars in revenue from political advertising every cycle. And although the FCC took a

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step forward by putting the public and political file online for TV stations, I am concerned that isn't enough for consumers.

Are consumers able to easily use these online political files to determine who is behind the issue ads that they see? And, you know, don't Americans have the right to know who is behind these ads? If you can comment on, you know, the access to finding out the information about who is doing these ads.

I was going to ask Mr. O'Boyle.

Mr. O'Boyle. Thank you, Mr. Pallone.

We feel that there are important steps the FCC could take to improve the quality of the online public file by making it a searchable, queryable database that, as other government agencies make their data machine-readable so that you can search --

Mr. Pallone. Well, you agree that right now it is hard to find?

Mr. O'Boyle. It is not particularly useful. In many cases, we have public files that have been handwritten, scanned into a PDF, and uploaded so that they can't actually be searched and you have to decipher sort of a scrawl. And that could be made much more usable.

More broadly speaking, even if that were made as usable as we would like, it still would not disclose the true identity of an actual sponsor of an ad.

And to your question about whether voters are able to determine who is trying to persuade them, no. To get that, we need to get the

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FCC to undertake a rulemaking updating its sponsorship identification rules for 2015.

Mr. Pallone. Okay.

I have one more question. Do we have time?

Mr. Walden. We have let the cloakroom know that we are trying to finish.

Mr. Pallone. All right. Then let me stop. Thanks.

Ms. Eshoo. No, ask it.

Mr. Pallone. All right. All right. Well, this is a New Jersey question, though.

Mr. Walden. Oh, forget that.

Mr. Pallone. I can wait till we come back.

Mr. Walden. No, no, we are not coming back.

Mr. Pallone. Oh, all right.

Well, I am just worried that in New Jersey -- you know, this is from Hurricane Sandy and the local broadcasters -- in New Jersey, we already have too few TV stations. And one of them is owned by an entity that already owns two other stations in the same market.

So I was going to ask either Mr. O'Boyle or Mr. Scurato, can you elaborate on whether joint ownership as well as situations where there are sharing agreements between stations produces more local news and information for consumers? This is our concern in New Jersey.

Mr. O'Boyle. Briefly. And I will allow Mr. Scurato to respond,

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as well.

University of Delaware Professor Danilo Yanich has studied extensively the nature of nested ownership structures and the impact they have on content. And in every market they have studied, they yield homogenization of content.

So, rather than plowing the efficiencies into new investigative local reporting that holds local officials accountable and informs the local electorate, instead, they are padding the bottom line.

Mr. Pallone. Okay.

Mr. Scurato. Further, I would just add that, you know, there is evidence that, as these agreements are entered into, these sharing agreements, that newsrooms shrink and there are fewer jobs at these stations. And so that has a pretty direct impact on the quality of local news and information.

Mr. Pallone. I think you are right.

All right. Thank you very much.

Mr. Walden. We want to thank our panelists.

We have seven votes, so the intent would be to adjourn, unless there is an objection.

I am getting mixed signals.

Ms. Eshoo. Well, I wish we could stay all morning because there is so much that we can be discussing, but, you know, all the well-laid plans in the world.

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I don't see any other members that showed up from our side for the hearing. So do you anticipate any? Because if you don't, then --

Mr. Walden. I don't believe so. So I think other questions can be submitted for the record.

[The information follows:]

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Ms. Eshoo. Yeah.

Mr. Walden. Otherwise, they are going to be here another hour before we get back.

Ms. Eshoo. I have some more questions, so I am going to submit them to you.

[The information follows:]

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Mr. Walden. Thank you for your participation. Sorry this hearing was abbreviated, as well. We appreciate your input, and maybe we can have a further discussion on these issues down the road.

We are adjourned.

[Whereupon, at 10:33 a.m., the subcommittee was adjourned.]