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MEDIA CONCENTRATION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JULY 17, 2001

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COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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MEDIA CONCENTRATION

TUESDAY, JULY 17, 2001

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:35 a.m. in room SR–253, Russell Senate Office Building, Hon. Ernest F. Hollings, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

The CHAIRMAN. Good morning. The hearing will come to order. I know that there is a good start there with this outstanding panel. Let me see if I can include my full statement in the record, and summarize it in a sense. We have a hearing this morning, of course, on media concentration, and for years now, the genius of the American broadcast system, which is the best in the world, has emphasized diversity. Diversity in ownership creates opportunities for the smaller companies, local businessmen and women. Diversity in ownership allows creative programs and controversial points of view to find an outlet. Diversity in ownership promotes choices for advertisers and diversity in ownership preserves localism, promotes competition, and in fact, it gives us on the Committee and the citizens, generally of the country, our freedom of speech.

I have heard, “Wait a minute, we have got to do away with these ownership rules to give the owner the freedom of speech.” The truth of the matter is that that is a temporary license to amplify his freedom, but to make sure that it is not exclusive, we have injected diversity for at least the past 30 years.

Now, what’s happened is that we are being attacked from every particular angle. In other words, you have got the insatiable industry. We have got the courts and judges that appear to be ignoring the Supreme Court when they set the precedent about the government’s strong interest in preserving a multiplicity of information sources, and, of course, we have had our distinguished Chairman of the Federal Communications Commission.

And I read a quote from him at the latter part of last year, and Chairman Powell, and I quote: “I start with the proposition that the rules are no longer necessary and demand that the Commission justify their continued validity.” Well, that is not the law—which I read again this morning in an article about this particular hearing that these are all rules dating back to 1970. You should have been here, gentlemen of the panel, in 1996, just 5 years ago. The tremendous debate that we had about just this, these rules. We had a vote on the broadcast ownership cap on the Senate side and it only prevailed—at one time it prevailed one way by 1 vote, and then on a revote, Senator Dole changed and we had the reestablishment—reaffirmment, I should say—of these particular rules by 2 votes.

So it had been thoroughly debated. The Congress has been watching these, and the problem is certainly not too little mergers, too little consolidations. But we might hear differently. We have been preparing a bill, I have been working with the colleagues on both sides of the aisle trying to fashion a bill because I like to get things done, not just make headlines, but see if we can make headway. In that light, we really appreciate the appearance of these witnesses here this morning. Let me stop there and yield to our distinguished Ranking Member.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

Today, we test the claims of those who would further consolidate the media marketplace. We will hear from two balanced panels who will debate whether our changed media landscape warrants the repeal or relaxation of two existing, sensible restrictions on media ownership—the 35 percent national television broadcast ownership cap and the newspaper-broadcast cross ownership rule.

The last several years have wrought unprecedented concentration in the entertainment and media industries. AOL and Time Warner have merged, Viacom and CBS have united, and Tribune has acquired Times Mirror. These transactions and other consolidation in the industry have decreased, rather than increased competition among media outlets. Yet some of these vertically integrated entertainment conglomerates would like to grow even bigger, and are here before our Committee today seeking to eliminate more of the remaining restrictions on media ownership.

These ownership restrictions are based on factors outside the bounds of a traditional antitrust analysis. For example, the national broadcast ownership cap preserves the balance of power between the networks and their affiliates, and thereby serves to promote localism and diversity in individual markets. Similarly, the newspaper-broadcast cross-ownership Rule enhances the proliferation of diverse, and separate points of view in individual markets.

The reasons for these rules are simple, and they reflect the underpinnings of the Commission's statutory public interest authority. Diversity in ownership promotes competition. Diversity in ownership creates opportunities for smaller companies, and local businessmen and women. Diversity in ownership allows creative programming and controversial points of view to find an outlet. Diversity in ownership promotes choices for advertisers. And diversity in ownership preserves localism—so individuals in towns across America are afforded access to at least several sources for their local news and information.

The rules in question have encouraged the growth of locally relevant, independent programmers and distributors of media content. These critically important, independent voices energize our civic discourse and help separate our Nation from those that prohibit the free flow of information. And yet, we are having this hearing today, because the rules are under attack: (1) from an insatiable industry that is unsatisfied with the tremendous consolidation that has already taken place; (2) in the courts from judges who appear to be ignoring Supreme Court precedent about the government's strong interest in preserving a "multiplicity of information sources" in the marketplace; (3) and, most importantly, at the FCC, from a Commission that seems intent on relaxing or eliminating many of the existing ownership rules without regard to the tremendous consolidation that has already occurred.

Last year, Chairman Powell stated, and I quote: "I start with the proposition that the rules are no longer necessary and demand that the Commission justify their continued validity."

That, my friends, is not the law. And that is why we are having this hearing today—to set the record straight. The biennial review process we set up in the Telecommunications Act of 1996 did not presume that the ownership limits "are no longer necessary," and must be justified to be retained. It simply requires the FCC to review its ownership rules in light of competition in the market and in view of their ongoing public interest obligations, which require them to promote and protect diversity and localism, values recognized by the U.S. Supreme Court as satisfying a "governmental purpose of the highest order."

To those who advocate further consolidation, I say, prove your claims. The burden must lie with the proponents of deregulation to demonstrate that a further loosening of the broadcast ownership cap or the newspaper/broadcast cross-ownership rule would be consistent with the public interest.

I would propose a different route. Given the consolidation that has occurred already, I believe that we need to take a breather before permitting further concentration to occur. Let's recall—

First, the FCC instituted the Financial Interest in Syndication rules (Fin/Syn) in 1970, that imposed significant limitations on the percentage of "in-house" programs the networks could produce. Those rules also prevented the networks from having a financial interest in syndicated programming on the second run market.

In the late 1970s, the Department of Justice entered into consent decrees with the major networks to settle litigation dating back to the Johnson Administration, that sought to also curb the networks' ownership of in-house programming.

In 1995, the FCC eliminated the Fin-Syn rules, giving the major broadcast networks the right to own an unlimited amount of programming that they broadcast, and to syndicate programming by selling it directly to stations. The DOJ consent decrees lapsed around the same time.

A year later, in 1996, Congress raised the broadcast ownership cap from 25 to 35 percent, allowing companies like News Corporation and Viacom to purchase yet more TV stations.

Two years ago, in 1999, the FCC relaxed the duopoly rules to allow a single owner to acquire two TV stations in some of the larger markets across the country.

Last year, Tribune acquired Times Mirror and took advantage of the FCC's weak enforcement of the newspaper-broadcast cross-ownership rule. In practice, the FCC has allowed the owner of a broadcast station to acquire a newspaper in the same market without applying the rule until the station's broadcast license is renewed, which can be years later.

Finally, earlier this year, the FCC did away with a portion of the dual network rule and permitted Viacom's UPN to exist under common ownership with CBS.

It is directly because of these rule changes and lax FCC enforcement that we have these massive, vertically integrated companies like Viacom and Tribune which—because of their ability to promote and share their content and news products across multiple distribution platforms—are immensely profitable corporations. And yet today they come before us and ask for more.

So we've come to a crossroads and there are two paths we can take. One leads to further consolidation and an erosion of diversity in our local markets. The other provides for maintenance of rational ownership restrictions to allow local media outlets to retain some ability to control and disseminate locally relevant news and information, as well as programming that is uniquely suited to their particular community.

That is why I am considering legislation, along with Senators Inouye and Dorgan, that will hopefully restore some sense to today's debate. Our bill, which we may introduce today, requires FCC licensees to alert the Commission when they acquire a newspaper that creates a cross-ownership situation. The FCC is then directed to review the appropriateness of the acquisition, and determine whether any action is needed to bring the licensee in compliance with the rule.

In addition, our bill requires the FCC to report to this Committee, and to the House Committee on Commerce, with any proposed rule changes that would relax or repeal existing media ownership limits. Such proposed changes could go into effect 18 months after we receive such a report—which must include the FCC's explanation of how its rules changes will promote competition, diversity, and localism in the public interest.

I look forward to testimony from today's witnesses. These are important topics—more important in many ways than the typical debates between competing industry sectors. Today we debate the impact of media ownership on the diversity of outlets, viewpoints, and ultimately, the discourse of our democracy.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator McCAIN. Thank you very much, Mr. Chairman. I also welcome our distinguished panel. And I agree that this is an important hearing. Existing regulatory caps on broadcast station and newspaper ownership were created decades ago to preserve competition in a mass media market consisting of a limited number of radio stations, television stations and newspapers. But since that time, the mass media market has expanded exponentially. As a result, broadcasters and others are now saddled with anachronistic ownership rules that limit their ability to compete in the modern mass media market.

Changes in the mass media market are self-evident. To put the matter bluntly, in the digital era, insight and commentary on matters of public policy will no longer be dominated by Cronkite, Brinkley, *The New York Times* and *The Washington Post*. In their place have risen CNN, CNBC, MSNBC, Salon, Wired, Slashdot and innumerable other sources of information and news. Last night I was flipping through the channels and saw BBC News. I hope that our panelists will look at BBC News and take a page from their book and cover some foreign news for a change as well.

This new mass media market is dominated not by broadcasters and newspapers, but by multichannel mass media entities like cable TV, direct broadcast satellite television, wireless cable, and of course, the Internet. These new media are not only powerful economic competitors, they are also driving all forms of media to become more interactive.

Interactive communications limit mass media's ability to dictate public opinion and they allow ordinary citizens to be more than passive recipients of institutionalized news. Many websites, for example, let readers respond to a story by posting their reactions, rebuttals or questions.

In the face of these new competitors, new technologies and new market demands, ownership restrictions on traditional media have not only become unnecessary, they have become anticompetitive. Faced with new sources and new methods of competition, broadcasters and newspapers saddled with potentially outdated infrastructure desperately need the increased efficiency that relaxed ownership rules permit.

None of these observations are new to this debate or to this Congress. Indeed, Congress recognized all of these points when it enacted the 1996 Telecommunications Act that directed the FCC to review all of its broadcast ownership rules every 2 years. But unfortunately, that directive has gone unfulfilled. To be sure, the Commission has overhauled some of its ownership rules, but it left others in place, including the rules that are arguably the most anachronistic and anticompetitive, the newspaper broadcast cross-ownership ban and the 35 percent national broadcast ownership cap.

These actions are inconsistent with the letter and intent of the 1996 Telecommunications Act. That Act directed the Commission to review all of the rules every 2 years because changes rendered those rules inherently suspect.

Unfortunately, change in the market has proved once again that it can and will outpace change in government bureaucracy.

There are several sources feeding the bureaucratic inertia that have kept these ownership rules in place even as permanent and unmistakable changes in the mass media market continue to render them obsolete. Some of these sources sprang from a misguided notion that we should more heavily regulate broadcasters who profit from the free use of valuable public spectrum. Others sprang from ingrained notions about the power of the broadcast networks and newspapers. But if we are truly to serve the American people, then none of these concerns can justify continued inaction.

I firmly believed that broadcasters should pay for the spectrum they use, but burdensome and pointless regulation is no substitute for public revenues obtained from a competitive broadcast industry. I firmly believe that this Congress and the FCC should remain vigilant to prevent undue concentration of power in the mass media markets, but punishing yesterday's victors will only aid tomorrow's would-be monopolists.

Mr. Chairman, thank you for convening this hearing today.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA

Thank you Mr. Chairman for having this hearing today regarding this very important topic.

Existing regulatory caps on broadcast station and newspaper ownership were created decades ago to preserve competition in a mass media market consisting of a limited number of radio stations, TV stations and newspapers. But since that time, the mass media market has expanded exponentially. As a result, broadcasters and others are now saddled with anachronistic ownership rules that limit their ability to compete in the modern mass media market.

The changes in the mass media market are self-evident. To put the matter bluntly: In the digital era, insight and commentary on matters of public policy will no longer be dominated by Cronkite, Brinkley, the *Times* and the *Post*. In their place have arisen CNN, CNBC, MSNBC, *Salon*, *Wired*, *Slashdot* and innumerable other sources of information and news.

This new mass media market is dominated, not by broadcasters and newspapers, but by multichannel mass media entities like cable TV, direct broadcast satellite TV, wireless cable, and, of course, the Internet. These new media are not only powerful economic competitors; they are also driving all forms of media to become more interactive. Interactive communications limit mass media's ability to dictate public opinion, and they allow ordinary citizens to be more than passive recipients of institutionalized news. Many websites, for example, let readers respond to a story by posting their reactions, rebuttals or questions.

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None of these observations are new to this debate, or this Congress. Indeed, Congress recognized all of these points when it enacted a 1996 Telecommunications Act that directed the FCC to review *all* of its broadcast ownership rules every 2 years. But unfortunately, that directive has gone unfulfilled. To be sure, the Commission has overhauled *some* of its ownership rules. But it left others in place, including the rules that are arguably the most anachronistic and anticompetitive—the newspaper/broadcast cross-ownership ban and the 35 percent national broadcast ownership cap.

These actions are inconsistent with the letter and the intent of the 1996 Telecommunications Act. That Act directed the Commission to review *all* of the rules *every* 2 years because change has rendered those rules inherently suspect. Unfortunately, change in the market has proved once again that it can and will outpace change in government bureaucracy.

There are several sources feeding the bureaucratic inertia that have kept these ownership rules in place even as permanent and unmistakable changes in the mass media market continue to render them obsolete. Some of these sources spring from the misguided notion that we should more heavily regulate broadcasters who profit from the free use of valuable public spectrum. Others spring from ingrained notions about the power of the broadcast networks and newspapers.

But if we are truly to serve the American public, then none of these concerns can justify continued inaction. I firmly believe that broadcasters should pay for the spectrum that they use, but burdensome and pointless regulation is no substitute for public revenues obtained from a competitive broadcast industry. I firmly believe that this Congress and the FCC should remain vigilant to prevent undue concentration of power in the mass media markets, but punishing yesterday's victors will only aid tomorrow's would-be monopolists.

Again, Mr. Chairman, thank you for convening this important hearing today.

The CHAIRMAN. Thank you.

Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. Mr. Chairman, I commend you for calling this hearing. I have a rather lengthy statement, but if I may, I would like to just summarize it and ask that my full statement be made part of the record.

Last year, we had received reports that all four networks turned a profit. And I understand that the newspaper industry continues to generate profits at a pace much greater than many American industries. Therefore, Mr. Chairman, I believe that we must be exceedingly cautious before we give into industry's claim that absent regulatory relief, their businesses will suffer.

In many ways, Mr. Chairman, these companies occupy a public trust. Broadcasters, through their grant of free spectrum, inform the public of local and national relevant news and information; and newspapers do the same. The ownership restrictions that limit aggregation of these businesses are premised on the need to protect that public trust. These ownership restrictions help preserve diversity of ownership and viewpoints both nationally and market-by-market. In turn, that diversity enhances a vibrant localism that keeps our citizens informed when they pick up the morning paper and turn on the evening news. Such localism permits the coverage in local papers and stations to more truly reflect the communities they serve

Mr. Chairman, I ask that my full statement be made part of the record.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

I want to commend Chairman Hollings for holding this important hearing. It is past time for the Commerce Committee to examine the vitally important issues of consolidation in the broadcast and newspaper industries, and I look forward to the debate over these topics on today's panels.

Over a decade ago, I chaired similar hearings in this Committee. The tale told then was much like the one we'll hear today. The marketplace has changed, our business is getting tougher and tougher to run in the modern economy. Competition is undermining our profits, and without relief, there may be fewer outlets to provide Americans with quality news and programming. In short—let us combine so we can compete, and if we can compete, news and programming will improve along the way. I wish I were convinced.

Last year, all four networks turned a profit. And I understand the newspaper industry continues to generate profits at a pace greater than many American industries.

We must be exceedingly cautious before we give in to industry's claims that absent regulatory relief, their businesses will suffer. In many ways, these companies occupy a public trust. Broadcasters through their grant of free spectrum, inform the public of local and nationally relevant news and information. Newspapers do the same.

The ownership restrictions that limit aggregation of these businesses are premised on the need to protect that public trust. The ownership restrictions help preserve diversity of ownership and viewpoints both nationally and market by market. In turn, that diversity enhances a vibrant localism, that keeps our citizens informed when they pick up the morning paper or turn on the evening news. Such localism permits the coverage in local papers and stations to more truly reflect the communities they serve.

Without these ownership restrictions, I believe that diversity and localism would suffer. I believe that these businesses would do what I would do—maximize returns to the detriment of our public discourse—by reducing costs, promoting efficiencies and synergies, re-running the same stories and repurposing the same news and information. There is nothing wrong with that. It's the American way.

But that profit motive is in conflict with another American value—the exchange of ideas and information that informs our cultural and political debate. Accordingly, we have for years had reasonable restrictions that prevented a single owner from exercising undue power over that debate: nationally, we have prevented the networks from owning too many stations. And locally, we restrict the joint ownership of stations and newspapers.

These rules make sense to me. That is why I look forward to co-sponsoring legislation with Chairman Hollings and Senator Dorgan to bring some sense to this debate, by requiring the FCC to explain to the Committee how relaxing the ownership limits will serve the public interest.

I expect some of today's witnesses to feel differently about these issues. I look forward to the debate.

The CHAIRMAN. It will be included in the record.

Senator Wyden.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you very much, Mr. Chairman. Mr. Chairman I want to commend you because I think you are holding hearings on an extraordinarily important subject and I just want to walk through briefly an example of what could happen if all of these rules on media consolidation are lifted. You are correct in noting that there are some in this country who are saying let us just throw them all out the window.

If that was the case, you could have AOL/Time Warner going out and buying AT&T Cable, which would give it a huge percentage of the Nation's cable market. That new entity could go out and buy NBC if all the rules were lifted, and then start snapping up individual television and radio stations until they had a nationwide chain with a very large presence in most major markets. That new, very large entity then could go out and buy Gannett, giving them newspapers in many of the same markets where they already control cable, broadcast TV, and radio.

My concern, Mr. Chairman, and why I think your hearings are so important, is that if you just went out and lifted all these rules as some have proposed, you could have on our watch the most radical media consolidation in this country's history and so I think it is important that we take the time to think through the ramifications of this possibility, and that is why I think your hearings are so important and I look forward to working with you and our colleagues to examine these questions.

The CHAIRMAN. Very good.

Senator Kerry.

STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR FROM MASSACHUSETTS

Senator KERRY. Mr. Chairman, thank you for having these hearings. Let me just very briefly say that we have been through this a number of times in the last years, 1996 most recently. We saw the ownership shifted to the 35 percent from the 25. And we have seen the shift from sort of the finite number of stations to a percentage of national audience, and I think that shift reflected a change in the marketplace itself and in our perceptions of it.

Like Senator McCain, I think I would observe that the marketplace has changed even further very significantly in a lot of different ways, and all of us understand that this fight, to a large degree, is over advertising revenues, and the structure by which local affiliates are able to make their pitch and what kind of package they can present versus the consolidated packages that other larger, more diverse entities are able to present. Our interest, I think, Mr. Chairman, has to still remain to the question of protecting people's access to diversity in information, and there is a principle of localism which you have very articulately and forcefully advocated both in your letter to the FCC and otherwise here this morning. I agree with that fundamental concept of both the diversity and localism.

On the other hand, I think it is appropriate for this Committee at this juncture to be analyzing whether or not that marketplace has changed in a way that the mix is different, in the way in which diversity may be protected currently, or the way in which people will have access to information, which is obviously on its face so different from the original broadcast structure that we sought to protect when the principle was first established.

We do notice, however, that there has been this extraordinary media consolidation: AOL purchasing Time Warner, Viacom, CBS; News Corp. presently trying to get 10 television stations from Chris Kraft, so that in the television broadcast industry, you have got, I think, the percentage of commercial television stations controlled by the largest 25 groups has climbed from 25 percent to 45 percent since passage of the 1996 Act.

But none of that, none of those percentages adequately reflect the other kinds of changes that have taken place in how people have accessed information, what information they have available to them. I have a sense this issue is probably going to be decided either by the FCC or the courts because I think they may do so faster than we are capable of, but it is entirely appropriate that we look at it, and examine whether or not any of those changes in the marketplace currently and in the way people get information mandate that we perhaps think differently about how we are measuring what the impact in diversity and localism really is and how it is best protected. So I think it is appropriate that we are measuring today, and apologize to the witnesses and to my colleagues. We have a markup on two trade bills in the Finance Committee in about 10 minutes, so I can't be here for all the testimony, but I will try to come back.

The CHAIRMAN. Very good.

Senator Burns.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. I would just ask that my statement be made part of the record, and I will listen to the witnesses before I make up my mind.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENTOF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Thank you, Mr. Chairman. I thank the Chairman for calling the hearing on media consolidation today. This is certainly a topic that warrants the Committee's full and serious attention.

I would first like to touch on the debate surrounding the current 35 percent national cap on broadcast ownership. I strongly support the current cap, which was raised from 25 percent as part of the 1996 Telecommunications Act.

Many argue that the increasing variety of consumer choices for video programming renders the need for any restrictions on broadcast ownership obsolete. It is true that the array of multichannel video media has increased significantly. Currently, many consumers can choose from direct satellite, cable or even the Interent for video programming. However, even when consumers do have this variety of video distribution to choose from, many of these competing technologies are not true alternatives to locally based programming. For rural consumers in particular, alternatives increasingly exist only between different national distribution networks.

Free, local, over-the-air television broadcasting still serves a vital and unique role in providing community information. The ability to receive local television signals is more than just having access to local sports or entertainment programming. It is a critical and immediate way to receive important local news, weather and community information.

Additionally, natural tensions exist between the desire of networks to maximize national audiences and the sensitivities of local affiliates to their specific audiences. I am very concerned that any lifting of the cap would significantly increase the leverage the networks currently have in negotiations with their. affiliates and lower the degree of flexibility that stations have in providing local programming.

In a drastically different course of events than has taken place in the video marketplace, the number of daily newspapers in the country has plummeted significantly in recent years. Since 1975, the year the ban on newspaper broadcast cross-ownership was instituted by the FCC, the number of daily newspapers has declined from nearly 1,800 to roughly 1,500. If community-based newspapers are to survive, they must be given the option to increase 3 efficiencies by entering into co-ownership with local broadcast stations.

The Commission's outdated position on cross-ownership is of great concern to me, particularly given its failure to offer a substantive, objective analysis of the actual effect of the cross-ownership ban in the current media marketplace. Even though the previous Commission announced a Notice of Proposed Rulemaking on the cross-ownership restriction as a result of its 1998 biennial review, nothing ever happened. I understand that the new Commission plans to rectify this situation and I plan to follow developments in this critical area with great interest.

Thank you, Mr. Chairman. I look forward to the testimony of today's witnesses.

The CHAIRMAN. Very good. That is a change.

Senator BURNS. Minority status does that.

The CHAIRMAN. Senator Cleland.

STATEMENT OF HON. MAX CLELAND, U.S. SENATOR FROM GEORGIA

Senator CLELAND. Thank you very much, Mr. Chairman. I understand that antitrust is defined as, "opposing or intending to regulate business monopolies such as trusts or cartels, especially in the interest of promoting competition." Well, these Federal laws that we are talking about were created to protect American citizens from the concentration of power in too few hands and govern all industries.

While these laws are enforced by the Department of Justice, there are often other agencies involved in merger reviews with the responsibility of examining aspects other than antitrust, but complimentary to the merger review. With regard to broadcasting mergers the FCC has an appropriate role of reviewing of broadcast license transfers to ensure they are in the public interest.

Essentially, regulations and laws like ownership caps are designed to be additional protections for the public. In this case, these regulations promote a diverse and free exchange of ideas. When one entity reaches 35 percent of the Nation's homes, is that enough to attract the attention of antitrust officials? Maybe not. But this single entity is now able to reach millions of homes. In this case, I believe that the law limiting broadcast ownership enables and promotes diversity, above that of antitrust review by itself.

However, I can certainly understand why a group would want to exceed this cap. According to Kevin Saunter in the broadcast television industry book, the profit margin for network-owned and operated stations can still reach an amazing 25 percent or more which translates into yearly profits that can be in the tens of millions of dollars, a significant amount for networks struggling with decreasing viewership and increasing costs.

The FCC as the guardian of the public's interest and the public's manager of radio spectrum owes the American public an appropriate review of the transfer of broadcast licenses. Although multichannel service providers have increased the number of outlets people can turn to for video information and entertainment, about 20 percent of Americans still remain dependent on free over-the-air television for their information. This portion of the population should not be overlooked when contemplating removing or increasing the cap.

I support the continuation of the FCC's biennial review of the broadcast ownership cap and the newspaper broadcast ownership cap as they have been directed. Although relaxation of these two caps has been rejected up to this point, I will be watching closely for the results of the FCC's next review. Given the relaxation of the duopoly rules, I believe we will be able to see more clearly the potential for greater consolidation.

Antitrust officials play an important role in our economy, however, there are additional factors that might be overlooked if other agencies are removed from the merger review process. When we are discussing the precious and finite commodity of our national spectrum, I believe it is appropriate for the FCC to examine these mergers.

I also believe due deference should be given to its decisions. I look forward to the Commission's continuing examination of ownership rules, keeping in mind that every regulation should be continued to be examined for its rlevance in this ever-changing world.

Thank you, Mr. Chairman

The CHAIRMAN. Thank you.

Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman, thank you very much. I apologize. I was at a leadership meeting and I missed your opening statement, which I am sure would have been illuminating for me.

The CHAIRMAN. I did mention your amendment. Don't you remember, when we voted with respect to change of ownership. Only by 2 votes did we have the 35.

Senator DORGAN. In 1996, when the Committee reported out a bill that expanded the audience cap to 35 percent, I believe, and I offered an amendment on the floor of the Senate which about 4 o'clock in the afternoon prevailed, Senator Dole was on the other side and I actually prevailed and I was the most surprised man in Washington, DC., and then I believe Senator D'Amato changed his vote at the request of Senator Dole so that they can reconsider it, and then dinner intervened and several Senators had some sort of an epiphany over their dinner and we had a revote about 4 hours later, and I ended up losing. Such is the work of the Senate, well within the rules, I might add.

But I felt the need to offer the amendment at that time because I worried about what was going to happen. Even then I was worried about what was happening, but we have had since then as you know an orgy of mergers in this industry. I think in 1996, the largest radio ownership group had 39 stations. Now, 1100 stations-plus. What's happening in broadcast, in my judgment, is unhealthy.

There are competing interests. The private interests of those who are engaged in this and they have every right to hold that interest and want to become big and big and bigger, and the public interest, and I would say to the FCC, and I hope they pay some attention to this hearing, Mr. Chairman, I am pleased you are holding the hearing, the question of whether we ought to have ownership limits and the question of whether caring about localism is some old-fashioned anachronism is a very important question. I answer it one way. Some others might answer it another way. But I feel very strongly about it.

The FCC has a responsibility to us, a responsibility to this country to understand that these airways belong to the American people and that localism is not some old-fashioned notion about what we ought to have as a public policy, and I think the burden—the FCC somehow seems to suggest the burden is on the Congress to demonstrate why there should be limits. That is not the case at all in my judgment. The burden ought to be on the FCC and the broadcasters to demonstrate why the limits ought to be increased.

In my judgment, there is no basis and no case that can be made to increase these broadcast limits. If anything, we ought to go back to the 1996 limits. But I fear that that horse is long out of the barn. Mr. Chairman, thank you for calling these hearings. They are very important.

The CHAIRMAN. Thank you.

Senator Fitzgerald.

STATEMENT OF HON. PETER G. FITZGERALD, U.S. SENATOR FROM ILLINOIS

Senator FITZGERALD. Well, thank you, Mr. Chairman. I would like to welcome one of my constituents, Mr. Jack Fuller, who is from Evanston, Illinois and President of the Tribune Company. The Tribune, in addition to owning newspapers and television stations, is the owner of the Chicago Cubs, a great baseball team, and they are doing very well this year and I hope we can have a World Series at least sometime this century. The Cubs have not won a World Series since 1908. Anybody can have a bad century, I guess, in Chicago.

Senator BURNS. Seven years ahead of time.

Senator FITZGERALD. But anyway, I am glad that the Chairman has called this hearing. I think it is an important issue. I do agree that the public owns the airwaves. I do have questions, however, as to whether the ownership restrictions make sense in today's current climate, where you have so many media outlets, so many cable television stations and so many satellite TV channels and so many radio and other broadcast outlets, so I look forward to this hearing as far as going into depth and exploring the issue. I do wonder whether the restrictions that date back to the late 1940s or 1946, when there were only three broadcast networks around the country, continue to make sense.

Thank you, Mr. Chairman, for holding this hearing.

The CHAIRMAN. Thank you. In presenting these witnesses, let me make it as part of the record, unless there is objection, the *Columbia Journalism Review* ownership listing of Viacom's assets, and the *Columbia Journalism Review* ownership listing of Tribune's assets. I was just trying to summarize. For example, Viacom has got 19 Paramount stations; and the MTV networks, Nickelodeon channels, Showtime Networks, eight channels; Black Entertainment Television with six channels; and Paramount production and distribution and right on down—and publishing, CBS television ownership of some 17 stations there. In radio, it is just too much to count. I counted 40 different cities, and there are several radio stations in each city.

[The information referred to follows:]

[From the Columbia Journalism Review]

WHO OWNS WHAT

Viacom, 1515 Broadway, New York, NY

Broadcast and Cable

Paramount Stations Group

WUPA—Atlanta
WSBK—Boston
WWHO—Columbus
KTXA—Dallas, Ft. Worth
WKBD—Detroit
KTXH—Houston
WNDY—Indianapolis
WBFS—Miami
WLWC—New Bedford/Providence
WUPL—New Orleans
WGNT—Norfolk
KAUT—Oklahoma City
WPSG—Philadelphia

- WNPA—Pittsburgh
- KMAX—Sacramento
- KSTW—Seattle
- WTOG—Tampa
- WDCA—Washington, DC
- WTVX—West Palm Beach

UPN

The Paramount Channel

MTV: Music Television

- M2
- MTV
- MTV Asia (joint venture with PolyGram)
- MTV Australia (licensing agreement)
- MTV Brazil (joint venture with Abril S.A.)
- MTV Europe
- MTV India (joint venture)
- MTV Indie
- MTV Japan (licensing agreement)
- MTV Latin America
- MTV Mandarin (joint venture with PolyGram)
- MTV Productions
- MTV Ritmo
- MTV Rocks
- MTV Russia

Nickelodeon

- Nickelodeon Australia (joint venture—includes News Corp.)
- Nickelodeon Germany (joint venture with Ravensburger, and Bear Stearns)
- Nickelodeon Hungary
- Nickelodeon Iceland
- Nickelodeon Latin America
- Nickelodeon Nordic
- Nickelodeon United Kingdom (joint venture with BSKYB)
- Nick at Nite
- Nick at Nite's TV Land
- Nick Jr.
- Nickelodeon Books
- Nickelodeon Magazine
- Nickelodeon Movies
- Noggin

VH1

- VH1 Country
- VH1 Soul
- VH1 Germany (joint venture with Bear Stearns)
- VH1 United Kingdom

Comedy Central (joint venture with Time-Warner)

Showtime Networks Inc.

- SET Pay-Per-View (pay-per-view marketer of Mike Tyson fights)
- Showtime
- Showtime en Espanol
- Showtime Extreme
- Sundance Channel (joint venture with Robert Redford, and PolyGram)
- The Movie Channel
- FLIX

BET—Black Enteratinment Television

- BET on Jazz: The Jazz Channel
- BET Action Pay Per View
- BET International
- BET Movies/STARZ!
- BET Pictures I
- Viacom Interactive Services

Viacom—Film & Television Production/Distribution

- Paramount Pictures
- Paramount Television
- Paramount Home Video

CIC Video (joint venture)
Viacom Productions
MTV Films
MTV Productions
Nickelodeon Studios
Nickelodeon Movies
Wilshire Court Productions
Spelling Entertainment Group (80%)
Spelling Films
Spelling Television
Republic Entertainment
Big Ticket Television
Worldvision Enterprises
Hamilton Projects

Viacom—Video and Music/Parks

Retail

Blockbuster Video
Blockbuster Music
Viacom Entertainment Stores

Paramount Parks

Paramount's Carowinds (located in Charlotte, NC)
Paramount's Great America (located in Santa Clara, CA)
Paramount's Kings Dominion (located in Richmond, VA)
Paramount's Kings Island (located in Cincinnati, OH)
Paramount Canada's Wonderland (located in Toronto)
Raging Waters (located in San Jose, CA)
Star Trek: The Experience (located in Las Vegas, NV)

Other

Viacom Consumer Products
Famous Music (copyright owners)
Viacom Interactive Services
Star Trek Franchise

Viacom—Publishing

Anne Schwartz Books
Archway Paperbacks and Minstrel Books
Lisa Drew Books
Fireside
The Free Press
MTV Books
Nickelodeon Books
Simon & Schuster Consumer Group
Simon & Schuster
Simon & Schuster Audio Books
Simon & Schuster Children's Publishing
Simon & Schuster Editions
Simon & Schuster Interactive
Simon & Schuster Interactive Distribution
Simon & Schuster Libros en Espanol
Pocket Books
Scribner
Star Trek
Touchstone
Washington Square Press

Viacom—Theaters and Film Distribution

Paramount Theaters
Paramount (Europe)
United Cinemas International (UCI) (joint venture with Universal)
United International Pictures (UIP) (joint venture with Universal)

Music

Famous Music
Famous Players

CBS Television

Television-owned and operated stations

WCBS—New York
KCBS—Los Angeles
WBBM—Chicago
WCCO—Minneapolis
WFRV—Green Bay
WWJ—Detroit
WJZ—Baltimore
WBZ—Boston
KCNC—Denver
WFOR—Miami
KYW—Philadelphia
KDKA—Pittsburgh
KUTV—Salt Lake City
KPIX—San Francisco
KEYE—Austin Cable
TNN: The Nashville Network
CMT: Country Music Television

Group W Network Services—technology services for the cable and broadcast industries

New Media—Online

CBS.com
CBSNews.com
CBSSportsLine.Com (partial)
CBSMarketWatch.com (with Pearson PLC)
CBSHealthWatch.com (partial)
Office.com (33.3% with Winstar)
ThirdAge (30%)
Big Entertainment—Hollywood.com (30%)
Contentville.com (35% with Brill Media Holdings 34%, Primedia Inc., NBC, Ingram Book Group and EBSCO)
StoreRunner.com (partial)

CBS Radio—Infinity Broadcasting

Atlanta: WAOK-AM; WVEE-FM; WZGC-FM
Austin: KJCE-AM; KAMX-FM; KKMJ-FM; KQBT-FM
Baltimore: WJFK-AM; WLIF-FM; WXYV-FM; WQSR-FM; WWMX-FM
Boston: WBZ-AM; WODS-FM; WBCN-FM; WBMX-FM; WZLZ-FM
Buffalo: WECK-AM; WBLK-FM; WJYE-FM; WLCE-FM; WYRK-FM
Charlotte: WFNZ-AM; WGIV-AM; WBAV-FM; WNKS-FM; WPEG-FM; WSOC-FM; WSSS-FM
Chicago: WBBM-AM/FM; WSCR-AM; WXRT-FM; WCKG-FM; WJMK-FM; WUSN-FM
Cincinnati: WGRR-FM; WYRQ-FM; WYLX-FM; WUBE-FM
Cleveland: WDOK-FM; WQAL-FM; WZJM-FM
Columbus: WLVQ-FM; WAZU-FM; WHOK-FM
Dallas: KHVN-AM; KLUV-FM; KOAI-FM; K000-AM; KRBV-FM; KRLD-AM; KVIL-FM; KYNG-FM
Denver: KDJM-FM; KIMN-FM; KXKL-FM
Detroit: WWJ-AM; WVMV-FM; WKRK-FM; WOMC-FM; WXYT-AM; WYCD-FM
Fresno: KMJ-AM; KOOR-AM; KNAX-FM; KOQO-FM; KRNC-FM; KSKS-FM; KVSR-FM
Greensboro, NC: WMFR-AM; WSJS-AM; WSML-AM
Hartford: WTIC-AM/FM; WZMK-FM; WRCH-FM
Houston: KILT-AM/FM; KIKK-AM/FM
Kansas City: KBEQ-FM; KFKF-FM; KXMV-FM; KOZN-FM
Las Vegas: KSFN-AM; KXNT-AM; KLUC-FM; KMXB-FM; KMZQ-FM; KXTE-FM
Los Angeles: KNX-AM; KFWB-AM; KCBS-FM; KTWV-FM; KLSX-FM; KRLA-AM; KROQ-FM; KRTH-FM
Minneapolis: WCCO-AM; KSGS-AM; KMJZ-FM; WLTE-FM
Monterey-Salinas: KLUE-FM
New York: WCBS-AM/FM; WINS-AM; WNEW-FM; WFAN-AM; WXRK-FM
Orlando: WJHM-FM; WOCL-FM; WOMX-FM
Palm Springs: KEZN-FM
Philadelphia: KYW-AM; WPHT-AM; WOGL-FM; WIP-AM; WYSP-FM
Phoenix: KMLE-FM; KOOL-FM; KZON-FM
Pittsburgh: KDKA-AM; WBZZ-FM; WDSY-FM; WZPT-FM
Portland: KUPL-AM; KBBT-FM; KINK-FM; KKJZ-FM; KUFO-FM; KUPL-FM

Riverside: KFRG-FM; KXFG-FM
Rochester: WCMF-FM; WPXY-FM; WRMM-FM; WZNE-FM
Sacramento: KHTK-AM; KQPT-AM; KZZO-FM; KNCI-FM; KRAK-FM; KSFM-FM; KYMX-FM
San Diego: KPLN-FM; KYXY-FM
San Jose: KEZR-FM; KBAY-FM
San Francisco: KCBS-AM; KFRC-AM/FM; KITS-FM; KYCY-FM/AM; KLLC-FM
Seattle: KRPM-AM; KBKS-FM; KMPS-FM; KYCW-FM; KZOK-FM
St. Louis: KEZK-FM; KYKY-FM; KMOX-AM
Tampa: WQYK-AM/FM
Washington, DC: WHFS-FM; WJFK-FM; WPGC-AM/FM; WARW-FM
West Palm Beach: WEAT-FM; WIRK-FM

Westwood One (equity interest-radio network syndicated program/producer
Metro Networks
    TDI Worldwide—outdoor advertising
Outdoor Systems

Production

    CBS Production
    EYEMARK—marketing and production of syndicated programming
    King World Productions—first-run television syndication

Tribune Company, Chicago, IL

Broadcast and Cable

    WPIX—New York
    KTLA—Los Angeles
    WGN—Chicago
    WPHL—Philadelphia
    WLVI—Boston
    KDAF—Dallas
    WGNX—Atlanta
    KHTV—Houston
    KTZZ—Seattle
    WBZL—Miami-Ft. Lauderdale
    KWGN—Denver
    KTXL—Sacramento
    WXIN—Indianapolis
    KSWB—San Diego
    WTIC—Hartford/New Haven
    WTXX—Hartford
    WXMI—Grand Rapids
    WGNO—New Orleans
    WPMT—Harrisburg
    WBDC—Washington (not owned, but operated under a Lease Managment Agreement)
    WNOL—New Orleans

    Tribune Entertainment—production and distribution
    Qwest Broadcasting LLC
    Tribune Co. holds a 25% stake in Time Warner's WB Network

Cable

    CLTV—Chicago area 24 hour news and sports
    TV Food Network (31%)
    Central Florida News 13 (CFN 13)—24 hour local news channel—joint venture between Tribune and Time Warner Communications

Radio

    WGN—AM (Chicago)
    KKHK—FM (Denver)
    KOSI—FM (Denver)
    KEZW—AM (Denver)

Tribune Company—Publishing

Daily Newspapers

    Chicago Tribune
    Fort Lauderdale Sun-Sentinel
    Orlando Sentinel
    South Florida Newspaper Network
    Daily Press (Hampton Roads, VA. and area)

The Advocate (Stamford, CT)
The Baltimore Sun
Greenwich Time (CT)
The Hartford Courant
LaOpinion (50%, Spanish language newspaper in Southern California)
Los Angeles Times
Los Angeles Times Syndicate (syndication service)
Los Angles Times-Washington Post News Service (50%)
The Morning Call (Allentown, PA)
Newsday (Long Island, NY)
Tribune Media Services—syndicated content for print and online
On The Mark Media
TMS TV—television programming information
TVData—television programming information
Zap2it.com—Website offering TV listings

Online Publications

Black Voices—Afro-centric news and information
Exito—South Florida Hispanic community news
Relcon—listing of Chicago area apartments
US/Express—weekly entertainment news
Digital City Atlanta
Digital City Boston
Digital City Chicago
Digital City Denver
Digital City Hampton Roads
Digital City Los Angeles
Digital City Orlando
Digital City South Florida
cars.com—national Web site for vehicle listings—venture with Times Mirror and Washington Post Co.
apartments.com—national Web site for apartment listings—venture with Times Mirror and Washington Post Co. (cars.com and apartments.com are part of Classified Ventures LLC)
CareerBuilder.com (16%)—online employment information

Tribune Company—Other

Sports Franchise
Chicago Cubs

Tribune Ventures: Investment in and partnerships with the following ventures; percentage indicates how much ownership Tribune Co. has with:

America Online (1.5%)
CheckFree (1.0%)—electronic payment processor
Digital City (20.1%)—local interactive content
Excite (4.3%)—World Wide Web search engine
ImageBuilder Software (23%)—software developer
Discourse Technologies (14%)—multimedia education products
Infobeat (12.6%)—customized content
iVillage (7.8%)—online content
Lightspan Partnership (6.6%)—new—media education products
Open Market (2.6%)—electronic commerce
Peapod (10.7%)—online grocery shopping service
Picture Network International (NA)—online content
The Learning Company (11%)—multimedia education products
SoftKey International (NA)—digital education products
StarSight TeleCast (NA)
Interealty Corp. (25%)—real estate information
Knight—Ridder/Tribune Information services (50%)—news wire
Baring Communications Equity (Asia—Pacific) Ltd. Fund (NA)
Classified Ventures LLC (33%)

The Washington Post Co., Washington, DC

Newspapers

The Washington Post
The Washington Post National Weekly Edition
The Washington Post Writers Group (syndication)
The Herald (Everett, WA)

Gazette Newspapers, Inc. (community weekly newspapers and a monthly business publication, in Maryland; 11 military newspapers)
International Herald Tribune (50%)—with The New York Times Company
Los Angeles Times—Washington Post News Service (50% with Times-Mirror)
Enterprise Newspapers—4 weekly community newspapers in Snohomish County, WA

Magazines

Newsweek
Newsweek International
Newsweek Japan (Newsweek Nihon Ban)
Newsweek Korea (Newsweek Hankuk Pan)
Newsweek En Espanol
Itogi—Russian language newsweekly
Tempo—Greek language newsweekly with New Communications, S.A.
Post-Newsweek Business Information—trade magazines and trade shows

Television

Post-Newsweek Stations, Inc.
WDIV—(Detroit) (NBC)
KPRC—(Houston) (NBC)
WPLG—(Miami) (ABC)
WKMG—(Orlando) (CBS)
KSAT—(San Antonio) (ABC)
WJXT—(Jacksonville) (CBS)
ACTV, Inc. (20%)—Interactive television for entertainment and education
Newsweek Productions

Cable Operations

Cable One—MSO based in Phoenix, AZ

Other

Kaplan Educational Centers
Digital Ink Co.—new media and electronic publishing
Classified Ventures—with Times-Mirror and Tribune Co.
LEGI-SLATE—online Federal Government and regulatory information
Robinson Terminal Warehouse—newsprint facility in Virginia
Capitol Fiber—recycling center in Washington/Baltimore area
Bowater Mersey Paper Company (49%)—newsprint manufacturer in Nova Scotia
Dearborn Publishing Group, Inc.—a publisher and provider of licensing training for securities, insurance and real estate professionals

The CHAIRMAN. So, but excuse me, Mr. Karmazin, you are behind Tribune. You got to play catch-up ball with the Tribune. I am putting them in there also. Let me present and introduce Mr. Mel Karmazin, the President and Chief Operating Officer of Viacom; Mr. Alan Frank, the Chief Executive Officer of Post-Newsweek Stations; Jack Fuller, President of Tribune Publishing; William Baker, President of WNET in New York. The Committee is indebted to each of you for coming.

Mr. Karmazin, we will start with you, sir.

STATEMENT OF MEL KARMAZIN, PRESIDENT AND CHIEF OPERATING OFFICER, VIACOM, INC.

Mr. KARMAZIN. Thank you, Mr. Chairman, Senator McCain and other Members. I really appreciate the opportunity to be here today. I did not think you wanted to hear what I was going to say. I am sorry.

The CHAIRMAN. I would love to hear what you are going to say. If I were running CBS, I'd hire you this afternoon, so do not worry about that.

Mr. KARMAZIN. By way of background, I do go back a long time in the broadcasting business. I went to work in 1967 for Mr. Paley's CBS and had as mentors Mr. Paley and John Kluge. Both of those fine broadcasters. And, I like to call myself a broadcaster who has talked about localism and diversity, so let there be no mistake; obviously we are very interested, as are all of our television stations and all of our radio stations in localism, and certainly are prepared to demonstrate our localism in our communities, whichever community you are sitting with, as compared to any other broadcaster, whether or not they live in the market or do not live in the market. Certainly, localism and diversity are something that we think is very important.

I'd like to go back to those days, by the way, if you can mandate it, to where there were only three networks, and the diversity was just those three. So I do not think that, Senator as you said, the horse left the barn. But I think those days are gone. When I first started in the business, there were three networks, 9 out of 10 people watched prime time on network television. The average viewer had seven television stations available to them, and there was no VCR.

Today, the three networks, together in prime time, have less than 35 percent of the audience on television. The average home has 54 channels available to them. There are VCRs in almost 90 percent or actually over 90 percent of the country. There are items like TiVo and UltimateTV and the Internet. But even more important than what's here today, is there are more choices coming and the changes are going to be even more dramatic. There is going to be available very soon in every car, satellite radio, so that you will be able to receive 100 radio stations in your car here in Washington, DC. in CD quality, controlled by one company. It will be a subscription service, so the American public is going to have to pay to receive those 100 different radio stations and we, free over-the-air broadcasting, are going to have to compete with them.

There is also, if you follow what's going on with technology, the Internet which is also going to be available in your car. Internet access is available today on your PDA. It is available on your cell phone. It is going to be available in your car. There are 4,000 radio stations on the Internet that you are going to be able to reach in your home or you are going to be able to reach in your car, and the whole world is changing. Technology is changing dramatically. We are not just in a vacuum. Consolidation is taking place in every industry, so we are now competing to get advertising dollars from banks that are consolidating. We are competing to get advertising revenue from airlines that are consolidating. Our advertisers have consolidated. There are fewer and fewer of them, as have the advertising agencies consolidated.

And that consolidation is continuing. You mentioned earlier AOL/Time Warner, and alluded to the possibility that AT&T might do a transaction and possibly AT&T could do a transaction with Comcast. And it is possible that DirecTV, which has access into 100 percent of the homes in America, might even combine with News Corp., so we are not sitting here suggesting those things should not be allowed to take place. They are wrong to take place. But in order for us to compete against them, we need to have a stronger, free over-the-air broadcasting system and I believe that we need to see changes that have to be made in order to be able to have a fair seat at the table with these companies that have consolidated.

A lot has been said about radio consolidation so let us talk about that. There is a little over 10,000 radio stations in the United States. One company, not ours, owns a little bit over 1,000. That is 10 percent of the stations, so the largest company in this industry owns 10 percent. To some people, that might seem like a lot. To me, it is not Microsoft, as far as a consolidated position in this country.

But the effect of consolidation has not been less diversity, it has been more. To take Washington, DC., the same number of radio stations exist today that existed in the past. Fewer operators, more programming choices. There are far more programming choices available today to the people of Washington than existed prior to the 1996 Telecommunications Act.

I think that consolidation, deregulation has been good for the American public. I think we need to see the world where we can own two networks. We are channel 350 on DirecTV. We are channel 20-something here in Washington on some cable systems. We are on another channel with DishTV. There needs to be consolidation on the network side of things. We need to see that 35 percent arbitrary cap removed so that we can make money on our TV stations, so we can bid for programming, so we can afford to keep good programming on free over-the-air broadcasting, and we need to see further deregulation in the radio industry to compete with the technology that is satellite.

If somebody is concerned about too much concentration, for 30 years, I have been dealing with the Justice Department. They are pretty good at doing their job, and obviously there is a mechanism for unfair consolidation or too much consolidation. I see my time is up, so thank you.

[The prepared statement of Mr. Karmazin follows:]

PREPARED STATEMENT OF MEL KARMAZIN, PRESIDENT AND CHIEF OPERATING OFFICER, VIACOM, INC.

Good morning, Chairman Hollings, Senator McCain, and Members of the Committee. I am Mel Karmazin, President and Chief Operating Officer of Viacom. Thank you for this opportunity to testify before you today on the topic of media consolidation and broadcast ownership.

Instead of “media consolidation,” I prefer to call it “media competition,” because that’s what consumers are enjoying today. Over the last decade, consumers have reaped the benefits of a tremendous amount of change in the media industry: the meteoric growth of cable, the explosion of the Internet, the expansion of broadcast networks from four to at least nine, the birth of DBS, and the proliferation of new media devices, such as cell phones and personal digital assistants, which are allowing consumers to access information when and how they want it.

It is no coincidence that this enormous growth in content and distribution platforms has taken place during a time of consolidation in our industry. Horizontal and vertical combination is businesses’ response to consumers’ ever-multiplying demands for more information and entertainment tailored to their lives. Given today’s marketplace, we have seen content providers expand to keep up with the change: This personalization of information and entertainment is made economically possible through mergers, such as that between Viacom and CBS last year. Scale allows companies to accept risks associated with spiraling costs of programming, from the cost of talent to sports rights, and other costs, such as those required to market, brand and promote our products. And scale in the broadcast business brings consumers, *for free*, greater entertainment, sports and news programming choices than ever before.

If we are to understand the media industry, we cannot examine it in a vacuum. Because what happens in other industries unquestionably affects us in the media, particularly at companies like Viacom, where half of our revenues depend on advertising. As airlines merge, as banks merge, as consumer product companies merge, the number of our advertising customers also declines. Where before, for example, our company might have approached Airline X, Airline Y, and Airline Z as separate advertisers, we now have one fewer client and, as a result, one fewer source of advertising revenue. And, today, the agencies that represent the Nation's advertisers have also declined, meaning that mergers in that industry have forced us in the media to negotiate with only a handful of firms for a crucial part of our business.

In a world where AOL and Time Warner can combine, where Comcast may end up owning AT&T's cable systems, and where News Corporation could control DirecTV, it is ironic that today's hearing focuses largely on maintaining harmful restrictions on the only news and information medium that remains free to all Americans—broadcasting. Right or wrong, subscription-based cable MSOs and DBS providers are permitted to operate without the myriad ownership restrictions that hinder broadcasters. Yet, in a cruel twist of fate, these pay television services rely on broadcast television as a key component of their offerings: some 80 percent of Americans now tune into their broadcast television stations through their cable or satellite provider. Thus, while the services that require American consumers to pay fees for access to them continue to consolidate largely unchecked, broadcasters, of which we are a proud member, face the prospect of being more and more marginalized. Television and radio broadcasting are the only media today that remain hamstrung by rules governing ownership—of television and radio stations locally and nationwide and of broadcast television networks—in ways that are far more onerous than those affecting their competitors.

Despite the hyper-competitive state of the television industry, it is bewildering and astounding that there is a debate raging anew here in Washington over the limits on national broadcast television station ownership, which currently prohibit a group owner from reaching more than 35 percent of television households. Some, including the broadcast networks (ABC, CBS, Fox and NBC), want these limits pared back or repealed. Others, including some of the largest media conglomerates in the United States (such as Post-Newsweek, Cox, Belo and Hearst-Argyle), which count among their holdings broadcast network-affiliated television stations, as well as newspapers, cable systems and radio stations, are fighting hard to retain the status quo.

The proponents of the status quo in this debate are clearly motivated by an overwhelming fear that their television business is changing and that freezing ownership at today's levels is the panacea. But we all must recognize that the broadcast business is dramatically changing all around us: Our audiences are dwindling, our margins are contracting and our share of advertising revenues is declining. The impact on consumers, who should be central to this debate, do not benefit from the status quo when it is irrational, anticompetitive, and an obstacle to expanded choice. After all, it is change and deregulation that have brought about the almost dizzying array of video and audio options Americans enjoy today.

History instructs us that the fear of change is best confronted with a generous helping of flexibility and an invigorating dose of innovation. For instance, take the radio industry in the early 1940s, when many feared that a gadget called television would steal away its audience. Well, the coming of television did affect the radio business, but not in the way those fearful of change imagined. Instead, innovative managers prodded radio to recreate itself in the face of television's competitive threat, changing it over time from a center-of-the-living room, sit-down form of entertainment to one that went with consumers as they pursued their daily activities. And, as such, radio prospered as never before.

Or look at the broadcast television industry in the 1950s, when it, in turn, feared a new technology that took TV station signals and delivered them by cable to homes too far away to receive them over the air. Broadcasters fought the new technology because they saw it as a threat to free, over-the-air television and localism. Yet, today, more consumers are able to watch over-the-air television stations with a clear, sharp picture than would ever have been possible using rooftop antennas and rabbit ears. And over-the-air television stations have profited as a result.

History teaches us that change is uncomfortable and unnerving to both government and business as we all undergo the turbulence of moving from the older to the newer technologies. But in the end, when the change has occurred, we see that consumers have benefited from the upheaval because they have been empowered as never before. With hundreds and hundreds of programming choices available at their fingertips, consumers are the final arbiters of which of these services will succeed and which will fail.

Change is something my company deals with day after day. At Viacom, our broadcast networks, our cable networks, our video rental business, our publishing arm, our movie studio, and our radio stations are all by necessity constantly practicing the arts of futurism and prognostication, trying to figure out the next new technologies, trends, and regulatory schemes, and strategizing as to how we will adapt our business models to keep them relevant in any given new environment. Obviously, Viacom is not alone. Any business that is to survive must be three steps ahead of the curve or risk obsolescence. This includes big media companies with newspaper and television interests like Belo, Cox, Hearst-Argyle and others, which have been pushing for relaxation of the current restrictions on common ownership of a daily newspaper and a television station in the same community as one way to realize necessary economies in the face of the continuing decline in newspaper circulation. These companies advocating for a liberalization of local restrictions are, of course, the very same ones fighting deregulation of television ownership on a nationwide basis.

I empathize with the frustration of these newspaper conglomerates—deregulation is important for each of our businesses. But the common ownership of two television stations and of multiple radio stations in a local market consolidates advertising revenues far less so than the combination of a daily newspaper and a television station in one market. Thus, lifting the newspaper limit should occur only after the national television cap is lifted, the dual network rule is modified and the local ownership limits on television and radio are relaxed. It is these latter changes that promise greater benefits to ensure the future viability of the free delivery of entertainment, news and information to the American public.

Over the last decade alone, a worldwide technological tsunami has crashed upon the world, flooding the broadcast industry with competition in unprecedented proportions. Broadcast radio now competes head-to-head with Internet radio websites that offer customized music, sports and news. Where offices once turned on a radio for background music, individual employees are now "tuning in" to favorite websites on their PCs for their all-day listening pleasure. And one day soon, when wireless Internet access is ubiquitous, people driving in their cars may opt to listen to radio websites instead of their local broadcast radio stations. Satellite radio, which has been in the planning stages for years and is just now launching, is a new form of "radio" which will provide a subscriber with not just one program format as do traditional radio stations, but a whole range of them. Unlike traditional radio, which can reach only as far as a terrestrial broadcast signal, the new technology will let drivers travel far and wide without ever losing the clear reception of these satellite "stations." As for broadcast television, it competes directly with cable, which was originally created only to serve as a conduit for broadcast signals. That service, subscribed to by nearly 70 percent of the country's households, has developed into a multi-channel video programming distribution platform that not only carries hundreds of cable networks but serves as a high-speed gateway to the Internet and the literally millions of websites that offer personalized entertainment, news, weather and sports. The World Wide Web itself, born around 1994, spawned nearly three million sites from 1999 to 2000 alone. Direct broadcast satellite, another competitor to broadcast television, delivers hundreds of crisp digital programming channels to more than 10 percent of the country and also offers high-speed Internet access.

In 1996, Congress fully recognized this formidable competition to broadcasters when it passed the Telecommunications Act. Among other deregulatory actions, that law eliminated all limits on the national ownership of radio stations, raised from 25 percent to 35 percent the national ownership limit on television stations while deleting the numerical cap of 12 stations, and mandated that the FCC review broadcast ownership rules every 2 years.

Those who fear the further deregulation of television often point to the state of broadcast radio ownership in an attempt to paint a bleak picture of media concentration. In so doing, they note that the largest radio station group owns some 1,200 stations, that this group and a handful of others control a large portion of the radio advertising market, and that stations in these groups play the same programming formats from central feeds in their distant, big-city headquarters.

While their raw numbers are accurate, they give a completely misleading picture of a radio industry that is in reality vibrantly competitive and is certainly more diverse than the industry serving consumers in the pre-Telecommunications Act era. There are more than 10,500 commercial AM and FM radio stations in this country, so the top group owns only about 11.4 percent. The fourth largest radio group in terms of numbers, Viacom's Infinity radio division, owns 184 stations, representing a mere 1.7 percent of all commercial radio stations. The audience for the average radio station in this country is miniscule. And, the radio advertising market is so small—totaling only about 8.5 percent of *all* ad expenditures nationwide across all media (newspapers, magazines, billboard, Internet, cable, television, etc.)—that even if a single entity owned *every* radio station in the country, it still would control only a small portion of the advertising pie. In fact, under an antitrust review, one owner could not buy every radio station nationwide, because there would be limits on the number of outlets that that party could own on a local basis. Newspapers, by the way, still garner about 21 percent of total ad spending.

And what of the argument that ownership consolidation limits the diversity of formats? No basis in fact whatsoever. That is because the multiple owner seeks to diversify formats in order to garner the widest cross-section of listeners.

All we need do is look at the radio scene here in Washington's own backyard to see this theory spun into practice. In 1993, the 53 commercial and noncommercial radio stations in the Washington, D.C. market were owned by 39 licensees, who offered 19 different formats. Today, 5 years after the Telecommunications Act's liberalization of the radio ownership rules, these 53 stations are owned by fewer licensees—27 to be exact. But these 27 offer more formats: 22 instead of 19, a nearly 16 percent increase. Radio listeners in Washington can now tune in to a Korean language station, a Mexican station, two ethnic stations, a full-time smooth jazz station and a business news station, none of which was available 8 years ago or so.

Consumers in Columbia and Greenville, South Carolina enjoy even more diversity of formats—about 45-58 percent more than they could choose from before passage of the Telecommunications Act. Since 1993, the number of owners of radio stations in Columbia has decreased from 20 to 13, but the number of formats has increased from 11 to 16, including seven new formats and one new Spanish-language station. In Greenville in the same time period, the number of owners has gone from 27 to 23, but the number of formats has gone from 12 to 19, including ten new formats and two new Spanish-language stations. Radio programming, in short, has become more—not less—diverse, and consumers enjoy the fruits of Congress' deregulatory efforts. Moreover, broadcast radio is now better poised to compete with the new substitutes of the Internet and satellite radio.

As in the case of radio, we must parse the naysayers' arguments against deregulation of the national television ownership cap. Their primary contention, intended to incite fear among policymakers, is that localism will fall if the cap is lifted. Major media companies such as Cox, Belo and Hearst-Argyle—headquartered in Atlanta, Dallas and New York, respectively—each operates tens of stations in markets very far flung from their home bases. Yet, somehow these huge media companies shamelessly argue that they are "local" in every market where they own a television station while we are not. This pretzel logic does not end there. These same companies further contend that because CBS, for example, has its headquarters in New York, the stations it owns in other markets cannot be "local," and decisions about local news and information must be orchestrated from corporate offices in New York. This despite the fact that CBS's local station in Boston is just as "local" as the station owned in that market by New York-based Hearst-Argyle.

In fact, all we need do is look at a sampling of states to see that television stations in only a minority of cases are even owned by companies headquartered in the same state. In Massachusetts, of the 13 commercial television stations licensed there, none is owned by a Massachusetts broadcaster. Of the 14 television stations in West Virginia, two are owned by in-state broadcasters. And in Kansas, only one of the 11 television stations is owned by a Kansas broadcaster.

The real story is that CBS, like every other broadcaster, knows that localism is what makes broadcasting unique and a worthy competitor in the burgeoning video programming marketplace. While offering local news and public affairs programming may make us good citizens, it is also no secret to networks, group owners and individual station owners that local programming is a key competitive advantage that attracts viewers and differentiates broadcast television from cable channels, which are distributed nationally. CBS' owned-and-operated stations individually determine how much news they will air, what stories they will run and when they air them. As with our Infinity radio stations, there is no corporate dictator in New York who orchestrates the stations' local news programs. In fact, it's quite the opposite. Our stations' news directors have complete freedom locally. This is a fundamental CBS policy. And it is good business.

On average, each of our CBS stations airs 25 hours of local news and public affairs programming each week, with actual amounts in some markets surpassing every other station. And our stations do not flinch from covering stories of local interest, even if it means preempting network programming. Just this past May in Minneapolis, for example, our WCCO–TV preempted 3 hours of primetime network programming to run an emergency weather newscast. For the past 20 years, WBZ, our Boston station, has preempted primetime network shows to air the Boston Children's Hospital Telethon. WBZ also aired complete coverage of Congressman Joe Moakley's funeral, preempting programming from 10 a.m. through 4:30 p.m.

Many of CBS's general managers, news directors and other staff were raised in the communities where they work and, as a result, know these communities intimately. For example, Peter Brown, the news director of WBZ in Boston was born in Newton, Massachusetts and has worked at our station for 19 years as of this Labor Day, having worked his way up the ranks. And Brian Jones, the general manager of KTVT in Dallas, graduated from Plano High School, attended the University of Texas and has spent all of his working life in the state. He has been with KTVT for 14 years and started there as the station's national sales manager.

In addition to covering local events, our stations heavily participate in public service activities. For example, for the past 10 years, KPIX in San Francisco and, for the past 20 years, WBZ in Boston, have separately aired an adoption series that features local children in need of adoption. The KPIX series has led to the adoption of 86 percent of the children featured.

As with radio, consolidation in the television industry can result in significant benefits to the consumer. Viacom's merger with CBS brought under one roof a group of television stations affiliated with UPN and a group affiliated with CBS, with overlap in six markets. In five of these duopoly markets, we are airing or are about to launch half-hour newscasts or hourly updates on stations where none existed. As a result, diversity has expanded in Boston, Dallas, Detroit, Miami and Pittsburgh, where viewers now have access to more unique local news, weather and sports.

The "localism-is-dead" issue, therefore, is a transparent distraction from the affiliates' true fear: the inevitable change to the broadcast business model which has in the past delivered to affiliates a steady, now unrealistic level of revenue. Under the traditional business model over the past few decades, networks have not only provided affiliates with a multi-billion dollar schedule of entertainment, sports, news and public affairs—all free of charge—but also cash compensation for carrying that programming. This in addition to the commercial positions within network programming which are made available to affiliated stations to sell for their own account, producing advertising revenues over and above those which they receive from the sale of time during non-network programming—revenues which go straight to the bottom line.

Look behind the dust being kicked up in Washington by affiliates and what you see is a bold request for government creation of a world where the network bears the entire risk and expense of developing programming with no countervailing obligations on affiliates—such as simply fulfilling their contractual commitments to air this programming. If the affiliates get their way, the public will not, because networks will be discouraged from engaging in the even more expensive and riskier enterprise of creating new shows the public wants.

The broadcast network makes money through only one source, the sale of national advertising. Compare this single-revenue business model to the dual revenue stream of cable networks, with whom broadcast networks compete: A cable network relies on ad sales, too, but is also paid by cable operators for carriage of its programming—the exact opposite of the relationship which prevails between broadcast networks and their affiliates. Moreover, while the "Big 4" broadcast networks are prohibited from combining, cable networks are subject to absolutely no ownership restrictions.

Broadcast networks, which provide programming free to consumers and are limited by regulation in what other television stations or networks they can own, cannot continue to compete based on these old and outdated paradigms. When the profits made by the top 15 cable networks dwarf the earnings of their over-the-air competitors, it is unrealistic to continue to restrict combinations between broadcast networks when no such restriction exists for cable networks. And when the profit margins of network-affiliated stations are several multiples of those of the networks that supply most of their programming, it is unrealistic and unfair to artificially restrict the number of local stations that the networks themselves can own to amortize their enormous programming costs.

With fewer viewers watching more expensive broadcast television programming and advertisers unwilling to spend more to pay for it, broadcasters must be permitted to participate in the economies of scale enjoyed by their competitors. For example, in addition to its operations in New York, CBS News staffs bureaus around the world to produce network news. If our company were able to own and operate another major broadcast network, we could use the combined resources to operate more efficiently and to provide more news more often on both networks—to all Americans and still free of charge. Even with two such networks under one roof, the combined ratings and advertising revenues would not come close to dominating the literally hundreds of remaining television programming competitors.

Maybe it's the golden years of television that opponents of relaxing the national broadcast television station ownership cap really yearn for. And why not? Life was easier then for the few of us in the media business. Even in 1976, in the afterglow of those golden years, CBS, along with the only other broadcast networks at the time, ABC and NBC, claimed nine out of 10 viewers each night. The average home at that time had seven channels to choose from. And the VCR was not commercially available. That is a status quo any business would want to preserve.

Nostalgia may make us feel better for a time, but neither time nor technology stand still. Almost 5 years later, in 1980, there were 734 television stations, 21 percent of all homes subscribed to cable, 16 national cable networks existed, and the average home received nine channels of programming. In 1991, Americans could select from 33 channels of programming, the broadcast networks had lost one-third of their audience, and VCRs were in 70 percent of all homes.

Today, there are 1,663 TV stations, 9 broadcast networks, 70 percent of all homes subscribe to cable and another 10 percent pay for DBS. There are 281 national cable networks and the average home receives 54 channels of programming. A viewer can tune into several all-news cable channels, both national (such as CNN, MSNBC and the Fox News Channel) and regional (such as NY1 News in New York and News Channel 8 in Washington). Or a viewer can choose to watch an all-golf channel, an all-cooking channel, or an all-history channel. Or, perhaps, check in on the deliberations of this Committee on C-SPAN. And then there is the Internet, a medium none of us can ignore. According to the Pew Research Center, as many Americans—33 percent—receive their news from online sources as from broadcast networks. For younger people, the trend toward new media sources for news and information is even more pronounced: more college graduates under the age of 50 receive news from the Internet than from television news.

As a result of this robust competition, six of the broadcast networks today, the "Big Three" plus Fox, the WB and UPN, jointly garner only about 35 percent of TV households in prime time. Although the population of the United States has grown significantly, fewer people watched the final episode of *Seinfeld* in 1998 than watched the final episode of *M*A*S*H* in 1983. Whereas broadcast network television was once the common experience that bound the nation, it is now just one of a myriad of television programming choices.

In the aftershock of such seismic growth in competition, all broadcasters, networks and affiliates alike, should embrace change and join in advocating rules changes that will put us at regulatory parity with our competitors and help to preserve free, over-the-air television as a vibrant part of our remarkable media marketplace. Let's start with the fact that the 35 percent cap imposed on broadcast television is an unrealistic and arbitrary limit. Limiting broadcast television ownership doesn't affect competition or diversity in any market at all. Viewers watch stations only in their local markets, and consolidation in different markets has no impact on competition.

Congress in its wisdom has always understood that regulatory regimes must move in synch with the dynamism of competition. In the Telecommunications Act of 1996, Congress directed the FCC to review its rules on a biennial basis to "determine whether any of such rules are necessary to the public interest as a result of competition." Given the undeniably robust State of competition in the video marketplace today, it is unjustifiable that television broadcasters continue to be unfairly impaired by an onerous regulatory regime attached to no other telecommunications segment. Instead, television broadcasters must be positioned to withstand economic challenges, as businesses are now experiencing in this downturn, in order to compete against the ever-multiplying array of competitive video program distributors, and to commit the huge investments needed to make the transition to digital.

We therefore urge that the FCC make important changes in its upcoming biennial review. First, the national broadcast television ownership cap must be lifted. Second, one major broadcast network should be permitted to combine with another. And, third, local television and local radio ownership should be based on a percentage of the market, not on the number of stations and arbitrary numbers of "voices." We hope that this Committee will support the FCC as it undertakes these significant actions.

Eliminating ownership restrictions, which attempt to regulate by a prophylactic method that often ensnares the wrong targets, will not mean the end of any review of mergers, of course. Our nation's antitrust laws require intensive review by the Department of Justice or the Federal Trade Commission on a case-by-case basis to determine whether consumers will be harmed by a particular combination. These arms of the government, which have the authority and expertise to assess concentration, should be permitted to do their jobs rather than having arbitrary rules applied that may actually work against consumer's best interests. Such tailored assessments of the impact of media transactions promote, rather than stifle, competition.

There is only one status quo we should all fight to maintain, and that is the world-class quantity and quality of media choices available to Americans. A healthy broadcast industry that delivers entertainment, sports and news for free to all

Americans is a critical element of our society and is only made possible by the incredibly competitive media landscape that is uniquely American. It should not be left to struggle under the weight of rules that favor a select group of broadcasters at the expense of the American viewing public.

The broadcast industry is at a critical juncture. This Committee has the opportunity to make an historic contribution by embracing the future and unlocking the shackles that threaten to extinguish broadcasting and its essential role in creating and maintaining an informed and diverse citizenry. We are prepared to take the economic risks to make this new world of choice a continuing reality and to follow your lead into a more competitive future that will result in empowering Americans more than at any time in the history of this great nation. Now is the time to reject interests of the few for the benefit of the many.

Thank you.

The CHAIRMAN. Mr. Frank.

STATEMENT OF ALAN FRANK, PRESIDENT, POST–NEWSWEEK STATIONS, INC.

Mr. FRANK. Good morning, Mr. Chairman and Members of the Committee. My name is Alan Frank. I am the President of Post-Newsweek Stations, chair of the Network Affiliated Stations Alliance, representing more than 600 local television stations affiliated with ABC, CBS and NBC. I also serve on the NAB board.

Both NAB and NASA strongly believe that the national television ownership cap should not be increased. We appreciate the recent letter from Chairman Hollings, Senator Stevens, and other Members of the Committee emphasizing that the 35 percent ownership cap should be retained.

The question facing the Committee as it reviews media concentration is not whether I am a better broadcaster than Mel Karmazin. I run a high-quality television station in Detroit that competes with one of the CBS O&Os, and even though Mel's station does no local news, it is a pretty good question. The question instead is sometime will there continue to be a variety of companies, Mel Karmazin's, my company, Cosmos, Benedict, Fisher, Hubbard and dozens and dozens of others making critical news and programming decisions in America, or at the next ownership hearing 5 years from now, will Mr. Karmazin be here alone, one person able to testify for the entire broadcast industry because the networks run out of New York and Hollywood will own most of the country.

Localism and diversity are at the core of the American broadcast system. Local affiliates are the embodiment of these principles. When NBC told its affiliates last fall to air Game One of the American League Playoffs instead of the first Presidential debate, it was the affiliates that complained and ultimately the network relented and allowed affiliates to preempt the baseball game for the debate.

Allowing the networks to own more stations means that next time there will be no local pressure to correct the network's bad judgment.

Limits on national television ownership sustain our unique form of American broadcasting. Other countries like Japan or Britain or France have no such thing as local news. What happens in Tokyo or London or Paris sets the agenda. There is no community or regional coverage. Increase the ownership cap, and you place in peril our balanced national local system of strong networks and strong local affiliates.

Since the ownership cap was increased to 35 percent, the networks have gained substantial power, power that is been used to diminish the role of affiliate stations. We believe the cap should be at 25 percent and the legitimate question for the Committee is why not move the cap back to 25 percent, a number which many of you supported in 1995. Certainly any increase beyond 35 percent would jeopardize localism and diversity. As you review the current state of media ownership, please consider these three points.

First, the more stations the networks own, the more they will nationalize and homogenize news and programming. The networks have one goal. To make certain that 100 percent of their programming is carried by affiliate stations. There is tension between the network's business model and business objective, which is maximum exposure, and my business and legal objective, which is to meet the needs of the community I serve. My written testimony has several examples of how we preempt network programming to meet community needs.

Let me give you one here. At our television stations in Jacksonville, Miami and Orlando, we preempt hours of network programming each year to carry the Children's Miracle Network Telethon. This program and others like it reflect local interests, local concerns and local needs. We make these decisions not because we want to harm the network's bottom line, but because we seek to meet the special needs of our communities.

If the ownership cap is relaxed further, the networks will buy more local stations. How will that change their operations? Think about the general manager of an O&O in South Carolina or Montana, or Oregon, or Mississippi, who has to decide whether to preempt network programming to go carry a local ballgame or candidate debate. Trust me. No GM of an O&O wants to call Mel saying that the station won't be showing a network program in order to carry a debate or high school ballgame.

Second, I want to dispel the myth propagated by the networks that the future of free over-the-air broadcasting is at stake unless the cap is raised. Quite to the contrary. Localism and diversity are at stake if the cap is raised. In 1996, when the ownership cap was being debated, the networks complained that they were going broke in the network business and needed to own more stations. They were granted their wish, but are now back repeating this plea. This claim suffers from the fallacy of Hollywood accounting. It fails to take into the account the profits network companies earn from program syndication, cable, and their own television stations.

The networks are doing just fine, thank you. Wall Street reports show that the four networks collectively in the year 2000 had profits of over $4 billion. Free over-the-air television does not need more network ownership to survive.

And finally, the dramatic changes in the broadcast industry since 1996 show that the cap must be retained. Since then, Fox has agreed to buy Chris Kraft; Disney bought ABC Cap Cities; Westinghouse bought CBS; CBS bought Infinity Broadcasting and Viacom bought CBS and this doesn't even touch on the networks' aggressive move into the programming and syndication markets following the repeal of Fin-Syn, where most of the competition has been eliminated. These developments led the FCC to report recently that since 1996 competition in the broadcast industry was reduced rather than increased.

In conclusion, while the world of television has changed substantially, the need for safeguards has not. In fact, it has increased. Whether it is local weather or news or candidate forums or sports or charity events, local broadcasters remain a trusted source of information and other important service to their communities. And for those millions of Americans who do not subscribe to pay TV, local broadcasters are their sole source of news and programming.

So although it is easy for the networks to say these network rules do not make sense in Internet time, the truth is that values of localism and diversity endure and are as much in need of protection today as they have ever been. Thank you, Mr. Chairman.

[The prepared statement of Mr. Frank follows:]

PREPARED STATEMENT OF ALAN FRANK, PRESIDENT, POST-NEWSWEEK STATIONS, INC.

Mr. Chairman and Members of the Committee: My name is Alan Frank. I am President of Post-Newsweek Stations and chair of the Network Affiliated Stations Alliance (NASA), a group that represents the more than 600 local TV stations across America that are affiliated with the ABC, CBS, and NBC networks and that strongly opposes any increase in the national television ownership cap. I also serve on the Board of the NAB, which shares our view that the ownership cap should not be increased. I am pleased to appear at this hearing on behalf of the local affiliates in this country who work every day to operate quality local stations that present a blend of local programming, news, syndicated programming and national network programming. I'm also pleased to be here with Mel Karmizan. We want the networks to grow and prosper, because their doing so will make them stronger and more valued partners to the affiliates. CBS and the other networks have to be vital partners in providing our communities with successful programming.

Before I launch into the views of local broadcasters on the important matter of ownership rules, it may be helpful to put some basic industry facts on the table, since I appreciate that you have lots of industries to keep track of within the broad jurisdiction of this Committee. The broadcast television networks are in the business of acquiring or producing prime time entertainment, news and sports programming, selling advertising time to national advertisers for insertion inside the programming, distributing that programming and advertising to local stations, and owning some television stations, mostly in major markets, to carry that programming and advertising. The television networks are anxious to reach 100 percent of the audience, because that helps them charge higher rates to advertisers. To accomplish this goal, in each of the two hundred or so television markets in the country, the networks either own a station, known as an owned-and-operated station (O&O), or they enter into a contract to have a local broadcaster act as an affiliate. Under current law, no network is permitted to own stations that reach more than 35 percent of the national audience; thus, 35 percent is the national television ownership cap.[1] As a consequence, local stations that affiliate with a network are an important part of the networks' business model. My company has a typical arrangement—we run six stations and have affiliate agreements with each of the three major networks. In addition to arranging to carry network programming, we also produce our own local news, public affairs and entertainment programming; we carry some local sports; we carry charity telethons and other specials such as "Billy Graham Specials;" and we buy syndicated programming, which includes everything from "Jeopardy" to "Frasier" reruns. We are also responsible for selecting the mix of these ingredients based on informed views of what best serves the public in our community.

The system that I just described provides strength and flexibility to our broadcast service. Indeed, Chairman Hollings, Senator Stevens, Senator Inouye, Senator Burns, Senator Lott, Senator Dorgan, Senator Cleland, Senator Boxer, and Senator Edwards, joined by an equally bipartisan number of House colleagues, recently

[1] The Telecommunications Act of 1996 set the national television broadcast ownership cap at 35 percent, and this cap is reflected in the rules of the Federal Communications Commission (FCC). Telecommunications Act of 1996 § 202 (c)(1)(B); 47 C.F.R. § 73.3555(e)(1). Since the early 1980s, the national ownership rule has moved from 7/7/7 (7 AM, FM and TV stations), to 12/12/12 (12 AM, FM, and TV stations, with a limit on the aggregate reach of the 12 television stations to 25 percent of the national audience), to 35 percent of the national audience.

made this same point to Chairman Powell: Two of the hallmark principles of the Communications Act are localism and diversity, and our uniquely American form of broadcasting, with its combination of national networks and local, independently owned and operated broadcast outlets, reflects these core principles. We are committed to making sure that as the media industry evolves and consolidates, the voice of local broadcasters is not stifled or silenced. The national ownership cap at its current level serves a critical role in preserving localism.[2]

We commend Chairman Hollings and the many Members of the Committee for this strong letter in support of localism and against any increase in the national television ownership cap. That view, which also is backed by NASA and the National Association of Broadcasters (NAB), sends a powerful message to Chairman Powell and the FCC as they review the broadcast ownership rules.

The question facing the Committee as it considers the matter of national television ownership rules is simple: Will there continue to be a variety of companies—Mel Karmizan's; my company; Jim Keelor's company, Cosmos; Jim Yager's company, Benedek; Ben Tucker's company; Stan Hubbard's company; and dozens and dozens of others—making critical news and programming decisions in America? Or at the next ownership hearing held 5 years from now, will Mr. Karmizan be here alone, one person able to testify for the entire broadcast industry because the networks, run out of New York and Hollywood, collectively will own most of the country (and will be able to take the rest for granted)?

This scenario cannot be dismissed. Consider how quickly the industry has changed in just a few years. Today, Mr. Karmizan has stations reaching 41 percent of America. His colleagues at ABC, Fox, and NBC control stations reaching 24 percent, 41 percent, and 27 percent respectively. By contrast, my company has stations reaching 7 percent, and no affiliate group has stations that reach more than 30 percent. This growth in network power is remarkable and is felt in significant ways across the broadcast community. Before the 1996 Act was passed, the three major networks reached no more than 1 in 5 households through their O&O stations.

The networks were able to expand their audience reach because in 1996, the national broadcast ownership cap was increased from 25 percent to 35 percent. NASA, along with Senators Dorgan and Helms and many others, wanted to keep the cap at 25 percent. Many of the members of this Committee expressed concern about the repercussion of increasing the cap to 35 percent. While we appreciate the compromise worked out by Chairman Hollings, Senator Dorgan, Senator Lott and others during debate of the 1996 Act, I can tell you that your fears were well founded. Make no mistake: as a result of that change the networks have increased their holdings and their power just as the leadership of this Committee predicted. The result is that today local broadcasters have less independence, less ability to make sound programming decisions for their local communities. An increase to 45 percent or 50 percent would be a disaster and I believe that even at 35 percent we are at risk of becoming passive conduits for the networks' daily feed of news and programming.

As the recent letter from many members of this Committee clearly stated to Chairman Powell: The national ownership cap is vital to ensuring that television programming decisions remain in the hands of local broadcasters, and that media power does not become concentrated in New York or Los Angeles. The national broadcast ownership cap is not, as some wrongly suggest, just about competition. Local input helps keep our broadcast system responsive to the views of local communities across the country. That diversity of viewpoint benefits our democracy.[3]

The local affiliates share this view that localism is the core of our broadcast system and that any increase in the national ownership cap puts those values at risk. We greatly appreciate the strong leadership that Chairman Hollings and so many distinguished members of this Committee have demonstrated on this issue. We also welcome the opportunity to set out the case in detail why the networks' bid to increase the ownership cap should be rejected. In the past, the networks have asserted four reasons why the ownership cap should be lifted or repealed: (i) the financial health of the networks and the future of free, over-the-air television are at stake; (ii) the world of television has changed in recent years and the rules are unnecessary and antiquated; (iii) national ownership rules do not promote localism or diversity; and (iv) the ownership cap is unconstitutional. Let me consider each of these issues in turn.

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[2] Letter to Chairman Michael Powell from Senators Hollings, Stevens, Inouye, Burns, Lott, Dorgan, Cleland, Boxer, Edwards, Helms, and Represenatives Dingell, Markey, Burr, and Pickering (Attachment 1).

[3] *Id.* at 2.

I. The Networks Do Not Need To Own More Stations To "Save Free, Over-The-Air Television"

In 1996, when the ownership cap was being debated, the networks complained that they were going broke in the network business and needed to own more stations. They were granted their wish and now are back here a few years later, repeating their plea: somehow the future of free, over-the-air television is again at stake unless Congress increases the ownership cap. This claim suffers from what I call "the fallacy of Hollywood accounting." In making this claim, the networks are asking you to myopically focus on the artificial accounting system they've set up, a system that separates the part of the business that buys and distributes programming from the part of the business that makes, owns, or syndicates programming, from the part of the business that owns TV stations, from the part of the business that makes money from cable and Internet programming. But this argument proves too much. If a single network owned 100 percent of the stations in America, it still would show only moderate network profits because the profits from syndication, cable and Internet services do not flow to the network portion of the balance sheet. For a more accurate picture of network profits, one needs only review their financial reports to Wall Street analysts. Even a cursory review of those financial reports, shows that their vertically integrated programming and distribution businesses are highly profitable. CBS Network enjoyed a 19 percent increase in profits from 1999 to 2000 after a 59 percent increase in profits from 1998 to 1999 and a 19 percent profit increase from 1997 to 1998.[4] The four networks, collectively, have 2000 profits (even with "Hollywood accounting") of over four billion dollars!

Over the past decade the networks have benefited from a number of rule changes that have allowed them to strengthen their competitive position. Remember, in the late 1980s and early 1990s, the networks argued for repeal of the financial interest and syndication ("fin/syn") rule, which prohibited the networks from producing and syndicating their own shows. After much discussion and with some trepidation, the local affiliates supported the networks on that issue and the FCC repealed the rule. How has this rule change benefited the networks? Today, the networks own a substantial part of the programming they distribute and many independent programmers have exited the market. Some critics have complained that the fact that the networks own the programming may affect their judgment, leading them to keep a show on the air so that they get to the magic number of 100 episodes needed to take the show into syndication. At the moment, there's an active debate on whether network ownership of shows impacts the primetime schedule and causes independent producers to be squeezed out. These debates will cease if the networks owned more local TV stations, because the O&O stations will just be passive and quiet conduits for the network programmers.

The networks also benefit from their affiliates when a program is made popular by affiliate carriage then goes into syndication. For instance, I and other affiliates carry a CBS program such as "Everybody Loves Raymond," which helps make it a popular program and enables CBS to take it to the syndication market. Once a show goes into syndication, I could well face a situation in which I have to compete against a station across town that is carrying a syndicated CBS program that I helped make popular. How did that program become so valuable in the market? Because I carried it for CBS. Now, it is true that the owners of programming taken into syndication always reaped the financial benefits, today the networks gain substantial revenue because they now own a significant portion of the programming. This same reasoning applies to network programming that is "repurposed" and distributed on a cable network. The networks reap the value of national distribution and branding that the affiliates make possible.

In short, the networks and their related businesses are growing and prospering financially. Because of lifting the fin/syn rule and the ownership cap to 35 percent, along with other rule changes over the past 5 years such as relaxing the dual network and duopoly rules, the networks are doing quite well, thank you, and as a byproduct of these changes are expanding their dominance over affiliates. The net-

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[4] CBS figures for years 1996–99 represent the revenue and profit data reported for CBS' "television segment" in the Forms 10-K and 10-K/A for CBS Corp. filed on March 29, 2000 and August 5, 1999, respectively. According to these reports, the television segment of CBS Corp. for years 1996–99 consisted of three integrated operations: the CBS television network, the CBS owned and operated television stations, and CBS' television syndication operations.

On May 4, 2000 CBS Corp. merged with Viacom Inc. CBS figures for year 2000 represent the revenue and operating income data reported for Viacom's television segment in the Form 10-K for Viacom Inc. filed on March 28, 2000. The television segment for Viacom Inc. consists of the CBS and UPN television networks, 39 owned and operated television stations, Viacom's television production and syndication business.

works' position is that free, over-the-air television is at stake if the cap is not lifted, whereas the fact is that localism and diversity are at stake if the cap is not retained.

II. The World Of Television Has Changed, But The Networks Continue To Hold Substantial Power

On one point, the networks are right. The world of television has changed substantially in recent years. Since the last time a representative of the network affiliates appeared before this Committee to testify on broadcast ownership rules, 6 years ago, the following has taken place: Disney bought ABC/Cap Cities, a move that was a direct result of repeal of the fin/syn rule; Westinghouse bought CBS, and then dropped the Westinghouse name; CBS of course bought Mr. Karmizan's company, Infinity Broadcasting; Viacom bought CBS; Fox has agreed to buy Chris-Craft. This flurry of deals led the FCC to report recently that thanks to mergers and acquisitions, *competition in the industry lessened rather than increased* since the Telecommunications Act of 1996 was passed.[5]

In response to this argument, the networks say that this is just an intramural squabble about relative bargaining power inside an industry that is challenged to keep pace with the dynamic of competing media, and therefore they argue that neither Congress nor the FCC should get involved. Thus, the networks focus almost exclusively on the general market for video news and entertainment and conclude that any increase in television network ownership will not alter the broader competitive; landscape. This argument is off the mark because it ignores three markets in which competitive conditions have a direct bearing on the continued justification for the national ownership rule: (1) what the Commission has termed the "market where networks meet stations," (2) the market for syndicated programming, and (3) the market for advertising.

(1) Network/Affiliate relations. Under our system of broadcasting, networks and local stations are both collaborators and competitors. If I have a CBS affiliate (and I have two in Jacksonville and Orlando), in many ways I'm in business with Mel Karmizan. When he gets a hit show, I benefit. When he needed to spend money for the NFL football package, I helped pay for it. In fact, when the bill for the NFL package came due, Mel Karmizan emphasized that we were collaborators. But this is supposed to be collaboration, not capitulation. Under the strict terms of the law, written by Congress into the Communications Act of 1934 and reflected in the FCC's rules, I am not supposed to turn over the keys to my stations to CBS. I'm there to run local stations. Sometimes I produce programming myself, sometimes I buy it from others, and some parts of the day I depend on network programming. In that way, we are collaborators. Just as I want the network to be successful, my network wants me to run good stations.

But at the same time, we're also business competitors. I periodically sit across the table from network executives and negotiate affiliation agreements. These are tough, long, important negotiations. The competition is not just at contract negotiation time, however. The competitive tension between the networks and affiliates is present every day. That competitive tension is understandable because the business goal of the network is different from the goal of a local station operator. CBS has one goal: to make certain that 100 percent of their programming is carried by CBS affiliated stations and to achieve high ratings for that programming. One hundred percent clearance of a program helps generate higher ratings. It also helps CBS if it owns a stake in the program. And it helps when it sells time to national advertisers. The tension lies between the network's business objective, maximum exposure, and my business—and legal—objective, to meet the needs of the community I serve. In Detroit, we preempt network programming to carry the local Thanksgiving Day parade. In Houston, we preempt network programming for rodeo coverage and for the Muscular Dystrophy telethon. In Jacksonville, Orlando and Miami we preempt hours of network programming to carry the Children's Miracle Network. In the Carolinas, carrying ACC basketball is popular, and some of those games occur during prime time. For some Mississippi stations, the Billy Graham Special a couple times a year gets a big audience. In Montana, the state high school sports finals generate lots of viewers. These programs reflect local interests, local concerns, and local needs.

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[5] Biennial Review Report, at §§27–28 (Excerpts in Attachment 2). Former Commission Chairman William E. Kennard said that the consolidation that has occurred since 1996 in the television industry, both horizontal and vertical, has been "unprecedented." Sallie Hofmeister, *"FCC to Propose Easing Broadcast Ownership Rules," Los Angeles Times,* May 31, 2000, at A-1 (quoting Kennard).

Whatever the reason—and yes, the reason can be that another program is more popular and thus more remunerative—a local broadcaster makes a decision not to carry the network feed. Local broadcasters make these decisions not because they want to harm the network but because they seek to meet the unique needs of their community. (A local broadcaster should not have to prove they lost money to justify a preemption; indeed, getting a big audience is in many ways the best vindication that it was a "good" preemption.) The competitive tension that I describe here has always been part of our business, but in recent years the pressure not to preempt network programming has grown intense and has been reflected in affiliation agreement provisions that are too restrictive. Clearances of network programs are up; affiliate preemptions are down. Affiliates are being "muscled" to carry network shows that they otherwise would not choose to air and their role as a disciplining force to the networks is being diminished. Their voices against unsuitable network material have become muted. Their suggestions for improving network news and other shows grow fewer and fainter.

These trends have increased dramatically since the cap was raised to 35 percent and have adverse consequences for the quality of the public's broadcast service (whether the viewer is served over-the-air, or by cable or satellite). If the ownership cap is relaxed further, one of two consequences will result. First, if the networks buy lots of stations then the general manager of an O&O in Raleigh or Columbia or Jackson or Decatur who has to make the decision of whether to run a local basketball game or Children's Miracle Network telethon or a special will be answering to Mel Karmizan. Trust me: no G.M. working for Mel will want to call him saying that they won't be showing his network program to carry a high school basketball game. Alternatively, as the networks buy up more and more stations and network power increases, the number of independent voices will dwindle and if my station remains independently owned, it will become more difficult to speak out without the fear of repercussions from the network.

As this analysis makes clear, increasing the ownership cap would harm the vitally important relationship between broadcast networks and their affiliates. We're not alone in this view. The FCC reported last year that raising the ownership cap would "increase the bargaining power of networks over their affiliates, reduce the number of viewpoints expressed nationally, increase concentration in the national advertising market, and enlarge the potential for monopsony power in the program production market."[6] Because of further consolidation, that statement is truer today than it was 12 months ago.

(2) Syndicated programming. With regard to syndicated programming, both Congress and the FCC have recognized that the state of competition in that market has a direct impact on whether to repeal or modify the broadcast cap. On the supply side, repeal of the Fin-Syn rule has allowed networks to purchase major syndicatios or develop their own syndication divisions, thereby taking control over a greater proportion of non-network program hours. As a result, the number of syndicators that control significant amounts of content has declined—from dozens in 1996 to a handful today—and most of those that remain are tied to the networks.[7] In addition, on the demand side, further nationwide consolidation of station ownership will mean that there are fewer viable purchasers for syndicated programming aside from the dominant national networks. Repeal or relaxation of the national broadcast cap would thus exacerbate both supply side and demand-side concentration in the syndication market.

(3) Advertising. With regard to the advertising market, the FCC concluded recently that an expansion of the 35 percent cap would harm competition by "increas[ing] concentration in the national advertising market."[8] In the current marketplace, independent advertising sales representatives serve as intermediaries between local stations and national advertisers. These "reps" are capable of assembling enough independently owned affiliates and other local stations to compete with the networks as sellers on the regional or national spot advertising market.[9] Because O&Os; do not sell advertising in competition with the networks that own them, the national broadcast reach cap is essential to protecting the ability of affiliated stations to maintain healthy competition in these markets.

In sum, though the world of television has changed substantially, the need for safeguards has not. In fact, it has increased. Though over-the-air television does not

[6] *Biennial Review Report,* at § 26 n. 78 (Excerpts in Attachment 2).
[7] See David Hatch, *"Independents Fight the Good Fight," Electronic Media* (Jan. 29, 2001) at 1.
[8] *Biennial Review Report,* at § 126 n.78 (Excerpts in Attachment 2).
[9] *See generally Review of the Commission's Regulations Governing Broadcast Television Advertising, Notice of Proposed Rulemaking,* 10 FCC Rcd 11,853 (June 14, 1995).

hold the position it once held in American society, its impact still looms large. Whether it's local weather or news or candidate forums or sports or charity events, local broadcasters remain a trusted source of information. And for those Americans who don't subscribe to pay-TV service, local broadcasters are the sole source of news and programming. So though it is easy for the networks to say that these ownership rules don't make sense in Internet time, the truth is that the values of localism and diversity endure and are as much in need of protection today as they were years ago. And the power and proclivity of the networks to override them are greater.

III. The National Television Ownership Cap Promotes Diversity and Localism

The foundation of the Communications Act of 1934, and every amendment since then, is that a person who holds a spectrum license is obligated to use the nation's airwaves to serve the public and to maintain control of the station's operations. Since its inception, the FCC has applied special rules to the nation's broadcast system with one overriding goal in view: service to the public. Central to that goal is the principle that the local licensee must be free to choose the appropriate mix of programming for the community it serves. As Congress has recognized, the balanced system of national networks and local affiliates has "served the country well" by combining the "efficiencies of national production, distribution and selling with a significant decentralization of control over the ultimate service to the public." [10] To further the public interest, broadcasters of free, over-the-air television have long been charged with serving the diverse needs of local communities, for example by providing programming that is responsive to the issues facing those communities and affording equal opportunities and reasonable access to candidates for public office.[11]

One of the most effective ways to protect viewpoint diversity is to safeguard the important partnership between broadcast networks and their affiliates. The ownership cap is a vital way to ensure the delicate balance in the network-affiliate relationship is maintained. For example, a network-affiliated broadcaster must have the freedom to respond effectively and comprehensively to its community by interspersing programming responsive to its local community with the national programming provided by the network. Even with the cap at 35 percent, the affiliates' freedom is in jeopardy. The FCC, which has studied the industry closely, agrees.

The Commission stated in its *Biennial Review Report*: The national networks have a strong economic interest in clearing all network programming, and we believe that independently owned affiliates play a valuable counterbalancing role because they have the right to decide whether to clear network programming or to air instead programming from other sources that they believe better serves the needs and interests of the local communities to which they are licensed.

Biennial Review Report, at § 30 (Excerpts in Attachment 2).

The bargaining power of the networks has *increased* dramatically since 1996. For example, the current network affiliation agreements typically provide that a network affiliate risks loss of affiliation and other serious penalties if it "preempts" more than a few hours of network programming over an entire; year without the network's approval.[12] This shift in the balance of power threatens the ability of consumers to view local programming that meets community needs. Concern about this overreaching led the affiliates to ask the FCC to rule that the networks' new practices are inconsistent with existing Commission rules and the Communications Act, and should stop immediately. We have submitted substantial evidence to the FCC on this issue, but let me share with the Committee one well-publicized example. Last fall NBC told its affiliates to air Game One of the American League Division

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[10] H.R. Rep. No. 100–887, pt. 2;, at 20 (1988). *See also Turner Broadcasting System, Inc.* v. *FCC,* 512 U.S. 622, 663 (1994) ("Congress designed this system of allocation to afford each community of appreciable size an over-the-air source of information and an outlet for exchange on matters of local concern.").

[11] *See In re Review of the Commission's Regulations Governing Television Broadcast, Further Notice of Proposed Rulemaking,* 10 FCC Rcd § 524 at 66 (1995). Notwithstanding competition from cable, DBS, and the Internet, broadcast television remains the dominant medium for video programming. In 2000, network affiliates and other broadcast stations accounted for some 60 percent of television viewership nationwide. *See Seventh Annual Report, In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* CS Docket No. 00–132, at § 22 (Jan. 8, 2001). In a recent ratings period, only two of the 100 top-rated prime-time shows were cable programs, rather than broadcast. *See* TVB Press Release, *Broadcast Television Continues Lead Over Cable Through March* (April 18, 2001).

[12] Affiliate agreements must be filed with the Commission pursuant to 47 C.F.R. § 73.3613(a).

Series rather than the first of the 2000 Presidential debates.[13] Ultimately, after hearing repeatedly from the NBC Television Affiliates Association, the network relented and allowed affiliates to preempt the baseball game for the debate. Fox, meanwhile, insisted that its affiliates air the sci-fi series "Dark Angel" instead of the debate, and Fox did not back off. Allowing the networks to own more stations means that this tendency to hew strictly to the network programming line-up will be spread among more stations and will affect more communities and viewers.

Two networks—Fox and CBS—already exceed the 35 percent reach cap; indeed, if the "UHF discount" is disregarded, each of these networks already has an audience reach of close to 50 percent.[14] By owning more stations, especially in major markets, the networks directly control the distribution of information to an increasing percentage of the American public, who as a result forego the benefits local licensee judgment traditionally exercised by the independently owned network affiliates. Network O&Os, for sound business reasons, rarely preempt network programming for local programming; of greater interest to their local communities. Even when airing a program of local interest would be more economically beneficial to the local licensee than clearing network-owned programming, the networks have a strong incentive to broadcast their own programs via all of their O&Os and affiliates, for two reasons. Their ability to sell nationwide advertising time depend on their ability to garner high ratings; and also, as the networks continue to purchase or develop their own syndication operations, nationwide clearance increases the national "aftermarket" value of their programs. Non-network-owned stations, by contrast, are not similarly constrained because their sole interest is in how well the programs perform in the local community.

The result of all of these changes in the market is two-fold. First, the more stations that the networks own, the more you'll see the nationalization or homogenization of programming. The networks have a strong business incentive to deliver a national feed all the time. Nationalization of our broadcasting system sets back the cause of localism and diversity. Second, as I explained above, the affiliates are at risk of losing power to stand up to the networks, to informally ride herd on issues of suitability and taste in programming. We may not always succeed, and you may not agree with our judgment, but I'll tell you that a critical part of the job of the affiliate boards is to carry complaints about programming and how it is promoted to the networks. The result is a healthy debate on what is good television. That beneficial influence would be lost if the affiliates become, as Congress feared, mere "passive conduits for network transmissions from New York."[15]

Let me emphasize that I think Mel and the other networks generally run good local stations. The question is not whether I'm a better broadcaster than he is. The question is whether we as a society are better off having three or four people making those decisions from New York or Hollywood, or dozens and dozens.

IV. The Television Ownership Cap Set By Congress Is Constitutional

Contrary to the contention of the networks, the recent decision in *Time Warner Entertainment Co., L.P.* v. *FCC,* 240 F.3d 1126 (D.C. Cir. 2001) ("*Time Warner II*") does not affect the validity of the 35 percent national broadcast ownership cap. In the first place, the same court had already held that a cable ownership cap was constitutional and that the FCC was empowered to establish a cap. Instead, the problem was the lack of justification for the 30 percent cap that it selected.

In contrast to the horizontal cable rule addressed by the court in *Time Warner II*, the 35 percent ownership cap was set by Congress. The statutory backdrop to the horizontal cable rule could scarcely have been more different from the one at issue here. In the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, 106 Stat. 1460 ("Cable Act"), which authorized the rulemaking at issue in *Time Warner II*, Congress delegated to the Commission the authority to set "limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest." 47 U.S.C. § 533(f)(1)(A). Moreover, Congress declared that in setting such limits the Commission must "ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient: size, the

[13] *See* Michael Camey, "NBC's Swing Vote: Network To Skip Debate For Baseball," *Washington Post,* Sep. 23, 2000, at C1. Fox insisted that its affiliates air the sci-fi series "Dark Angel" instead of the debate.

[14] *See* "Sly Fox buys big, gets back on top," *Broadcasting & Cable*, Apr. 23, 2001, at 60. Under the Commission's rules, the audience reach of an UHF station in calculating the national ownership cap is reduced by half, due to the traditional weaker coverage of an UHF signal.

[15] H.R. Rep. No. 104–204 at 221 (1995).

flow of video programming from the video programmer to the consumer." Id. § 533(f)(2)(A).[16]

Acting pursuant to this delegated authority, the Commission set a 30 percent limit on the number of subscribers that may be served by a single cable operator, justifying this limit in part by pointing to the risk that several cable operators might independently deny carriage to a given programmer. A 30 percent cap would ensure the presence of at least four cable operators in the marketplace, the Commission reasoned, reducing this risk and increasing the diversity of media voices available to the public. Time Warner 11, 240 F.3d at 1134. In *Time Warner II*, the court concluded that the Commission was not authorized to protect diversity by taking into account the potential for non-collusive action by multiple cable operators, because Congress in the Cable Act had given the Commission a more limited mandate. *Id.* at 1135–36.

By contrast, Congress established the 35 percent national television ownership cap by statute. The Commission's authority to regulate broadcast station ownership in the interests of diversity and localism is clear. Moreover, the 35 percent rule does not abridge any speaker's First Amendment rights. Unlike the cable must-carry rules legislated in the 1992 Cable Act, it is a restriction on ownership, not a restriction on (or a compulsion of) speech. The networks have tried to claim that as a result of the ownership cap, they are barred from speaking to 65 percent of the potential television audience nationwide. That is not the case. Apart from the fact that broadcast networks are free to own cable programming networks (as all the networks do) and radio stations, each of the networks operates a national broadcast television network. Through their O&Os and their affiliates, NBC, CBS, and ABC now reach over 98 percent of all television households (a figure that approaches 100 percent when their owned cable and satellite networks are added to the equation) and Fox reaches well over 90 percent. A rule change allowing them to own additional stations would not enable them to speak to a single viewer they cannot reach now.

We agree with the conclusion that many members of this Committee communicated to Chairman Powell on this question: In writing the Telecommunications Act of 1996, Congress itself set the national television ownership cap and incorporated it in the statute for the same reasons the court [in the Time Warner case] found to be important governmental interests in the recent litigation addressing the cable ownership cap: to promote diversity in ideas and speech and preserve competition.[17]

NASA, joined by the NAB, has vigorously defended the constitutionality of the ownership cap before the D.C. Circuit in a suit filed by the networks. Given the statements by the court in both Time Warner decisions, we're confident that we'll prevail. However, I suspect that regardless of how the court decides this issue may be back before the Committee.

My company and all the members of NASA are in the broadcast business because we want to be local broadcasters. We want to be partners with the networks; I want them to succeed and I hope they want me to succeed. We want them to offer quality programming but ultimately we want the ability to carry out our legal mandate to make decisions about what works best for each of our communities. Increasing or repealing the national ownership cap puts at risk our system of diversity and localism. As demonstrated above, all of the networks' arguments for altering the ownership cap lack merit. For the sake of the public interest and the health of the American system of broadcasting, we strongly urge this Committee to preserve and affirm the national television ownership cap.

[16] In addition, Congress in the 1992 Cable Act expressly required the Commission to "account for any efficiencies and other benefits that might be gained through increased ownership or control." *Id. § 533(f)(2)(d). The 1996 Act contains no equivalent requirement.*

[17] Letter to Chairman Michael Powell, at 2 (Attachment 1).

ATTACHMENT 1

Congress of the United States
Washington, DC 20515

June 29, 2001

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Powell:

We oppose any effort to increase the national broadcast ownership cap. Two of the hallmark principles of the Communications Act are localism and diversity, and our uniquely American form of broadcasting, with its combination of national networks and local, independently-owned and -operated broadcast outlets, reflects these core principles. We are committed to making sure that as the media industry evolves and consolidates, the voice of local broadcasters is not stifled or silenced. The national ownership cap at its current level serves a critical role in preserving localism.

We believe that the 35 percent cap should remain where Congress established it in the law, and we write to urge the Commission not to increase the cap and to vigorously defend this provision as it comes under fire before the Commission and in the courts. We believe that the voice of the local station will become ever more meaningful to our communities, especially for that segment of the population that does not subscribe to pay television, as the broadcast television industry transitions to digital technology and its ability to serve local communities is enhanced. It is for this reason that we oppose any increase in the current 35 percent national television ownership cap that Congress adopted, after lengthy debate on the floor of both the House and Senate, as part of the Telecommunications Act of 1996.

Challenges brought by the broadcast television networks against the national television ownership cap lack merit and we believe the Commission has an obligation to vigorously defend the cap against such challenges. In our view, the D.C. Circuit's recent holdings in litigation surrounding cable ownership caps simply establish that (1) Congress acted constitutionally when it set limits on ownership of media properties in order to preserve competition and promote diversity in ideas and speech; and (2) the FCC did not adequately justify the particular numerical limitation it set on cable networks in its rule. The D.C. Circuit did not find that the Commission could not promulgate limitations with regard to media ownership. In writing the Telecommunications Act of 1996, Congress itself set the national television ownership cap and incorporated it in the statute for the same reasons the court found to be important governmental interests in the recent litigation addressing the cable ownership cap: to promote diversity in ideas and speech and preserve competition.

Moreover, the time is not right for a change in the national ownership cap. In recent years the Commission has altered a number of rules affecting the broadcast industry, from the dual network rule to the duopoly rule to the financial interest and syndication rule. Because these rules are related and interact in their impact on local broadcasting, the Commission should take sufficient time to observe the effects of those recent changes and assess their impact on diversity and competition before considering any alteration to the national limit.

The national ownership cap is vital to ensuring that television programming decisions remain in the hands of local broadcasters, and that media power does not become concentrated in New York or Los Angeles. The national broadcast ownership cap is not, as some wrongly suggest, just about competition. Local input helps keep our broadcast system responsive to the views of local communities across the country. That diversity of viewpoint benefits our democracy. The national ownership cap also ensures that the delicate balance of power in the network-affiliate partnership is maintained. We think that recent controversy regarding the scope of the networks' power even under the current regulatory regime underscores the notion that retention of the 35% national television ownership cap remains essential to prevent potential abuses.

We urge the Commission to honor its statutory responsibility to facilitate a robust system of locally-based broadcasting not equaled anywhere in the world by maintaining and enforcing the law as established by Congress. Thank you for your time and attention to this matter.

Sincerely,

John D. Dingell
Edward J. Markey

R. Burr
Chip Pickering

Fritz Hollings
D. Inouye

Trent Lott
Ted Stevens

Byron L. Dorgan

Max Cleland

Jesse Helms

John Edwards

Barbara Boxer

ATTACHMENT 2

JUL 5 6 12 PM '00

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.	))))	MM Docket No. 98-35

BIENNIAL REVIEW REPORT

By the Commission: Chairman Kennard and Commissioner Ness issuing separate statements; Commissioners Furchtgott-Roth and Powell concurring in part, dissenting in part, and issuing separate statements; Commissioner Tristani approving in part, dissenting in part and issuing a statement.

Adopted: May 26, 2000 Released: June 20, 2000

TABLE OF CONTENTS

Paragraph

I. INTRODUCTION

1. This Report reviews our broadcast ownership rules as required by Section 202(h) of the Telecommunications Act of 1996 ("Telecom Act").[1] That section provides:

> The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.[2]

More recently, Congress has prescribed a period of 180 days from November 29, 1999, in which the Commission is to complete the 1998 biennial review of its broadcast ownership rules.[3] The Conference Report for this 1999 Act states that within the subject period the Commission shall issue a report and if it concludes that it should retain any of the rules unchanged, it "shall issue a report that includes a full justification of the basis for so finding."[4]

2. Six rules are reviewed in this Report: (1) the national TV ownership rule (including the "UHF discount"); (2) the local radio ownership rules; (3) the dual network rule; (4) the daily newspaper/broadcast cross-ownership rule; (5) the cable/television

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1 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The context of Section 202(h) of the Telecom Act makes clear that the scope of the required ownership review relates to the Commission's broadcast ownership rules, both those adopted under Section 202 and our other broadcast ownership rules. In this regard, we note that Section 202 is entitled "Broadcast Ownership," as is the corresponding section of the Conference Report. House Rep. 104-458, 104th Cong., 2d Sess. 161 (1996). Also required by Section 202(h) is the biennial review of rules adopted pursuant to Sections 202(a)-(f) of the Telecom Act. These include rules pertaining to cable as well as broadcast cross-ownership.

2 Section 11(a) of the Communications Act of 1934, as amended, similarly provides that under the statutorily required review, the Commission "shall determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition" and requires that the Commission "shall repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 USC § 161.

3 Section 5003, Pub L. 106-113, 113 Stat. 1501 (1999), Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.

4 Joint Explanatory Statement of the Committee of Conference on the "Intellectual Property and Communications Omnibus Reform Act of 1999," at 59.

cross-ownership rule; and (6) an experimental broadcast station ownership rule. The Report provides a regulatory history of each rule, followed by a discussion of the competitive and diversity issues that justify our decision as to whether the rule remains in the public interest.

3. On March 12, 1998, we adopted a Notice of Inquiry ("NOI")[5] in this proceeding seeking comment on the six rules included in this biennial ownership report. The NOI did not seek comment on the local television ownership rule or one-to-a-market ownership rule because these rules were already the subject of pending proceedings and we reasoned that their examination in those proceedings complied with Congress' mandate that we review all of our ownership rules biennially beginning in 1998.[6] On August 5, 1999, we adopted a Report and Order[7] relaxing our local television ownership rule and one-to-a-market ownership rule. Those decisions provided broadcasters with expanded opportunities to realize the efficiencies of television duopolies and local radio/television combinations in markets where an essential level of competition and diversity would be preserved. More specifically, we narrowed the geographic scope of the television duopoly rule from the Grade B contour approach to a "DMA" test. This new approach allows the common ownership of two television stations without regard to contour overlap if the stations are in separate Nielsen Designated Market Areas ("DMAs"). Additionally, it allows the common ownership of two television stations in the same DMA if their Grade B contours do not overlap or if eight independently owned, full-power and operational television stations will remain post merger, and one of the stations is not among the top four ranked stations in the market based on audience share. Furthermore, we adopted waiver criteria presuming, under certain circumstances, that a waiver to allow common local television station ownership is in the public interest where one of the stations is a "failed station," is a "failing station," or where the applicants can show that the combination will result in the construction and operation of an authorized but as yet "unbuilt" station. We also substantially relaxed the radio/television cross-ownership ("one-to-a-market") rule to permit more such combinations, including allowing a party to own as many as one TV station and seven radio stations under certain circumstances. These actions were taken in fulfillment of our obligations under Section 202(h) of the Telecom Act and satisfy its requirements as to the subject rules.[8]

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[5] Notice of Inquiry, 13 FCC Rcd 11276 (1998) ("NOI").

[6] NOI, supra at 11279-80.

[7] Report and Order in MM Docket Nos. 91-221 & 87-8, 14 FCC Rcd 12903 (1999) (hereinafter "TV Ownership Order").

[8] The Conference Report accompanying the Telecom Act, states that the, "conferees are aware that the Commission already has several broadcast deregulation proceedings underway. It is the intention of

4. In the instant phase of our biennial review of broadcast ownership rules, we conclude that the local radio ownership rules, the national television ownership rule (including the UHF discount), and cable/TV cross-ownership rule continue to serve the public interest and so retain these rules. As noted above, we have just recently substantially relaxed our local television ownership and one-to-a-market rules. It is currently too soon to tell what effect this will have on consolidation, competition and diversity. Until we have further information in this regard we believe that these rules remain necessary in the public interest in their current form. However, we will issue Notices of Proposed Rule Making proposing modification of the dual network and newspaper/broadcast cross-ownership rules. Additionally, in the case of the local radio ownership rule, we will issue a Notice seeking comment on alternative methods of correcting certain anomalies in the way we currently define radio markets and the way we count the number of stations in a radio market and the number of radio stations that an entity owns in a market. Finally, we conclude that the experimental broadcast station multiple ownership rule may no longer be in the public interest and will issue a Notice of Proposed Rule Making proposing its elimination.

II. BACKGROUND

5. For more than a half century, the Commission's regulation of broadcast service has been guided by the goals of promoting competition and diversity.[9] These goals are separate and distinct, yet also related. Indeed, as recently as 1997, the Supreme Court noted that "[f]ederal policy . . . has long favored preserving a multiplicity of broadcast outlets regardless of whether the conduct that threatens it is motivated by anticompetitive animus or rises to the level of an antitrust violation."[10] The Supreme Court has also held that both of these goals are important and substantial public policies for First Amendment purposes.[11] Competition is an important part of the Commission's public interest mandate, because it promotes consumer welfare and the efficient use of

the conferees that the Commission continue with these proceedings and conclude them in a timely manner." H.R. Rep. 104-458, at 164.

[9] For a more extensive discussion of the Commission's competition and diversity goals see TV Ownership Order, supra at 12910-12924.

[10] Turner Broadcasting System, Inc. v. FCC, 520 U.S. 180, 117 S.Ct. 1174 (1997)("Turner II"). (Citations omitted.)

[11] Turner Broadcasting System v. FCC, 512 U.S. 622, 662 (1997)("Turner I").

resources and is a necessary component of diversity.[12] Diversity of ownership fosters diversity of viewpoints, and thus advances core First Amendment principles. As the Supreme Court has said, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public . . . ."[13] Promoting diversity in the number of separately owned outlets has contributed to our goal of viewpoint diversity by assuring that the programming and views available to the public are disseminated by a wide variety of speakers.

6. This Report uses the framework for reviewing competition and diversity outlined in the NOI to evaluate, as required by the Telecom Act, whether the six rules included in this biennial review continue to be in the public interest.[14] Thus, we assess current levels of competition in the market for delivered video programming, the advertising market, and the program production market to determine whether such competition has eliminated the need for the six rules. Our diversity analysis focuses upon the degree to which broadcast and non-broadcast media, operating within the framework of our ownership rules, advance the three types of diversity (i.e., viewpoint, outlet and source) that our broadcast ownership rules have attempted to foster. Viewpoint diversity refers to the range of diverse and antagonistic opinions and interpretations presented by the media. Outlet diversity refers to a variety of delivery services (e.g., broadcast stations, cable and DBS) that select and present programming directly to the public. Source diversity refers to the variety of program or information producers and owners.[15]

III. STATUS OF MEDIA MARKETPLACE

7. Our decision here concerning the broadcast ownership rules takes account of the ongoing changes in the structure of the broadcast industry. The UHF television discount, the daily newspaper/broadcast cross-ownership rule, the cable/television cross-ownership rule, and the experimental broadcast station ownership rule have not been examined for many years. In reviewing these rules, we recognize that there has been

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[12] Revision of Radio Rules and Policies, 7 FCC Rcd 2755 (1992), recon. granted in part, 7 FCC Rcd 6387 (1992), further recon., 9 FCC Rcd 7183 (1994).

[13] Associated Press v. United States, 326 U.S. 1, 20 (1945); accord Federal Communications Commission v. National Citizens Committee for Broadcasting, 436 U.S. 775 (1978).

[14] NOI, supra at 11277-78.

[15] See TV Ownership Order, supra at 12911-12, n.29; see also TV Ownership Further Notice, 10 FCC Rcd 3524, 3549-50 (1995).

substantial growth in the number and variety of media outlets in local markets. In contrast, the national television ownership rule, the local radio ownership rules, and the dual network rule were modified in 1996 in accordance with Section 202 of the Telecom Act. While there has been growth in the number and variety of media outlets since the Telecom Act, there have also been significant changes in the ownership structure of the broadcast industry during that period, chiefly consisting of extensive consolidation in the radio and television industries.

8. Section 202(h) of the Telecom Act requires us to determine whether any of our broadcast ownership rules "are necessary in the public interest as the result of competition." We note that some commenters express the belief that this limits our review only to competitive matters and that our analysis must be devoid of diversity considerations. Because the statutory language requires reference to the public interest standard, and because diversity and competition have both been critical components of that standard,[16] our review must consider diversity issues as well. Indeed, the United States Supreme court has identified as a "governmental purpose of the highest order" ensuring the public's access to "a multiplicity of information sources."[17] Also, there is support for our consideration of diversity in this context in the legislative history of the Telecom Act itself. As discussed in our recent local television ownership decision,[18] Congress expressed diversity concerns with regard to at least two of our rules and, with respect to our review of the radio/television cross-ownership rule, expressly instructed the Commission to take into account not only the increased competition facing broadcasters but also "the need for diversity in today's radio marketplace."[19] Finally in this regard, the statutory language appears to focus on whether the public interest basis for the rule has changed as a result of competition, and does not appear to be intended to limit the factors we should consider. Therefore, our public interest determination for each rule is based on an examination of both competition and diversity issues in light of competitive market conditions. The material below provides a brief overview of the number of outlets, ownership structure, and other information relevant to the current status of competition in the video, audio, and newspaper industries. The numbers alone, of course, are not sufficient to determine whether particular media compete with one another in relevant markets or whether different media are adequate substitutes for one another from a diversity perspective.

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[16] See, e.g., United States v. Storer Broadcasting Company, 351 U.S. 192, 203 (1956); FCC v. National Citizens Committee For Broadcasting, 346 U.S. 775, 780-81,794 (1978).

[17] Turner II, supra at 190.

[18] TV Ownership Order, supra at 12913.

[19] S. Conf. Rep. 104-230, 104th Cong. 2d Sess. 163 (1996).

9. Video. There are currently over 100 million TV households in the U.S.[20] served by a variety of video outlets. Over-the-air outlets include: 1,243 commercial TV stations (682 UHF, 561 VHF); 373 non-commercial, educational TV stations (248 UHF, 125 VHF); and, over 2,100 low-power TV stations.[21] Sixty percent of commercial TV stations are affiliated with one of the top four networks (ABC, CBS, Fox, & NBC). Another 18 percent are affiliated with the newer national networks: United Paramount (UPN), Warner Brothers (WB) and the Paxson Network (Paxnet).[22] The remaining commercial stations are affiliated with smaller networks or are independents. The average TV household in the U.S. can receive 13 over-the-air TV stations, while 36 percent of all homes can receive 15 or more stations and 9 percent can receive 20 or more stations over the air.[23]

10. There are over 10,400 cable systems passing 96+ million homes and serving almost 67 million TV households.[24] This represents sixty-six percent cable penetration.[25] Sixty-four percent of all subscribers have at least 54 channels and over 98% have a minimum of 30 channels.[26] Today there are over 170 national cable programming networks and 50 regional networks.[27] Many cable systems offer PEG access channels, and some, albeit fewer than a dozen, offer local cable news, educational and public affairs programming. Most, if not all, of these latter type of channels are owned by a local television station or newspaper.

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20 U.S. Television Household Estimates, Nielsen Media Research, September 1999.

21 FCC Press Release, Broadcast Station Totals as of September 30, 1999, (issued November 22, 1999).

22 BIA Research Inc., MEDIA Access Pro Data Base, May 22, 2000.

23 Nielsen Media Research, Television Audience 1996, 1997.

24 Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket 99-230, ("Sixth Cable Report"), 15 FCC Rcd 978, Appendix B (2000).

25 Broadcasting & Cable, April 24, 2000, at 62.

26 Id. at Table B-4.

27 NCTA, Cable Television developments, Fall 1998/Winter 1999, at 28-136.

11. Other video providers include Direct Broadcast Satellite (DBS), which currently provides up to 350 channels to over 10 million subscribers. Multichannel Multipoint Distribution Service (MMDS) serves over 800,000 subscribers; Satellite Master Antenna Television (SMATV) has approximately 1.5 million subscribers; Home Satellite Dishes (HSD) serve over 1.7 million households; Open Video Systems (OVS) have 60 thousand subscribers.[28] By 1999, fifty percent of households owned a PC and over 100 million Americans were Internet users.[29]

12. Audio. Over 12,600 radio stations are currently on the air (4,783 AM, 5,766 commercial FM and 2,066 educational FM).[30] The average radio market has 22 commercial radio stations. Of 270 Arbitron radio markets, 128 markets (47 percent) are served by more than 20 stations and 90 percent of markets (244 of 270) have over 10 stations.[31]

13. Newspapers. In 1998, there were 1,489 daily newspapers in the U.S. The total circulation for those dailies was about 56 million.[32] There were also 8,193 weekly newspapers with a combined circulation of over 74 million, and a Sunday circulation of over 60 million.[33] There are also a number of special interest newspapers available to readers, catering to a wide variety of audiences. There are 185 African-American newspapers in 35 states and the District of Columbia, 107 Hispanic newspapers published in 35 states and the District of Columbia, 98 Jewish newspapers in 31 states, 159 other "ethnic" newspapers published in the U.S., 43 gay and lesbian newspapers published in 24 states and the District of Columbia, 134 military newspapers published in 38 states, 132 religious newspapers published in 40 states and the District of Columbia, and 1,236 college newspapers published in all 50 states and the District of Columbia.[34] Many of

28 Sixth Cable Report, supra at Table C-1.

29 Id. at p.8.

30 FCC Press Release, Broadcast Station Totals as of September, 30, 1999, (issued November 22, 1999).

31 These station counts include all in-market stations and selected out-of-market stations based on BIA's "Investing in Radio," 1999 Market Report, 4th Edition.

32 Newspaper Association of America, Facts About Newspapers 1999, at 15.

33 Id. at 16, 27, 31.

34 Editor and Publisher Yearbook 1998, at II-1 to II 124.

these newspapers, however are not published daily, are not in the English language, and are not circulated generally in the community of publication, or have insufficient circulation in the DMA.

IV. RULES

A. National TV Ownership Rule and UHF Discount

1. Regulatory History

14. Section 73.3555(e)(1) sets forth the current national TV ownership rule. That section states:

> No license for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer, or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in TV stations which have an aggregate national audience reach exceeding thirty-five (35) percent.[35]

15. Section 73.3555(e)(2) sets forth the "UHF discount." That section explains that "national audience reach" is based on the number of TV households in Nielsen Designated Market Areas (DMA), and that UHF TV stations are attributed with only 50% of the TV households in the DMA.[36]

16. The Commission first adopted a national ownership limit for television broadcast stations in the 1940s by imposing numerical caps on the number of stations that could be commonly owned, and originally limited common ownership to no more than three stations nationwide.[37] Several years later this was expanded to allow ownership of no more than five stations.[38] In retaining the five station rule in 1953, the Commission

[35] 47 C.F.R. § 73.3555(e)(1).

[36] 47 C.F.R. § 73.3555(e)(2). The UHF discount is intended to recognize the deficiencies in over-the-air UHF reception vis-a-vis VHF reception. As a result, UHF stations are not "credited" with reaching their entire market but, instead, their coverage is "discounted" by 50 percent.

[37] 6 FR 2284-85 (Tuesday, May 6, 1941).

[38] 9 FR 5442 (Tuesday, May 23, 1944).

explained:

> The purpose of the multiple ownership rules is to promote diversification of ownership in order to maximize diversification of program and service viewpoint as well as to prevent any undue concentration of economic power contrary to the public interest and thus to carry out the underlying purpose of the Communications Act to effectuate the policy against monopolization of broadcast facilities and the preservation of the broadcasting system on a free competitive basis.[39]

17. In 1954, the Commission adopted the "Seven Station Rule" by raising the multiple ownership limit from five stations to seven, with no more than five being VHF stations.[40] The Commission believed that the more rapid and effective development of the UHF band warranted permitting the ownership of additional UHF stations.[41] The Commission noted that it was aware of the serious problems confronting the development of the UHF service, especially in markets with VHF-only set saturation, and that it was in these areas particularly where the prestige, capital, and know-how of the networks and other multiple owners would be most effective in aiding UHF.[42]

18. Thirty years later, in 1984, the Commission eliminated the Seven Station Rule and established a six-year transitional period during which common ownership of twelve television broadcast stations would be permitted.[43] The Commission determined that repeal of the Seven Station Rule would not adversely affect the Commission's traditional policy objectives of promoting viewpoint diversity and preventing economic concentration.[44] The Commission explained that: 1) changes in the broadcasting and

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[39] Amendment of Multiple Ownership Rules, 9 RR 1563 (1953). See Federal Communications Commission v. Sanders Brothers Radio Stations, 309 U.S. 470 (1940).

[40] Amendment of Multiple Ownership Rules, 43 FCC 2797 (1954).

[41] Id. at 2801.

[42] Id.

[43] Amendment of Multiple Ownership Rules, (Gen. Docket 83-1009) 100 FCC 2d 17 (1984).

[44] See id. at 24-46 for a discussion of the effects of eliminating the rule on viewpoint diversity and economic competition.

communications markets,[45] 2) new evidence of the positive effects of group ownership on the quality and quantity of public affairs and other programming responsive to community needs,[46] and 3) the lack of relevance of a national ownership rule to the availability of diverse and independently owned radio and TV voices to individual consumers in their respective local markets[47] led to the conclusion that the rule was unnecessary to ensure diversity of viewpoints.[48] The Commission determined that the better focus for addressing viewpoint diversity and economic competition concerns was the number and variety of information and advertising outlets in local markets.[49] Nevertheless, the Commission recognized the concerns of some commenters that, if the rule were repealed immediately and in its entirety, a significant restructuring of the broadcast industry might occur before all ramifications of such a change became apparent. Therefore, the Commission established a transitional limit of twelve television broadcast stations.[50] The transitional limit would automatically sunset in six years unless experience showed that continued Commission involvement was warranted.

19. On reconsideration, the Commission, modified its decision.[51] Specifically, the Commission 1) established an audience reach cap of 25 percent,[52] in addition to the

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[45] Id. at 18, 28.

[46] Id. at 20.

[47] Id. at 37.

[48] Id. at 19.

[49] Id. at 20. Regarding the possibility of competitive harm, the Commission noted the conclusions of the Department of Justice that "elimination of the Seven Station Rule will raise little risk of adverse competitive effects in any market." The Department concluded that elimination of the rule would not increase concentration in the national network advertising market, because each network has already achieved access to almost every local market through its affiliation agreements. In the local spot market, the Department concluded that "[s]ince spot advertising is sold in local geographic markets, and the rule does not address concentration in those markets, a rule change should not affect competition in spot advertising." Id. at 38, 41. The Commission also noted that elimination of the rule may allow group owned television stations to exploit important efficiencies. Id. at 44.

[50] Id. at 18, 55.

[51] Memorandum Opinion and Order in MM Docket No. 83-1009, 100 FCC 2d 74 (1985).

[52] Defined as 25 percent of the national audience, calculated as a percentage of all Arbitron ADI television households.

twelve station limit, to better account for the effect that relaxation of the rule would have on population penetration; 2) attributed owners of UHF stations with only 50 percent of their ADI audience reach to take cognizance of the limitations inherent in UHF broadcasting; 3) permitted common ownership of an additional two television stations, provided that they were minority controlled; and 4) eliminated the automatic sunset provision. The stated objective was to permit reasonable expansion so as to capture the benefits of group ownership while avoiding the possibility of potential disruptive restructuring of the national broadcast industry.[53] The Commission explained that a numerical cap would prevent the acquisition of a tremendous number of stations in the smaller markets, thus reducing the possibility of disruptive restructuring in small markets, while an audience reach cap would temper dramatic changes in the ownership structure by the largest group owners in the largest markets.[54] The Commission noted that its decision to use both a numerical cap and an audience reach cap was also predicated on concerns regarding the potential impact on industry structure.[55] The Commission further explained that attributing UHF stations with 50 percent of an ADI market's audience reach was intended to address the fundamental disadvantage of UHF television in reaching viewers.[56] The Commission found it inadvisable to terminate the multiple ownership rules for television broadcast stations automatically at the end of six years. The Commission explained that 1) it was appropriate to proceed cautiously in relaxing the rules and 2) an automatic sunset of the ownership rules was unnecessary to achieve the Commission's policy objectives.[57]

20. On March 7, 1996, the Commission amended the national television station multiple ownership rules to conform to the provisions in Section 202(c)(1) of the Telecom Act.[58] Specifically, the Commission eliminated the numerical limit on the

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[53] Memorandum Opinion and Order, (Gen. Docket 83-1009) supra at 98.

[54] Id. at 89 and 91.

[55] Id. at 87-88 n. 38.

[56] The UHF Comparability Task Force found that: "Due to the physical nature of the UHF and VHF bands, delivery of television signals is inherently more difficult at UHF. It should be recognized that actual equality between these two services cannot be expected because the laws of physics dictate that UHF signal strength will decrease more rapidly with distance than does VHF signal strength." Id. at 93.

[57] Id. at 96-97.

[58] Order, 11 FCC Rcd 12374 (1996).

number of broadcast television stations a person or entity could own nationwide and increased the audience reach cap on such ownership from 25 percent to 35 percent of television households.

21. In our Notice of Inquiry in this proceeding we sought comment on this rule. Particularly, we asked about its effect on competition in the national advertising market and the program production market at the national level. We also sought comment on the rule's effect on existing television networks and the formation of new networks and sought information on the economies of scale that may have been realized as a result of the consolidation permitted by the Telecom Act.[59] Finally, we asked whether the UHF discount should be retained, modified or eliminated in view of the decreasing disparity between VHF and UHF television and, in the event of a decision to modify the rule, whether and, if so, how group owners that exceed any new limits should be grandfathered.[60]

2. Comments on National TV Ownership Rule

22. All of the major networks (ABC, CBS, Fox, and NBC) support total repeal of the national television ownership rule. These networks argue that abolition of the rule would have no effect on the level of diversity and competition in local markets,[61] and retention of the rule hinders broadcasters from achieving economic efficiencies.[62] These networks maintain that group owned stations provide more news and public affairs programming than non-group owned stations.[63] They also argue that removal of the audience reach cap would promote the development of new broadcast television networks.[64] Finally, they argue that the only two markets that may be affected by elimination of the rule, the national advertising market and the market for national

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[59] NOI, supra at 11281.

[60] Id. at 11285.

[61] ABC Comments at 5, CBS Comments at 8, Fox and USA Broadcasting Comments at 13, and NBC Comments at 11.

[62] ABC Comments at 6, CBS Comments at 13, Fox and USA Broadcasting Comments at i-ii, and NBC Comments at 15-16.

[63] ABC Comments at 7, CBS Comments at 14-15, Fox and USA Broadcasting Comments at 16-19, NBC Comments at 15.

[64] Fox and USA Broadcasting Comments at i-ii, and NBC Comments at 14-15.

exhibition rights to video programming, would remain unconcentrated.[65]

23. Two group owners (Paxson and Council Tree) support relaxation of the rule. Paxson proposes facilitating the construction of new television stations by allowing group owners to take an equity interest in the new stations in exchange for financing the construction of new stations.[66] The ownership interest would not count for purposes of the audience reach cap. Council Tree suggests permitting group owners that have reached the 35 percent cap to take an equity interest in additional stations, as long at the stations are controlled by small businesses.[67] Again, the ownership interest would not count for purposes of the audience reach cap.

24. A number of commenters support retaining the national television ownership rule.[68] NAB argues that the new television ownership limits have not been in effect long enough to warrant any modification at this time.[69] Network Affiliated Stations Alliance (NASA) asserts that an increase in the audience reach cap will increase the bargaining power of networks and, therefore, diminish localism by making it more difficult for affiliates to program their stations in the interests of the communities they are licensed to serve.[70] Center for Media Education (CME), et al., contend that the recent increase in the cap has led to unprecedented concentration and diminished competition that may enable networks to exercise monopsony power in the program production market.[71] According to CME, et. al., the public is receiving less news and information from fewer sources.[72]

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[65] CBS Comments at iv.

[66] Paxson Communications Corporation's Proposal to the FCC to Increase Broadcast Diversity (submitted July 24, 1998).

[67] Council Tree Communications Comments at 9.

[68] National Association of Broadcasters (NAB) Comments at 11-12; Network Affiliated Stations Alliance (NASA) at 6-15; Center for Media Education (CME), et. al. Comments at 2-17; Office of Communication, Inc., United Church of Christ, and Black Citizens for a Fair Media Comments at 4-6; American Federation of Television and Radio Artists (AFTRA) Comments at 3-6; and Gallium Communications, Inc. Comments at 2 and Reply Comments at 2-3.

[69] NAB Comments at 11.

[70] NASA Comments at 2, 5, 12 and 14.

[71] CME, et. al. Comments at 14-16.

American Federation of Television and Radio Artists (AFTRA) asserts that maintaining the existing 35 percent cap will not harm competition and is essential to protect diversity on the airwaves.[73] AFTRA argues that group owners recycle news and public affairs programming from one reporter or news writer, whereas the public interest is better served by having different reporters and news writers in separate markets provide different angles and perspective on the news.[74] One commenter wants the Commission to increase viewpoint diversity by reducing the number of stations a company may own if group owners do not spin off properties on a voluntary basis.[75]

3. Discussion of National TV Ownership Rule

25. We believe that the audience reach cap should be retained at its current level for the present. As an initial matter, Congress prescribed an increase in the cap from 25% to 35% in the Telecom Act. Several considerations motivate our decision not to change the national TV ownership rule. First, we believe that the effects of our recent change to the local television ownership rule should be observed and assessed before we make any alteration to the national limit. Second, the existing reach cap has already resulted in many group owners acquiring large numbers of stations nationwide since the cap was increased to 35 percent in 1996. We also believe that this trend needs further observation prior to any change in the cap.[76]

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72 Id. at 16. As examples, CME, et al. point to situations in Florida and Pennsylvania where commonly owned affiliates of different networks air the same local newscasts.

73 AFTRA Comments at 3.

74 Id. at 4-5.

75 Gallium Communications, Inc. Comments at 2-3.

76 We note, however, that on November 18, 1999, Fox Television Stations, Inc., filed an "Emergency Petition for Relief and Supplemental Comments" in this proceeding seeking, among other things, repeal of the national broadcast ownership rule. Also, on November 19, 1999, Viacom Inc. filed "Comments" in this proceeding seeking repeal of the same rule and, additionally, the dual network rule. The original deadline for filing comments in this proceeding was May 22, 1998, with June 22, 1998, being the reply comment deadline. These deadlines were later extended, pursuant to the request of the National Association of Broadcasters, to July 21, 1998, and August 21, 1998, for comments and reply comments, respectively. Order in MM Docket No. 98-35, DA 98-854 (released May 7, 1998). The Fox and Viacom filings, having been submitted nearly 18 months subsequent to these deadlines will not be considered in this proceeding. Simply, to do so would provide a precedent for subjecting our biennial review proceedings to unceasing comment cycles, and would deprive other parties of an ability to respond to these new matters absent establishment of new pleading cycles. Accordingly, they will not be considered herein but will be included in the record of our 2000 biennial review of broadcast ownership issues.

26. One factor in our decision is the recent relaxation of our local television ownership rules.[77] As noted above, those decisions provided increased flexibility for the creation of television duopolies and television/radio combinations in local markets while safeguarding an essential level of competition and diversity. We conclude that prudence dictates that we should monitor the impact of our recent decisions regarding local television ownership and any impact they may have on diversity and competition prior to relaxing the national reach cap. Commenters supporting relaxation or elimination of the cap make credible arguments in favor of their position. These arguments include the contention that elimination of, or increase in, the cap would allow additional economic efficiencies and more news and public affairs, increase minority ownership by removing the cap as an impediment to broadcasters obtaining attributable equity interests in minority-owned television stations, and promote the development of new broadcast television networks. We believe, however, that the competitive concerns of opponents of relaxation or elimination of the cap[78] are more convincing under current circumstances. Until we gain experience under the new local television ownership rules we are disinclined to correspondingly relax them on the national level. While we will reexamine this decision in our future biennial reviews of broadcast ownership rules, we intend to proceed cautiously in this area at the present time.

27. Also, elimination of the 12 station numerical cap has already permitted group owners to acquire a large number of stations.[79] The Appendix to this Report provides a snapshot view of the restructuring that has taken place in the broadcast television industry since enactment of the Telecom Act in February 1996. The table lists the number of commercial television stations owned by the top 25 group television owners for 1996 and 2000 ranked by the national audience reach of these television owners. The data show that many group owners have acquired additional stations and increased their audience reach since the Telecom Act's passage.

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[77] See TV Ownership Order, supra.

[78] These arguments are that eliminating or expanding the reach cap would increase the bargaining power of networks over their affiliates, reduce the number of viewpoints expressed nationally, increase concentration in the national advertising market, and enlarge the potential for monopsony power in the program production market.

[79] The current rule permits a group owner to acquire a VHF station in every market below DMA 47 (i.e., DMA 48 through DMA 210, a total of 163 stations) and still remain below the 35 percent audience reach cap. By holding UHF stations only, a group owner could acquire a station in every market below DMA 10 (i.e., DMA 11 through DMA 210, a total of 200 stations) and still remain below the 35 percent audience reach cap.

28. Moreover, consolidation is a feature of other video media. In cable, the seven largest operators now serve almost 90 percent of all U.S. cable subscribers, which is up from 63 percent being served by the top 10 multiple system operators ("MSO") in 1990.[80] Thirty-seven percent of satellite-delivered national programming networks are now vertically integrated with a cable MSO. In 1999, for example, one or more of the top six cable MSOs held an ownership interest in each of 101 vertically integrated national programming services. In addition, a significant percentage of the top national programming services are controlled by approximately eleven companies, including cable MSOs, broadcasters and other media entities.[81] Of the top 50 programming services in terms of subscribership, 46 are owned by one or more of these 11 companies.[82]

29. The evidence suggests that the television broadcast industry is still adapting to the recent relaxation of the national and local ownership rules and we wish to avoid actions with the potential for disruptive restructuring. For example, applications for duopolies under our new local television ownership rule were only filed this past November and we believe that we should monitor developments under this new rule prior to making any changes to the national television ownership reach cap.

30. We also intend to proceed cautiously because the Commission has previously recognized that a change in the audience reach cap may well influence the bargaining positions between broadcast television networks and their affiliates.[83] We noted that in some situations, relaxation of the national ownership limits could increase the bargaining power of networks by expanding their option to own rather than affiliate with broadcast television stations. In other situations, however, relaxation of the national ownership limits could increase the bargaining position of group-owned affiliates by creating larger, more powerful groups. In its comments, NASA asserts that the national ownership rule is

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[80] Sixth Cable Report, supra at 986; Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48, ("First Cable Report"), 9 FCC Rcd 7442, 7514 (1994).

[81] Sixth Cable Report, supra at 1058. The eleven are: ABC/Disney, General Electric, CBS/Viacom, News Corp., Time Warner, Discovery, Rainbow Media Liberty Media, USA Networks, E.W. Scripps and Comcast.

[82] Id. The four unaffiliated services among the top 50 are C-SPAN and C-SPAN2 (both of which are almost wholly funded by the cable industry), WGN and The Weather Channel.

[83] Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates, 10 FCC Rcd 11951, 11960 (1995).

the essential mechanism for maintaining the balance between networks and their affiliates to ensure that affiliates can program their stations in the interests of the communities they are licensed to serve.[84] NASA argues that an increase in the audience reach cap will increase the bargaining power of networks.[85] We believe that in considering relaxation of the national ownership rule we should act cautiously in light of the potential impact of this rule on the bargaining positions of networks and affiliates, particularly given the restructuring that may be taking place concurrently on the local level. We do not believe that consolidation of ownership of all or most of the television stations in the country in the hands of a few national networks would serve the public interest. The national networks have a strong economic interest in clearing all network programming, and we believe that independently owned affiliates play a valuable counterbalancing role because they have the right to decide whether to clear network programming or to air instead programming from other sources that they believe better serves the needs and interests of the local communities to which they are licensed. Independent ownership of stations also increases the diversity of programming by providing an outlet for non-network programming. We do not believe that the role played by independently owned affiliates is any less important today than it was four years ago when Congress determined that the public interest was served by maintaining a national ownership limit, albeit it at a slightly relaxed (35% rather than 25%) level.

4. Comments on the UHF Discount

31. A number of commenters advocate elimination or substantial modification of the UHF discount.[86] These groups argue that the original basis for the discount appears to have fallen away. Specifically, the deficiencies in UHF reception that existed in the early years of television have largely been ameliorated by improved television receiver design and the fact that more than two-thirds of all television homes now receive local signals via cable.[87] ABC maintains that the only television households that might have trouble receiving UHF signals are the 32 percent that do not subscribe to cable. ABC contends that if half of those households cannot receive UHF signals, a 50 percent discount is

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[84] NASA Comments at 2.

[85] Id. at 5.

[86] ABC Comments at 18-23; NBC Comments at 16; Press Broadcasting and Greater Media Comments at 4-6; and CME, et al. Comments at 17-19.

[87] NBC Comments at 16; ABC Comments at 19; Press Broadcasting and Greater Media Comments at 5; CME, et al. Comments at 17-18.

The CHAIRMAN. Thank you, Mr. Frank.
Mr. Fuller.

STATEMENT OF JACK FULLER, PRESIDENT, TRIBUNE PUBLISHING COMPANY

Mr. FULLER. Mr. Chairman, as a newspaper man ordinarily I wouldn't be here on Capitol Hill asking for anything but information, but because of the ongoing revolution in the way Americans get their information, I am here to ask you that you permit newspapers to compete freely with other media for a share of the fragmenting news audience unhampered by legal restrictions on ownership of the means of communication.

Since the cross-ownership rule was established nearly three decades ago the news business has been transformed. In addition to newspapers, magazines, broadcast television and radio, now Americans can get news from a proliferation of national all-news cable operations such as CNN, Fox News and so on, as well as from local cable operations such as New York One News and News Channel 8 here in Washington.

On the Internet, they can get news from a wide variety of sites all over the country and all over the world. With a few keystrokes, they can search the World Wide Web for news that interests them—from what you have said in the Senate and the way you cast your votes to information about local schools and parks.

This profusion of news sources is good for the country, but it is a challenge for newspapers whose readership has been under pressure because of media fragmentation and whose advertising revenue is targeted by every new competitor as well as by the old ones. This has put newspapers under some financial stress. You have probably seen reports of significant cutbacks most have had to make in this period of economic softness.

The cost of covering the news, however, is not declining. It is increasing. Covering the meetings and activities of hundreds of municipal government bodies, local school boards, and other public policy events is a huge and expensive undertaking. Building teams of journalists who are capable of understanding the complexity of public policy issues today and translating them for lay people is not easy or cheap. Not to mention the cost of serious, sophisticated original coverage of the Nation and the world as Tribune newspapers are committed to providing.

In Chicago alone, *The Chicago Tribune* employs nearly 700 editorial staffers and hundreds of freelancers, most of them devoted to news of local interest. In Los Angeles, the numbers are higher—1,130 editorial staff of the *Los Angeles Times*. Even in small markets such as Newport News, *The Daily Press* employs 155 full time editorial staff, which is nearly 3 times the size of a broadcast news operation even in the metropolitan areas.

The question is whether in a fragmented media environment we will be able to find the economic model to continue to support local coverage at this level. I believe we can, but it will mean spreading the cost of high quality journalism over more than one distribution channel. We will have to reach new audiences in the many new ways that people like to receive their news. And to do so we have to have the burden of the cross-ownership rule lifted.

In an environment where people's choices for obtaining information have radically multiplied, there is no risk of one voice dominating in the marketplace of ideas. In fact in the clamor of cities like Los Angeles, Chicago, New York and others it is frankly a challenge for any voice, no matter how booming it may seem, to get itself heard. So long as distribution channels continue to proliferate, and the explosion of bandwidth guarantees that they will, the public's demand for a diversity of voices will always be satisfied.

The public interest is served by freeing newspapers to compete in the new highly competitive news environment. Let firms own newspapers and broadcast television stations and people who get all their news from broadcasting today will hear new voices. Let the cross-ownership rule fall and you'll see enriched newscasts.

Here is an example of what's possible. It comes from Chicago, where the Tribune's ownership of the *Chicago Tribune* and WGN have been grandfathered under the cross-ownership rule. Last year, more than 40 reporters, editors and visual journalists from the *Chicago Tribune*, WGN, and CLTV which is our local all-news cable channel, worked together on a series of stories entitled "Gateway to Gridlock," about the effect of air traffic snarls at O'Hare Airport on people's lives all over the country. Stories appeared in every medium, each medium telling the story as it was best for that audience. The public was the beneficiary and the *Chicago Tribune* was honored with a Pulitzer Prize for the effort. No broadcast, cable, or Internet news operation alone could have devoted the resources it took to research, write, edit, and package "Gateway to Gridlock."

So with cross-ownership, public access to high-quality local news increases. It does not decrease. And that is why neither your files nor those of the Federal Communications Commission are filled with complaints from the communities where cross-ownership now exists. In contrast, in South Florida, the ban on cross-ownership has actually impeded the introduction of new voices in broadcast news.

Just to put the situation in historical context when the cross-ownership ban went into effect, there were seven over-the-air television stations in Miami; cable was in its infancy and had little impact there. The Internet information superhighway wasn't even a dirt road.

Today, residents of Miami can watch 15 over-the-air television stations. They can choose from 8 daily newspapers, or listen to one of 67 radio stations. Cable delivers in excess of 75 channels, including all the news channels. Tribune owns the *Sun-Sentinel* in Ft. Lauderdale, and a while back, it acquired a group of stations that included small UHF stations ranked seventh in the Miami market. That station programmed no local news when we bought it. At the close of the transaction we got a waiver of the cross-ownership ban from the FCC, but the waiver forbade us from putting any local news from the *Sun-Sentinel* on the channel.

So instead of partnering with the *Sun-Sentinel* and providing broadcast viewers access to the work of 370 members of the newspaper editorial staff, our television stations had to partner with the local NBC affiliate airing that station's newscast.

The combination of two television stations is permitted by law, as is ownership of television by the Internet companies, by cable providers, by telephone companies, by wireless service providers. Anybody, it seems, can own a television station except aliens, drug dealers and newspaper publishers.

I believe the cross-ownership ban is anachronistic in today's world. I believe it is making it much more difficult for newspapers, which are vital to serve communities with news and public service journalism, to compete, and I believe it is time for it to be lifted. Thank you, Mr. Chairman.

[The prepared statement of Mr. Fuller follows:]

PREPARED STATEMENT OF JACK FULLER, PRESIDENT, TRIBUNE PUBLISHING COMPANY

Good morning. My name is Jack Fuller and I am President of Tribune Publishing Company, the newspaper subsidiary of Tribune Company.

As a newspaperman, ordinarily I wouldn't be here on Capitol Hill asking for anything but information. But because of the ongoing revolution in the way Americans get their information, I am here to ask that you permit newspapers to compete freely with other media for a share of the fragmenting news audience, unhampered by legal restrictions on ownership of the means of communication.

The time has come for the elimination of the newspaper-broadcast cross-ownership rule. There are many reasons why—from the constitutional to the historical to the practical. Let me concentrate on the practical.

Since the cross-ownership rule was established nearly three decades ago, the news business has been transformed. In addition to newspapers, magazines, broadcast television and radio, now Americans can get news from a proliferation of national all-news cable operations such as CNN, Fox News, and MSNBC, as well as from local cable operations such as New York 1 News and Newschannel 8 here in Washington. On the Internet they can get news from a wide variety of sites from all over the country and all over the world. With a few keystrokes, they can search the World-wide Web for news that interests them, from what you have said in the Senate and the way you have cast your votes to information about their local schools and parks.

This profusion of sources of information is good for the country, but it is a challenge for newspapers, whose readership has been under pressure because of media fragmentation, and whose advertising revenue is being targeted by every new competitor—as well as by the old ones. This has put newspapers under financial stress. You have probably seen reports of the significant cutbacks most have had to make in this period of economic softness.

The cost of covering the news, however, is not declining. It is increasing. Covering the meetings and activities of hundreds of municipal government bodies, local school boards, and other public policy events is a huge and expensive undertaking. Building teams of journalists who are capable of understanding the complexity of public policy issues today and translating them for lay people is not easy or cheap. Not to mention the cost of serious, sophisticated, original coverage of the Nation and the world, as Tribune newspapers are committed to providing.

In Chicago alone, the *Chicago Tribune* employs nearly 700 editorial staffers and hundreds of freelancers, most of them devoted to news of local interest. This compares to the 50 or 60 reporters and editorial staff typically employed by local television news stations in Chicago. In Los Angeles, the numbers are even higher—1,130 editorial staff at the *Los Angeles Times*. Even in the smaller markets, the size of our newsgathering operations is significant. In Newport News, Va., for example, the *Daily Press* employees 155 full-time editorial staff, three times the size of a broadcast news operation in one of the major metropolitan markets.

The question is whether in a fragmenting media environment we will be able to find the economic model to continue to support coverage at this level.

I believe we can, but it will mean spreading the cost of high quality journalism over more than one distribution channel. We will have to reach audiences in the many new ways that people now like to receive their news. And to do that, we will need to have the burden of the newspaper-broadcast cross-ownership rule lifted.

In an environment where people's choices for obtaining information have radically multiplied, there is no risk of one voice dominating the marketplace of ideas. Today in clamorous cities like Los Angeles, Chicago, and New York, it is frankly a challenge for any voice—no matter how booming—to get itself heard. So long as distribution channels continue to proliferate—and the explosion of bandwidth guarantees that they will—the public's demand for diversity of voices will always be satisfied.

The public interest will be served by freeing newspapers to compete in the new highly competitive news environment. Let firms own newspapers and broadcast television stations and people who get all their news from broadcasting today will hear new voices. Let the cross-ownership rule fall and you will see enriched newscasts. Here's an example of what is possible. It comes from Chicago, where Tribune's ownership of the *Chicago Tribune* and WGN television and radio is grandfathered under the cross-ownership rule.

Last year, more than 40 reporters, editors, and visual journalists from the *Chicago Tribune*, WGN-TV and CLTV, our 24-hour cable news channel, worked together on a series of stories entitled, "Gateway to Gridlock," about the effect that air traffic snarls at O'Hare Airport were having on people's lives all over the country. Stories appeared in the newspaper, on television, on cable, and on the Internet. Each medium told the story in the way best suited to its audience. The result was wide dissemination of a thorough analysis of an important local and national issue. The public was the beneficiary, and the *Chicago Tribune* was honored with a Pulitzer Prize for the effort.

No broadcast, cable, or Internet news operation alone could have devoted the resources it took to research, write, edit, and package "Gateway to Gridlock." So with cross-ownership, public access to high-quality local news increases. It does not decrease. And that is why neither your files nor the Federal Communications Commission's are filled with complaints from the communities where cross-ownership now exists.

In contrast, in South Florida, the ban on cross-ownership has actually impeded the introduction of new voices in broadcast news.

Just to put the situation in historical context, when the cross-ownership ban went into effect, there were seven over-the-air television stations in Miami. Cable was in its infancy and had made little impact there. The Internet information superhighway wasn't even a dirt road.

Today residents of Miami can watch 15 over-the-air television stations. They can choose from eight daily newspapers or listen to one of 67 radio stations. Cable delivers in excess of 75 channels, including CNN, Fox News Channel, C-SPAN, CNBC, and MSNBC.

Tribune owns the *Sun-Sentinel* in Ft. Lauderdale. In 1997, it acquired a group of stations that included a UHF channel ranked seventh in the Miami market. The station programmed no local news when we bought it. To close the transaction, Tribune got a temporary waiver of the cross-ownership ban. But the waiver forbade Tribune from any newspaper-broadcast joint operations. So instead of partnering with the *Sun-Sentinel* and providing broadcast viewers access to the work of 370 members of the newspaper editorial staff devoted to covering the local community, our television station has had to partner with the local NBC affiliate, airing that station's newscast.

And if that were not enough, CBS/Viacom owns two stations in the same market, and will program news on both in competition against the Tribune-owned station.

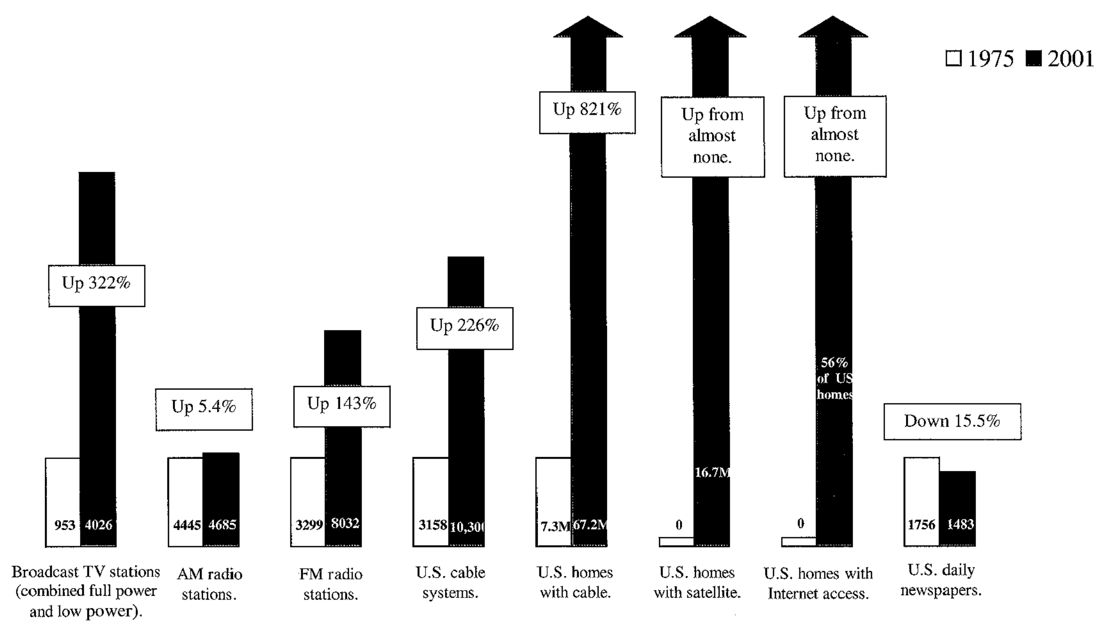
The combination of these two television stations is permitted by law, as is ownership of television by Internet companies, cable providers, telephone companies, wireless service providers. Anybody, it seems, can own a television station except aliens, drug dealers—and newspaper publishers.

A lot of serious people are asking today what is going to become of newspapers in the communications revolution. They worry about this because they realize that good newspapers are vital to the health of communities and to the health of the national public debate as well.

I am actually very confident of our ability to get through the revolution and still be able to provide the kind of high quality, comprehensive news reports that Americans need in order to make their sovereign decisions. But we have to be able to adapt to a new, highly competitive environment of the sort I described in South Florida, and we have to be able to deal with powerful organizations such as AT&T, which is the sole provider of cable services to virtually the entire *Chicago Tribune* market area and which sells zoned advertising on 35 channels. In this kind of environment we have to be unencumbered by anachronistic government restrictions that are based only on the fact that we own printing presses.

Great newspapers can survive the information revolution, but not with a weight shackled to their ankles. The public interest and the Constitutional ideal of free expression demand that the shackle be removed.

1975-2001: A nationwide explosion in all media but one.



Chicago News Outlets 1975 vs. 2001

Up 3,839%	Up more than 500%	Up from three.	Down 23%
From 54,360 to 2,141,700.	From 10 to more than 50.	Now includes local/regional editions of national publications (e.g., NYT, USA Today, WSJ).	From 1,613,813 to 1,230,329.
Number of homes with cable is up.	**Available television and cable channels are up.**	**More daily newspapers are easily available.**	**Circulation of major local daily newspapers is down.** *

* Combined daily circulation of largest daily newspapers.

Miami News Outlets 1975 vs. 2001

Up 5,996%

From 18,073 to 1,101,750.

Number of homes with cable is up.

Up more than 600%

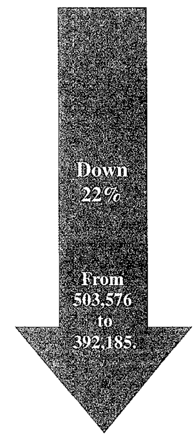
From 7 to more than 50.

Available television and cable channels are up.

Up from three.

Now includes local/regional editions of national publications (e.g., NYT, USA Today, WSJ).

More daily newspapers are easily available.



Circulation of major local daily newspapers is down.*

* Combined daily circulation of Miami Herald, Miami Daily News (1975) and Diario las Americas.

The CHAIRMAN. Thank you, sir.
Mr. Baker.

STATEMENT OF WILLIAM F. BAKER, PRESIDENT AND CEO, THIRTEEN/WNET

Mr. BAKER. Chairman Hollings and distinguished Senators, thank you for inviting me to speak today here about an important issue that cuts to the very heart of our national spirit and our public vitality. I am President and CEO of public television station Thirteen WNET in New York. Before coming to Thirteen, I served a dual role as President of Westinghouse television from 1979, and then Chairman of Group W Satellite Communications, the cable programming businesses, from 1981.

During my years at Westinghouse, five cable networks were launched, including Discovery Channel and Disney Channel. We also established the successful national "PM Magazine" program and introduced Oprah Winfrey, along with Alan Frank's help, as a talk show host. I'm author of "Down the Tube: The Failure of American Television."

This background in public and commercial television broadcasting has given me some perspective on the issues the Committee is facing today. Arguably, the most important entitlements America possesses are the rights to free speech and an independent press. These rights are pillars of our Constitution and make our way of life a model that is admired in every corner of the planet. Today, however, trends in the media industry and regulatory policy are severely threatening free independent and diverse expression in America. The two rules being examined by this Committee, national television station ownership caps and cross-ownership of television and newspaper outlets in the same market, were put in place for a simple and essential reason, to ensure that control over news, information and the expression of ideas did not fall into the hands of a few powerful players. But this is exactly what's happened in a few short years.

In 1983, 50 companies controlled more than half of the media in the United States. On paper at least, a mere 50 companies controlling most of American media would seem to be a cause for concern in itself, but today, just 20 years later, the number has dropped to six. Six gigantic corporations control the vast majority of television, cable, radio, newspapers, magazines and the most popular Internet sites, and consequently, the majority of information, public discourse, and even artistic expression in the United States.

We have on our hands what one might call a merger epidemic in the media industry, and like any other epidemic, this is an unhealthy one. If ownership caps are repealed, television will surely follow the example of radio. Since the passage of the 1996 Telecommunications Act, 10,000 radio station transactions worth approximately $100 billion have taken place. As a result, there are 1,100 fewer station owners today, down nearly 30 percent since 1996.

Before 1996, the largest owner of radio stations in America controlled 60 stations. Now one company owns 1,200 and two others own about 200 each. Consequently, in nearly half of the largest markets, the three largest companies control 80 percent of the radio audience.

The numbers show that competition is not increasing. While the numbers of channels may be slightly on the rise, the number of owners is dropping, and where free and independent media is concerned is the number of owners, not the number of stations or channels or formats that matter. The media hold a special place in our society. By helping us learn about the world, exchange ideas and understand who we are, they help us enable our conscience as individuals, and as a free people. When they are treated as mere economic products, they simply cannot play the vital role, social and cultural role that make them so central to our way of life.

When the local newscast focuses on the real life story behind the evening's movie of the week sent down from the network, shouldn't we raise our eyebrows? If a television news editor is under pressure from top brass to increase ratings, which of the following stories will she give priority: Julia Roberts' new boyfriend or a school board debate over teaching standards? As one independent journalist has written, "when commercial interests are set against democratic or professional values, it is predictable that the interests of the market take priority. This is self-evident."

Cost-cutting to improve margins diminishes diversity. Throughout America, media giants are closing newsrooms, merging staff, producing multiple newscasts on different stations from the same source. A healthy trend for the corporate bottom line. But where does it put local viewers looking for varying perspectives? Logically we must also be wary of cross-ownership between broadcast media and newspapers. There are more and more one-newspaper towns.

Although some have argued that the two industries are distinct and should be treated separately, I believe that the final measure should be the overall quality, diversity, and objectivity of information being delivered in a given market. We need various print and broadcast outlets to serve as local critics of one another. Can we truly expect the management of a company that owns both a broadcasting station and a newspaper in the same market to operate those media outlets with distinct, discrete and independent editorial voices?

If the answer is no, and I think it could be, then when that situation exists in a given market, we have lost a pair of diverse and antagonistic voices in that market and therefore, we have lost what the Supreme Court views as essential conditions for a vigorous marketplace of ideas.

The underlying motivation for commercial producers is to increase shareholder returns. Good business? Yes. But broadcasting is not only a business, and it must not be allowed to become only that. It is a public trust. Like our national parks, the airwaves belong to the people. The people have granted commercial broadcasters free license to this precious national resource, with the understanding that they will be used in the public interest. This was established by the Communications Act of 1936.

Deregulation has made fundamental changes in the industry, and ramifications extend throughout the national and global economies. With you, it is not too late to stop, or slow or, to even reverse the trend that has been threatening the very foundation of free uninhindered independent media in our Nation. Thank you.

[The prepared statement of Mr. Baker follows:]

PREPARED STATEMENT OF WILLIAM F. BAKER, PRESIDENT AND CEO, THIRTEEN/WNET

Chairman Hollings, Distinguished Senators, thank you for inviting me here to speak about an issue that cuts to the very heart of our national spirit and public vitality.

I am president and CEO of public television station Thirteen/WNET New York. Before coming to Thirteen, I served a dual role as President of Westinghouse Television, Inc. (from 1979) and Chairman of Group W Satellite Communications (from 1981). This background in public and commercial broadcasting has given me a broad perspective on the issues before this Committee today.

Arguably the most important entitlements Americans possess are the rights to free speech and an independent press. These rights are pillars of our Constitution and make our way of life a model that is admired in every corner of this planet.

Today, however, trends in the media industry and regulatory policy are severely threatening free, independent and diverse expression in America. The two rules being examined by this Committee—national television station ownership caps and cross-ownership of television and newspaper outlets in the same market—were put in place for a simple and essential reason: to ensure that control over news, information and the expression of ideas did not fall into the hands of a few powerful players.

But this is exactly what has happened in a few short years. In 1983, 50 companies controlled more than half of the media in the United States.[1] On paper at least, a mere 50 companies controlling most of American media would seem to be cause for concern. But today, just 20 years later, the number has dropped to six. Six gigantic corporations[2] control the vast majority of television, cable, radio, newspapers, magazines and the most popular Internet sites—and consequently, the majority of information, public discourse, and even artistic expression—in the United States.[3]

We have on our hands what one might very well call a "merger epidemic" in the media industry. And like any other epidemic, this is an unhealthy one.

If ownership caps are repealed, television will surely follow the example of radio. Since the passage of the 1996 Telecommunications Act, 10,000 radio station transactions worth approximately $100 billion have taken place. As a result, there are 1,100 fewer station owners today, down nearly 30 percent since 1996.[4]

Before 1996, the largest owner of radio stations in America controlled some 60 stations. Now, one company owns about 1,200 and two others own more than 200 each. Consequently, in nearly half of the largest markets, the three largest companies control 80 percent of the radio audience.[5]

The numbers show that competition is not increasing. While the number of channels may be slightly on the rise, the number of owners is dropping. And, where free and independent media is concerned, it is the number of owners, not the number of stations or channels, that matters.

The media hold a special place in our society. By helping us learn about the world, exchange ideas and understand who we are, they help enable our conscience as individuals and as a free people. When they are treated as mere economic products, they simply cannot play the vital social and cultural roles that make them so central to our way of life.

I ask you this: Can a journalist objectively cover the news when his parent company is one of the world's largest conglomerates, with financial interests in nearly every corner of the national and global economies? When a local newscast focuses

[1] "The Media Monopoly," Ben Bagdikian.

[2] AOL-Time Warner, Disney-ABC, General Electric-NBC, Viacom-CBS-Westinghouse, NewsCorp-Fox, and Bertelsmann. (Cited in "Legal Project to challenge Media Monopoly" by Dorothy Kidd, in Media Alliance's *MediaFile* , May/June 2001.)

[3] "Each of the dominant six firms now owns the major companies that create the content of the mass media, like newspapers, magazines, book publishing houses, and movie and TV production studios. Each of them has also acquired the next step, the national delivery systems for the programming they control or lease, like broadcast networks and cable. And finally, each has acquired or shared ventures with the ultimate delivery mechanism into each American home and office, the telephone company lines, cable systems and satellite dishes. (Ben H. Bagdikian, *The Media Monopoly*. Beacon Press, Boston, 2000. p. xvii.)

[4] According to BIA Financial Network, as cited in "One Big Happy Channel?" by Eric Boehlert (Salon.com, June 28, 2001)

[5] "Making Media Democratic" by Robert W. McChesney (Boston Review, November, 1998)

on the “real-life” story behind that evening’s “Movie of the Week” sent down from the network, shouldn’t we raise our eyebrows? If a television news editor is under pressure from top brass to increase ratings, which of the following stories will she give priority: Julia Roberts’ new boyfriend or a school board debate over teaching standards? As one independent journalist has written: “When commercial interests are set against democratic or professional values it is inevitable that the interests of the market take priority.”[6]

This is self-evident. Cost-cutting to improve margins diminishes diversity. Throughout America, media giants are closing news rooms, merging staff, and producing multiple newscasts on different stations from the same source. A healthy trend for the corporate bottom line, but where does it leave local viewers looking for varying perspectives?

Quality is another casualty. When the main objective behind every minute of airtime is to maximize profits, standards take a back seat to better margins. Trawling for eyeballs becomes commonplace. No wonder the airwaves are seething with sensationalism and empty technical glitz. Barely concealed behind every new blockbuster series is the fevered battle of media titans over ratings and ad dollars.

Logically, we must also be wary of cross-ownership between broadcast media and newspapers. Although some have argued that the two industries are distinct and so should be treated separately, I believe that the final measures should be the overall quality, diversity and objectivity of the information being delivered in a given market. We need various print and broadcast outlets to serve as local critics of one another. Can we truly expect the management of a company that owns both a broadcaster and a newspaper in the same market to operate those two media outlets with distinct, discreet and independent editorial voices? If the answer is no, and I think it clearly is, then when that situation exists in a given market, we have lost a pair of diverse and antagonistic voices in that market. And therefore, we have lost what the Supreme Court views as essential conditions for a vigorous marketplace of ideas.

The underlying motivation for commercial producers is to increase shareholder returns. Good business? Yes. But broadcasting is not only a business. And it must not be allowed to become only that. It is a public trust. Like our national parks, the airwaves belong to the people. The people have granted commercial broadcasters free license to this precious national resource with the understanding that they will be used in the public interest. This was established by the Communications Act of 1934.[7]

Deregulation has made fundamental changes in the industry and ramifications extend throughout the national and global economies. But it is not too late to slow, stop and even reverse the trend that has been threatening the very foundations of free, unhindered, independent media in our nation.

The CHAIRMAN. Thank you very much, Mr. Baker. I am learning new words today. Everything is “exacerbating, egregious.” You have a “dichotomy.” The best word I learned—and at the time I learned it, they eliminated it—that was “honorarium.” But now it is “anachronistic,” old hat, I guess, outdated, never considered, nonsense. We debated it and we had the most vigorous debate and hangup on the 25, 35 percent. Mr. Frank has testified, he would like to go back to the 25.

The reason we went to the 35 was to get the bill passed. When we got that bill out, there were a lot of compromises. We had 95 votes, bipartisan, in 1996, but it wasn’t an anachronistic situation with respect to ownership and the numbers. It is not an arithmetic problem. We used to have in my hometown three radio stations. All three had news, one had popular music and the other two had rock.

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[6] Bettina Peters, “Corporate Media Tends in Europe, ” (The Campaign for Press and Broadcasting Freedom, November 2000.)

[7] Peter Franck, of the National Lawyers Guild Committee on Democratic Communications, quoted in “FCC Says to Hell with the Public Interest” by Camille Taiara (Media Alliance’s *MediaFile*, December 1999.) “The 1934 Public Broadcasting Act very clearly declared airwaves to be public property,” says Franck. “It’s a natural resource that exists by the laws of physics. Yet these corporations got, for nothing, spectrum worth millions and millions of dollars. That’s just welfare for the already very rich.”

Now I have got 11 stations. But I can tell you right now, there is no choice at all, other than the public radio.

In fact, I never before used that little tape deck for music. Now I am buying tapes and everything else because aside from public broadcasting, there are no worthwhile programs. It is interesting. I listen to the music because the other 10 stations have got out of California, and they are hollering at each other and debate, they have got an epileptic fit, they are swallowing their tongues and everything else, about to die. I can't get music out of it and so I buy a music tape. So the fact that I have got 11 radio stations—do not give me the numbers problem.

Back now to Mr. Fuller. Well, for example, when they put these limitations on the cross-ownership of a newspaper and a TV station, the FCC said, and I quote: "It is unrealistic to expect true diversity from a commonly-owned station/newspaper combination."

Now, go fast-forward here to just a couple years ago and the *American Journalism Review* article entitled "Synergy City." It describes the Tribune Company's attempts to repurpose its news content across all its properties, and the article states, and I quote: "entering the news room of the *Chicago Tribune*, your eye is drawn to a massive multimedia desk, around which are arrayed editors from WGN TV, WGN radio and so forth, the 24-hour local cable news channel, the *Tribune's* Internet edition. In most companies, a Berlin Wall separates the different media. At the *Tribune*, all media units report to David Underhill, Vice President for Video and Audio Publishing. 'The goal of our unit,' says Underhill, 'is to be a synergy group. I love the word.'"

So you can see, the genius—namely, diversity—is not anachronistic at all, it is disappearing. Why you have that with the *Tribune* because of lethargic FCC. They are not calling the rule about cross-ownership because they are waiting for the time for relicensing every 8 years, otherwise, they should have called the rule. If somebody is speeding, you do not wait for next year's new Chairman of the Highway Commission. You arrest him. You stop it. That is a violation right now. Not the case with the FCC. They have given everybody—and I do not blame you at all, Mr. Karmazin, but like I say, I would hire you. Where is that thing, I mean, here, look at the success here.

The Quarterly Report for CBS network and I quote: "achieved double-digit revenue growth in prime time with increased ratings and pricing in the first quarter of 2001." On May 28th, in the edition of *Broadcasting and Cable* reported "fiscal 2000 was a profitable year for ABC, CBS, Fox, and NBC with decent profit margins." The article indicated that in 2000, the CBS network enjoyed $200 million in profits. Your own TV stations enjoyed $775 million in profits, and your TV production and syndication businesses enjoyed $450 million in profits.

Well, it doesn't sound to me like CBS and Viacom need any more relief. In fact, I hope Sumner gives you a raise. Please comment if you will.

Mr. KARMAZIN. Senator, I didn't think making a profit is something that I should be embarrassed about.

The CHAIRMAN. I am proud of it. You are not embarrassed, are you?

Mr. KARMAZIN. Not at all. And by the way, I think that what you need in order to make investments is profits. So, I think that the profit margin, since you are bringing it up, on a television network, is in the single digits. Marginally profitable. Not a lot of money for the invested capital. We spend about $3 billion a year for programming on our network, and news, and of that $3 billion—let us assume that $200 million number were accurate—that isn't the best return on capital that a company could get.

I think the first point that I would like to make is that there are some facts that were wrong, though. We do news in Detroit on our television stations. We did it as a function of consolidation and we managed to do it as one of the benefits that we have, but the sense for me is that in 1996, it was probably OK, what the deregulation was.

Since 1996, a lot has changed in America. The pipe has gotten broader. There have become many, many more competitors in that market, so there needs to be—as was the intent at the time—a biennial review of the rules, because even at that time, it was believed that the FCC should take a look every 2 years to see whether or not there should be any further relaxation. Regarding the programming in South Carolina, sir, I don't own any radio stations, but if you would give us some further deregulation, I will put more stations to your choosing on in South Carolina.

The CHAIRMAN. Very good.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. I think we can agree or disagree on this specific issue we are discussing today. I don't think we disagree that the information technology has profoundly affected the way we live, work, are entertained and receive information, and a lot of it is in the eye of the beholder.

Mr. Frank, you pointed out that in your statement today, Mr. Karmazin's station is reaching 41 percent of America's population, and its' colleagues—ABC, Fox, NBC-controlled stations—reached 24, 40, and 27 percent respectfully. To balance that statement out, I think it is important to recognize prime time viewership among the top six broadcast networks has declined from 71 percent in 1996 when this law was passed to 58 percent in the year 2000. Cable has made tremendous inroads. Now 70 percent of American TV households, compared to just 13 percent in 1975. Satellite. Internet. The list goes on and on.

I appreciate, Mr. Frank, your powerful argument in support of localism, and against any increase in the National Television Broadcast Act, and obviously, for local news, sports, weather coverage. Yet in your organization, NASA, five companies alone that belong to your organization have a combined $14.4 billion dollars in revenue, reach 63 percent of the Nation. These companies own or have financial stakes in cable companies, newspapers, radio stations, magazines, websites, and publishing houses.

Companies that belong to NASA include: Belo, Hearst, Argyle, Cox, Gannett, Washington Post. You own stations in cities such as Palm Springs, Jacksonville, Seattle, Louisville while their corporate headquarters are located in New York, Atlanta and Dallas. Is it your belief that these stations, including the ones you own, in five different cities across America, are able to maintain localism while their headquarters are located elsewhere?

Mr. FRANK. Senator, the question about localism is not necessarily local ownership. Localism is not the same as local ownership, and it is more than local programs. The question is where are the incentives for the local community, and it has to do with a mindset. If the O&Os have different business interests as opposed to local groups that own stations, you know, our objective is to serve the local community, period.

Post-Newsweek as a for instance, sir, has six stations around the country and we have two things that unite us. One is strong journalism, because we are, after all, a Washington Post company, and the other is a belief in serving local communities. Therefore, our station in San Antonio looks very different from our station in Jacksonville, looks very different from our station in Detroit or Houston or Orlando. We do not have a Post-Newsweek set. We do not have Post-Newsweek pins, we don't have Post-Newsweek blazers. Because each station reflects the community it serves and is run by the local general manager.

Senator MCCAIN. So you have that commitment, but the other people who own stations across the country do not have that commitment. Or are headquartered away from Jacksonville, San Antonio, Orlando, Miami, Ft. Lauderdale, Houston and Detroit. Stations that you own. You are committed to localism, but CBS affiliates, they aren't.

Mr. FRANK. Senator, the question is not us versus them. I said before, Mel Karmazin is a good broadcaster. We have no problems with the way he runs stations. What I said in my testimony, by the way, was that that CBS-owned station in Detroit does not have its own news department. They now do carry a newscast, as Mel said, from the Paramount station. They still don't have their own news department.

It is not a question of whether they are good broadcasters. The question has to do with diversity and the number of ownership and the number of owners throughout the country. We just do not believe if the cap is raised obviously you are going to have fewer owners. We don't believe that's good policy, we don't believe that's good for the country, we say diversity. We say the more the merrier at the table. Others say "mine, mine, mine." We think the more the merrier is the answer. Not fewer.

Senator MCCAIN. I won't belabor the subject, but it is pretty obvious to me that your commitment to localism because you own stations all around the country should not be any different from that of others who own perhaps more stations around the country.

Let me move to Mr. Fuller very quickly.

Mr. Fuller, you are a Pulitzer Prize-winning journalist and you have been in journalism over 30 years, as you stated. First of all, what was the state of competition when you entered the business compared to the state of competition now? What specific trends are you seeing given the emergence of new technologies, particularly the Internet? If I want to know what's in your newspaper tomorrow, I can go the early evening news—I do not have to buy your paper at the local news-stand. I can also go online, the same way with *The Washington Post* and the same way with every other newspaper in America. I would be interested in your comments on the state of competition and how it is going to affect your business.

Mr. FULLER. When I began working in the newspaper business, in order to start a newspaper, you had to have tons and tons of newspaper presses, a huge facility, a fleet of trucks, and a distribution system that got to everybody's doorstep in the morning before 6 o'clock. Today all it takes to get into my business is a server, a staff to write and report the news, and an Internet connection. It is vastly different. That is not even to speak of the national distribution of newspapers that did not used to be available in other cities. It is also not to speak of the proliferation of cable news. CNN did not exist when I started in the newspaper business. There were three networks.

The fact is, from where I sit, we are not in a period of concentration. We are in a period of radical fragmentation, and what you are seeing is serious journalistic organizations trying to find ways to deal with that so they can continue to support serious journalism for their communities.

Senator MCCAIN. I thank you, Mr. Chairman.

The CHAIRMAN. I thank you.

Senator Wyden.

Senator WYDEN. Mr. Karmazin, Mr. Fuller, is it your position that there should be no ownership restrictions at all?

Mr. KARMAZIN. I think that my viewpoint is that the Department of Justice should measure what is unfair competition, and that there is the opportunity within that Department to assess whether or not one company is buying too many. Right now, we go through that process whenever we make an acquisition and in a number of acquisitions that we have made, they have determined we had too much control in a given position and we had to make divestitures.

What we are saying is, today the concept of the 35 percent cap, and the concept of owning one network of the full broadcast networks, that rule should go away. I have no horse in the race on newspaper-television cross-ownership. I would support that relaxation.

Senator WYDEN. You would be troubled, then, by the scenario I painted, because the scenario I painted in my opening statement is if you have all of these ownership rules lifted, you could have a single massive media company in this country.

Mr. KARMAZIN. No, you couldn't, sir, with all due respect.

Senator WYDEN. We have done some checking and if you take this proposal where you throw all of the rules out the window, you start with Time Warner/AOL buying AT&T Cable.

They could do that—we have reviewed this. They could buy NBC and then they start in with newspapers, radio and TV, and your theory is that somehow somebody at Justice is going to block some of this. But our analysis is if you get rid of all the ownership rules whatsoever, you could have this single huge media entity. I am curious whether you think there would be any down-sides in that for the American people?

Mr. KARMAZIN. With all due respect, I don't think that you could say without the Justice Department. I mean, there is a Justice Department. There is a whole lot of control that would potentially stop that from occurring, so I do not think you have to worry that is going to happen. I also do not believe that the marketplace is going to let that happen.

What we are saying is that there is probably, between no regulation and where it is today, room for significant improvement. There is a difference between the scenario you outlined and the scenario that exists today. There is a huge gap.

Senator WYDEN. There may be grounds, then, for coming up with a bipartisan proposal, because what concerns me is that I have asked about what's going to happen if you lift the rules completely. I am convinced we will have scenarios like I described, not very many, maybe two of them, but we will have them, and there may be something in between that and leaving everything exactly the way it is. That was why I wanted to explore it with you.

Mr. Fuller.

Mr. FULLER. Well, I am most concerned about the restrictions on newspapers which are hobbling our capacity to compete in the current environment. My inclination is that antitrust law is an effective instrument against undue market power. It has worked for more than 100 years in this country, and it will work in this industry as well. Frankly, it seems to me that the least justifiable place for special restrictions is in the area of expression. It is not the most justifiable area, it is the least justifiable area. We are willing to live with antitrust constraints as we are happy to live with them.

Senator WYDEN. You have to have tools that have the opportunity to be effective and if the U.S. Congress or the FCC steps in and says the sky is the limit, which is what I have been concerned about in terms of those who say there should be no rules at all, I think we are headed for trouble. Just a couple of other questions, if I might, Mr. Chairman.

When the cap is lifted, Mr. Karmazin, is there any question that what will happen is the major networks will require the affiliates around this country rather than having to deal with independent stations?

Mr. KARMAZIN. Yes. I think there is a big question about that because if you take a look at where NBC and ABC are today, they are not anywhere near the 35 percent cap. So if, in fact, there was such an appetite for that to happen, I would suspect that you would be finding all of these companies at the 35 percent cap level, and in fact, NBC and ABC are not.

I think the concept of an affiliate that is willing to preempt the network and the fact that our own stations aren't looking to improve their local relationship is silly, because we, too, preempt the network at our local stations. They are encouraged to do whatever is serving their local community. The other thing that really has come up that is inaccurate, I wish we were sworn in for this testimony, you know. The other thing that was inaccurate is what happens when there is a merger.

As Mr. Baker is aware, we own two radio stations in New York City. They are all-news radio stations, WCBS and WINS. Those two news stations have not consolidated. Those two news stations are operated independently. They have a totally separate viewpoint and I have not been in the newsroom of those two stations or CBS ever, other than to congratulate them.

Senator WYDEN. One last question, if I could. Mr. Karmazin, I want to make sure it is your view that when networks own distribution channels, if these changes go through, network owns the local station. In your view, this would not end up in any significant changes with respect to priorities for local programming in this country?

Mr. KARMAZIN. That is correct. Because I think the only way that a television station can be successful, the only way we can justify what will be these extraordinary prices that the people who choose to sell their stations are going to get, the only way you are going to justify those prices is if, in fact, you are able to grow that business. The way you grow the business is by getting higher audience, and by having better programming, so I think the effect is better programming.

Just one example, if I may. We got back into the business of carrying the NFL a few years ago. You know, I guess there may be an argument that says it doesn't matter whether the NFL is available on free over-the-air broadcasting or is available on cable. We happen to think that it should be on free over-the-air broadcasting and did our part. The way we justified the price was not the amount of money we would make at the network, because we lost money at the network. At the network level from an accounting point of view—legitimate point of view, not Hollywood accounting, we lost money. But what we did do was the stations that we owned contributed toward that profit, as well as our affiliates.

I think you need to look at the importance of the CBS-owned television stations and the profits that they make in supporting the news operation. We have 1,500, 1,600 at CBS News. It is not being supported based on the half-hour newscast that we run at night. In part, it has contributed to these other assets that the company has.

So no, I don't think there is a weakness. I think it is better programming. I think if were you to look at the effect of deregulation on the radio industry, which consolidated more than the television business, today, there are a little over 1,000 television stations. We own 3.5 percent. We have 35 television stations. You know, there is room for that and, between that and the egregious scenario that you are discussing.

The CHAIRMAN. Very good.

Senator Burns.

Senator BURNS. I think what we have seen here is a classic discussion between Mr. Karmazin and Mr. Fuller. As one looks at it from a news standpoint and service to the public and the other one looks at the bottom line, and in a way that is the way it should be. We have always had that clash. And also when you had trouble, it is hard, it seems a fruitless exercise to lock the barn after the horse is gone. Well, the horse is gone and we have been left with what we are left with sometimes.

Mr. Fuller, the FCC has an obligation—although we all deal with it every day. I hate to pass that up. It is a great line. Anyway, the FCC has an obligation under the 1996 Telecommunications Act to review all of its broadcast ownership rules on a biennial basis. In closing out that 1998 review in May of 2000, the FCC put in an order that they would begin rulemaking on broadcast newspaper cross-ownership. Can you tell us what they have done to date and when you expect them to act and to what do you attribute the delay?

Mr. FULLER. Well, they have not done it. There has been a change in administration. That slowed things down. I think that all we have been asking for is that that process go through so that we will all have a chance in the Commission to have our say. They will be able to evaluate the current state of the information market and make a decision as to whether these rules are out of date or not.

Senator BURNS. I want to bring up something else. I heard everybody is saying that have you an obligation because radio and television broadcast companies who operate free over-the-air, are using the spectrum at no cost, and the American people gave it to you. I think we tend to look back in history, back when radio was started, the government asked radio stations to go on the air. They said you take the spectrum and you put it on the air. In the 1950s, they did the same thing to television. Take this spectrum, put it on the air, and especially your company like WGN. I wish I had Mr. Baker's pipes. I would still be back in the farm broadcast business.

There are only two guys that have got pipes like that that I know of and Orrin Samuelson is one of them, you know, a Wisconsin kid there. But the government urged you to do that, to put these radio stations on the air. Now, both WGN and even your publication companies in Chicago, they have positions of great prestige. You are looked at as a pace-setter in the industry.

Then they came up with a cross-ownership rule in 1975. What has changed in the business that would prompt them to look at that differently now?

Mr. FULLER. Well, at the time of the cross-ownership rule and I think we have given you statistics on this, most metropolitan areas, including Chicago, had three or four VHF stations, a UHF station or two, and that was it. The newspaper had no competition for its want ads. The newspaper had no competition for retail business, with the exception of the over-the-air television which does a different kind of advertising. It was a very stable situation. Today it is a very unstable situation.

We have huge organizations going after our classified advertising business. Microsoft is in the automotive classified business. *Monster.com* is the biggest provider of online recruitment classified in the country. By the way, it provides no public service journalism for anybody.

These changes have been enormous. I, for one, have spent much of the last 10, 15 years trying to figure out, to the Chairman's point, how to make our organization a synergistic one, because I did not want to leave behind an organization that was the journalistic equivalent of the railroads. They did not change and adapt to a new environment, a new competitive situation, and ended up coming to you to rescue them financially. That would not be a good outcome from my standpoint, and so we are doing what we can to continue to build the economic model for doing great journalism.

Senator BURNS. Well, I appreciate that answer very much because I think journalism with a great deal of credibility is very, very important right now. What I see happening in the journalistic end of the world, Mr. Baker would probably agree with some of this and Mr. Karmazin would, too, that we seem like we have people who are in the reporting business that want to be the story instead of report the story, and we have to put up with that every day. Everybody wants to get their name on a byline above the fold on the front page, and that is very, very competitive as anybody knows. So sometimes we embellish. We want to be the story instead of report the story, and I have fought that.

I wanted to say before this Committee, on any poll that you take in the broadcast industry—and I am very proud of that organization that I used to be in and I am still a member of. But they always carried a great deal of credibility, and that is the National Association of Farm Broadcasters, and because we are a specific little market, niche market out there. But those people who we serve depend on that news and information almost on an hourly basis anymore. We carry a great deal of credibility in our business and we take it very, very seriously and we also take the business side very seriously because that is what enables us to get the news out. I wanted to ask you one question while we are in the yellow zone.

Given the choice, would you rather have the ownership caps lifted or cross-ownership allowed? And I will let any of you just take a shot at that.

Mr. KARMAZIN. This will be obviously self-serving, because I am not in the newspaper business, so clearly I would like to have the ownership rules lifted. But you know I think the competition, as they found out in 1996, was on the local level. In other words, *The Washington Post* may be very important here in Washington, but it is less important in Milwaukee, so the cap issue is on a national level. There isn't the same degree of concentration as there is at the local level, so I think there is a greater argument for the national cap to be lifted. But I would also support cross-ownership being gone, too.

Mr. FULLER. You won't be surprised, Senator, that I am focused on the newspaper broadcast cross-ownership, and if I could get one done, it would be that, in the interest of future health of the newspaper business.

Mr. FRANK. Senator, NASA, which I represent, deals with network affiliate relations and has no purview at all in newspaper cross-ownership and so we are here to talk about holding the cap on station ownership and retaining the cap at 35 percent.

Mr. BAKER. Senator, I do not have a dog in either of these fights except I would be delighted to take a job in the farm broadcasting business. I am sure it pays better than public television. But it is my feeling that neither should be lifted.

Senator BURNS. Thank you, Mr. Chairman.

The CHAIRMAN. I have got to correct the record. We did not swear the witnesses because we know the witnesses and that they will tell the truth. But the government did not ask the radio to go on the air. Wasn't it David Sarnoff on the top of that Wannamaker building that picked up the signal from the sinking Titanic? I think it was. But in any event, from 1912 to about 1924, when Herbert Hoover was the Secretary of Commerce, all radio stations, wireless came on, jammed each other and the radio industry came to the government and said "Please, for Lord's sakes, regulate us, otherwise nobody is going to be heard."

The government did not ask the radio to go on the air. The radio asked the government to please get us on the air because we were jamming each other.

Senator BURNS. I don't remember it.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you. I might add also the government instituted something called a public interest of convenience and necessity test along with that.

The CHAIRMAN. That is a big difference. I was going to get to that with Mr. Karmazin. You all go running around now with the Department of Justice. This Committee has already confronted the Department of Justice on the test for the Sherman Antitrust, whereas in the airline industry, business predatory pricing ordinarily is not predatory, because the last seat of it is a de minimis cost.

The Antitrust Division has nothing to do with diversity. The Antitrust Division of the Justice Department has nothing to do with the public interest. We have the public interest charge and we have the diversity charge and have had it unless we do away with it. Excuse me.

Senator DORGAN. Mr. Karmazin, I was thinking if someone had walked in the door when you said you had 3.5 percent of the television stations they would have thought you a bit player in this debate, an interesting way to describe your position, I might say.

I want to ask you about where you think all of this would move in about 5 years if we had unrestrained ability to buy and sell in these industries. Let me preface it by saying that I think the antitrust law enforcement in this country has been a new nearly constant and pathetic failure. A decade or so ago, I threatened to put pictures of antitrust lawyers on the sides of milk cartons because I knew we were paying them, but there was no evidence they were showing up for work. I have not changed my mind much about that. I think antitrust law enforcement has been a pathetic failure.

But let me ask you this, assuming that there are no limits, where do you think we end up 5 years from now?

Mr. KARMAZIN. Well, I think we have a better chance of preserving free over-the-air broadcasting than if there are no changes and that we are now forced to deal with the fact that the consolidation has totally taken place all around us in this non-regulated area, so there is nobody that's regulating whether or not, to your point of the Justice Department about these airlines consolidating and we are losing advertisers and the banks are consolidating and the advertising agencies are consolidating. How does a small—relatively to these other companies that are consolidating—how do you sit at the table? So now let us assume for the moment that somebody acquires AT&T, and let us assume hypothetically it is one of the existing MSOs.

We now have to sit with them and get our channel carried because we have 80 percent of our viewers who choose to get their programming that way. The chance of the American public being better served exists for us to be able to sit at the table with having it be a level playing field. I believe that there is so much competition out there, there are so many choices for the American public.

I think sports rights, I think good programming, I don't want to take our most desirable programming and put it on cable, because I will have two streams of revenue. Because we could do that. There is nothing really that would stop us. Or radio, putting it on satellite radio or taking it and putting it on Yahoo or taking it and putting it on AOL. But the reason you put it on free over-the-air broadcasting is you can make some money that way.

And the way you make money in this world—there are still 24 hours of the day—so if we now accept that there are 24 hours of the day, there are more choices that people have. They are spending less time with everything. Advertisers are spending less money. Well, how do you grow your business? Well, one of the ways you do it is through efficiency and one of the things that consolidation allows is it allows you to be more efficient.

Senator DORGAN. I must say I watch the television in the morning while I shave and brush my teeth and it is hard for me to really relate to the notion there are more choices. It doesn't matter which knob on the dial you turn, you are hearing exactly the same thing. Mr. Baker, Mr. Karmazin in some ways makes my point about lack of antitrust enforcement, I think. He says there has been this robust merger activity in banks, enormous merger activity in airlines and therefore, we must do it.

My point is that antitrust enforcement has been pretty pathetic in all these areas, but Mr. Karmazin says just take all these limits off and if you did not have limits, the market system would work just fine and have Justice be the referee over here. What do you think happens in 5 years if all ownership limits are removed at this point?

Mr. BAKER. Well, I think we already have seen incredible massive consolidation, and earlier we were talking about the differences between a local broadcaster of the kind that Post-Newsweek stations, Alan Frank's stations are, and more powerful vertically integrated companies like television networks and larger broadcasting entities.

I think that being scrupulous and looking at these regulations and in watching how companies can utilize their massive power across multiple distribution systems is one that we have to have great concern about in the American public.

When I was a producer back in my hometown in Cleveland, Ohio, 30 years ago, there were 16 radio stations. There still are today. This is kind of like Senator Hollings' story. When it rained in Cleveland, almost all the owners of the stations got wet. There were 10 owners and 9 newsrooms. Now these 16 stations have 5 owners and 3 newsrooms. So this consolidation is a serious business right now.

Mr. FRANK. Senator, if I may. Currently, as to what folks can own, what individual companies can own, the networks can own, is an interesting list. Here's what can be owned today: Enough TV stations to cover 35 percent of the Nation's households, all the radio stations they can afford limited only by the local radio television cross-ownership rules. All the cable systems they can afford, limited only by the local cable television cross-ownership rules. All the satellite systems they can afford, all the wireless cable systems they can afford, all the cable network channels they can afford, all the satellite program channels they can afford, all the movie and television production studios and facilities they can afford, all the television syndicated program companies they can afford, all the Internet program production and distribution facilities they can afford, all the newspapers they can afford limited by local television newspaper cross-ownership rules, all the magazines they can afford.

It seems to us what is available now under the current rules, to try and lift the cap on local television stations and putting localism and diversity at risk, it may be more efficient to have bigger companies, but it is not the democratic way. It is not the American system of broadcasting where the local licensees, the heart and soul of what the American system is built on, it just doesn't fit.

A network president said to me at one point—not for Mr. Karmazin's network—that his vision of a network affiliate was to be a McDonald's franchisee. And I would say, that's not our vision. Our vision is that we are broadcasters. We are there to serve the local communities. We think that the cap is the minimum protection we need in this environment.

Senator DORGAN. Mr. Chairman, if I may just ask one additional question. I thank you for your responses.

Mr. Fuller, you raised the issue of "serious journalism." Thomas Jefferson described the role of the free press in the sustaining of a democracy and how important it is. In your judgment has "serious journalism" suffered in the last 5 years?

Mr. FULLER. It is a very mixed picture. We were just talking about this when we were coming over to the hearing. Many of the great newspapers of the country at the time when I started in the business did things that would make us blush today.

Senator DORGAN. I am talking about the last 5 years, however. I am talking about since the 1996 Act, all this merger activity.

Mr. FULLER. I don't think in the newspaper business there has been any significant change in the quality of journalism over the last 5 years. There has been cost pressure in some places, but I think the standards have been upheld pretty well.

Senator DORGAN. Just to make an observation. In Grand Forks, North Dakota, I think it was last week or the week before, there was a picket line including reporters, outside of a newspaper that is owned 1,500 miles or 2,000 miles from Grand Forks—which is the case of most newspapers in my State, they are owned by out-of-state interests. They were constantly cutting and cutting and cutting, and finally we had this spectacle which you rarely see in North Dakota of people holding pickets outside of a Grand Forks newspaper.

Mr. Baker, would you just answer the same question with respect to serious journalism?

Mr. BAKER. That is a fair question, but a tough one to answer, so I don't really have an answer to that. All I can say is that certainly pressure on the bottom line at every level in journalism, in electronic journalism, in newspaper journalism, I think it has been widely reported that this is a serious matter. People just do not have the time. There are fewer people doing more work. My brother, who has been a TV news cameraman like these fellas here for the last 35 years in Ohio, said that he is now doing the news for two television stations. He says he just doesn't have enough time to get the job done the way he would like to get it done.

Senator DORGAN. I thank the panel very much.

The CHAIRMAN. Senator Fitzgerald.

Senator FITZGERALD. Thank you, Mr. Chairman. I wonder if any of the panel that is speaking with respect to the cross-ownership rule would know whether there was some industry or group of individuals that was lobbying the FCC to impose that cross-ownership rule back in 1975? Would anybody know the answer to that?

Mr. FULLER. I really do not.

Senator FITZGERALD. Nobody knows. Because just from my experiences around here, most of these ideas for these regulations or restrictions do not just pop into some regulator's head. There is normally somebody advocating them. I am struck, I guess, by the fact that at one time back in the 1940s or late 1940s, the FCC was actually encouraging publishers to buy broadcast stations or invest in broadcast stations. That is how Colonel McCormick at the *Chicago Tribune*, started WGN. Is that correct?

Mr. FULLER. That is exactly right. He was a pioneer and bought an experimental radio station at WGN radio, which wasn't requested by the government. But later, at the beginning of the television era, the government did encourage publishers to start experimental stations, and the Colonel did start WGN television.

I suspect that those early enterprises were like Internet enterprises are today. They weren't very profitable. They were probably big losers for a long time. And what the government was attempting to do was get people with some financial resources to give it a jump-start.

Senator FITZGERALD. So there were no restrictions, then, until 1975 when the cross-ownership rule was established. Are you aware, Mr. Fuller, of any finding of abuse or domination or monopolization in a market by any of the existing companies that have cross-ownership that were grandfathered from the original rule?

Mr. FULLER. To my knowledge, there has not been any significant complaint from the few markets that have had cross-ownership. Typically, those television stations have been pretty good ones and served the communities well, and there has just not been a lot of complaints.

Senator FITZGERALD. None of them have had their licenses yanked?

Mr. FULLER. Not that I know of.

Senator FITZGERALD. Does the *Tribune* favor lifting the cap entirely or relaxing the cap to some extent?

Mr. FULLER. You know, the fact is I only really know for sure the kinds of markets that we are in. We typically are in pretty big major metro markets. That is pretty much where our focus is, and I know for sure in those markets, there is really no justification that I can see for the cross-ownership rule. My inclination is that everywhere there has been a proliferation of means of people getting information. Even in my grandparents' old home in central Illinois, where we practically had to listen to WGN for anything in those days, now everybody has computers operating. They are getting farm information and so forth from hundreds of different places. I suspect that it is probably the same in most places. Certainly, in the big metro markets it is a foolish rule.

Senator FITZGERALD. Mr. Baker.

Mr. BAKER. Yes, Senator, I do not know what the answer is to, this, but I would just like to add this thought, and that is tied to this concept of the Supreme Court of diverse and antagonistic voices in a market. It just strikes me—and I just ask this Committee to think about this—it just strikes me that if reporters are from the same company, a television station and a newspaper, and they both get compensated with bonus stock options or bonuses at the end of the year, and they attend the corporate Christmas party, you know, is it possible, it certainly is possible, I suppose, to be antagonistic to one another and to show totally separate points of view. But it might be a bit harder, and I just ask you to think about that issue.

Mr. FULLER. If I can give a couple of examples. In Chicago, WGN television, our great partner, took considerable glee, at least by the lights of the editorial department of the *Chicago Tribune*, when one of the editors of the *Tribune* was arrested in a humiliating way. The story led the newscast of WGN television at 9 o'clock at night. I don't think you would find WGN believing that our television critics are overly kind to WB programs. I know that if you ask most Cubs fans whether the *Tribune* is slanting it toward the Cubs, you would hear very few people saying they thought it was doing that. In fact, most people think we are more antagonistic toward the Cubs because we own them.

Senator FITZGERALD. Mr. Karmazin, with respect to the ownership caps nationwide. The cap is now at 35 percent, and that 35 percent means that you cannot be available to more than 35 percent of the Nation's market. But at any one time, what percent of the market, of the whole country is actually watching one of the stations that you own?

Mr. KARMAZIN. Unlike the rule as it applied to cable which the court just set down, you can own 30 percent. In that particular case, the cable system is reaching fully the 30 percent of the households, because in every market, there is 80 percent of the people in that market that are subscribers to the cable system or 70 percent. We would typically have an audience that might be 10 or 12 percent, so within the market, if in fact, New York City accounts for 6 percent of the population, we may be reaching 15 percent of that 6 percent. So realistically, we are not reaching 35 percent of the country with our local programming.

Senator FITZGERALD. That would be less than 30 years ago, too, wouldn't it, where you are actually reaching?

Mr. KARMAZIN. It is far less today than it was when I first started in the business.

Senator FITZGERALD. If I think about an analogous situation in banking, I have a background in the banking profession, there is a Justice Department rule that no bank may have 10 percent of the deposits in a given area. But that is how they phrase it. You cannot have the actual deposits, but as far as being available to people in the area, I would think there are companies like Citibank that would be available to almost everybody in Chicago, available probably almost to everybody in a major metropolitan area anywhere in this country.

Would it make more sense to structure the rule, instead of who your stations are available to, to look at who is actually watching it, because you are going to be available to lots of people who aren't actually watching it.

Mr. KARMAZIN. Senator, we truly believe that the arguments are there for the cap to be just eliminated, and that there should be no national restriction.

Senator FITZGERALD. Have you done a First Amendment challenge like the cable owners did successfully?

Mr. KARMAZIN. Well, I can't tell you successfully, but the court has stayed the enforcement of the 35 percent cap, and that is why we have 41 percent currently. We believe that we have oral arguments, I believe in September on it, so we are optimistic. But we would like to see there be no cap. But, if what you are talking about the proposal as it related similar to Citibank, is certainly more workable than the 35 percent cap is, because it is just a misnomer. We are not reaching 35 percent of the people. There is no television station that reaches 100 percent of its market.

Senator FITZGERALD. Right. That would seem to make more sense if the cap were not lifted entirely.

Mr. KARMAZIN. I see that viewpoint, sir.

The CHAIRMAN. Go ahead.

Mr. FRANK. The way the measurements work, a show like "Survivor" comes along and the ratings of CBS, thankfully for the CBS affiliates that we have, go significantly up. The system we operate on has been in place for many years and, in fact, if you do reach—the networks reach almost 100 percent of all the available audience every week—and that is good for the country.

The problem with raising the cap, or eliminating the cap, is that you are talking about a different subject here. You are not talking about reach, because CBS is into 100 percent; NBC, ABC, they are into basically 100 percent of the homes now with their affiliates. What you are talking about is changing the balance of the local American system of broadcasting, which is based on strong networks and healthy, strong affiliates as well. If you do not have the balance of power between them, if you raise that cap at all then the local affiliates have no way to participate in that.

In fact, if the cap went to 45 percent—just as a for instance—that would mean that a network could own stations in the top 20 markets, every one of those markets and that would mean then that, in fact, the affiliates would have no say at all at the table, no moderating influence, no discussion at all about things like a baseball game.

Senator FITZGERALD. Could I follow up. I know my time is expired.

The CHAIRMAN. Go right ahead.

Senator FITZGERALD. The networks have always had a dominant share of say national news, the NBC, ABC, and CBS Nightly News. They basically had a monopoly on that 30 years ago as far as television, broadcast, national news. The local news is Balkanized, because there are local media markets. In my State, there are 9 television markets. You seem to be concerned not with any kind of a domination at the national level, because as you pointed out, the networks reach into virtually 100 percent of the homes. You are not concerned about them controlling national news, but you are concerned about them controlling local news?

Mr. FRANK. Well, the fewer owners that you have of local stations, you lose the ability of making independent decisions. You have fewer people at the table.

Senator FITZGERALD. Why are you concerned about the local news and not the national news?

Mr. FRANK. We are not. Nationally it is what it is at the moment, and the cap has no effect on how that operates at this moment. What you are talking about—the ownership cap—is the percentage of stations that one company can own throughout the country.

Senator FITZGERALD. But shouldn't you, to take your logic to be perfectly consistent, you should not only want to continue the ownership restrictions so that there is not a domination around the country in the small market, but you should want to do something to address the monopoly on national news that I think the networks really have. And certainly had to a far greater extent many years ago.

Mr. FRANK. Again, sir, we believe that the ownership cap issue has to do with diversity and localism and the ability of having many owners participate in the choices made by people around the country and not a few.

Senator FITZGERALD. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Breaux.

STATEMENT OF HON. JOHN B. BREAUX, U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Thank you very much. I have two points I want to get into. First, I think the argument of localism is a smokescreen. Because in my State of Louisiana, I got about 30 stations. The vast majority of them owned by people in New York and California and Texas, whether it is a CBS affiliate in New York or whether it is a Hearst Argyle conglomeration of affiliates around the country.

I think the real issue here is the bargaining power between the affiliates and networks. I think you can always talk about localism. We have more local views now on stations in my State and everywhere else. It is good because the station, whether it is affiliate-owned or network-owned, is good broadcasting. It is good business. People buy ads when you see local news being covered and community affairs being covered. That is true whether it is a CBS-owned station, NBC-owned station, Hearst Argyle station, Post-Newsweek station, they are going to put local stuff on because it is good business.

I cannot fathom an argument that somehow some large affiliate group in New York owns stations in Louisiana that somehow Louisiana is being better covered from a local standpoint because someone in New York owns them, versus CBS in New York. They are both in New York. And they both carry local stuff because it is good business. It is good policy. You sell ads, people want to see what's on the local news. They love the local newscasters, they love seeing local community affairs covered.

So I think this whole argument of localism is a smokescreen as far as the real issue being the marketing power between the networks and their affiliates. I understand that. But I don't think localism is any better served by a group in New York that owns my stations in Louisiana.

Mr. Frank, can you comment on that?

Mr. FRANK. Thank you, Senator. I have said all along during the hearing that this is not anti-network. We appreciate people like Mr. Karmazin, they are true broadcasters. The question is how many people, how many owners are you going to have? Who is going to make the programming decisions in America? It just seems to us that it is clear that the fewer owners you have, the fewer people make the decisions, it is simply not good policy.

Affiliates are good moderating influences with the network. They are disciplining influences and this happens every day between the affiliate boards and the network. Every week, we talk about different things. Networks make decisions. For instance, NBC fed the XFL games this year, and in spite of affiliate protests, there was one feed, an 8 o'clock game every night for 15 or 13 weeks, whatever the season was. That meant on the West Coast those games started at 5 o'clock. In spite of heavy affiliate protest, that meant that every week throughout the season there was no local news on any NBC station because they were carrying XFL.

Senator BREAUX. Mr. Karmazin, can you comment on that?

Mr. KARMAZIN. Sure. I guess this proves this has nothing to do with the ownership cap, because right now, NBC is 25 percent of the country and obviously, if the existing relationships between the network and the affiliates are so strong this way, then why did they not have the influence against NBC? I think it has to do with some group owners who do not want us to compete to buy TV stations, because if we are not at the table competing, maybe they can get it smaller. Because I guess it is possible for one group owner, under 25 percent, to own maybe 100 television stations in the smallest markets in the country. So there you would have one person have 100 stations and that, I guess, would be OK, because it is not the ones that are the ones that the major group operators are interested in.

I think the localism, you know, is absolutely not accurate. I would argue that when we look at a Post-Newsweek station, a great TV station in Jacksonville, and we have a great TV station in Baltimore, you could not tell which one is a Post-Newsweek station, which is a local station. Both preempt when appropriate, and both are serving their respective communities.

Senator BREAUX. Let me ask the second point. Is the question of the cap, and I think Senator Fitzgerald talked about this. It used to be you could only own three stations, then we moved it up, I think, to seven stations, then we moved away from this concept of how many stations you could own to what percent of the audience in the market versus the country that you could potentially influence, and we are now at 35 percent. But it seems to me that the 35 percent is a number that has no meaning.

Mr. Karmazin, you had talked about CBS having 10 percent of the actual viewership. The Nielsen ratings that we have seen say we are going to tell you it advertises that, but it is less than that.

All the networks, 3 percent of the actual audience watches that station and that feed from that network, as opposed to—you may be in a market that you are covering 35 percent potential audience. But if you have got cable in that area, which you would with 125 different channels at any one time, you probably average out maybe 3 percent of the actual viewing market. I think the 35 percent, if you are going to have a standard, I think it ought to be based on something that is realistic, i.e. what percent of the market actually looks at the broadcasters or affiliates in that area.

Is there any way we are going to have a cap that would be more accurate a reflection of the market influence and potential other than just a number that only relates to potential owners?

Mr. KARMAZIN. Well, taking a look at the radio industry as an example and taking a look at what was thought about in 1996, the belief was that the area of concern was not the absolute number, you know. So what if somebody owns a station in every single market in the United States.

Senator BREAUX. If nobody listens to it.

Mr. KARMAZIN. There is so much other competition, there are so many other choices. That did not seem to be a problem. So again, our viewpoint is if, in fact, we owned a television station in every market in the United States—something that we would not have a business interest ever doing, we would like to be in big cities and big markets. If we own 212 television stations that would not present, in any given market, any concern to anybody locally in that market, because there would be so many other competitive choices. Our position would be that there should be no cap. If there were a cap, it should be more related to what we reach, not the hypothetical number of how many people live within that market who conceivably could get that station.

Senator BREAUX. Thank you, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you very much.

Senator Allen.

STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. Let me commend you on holding this hearing on these important issues. Let me say at the outset, I very much value local broadcasters. As Governor—and I know Senator Hollings when he was Governor—I understood the value of local broadcasting for the local events, the news, natural disasters, local causes, and so forth. I think that is very important and I have come from that point of view.

I also think it is just great for consumers these days, all the competition there is with satellites and cable and it is not just the three networks. There is now Fox, CNN has done a great job. I think people love contentiousness. That is why "Crossfire" does so very well and "Capital Gang" and so forth, and then people like diversity.

In fact, it all started on PBS with the "McNeil/Lehrer Report." They liked people arguing and giving a point of view. There is plenty, like the Family Channel, and Nick, which my children thrive on, as well as the Nature channels, and sports. I do watch the networks mainly for local news and sports, so it is smart of you to get the NCAAs and the NFL, as far as I am concerned. And I do watch WGN, because I like to watch the Sox and the Cubs. There is the variety of others.

At any rate, the issue here is the broadcast cap, the newspaper cross-ownership issue and the third issue, where listening to all of you all talk about wanting to get into the big markets is an issue that has arisen in broadcasters from our Commonwealth of Virginia and smaller markets that have to do with a small market ownership restriction rule, so they call them duopolies, and I'd like to hear your views on that.

Senator McCain and Senator Breaux and Senator Fitzgerald went through the litany of how things have changed. Things have changed and we need to be realistic on it as far as the smaller market share for national broadcasters. There is more competition. There is more choice for viewers.

On the issue of the newspaper cross-ownership, newspapers have faced some challenges with all this competition. There are fewer newspapers, and yes, they are more consolidated, but nevertheless, I see no logic in restricting a broadcaster from ownership of a broadcasting station to be owned by a newspaper. I see absolutely no logic whatsoever. Just as a matter of philosophy and principle, what does it matter with all this choice and competition? I do not know what the legislation will come up with, but certainly on cross-ownership of newspapers and broadcasting, I see no reason why that outmoded approach would stand and I think it actually would benefit consumers, where broadcasters and newspaper owners face financially challenging conditions in the newspaper business and also in the local broadcasting area.

That brings me to the issue that I am personally interested in. If legislation is going forward in this area, I think it is closely related, and that is, folks that were talking to new broadcasters from generally the Southwest Virginia/Tennessee area, the Bristol/Kingsport area, or the Tidewater area, or the Roanoke/Lynchburg area where there are specific restrictions on these small market owners that if you have fewer than 8 stations, you cannot have cross-ownership. Their concern is that these restrictions that are put on small markets restricts them from producing quality programming for that community, whereas the big city areas, the larger markets do not have these same restrictions. I think that these local television managers confirmed, and in some cases would limit facilities and getting revenue sharing that would help keep struggling stations alive with better programming and more diversity, as well as the quality available to the viewers in some of these small markets.

I would like to see if we can seek some redress to that to treat smaller areas, smaller-market ownership the same as all the big areas or larger markets. So in sum, I very much agree with some of the comments of Senator McCain and Breaux and Fitzgerald. Some of these matters are addressed by the must-carry rules on cable. There is pending litigation of the issue of the 35 percent cap. I am going to continue listening to that. I have not made a decision one way or the other on that particular issue, but I have been listening to all the arguments on the issue of newspaper cross-ownership. Boy, that is an archaic rule, and I think that ought to be removed if it takes legislation. I do think we need to relax the restrictions on smaller market ownership. I look forward to working with Members of the Committee on a variety of issues here, and I commend the Chairman for having this hearing.

I would just like to ask, since you all have given your views on the caps and the cross-ownership issue—and in listening to you, Mr. Fuller, carrying on very persuasively, expressing your views on restrictions—I would ask Mr. Frank and Mr. Karmazin as well, what would your views be on relaxing these restrictions on small market so-called duopolies? Would you all support addressing that?

Mr. FULLER. Tribune has supported relaxation of the duopoly rules.

Mr. KARMAZIN. Again, we do not have any stations in the small markets, but we fully support it. I think there may be a situation where if there are 5 stations in a market and they cannot take advantage of duopoly and consolidation and they had 5 newsrooms in those stations, there is a risk there will be zero newsrooms as compared to there being one or two. I think that small market television, small market radio—my son owns five radio stations outside of Madison, Wisconsin, and his total revenue for his five stations is like about $2 million, and believe me, he needs consolidation in order to be successful, so I would definitely support it.

Senator ALLEN. Mr. Frank.

Mr. FRANK. Senator, NASA has not taken a position on duopoly. It is a matter of wide debate. Personally, I testified against duopoly some years ago in front of the FCC, but once the rule is passed, obviously it is the rule that we have and many broadcasters participate in it. And people are looking into ways to make it work.

Senator ALLEN. If I may, Mr. Chairman, so your position personally is that you personally do not like that restriction, but your association has not taken any position in favor or in opposition of any changes to it?

Mr. FRANK. Yes, sir. That is correct. Our association deals with network affiliate relations and concerns and duopoly is not on that list.

Senator ALLEN. Thank you, Mr. Chairman.

The CHAIRMAN. Let me, on behalf of the Committee, thank each of you for your valuable contribution. We appreciate your appearance, and we will keep the record open for any further questions by the other Members who could not attend, and very, very much thank you.

We have a very important second panel: Gene Kimmelman of the Consumers Union and Dr. Eli M. Noam, a Professor of Finance and Economics and the Director of the Columbia Institute of Tele-information.

Dr. Noam, Mr. Kimmelman, it is unfair. With these large Committees, we used to have 6 and then 13, now we have 23 Members. With the questions and the answers from the complete panel, we never can really get past one panel. But we are grateful for your patience. I will be glad to hear, Mr. Kimmelman, if you can start us off, and Dr. Noam. The reason I am hastening along, too, is because I understand they may have a roll call at 12 o'clock.

STATEMENT OF GENE KIMMELMAN, CO–DIRECTOR, CONSUMERS UNION

Mr. KIMMELMAN. Thank you, Mr. Chairman on behalf of Consumers Union, publisher of *Consumer Reports*, I appreciate the offer to testify and we want to, on behalf of Consumers Union, support your efforts to ensure that before these very important media ownership rules are adjusted, modified or eliminated, that the expert agency, the Federal Communications Commission, has actually done its homework and evaluated the market realities in media markets.

All the witnesses, and I believe, all the Members of the Committee, have endorsed the very principles that consumers believe are at stake here: promoting competition, diversity of ownership, and meeting local community needs. And these media ownership rules have been absolutely critical and have met those goals in the past.

But the market has changed, as many of you have pointed out today, but not quite in the way that some would have you believe. To understand how these markets work, you cannot just throw everything involving media together and say everything is equal.

Mr. Karmazin spoke quite a bit about outlets, but it is interesting when his boss, Mr. Redstone, comes before Congress or files an antitrust lawsuit, he highlights market share and influence. That is what Viacom looks at when it evaluates markets, and it is what the Committee and the FCC should look at instead of media outlets

Nightly broadcast network news has 25 million viewers every night. All of the other cable news channels, all put together, three million. Add the Internet, hardly anything more. Newspapers are monopolies. Monopoly outlets in 98 percent of communities in this country. Statistics show that the two most important means by which consumers receive news and information are television and newspapers. So this isn't an issue of whether a lot of broadcasters should own a whole lot of newspapers in the community. There is only one newspaper. If that newspaper owns a broadcast outlet, that is the issue. Whether you support giving away the airwaves or auctioning them off, it is not the broadcasters who talk about that. It has been in the newspapers where that debate has occurred and the danger of lifting that restriction right now involves the loss of newspapers challenging broadcasters' business practices.

We have heard a lot of talk about variety. There is enormous variety out there. But that is not the important issue when you are promoting a diversity policy at the FCC. The issue is who owns it? You can have all the variety you want from a monopoly and unless you have a benevolent dictatorship, you do not necessarily meet community needs. We have a lot of variety on the Internet, but AOL/Time Warner now controls a third of the hits on the Internet. If you look at prime time television, that is what people watch the most. That is predominantly owned now by the national broadcast television networks. And you add together the top cable companies and top broadcast networks and almost all of the most popular 10, 20, 30, 50 channels are controlled by those national networks and the largest cable companies.

When we hear talk about the First Amendment, it is important to consider not just the corporate free speech rights, but the public's rights as you have pointed out, Mr. Chairman, to an open marketplace of ideas. The corporate rights are given through privilege by this Congress, the rights to use the public airwaves and rights-of-way. You can and have restricted their use and the courts have supported Congress in doing so. You could have made cable and wireless common carriers, just like telephone companies are.

Telephone companies cannot control what goes over their networks, and the courts have said that is within the purview of the Commerce Clause rights of Congress to regulate for the public's interest. You could do that here, too, since what is at stake is the public's right to free speech.

Let me explain why the variety of outlets do not solve consumer problems. Everyone recalls the dispute between Time Warner and ABC about carriage of Disney programming. Mr. Karmazin is talking about competing against cable. If Time Warner had won that battle, consumers would have lost programming. But Time Warner could have still raised their cable rates. If ABC won, which it finally did, and had its programming on Time Warner cable, Time Warner could just keep on raising rates.

What we have in these markets is not direct competition. We have separate market segments adjacent to each other and what we are seeing more and more without competition in transmission or distribution is that the giants in the media business are not competing for consumers' interests. They are not competing to drive down prices and to offer consumers more of what they want. It is a competition of sorts. It is a fight. It is a fight over who divides monopoly profits, and that is the problem here. We need to go back and look at market structure to understand how broadcast and cable fail to compete.

Now, it is our view that it is absolutely critical for the Federal Communications Commission to go back and do a careful analysis of these markets. It has not done so in the recent past. It is now time to do that. But before the FCC considers changing these media ownership rules, we want to make sure that any alteration, any modification or elimination still meets those public interest goals of competition, diversity of ownership and meeting local community needs. Chairman Powell has indicated that the marketplace is good enough.

As you point out, Mr. Chairman, I am not sure that is consistent with the law. But I know one thing, the empirical research does not support the view that the marketplace itself, and it certainly never has in the past, provided diversity of ownership automatically, or meets local needs automatically. And in this case we do not have anywhere near a competitive market. We have massive consolidation within each communications and media sector which tends to extend monopoly control of each sector rather than compete head-on.

So Consumers Union very much supports your effort to make sure that before the FCC modifies these rules, it gets the facts, gets the facts right and makes sure that we are still represerving these important public interest principles.

Thank you.

[The prepared statement of Mr. Kimmelman follows:]

PREPARED STATEMENT OF GENE KIMMELMAN, CO-DIRECTOR, CONSUMERS UNION

Consumers Union[1] is concerned that meaningful public policy debate about the need for media and communications ownership restrictions has been distorted by ideology and the business interests of the commercial players who stand to gain or lose by manipulating this debate. We urge policymakers to reaffirm the goals of promoting competition, diversity and meeting community needs, and to refocus the ownership debate on the fundamental attributes of the various communications and media markets. While the antitrust laws can effectively prevent substantial reductions in competition, they are not effective tools for dismantling monopolies, promoting competition or preserving other public interest values. We believe that consumers' interests will best be served if the Federal Communications Commission (FCC) is instructed to maintain previous media ownership rules, until it can demonstrate how the public interest in more competition, diverse ownership and the needs of local and minority viewpoints can be met by altering or eliminating these rules.

The recent explosion of media and communications technology was expected to deliver consumers a brave new world of competition across all telecommunications and media markets. There is no doubt that today, consumers have the option of receiving news, information, entertainment from a far greater variety of media—newspapers, radio, television, the Internet—than ever before. Unfortunately, this growth in variety has not been accompanied by a comparable growth of independent, diversely owned competitive communications services and media voices.

Rather than the cross-market competition envisioned with the enactment of the 1996 Telecommunications Act, virtually every communications and media sector has witnessed an explosion of consolidation. The study attached as an appendix to this testimony, "Mapping Media Market Structure at the Millennium," provides the detailed empirical and analytical analysis upon which our testimony relies. The two major communications wires into the home, telephone and cable are now controlled by a few super-regional companies that focus their business on dominating their respective markets rather than challenging each other's core business. Long distance companies have not been able to crack the local phone companies' stranglehold on consumers, and the satellite companies still cannot compete on price with cable monopolies. Radio and newspaper chains grow larger, and national broadcast networks continue to buy more local broadcast stations. And on the Internet, where "the number of potential online channels is infinite," about one-third of user minutes were controlled by cable giant AOL Time Warner last year.[2]

Has this consolidation opened the door to new competition? Hardly. Contrary to the claims of the major players in each communications sector, Internet service providers, national broadcast networks, newspaper and radio chains, and cable companies do not compete in a meaningful way against each other for consumers' news, information, entertainment and other communications needs.

A careful market analysis reveals that there are several kinds of media markets (e.g., national v. local, primetime television v. daytime TV, national network news v. all other news programming), which support different business models (e.g., subscription-based v. advertiser-based). These markets are adjacent to each other rather than in competition with each other. This is not to say that there is no form of competition or rivalry across media, but newspapers' classified advertising cash cow in no way resembles the high-priced pharmaceutical and auto advertising splashed across national television network primetime programming. These are separate markets that are not yet substitutes for one another. For example, the enormous growth of the Internet provides no basis for relaxing the national television broadcast ownership cap, given that only about half the country is on the Internet, and the Internet does not provide a service comparable to broadcast television.

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[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

[2] "Online Media Consolidation Offers No Argument for Media Deregulation," Jupiter Media Metrix, Inc. June 4, 2001.

And in moderately or highly concentrated media and communications markets, vertical integration—the combined ownership of content and distribution channels—can skew incentives to undermine journalistic independence. For a news program at a station that is independently owned and operated, the overriding concern should be credible and professional reporting that will bring viewers back. However, when a large media conglomerate gobbles up that same station, it becomes unlikely that the station will cover its parent aggressively when inevitable conflicts of interest arise. In markets with few direct competitors, this bias is more likely to go unnoticed and unchallenged.

Even when it appears that the giants in one media sector are squaring off against the giants in another, each invoking the consumer's interest as its sole motivation in battle, often the consumer is more a hostage than the beneficiary of the warfare. For example, when ABC, backed by its parent, the Walt Disney Company (Disney), squared off against cable monopoly Time Warner over carriage terms for Disney's programming, consumers faced the following prospects: either Time Warner would win and consumers would still pay inflated cable rates without receiving Disney programming, or Disney would win, and Time Warner could increase consumers' rates in return for carrying Disney programming. And when cable and Internet giant AOL Time Warner sounds like it wants to challenge the national broadcast networks' dominance in TV news coverage through its popular CNN and Headline News cable channels, analysts believe this really means that AOL Time Warner wants to merge or partner with either ABC News or NBC News.[3]

The fundamental failure of media and communications policies to develop competitive transmission/distribution systems has left consumers at the mercy of powerful content and transmission companies whose most antagonistic, "competitive" behavior consists of fighting with each other over who gets the larger share of monopoly profits from consumers, and who often control content delivered to consumers.

As the FCC reviews its national television broadcast ownership cap, and newspaper/broadcast cross-ownership rules, it is critical that the Commission take a careful look at the fundamentally different characteristics of each media and communications market, in determining what regulations are appropriate to meet Congress' goal of protecting the public interest. And Consumers Union believes that it is important for the Commission to preserve critical elements of previous judicially and Congressionally approved definitions of the "public interest"—promote diversity based on independent ownership designed to expand competition, meet local community needs, and protect the viewing/listening public's First Amendment rights to hear and be heard—rather than drifting toward a definition where variety (even if owned and controlled by few) equals diversity.

Past Commission reviews of these ownership rules have involved only cursory analysis of the most critical economic forces at play in media markets and we believe it is time to correct that flaw. Especially at a time when the D.C. Circuit Court of Appeals can find a way to read an act of Congress (the 1992 Cable Act, Public Law 102-385, which was designed to promote cable competition by limiting concentration of ownership) as potentially allowing a single cable company to own systems serving as many as 60 percent of all cable customers,[4] it is obvious that Congress' expert communications agency must do a better job in gathering data, analyzing market forces, and then demonstrating how congressionally mandated rules address market dysfunction.

However, we are troubled that the FCC's current Chairman has characterized the broadcast ownership cap as based on "a romantic notion, an emotional one,"[5] that limits "are almost always poorly calibrated"[6] and that "there is something offensive to First Amendment values about that limitation."[7] We certainly hope that Chairman Powell will engage in a thorough analysis of the market forces that are affected by this rule and all others, rather than reach conclusions based on past shortcomings in the FCC's research. And we hope the Chairman has not forgotten than the First Amendment protects the public's free speech rights, not just the more limited right of commercial media enterprises.[8] As we point out above, just because many media ownership rules are old and markets have changed does not mean that

[3] Jim Rutenberg, "Mix, Patch, Promote and Lift." *New York Times* (July 15, 2001).

[4] *Time Warner Entertainment* v. *Federal Communications Commission*, No. 94–1035 (D.C. Cir., Mar. 2, 2001).

[5] Labaton, Steven, *"F.C.C.'s Chairman Would Curb Agency, Reach," New York Times*, Feb. 7, 2001.

[6] Srinivasan, Kalpana, *"FCC Chief Wary of Broadcast Rules," Associated Press*, April 25, 2001.

[7] Id.

[8] *Red Lion Broadcasting Co., Inc., et al* v. *Federal Communications Commission et al, 395 U.S. 367 (1969).*

markets, without these rules, can adequately promote diversity of ownership and competition.

Recent research on the economics of radio and newspaper markets raises fundamental concerns about whether deregulation of ownership in media markets can produce the kinds of consumer benefits and a robust marketplace of ideas, that are usually associated with competitive markets.[9] For example, data show that people whose tastes in radio programming differs from the largest group of listeners in a community tend to receive less content than they desire in the marketplace, and that this is likely the case for other media:

A consumer with atypical tastes will face less product variety than one with common tastes. The market delivers fewer products—and less associated satisfaction—to these groups simply because they are small. This phenomenon can arise even if radio firms are rational and entirely non-discriminatory.

The fundamental conditions needed to produce compartmentalized preference externalities are large fixed costs and preferences that differ sharply across groups of consumers. These conditions are likely to hold, to greater or lesser extents, in a variety of media markets—newspapers, magazines, television, and movies.

Radio programming preferences differ sharply between blacks and whites, between Hispanics and non-Hispanics and (to a lesser extent) across age groups.[10]

These findings indicate that, given the large fixed costs involved in offering media services, the wide variety of tastes in media markets, and the drive to maximize profits through maximum advertising revenue/audience size, market forces are likely to leave more local tastes under-satisfied by national firms, and more minority tastes under-satisfied even in local markets. It is therefore necessary for the government to continue regulating—either through structural constraints like ownership caps, or behavioral requirements like "equal time," "reasonable access," or network/affiliate rules—to pursue the public interest goals of meeting local community needs and promoting diversity of views in media markets, even where competition exists.

Consumers Union therefore believes the FCC should leave the current national television broadcast ownership cap in place, while it initiates a much more detailed and extensive analysis of market structure than it has in the past. The current cap, which allows a national broadcast company to own local television stations that reach as many as 35 percent of the national television viewing audience, is already set at a level that often triggers antitrust scrutiny over the ability to control programming decisions in the marketplace. With four national television networks already dominating primetime television viewing and the massive advertising dollars that come with it, there is a substantial danger that further ownership of local stations would lead to increased pressure on local stations to carry nationally oriented programming which maximizes national advertising revenue, at the expense of locally oriented programming. And the fact that the national television networks, no longer constrained by limits on vertical integration (the financial interest and syndication rules), have a financial incentive to favor programming they produce and syndicate is likely to increase pressure on local stations to carry network owned rather than locally popular programming. Certainly the local network affiliates—who may also be doing less than they should to meet community needs—are complaining about an excessive national profit orientation by the networks at the expense of local programming needs.[11]

Consumers Union urges the FCC, as part of its review of the broadcast ownership cap, to initiate an investigation which answers the following critical questions:

1. Since the national television broadcast ownership cap was raised from 25 to 35 percent, how much has local programming designed to meet community needs suffered?

2. How much has elimination of the financial interest and syndication rules affected local station's ability to preempt network programming to show programs that reflect community tastes?

3. How much does l, as opposed to theoretical, enforcement of the Commission's network/affiliate rules protect local broadcasters from unfair leveraging by the national broadcast networks?

4. Are these rules adequate, without a national ownership cap, to prevent unfair leveraging?

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[9] Waldfogel, Joel and George, Lisa, *"Who benefits Whom in Daily Newspaper Markets?" National Bureau of Economic Research* (2000). Waldfogel, Joel, *"Preference Externalities: An Empirical Study of Who Benefits Whom in Differentiated Product Markets" National Bureau of Economic Research* (1999).

[10] Waldfogel, *"Preference Externalities"* at 27-30.

[11] Network Affiliated Stations Alliance, "Petition for Inquiry into Network Practices." (Federal Communications Commission, Mar. 8, 2001).

5. When there is no interference from the national broadcast networks, are local broadcast licensees meeting their obligations to serve local community needs, or is greater public intervention necessary to ensure diversity of local programming?

The FCC's newspaper/broadcast cross-ownership rule plays a very different role from the national broadcast cap in promoting a marketplace that protects the public interest. Consumers Union believes that this prohibition on a local newspaper owning a local broadcast outlet in the same community has much more to do with promoting checks and balances in media coverage of news and information (including matters affecting the business interests of newspapers and broadcasters) than competition. The fact that virtually every community in this country has only one financially stable community-wide newspaper, and that broadcast does not compete effectively with newspapers, should give the FCC pause as it considers relaxing or eliminating the cross-ownership rule:

Wasn't it television and radio that were going to kill newspapers? "I don't really consider them competition in that old-school way," stresses Florida Sun-Sentinel editor Earl Maucker. "They reach a different kind of audience with a different kind of news—

Publisher Gremillion, a former TV executive himself, seconds the point, "I don't believe people are watching TV as a substitute for reading the newspaper—" —Many newspapers are increasingly writing off local TV news as a serious threat, treating local stations instead as potential partners who can help spread the newspapers' brand name to new and bigger audiences.[12]

It is difficult to imagine the Thomas Paine pamphleteer tradition of print journalism—considered so valuable to our core beliefs that the Supreme Court granted it the most far reaching First Amendment protections[13] will be able to survive in a world where newspapers become marketing devices for broadcasters. Print journalists often assert an allegiance to their almost century-old creed:

I believe in the profession of journalism. I believe that the public journal is a public trust; that all connected with it are, to the full measure of their responsibility, trustees for the public; that acceptance of lesser service than the public service is a betrayal of this trust.[14]

Compare these journalistic values with the image presented by Tribune Company executives, describing how the Chicago Tribune and Chicago television station WGN, among other media properties, view their business: "Tribune had a story to tell—and it was just the story Wall Street wanted to hear. In charts and appendices, they showed a company that owns four newspapers—and 16 TV stations (with shared ownership of two others); four radio stations; three local cable news channels; a lucrative educational book division; a producer and syndicator of TV programming, including Geraldo Rivera's daytime talk show; a partnership in the new WB television network; the Chicago Cubs; and new-media investments worth more than $600 million, including a $10 million investment in Baring Communications Equity Fund, with dozens of Asian offices hunting out media investments.

"There was an internal logic and consistent language to their talk: Tribune, said the four men, was a "content company" with a powerful "brand." Among and between its divisions, there was a "synergy."

"It was a well-scripted, well-rehearsed performance, thorough and thoroughly upbeat. And the word "journalism" was never uttered, once.

"Even apart from TV and new media—at the Tribune papers themselves—the editor in chief rarely presides at the daily page one meeting. The editor's gaze is fixed on the future, on new zoned sections, multimedia desks, meetings with the business side, focus group research on extending the brand, or opening new beachheads in affluent suburbs. "I am not the editor of a newspaper," says Howard Tyner, 54, whose official resume identifies him as vice president and editor of the Chicago Tribune. "I am the manager of a content company. That's what I do. I don't do newspapers alone. We gather content."[15]

In highlighting the Tribune Co., we do not mean to suggest that there is anything wrong with the company's behavior. On the contrary, economic "synergies" may certainly help Tribune improve the quality of its media products. And we do not mean to suggest that other factors, like newspaper consolidation and newspaper ties with

[12] Stepp, Carl Sessions, *"Whatever Happened to Competition," American Journalism Review* (June 2001).

[13] *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964).

[14] Kunkel, Thomas and Roberts, Gene, *"The Age of Corporate Newspapering; Leaving Readers Behind," American Journalism Review* (2001) citing Walter Williams, *The Journalist's Creed* (1914).

[15] Auletta, Ken, "The State of the American Newspaper." *American Journalism Review* (June 1998).

other corporate entities, do not also challenge print journalist's ability to follow their creed. However, when the two largest sources of news and information—television and newspaper[16] come under the same ownership roof, there is special cause for concern about business pressures that could undermine the free marketplace of ideas.

Consumers Union believes that, particularly where there is only one local newspaper, the public interest is best served by prohibiting that newspaper from owning a local television broadcast outlet. Dangers ranging from favorable newspaper reviews of a broadcaster's programming, to positive editorials/opinion articles about business interests of a broadcaster or politicians who favor such business interests would be difficult to prevent if cross-ownership is broadly permitted:

Down in Tampa, Media General has gone so far as to put its newspaper, the *Tampa Tribune*, in the same building with its local television station and online operation, the better to exchange stories and, ostensibly, resources. (It's still unclear what the newspapers get out of the bargain other than garish weather maps sponsored by the local TV meteorologist.) Tampa's has become the most sophisticated model of this kind of thing, and as such is drawing enormous interest from other newspaper companies.

Under the Tampa model, and presumably in most major city rooms of the future, news decisions for all these outlets are made in a coordinated way, sometimes in the same meeting. In effect the same group of minds decides what "news" is, in every conceivable way that people can get their local news. This isn't sinister; it's just not competition.[17]

Except where there is meaningful competition between local newspapers, we believe that lifting the newspaper/broadcast cross-ownership ban would significantly undercut the watchdog role that newspapers play over broadcasters and thereby undermine—particularly in the realm of political speech—Congress' goal of ensuring an open marketplace of ideas.

It is time for the FCC to engage in a careful analysis of media and communication markets, before it considers altering current ownership rules. Consumers Union believes that such a analysis will demonstrate the need to preserve the national broadcast network ownership cap and newspaper/broadcast cross-ownership rule in order to promote the publics interest in more media and communications competition, diversity of ownership, and protecting the First Amendment rights of citizens whose tastes do not correspond to those of the majority nationwide or in a particular community.

The CHAIRMAN. Very good.

Dr. Noam.

STATEMENT OF DR. ELI M. NOAM, PROFESSOR OF FINANCE AND ECONOMICS, COLUMBIA UNIVERSITY; DIRECTOR, COLUMBIA INSTITUTE OF TELE–INFORMATION; FORMER COMMISSIONER OF PUBLIC SERVICES, NEW YORK STATE

Dr. NOAM. Thank you very much, Senator. Thank you for dealing with this important issue. Yes, there has been a lot of mergers. Some are troubling and some are not, but going beyond the specific deal, the more important question is whether, in the aggregate, American media have become more concentrated. Because if we deal with that question, maybe we can relax a little bit about the issues before us.

Despite the conventional wisdom about media concentration, the answer is not an obvious yes. Because while the fish in the pond have grown in size, the pond grew even faster.

Second, there have been a lot of new fish. Some of the giant companies such as AOL or Microsoft or Viacom or Qwest hardly existed 20 years ago or did not exist at all. And at the same time, some of the old media empire giants have imploded, companies such as RCA, the original CBS, Hearst, or AT&T. I wouldn't be surprised

[16] Media Studies Center Survey, University of Connecticut, Jan. 18, 1999.

[17] Kunkel, Thomas and Roberts, Gene, *"The Age of Corporate Newspapering; Leaving Readers Behind." American Journalism Review* (May 2001).

if in the future we will say the same thing about Fox, Disney, Time Warner, or Viacom. Companies are growing more than they can manage, around some kind of charismatic leader who puts it all together, but when he steps off the scene, companies often cannot manage the way they did before.

When it comes to concentration, there are strong opinions, but the numbers are scarce. Therefore, we have conducted a study at Columbia, and collected market share numbers industry-by-industry, company-by-company, for 52 media and information subindustries—from book publishing to film production to Internet service providers and consumer electronics—in order to trace the concentration trends since the early 1980s after the AT&T divestiture. It is probably the most detailed study of media concentration in America, and is generally confirmed by another empirical study at Penn State.

Unfortunately, I was invited here only 3 days ago, so my data is not quite up to date. But what we did find was that the overall concentration of the entire information sector, which includes mass media, telecommunication, and the IT sector, did not increase, but declined somewhat over the past two decades. At first, it went down, and then it rose again, but by 1998 not quite to the level that existed in 1984 right after the AT&T divestiture.

Now, if this surprises you, just remember that 20 years ago, in that supposedly Golden Age of unconcentrated media we seem to have lost, there were three major television companies, one computer company, and one telecom company. While today, nobody would argue that the communications industry is greatly fragmented, there certainly are more participants than used to be, although a bit less than 2 or 3 years ago. For the classic mass media, such as broadcasting, cable television and print media, concentration has increased, but not in every segment.

Radio is the classic example everybody gives for an explosion of ownership. Its concentration more than doubled in the last 5 or 6 years. But at the same time, the largest of the companies owns only 11 percent of all stations and it accounts for 15 percent of all revenue according to a DeutscheBank-Alex Brown study. Furthermore, there are other audio delivery technologies.

I, for example, listen to radio more on the Internet than over-the-air, and the reason is partly because I like country music and in New York City, despite 35 stations, you usually cannot get country music over public radio. A few stations have tried, but dropped out. But if Mr. Karmazin doesn't give this music to me, Yahoo does. Obviously, I can't do this in the car yet, although this too, will come and there are alternatives such as satellites. So the real issue of radio ownership is actually not so much the national ownership issue, but it is local concentration. It is whether one company should have 8 stations in the same market.

Now, does that mean that there is concentration problems? No. As I said it is probably more local concentration in newspapers, in telecommunications, and in cable television. That is why a cap on national cable ownership can be more justified than for broadcasting, where no local market power exists in the aggregate that could exclude channels in the way that the largest of the cable companies could.

When it comes to the broadcast industry, a national ownership cap will not do very much. Today, the four major networks have barely 50 percent of the prime-time audience. Their share keeps shrinking, and they are only a shadow of their former domineering self. Most of the audience is watching their programs over cable, not over-the-air, and if one additional Supreme Court Justice changes his view and votes against broadcast TV's must-carry rights, the broadcast industry would be going into a tailspin.

Cable operators will then do separate deals with the major networks and syndicators for direct program feeds, bypassing local broadcasters, and will create or contract with local providers such as newspapers for the news programs. Broadcast station's spectrum rights will be their most important asset, not their broadcast operations.

If you truly want very badly to achieve local content, a direct approach is better than working through ownership. You could, hypothetically, require a certain amount of local program production as a prerequisite for license renewal. You could set an open broadcast time slot for local access to television. You could license low-power television. Now, those might not be things that we want to do, but the fact that most industry proponents of localism do not advocate such direct policies toward localism tells me that this fight isn't really about localism. And if that is the case, then government officials should not be the arbiter between several media industries on how to split the pie between them, tempting at it might be. Similarly, media industries that cherish their independence should not call for the government to regulate them. It is really asking for trouble.

Therefore, I would not perpetuate the old rules of national broadcasting ownership caps in an environment of new media.

I thank you, Senators, for your kind attention.

[The prepared statement of Dr. Noam follows:]

PREPARED STATEMENT OF DR. ELI M. NOAM, PROFESSOR OF FINANCE AND ECONOMICS, COLUMBIA UNIVERSITY; DIRECTOR, COLUMBIA INSTITUTE FOR TELE-INFORMATION; FORMER COMMISSIONER OF PUBLIC SERVICES, NEW YORK STATE

Chairman Hollings, Senator McCain, members of the Commerce Committee, I am grateful to join you in discussing the important topic of media concentration and ownership rules. Let's start by agreeing that we all share an *intense* desire not to let the diversity of media voices be strangled by a few big companies. But the question is how to go about it.

There are many elements of ownership rules. Caps, cross-ownerships, foreign-domestic, minority. Each raises different issues. I will focus here on the national cap for TV broadcasters, though I'll be happy to address other issues as well later.

It would probably help us all if we first looked at the extent of media concentration, because that would take the edge of alarm off.

Yes, there have been lots of mergers. Some are troubling, some are not. Going beyond the specific deal, the more important question is, in the aggregate, have American media become more concentrated?

Despite the conventional wisdom, or books based on anecdotes rather than data, the answer is not an obvious "yes." First, while the fish in the pond have grown in size, the pond did grow, too, and faster. The growth of the information industry has been 8 percent faster than inflation since 1987. Second, there have been a lot of new fish. Giant Companies such as AOL, Microsoft, Viacom, Qwest, hardly existed a few years ago. Foreign companies such as Bertelsmann and Vivendi are contesting the American market. Third, there are new and rapidly growing ponds, like the internet; and fourth, all these separate ponds are becoming more of a large lake, as the technological and regulatory dikes between them fall.

When it comes to concentration, views are strong, but numbers are scarce. Therefore, at one study at Columbia we collected market share numbers, industry by industry, company by company, for 60 media and information sub-industries from book publishing to film production to internet service provision and consumer electronics, in order to trace the concentration trends since the early 1980s, after the ATT divestiture. This is probably the most detailed study ever of media concentration in America. It is confirmed by another study, by Ben Compaine, formerly of Harvard. Unfortunately, we did the study 3 years ago. I am updating it, but I had only 3 days since your invitation, including the weekend. But I will provide you with them when we have updated the work.

What did we find? Surprisingly, the overall concentration of the entire information sector, defined to including also telecommunications and the IT sector, did not increase, but declined somewhat in the past two decades. Or rather, first it went down, then it rose, but not to the level that existed before. If this surprises you, just remember that 20 years ago, there were 3 major TV companies, 1 computer company, and 1 telecom company. The combined share of the top 10 companies in the U.S. information industry declined from 59 percent in 1987 to 39 percent in 1998, even as the total size of most companies increased.

If one looks at the classic mass media industries alone, they did indeed increase in concentration but remained unconcentrated by Justice Department standards. (I should add that I do believe that for media, antitrust standards should be interpreted more stringently than for other industries because of their special importance, and because of the undesirablility and unconstitutionality of direct regulatory interventions). The weighted average of 4 firm market share for the mass media industries was 33 percent in 1986. It then fell to 27.5 and rose to 40 percent again.

For the 3 networks, it declined from 70 to 53 percent. For local TV stations, the top 4 firms share rose nationally from 15 to 26 percent. For cable TV distribution, it rose from 37 to 60 percent.

The main factors increasing the rise in the mass media concentration figures were cable television systems (accounting for half) and home video (accounting for 20 percent). Concentration also increased in TV station ownership and retail bookstores, and more than doubled in radio station ownership and book publishing. There is one very large owner of radio stations. But even it owns only 11 percent of all stations and accounts for 15 percent of revenues. And the number of radio stations grew by 800 in the past 3 years. The number of TV stations increased since 1984 by 37 percent, or about 400 stations. The top four firms still have only about quarter of these markets, as measured by revenue. In other industries, concentration held relatively steady. Film production remained fairly concentrated but steady, with the top four firms controlling 60 percent. The national movie theater, newspaper and magazine markets remained relatively unconcentrated, with the top four firms accounting for a quarter of sales.

Therefore, it cannot be said that U.S. media have become, in general, more concentrated. Some segments have, others have become *less* concentrated. Still, the next question then must be raised: even if a firm does not dominate any specific market, could it not be overpowering by being a medium sized firm in every market? The fear is that vertically integrated firms will dominate by having their tentacles in each pie. But in economic terms, this can only happen if a firm has real market power in at least one market, which it then extends and leverages into other.

But where markets are competitive, vertical integration makes little sense. Disney should not earmark its best programs for ABC if other networks offer more money. Conversely, for Disney to force its lemons on the ABC television network would only hurt the company.

Does this mean there is no concentration problem? No. But the real problems in media concentration are not national, but local, 98.5 percent of American cities—though less of a share of people—have only one newspaper. (But you rarely will find editorials castigating this concentration). Most American homes have no choice in their cable provider, though DBS is changing that. This is why a cap on cable ownership can be more easily justified than for broadcasting, where no local power exists that in the aggregate could exclude channels the way that the largest of cable companies could. Alternative local residential phone service may be coming, but is not here yet. That's why local interconnection is regulated. And the absence of competition in local telecommunications might justify a higher cap on cable where it becomes an active rival to telecom, as in ATT's original strategy. Local radio concentration has increased considerably since the Telecommunications Act of 1996 relaxed local ownership ceilings, and may become more of a problem than national radio concentration. On the other hand, the ownership of multiple radio outlets in a community has also increased program diversity, because a firm that buys an additional station in a market will target new audiences rather than cannibalize its existing ones.

In broadcasting, we've had a set of rules established when two-and-a-half TV networks, all headquartered in Manhattan within a few blocks, supplied the TV programming for most Americans. But the ownership rules didn't really change that. What did create the change was the entry of cable television that now provides almost 70 percent of households with a menu of about 55 channels, on average. Satellite TV reaches another 15 percent or so of households. Both of these media can program scores of channels, and can also charge subscription and per view fees, which gives them a much stronger base than advertising revenues. Today, the top 4 networks have barely 50 percent of the audience and keep shrinking inexorably. There are over 200 cable channels being offered. Thus, broadcasting is a pale shadow of its former self. Only a small audience slice watches the classic over-the-air VHF TV. If one additional Supreme Court justice changes his view and votes against broadcast TV's must-carry rights, the industry will be going into a tailspin. Cable operators will do separate deals with the major network and syndicators for direct program feeds, bypassing local broadcasters, and will gradually create or contract with local providers such as newspapers for the news programs. And as that happens, broadcast stations' spectrum rights will be its most important asset, not its broadcast operations.

And that's just today's challenge. In the near future, with high speed internet rising in penetration; it will become an additional medium for the distribution of mostly national and even global programs, often of new and interactive kinds, which are not possible for broadcasters.

Broadcasting has now been given a second chance, through digital TV with its multicasting potential. So far, this has been a total failure. But the concept of broadcast TV as a multi-channel medium with each station broadcasting half a dozen of programs may become the lifeline for that industry as it competes against cable. It is also a high cost proposition that will challenge the smaller firms.

The increasing fragmentation of audiences through narrow casting also leads to a decline of localism. Local programming, outside the news, was always more asserted than practiced, with some noteworthy exceptions. The economics here are basic. Any professional TV program is expensive to produce but cheap to reproduce. Therefore, national networking is the economically logical way to go. It's been that way since early radio. And if audiences get fragmented locally, they have to be aggregated nationally. So there are fundamental and increasing incentives toward national electronic media. Conversely, whatever local production or preemption or syndication that draws audiences will be practiced by stations based on local conditions, whatever the ownership is, since they have to contest nightly for audiences.

So this is an industry in intense transition, much more in trouble than it often recognizes itself, and this then leads to fundamental restructuring as a response. You can constrain it, but then you might end up with the electronic equivalent of the railroads and other rustbelt industries.

I am more concerned with the question of impact on minority ownership. But here, even under the old system, minority ownership has been miniscule, and if one wants to achieve it one should find other ways.

There are also costs to this cap restriction. It prevents larger companies from seeking new licenses, or acquiring weak UHF stations, because they count as part of aggregate ownership. Just as cross-ownership restrictions can reduce the number of stations, as well as sometimes of second-tier newspapers. And this deprives communities of additional stations and voices.

Much of what this fight over ownership caps is about the relative bargaining strength between station groups and networks. That's vital to the participants, but does not obviously an issue of issue of protection of local content. It's ultimately an empirical matter for study, whether local programming in a competitive local market is affected by ownership or cross-ownership at all. Since we have various exceptions for every rule around the country, this can be determined.

To conclude, it seems to me that if you want to achieve local content, there are approaches that are more direct than working through ownership, such as a certain amount of local program production as a requirement of licensing, or an open a time slot for local access to TV, or the licensing of additional broadcasters such as LPTV, or the right to reply. The fact that most proponents of localism do not advocate such direct policies toward localism tells me that this fight isn't really about localism.

And if that's the case, you should not become the arbiter between several industries, TV networks, station groups, and Hollywood syndicators. Media industries cherishing their independence should not call for the government to regulate them. It's asking for trouble. But if one can show clear and convincing public harm, that's one thing. If one can show local media power that permits its vertical extension, then some protective rules may be in order. But in the absence of such showing, I would not perpetuate old rules of national broadcasting ownership caps in an environment of new media.

Thank you very much for your kind attention

The CHAIRMAN. Thank you very much.

Senator Breaux.

Senator BREAUX. Thank you very much. Mr. Chairman. I did want to hear both of these gentlemen because neither one of them have an economic stake in this. I mean, everybody else at the previous table represented millions of dollars and legitimate interests. What we do here—and both of you can sort of stand back and give us a perspective that is not influenced by the bottom line of what happens with regard to the ownership issue.

Dr. Noam, if I pronounced it correctly, you have in your statement something that I had said and I did not notice it before. I said that local ownership really is a fight, not so much of local content, but really on the bargaining power between the affiliates and the networks. What do you mean by that? I mean, I agree with it. It is what I said. It is in your testimony. Can you explain and elaborate what do you mean by that statement?

Dr. NOAM. There are several industries involved. The providers of syndicated programs would like to deal with a large number of local stations rather than with a smaller number of buyers who would have a greater bargaining power.

The medium-sized station groups do not want to compete for station acquisitions with the large. And the network affiliates more generally want to have station groups, more bargaining power relative to the networks. From their perspective, it is a perfectly logical behavior.

But I do not think that there is a great deal of public interest in terms of diverse content that is attached to that. I can agree with the point that you made earlier, namely, that if a station, regardless of the ownership, should more or less follow some very similar principles of what the audience wants to see because they are competing nightly and daily for audiences. There shouldn't be any difference on content. If the networks do not serve local markets well, they aren't doing a good business and eventually they will lose audiences. There are self-correcting market forces here.

Senator BREAUX. I used a station, whether a station in Louisiana is owned by CBS in New York or owned by Hearst Argyle in New York. It seems to me that it is a New York-owned station and what they are going to do is try and serve the needs and local market in Louisiana in the most profitable manner that they can and obviously, that means having a lot of local content. Do you have any problems with that as a principle? It seems to me it doesn't matter whether Hearst Argyle or CBS owns it. They have to do what's best to be successful in running that station.

Mr. KIMMELMAN. I think that is a good point. There is an economic factor missing from the equation. That is a national broadcast network that has lost 50 percent market share, but remain the biggest player in prime time, the big bucks, the big advertising dollars. They need to get their programming on, period. Their programming is preeminent. Even a New York-owned set of stations trying to meet local needs has slightly different economic incentives. They want maximum eyeballs, maximum viewership in that particular community or 5 or 6 or 8, but not nationwide and that can have a very significant impact on the programming you select during prime time when most people are watching.

The CHAIRMAN. Would the Senator yield on this important point? Isn't it a fact, Senator Breaux and panel, on whether or not you own content. You have mentioned CBS. They have got content. The Fin-Syn rules have been abolished. So they are pushing content. Whereas Hearst, you said, they are both in New York, but these group ownerships, they do not have content so they are not pushing it. I find from the local folks, and everything else of that kind, if they can get and adhere to the localism, which we both agree is of tremendous value, that has been put in. You used to have to come up and justify your relicense and ensure how many public interest shows you had and everything else. But where they have got just affiliates, and the affiliate is being harassed by the network owner because they have got content, it is just like the morning programs and the evening.

They are advertising movies all over the place. I couldn't go on "Who Wants To Be a Millionaire." I think I could do pretty good on the answers, but not with the movies. They are getting rid of me about the third or fourth question: "who played the leading part in such-and-such a movie." They are promoting them regularly. More people are going to them, and it is a money-making promotional proposition of content which is taken away.

It is not that both of them come from New York, and it is an affiliate link. But John, isn't it an affiliate fight because they do have content where Hearst doesn't, and they just want to see the station succeed and as you and I both agree, localism counts.

Senator BREAUX. The Senator makes a good point. The fact is if you do not like what the network has programmed, you have got 125 channels you can go to on your cable and look at something else. In New Orleans, for instance, I think I am correct, but I think WWL Channel 4 is a Hearst Argyle station.

Does anybody out there in the audience know? Anyway, it is a CBS affiliate. They do not like the CBS "Morning Show," so they just do not carry it. And they carry their local news for the whole entire 2-hour block in the morning because they think that that is a local—and the network cannot make them do it. So they have to appeal to a local audience and if the local audience doesn't like the national programming, it is not going to carry it. I mean, no one wants to do that.

The final point is 35 percent limitation. It seems to me that it was spelled out at a time when you just looked at the potential market, but now with 125 stations on the cable, the actual numbers of people watching the networks probably average out from the Nielsen ratings about 3 percent. You can have a station in Los Angeles which has huge potential market, maybe 20 percent of the whole country where nobody watches your station, your penetration may be almost zero or 3 percent, which is average. So the question is, is there a better way of gauging the media dominance in an area other than just selecting the total number of people that live in the area. Shouldn't it be based on the number of people that watch a particular network affiliate?

Mr. KIMMELMAN. Senator Breaux, I think it is a very good point. The difficulty is, it changes all the time. Every one of these stations has different ratings for different days, different months. We do measure differently in different areas. I think this is something that is absolutely critical to look at. I think you should make the Federal Communications Commission look at it. It is easy to challenge a number. Why not 36 or 40. The issue is how does some other number provide for promotion of localism, competition and ownership. That is what we have not seen from the FCC.

They can raise concerns about a number, it is easy to nitpick, but no one has come up with a better alternative. It is a very hard point. It is hard to measure. Mr. Karmazin has talked about his low numbers. Some programming gets a 25 percent market share and that is the big advertising dollars, but it won't necessarily get it every day or every week.

Senator BREAUX. Dr. Noam, do you have any comments on that thought?

Dr. NOAM. I'd like to comment on the question of national content or local content. As we have 200-plus cable television channels offered, localism is really in trouble. As one fragments audiences, one must aggregate them nationally, and it is very expensive to produce programs. It is expensive to produce programs, but cheap to reproduce, and therefore a national distribution takes place. That has been the way from the beginning of radio.

To use an analogy: In New York, zoning laws restrict large supermarkets. The background is the desire to protection smaller stores on social policy reasons. But the result is to have many inefficient small stores that still sell virtually the same mass products like Campbell's soup, Coke, and Haagen-Daz. People pay more but do not have more choice. The economic forces for media work similarly. So we should worry about local programming. But ownership rules are an ineffective way to deal with the issue.

The CHAIRMAN. Thank you very much. The roll call is about to go on, so the Committee is indebted to both of you, Mr. Kimmelman, Dr. Noam. We appreciate your appearance. The record will stay open for questions. The hearing will be in recess subject to the call of the chair.

[Whereupon, at 12:03 p.m., the hearing adjourned.]

APPENDIX

Prepared Statement of Lowell "Bud" Paxson, Chairman of Paxson Communications Corporation

Paxson Communications Corporation is the largest television station owner in the country and the creator of the newest over-the-air television network. We would request that the following statement be submitted for the record of the July 17, 2001 Senate Commerce, Science & Transportation Committee hearing on broadcast ownership.

This statement sets forth our position on the current national television ownership cap. Our position is simply stated and, we believe, legally compelling. The FCC's current 35 percent television cap should be completely eliminated and the issue of television concentration on a national level should be left to Federal antitrust authorities.

The 35 percent television cap is a totally arbitrary number bearing no relation to any antitrust or even public policy concern, it was adopted without record support and it fails to accurately measure the viewership reach of any television group owner. For these reasons, it cannot and will not survive review by the Court of Appeals in Washington, DC. But, neither this Congress nor the FCC should wait for such an adverse decision. The time is now for the repeal of this antiquated rule.

First, a brief history of the 35 percent rule. During the deliberations leading to the 1996 Telecommunications Act, a group of television broadcasters, including Paxon, formed the Local Station Ownership Coalition which lobbied for televison duopoly and local marketing agreements, i.e. LMAs. The Coalition supported H.R. 1555 (entitled "The Communications Act of 1995") which was voted out of the House Commerce Committee by a 38-5; vote. This bill raised the television audience cap to 35 percent for one year and then to 50 percent thereafter.

However, when the Bill went to the House floor, the Coalition became aware of efforts to amend the bill to set the television ownership cap at 35 percent. The Coalition members convened by telephone conference and agreed to accept the reduction in the television cap in return for keeping the support of the House members for H.R. 1555. The Coalition's views were then communicated to key Representatives on the House Commerce Committee who were sponsoring the local television ownership changes. The Coalition's position on this issue was dictated by the intense desire for local television and LMA rule relaxation and not by any analysis of the consequences of a 35 percent vs. a 50 percent audience cap. In short, the 35 percent number was "plucked out of thin air" as the Court of Appeals noted recently in striking down the cable ownership rule.

The second point worth noting is that the 35 percent audience cap does not actually provide a meaningful measurement of anything. As NBC's President, Bob Wright, has explained in testimony before Congress, although NBC's 13 owned television stations reach about 25 percent of the country's television households (as measured by the current FCC rule), only 2-3 percent of those homes are actually watching NBC on average, so that NBC's owned stations garner about 6 percent of television viewers nationwide.

The 35 percent rule is simply arbitrary and capricious and it fundamentally restricts the right of television owners to speak to their viewers. Local television markets are very competitive nowadays and we face competition from many sources including other television stations, cable, cable networks, Microsoft's Web TV, TIVO, Ultimate TV, radio, newspapers, DBS, magazines, billboards, the Internet, direct mailings, etc. Notwithstanding this intense competition, a television owner at the 35 percent cap cannot buy a television station in a new market simply because of its ownership somewhere else. There is no logic to this and it is violative of that owner's First Amendment free speech rights. And let's be honest, the issue is not local ownership vs. out-of-market ownership. First there is no legally justifiable reason for favoring local ownership of broadcast stations and most stations are owned by group owners, not individual local owners. The issue is how the station is operated and how responsive it is to its obligations as a licensee. Second, most viewers do not know, or care, whether a television station is owned by a local group, a national network or a newspaper group from another state. It is simply irrelevant.

In summary, Paxson Communications urges Congress not to wait until further Court rulings striking down the 35 percent cap and other ownership restrictions but to take the lead and eliminate these antiquated, useless, and constitutionally infirm rules now so that our television industry can meet the new competitive challenges. All existing antitrust laws are fully capable of protecting the consumer and preventing anti-competitive conduct.

PREPARED STATEMENT OF JAMES A. WADES, RADIO AND TELEVISION BROADCAST INDUSTRY VETERAN

As a nearly 20 year veteran of the Radio and Television broadcast industries, I feel it is my duty to offer input to the Committee on the issue of Media Concentration, a trend that has, over the past decade, resulted in a significantly reduced level of quality broadcast service to communities throughout these United States.

Historically, the regulatory approach affecting the electronic media has been based in the public interest. This approach began during the 1920s under then-Secretary of Commerce Hoover and has been consistently reaffirmed under countless administrations as well as through three distinct government agencies charged with the responsibility of regulating broadcasting activities (e.g. Department of Commerce, Federal Radio Commission, Federal Communications Commission). Unfortunately, it appears that recent regulatory decisions have resulted in a climate that de-emphasizes the requirement for licensees to act in the public interest.

Impact on Local Service

Over the past decade, the vast majority of local radio stations have eliminated any meaningful commitment to local community affairs. While serving as a consultant to a large number of AM and FM broadcast stations throughout the Great Lakes Region, I have watched as local stations have been consistently absorbed by large media conglomerates. The result has been, almost without exception, the elimination of local news directors and community affairs positions within these stations.

Whereas stations formerly owned by local community investors often maintained ties with numerous organizations and local government entities, stations managed from outside the area often fail to identify the potential value of coordination with the local community. The results are often subtle, but nonetheless important. For example, I have seen many stations de-emphasize the importance of Emergency Alert System bulletins, such as Tornado Warnings, Flash Flood Warnings, and similar local emergency information simply because it does not fit into a prefabricated format developed thousands of miles away at a corporate headquarters.

Media Concentration encourages the development of generic radio programming transmitted to local affiliates via satellite. While this offers significant profitability advantages for large corporate owners, such formats discourage the dissemination of local community information and programming.

Media Concentration Discourages Cultural Diversity

Media concentration has resulted in the creation of generic radio formats, which are unable to offer a range of choices to the local consumer. With programming standards concentrated in the hands of a few large corporate entities, the natural business tendency toward decreasing operating overhead results in the elimination of local positions formerly held by qualified programming experts. Instead of local broadcasters developing formats, which respond accurately and rapidly to the desires of a local community, the local listener must choose from a limited variety of programming designed to appeal to the "lowest common denominator." In many cases, one can hear identical programming at multiple locations on the dial. This programming often originates from a single location and is then rebroadcast through multiple transmitter sites with overlapping coverage areas.

Those local investors that do attempt to compete with concentrated media entities often meet with minimal financial success. Not only does an erstwhile attempt to develop programming tailored to local needs result in higher overhead in the form of employment expenses, but it also becomes difficult to capture scarce advertising revenue. In simple terms, larger advertisers and agencies find it easier to deal with a few large corporate entities rather than to work with numerous independent broadcast stations. This situation has become even more serious as local businesses are destroyed or marginalized by the invasion of large corporate chain stores, most of which purchase advertising only through large agency representations.

I have spoken with many individual station owners who have "sold-out" to media conglomerates simply because they were no longer able to generate sufficient revenues in competition with concentrated media power. The result has been a consistent lack of local programming and community involvement.

Media Concentration Limits the Voice of Minority Interests

Ethnic and minority owned broadcast stations are consistently marginalized by media concentration. Many of these broadcast stations are often operated by individuals who have a sincere desire to serve a unique community, which lacks a voice or cultural perspective in traditional mass media. Such stations find it difficult to compete with duopolies and media consolidations within their communities.

I have watched as minority-owned stations struggle to generate advertising revenue when faced by competition from one or two companies, which often own all remaining viable stations in a broadcast market.

Such stations are likely to be further marginalized by the ill-advised decision of the Commission to create low-power FM broadcast stations to serve unique communities. Such stations offer little in the way of coverage area and they often lack the necessary capitalization and revenue stream necessary to adequately serve their community with a quality product. However, they do serve to drain valuable advertising revenue away from viable minority-owned stations. As a result viable ethnic or minority-owned stations often find themselves caught between the excessive revenue flow to local duopolies and competition from ineffective low power UHF TV and FM stations that offer only "lipservice" to broadcast diversity.

Media Concentration Lowers Technical Standards

My experience indicates that many stations owned by large corporate entities pay little attention to those FCC regulations designed to insure that the interference between stations is limited and the average listener receives a consistent, quality, broadcast signal.

I have observed AM Directional Antenna systems operating out of tolerance for weeks, if not months on end, resulting in interference to co-channel stations in other parts of the country. I have observed over-modulation, off-frequency operation, and over-power operation at both AM and FM stations throughout the Great Lakes Region. Many of these stations are operated under a management structure that views FCC technical standards as a cost-center and threat to the shareholder.

In some cases, stations consistently fail to meet technical standards simply because they have employed one under-qualified technician to maintain multiple studio and transmitter sites within the same market. Whereas each station formerly employed a competent broadcast engineer or maintained a viable service contract with an outside consulting engineer, consolidation often results in a single salaried technician burdened under an impossible workload.

Contract and Consulting Engineers are often harmed by the same economic forces resulting from media concentration. Prior to the most recent wave of media consolidations, there were significant benefits to contracting one's engineering services through a local engineering company. This allowed stations to maintain their facilities on an as-needed basis. Today, large media groups often find it is in their best interest to avoid engineering contracts. It is simply cheaper to hire a single, minimally competent technician on salary and then insist that he work an almost unlimited number of hours. If compliance with Commission Rules is impossible, it matters little. Congress consistently fails to authorize adequate funding to the Commission for reasonable inspections of broadcast stations and other licensed services. Therefore, there is little risk of being caught.

Media Concentration Encourages Unhealthy Speculation

Unlike most businesses, the unique nature of broadcasting, combined with the current regulatory environment, has resulted in many broadcast properties having two unique and distinct values. The first value is that of an operating business, offering investors a net profit or loss based on available revenue and expenses. Unfortunately, broadcast stations also have a "speculative value," much like real estate.

The analogy to real estate is instructive. Like real property, an FCC broadcast license serves as a "deed" to a property. It defines and protects a unique coverage area as well as a location within the radio frequency spectrum. Therefore, like real estate, the license has value simply as an investment property, even if the business occupying that property is not viable.

It is my opinion that much of the media concentration is not motivated by a desire or need to compete with technological or marketplace innovations, but rather through a desire to speculate, and perhaps profit, on the future value of "real estate." As more broadcast properties are concentrated in the hands of a single group of investors or a publicly held company, the aggregate value of the real estate increases. Investment in the media consolidation occurs simply because the value of this finite resource is likely to increase over time.

As in the case of real estate, it is often desirable to limit any costs associated with the property while it is accruing in value. Such costs are usually associated with the production of a quality broadcast product and the maintenance of reasonable technical standards.

In the past, Congress and the Commission recognized that this factor resulted in the degradation of broadcast products and community service. Limits had been placed on the frequency with which an investor could transfer a broadcast property. In recent years, these limitations have been removed resulting in "trafficking" in broadcast station licenses. Further deregulation has allowed consolidation of properties and even greater speculation.

Media Consolidation is a Threat to Balanced Political Coverage

During the 1930s, Powell Crosley, Jr. was licensed to operate a super-power station capable of dominating the broadcast marketplace, as it then existed. Evidence soon emerged that Mr. Crosley was dictating policy to news personnel in an effort to insure that his personal viewpoints were favored. The Commission soon ended its experiments with such authorizations in order to insure that no single person or business entity could control public access to news and information.

While it is true that the electronic media is more technologically diverse today than at any time in the past, the fact remains that broadcast media maintains considerable power to shape ideas and values within our society. Even the Internet, with its unprecedented growth, lacks the ability of broadcast media to encourage consensus and the convergence of ideas.

Media concentration places unprecedented power in the hands of the few. These individuals will not only have the ability to influence political debate, but also to shape the individual values of our children through the control of popular culture and entertainment. While the extent of the ability of popular culture and entertainment to shape individual values is debatable, few would argue with the suggestion that its influence is significant. The current lack of stewardship and social responsibility on the part of mass media should be obvious to the thinking person. Does the existing track record justify increased trust and confidence?

We Are at a Crossroads

If Congress allows the Commission to authorize greater media concentration, we will be taking one more step away from the tradition of viewing radio frequency spectrum as an asset to be managed in the public interest on behalf of the American people. We have already set a dangerous precedent by auctioning spectrum to the highest bidder, an action which, by the way, is a significant departure from a nearly 75 year history of spectrum management.

Unlike manufacturing or service industries, most of which can be largely regulated by the market place, broadcast media investors are given the privilege to serve the community while engaged in a useful business enterprise. Congress must insure that public resources are utilized in a manner that benefits the Nation as a whole, while allowing shareholders to maintain a reasonable margin of profit. Any attempt to compare broadcast media with other business activity is, by definition, incorrect. No other business has similar access to a resource traditionally viewed as public property.

Further media concentration will result in additional inequalities in the market place and will serve only to silence the few local voices left within the electronic media. The pressures on locally owned broadcast stations and those employed by them will ultimately result in business failure and the need for local investors to sell-out at whatever price they can obtain.

There is not substitute for an effective free press in the form of diverse, locally owned broadcast media. Media concentration will only result in cultural narrow-mindedness, a lack of economic diversity, and a dangerous consolidation of political and cultural power in the hands of a few. It is my sincere hope that Congress will take whatever steps are necessary to encourage true diversity in the broadcast marketplace.