

The Free State Foundation

A Free Market Think Tank For Maryland...Because Ideas Matter

Prepared Statement of

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at the

**Second Future of Media Workshop
"Public and Other Noncommercial Media in the Digital Age"**

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Thank you very much for inviting me to participate in today's workshop. I suspect that the views that I am going to offer are shared by few others participating today, so I appreciate the opportunity to present them.

Let me summarize this way and then discuss in a bit more detail. Whatever the merits of government funding for public broadcasting in 1967 when Congress enacted the Public Broadcasting Act to address certain perceived media "market failures," today's media marketplace is characterized by an abundance and diversity of media sources. This fact calls into question the need for such continued funding. When the government funds "public media," inevitably a tension arises between the government's involvement in content and programming decisions and First Amendment values that are at the core of our republic.

Indeed, apart from strict First Amendment jurisprudential considerations, when government-supported media – that is, media supported with our tax dollars -- decide what content should be filtered or amplified regarding issues of public importance, I suggest government's involvement tends to exacerbate public tensions in a way that makes civil discourse more difficult. This is because government content decisions are seen by many as tilting the public policy playing field in a way inconsistent with their beliefs. Perhaps such government involvement might be more readily tolerated if there were widespread agreement among the public that information needs exist that clearly are not being met by the private media. But in a market characterized by media abundance, such is not the case, or at least the exceptions are narrowly circumscribed. So I am opposed to expansion of funding for public broadcasting, or for "repurposing" government funds to support other public media, such as websites. Indeed, given the unprecedented national debt (almost \$13 trillion) and competing budgetary demands facing the country, maybe this is a moment in time when reasonable

people can agree that, in light of the media marketplace changes, an "exit strategy" should be set for reducing or eliminating funding of public media.

Now, to elaborate a bit. First, I share the conviction, of course, that the availability of diverse sources of news and information, and so-called "accountability journalism," are important to the functioning of our democracy. And I understand that, apart from the current recession, the digital revolution, and particularly the rise of the Internet, has caused disruption to the traditional media marketplace, especially to local broadcasters and newspapers. Indeed, the financial difficulties faced by these traditional media, which have led to cutbacks in journalists and other personnel, have surely been exacerbated by the FCC's almost inexplicable refusal to relax media ownership restrictions that were adopted in a much different era.

Despite the marketplace disruptions, and despite those who will forever assert "media concentration" in support of more government regulation and/or funding, the reality is that we do live in an age of media abundance.¹ I am not going to use my time here to recite the number of different cable channels of various varieties, number of hours of C-SPAN programming of various types each year, or the number of new Internet websites and blogs available each day (or hour). They are well-documented.² Rather, I want to use as a point of departure for the remainder of my time, some observations by Ellen Goodman, who is working on the Commission's "Future of Media" project as a visiting distinguished scholar. I do this because, though I respect Ellen and she is a friend, I find what I take to be her views

¹ I recognize that in the area of children's programming, the marketplace may not function in a way that optimizes such programming, and that this might justify circumscribed government support for this type of programming.

² Adam Thierer's testimony submitted in the FCC's March 4, 2010 workshop on "Serving the Public Interest in the Digital Era" contained many of the pertinent "age of media abundance" statistics. Here only a few statistics: 565 cable TV channels; 2200 broadcast TV stations and 13,000 broadcast radio stations; 234 million websites; and over 20,000 magazines.

troubling in ways that help me articulate why I do not support government funding of public media in today's environment. And because I think her views may be representative of many of those, whether articulated as frankly or not, of those who support government-supported media.

Ellen recognizes that, as opposed to forty years ago, we now live in an age of media abundance. So the original rationale for government-supported public broadcasting – that the marketplace failed to produce certain types of programming -- largely no longer holds. Indeed, the original rationale is now turned upside down. Ellen contends that: "The mission of public media – to engage publics with information relevant to improving lives in particular communities and shared polities – is of growing importance in a world where *information is abundant*, but does not always reach the people who need it, and where wisdom and knowledge remain hard won."³ And she has observed that: "Today, the scarce resource is attention, *not programming*."⁴

So what is Ellen's answer to this particular attention-deficit disorder in a world where "wisdom and knowledge" remain hard won? She suggests that we need public media to act as curators so they "can use their brand, community connections, technology, and editorial capacities to raise the profile of important, reliable, and innovative content."⁵ Public media can now serve "as both a *filter* to reduce information overload and a *megaphone* to give voice to the unheard."⁶

³ Ellen Goodman and Anne Chen, *Digital Public Media Networks to Advance Broadband and Enrich Connected Communities*, FCC GN Docket No. 09-51, November 6, 2009, at 4 (hereafter *Digital Public Media*).

⁴ Ellen Goodman, *Proactive Media Policy in an Age of Content Abundance*, in Phillip Napoli, ed., *MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS* (2007) at 370, 374.

⁵ *Digital Public Media*, at 10.

⁶ *Id.* at 8.

I disagree. In an age of information abundance, we do not need, and should not want, government-supported media acting as a filter or a megaphone. Make no mistake: Such filtering or amplifying necessarily involves the government in making decisions based on media content. How else to decide what information should be filtered or amplified to give voice to the unheard, or to meet some "public interest" objective, other than on the basis of content? This government involvement in content selection runs against the grain of our First Amendment values.⁷

Apart from whether in today's abundant information marketplace such a government filtering and amplifying role actually contravenes the First Amendment, it is unwise for the government to play such a role. In our country, with all the diversity – including, not least, diversity of philosophical and political perspective -- that characterizes the American public, there are significant differences of opinion concerning what issues are important and whether they are covered adequately or fairly in the media. (See, for example, the current debates about the coverage of the Tea Party movement and how it has -- or has not -- been portrayed in the media.) There are, and always will be, significant differences of opinion in our heterogeneous society as to what constitutes "wisdom and knowledge."

⁷ I am fully aware that the Public Broadcasting Act requires the Corporation for Public Broadcasting facilitate programming "obtained from diverse sources, with strict adherence to objectivity and balance" in all programming of a "controversial nature." 47 U.S.C. §396(g)(1)(A). Of course, this only makes explicit the government's role in selecting content. Despite the "heat shield" function thrust upon CPB as a means of trying to insulate public broadcasters from more direct government interference, there have been various and ongoing instances of attempted influence of programming throughout public broadcasting's history. See Donna Coleman Gregg, *The Key to Media's Digital Future: First Amendment Freedom, Not Desperate Measures*, Perspectives from FSF Scholars, Vol. 5, No. 11, April 16, 2010. ("Unfortunately, our history also shows how difficult it can be to keep such subsidies viewpoint neutral and to provide them without public officials' interference in content.") ("Notwithstanding these measures, the inability of members of Congress and Presidents to refrain from using the appropriations and budget process to wield influence inevitably prevailed, resulting in ongoing instances of subtle and not-so-subtle pressure on public broadcast programming decisions.") Ms. Gregg is Adjunct Senior Fellow at the Free State Foundation and is a member of the faculty of the Columbus School of Law of The Catholic University of America, where she is affiliated with the Institute for Communications Law Studies. She is a former Vice President of Legal and Regulatory Affairs and General Counsel of CPB and Chief of the FCC's Media Bureau.

This is not unnatural or unhealthy in a democracy that takes pride in its tradition of vigorous public debate and free speech protected by the First Amendment. But when the government, through government-funded media, involves itself in shaping public opinion – whether or not it openly acknowledges doing so -- its very involvement tends to inflame passions that make civil public discourse more difficult. This is because there are significant differences of opinion – perhaps even among the panelists here today – as to what issues or subjects need more or less filtering or amplification. (To the extent that lack of "quality" in the content of commercial media is offered as a justification for continued government funding of programming, I would offer a similar "eye-of-the-beholder" response. Simply put, today's marketplace ought to provide as much "quality" as the American public demands. Absent coercion, it is difficult to justify expenditure of taxpayer dollars trying to force-feed programming that the public does not want.)

In sum, there is no reason to expand or repurpose government-funded media. Indeed, given the fiscal exigencies facing the country and the massive public debt, it is an appropriate time to develop a plan for reducing or eliminating such support.