FEDERAL COMMUNICATIONS COMMISSION

In re:)
)
FCC EN BANC)
LOCAL BROADCAST OWNERSHIP)

Pages: 1 through 130

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Date: February 12, 1999

Place: Washington, D.C.

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Before the
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Commission Meeting Room
TWC-305
The Portals
445 Twelfth Street, S.W.
Washington, D.C.

Friday,
February 12, 1999

The hearing commenced, pursuant to Notice, at 9:20 a.m., before the Commissioners of the United States Federal Communications Commission, William E. Kennard, Chairman, presiding.

APPEARANCES:

<u>On Behalf of the FCC:</u>

WILLIAM E. KENNARD, CHAIRMAN
MICHAEL K. POWELL, COMMISSIONER
SUSAN NESS, COMMISSIONER

HAROLD FURCHGOTT-ROTH, COMMISSIONER
GLORIA TRISTANI, COMMISSIONER

Panel Members:

BILL BAKER
WNET-TV, Channel 13, New York

APPEARANCES (Continued):

Panel Members (Continued):

GREG SIDAK
American Enterprise Institute

OWEN FISS
Professor, Yale

KENT MIKKELSEN
Economist Inc.

DEAN ALGER
Public Affairs Consultant

VICTOR MILLER
Bears Stearns

LAWRENCE K. GROSSMAN
Chairman, Connecticut Board Public Programming
Strategic Planning Committee

JEFF MARCUS
President/CEO, Chancellor Media

ALAN FRANK
Post Newsweek

ROYCE YUDKOFF
Managing Partner, Abry Partners

STEVIE WONDER (MORRIS)
Owner, KLJH

KAREN SLADE

MIKE McCARTHY
Executive Vice President/General Counsel
Belo Corporation

ANDY SCHWARTZMAN
MAP

P R O C E E D I N G S

9:20 a.m.

CHAIRMAN KENNARD: Good morning. Could we please come to order? Good morning, and welcome to today's en banc hearing on local television ownership. We are delighted to have such a distinguished group of panelists with us today. And I welcome you all and thank you for making time to be here with us today.

We have a lot to accomplish today. We have a very packed agenda, two panels. And I want us to get started so that we can adjourn by noon.

The topic of today's hearing is the Commission's local television ownership rules. Today, we're gathered to address the TV duopoly rule, the radio-television cross-ownership rule -- also known as the one-to-a-market rule. And we're also going to hear about television local marketing agreements, also known as LMAs.

Now, in reviewing our broadcast ownership rules, I believe that we should be guided by two important principles. First, the bedrock obligation to promote diversity over the airwaves; and second, to ensure that we have a robust, competitive broadcast industry.

These twin goals, diversity and competition, are in my view the core components of the Commission's public interest mandate and they have served as a foundation for the work of this Commission for decades.

Now, although much has changed over the past decades, the centrality of these goals to our policymaking and to our country have not. Despite the growth of cable, DBS, and other video competitors, broadcast television continues to serve as the primary source of news and information for most Americans today. It's a vital component of our society, one that has a profound effect on the vibrancy of public debate in our society and fundamentally the success of our democracy.

We also recognize that much is changing in the marketplace. The world is going digital. Cable network programming has gained in popularity and is growing. The internet has burst on the scene, presenting Americans with a whole array of new information news.

And as we approach this changing landscape, it is important that this Commission keep up with changes in the marketplace, but never losing sight of the foundations of diversity, a basic tenet of our national policy, as the Supreme Court has written. We must have the widest possible dissemination of information from diverse sources. The Supreme Court has said that this is essential to the welfare of the public.

So, finding the appropriate balance between competition and diversity is always difficult. And I believe that considering these rules will be among the most important and difficult public policy decisions that this Commission makes.

They force us to answer some very fundamental questions, like: how do we preserve diversity and localism while ensuring that broadcasters have flexibility to compete and to move into the digital age; how do we make sure that all Americans have opportunities to participate in this marketplace, particularly small businesses, minority companies, companies owned by women.

But at the end of the day, what is at stake here is the preservation of a robust system of free over-the-air broadcasting in which all Americans have opportunities to participate, not only as viewers and listeners, but also as entrepreneurs and participants.

Well, we have assembled a -- a very distinguished group of panelists with diverse points of view to shed light on these topics. I will ask first the Commissioners -- I will invite them to give a brief opening statement and then we'll go to our panelists. After that, we'll have some brief period for discussion and question and answer among the Commissioners and the panelists.

The first panel here is composed of representatives from academia and Wall Street, as well as some other people who have informed views on these topics. We will then have a second panel of speakers who will represent the broadcast industry and also representatives from public interest organizations who have been following these issues for many years.

The only thing I ask is that the panelists be brief. We have a very tight schedule and a lot of people to hear from. So we're going to ask that each panelist limit yourself to five minutes to present your views.

And we have a very able timekeeper here, our secretary, Magalie Salas. She is going to give you notice at the one minute mark. And I will apologize in advance if I very rudely interrupt you in mid-sentence. But I'm afraid that that's the only way we're going to get through this on time today.

So without further ado, I will ask Commissioner Ness if she has any opening comments.

COMMISSIONER NESS: Thank you, Mr. Chairman. But I can't imagine that you have a rude bone in your body.

I'm very pleased that we're holding this en banc today. It's a discussion that's long overdue. Structurally you commented, Mr. Chairman, about diversity and competition as being the basic tenets of our broadcast system.

Structurally, our system of broadcast ownership was founded on two other concepts, private ownership and localism. Broadcasters are stewards of the airwaves. They receive highly coveted licenses to use a portion of the radio spectrum for free in exchange for serving the public. And they've served us well.

And we license local stations, not national networks, again, to ensure that our communities are well served. The vast majority of Americans get their news and information from broadcast stations - be it received over the air or via cable. Free over-the-air broadcast is a service that's ubiquitous, that can be received anytime, anyplace, without going through a gatekeeper or being tethered.

Free over-the-air broadcast, when ownership is widely held, is a vital underpinning of our democratic society. As the Chairman noted, the Supreme Court opined that the First Amendment itself rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. So I have always been a strong supporter of the concepts of free over-the-air broadcasting, where it's been widely held.

Now, the ownership proceedings that have prompted this hearing were underway when I first joined the FCC in 1994. And there have been enormous changes in the media landscape since that time. We're getting our operations here underway.

There was the Telecommunications Act of 1996, which set the stage for significant consolidation of ownership, especially in radio. And instead of just three television networks when I joined the Commission, we now have seven.

There is now significant presence of DBS, which was just being launched a few years ago. There is continued growth of cable and cable networks.

We have eliminated the financial interest in syndication and prime-time access rules since that time.

And digital television, which was once a dream, has now been launched, with every television licensee being loaned a second six-megahertz channel to effectuate a smooth transition to digital and with great flexibility to provide new and exciting services for the consumer with new revenue streams.

And then there is the explosive growth of the internet which, among other things, permits people to receive broadcast programming from around the globe.

What is the impact of all of these changes on the delivery of free over-the-air television to the American consumer? How do they affect government's role? What are the public policy goals we're trying to achieve? And how are these goals changed, if at all, in light of the other developments that I just mentioned?

Today's hearing gives us an opportunity to explore these important questions. And I look forward with great enthusiasm to the ensuing discussion. Thank you, Mr. Chairman.

CHAIRMAN KENNARD: Thank you, Commissioner. Commissioner Powell.

COMMISSIONER POWELL: Mr. Chairman, I'll reserve my comments to the questioning in the interest of time.

CHAIRMAN KENNARD: Thank you. Commissioner Furchgott-Roth.

COMMISSIONER FURCHGOTT-ROTH: Thank you, Mr. Chairman. I would like to thank you for holding this hearing. I would like to welcome our guests who have taken a great deal of time out of their busy days both to come here and to prepare their testimony. And I think all of us look forward to speedy action on resolving these issues and ultimately the repeal or the relaxation of our ownership rules.

I think that's the clear intent of Congress, as demonstrated in a letter that we received yesterday, which I would request, Mr. Chairman, can be entered into the record. The economic basis for the continuation of many of these rules is quite dubious. The information and entertainment markets in this country are -- have become just a continuum of differentiated product markets.

There have been an explosion of sources, as Commissioner Ness has -- has just described. Our own video competition report issued just a couple of months ago describes enormous expansion of sources of multi-channel video programming, which is only one small facet of both the video industry and the information and entertainment industry.

Antitrust concerns are real, but they are addressed by other federal agencies. And I think we are left with a puzzling question which is why we continue to apply a much more stringent and punishing set of rules to one segment of this differentiated product market and -- and not to others.

I look forward to the comments from the panelists today. And I'm sure we're all going to learn a lot. Thank you.

CHAIRMAN KENNARD: Thank you, Commissioner. Commissioner Tristani.

COMMISSIONER TRISTANI: Thank you, Mr. Chairman. I want to mention three concerns that I hope the panelists will address this morning. These don't deal with the nuts and bolts of our local ownership rules or the grandfathering issues that have been in the press, but with the underlying basis for our rules.

It's these fundamental issues that will determine what kind of local ownership rules are necessary. First, is broadcasting just another business like making widgets or toasters, or is it still more than a business? That is, is there still something special about broadcasting that warrants special treatment by the Government, whether it's special benefits like must-carry or special restrictions like the ownership rules we're discussing today?

I've always believed that free over-the-air broadcasting is special and that it plays a unique and important role in our society, that warrants special treatment. I would like to hear from both sides of that issue, from those who agree and from those who believe that the explosion of new media, like the internet and cable, means that whatever unique role broadcasting used to play is over and that the era of special treatment, both good and bad, ought to end.

My second question is, what is it about free broadcasting that we should preserve? Is it whatever entertainment advertisers are willing to pay for or is it something more than that? The benefit we are trying to preserve will shape the kind of ownership rules that make sense.

In my mind, the primary benefit worth preserving is the flow of diverse viewpoints on the issues of public importance. There is nothing more crucial to democracy than a full and fair debate of the issues. And broadcasting is still the place most people go to become informed.

This goals requires more separately owned stations in town than, for instance, if we all were concerned about was -- all that we were concerned about was making sure that people had access to local weather and emergency information. Again, I would like to hear from those who agree and from those who believe that our ownership rules ought to be tailored to a different goal.

Third, I would like to hear about the effect of consolidation on the broadcasting business. Are bigger broadcasters able to do a better job of informing the public or does consolidation simply lead to homogenized viewpoints and a bottom-line mentality that degrades the product?

I look at the rampant consolidation in the radio business over the past few years with its outsourcing of news, national play lists, and distant owners, and frankly I'm concerned. I'm even more concerned that radio consolidation is not nearly over. I hear rumblings about the possibility of one company controlling over 900 radio stations. And I fear for the public interest.

I wouldn't want to see television broadcasting head down that road. Some public goods may not be valued on Wall Street, but they are priceless on Main Street. I look forward to your comments.

CHAIRMAN KENNARD: Thank you, Commissioner. We'll begin with our first panelist, Mr. Baker from WNET-TV. And I'll ask Mr. Baker and all the panelists to give a brief introduction of themselves and their affiliation. Thank you.

MR. BAKER: Thank you very much, Mr. Chairman and Commissioners. I'm Bill Baker. I'm president of WNET-TV, although I'm an author of the book -- co-author of the book Down the Tube, and a HAM radio operator, W1BKR, former -- and former president of Westinghouse Television and chairman of Westinghouse's cable programming businesses.

I'm going to read quickly and -- and if I get cutoff, my entire remarks I've made available. So I'm going to try to maybe do a digested version.

This is an issue of profound importance. Indeed, it goes right to the heart of our way of life. Democracy by definition depends on the free and uninhibited expression of a range of ideas, opinions, and voices.

Since most Americans still get most of their news and information via free over-the-air television, it's imperative to the health and welfare of the American people that we maintain an unfettered marketplace of ideas in that medium. Accordingly, when we -- when conditions conspire to interfere with or impede such expression, our democratic system is notably weakened.

Since its earliest days, American broadcasting has had to balance its dependence on the profit motive with its obligations to the public interest standard to which Congress has never wavered. These two forces have been locked in a dynamic tug of war that has driven the development of radio and television and thrust it into the center of American life.

In my thirty years plus in broadcasting, I have had the privilege of heading up a major commercial television group and presiding over one of America's foremost public television stations. Through that professional experience and in researching the book Down the Tube, I've come to respect a healthy mix of marketplace incentives and regulation in the public interest.

But today I fear that you are about to let private interests tip the scales too far in their favor. All around us, we see evidence that when corporate balance sheets come to dominate a media concern, the shareholders garner the profits at the expense of viewers looking for substance.

A recent survey commissioned by the Benton Foundation and the Project on Media Ownership discovered that 80 percent of all those polled were in favor of more educational programming for children and more local programming. Yet as we all know, it took Congress and the FCC to mandate that broadcasters provide just three hours of educational programming for children per week.

Unregulated, programmers found no incentive to provide families with even a meager ration of educational fare. As for local programming, broadcasters supporting the modification and/or the elimination of cross-ownership and duopoly rules propose that cost savings they will enjoy from operating co-located facilities in a single market will allow them to compete more effectively. But at what cost?

Two apparently competing news programs emanating from a single newsroom at two different stations certainly do not reflect the vigorous marketplace of ideas from the diverse and antagonistic sources that the Supreme Court deemed essential to the public welfare.

Moreover, there is no assurance that a single owner of multiple outlets counter-programming itself will actually provide more meaningful service to viewers outside the mainstream demographic sectors, especially in cases where corporate owners' ties to the communities are minimal and local management's measure of success is the short-term bottom line.

Consolidation in radio has not resulted in any diversity that I can discern. Moreover, with the general easing of ownership limitations and the lifting of the three-year anti-trafficking rule, the Commission has allowed radio stations to be turned into little more than commodities whose sky-rocketing market values must of necessity restrict the possibility of ownership to a select few.

Arguing that consolidation will not harm the marketplace of ideas, industry leaders insist that stations will serve the public, no matter who owns them. But can we seriously suggest that Fox Broadcasting Service is not influenced by the views of Rupert Murdoch? Is there anyone among us who would assert that the combined CBS-Westinghouse view of serving the public interest is the same as the distinct and competitive views of those companies when they were run by those two old adversaries, Bill Bailey and Don McGannon?

As an industry veteran who has been head of a multi-group conglomerate, take it from me: ownership matters. Yes, the economy has changed and broadcasting must endure increased competition from cable and other new media. That does not justify every scheme for reducing competition within the medium.

We must remember that broadcasters have a special position in our society. As trustees of a prized national resource, they hold an obligation to look beyond the bottom line. To aim for the bottom line is to aim too low.

We -- were commercial broadcasters in financial peril, perhaps their arguments would be more convincing. And my comments would take on a different tone. But the fact is that broadcasting remains a highly lucrative business.

Unfortunately, it's local diversity that could suffer. In my home town of Cleveland, Ohio, where only two of the 20 assigned radio stations were not locally owned when I was living there, those owners were active community leaders. Today there is only one such owner. Moreover, 14 of the stations are owned by three companies with minimal local ties.

CHAIRMAN KENNARD: Excuse me, Mr. Baker. Please wrap up.

MR. BAKER: Okay. Before you act, I urge you to put the issue on the public docket and air them fully. In Down the Tube, we discuss the many unintended consequences of past FCC deregulation. Be sure that the decisions you make today will not become infamous chapters in a book yet to be written.

Whatever has been said by influential Congress members, however the definition of public interest may change over time, Congress has not removed the standard from the Communications Act. And this Commission must define its substance. Today, the developing history of American broadcasting has its spotlight on each one of you. Consider what you do and what you undo.

CHAIRMAN KENNARD: Thank you, Mr. Baker. Thank you very much. Mr. Sidak.

MR. SIDAK: I'm Greg Sidak. I'm a scholar at the American Enterprise Institute here in Washington. For more than a decade, I've advocated in articles and books and testimony that the Commission eliminate its various broadcast ownership rules and instead rely on antitrust principles to oversee mergers and other transactions in this market.

I think that the tool of antitrust enforcement is a more subtle and finely calibrated policy instrument for addressing both competition in the marketplace for advertising -- which is what broadcasters sell -- and also competition in the marketplace of ideas.

I think the good news is that both on the question of diversity of viewpoints and economic competition in the mass media, there -- there is a healthy stake today. And that raises a question then of what benefit the ownership rules create on top of that already existing healthy state of competition and diversity of viewpoints.

My view is -- is that they probably produce no benefit on the margin. And at the same time, they may produce some significant costs. And in my view, those costs therefore likely exceed the benefits, which I believe to be nonexistent.

What are the costs? Well, I think they are of three kinds. One is the prevention of the achievement of economies of scale or scope in the structuring of broadcast businesses. And that is a loss of economic efficiency, which ultimately is not passed along to consumers.

Another byproduct of that, however, speaks directly to the diversity question. So I think a second cost is that if the efficient structure of the broadcasting industry is truncated and if broadcasters do not attain the scale and scope that they otherwise would in the absence of the rules, they may be denied the opportunity to operate at the minimum size that is necessary to support investment in origination of local programming.

So that -- that could actually be a cost of the current regime that -- that would be counterproductive from the perspective of enhancing diversity of viewpoints.

The third kind of cost is something that is a little more complicated to describe, I think, in any detail. And I believe that, for the record, there was submitted comments that I filed last year on behalf of the Newspaper Association of America, in which I elaborate on a theory of -- of how the prohibition on cross-ownership may actually inhibit freedom of speech by broadcasters by denying them the achievement of economies of scale and scope.

Essentially, this is a situation where the degree of asset specificity that a broadcaster has to make in its station becomes subject to regulatory risk. And without going into the great details of this - it's described at length in my -- in my testimony last year.

It's my belief that there may actually be a content result of structural regulation. And this harkens back to a concern that I had when I was at the Commission more than ten years ago. At the time, one cross-ownership case was in the D.C. Circuit. That involved newspaper TV, not broadcasting. But the D.C. Circuit in that case made the point that even ostensibly structural rules can have content results that are antithetical to freedom of speech.

So, just to conclude, I believe that the benefits of the rules are -- are negligible or nonexistent. The costs are non-trivial, including cost to diversity and freedom of expression.

CHAIRMAN KENNARD: Thank you, Mr. Sidak. Our next witness is

Professor Owen Fiss from the fine institution of Yale Law School. And I would note from the record that my wife still talks about how much she enjoyed your injunctions class, Professor Fiss.

PROFESSOR FISS: In the 1992 Cable Act, Congress imposed an obligation on cable operators to carry programs of over-the-air broadcasters. Congress feared that without this must-carry obligation, the operators would not carry these programs. This would further weaken the broadcast industry and result in a situation in which many homes in the United States would have no television at all.

Now, like the rules that are specifically before you today, the duopoly and cross-ownership rules, the must-carry regulations impose burdens and costs on the operators. Specifically, the freedom of operators to choose their mix of programs was restrained and the interest of the potential programmers and their viewers was constrained as well. And these interferences had both a First Amendment and an economic significance.

Yet in the 1997 decision in Turner Broadcasting, the Supreme Court upheld those regulations. As the Court saw it in that case, the issue was not whether or not the interest of these media organizations was to be burdened. Almost every regulation of a media entity creates burdens. And they have a First Amendment effect.

The question was whether or not those burdens could be justified by the overriding purposes served by the legislation.

Now, in Turner Broadcasting, the Supreme Court sustained these must-carry regulations on the idea that absent this regulation, we stood in a situation where the 40 percent of American homes that were not served by cable would be without any television at all, and that this purpose was sufficient to justify the intervention of Congress.

Now, there was a crucial distinction in the majority opinions. And I think it's important to underscore this distinction as a way of casting light on the issues that are before you.

One faction of the majority was represented by Justice Kennedy. And he analyzed this problem largely in antitrust terms. Noting the vertical integration between cable operators and cable programmers, he feared that the cable operators would engage in predatory practices and as a result of these predatory practices, destroy the broadcasting industry.

Now, in contrast to Justice Kennedy, Justice Breyer, also essential for the majority in Turner Broadcasting, disavowed any reliance on antitrust. For him -- for him, the crucial vector of analysis was the First Amendment. He, too, assumed that the decision of the programmers to drop broadcasting may have an extraordinarily unfortunate consequence for these homes in America that depended on free over-the-air broadcasting.

But he was prepared to assume that that decision might be based purely on economic considerations, specifically the maximizing of profits. And yet he insisted that even if the decision is based purely on economic, rational grounds, that there was an important purpose to be served by the regulation, and that this purpose was the furtherance of -- of diversity, as has been repeated several times - the widest possible dissemination of information from diverse and antagonistic sources.

The issue --

CHAIRMAN KENNARD: Professor Fiss, please sum up.

PROFESSOR FISS: I will. The issue -- the issue in that case was not simply one of -- if I could evoke the image of the Commissioner's statement -- the issue in that case was not simply one of balancing efficiency and diversity. I believe that the issue in that case was one of setting priorities.

The Chairman said that diversity is a bedrock principle. But I think what Turner Broadcasting teaches is that it is a bedrock principle that ultimately rests on the Constitution. Efficiency is a means of achieving that bedrock principle. But it is only a means. It should never, I think, govern the end, which is freedom.

CHAIRMAN KENNARD: Thank you, Professor. Mr. Mikkelsen.

MR. MIKKELSEN: I am Kent Mikkelsen with Economist Incorporated here in Washington, D.C. I am pleased to have an opportunity to present an economist's perspective on the station ownership issues before the Commission today.

There is a general presumption among economists and in society as a whole that the self-interested actions of individuals and firms in a free market will lead to socially desirable outcomes. There are a few recognized exceptions to this presumption.

One such exception is in the area of competition. Economic theory teaches that competing firms have an incentive to combine together, thereby reducing competition and raising their profits at the expense of consumers. The antitrust laws are designed to prevent such concentration from occurring.

They are justified by the clear potential for what we call the market failure. The antitrust agencies have developed regularly widely-accepted procedures for determining whether or not a particular merger or joint ownership is likely to reduce competition significantly.

Note that the agencies do not attempt to maximize the number of competitors. Mergers and joint ownership can yield benefits to consumers and also are an aspect of economic freedom. For these reasons, only mergers that are judged likely to have a significant impact on competition should be opposed.

Competition analysis is best done on a case-by-case basis. However, I would like to share some general conclusions which I think would be verified by case-by-case analysis.

First, suppose that the TV duopoly rule were relaxed. Assume that TV stations do not compete significantly with other media and so form a separate market in each broadcast area. There are about ninety DMAs served by four or fewer commercial TV stations where there may be little scope for joint ownership. However, there are over 40 DMAs with eight or more commercial stations in which some joint ownership of TV stations could probably be permitted without raising competitive concerns.

To take another case, suppose that TV stations and radio stations are considered to be in the same market. In this case, cross-ownership of TV stations and radio stations could raise competitive concerns in some markets. But there is no justification for an arbitrary cap on the number of cross-owned stations. Considerable cross-ownership could occur without raising significant antitrust -- or competitive concerns.

A case-by-case analysis could show that joint ownership should be permitted in some instances even if the concentration level on its face would indicate a possible competitive problem. For instance, if a station is dark or for some reason does not contribute significantly to competition, joint ownership is probably not anti-competitive.

Joint ownership or operation can also enable stations to offer superior services that would not be economical for either station to offer by itself. Such gains may outweigh competitive concerns.

By the standards of competition analysis, the TV duopoly and radio-TV cross-ownership restrictions now in place are not needed to preserve competition. I believe the Commission should relax these restrictions and preserve competition through antitrust analysis in cooperation with the Department of Justice.

Competition and diversity are offered as the two bases for the Commission's ownership rules. I find it instructive to contrast the two. First, competition policy is justified by a clearly identified market failure. I don't know that anyone has shown that there was a corresponding market failure that leads to insufficient level of diversity.

Second, unlike with competition, there appears to be no sound theoretical basis for linking deconcentrated station ownership to diversity. Counting voices seems to imply that persons or groups without a broadcast station don't have a voice. Clearly there are numerous groups in society that find many ways of persuasively expressing their views without owning a broadcast station.

Even if we knew how to increase diversity through ownership rules, it would be a mistake in my view to take what I call an absolutist approach to diversity. Following an absolutist approach, if diversity is good, then a policy that leads to more diversity must be preferred to any policy that yields less diversity.

Such an approach is not the basis for sound decisionmaking. If I may offer a comparison, we all value safety. And limiting highway speeds to 25 miles per hour would likely increase safety. But we don't adopt such a speed limit because the cost in inefficiency and loss of personal freedom is judged to be too high.

Similar balancing is needed in the pursuit of diversity or any other social goal.

In conclusion, competition in broadcasting can be preserved using antitrust standards without the need for one-size-fits-all restrictions like the duopoly and one-to-a-market rules. If, in selected markets, ownership concentration were allowed to rise to somewhat higher levels consistent with competition standards, I see no reason to think that the associated amount of diversity provided by broadcast stations and other sources would be insufficient.

No separate ownership standard based on diversity is warranted.

CHAIRMAN KENNARD: Thank you very much. Mr. Alger.

MR. ALGER: Yes. I'm a -- trained as a political scientist. I'm author of a book called Mega Media, that tries to deal with these broader patterns, and a public affairs consultant.

In my written comments, I noted conceptual foundations of the First Amendment and the public trust responsibilities of the media. We also need to be aware of broad patterns in the media which have broad national and local consequences. One broad pattern in media and society that is vital to keep in mind is the striking trend in public opinion on the media, and its implications. Details in my written statement and more so in my book.

I urge the Commission to be very aware of that state of public mind, its connection with the aggregate media concentration trend, and the impact on news and public affairs material, and ultimately the implications for democracy, as the Columbia Law School dean discussed.

On the role and purpose of the free over-the-air broadcasting system-and along with how to evaluate any genuine substitutes provided by cable TV and other outlets, democratic theory and judicial opinion make clear that the most important element of the prime mass communication system, TV -- broadcast TV, is provision of ample news and public affairs coverage, and exchanges of ideas of a truly diverse nature.

Most crucial is genuine, independent, investigative journalism. That's the central mechanism in this society to hold government and other officials accountable. And for local TV and radio, local and state news and opinion are the central and most important concern.

I see little of such significant local news material in any TV mode outside traditional VHF stations. So for the most important First Amendment element of calculating total separate voices or sources in a local media market, I see little justification for claiming there are many other full voices on cable, et cetera, and little justification for further loosening ownership rules.

Now, the further notices-the Commission suggests that the broadcast industry is in difficult financial conditions, and hence stations in a given market might need the help of common ownership for economic efficiencies. And there are claims that such group ownership will provide significantly enhanced programmatic offerings, including new or enhanced news and public affairs material.

These are used as justifications for further loosening the ownership rules to allow duopolies of various sorts, et cetera. And with enhanced offerings, plus a claim about editorializing and autonomy in group-owned stations, it is suggested that group ownership wouldn't really reduce the separate voices. Well, I see several sorts of evidence that raise doubts about those claims.

First -- and forgive my frankness on a few of these points -- from the conglomerates owning the networks and their local stations to various other group owners, in my book, I report much evidence that group owners especially and increasingly treat their commitment to -- treat their broadcast stations as commodities and have less and less commitment to serious news and public affairs coverage. I have many testimonials on this from the top ranks on down to field, reporters-among other evidence.

Second, and contradicting the talk of broadcast stations' problematic economics, are the profit margins of most TV stations. At least for anything resembling a decent size market, TV station profit margins range from 20 percent up to Cap. City's ABC's 55 percent. These are profit margins that frankly would make the average industrial manager drool uncontrollably.

And it is goop and conglomerate owners who are putting the greatest pressure on their stations to meet higher and higher profit levels. For example, CBS, that now owns WCCO-TV in my home territory of Minneapolis, demands that CCO raise its profit level from a healthy, very healthy 27 percent up to 40 percent. Where is that money coming from? That resource squeeze must come out of the primary, locally produced programming local news. And those resources are sent out of the community to a distant corporate headquarters.

Third, the huge media-buying binge has resulted in substantial -- or huge debt incurred by many group owners. That puts a further squeeze on station resources. Fourth, and most troubling, as I abundantly document and talk, chapter six in Mega Media, content analysis shows a -- an increasing deterioration in the amount of government and public affairs news, especially state and local news, and the quality of news in general.

And again, pressures for cheapening the news are especially great in group and conglomerate owners, with certain exceptions like A.H. Belo.

Fourth, I worry about the loss of a sense of stewardship for the public trust in the station, a sense of the -- a loss of the sense of news operation as central to the identity of the media organization, especially in the case of industrial media conglomerates, and increasingly, a loss of an independent -- excuse me, an intimate understanding of and profound commitment to the local community. Senator Dorgan has spoken about that.

CHAIRMAN KENNARD: I'll ask you to wrap up, Mr. Alger.

MR. ALGER: Okay. Just one moment here. Further, the frenzy of buying and empire building has bid prices of TV, radio stations up into the stratosphere. This has worsened debt levels. Increasingly, this bids out of the market small business, which I document in the book. And importantly, that includes minorities, as broadcasting and cable has related in October.

I would love to be able to talk about some other things, including the concentration effect on ads, and the more complete view of media group and conglomerate control of media across the board, across media types, as well as conglomerate effects on competition in local areas. Thank you.

CHAIRMAN KENNARD: Thank you. Mr. Miller.

MR. MILLER: Good morning. I'm an equity analyst for Bear Stearns and I've been so since June of 1996. And I cover the broadcast TV and radio business. Before that, I was a commercial banker with the Chase Manhattan Bank for eight years in the media and telecommunications group.

Before stating our position on local ownership rules, I would like to discuss the current operating and financial environment for television broadcasters. To argue the sense of the operating environment confronting local television broadcasters, I would like to state some basic facts to set the stage.

In 1980, there were three broadcast networks; now there are seven. In 1980, there were 734 commercial television stations on the air and now there are 1,197. In 1980, there were ten major pay and basic cable networks; now there are over 60. In 1980, the average home had ten viewing options available to it. In 1980, that number increased to over 50.

Clearly, the video distribution business has become progressively more competitive during the last twenty years. And we believe the main beneficiary of these changes has been the viewer. There are more than -- there are 60 percent more television stations on the air in local markets and 400 percent more viewing options on a national level. There is no shortage of distinct points of view.

In 1998, we wrote a broadcast TV piece called, "Seize and Control Their Destiny", in which we identified four operating challenges confronting the television business. First, the video competition is creating fragmenting viewership, which is adversely impacting the average station's profitability.

Second, local stations must contend with cable networks which enjoy a dual advertising subscription revenue stream, national reach, and content and distribution benefits of being owned by larger entertainment companies. It is being progressively --

becoming progressively more difficult for a single-channel local market broadcaster to compete for advertising, programming, viewers, and talent against these larger, multi-channel operators.

Third, local stations are facing strained network affiliate relations. Networks, in an effort to become more profitable, would like to re-purpose programming and may look to reduce the 400 to 600 million in network compensations they currently pay affiliates.

Fourth, growth in national advertising, which accounts for up to 50 percent of a local station's revenue stream is -- is anemic, driven by intense volume and competition from existing and emerging media.

It is obvious that local, free, over-the-air broadcast TV business is becoming progressively more difficult. We believe in order to survive in this environment-we believe an operator should have a) a broad distribution base, b) the ability to deliver large audiences, c) geographic affiliation and revenue diversity among its properties, and d) multi-media presence in markets if possible.

It may come as no surprise that the factors I've cited require scale and that 90 companies have exited the TV business since 1991 because they lacked it. Obviously, prospects are bleaker for unaffiliated stations and newer, undeveloped entrants.

In terms of the financial markets, capital is the lifeblood of any business. In order to have scale, industry consolidators must have acquisition capacity, which in turn means they must have debt capacity, a valuable stock currency, or both. However, consolidators of television have actually paid a price relative to consolidators of other media, in general.

In fact, since the passage of the Telecommunications Act of '96, the S&P, our Bear Stearns cable and radio stock indexes have outpaced the stock -- the TV stock index by 18 percent, 102 percent, and 207 percent, respectively. TV companies' significant underperformance reflects the cautious view of the market of this business.

As an equity analyst, I meet with and talk to hundreds of portfolio managers and analysts and mutual funds who actively purchase broadcast stocks and who each influence the investment of billions of dollars.

In general, I believe that portfolio managers and analysts are agnostics. They are willing to own the securities of any company, broadcast or not, that exhibits predictable and sustainable cash flow and avoid those that do not.

In this context, I believe that any action the Commission takes to improve the prospects of over-the-air television will reduce risks that confront the increased sustainability of cash flow and increased capital flow to the industry. We support relaxation of local ownership rules because we believe that it simultaneously creates a stronger TV business and more viewership choices.

First, we support the grandfathering of existing television local marketing agreements and support the development of future LMAs. We believe LMAs encourage more viewership choices because a stronger player can subsidize the launch, operating losses, and development of another station that would arguably lack the financial capacity to do so in a market that is probably too small to support the new station.

With economic support, LMA stations have been able to add new voices to the market, add higher quality programming, add news programming, and become a viable affiliate for the emerging networks. Eighty percent of all LMAs support the new WB and UPN networks.

Second, we believe the Commission should expand the duopoly concept to permit out-of-market DMA duopoly in general. We believe television markets and economies contained within a particular DMA are distinct.

Third, we think the Commission should consider duopoly. Large markets typically have the most viewership choices and have the most undeveloped stations. In smaller markets, we see no reason to permit duopolies which put a station on the air or to strengthen the position of weaker players.

Regarding the one-to-a-market rule, we take guidance provided by the Department of Justice in its conclusion that radio and television are not substitutes from an advertiser's point of view. If radio is a distinct marketplace in its own right, then the one-to-a-market rule is moot in terms of economic competition.

Lastly --

CHAIRMAN KENNARD: Please wrap up, Mr. Miller.

MR. MILLER: Yes, sure.

CHAIRMAN KENNARD: Thank you.

MR. MILLER: Lastly, we encourage the FCC not to force divestitures of properties as part of a ruling on LMAs and the one-to-a-market rule. We believe this would cause a sell-off in the stocks of these companies affected and could impact access to capital. Thank you.

CHAIRMAN KENNARD: Thank you very much. Mr. Grossman.

MR. GROSSMAN: Thank you, Mr. Chairman. The material that I received from the Commission described this panel's members as academics, legal scholars, economists, political scientists, and Wall Street observers. And in the interest of full disclosure, I should warn you that I am none of the above.

Far from being a legal scholar, I am in fact a law school drop-out, which may perhaps give me more credibility. I don't know.

Some time ago, I did serve -- occupy the Frank Stanton First Amendment Chair at the Kennedy School of Government. I was a senior fellow at Columbia. But no academic at either of those institutions considered me an academic. I was more likely an -- something of an outside practitioner or a Philistine.

I have, however, spent most of my working life in television, starting in advertising at CBS and NBC, and then at my own company, and then running NBC news and PBS. Currently, I serve on the board of Connecticut Public Broadcasting.

And for my sins, probably because I recently wrote a book called <u>The Electronic Republic</u>, I serve as chairman of the Connecticut Board Strategic Planning Committee, preparing for the digital era no mean piece of planning to go through.

But my role here this morning then is to offer you my own general perspective based only on my own diverse professional experience. And let me say right up front that in my view, you would be making a serious mistake and acting against the public interest if you decided this time to eliminate the TV station duopoly rule or the one-to-a-market rule.

Using ownership restrictions as proposed will serve only to weaken local television service. The ongoing changes in the mass media have not yet made it necessary to relax your ownership rules and risk reshaping the entire television industry for the worse.

If anything, new digital technology, such as data casting, internet access through the TV screen, and the prospects of multiplexing television stations appear to give local TV broadcasters even more opportunities to make money rather than less.

And reducing diversity of station ownership is certainly not advisable as long as your bedrock policy, as you enunciated it, Mr. Chairman, continues to be to encourage diversity of programming news sources and viewpoints.

Obviously, diversity of ownership by itself is no guarantee of producing a diversity of viewpoints. Nor does it guarantee the existence of diverse and antagonistic sources of information that, according to the Supreme Court, undergird the First Amendment.

But a policy that diminishesd diversity of ownership will certainly guarantee that future differing viewpoints will make it [sic] to the airwaves. And such a policy will guarantee the diminution of diverse sources of local news. It will guarantee the homogenizing of, antagonistic sources of ideas, and will help destroy localism.

And I urge you to conduct a careful study of radio, as Commissioner Tristani pointed out, to see the effect on local service that easing radio's local ownership rules has produced. In radio, what was once basically a locally owned media business is now virtually a national oligopoly.

Radio now offers less local service than in the past, in part because easing radio's ownership rules has brought about a predominance of distance, absentee owners more interested in financial results than in broadcast service.

The result is a sharp decline in local radio news gathering and local radio news reporting, and less attention paid to coverage of local issues.

Radio has experienced a huge rise in formulaic talk and music formats imposed by distant owners with little regard for individual community needs and interests.

And it's important to note that this sharp deterioration in radio's local service was not caused by economic hardship. Radio is now the most profitable of all the mass media, in many ways the dialing of Wall Street, in part because its programming and operating costs are so cheap.

The economies of scale that companies achieve by buying and operating scores of radio stations most often do not benefit the public, but go to increased profits and cash flow, and repay the debts incurred from radio station purchases.

The typical first step of a company that buys radio and television stations is to slash its newly acquired station's operating costs in an effort to improve the company's profit margins. And the biggest cost centers invariably targeted for budget cuts are local news reporting and local news gathering.

I write an occasional column for the Columbia Journalism Review called "In the Public Interest."And last fall, I wrote about the sad decline of radio news. Every radio news director I interviewed deplored the deterioration of local coverage and the disappearance of radio news reporting. And they blame it on companies' rush to reguire stations to cut costs.

As one said, "Radio today gives the appearance of having a multiplicity of news voices, but in reality what is coming out of these many thousands of radio channels is the product of a very few media owners."

Another complaint, that radio's multi-station owners are turning the stations under their control into a commodity rather than a service.

And you should also study, I suggest, what happened in TV markets where public-spirited, quality local broadcasters have sold their stations to larger, distant companies, a trend that will accelerate --

CHAIRMAN KENNARD: Mr. Grossman, if you will wrap it up, please.

MR. GROSSMAN: -- rapidly if you relax local ownership. Seattle, Maine -- Portland, Maine, Sacramento all fit that bill. And finally, as you know, digital technology will enable a single TV station to expand into four or five stations in the same market, compounding the local multiple ownership problem. So I urge you to hold off until it's demonstrated to be necessary to change these rules. Thank you.

CHAIRMAN KENNARD: Thank you very much, Mr. Grossman. And thank you all for those presentations. They were very, very well done. We'll have about a half hour now of questions and answers from the bench.

Because we don't have a lot of time for this, I'm going to ask my colleagues to just jump in, when the spirit moves them, with questions so that we can keep this going and hopefully have a lively discussion. And I'll start out with a couple of questions that I had.

First of all, clearly we have some pretty divergent views on this panel of how we should be evaluating this marketplace and the extent to which consolidation either promotes diversity or undermines diversity. And my colleagues and I really have to be able to come up with a framework for evaluating whether consolidation is going to enhance diversity or undermine it.

One of the things that I've learned in this job is that in talking to not only members of your industry, but really all of the industries that come before the FCC, is that there is -- there is often sort of a consistent theme in competitive markets today. And that is-companies come in and they ask that we deregulate their particular industry and regulate everybody else. And we're seeing a little bit of that in -- in this debate.

But oftentimes, when companies come before us and ask for regulatory relief or changes in our rules, they paint some fairly dire predictions about the costs of regulation, regulatory risks, the -- predictions about the demise of whole industries if we don't give them some regulatory risk. And we've heard that in this particular proceeding.

And, Mr. Miller, as someone who obviously studies the marketplace closely, you in fact made some of these predictions in your testimony-that if we don't adopt fairly significant deregulation, then the broadcast industry will suffer in the future.

I find that difficult though to reconcile with some of the analysis that I've seen of the broadcast industry today, television in particular. It's a very healthy business. And the statistics that I've seen recently show that television stations are trading at 14 times cash flow; that there is a -- there has been a 20 percent increase in television ad revenue, 1997; a 15 percent compounded increase in annual revenues in television versus 12.5 percent in the communications sector overall.

So clearly people are anticipating in the future that the television marketplace will be quite profitable, and is profitable today.

I don't dispute that there are certainly stations that are underperforming and that are in trouble-some of them, in fact, failing. And that's why we have been focusing attention in this proceeding on failing stations, and how do you deal with -- with those.

But what my question for the group of panelists is -- and I'll start with you, Mr. Miller. How do you reconcile your concern about the growth or future of the television industry with what we see today as a very, very successful and profitable industry?

MR. MILLER: No, I don't dispute the fact that we do have an industry that is healthy. But I think we have to take a forward view of the reality of the marketplace. Now, the statistics that you've quoted, for example, on the growth and the revenue in the business, I -- I don't see any level approaching 20 percent in our business.

For example, we've just gone through reporting cycle, and the average broadcaster, driven mostly by political advertising, had maybe three to four percent revenue growth on the top line. Without that political revenue, they would have actually recorded negative growth in the revenue line.

And while it's true that you're saying that -- that television stations are trading as high as 14.5 times, on -- in the normal course of events, they're not trading that high.

And in fact, we are seeing multiples, especially in the smaller markets, start to compress. And in fact, the recent Hersht Argyle transaction with Pulitzer -- they reconstituted the deal so that ultimately Hersht Argyle paid a lower multiple for a deal that they had just struck months ago.

So -- but really the focus of my comments were what do you do -- can you have -- can you have new entrants -- is that good for the business, new entrants, and -- and also encourage diversity? And my point is that there are certain television markets where, if you look back even a year or two years ago-that could not support, because of the size of the advertising pie in that market, new entrants into the marketplace, even though there were signals available to be built out.

And my major points have been that in larger markets and some of these smaller markets, there are signals that are dying to become an active member of an affiliate group, like a WB or a UPN. You wouldn't have those networks without LMAs is my --

was really my point.

I was looking at more what the reality is for the smaller players and how they become viable in this world, and is it a bad thing for a strong player to help these smaller players along? So we have a slightly different view of what -- what the revenue looks like, the multiples look like. And perhaps, you know, my comments were really more towards the weaker players in the market and how you build them into being viable entrants.

CHAIRMAN KENNARD: So it sounds like your -- what you're suggesting is that we should focus our attention on the smaller, underperforming stations that perhaps could not survive unless they were able to team up with a stronger player in the marketplace, as opposed to broader-scale, de-regulatory relief across the board.

MR. MILLER: Well, that's my view -- that's what my points were on duopoly. And for local marketing agreements, I had mentioned the fact that bringing new entrants into the marketplace, new -- new entrants and new voices into the marketplace, which is the major concern that you mentioned in your -- your opening statement. That was really the thrust of your -- your opening remarks. And I tried to answer those. That is one thing.

I think in general, the reality is that as the business progresses, that more widespread duopoly and more widespread ownership relief will be needed.

CHAIRMAN KENNARD: Thank you. Anyone else like to address that question? Mr. Baker.

MR. BAKER: Yes. First, one of the things I didn't say is that I -- I am speaking for myself and not necessarily on behalf of my institution.

CHAIRMAN KENNARD: So am I.

(Laughter.)

MR. BAKER: And I always -- I always used to think it would -- it would be fun to be an FCC commissioner. But I realize how tough all of this is. And I sit here and listen to this and I make a presentation on one side. And I listen to the other side and I see how rational and -- and logical it is. And I think, you know, "Gee, there are some very good points here." And it all comes down -- and I'm sure they are accurate, but in the micro sense.

And we have to look at the -- your job, too, is to look at the macro, to look at the broad picture. And one of my great -- and it is also unclear, it really is unclear, based on even just this simple testimony, what really is correct. And that's why I suggest we have to be very careful.

We have to go slow because if a wrong decision is made now -- and that's one of the things that we've kept finding in our research -- that a lot of bad decisions were made inadvertently. They were -- they were made -- but they were still made.

And once a bad -- a wrong decision is made, it's almost -- it's impossible to undo it. And there is a terrible damage that is done to the broader society as a whole. So my -- my vote is to go slow and be very careful. And this kind of discussion is very valuable.

CHAIRMAN KENNARD: Thank you. Mr. Grossman.

MR. GROSSMAN: Just very quickly. I think in dealing with small stations and underutilized frequencies, obviously waivers and special exceptions can be made. But I think, as Bill Baker pointed out, to recast the whole industry, in effect, for these exceptions to what is, I think, a very good rule-at this point at least, there is no need for it economically. Station prices are at an all-time high. And I think you run great risks in doing so.

CHAIRMAN KENNARD: Thank you. Any other questions from the bench?

COMMISSIONER NESS: Following up on that discussion, I believe Dean Alger testified that the cash flow multiples of many of these stations are in the forties and fifties percentile. With consolidation --

MR. ALGER: Profit margin or the -- I'm sorry. Do you mean the profit margin or the multiples?

COMMISSIONER NESS: The cash flow -- I'm sorry, the cash flow percentage, your profit margin -- cash flow margin, if you will. We've seen those multiples remaining -not only remaining fairly stable, but also increasing over the last couple of years. And we also have seen an enormous consolidation. We talked a little bit about radio, but also expansion and consolidation within television.

Can anyone comment, particularly Mr. Miller, as to whether you have seen in the deals that you have looked at, that as a result of these consolidations, that a greater percentage of revenues was dedicated toward public service programming, or did it go to pay off debt service?

I know you have a background as a commercial lender. And I'm delighted to see a commercial lender making good.

(Laughter.)

MR. MILLER: Thank you. Actually, way back when, we worked on a transaction involving some radio stations in Washington, way back when I was a Chase Senior at American. The -- the -- the question asked really is have we seen any of the -- any of this kind of -- the prosperity of the industry transform itself?

Well, I think we've seen that in two ways. First of all, the television business is, relative to a lot of other media, more regulated in terms of having mandatory children's programming -- three hours of that, having also dedicated a lot of time for public service announcements and community -- obviously, they're the link to the community.

And the way I look at it is that in the top fifty markets, the ABC, CBS, and NBC affiliates spend over $1.2 billion, just in news product alone. And what you're seeing is the local stations are actually saying, "We want more news programming."

They're putting more -- you know, you're seeing two, three hours for the typical station is now expanded to four or five hours of local news. And I think that that is a subtle way of saying that we're recommitting ourselves to the local marketplace with the prosperity of the business.

COMMISSIONER NESS: But isn't it also true that local news is extremely profitable for the local stations? That's why at least the first and second stations in the market-that drives about a third of their cash flow.

Is it not -- are you suggesting that all of the savings or a substantial portion of the savings that comes through these acquisitions are being dedicated to children's television, educational television? If that's so, I would love to see the statistics on that. I would be a big fan of that. Are you suggesting that a lot of that savings is going into airing the public service announcements?

MR. MILLER: No, all I'm saying is that when you look at mandatory -- there's going to be a rating system -- there's mandatory children's programming. They run public service announcements. There is more dedication to the local market and localism- there's a big discussion of localism.

COMMISSIONER NESS: But in each of these things have they -- has -- has all of that increased?

MR. MILLER: I believe that localism, especially in terms of local news -- providing local news and providing local content for the local community has increased. Yes, I do believe that. I've seen that -- I've seen that myself.

COMMISSIONER NESS: Does anyone else want to comment on the topic?

CHAIRMAN KENNARD: Mr. Baker.

COMMISSIONER NESS: Okay, Mr. Baker.

MR. BAKER: Yes. We -- we also have to be careful how we define some of these things. And I know the Commission can't get involved in content specifically, but we talk about local news. Sometimes local news becomes info-tainment. You know, the lead story in the newscast is the true -- the true facts behind the movie of the week kind of thing.

And so I -- and yes, there may be some public service announcements, but they are no longer mandated as far as I know. And they are also very often at two o'clock in the morning. So -- so we have to look at the specifics when we start having that kind of discussion.

MR. GROSSMAN: I think there is hard data that you can find and I think it's important that you do that in studying, as I suggest, what has happened with the radio changes. Take a look and see whether news staffs, news reporters, news budgets have increased or decreased after large purchases. Same with television stations.

And if the radio news directors that I've interviewed are to be believed, in every case where that has happened, the staff level, the news, the budget for news reporting and news gathering has been cut.

MR. MILLER: And I would say that that's just the exact opposite of the television business. We've seen the local broadcasters actually increasing their news expenses dramatically.

COMMISSIONER TRISTANI: Do you have any statistics to --

MR. MILLER: Sure.

COMMISSIONER TRISTANI: -- show us that --

MR. MILLER: Yes.

COMMISSIONER TRISTANI: -- that you could give us? And I mean specific as to station by station?

MR. GROSSMAN: After they've been purchased.

MR. MILLER: Absolutely.

COMMISSIONER TRISTANI: Particularly the news stations that are being rescued or the dormant stations because one of the things I've anecdotally heard is that, you know, some group comes and rescues a station that's dark, or what have you. And one of the first things they say is, "We're not going to be able to do local news." I don't know.

MR. MILLER: Yes. I mean, there is -- there was an extensive study done by the Association of Local Television that actually looks after all the 63 local marketing agreements that were done in the top hundred markets. And there are a number of cases --

COMMISSIONER TRISTANI: No, but I want -- I want -- I'm talking about a comprehensive not just some segments of the industry. But you're saying, "Categorically, I can tell you, Commissioners, that television stations are giving us more local news, not less." And I --

MR. MILLER: Well, I think there's more --

COMMISSIONER TRISTANI: -- I find that hard to believe.

MR. MILLER: -- there are more hours being put on the air and there is more money like the -- companies like I think you mentioned the A.H. Belo and Hersht Argyle and companies like this have realized that local news is the most important differentiating point that they have and are spending more money and more resources to try to deliver that differentiating factor to their local -- local audiences.

COMMISSIONER TRISTANI: Dr. Alger, could you address that?

MR. ALGER: Yes. Yes, what I've heard about A.H. Belo is -- is that they have realized something that I wish other group organizations would realize, that quality local news pays. But that's not the general pattern. In Mega Media, I have abundant testimony from the top ranks on down, saying quite the opposite.

Second of all, Mr. Miller mentions the -- more local news now. That didn't happen now, that didn't happen in the current environment. That happened quite some years ago that they expanded to those news hours.

And anecdotal evidence as well. You look at various stations-such as I did in just looking at the television schedule in Minneapolis-the WB network affiliate has in the traditional ten o'clock midwest late news slot-it has the Jerry Springer sleaze-a-thon rather than news shows. And I just have seen such abundant testimony that -- that I would have to disagree with my good friend here.

MR. SIDAK: Commissioner?

COMMISSIONER TRISTANI: Yes?

MR. SIDAK: The one study that I'm aware of that speaks to the question of the diversity of radio programming is one by Thomas Hazlett and David Sosa that was published in volume 26 of the Journal of Legal Studies called, "Was the Fairness Doctrine a Chilling Effect: Evidence from the Post-deregulation Radio Market."

And Dr. Hazlett and his co author -- Hazlett, of course, was a former chief economist at the FCC -- found a substantial increase from 1987 to 1995 in the diversity of radio formats. That's at least one attempt to try to globally, systematically measure the change in program diversity.

Now, you may quibble with the methodology. And I'm sure that there are other ways to approach it. But that's at least one -- one study that I would suggest you look at.

COMMISSIONER TRISTANI: Professor Fiss?

PROFESSOR FISS: I have no statistics. I don't even have anecdotes. But I would offer two cautionary comments. One -- and this maybe just reflects, or is another way of casting Mr. Baker's comment -- I think when you look at these statistics, you have to have some perspective on where the burden rests; where is -- what is the presumption that you're going to operate under?

And I suggest that in trying to answer this question of how do you allocate the burdens of demonstration of proof, that you be guided by not just public policy, but by what I believe to be Constitutional imperatives.

If you believe, as I think the Supreme Court does, that this bedrock policy that the Chairman spoke about is not just a policy out there in the air but has

Constitutional moorings, I think that that is a very, very strong imperative that the burden be cast upon those who wish to demonstrate that deregulation will in fact enhance this Constitutional policy.

Secondly, I think you also have to keep in mind the dynamic quality of these statistics. You not only have to think of what the statistics are today, say, about the mixture between entertainment and news, but you have to sort of understand what the mix would be if a policy, a broad policy of deregulation, were adopted.

Now, I respect the comment that Mr. Sidak made a few moments ago about what the -- what the impact of the abandonment of the fairness doctrine has been on television. But I -- I would be somewhat skeptical and suggest that perhaps abandonment of certain traditional policies of the FCC which sought to serve the end of diversity has not in fact had that effect.

MR. MILLER: Yes, just-just one other point. In the New Haven market where you live, there is a -- a station that had a 40-year -- it was dark for 40 years. So there was a license in the market that never was built out. And LIN television basically put this station under its wing, helped bring it up, is absorbing operating losses as we speak, and has now introduced a WB brand new voice into the market in the top -- one of the top 20 markets.

And you're saying, "Well, how can a WB -- how-how can a market that big not support another station?". So a lot of the ownership rules that I'm talking about, the changes in ownership rules, are to address your point.

PROFESSOR FISS: But I --

MR. MILLER: How do you increase -- how do you increase the number of voices -- can you have an increasing number of voices and the appearance of concentration at the same time? And I don't -- I think that in certain cases, it can be extremely beneficial. A lot of the LMAs that we have seen are creating new news programs as well, in local markets.

PROFESSOR FISS: But I think Mr. Grossman's point is the fundamental one. There is no issue, I think, on the entire panel that waiver, exception, may be appropriate, because efficiency can be an important instrument for diversity. And if that could be demonstrated and the burden would be on those wishing to get out from under the rules, I suspect that there is no one in this room that would deny the possibility of waiver or exception.

MR. SIDAK: I'll dissend because I do not think that the proper way to structure a rule is to say you can't do it unless you come forward and affirmatively prove under a waiver that you can do it. Everything is illegal unless we allow it. I mean, the general rule under an antitrust regime is everything is lawful unless it's unlawful.

COMMISSIONER TRISTANI: But we're not under an antitrust regime here at the Commission. I mean, with no disrespect.

MR. SIDAK: Well, I'm arguing --

COMMISSIONER TRISTANI: We're here under the public interest which is still in the lie --

MR. SIDAK: But I'm arguing, Commissioner --

COMMISSIONER TRISTANI: -- we were reminded of.

MR. SIDAK: -- that the -- that the more appropriate standard to apply is an antitrust standard.

CHAIRMAN KENNARD: Well, I would like to follow up on that if I might because a couple of you have made this argument, that we should have the antitrust laws basically govern this marketplace. Mr. Mikkelson, Mr. Sidak just made this point. And I think it's sort of an interesting one.

Particularly, when you look at this marketplace and you see that it is -- a lot of the relationships have been governed by regulation. Not only the local ownership rules, but the relationship between the cable industry and the television industry; the relationship between the television programming industry and the broadcast networks.

And I guess I'm having a little difficulty seeing how antitrust laws would be sort of the panacea here. For example, Mr. Mikkelson, you seem to be the strongest advocate for this points of view in your testimony. Do you think, for example, that we should have the antitrust laws substitute for a must-carry regime in our country as you've suggested that they should substitute for local ownership rules?

MR. MIKKELSON: I can't say that I've really formed an opinion about that subject, Mr. Chairman. My -- my basic point was that we have ways of thinking about competition issues that are widely respected and widely used. And it seems to me we don't have the analog on the diversity side.

The suggestion has been made in some of the previous comments, well, you know, what has been the effect; how has diversity been affected by various things. To me, such a study would be very -- very wise and very useful. But it would require that we be able to define exactly what it is we mean by diversity.

I think it's not equated with news programming any longer. And if it is, that's something that we could measure. When we know exactly what diversity is, then perhaps the consolidation of radio stations would provide an opportunity where we could measure that, what has happened.

But as long as we don't know exactly what it is, don't know how ownership affects it, and fundamentally don't know when we have enough, then it seems to me we don't have a good standard there to appeal to.

CHAIRMAN KENNARD: Mr. Baker?

MR. BAKER: Well, the antitrust arguments work to a degree. But they work in the realm of economics. And there is economic diversity and then there is the -- there is the Constitutional and Supreme Court kind of diversity of antagonistic sources and totally different sources of public viewpoint. And that's where it strikes me you have to step in because these economic arguments are good and they're solid. But they are only in my opinion part of the picture.

MR. MIKKELSON: I'm not sure that the owners are really a source of viewpoint. Potentially they are. But the sources of viewpoint that we have are the people whose views are being aired, not fundamentally the owners. So there are --

PROFESSOR FISS: Recognizes that the structure of ownership has an impact upon the views that are expressed. Is there anyone who doubts that?

MR. SIDAK: Well, that argument works two ways.

PROFESSOR FISS: Certainly.

MR. SIDAK: The First Amendment then is clearly impacted by structural rules, is it not? Absolutely.

PROFESSOR FISS: Yes.

MR. SIDAK: I'm glad we agree on that.

CHAIRMAN KENNARD: Yes. That's one of the few things I've agreed with, what you've said, Mr. Sidak.

MR. GROSSMAN: May I make a quick observation because I think that was a very interesting question, the antitrust. If -- if the basic law of this country were to auction off this incredibly valuable spectrum, then there would be no need for an FCC in this area and antitrust should obtain.

But since you are in effect allocating millions and millions and in some cases hundreds of millions of dollars worth of spectrum, there are other criteria that intrude.

And that's the reason for the whole policy, broadcast policy that requires the Federal Communications Commission in the first place. And that is why you have other criteria besides antitrust having to do with the public interests that dominate at this point and should continue in my judgement to do so.

CHAIRMAN KENNARD: Mr. Grossman, do you believe we should have a different public interest standard for license -- for the different licensees we have or should we apply the same public interest standard to all licensees?

MR. GROSSMAN: I think myself -- and this may surprise you -- it's time to change that whole standard. I don't think that the public interest standard for commercial broadcasting really obtains in any meaningful way any longer except for the three hours of children's programming a week.

I would much rather see a public -- none-for-profit public service broadcasting or a telecommunications service that has -- exists to serve the public interest and have in effect the spectrum auctioned off and the money go to the public treasury and let the commercial broadcasters do what they will. But that's such a radical change that it's not what you're facing here at all and not likely to have happened.

CHAIRMAN KENNARD: Do any of the other panelists have any view on whether the Commission should apply a single public interest standard or have different standards for different licensees?

MR. BAKER: I would argue a common public interest standard. I think that's the best public policy, not having a Grade A and Grade B public interest. I don't think that works. But that's just my personal opinion.

MR. GROSSMAN: In radio, to all intents and purposes, there is no way you can enforce that, observe it, or deal with it. And increasingly, as digital television comes along with thousands of channels operating and different kinds of industries, I think you're going to have an even more difficult time. And that's why I think it's time to take a whole re-examination about public policy regarding licensee assignments.

COMMISSIONER POWELL: I would like to ask a question with regard to -- Mr. Mikkelson, I hope I'm pronouncing your name correctly -- but mentioned that one of the greatest problems here is that there is no diversity HHI index.

There is no commonly agreed to basis for measuring whether you have diversity, how much of it is enough and whether the structural policies you're pursuing are adequate other than sort of visceral -- what I find to be largely visceral and sort of subjective judgements about these things. We've touched on it a number of times here. You don't like Jerry Springer, but it's one of the most popular shows on TV. I don't quite know what to do with that.

MR. ALGER: I don't like Jerry Springer, but I didn't say --

COMMISSIONER POWELL: No. No, no. I know who I'm pointing at. And, you know -- you know, and I'm very, very uncomfortable with the suggestion that the five of us are supposed to make judgements about what we should teach our public and not teach them with regard to what they'll embrace. And that -- that is a disturbing notion that I think is much spoken to by the First Amendment as -- as Professor Fiss' suggestion that there is an affirmative obligation under that provision.

But that said, something called diversity of voices and something called diversity of choice seems to be important I think across the board to all of us. But what I want to know also goes to some of the cross-ownership rules which is if our focus is on either choice or voice, what is the propriety of considering the full realm of outlets for the provision of those varying viewpoints to the public.

I'm often troubled that we shift terms when it's convenient. These other mediums are in when it helps an argument and they're out when they don't.

But truth be told, as my family sits around the house, we have any number of ways to get any number of sources from the headiest high-brow sorts of information to the lowest of the low if you think that's what Jerry Springer is. And all of those mediums I will tell you in my opinion can produce the full range of all of them.

You can find plenty of magazines that will provoke intellectual thought more dramatically than any television program I've ever seen as well as the sleaziest of sleaze. You can find any internet site that can do the same thing. You can find any radio station that can do the same thing.

So if people could address how they think we should factor in other outlets when considering the importance of broadcast, in particular, on diversity. And I'll let anyone answer.

MR. ALGER: Since you were sort of attacking my statement about Jerry Springer, may I clarify? I tried to make this very clear. Whoever wants to watch Jerry Springer is perfectly fine with me. My point is -- is the provision of news is the core responsibility of the Commission and is the core of the First Amendment issue. And I was saying that was in the place of the news -- the standard mid-west late news time.

And there is no news -- as I mentioned, I've written in my testimony, there is no news on that station or the others of that sort in the Minneapolis market. That's my point. Whoever wants to watch Jerry Springer is fine. I find it offensive, but others may not. That's a First Amendment and you're quite right. Okay?

So let's -- let's be clear. I'm talking about the provision of news as the core most important function of -- of broadcast TV which remains the most universal mass medium of access to all Americans, not just some. That's my point.

PROFESSOR FISS: Commissioner Powell, could I try to answer specifically? And I say this with due respect. You should not --

COMMISSIONER POWELL: This is when you're really in trouble.

PROFESSOR FISS: Right.

COMMISSIONER POWELL: Especially from a professor. But --

PROFESSOR FISS: You should not -- I -- I think it would be irresponsible for you to answer the question you posed based on your experience sitting in your house with the diversity of outlets that you have. There is -- all of us could recognize this emerging new sources of news and information; cable, internet, satellite transmission, magazines.

But the essential point of Turner Broadcasting is to understand that there are significant portions of Americans who are dependent on over-the-air broadcasting for their understanding of the world around them. They don't have these alternatives. Now, it's --

COMMISSIONER POWELL: But -- but -- but --

PROFESSOR FISS: -- true that these alternative markets compete with broadcasting or these alternative outlets compete. But I don't think they replace them.

COMMISSIONER POWELL: Let me take issue with that for a second. First of all, I by no means suggest that I make decisions based on my own personal experience. And we will -- we will turn to facts and evidence to support -- just as I require of all of you if you are going to make the arguments.

But I'm not prepared to say that there isn't a plethora of newspaper and magazine sources available to a good number of people. Seventy-three percent and growing, a percentage of Americans have access. Somewhere in the middle between what we're saying is the truth.

But my question really is not so much whether you should -- should take the most fruitful market and use that as your moniker, but to the extent that you should evaluate the presence of those alternatives nationwide in making the choice.

And I also would urge people to address the issue of it's absolutely right that a not insignificant portion of Americans rely on broadcasting. And it's absolutely right that that's still the most valued source. It's not always clear to me why it's absolutely right that that would stay the case and will always or should be by right the case.

Not that I dispute that we might come to that conclusion. But, you know, part of that is the presence of television's head start and the legacy of that media, respective of the provision of these things which has been in large measure eroded over time with the advent of things. And so I wouldn't be surprised if there will come a day that some commission will be seeing numbers that are dramatically different.

And what I'm wondering about is if it wasn't a third, if it was ten percent, rules have a way of lasting for a long time. I thought it was very interesting someone said be careful because, you know, these things -- you know, rules themselves when put in place are hard to repeal in the future, as well. And so I just wanted to clarify.

MR. MILLER: Commissioner, I mean, the thing we look at is that it goes right to the heart of what you're saying. In 1980, the average household had ten viewing options. That was it.

Now they have over fifty. And that's less than twenty -- now, that doesn't include magazines, newspapers and all the other media that are also exploding in terms of everybody is starting to go to the tiniest part of the demographics, serving individual demographics down to very minute segments at this point. So there is tons of that.

In fact, we actually wrote a piece called, "Will Choices Out-weight the Voices?", when we were looking at local ownership rules; should duopoly and LMAs be permitted. And we had one thought that there was -- once thought that there was going to be a scale. Is it more offensive to have a -- a one-owner control, effectively control two televisions in a station or is it better that we now have a new viewership choice in that market?

And we thought that there would be -- you know, one would -- one would weigh in higher. We found out that actually both can occur simultaneously, so we didn't have to take sides.

In the cases of a lot of the LMAs and duopolies we see -- or not really duopoly at this point, but LMAs -- we see that a new entrant is brought in which gives people like the people you're talking about, Mr. Fiss, the opportunity for people, over-the-air broadcast dependent people have another viewership choice.

And at that same time, we really haven't affected the marketplace that much because the average LMA takes four percent of the revenue in the market and three percent of the viewership share. So we've added a new -- we've added a new voice, and we haven't really undermined competition in the marketplace.

MR. BAKER: But it is possible for the opposite to happen. And that is, as we look at this vast array of choices and if we look them, especially the cable networks, many of them are all commonly owned, and are those necessarily different voices.

You also talk about the leverage of cross-promotion. You know, you see that in -- you see that in radio markets -- in radio stations. There may be a lot of radio stations. The ones that are commonly owned tend to have the ability to sell together, to promote together.

Those are wonderful economic efficiencies, no doubt. But it also drives a huge audience to that segment and gives them a voice that may be louder than the other voices and could be anti-competitive in the sense of a smaller player coming in.

MR. GROSSMAN: Can I make a quick response, Commissioner Powell? There are ways of judging this or testing on -- on a non-content basis which I think is what you're trying to get at and which I agree with.

You can find out before radio stations are sold and the year after, has their news department got a larger budget or a higher budget? Are there fewer or more people in the news division? Is there more or less local live programming; more or less local public affairs programming? Never mind how good or bad it is or what it has.

But I think those would be -- and similarly, with before and after television station, local television stations have been sold. What has been the trend? I think it would be very useful to find out. I don't know the answer to that, but I have my suspicions based on my conversations with the news directors of both television and radio before and after they've been sold.

And I suspect you will find that those kinds of outputs have diminished rather than increased. And that may help you in your decisions.

CHAIRMAN KENNARD: Mr. Alger.

MR. ALGER: Yes. Commissioner Powell had mentioned the rules put in place are often hard to repeal. May I respectfully submit that massive concentration of media across most of all sorts of media with massive lobbying resources and so on is a hell of a lot more difficult to undo than rules in place, especially when those media control, as I say, wide swaths.

Chapter 3 in Mega Media -- go out and buy a copy, everybody -- documents Time Warner, Turner, Disney, Cap Cities, ABC, Rupert Murdoch's News (phonetic) and so on. It's extraordinary the range of media that are controlled by eleven or twelve of these corporations which brings me to another point.

Mr. Baker mentioned the cross-promotion. One thing I would like and we need more research on -- and I said that in the book -- one thing I would -- I would like the Commission to think about is does the existence of conglomerates distort the competition in local markets.

The gist, as I understand it, of the -- the theoretical foundation of the Telecommunications Act and, indeed, of classical economics is that there is competition in a specific market for a specific service. But if, in fact -- and that's -- and the competition is based on quality and price. That's why it's supposed to be efficient and effective. And that's how you send market signals.

But if in fact you have a conglomerate bringing in from other parts of the country, other geographical markets, and from other product markets including industrial markets on which they may have monopoly control in, can they not only massively cross-promote -- which we're seeing ABC, Disney, etcetera, but also can they cross-subsidize to a very significant extent and, hence, again, drive out minority ownership.

We're seeing evidence of that -- the ownership of eight stations in Chicago. I point out in my written comments that in Chicago, for example, you have three mega-media corporations that control two VHF -- prime VHF TV stations, fifteen or sixteen radio stations, the prime newspaper in the area and so on. That's a great deal of cross-media ownership, a great deal of concentration; not diversity.

So I would encourage the Commission to think about that core economic concept that we're supposedly -- the market mechanism that's supposed to be efficient and effective is based on the idea of sending signals based on competition on price and quality of a particular product.

But if you bring in massive cross-promotion, if you bring in massive cross-subsidy, does that distort that market mechanism which the Commission is -- is here to -- to try and discharge based on the Telecom Act.

CHAIRMAN KENNARD: Mr. Alger, that will be the last word on this panel. Thank you all very much. It was a terrific discussion. We will recess for ten minutes and reconvene at 11:20 for our next panel.

(Whereupon, a brief recess was taken.)

CHAIRMAN KENNARD: Okay. We are ready to begin our next panel this morning. Now we are going to hear from people who are actually out in the marketplace every day, operating under the ownership rules that we administer here at the Commission. And we're also going to hear from a public interest advocate who watches very closely what happens in the market place.

We're going to begin with Jeff Marcus. And I'll remind the panelists that we are on a fairly tight time schedule. So please keep an eye on our timekeeper. And please introduce yourselves and give us your affiliation. Jeff.

MR. MARCUS: Good morning. I am Jeff Marcus. I am the President and CEO of Chancellor Media, the nation's largest radio company. I am formerly Chairman and CEO of Marcus Cable which was the largest privately owned cable company. I have not written a book yet.

It is both ironic and apt that I'm here today representing the National Association of Broadcasters. It is ironic because until last summer, I had spent my entire career, thirty-one years, in the cable industry building cable systems which competed with broadcasters.

And it is apt because the subject of this hearing is media competition. And there can be no better informed witness than someone who has helped build the most successful and relentless competitor the broadcast industry has ever faced; one which has completely transformed the competitive media landscape.

The pace of change in media competition is nothing short of breath-taking. And NASA and satellite industry has become a major provider of video. The internet has exploded and the ability to deliver audio and video signals over computers is growing ever greater. The cable industry is changing to digital technology that will dwarf today's channel capacity.

To negotiate these developments will require extraordinary agility and flexibility. It is in this environment that we examine the two venerable regulations, the television duopoly and one-to-a-market rules which are the subject of this hearing.

These two rules are glacial remnants of a regulatory ice age. They stem from an almost forgotten time when a few TV and radio stations were the electronic media. They are the product of regulatory fears that have no place in today's market.

Eight years ago, the Commission's Office of Plans and Policy found that the irreversible growth of multi-channel competitors would lead, without a change in the regulatory environment, to a reduction in the quantity and quality of broadcast service.

The record shows that the duopoly rule and one-to-a-market rules are counter-productive and destroy, not advance, your goals of competition and diversity. The duopoly prevented dozens of stations from being launched and condemned others to broadcasting with second-class signals and even worse programming.

We know this because we can see the results of the Commission's experiment with two station operations under the local marketing agreements, or LMAs. Nearly two-thirds of these LMAs involve failing or struggling stations. Nearly all the others put new stations on the air.

Nearly two-thirds of the LMAs provided outlets for the emerging WP and UPN networks. And over half the LMAs were carrying new local news programs, a topic debated this morning. Nearly half resulted in a substantial upgrade in technical facilities.

The efforts of LIN Television, soon to be a subsidiary of Chancellor Media, are typical of these LMA pioneers. Through an LMA, LIN saved a failing station in Battle Creek, Michigan, restoring the only local news programming and preserving a local outlet which even today would not be viable on a stand-alone basis.

In Norfolk, a LIN LMA enabled the transformation of a minimum facility home shopping channel to a full service WB affiliate. And in Austin, Texas and New Haven, Connecticut, LIN LMAs launched stations which had been unable to obtain adequate financing.

Perhaps most important, LMAs show how changing the duopoly rule can strengthen broadcasting as a competitor to multi-channel providers such as cable and satellite. When I ran a cable company, it seemed to me that cable had two main advantages over broadcasting: dual revenue streams and the ability to spread programming and other costs over multiple channels.

Now that I am in broadcasting, I see how hard it is to overcome these barriers. And while I am proud of our free, over-the-air system, I don't understand why the FCC should restrict free broadcasters' ability to compete with paid competitors who do not face the same restrictions.

The one-to-a-market rule has no better justification. Even when it was adopted, the Commission could not point to any actual problems that the rule would remedy. The many grandfathered radio-TV combinations and the waivers that the FCC has granted since 1996, like LMAs, allow us to look into what a world without the rule would be. And the answer is that no reduction in service or diversity has been caused by radio-TV cross-ownership.

Instead, radio and TV stations have strengthened their service to the public by realizing efficiencies from joint operations. If the radio and television stations do not compete, there is no justification for our cross-ownership rule.

The Department of Justice and recently the FCC has looked only at radio when examining proposed transactions. Surely the Commission cannot have it both ways, restricting radio ownership by looking at radio only, but barring cross-ownership based on an entirely different market.

Certainly there is no evidence, nor could there be, that the one-to-a-market rule in operation results in greater competition or diversity of programming in any market. The Commission should therefore heed the advice the OPP gave it years ago and get rid of rules that reflect only a bygone era of media competition.

The FCC should repeal the one-to-a-market rule. It should reform the TV duopoly rule to permit common ownership of two TV stations where at least one is a UHF station or where the combination has no likelihood of diminishing competition.

However, if you should not take this course, the investments, the millions and millions of dollars of investments that broadcasters have made to improve service to the public should not be jeopardized. And the existing LMAs and one-to-a-market waivers should be grandfathered.

And I would like to make one additional observation.

CHAIRMAN KENNARD: Mr. Marcus, I will ask you to wrap up.

MR. MARCUS: Chancellor Media and many others in the broadcasting industry share the Chairman's concern about the impact of current and future consolidation, however inevitable, upon the ability of diverse new entrants to gain a successful foothold in broadcasting.

We believe strongly, however, that such diversity cannot be manufactured through the imposition of non-economic ownership restrictions targeted at narrow media sectors. And a more plausible solution is to facilitate access to capital.

Chancellor is very optimistic that it can, working with other substantial broadcast organizations and Wall Street concerns, develop a significant venture capital fund to facilitate the development of viable new broadcast entrants. But it could only do so in a regulatory environment that enables broadcasters themselves to remain competition. Thank you.

CHAIRMAN KENNARD: Thank you very much. Mr. Frank.

MR. FRANK: Good morning. The first thing you will notice is that I am not Bill Rine. I am Alan Frank. I run the Post Newsweek Station in Detroit. To Bill's great disappointment, to your disappointment, to mine, as well, he can't be here due to a longstanding, unbreakable commitment.

Because of his strong convictions about duopoly and LMAs, Bill very much wanted to be here and he made great efforts over the past month to accommodate the shifting dates for this hearing. But I'm very pleased to be here because I share Bill's convictions on this issue.

We believe the controlling first principle is localism, something that's old and emptied of meaning by having been used too often as a slogan or overtaken by new developments. But localism is vibrant and substantive, and remains the soundest available guide for resolving various broadcast issues. Besides, it is the law.

Consistent with this Congressional mandate, our country's television service is universal, free and locally and nationally diverse and competitive. It is the envy of the world.

From a viewer's perspective, localism is local news, coverage of political figures for the public they represent, and station support of local charities and local civic activities. The range and shear volume of these contributions to our communities are staggering, but too often go unrecognized.

From a programming perspective, localism is the balance of network and locally produced or selected programming, a mix that we affiliates tailor to the audiences in our communities. From a regulatory standpoint, localism is Section 307 of the Act, the table of channel allotments and the propagation, interference and other technical rules and principles that provide the structure for local service throughout the United States.

Congress and the Commission have been faithful to localism principles. The table of DTV channels, the decision to uphold the Grade B standard, the preservation of the thirty-five percent national cap., the FCC's refusal thus far to water down the affiliate's right to reject network programming, and Congress' insistence on reasonable DTV cable carriage rules are all examples of the continued vitality of the localism principle.

We believe that the localism principle requires a meaningful duopoly rule to assure a diverse and competitive local marketplace. It is healthy to have different entities owning and controlling different broadcast outlets in a market. It leads to economic programming and viewpoint competition.

If a market has six outlets, it seems obvious that the interest of competition and diversity are better served id six different entities own and operate them than if one or two entities each owns and controls two or more stations in the market.

To provide consistency and predictability, the Commission properly codified the -- this presumption into the duopoly rule, stating that its purpose was, quote, "to promote maximum diversification of program and service viewpoints and to prevent undue concentration of economic power contrary to the public interest."

We agree that the Grade B standard for the duopoly rule should be relaxed and is unrealistically stringent. We support the Commission's proposal that generally stations should not be co-owned if their Grade A contours overlap or if they are in the same DMA.

Because the distinction between UHF and VHF is becoming outmoded and will expire in the digital world, it should not be a basis for exceptions to the duopoly rule. Exceptions might, however, be permitted for failing stations and other special circumstances.

Most LMAs are simply a way of evading the duopoly rule. Recognizing this fact, the Commission decided in the radio environment that if one station duplicates more than fifteen percent of the programming of another station, it should be treated for purposes of the duopoly rule as being co-owned. Nobody has given any good reason why that logic shouldn't apply to television LMAs, as well.

As for grandfathering existing LMAs, shams, regardless of when they were entered into, should not be grandfathered at all. If LMAs entered into after November 1996, when the FCC put the industry clearly on notice that LMAs were suspect and should not be relied on, should be grandfathered for no more than a year.

The FCC's statement in the November 1996 notice that intended to grandfather pre-existing LMAs for the remaining length of their original terms should be honored, but only for three to five years. Any more than that would reward over-reaching.

These constitute reasonable, even generous periods for broadcasters to bring themselves into compliance. After all, the radio rule, which is based on the same principle, has been in effect for seven years.

Some advocates for gutting the duopoly principle also believe in localism. Some, however, are simply after short-term dollars and have no regard for the impact on the local television system. For us, the genius of our system is localism. And the duopoly principle is essential to preserving it. Thank you.

CHAIRMAN KENNARD: Thank you very much, Mr. Frank. Mr. Yudkoff.

MR. YUDKOFF: Good morning. My name is Royce Yudkoff and I am Managing Partner of Abry Partners. I am also here today on behalf of ALTV, the Association of Local Television Stations.

Abry Partners is a Boston-based private equity investment firm which manages 825 million dollars in equity capital dedicated to investing in broadcasting and other media. We acquire under-performing broadcast stations in small and medium markets, and improve their performance by upgrading programming, news, staffing and signal coverage. Such investments lead to better service to the public.

Abry currently holds controlling interests in three television groups, one of which is in the process of being sold. Our two remaining television companies, NEX Star and Quorum, own and operate eighteen television stations.

Since 1993, we have been involved in several television LMAs, each providing valuable public interest benefits. NEX Star and Quorum are now involved in two LMAs. NEX Star owns WJET TV, Erie, Pennsylvania, the hundred and forty-second market.

NEX Star took over an existing time brokerage agreement for Channel 66, WFXP in Erie.

FXP is a stand-alone Fox affiliate in a market this small could not survive. With the LMA, FXP now broadcasts a local 10:00 p.m. news, five days a week, and provides Erie with a full schedule of Fox programming including Fox News Sunday.

Last December, FXP broadcasted a local high school football play-off game. We made it possible for many local fans to see this game, including grandparents of players. As a stand-alone station, WFXP would have had neither the equipment nor the personnel to undertake a project like this. Our future plans for WFXP include expanding its local newscast to weekends.

The benefit of an LMA is that it allows small market broadcasters to economize on expenses that do not impact the public in order to provide the public with more that is directly on the screen. Rather than preach to you about this, let me share with you our economics.

Erie, Pennsylvania has four commercial TV stations sharing 13.2 million dollars in net revenue each year. A solidly-run Fox affiliate will capture about fifteen percent of that, or two million dollars in revenue. But it costs of that 2.9 million dollars to run a bare-bone, small market Fox affiliate with local news. It costs this much because our costs are fixed.

The electricity to run my UHF transmitter costs the same as in a big market. So does the gasoline for my news trucks.

How does a broadcast operator fix this problem of losing $900,000.00 a year? The station can't cut administrative costs by declining to pay its telephone bill. It can't reduce its sales force without reducing revenue. It can't cut engineering expense by shutting off the electricity.

What it does is it eliminates its local news and it cuts its locally originated programming expense to get to break-even. What an LMA allows us to do in contract is to cut expenses that are irrelevant to the public. We can use one building, not two. We can consolidate certain selling expenses. We can share maintenance engineers and production equipment, while becoming more attractive in the areas the public wants to see.

For example, our other company, Quorum Broadcasting, recently acquired KSVI TV, Billings, Montana, the hundred and sixty-seventh market. With that acquisition came an LMA with W -- with KHMT, Harden, Montana, the market's Fox affiliate.

KHMT could not sustain itself as a stand-alone station. In fact, that station was off the air from 1993 until the middle of 1995. Now under the LMA, KHMT provides the market with over-the-air delivery of all Fox programming including Fox News Sunday, plus a great deal of support for local activities.

One example is KHMT's Teens Now, a series of vignettes dealing with problems encountered by local teenagers, coupled with a monthly magazine distributed through the schools. Last year we contributed $180,000.00 of public service announcements to local community activities on that station.

KHMT's over-the-air coverage is still much less than the other stations in the market because they cover this geographic vast area with numerous translators. We are committed to spending several hundred thousand dollars in 1999 for translators and microwave links in order to improve KHMT's service to the public.

We obviously are preparing for a transition to digital and the required investments.

It's clear that the LMA in Billings is serving the public interest by providing for an additional free over-the-air station that simply would not otherwise exist. It is just as clear that there has been no harm in the market due to the LMA. In fact, in 1998, the combined share of revenues of these two stations was less than one-third of the market's revenues.

I focused on small markets. But the record before you demonstrates the benefits of LMAs and markets of all sizes. These combinations should not be terminated. To the contrary, the opportunities to improve service through local combinations should be open to all. The TV duopoly rule should be relaxed to permit ownership of two stations in a market. Given the fierce competition from multi-channel providers, it makes little sense to limit the future of free over-the-air television to a single channel.

CHAIRMAN KENNARD: Thank you very much. Our next witness hardly needs introduction. Mr. Wonder.

MR. WONDER: Thank you. Thank you very much, ladies and gentlemen, Commissioners. I would like to share some of the notes with you. And I will make sure that you have the complete statement in speech form before I leave D.C.

I am Steven Morris, professionally known as Stevie Wonder. I am an artist. I bought a radio station in 1979 because I understood and valued the power of radio. As an artist, I appreciated the marketing power of the airwaves. As a student of social justice, I witnessed the power of and the reliance of mass communications.

When I bought KJLH, it was the only minority-owned radio station in the Los Angeles area. I bought a piece of history, as KJLH is the first black-owned radio station west of the Mississippi. This history is more precious now than it was then. This purchase was for the specific purpose of continuing to provide a voice to a community that had been unheard. KJLH was designed to be the eyes and ears of a people who lived in the shadows of Big Brother and big business.

My vision was to join an ever-growing collective of minority-owner entrepreneurs who understood the power of this medium. Twenty years later, I look into the future and I'm reminded of the past. KJLH is a stand-alone, Class A FM station fighting to survive in the country's second largest market. The evolution of regulation and de-regulation has brought us full circle.

Twenty years ago, minority owners of radio stations were the rare breed, yet a species developing and becoming strong and powerful. Today, the minority owner is again rare; now, an endangered species pursued by large corporate predators who consume the single and small owner.

Consolidation of radio ownership has made it difficult, if not impossible for the single owner. Competition with conglomerates who own several stations in a single market does not allow for fair access to advertising dollars. This is particularly true when conglomerates pursue a format that has been traditional domain of the minority owner.

Survival becomes a game of deep pockets. Often many single owners cannot afford to survive. In a scheme of free enterprise, I suppose this is fair game. However, control of the eyes and ears of the United States has never been about economics exclusively.

History has taught us the danger of monopolistic control of the means of the communication. Legislators consider these dangers. And even in this era of de-regulation and laissez faire, the public interest is still protected in the Communications Act.

The public interest cannot be protected when waivers are granted to allow multiple-station owners to own more stations. How are the single owners to compete with this -- the owners who stand to own more than nine hundred stations? Consider the value of the single radio station owner, particularly the ethnic minority owner.

Ownership diversity makes a difference in the mission of the station. This is lost when but a few businesses own almost everything. Different people have different ideas. During the unrest of the '60s and the '90s, my station had a special voice that served and affected the reality of despair and frustration in our community. Our messages helped heal and unify the community.

A simulcast between KJLH and Radio Korea was designed to dissolve tensions between the African American and Korean communities. The station was a beacon of hope for all of Los Angeles. And during the uprising of 1992, the studio stayed open in the midst of turmoil and violence. People came day and night to use this medium to sooth the community.

KJLH won the Peabody Award in 1992 for the quality and the responsiveness of our programming during this crisis. Minority single owners have a personal motivation to provide this kind of service for the public interest.

Our concerns are not driven by remote stockholders who are looking at the bottom line for return on their investments. Our concerns are not dictated by the Dow Jones, but by the Mary Joneses who rely on our station as their source of information and entertainment.

Public interest demands and public interest requires the protection of stations who stand alone like the dots in a Pac-Man game destined to be gobbled up by the voracious conglomerates. The big owners want more. Now they want TV and cross-ownership of TV and radio.

Whose interest is served by allowing television stations to acquire radio stations? Can we honestly say that public interest is served when we stand mute? Can we stand mute and watch the single minority station owners to be devoured by the relaxation of ownership rules? What is the standard?

When do you say that a company has enough? Is four hundred not enough? Are nine hundred stations sufficient? Are you contemplating a future where one or two companies can own all the stations? Is that not the script of some scary science fiction book we read as children?

Can we look in the future and see the voice of the people reflected in our precious airwaves? Or should we follow the stock market to understand what we hear and see?

It is in the power of this Commission to protect the public interest. As a minority owner and a member of the National Association of Black Owned-Broadcasters, I strongly urge you to stop the grabbing of multiple blanket ravers, stop the consolidation and remember the community that has placed its trust in your hands. I thank you very much. God bless you.

CHAIRMAN KENNARD: Thank you. Mr. McCarthy.

MR. McCARTHY: Thank you, Chairman Kennard and Commissioners. I'm Mike McCarthy, Executive Vice President and General Counsel of Belo Corporation.

At the outset, let me say that there is at least one thing said by the previous panelist that I agree with and that is all the nice things said about A.H. Belo Corporation. But it's by no means just Belo.

And Commissioner Tristani, we commissioned a study for the Gore commission that would give you some empirical information about the non-entertainment programming provided by at least the network affiliates in several markets which I would be happy to discuss during the question period.

Belo has been in the media business for a hundred and fifty-seven years. We are the owner of seventeen television stations, reaching 14.3 percent of the nation's households. We also own six daily newspapers with the Dallas Morning News as our flagship paper.

We operate LMAs in four of our television markets and believe we add considerable public interest value and editorial diversity in the markets where these LMAs operate. But while I would be pleased to answer questions about these LMAs, I would like to confine my remarks to the Commission's television duopoly rule.

While the television business today faces an extremely challenging competitive climate, Belo sees numerous opportunities to develop new businesses as extensions of our traditional local TV franchises. We are doing this by focusing on our major strength which is the hallmark of the structure of American television regulation.

We are licensed to serve local communities. Television stations are the only free local video services in the United States. We are key suppliers of quality local news and information to viewers.

To thrive in the burgeoning multi-channel university, our stations have to strengthen and extend their local news and information franchises, to find more outlets and provide re-purposed and in most cases, differentiated franchised news programming.

It's the only way we will maintain our viewer and advertiser bases.

Right now, Belo has joined us by programming cable news channels in our TV station markets and operating for LMA stations. Belo has two twenty-four-hour regional cable news networks, one in the northwest and one in Texas. These networks provide informational programming different from that broadcast over our stations in those areas.

Three of our four LMA stations have their own local news and all four have locally originated programs. But our ability to program additional local outlets, like other television stations, is strictly circumscribed now by the FCC with the prospect that we may not be able to do anything more at all.

Even as we weigh these limited options, our video competitors keep forming ever-larger, more formidable business combinations and alliances. Cable companies continue clustering their systems. Time Warner is now the owner cable provider in Houston, San Antonio and Austin, Texas, having exchanged cable systems in other markets with TCI and a new joint venture.

Now, Time Warner and TCI/ATT, which already provide myriad news and information services into U.S. homes, proposed to provide American households with local telephone businesses and high speed internet access. The RBOCs keep buying each other, adding cable and internet programming services to their wired homes.

Public utility companies are also beginning to provide programming into U.S. homes over their utility wires. And the satellite business is merging into fewer companies and proposing through signal compression more channels.

Comparable business alliance opportunities are unavailable to local TV stations. While new video outlets on cable, satellite, internet and telcos are exploding onto the competitive horizon, TV stations have to exist under a regime of scarcity-based ownership regulation.

The phrase, "an abundance of media outlets", has become an understatement. At the very least, thousands of web sites with streaming video are created every day. Remember that local television stations are the only service providing one-third of America with free local over-the-air news and information. We need the same loose regulatory considerations afforded cable television and telephone companies to expand our own business and programming basis.

From a public policy standpoint, it makes eminent sense for the Commission to remove any duopoly restrictions, at least in the larger television markets. There is no risk that this would result in a lack of editorial diversity in these larger markets.

The top twenty-five television markets average close to fifteen or sixteen full-service television stations. Cable television MSOs propose a five hundred-channel universe in these markets. Then there is a prospect of five hundred satellite channels, the ever-expanding internet, then forty to fifty radio stations.

And these are just the video and audio outlets. I won't take time here to mention the print providers of editorial information in our large markets where there are few, if any, barriers to entry. The Department of Justice has all the legal and administrative machinery it needs to monitor the competitive conditions.

In sum, Mr. Chairman and Commissioners, a significant loosening of the duopoly LMA restrictions, starting with the larger television markets at a minimum, is long overdue. We're not asking for special consideration. We merely want regulatory parity.

And I would just like to add my comments to Mr. Marcus' comments that we very much support the venture capital fund and have focused a lot of our efforts with Belo in management training for minority and women within our company as a means of training very qualified executives. Thank you.

CHAIRMAN KENNARD: Thank you, Mr. McCarthy. Mr. Schwartzman.

MR. SCHWARTZMAN: Thank you very much, Mr. Chairman. Before the clock runs, let me apologize to the Commission and staff. I was so proud of myself that I had mastered our new Adobi software and integrated the graphic exhibits that I had with the WordPerfect file of my testimony that I used the last draft of the testimony with a lot of typos and a couple of genuinely incoherent sentences in it, more incoherent than usual.

I will try to get you something that actually scans. An I apologize for that.

But the graphics are great.

Thank you. I am going to scrap most of those prepared remarks which is one of the reasons I am concerned about getting it to you, because I think given where we are in the day, maybe I can try to touch on a couple of the things that have come up productively.

First, I will incorporate by reference what I wind up saying at just about every one of these events, as well as on the Hill: The best stations in the country doing the best service show up at these hearings, in large part because they are the only stations that think it's important to be able to take high-level executives' time to commit to writing testimony, preparing it, sending it to Washing, and care about looking good. And they stand here and tell you what a great job they do, and they do.

But this is not about those stations. This is about the thirty percent of the stations that we found have no local newscasts whatsoever. This is about the twenty-five percent of the stations we've found that have no locally originated programming whatsoever, television stations in this country.

That's why you need to have a regulatory scheme that does no additional obligations on these broadcasters but nonetheless, does not allow concentration at the expense of the public.

I'm going to say that the kind of waiver discussion we had before today, earlier today, it is possible to base waivers on content-neutral, quantitative commitments to provide certain kinds of programming. To say locally-originated programming should not cause problems with Commissioner Powell's viscera, I don't think it's a very straight-forward kind of thing.

You can extract commitments for the kind of programming that's being described today for LMAs and eliminate those LMAs which are doing nothing, absolutely nothing for their communities.

The model of newspaper joint ownership agreements resembles LMAs in some way except that there is a very strict regime providing separation that doesn't exist with LMAs. LMAs here are merely a devise for evading the Commission's rules. If the Commission wants to define ownership, wants to have a waiver policy, fine. If it wants to have a system that simply promotes evasion, then it should stick with LMAs, I think to everybody's detriment.

Prophylaxis, defining these things, having a waiver policy, works. It will avoid the most painful issue you have in this docket which is divestiture. The reason the LMA divestiture issue is before you is because of the Commission's failure to adopt rules.

We raised the question of LMAs in 1991 and the Commission said at the time, "Well, there is only one TV LMA that we know of. If this ever becomes a problem, we can deal with it then." Well, now you have to deal with it. And it was a mistake not to have dealt with it then.

And to say, "Well, we made investments", as Mr. Miller said, and -- and those people's stock is going to go down, they made a bet. I've lost a couple of lunches betting on what this Commission is going to do. And if those people in the stock market made the wrong bet, that's unfortunate. But it's no basis for you to enforce the law and to read the law as it was written.

I'm here and you're there because the Communications Act contemplates that you have to make difficult decisions. Relaxed local ownership may well generate economic efficiencies, but it doesn't translate into more or more varied programming. And it most certainly does not replenish the creative gene pool to ensure that broadcasting can stay in touch with ethnic and social diversification of American society.

Don't look at what they say about how terrible the problems are; Mr. McCarthy's concerns about the costs of trying to compete with all these other non-local program services. If -- if Belo wants to pay a five percent franchise fee, commit four percent of its capacity to least access and wants to take one-third of its capacity for what amounts to the fairness doctrine, must-carry, if they want to pay that franchise fee, I'll happily apply the same standard, looser regulations he calls for for cable.

History is relevant. In the '80s, the Commission lifted the rules. There is a frenzy. Debt-service, not program-service, became important and it's become important now. The recession hit in 1991. OPP wrote a report which said, "Oh, well, the broadcasting industry is dead; we have to give them relief." Here we are again, same place. And I think that you need to avoid making the same kinds of mistakes again.

I've put into my materials what the Television Bureau of Advertising says about the strength and the unique nature of local broadcasting; how it and only it delivers ninety-seven percent of the American homes. Cable, internet, none of these other services get the same advertising and have the same ability to serve their community as they do.

Look at the facts sheet. Look what TBB says itself. Look at what the stations and the broadcasters tell Wall Street. They don't say, "We're really suffering." Stock market prices are going up, as we've noted. The valuations are way up. Wall Street bets that this industry is going to make money, a lot of money.

And I think that you can work within that framework to decide a system that is going to preserve a very viable, effective broadcasting system. As I often say in this room -- or in the Commission Meeting Room, not this room -- we have the best system in the world because of, not in spite of, the Communications Act of 1934.

You can adopt your scheme to those rules, leave a viable industry; but not abandon diversity, not abandon localism. That's what you're being asked to do and you shouldn't bite.

CHAIRMAN KENNARD: Thank you, Mr. Schwartzman.

COMMISSIONER TRISTANI: Mr. Chairman?

CHAIRMAN KENNARD: Yes?

COMMISSIONER TRISTANI: If I could interject a moment --

CHAIRMAN KENNARD: Please. I understand that you have to leave, so --

COMMISSIONER TRISTANI: I have to leave.

CHAIRMAN KENNARD: -- by all means.

COMMISSIONER TRISTANI: And I would like to thank the panelists for their incisive remarks. I'm going to watch what you're going to say now as to the questions later. And a prior engagement makes me leave. But I want to thank all of you.

And I want to thank in particular those panelists that have reminded us of the critical role that broadcasting plays in our society. Thank you, Mr. Chairman.

CHAIRMAN KENNARD: Thank you very much, Commission Tristani. And my thanks to the panelists, as well. Mr. Yudkoff, I would be interested in your response to Mr. Schwartzman's testimony. What about these thirty percent of stations that are providing no local news at all? And we understand that there are very compelling efficiencies whenever we allow one of these combinations. But what is the benefit to the public?

And your -- discussion of I believe it was the Erie situation where you talked about it was -- the LMA was really essential for that station to be able to survive. But what do you tell the public when we see stations that are providing no news and no public affairs, none of the local programming that makes free over-the-air television so important?

MR. YUDKOFF: Well, we know that the result of LMAs has been a significant increase in the amount of local news because a short time ago, your Commission put out an FCC inquiry. And the result of that was that we learned that fifty-four percent of the brokerage stations are producing local news which compares to twenty-three percent of all non-network affiliated stations producing local news.

That is an astonishing statistic because most of the stations that are time brokered were either bankrupt or near bankrupt. So they don't even reflect the average of all non-network affiliated stations.

The reason that most owners if they have the financial wherewithal want to produce local news, they want to, is because it attracts the public away from the non-local competitors. It is the single most powerful mechanism for differentiating ourselves from the sixty cable channels that in aggregate have more audience share than the leading station in any of our markets. So I actually think that LMAs have been a tremendous driver for an increase in local news, speaking statistically.

CHAIRMAN KENNARD: But what about the class of stations -- and I'm not exactly sure what percentage there is. But I'm -- confident there is a class of stations out there that could operate as stand-alone stations, providing an opportunity for yet another voice in the marketplace, that are operating under LMAs and not providing any significant additional public-interest programming.

I mean, what -- in that class of station, what is the benefit to the public and why should a combination like that deserve regulatory relief from this Commission?

MR. YUDKOFF: I think that the issue is -- the issue I'm most experienced with is in mid-sized and small markets where the dilemma for the -- if you want to increase the number of voices in the market, the dilemma is that with a fixed pool of revenue, that that, even more than regulation, sets a finite limit on the number of stations or the quality of local programming that the marginal station can produce.

And if you want to add to that, either in terms of number of voices or the amount of local programming, other than increasing the amount of revenue which, regrettably, is not in your power to do, you can allow us to share some of the costs. And that is the -- that is the only other mechanism I'm aware of to allow stations that don't have the wherewithal or choose not to produce local programming or local news, to have the resources to do that.

CHAIRMAN KENNARD: And is it your testimony that duopoly relief should be confined to those smaller and mid-sized markets where these efficiencies are really necessary in order to promote local programming?

MR. YUDKOFF: Sir, that's really beyond my expertise. I -- I really operate in mid-sized and small markets. I'm not really prepared to speak to large market issues.

CHAIRMAN KENNARD: Commissioner Ness, anyone else?

COMMISSIONER NESS: Your testimony, however, said that duopolies should be open to all. Does that also suggest that -- or are you saying -- is it your testimony that two healthy, financially healthy stations operating in a market ought to be able to -- to merge?

MR. YUDKOFF: I think that one of the benefits that you will see from duopoly generally is by economizing on redundant costs that the viewer doesn't see or doesn't care about will increase the level of competitiveness in the areas that viewers do care about because all of the markets in which I'm familiar with are extremely heated in their competition for pleasing the viewer. And I think that what you will be doing is putting more on the screen for the viewers and creating less in the back room that no viewer appreciates or understands.

COMMISSIONER NESS: But isn't there a cost involved there and the cost being the reduction of an independent editorial voice?

MR. YUDKOFF: Well, I think that there are already antitrust regulations that set limits on the level of concentration in markets. But I also think what you're doing is creating new voices in a market because you are -- you are creating the economics where stations that are either not on the air or even more frequently are these twenty-three percent of stations that don't produce local news or local programming, they have the economic resources to enter into that competitive fray.

COMMISSIONER NESS: Well, certainly, there is a difference between stations that economically are not viable or which have been struggling economically and can't survive without support. I think there -- one could draw a distinction between that kind of situation and a kind of situation where you have perfectly healthy stations competing in the marketplace. And now you're suggesting I believe that they ought to be allowed to combine.

MR. YUDKOFF: Well, Commissioner, that is -- we're just speaking about the extremes right now. Most of the stations fall somewhere on the spectrum.

For example, in a small market, to go from an entertainment-only station to a news station requires a minimum capital investment of about a million dollars. That's a bare-bones investment.

Jeff Marcus will smile. In one of his bigger market stations, it's many times. that.

But the least you can get the news on the air with is about a million dollar capital investment. I certify to you that in a lot of these small markets, operators just cannot make the numbers work if they have to put a million dollars up before turning the lights on a local news, even though you may rightfully regard them as a reasonably successful, profitable station.

If they were allowed to share the capital infrastructure with another station in the market, to take one element of the example, that would allow them to much more economically get into the business of providing additional news voice in the market, even though they would not meet your test of being an unprofitable station.

COMMISSIONER NESS: Should it be permitted then in every market that we take the number of stations and divide it by half so that every single station ought to be able to merge with another station?

MR. YUDKOFF: I think subject to some kind of antitrust restrictions, the answer would be yes.

COMMISSIONER NESS: So the ones who happen to be at the gate last or that did not take advantage of the duopoly rules to have LMAs presently would end up not being able to combine because everyone else had combined previously?

MR. YUDKOFF: I think that would vary from market-to-market because I think there will also be situations where there will be new entrants in the market or marginally competitive stations will become vibrant new competitors in the market. So we would have to look at it across each individual market in that sense.

CHAIRMAN KENNARD: Mr. Marcus, you testified that you didn't believe that there was any reduction in diversity as a result of consolidation in the last few years. And I think as we've seen from our -- this panel and the panel before, that that's certainly a debateable proposition.

But what I don't think is debateable based on what I've heard today is that there has certainly been a reduction in ownership diversity; that is, we're seeing more and more licenses concentrated in fewer and fewer hands.

And I think that the end of your testimony, you sort of acknowledged that by indicating that you were interested in exploring ways that we can increase the numbers of minority and women-owned stations in the country which we know to be a declining number based on studies over the last few years. Can you give us a little bit more testimony about what you had in mind specifically in that area?

MR. MARCUS: Well, let me say, first of all, that the reduction of minority and women owners and other individual owners has not been a result of these people being forced out of the business. These people have all sold out at enormous profits and fulfilling the American dream. This is something that many -- many of us all dream of doing in building a business and selling it at a profit.

But I would also say that the top three radio broadcasters, which own approximately a thousand stations, represent less than ten percent of the total radio stations in the country. And if you measure it by revenue, it's less than thirty percent. So there is a lot of independent and smaller ownership structures that are still out there.

Having said that, if we define diversity, not only by format, but by ownership, by gender, by -- by ethnic background, and we believe that there -- there is a desire to see that enhanced, then we are interested, and I know many others are interested in helping with that.

And we are proposing that against the backdrop of enlightened regulation, that we would be willing to have a major role in setting up a fund, a venture capital fund, that would match capital with opportunity for those qualified radio or television operators; that is, media operators, people that can demonstrate a history and an ability to run these assets. And we would back them.

We would have this run not by Chancellor, not by someone else, but by professional management. And we would invest in this altogether to try and fulfill that aspect of diversity.

CHAIRMAN KENNARD: Very interesting idea. Any other comments on what Mr. Marcus has just said? Mr. McCarthy?

MR. McCARTHY: Mr. Chairman, I think that it would be well for the Commission to recognize that there are some -- there are two clear incentives at work here which Victor Miller alluded to and several of the panelists of both panels. And that is that -- Commissioner Ness pointed out, is that news is profitable. And when I say news these days, part of that is public affairs also under the old Commission's definitions.

One, news is profitable. And then -- and in most of these markets, particularly the larger markets, there is a race, a very competitive race, to seize the franchise and to hold that franchise and extend your brand into different -- different forms like cable news channels or LMAs because that's the only thing that's distinctive about local television, is that we have a large component of our broadcast day that is locally originated -- or locally originated programming and that's news and some syndicated product.

And there is this incentive that is in operation in the penalty of what the Commission is doing. And it would be fair to recognize that incentive. And it's shown up in the LMAs from the standpoint of there definitely being new news programming put on that is differentiating news programming. It isn't just re-purposed. You've heard that word a lot obviously. Well, we all have, the re-purposing.

But the only way you can -- and this is the second incentive I'm speaking to. The only way you can continue extending your brand and extending your ability to use your news in non-entertainment programming is not have it be similar. In other words, ownership diversity -- I don't think you can say that ownership diversity means there is not viewpoint diversity.

In other words, we operate an LMA in Seattle. It isn't -- it has a news programming on -- a program on its own. It isn't the same program as our KING in Seattle. That wouldn't make sense from the standpoint of developing the franchise. In other words, you've got to differentiate your programming from all of the other video outlets. And then you've got to differentiate your programming to a great extent on our cable news networks.

We don't run -- we don't simply just re-purpose our programming and so you're just watching the main station at a different time. I think those two incentives are very powerful incentives. And they're at work now and could certainly underpin a relaxation of the duopoly rule.

CHAIRMAN KENNARD: Mr. Morris?

MR. WONDER: Chairman, I would like to speak on one particular thing that was said a moment ago. I had the pleasure of reading a comment recently that was made about Stevie Wonder. And they were talking -- it was said in a sarcastic way that I was impoverished.

The reality is that the very reason that I'm able to be here today as Stevie Wonder, born as Steven Morris, is because of the radio station that was a minority-owned station in Inkster, Michigan, WCHB, which is a daytime station.

And it was through me listening to the music and listening to the news and information that inspired me to as a little kid, far against my mother's rules -- I went and I took one of the radios she had and kind of put some plugs in different places and tried to broadcast through the house and got a whipping.

But the point I'm making is never did I imagine that I was going to be the -- the owner of a radio station. But I -- when coming to Los Angeles and hearing the station that was licensed by the city of Compton, KJLH, was so inspired by how much it sounded similar to the format of music and information as did the station that was an AM station in Inkston, Michigan.

The truth of the matter is that I a few years ago was approached to sell that station, to give it up. And I could have gotten myself forty or fifty million dollars. I love playing with money. It's okay.

But the -- the real important thing for me is that I wanted to -- far more important than -- than getting some money, I wanted to make sure that the voice of a community would be consistently heard and that it would open up a place of communication so that not that -- not just that minority community, but all various peoples of this melting pot that is to be called the United States, various cultures could be heard and united. I just wanted to make that point.

CHAIRMAN KENNARD: Thank you very much. Mr. Schwartzman.

MR. SCHWARTZMAN: I would like to make three points as fast as I can. First, you're getting some spin here. I do this by recollection and I hope I'm right. But I believe that Mr. Miller's published revenue projections for television for 1999 and 2000 is a nine to twelve percent growth which is about three times what he was talking about this morning.

We are hearing about everybody does news and news is -- is important; it's profitable. A major market group-owner issued the statement that says, "After long and" -- this is Broadcasting Magazine -- "After long and careful" -- Broadcasting and Cable Magazine, I'm an old-timer.

"After long and careful evaluation, we have concluded there is more than enough news programming in our market. The company said it could said it could better serve its viewers with entertainment programming. I don't think our strategy includes news."

This is what's going on. In fact, some of the companies again -- I hate to pick on Mr. Miller -- but some of the companies that he's -- whose stock he's recommending are going around to Wall Street saying, "We cut costs; we eliminate news departments."

One company brags it has no local programming staffs at all in all of its stations. The only thing they have in place at each of the communities where they own stations are salesmen. Everything else comes in by satellite. "What a wonderful business; why don't you invest with me." That's really what's going on here.

Number two, if you want to go along the lines of Mr. Marcus' suggestion, I think that is a very promising one, to try to find ways for meaningful amounts of capital. And as you know, Mr. Chairman, better than anybody else on earth, the amount of money that's been put together for those kind of ventures in the past has been so small as to be completely ineffective.

It's got to be a large amount of money to really be meaningful given the valuations here because you're going to have to get stations. You're going to have to buy off all of the people who are here who have got all the value.

If you're going to do that, you need very strong safeguards. Otherwise, you are going to have the LMA situation which, again, the Commission could help clarify by not sitting on appeals clarifying what the relationships with LMAs should be for years and years and years.

Number three, let's not get hung up on labels. This is not about news. I'm not saying it has to be news programming. What is news programming?

If you focus on locally-originated programming, if you focus on programming that discusses the way Commission traditionally approached it, issues of concern to the community -- give broadcasters tremendous latitude, but make them commit in exchange for any kind of relief. Make them commit to programming which comes from places or is of a nature to remediate the loss and diversity that comes with allowing some sort of common ownership.

You can have that cause and effect and you can do it in a way that will not cause discomfort intestinally for some of the people who don't like looking at content. I think it's possible to do that, but it does not involve the bright lines that your staff understandably favors.

MR McCARTHY: Mr. Chairman, could I just take thirty seconds to respond to that?

CHAIRMAN KENNARD: Certainly. Go ahead.

MR. McCARTHY: Because it isn't what's going on really. The only way you're going to get a franchise in your -- in your market is to produce a lot of non-entertainment programming, news/public affairs being a significant component. And we -- the study I referred to when Commissioner Tristani said, you know, "Show me the figures."

We commissioned a study which Wiley, Rine and Fielding did for the Gore commission which said, "Take seventeen markets" -- which happened to be the markets Belo was in -- "take the four" -- "the four main networks and take a program week, and eliminate all the commercial content; use the Commission's old program categories of non-entertainment programming -- news, public affairs and all the other non-entertainment programming exclusive of sports -- and let's see what a hundred and sixty-eight hours a week" -- "let's see what percent of that week these stations do."

The average was close to twenty-five percent of the program week, was non-entertainment programming. And the reason they're doing that is so -- because you've got to -- with your non-entertainment programming, your community service, you've got to differentiate yourself and distinguish yourself from all the other video outlets and you've got to get that franchise and extend that franchise.

And we can't -- we're limited as to how we can extend that franchise. But it's -- it's definitely in the public interest in my view.

CHAIRMAN KENNARD: But isn't the case, Mr. McCarthy, that those market incentives may be there and driving some broadcasters, but others have a different business plan and that's not part of it. And I think that's why we're seeing this discrepancy between what Mr. Schwartzman is saying and what you were saying.

There are some stations that are doing local programming and non-entertainment programming. But there is a class of stations that aren't. And we are being called upon to draw some line here. And that's what we're obviously grappling with. Jeff.

MR. MARCUS: Mr. Chairman, I would maintain that you really are going to have in the future two classes of over-the-air broadcasters. You're going to have the ones that believe in localism and the ones that don't because the race is to localism.

Cable companies over the last several years have focused on clustering. And there has been trading and swapping and buying and selling so that one company has the majority share of the market, if not the entire market.

And what they do once they get that is they go for a local news channel. And they go for local -- local programming channels. And the old issue of the access channels not being meaningful, all of a sudden they become meaningful because they can deliver the entire market. And they have all of this service that they can attract viewers with and now advertisers with.

So as broadcasters, our only defense is to go local because we can't compete with the fifty or eighty channels on -- on the cable system. And in order to go local, we need the fire power to come back at these cable companies. And I feel sort of strange arguing against my old industry. But we need the fire power to come back against the cable industry. And that's why LMAs and duopoly is important.

Not everybody goes for entertainment programming. We do news. Our differentiation in the marketplace -- and the reason our LMAs are becoming successful is because we focus on local news because that's what people want to see.

CHAIRMAN KENNARD: Thank you. Mr. Frank.

MR. FRANK: Sir, the issue -- I agree with Jeff Marcus. The issue is localism. And -- and -- but the other side of that is that when two competitors combine -- when -- when a company combines with another competitor, it adversely affects the marketplace for everyone else in the marketplace.

And you do lose the diversity of viewpoint and you do lose perhaps the public service. And those are the overriding principles.

You know, we've talked a lot about stations that are in trouble. Many of us who have taken over stations have taken them over in our company in Miami and in Detroit where the ratings were three shares, five shares; very, very low. And today, they are number one stations.

There is a period of hard work and investment. And that's what it takes to move a station up into the marketplace. And it is -- oftentimes we believe localism is the way to do that.

But just because you have a small share in the marketplace at this time does not mean you are a failing station and does mean you should be an exception to the LMA rule. When you allow -- when you allow LMAs and duopolies, what you do is really go against that principal of localism and diversity in public service.

CHAIRMAN KENNARD: Mr. Yudkoff.

MR. YUDKOFF: Mr. Chairman, I just wanted to come back to the important issue of diversity of ownership. I run an investment fund that invests in the broadcast business. And the reason we exist is to back inchoate entrepreneurs and help them to get into the broadcast businesses profitably to us.

I think that the most realistic way to make sure there is a diversity of ownership is to have a diversity in the management pool of broadcast properties which is the pool that these entrepreneurs realistically come from.

I think that a much less practical way to ensure a diversity of ownership is to regulate such that the small market stations, which are the most likely point of entry for entrepreneurs, are minimally economically viable. I don't think that will help having a diverse group of entrepreneurs unless that diversity comes from entirely other sources like -- like diverse owners who happen to be independently wealthy, completely aside from the broadcasting industry.

CHAIRMAN KENNARD: Ms. Slade.

MS. SLADE: I would like to say one thing. I'm in the radio side of the business. And we've just been through this consolidation. So you have existing operators that you can pull from, you've got a factual base if you want. You can ascertain what happened with the ownership rules changing. You -- we know what happened as far as ownership. There are fewer minorities. There are more conglomerates.

Can we assess what happened in the radio side of the business before we make all the changes in the television side? I mean, before we go into a television duopoly, can we see what impact it had from a public interest standpoint, from a diversity of interest standpoint, from a diversity of viewpoint standpoint? Can we make those assessments, ascertainments? I mean, can you do that for us before you change the rules?

Because as a small operator, I'm the one competing out there. And it's very difficult to compete with conglomerates. Just a case in point, I have a finite amount of inventory. I pitch, do my best. My numbers are what they are. I get the buy or I don't.

If I'm competing with someone that owns five, six, seven, eight radio stations and a television station and a billboard company, they're packaging it all together. They've got one-stop advertising. It's very difficult to compete.

Now, we do okay. But as you raise the bar and raise the bar, at some point you'll go under. When I came into this business ten years ago, there were five black-owned and operated facilities in Los Angeles. We are the only one now. And that's because the owner made a commitment to stay in the business.

We are committed to this industry. But the bar keeps raising and my competitors are not playing with the same rule book. I have a finite amount of inventory. They buy another station. It's very difficult.

So I would submit or recommend that you evaluate what's already happened on the radio side before you make massive changes on the television side.

CHAIRMAN KENNARD: Thank you. Commissioner Furchgott-Roth.

COMMISSIONER FURCHGOTT-ROTH: Thank you, Mr. Chairman. I believe, Mr. Schwartzman, the answer to number nine down is tension. But some of this may be an academic exercise. We received yesterday a letter from several leading members of Congress giving us some guidance that's kind of unequivocal.

"There is no" -- and I quote, "There is no question that all local marketing agreements have been grandfathered permanently." And they go on to cite parts of the '96 Act.

They go further to state, "The concept of grandfathering is fairly straight-forward. These arrangements should continue as long as the parties agree. Local broadcasters have invested hundreds of millions of dollars in these arrangements. They have served the public interest. It would be unfair and inconsistent with the law to now impose post-hoc limitations. The agreements should be renewable and freely transferable. Any restrictions such as imposing a term of years, limiting transferability, or limiting an LMA to its initial contract term are flatly inconsistent with the concept of grandfathering."

Many of you on the panel have testified frequently before Congress and have some sense of how strongly they feel about some issues. And I just wondered if you could give us, the FCC, some guidance about doing something that might not be consistent with such a straight-forward, unambiguous message.

MR. SCHWARTZMAN: Commissioner, you are, to be sure, an independent regulatory body which is more clearly an arm of Congress than any other part of the governmental body. But you are an independent regulatory commission. You are delegated authority and you are charged with interpreting the laws.

Members of Congress who write the laws have some very useful things to say. But it's decided by you and by the courts. Members of Congress who provide what is referred to by the courts as post-enactment legislative history don't always find that it's follows.

And while I value the interpretations and the suggestions that these members of Congress may have received as to what that letter may have contained as they sat down together and wrote it and assembled all the cases and reviewed their extensive knowledge of LMAs, I'm reminded that we frequently see amicus briefs filed by members of Congress. Most recently, one comes to mind is the census case the Supreme Court decided on different sides.

We had this before -- before the Commission judicial review of the Iowa Utility Board case. They both can't be right. That's why you're there. And your job is to interpret the law; not do what a member of Congress tells you in a letter you should do in interpreting the law.

MR. McCARTHY: Here is the hope for editorial diversity again. I disagree. And I don't think you can follow all of the -- the track record of the adoption of the 1996 Telecommunications Act without reading Congressional intent, legislative intent, that the Commission was asked to review some of these -- these rules, some of which go back to the '60s and with the purpose of rescinding those that no longer had any credibility in the marketplace we're in.

And the companion acts of Congress essentially de-regulating the other telecommunications providers I think is a very strong indicator of Congressional intent. I -- I agree with you wholeheartedly that LMAs were intended to be grandfathered.

And the newspaper broadcast cross-ownership rule and all the other rules which had their beginnings in the '60s and '70s, the purpose of -- of putting in this -- this by any old review is saying, "Well, we'll defer to a certain extent to the Commission." But bear in mind, this is what we -- this is how strongly we feel about these. We're starting to de-regulate the other ones. And the purpose is you look at them and de-regulate what doesn't make any sense, duopoly certainly being one of them.

MR. MARCUS: I would only add that I would agree with Mr. McCarthy. And I think the language and the legislative intent is very clear. And we see these letters coming to the Commission with greater frequency because I think the people that were a part of the process are concerned that the process may not be carried out. And so I would -- I would say that the intention of Congress needs to be followed here.

And if that were the case, if that were to happen, then I think that we would see greater opportunities for new entrants, minority and other new entrants into the -- into the business because there would be much more activity in the duopoly side and the LMA side.

And certainly, those of us that would like to invest in the -- in the venture side of it to bring on new entrants would feel that the laws that were adopted in 1996 and codified further in 1997 were being followed. We have to have a stable regulatory scheme. We have to be able to rely on what's been passed and not have the rules changing all the time because we are making major, major investments that are based upon -- on a regulatory scheme that has to remain intact.

CHAIRMAN KENNARD: Let me just say one thing about this point because I'm the one that most of these letters are addressed to. And I look at them all.

And I study them carefully.

And I have not seen since I've been Chairman or when I was General Counsel at this Agency, I have never seen a controversial issue where there has been unanimity in the letters that we have received from Congress.

And this issue is no different. Commissioner Ness?

COMMISSIONER NESS: Mr. Marcus, just following up on your last point. How many stations do you own presently?

MR. MARCUS: When all the pending transactions close --

COMMISSIONER NESS: Please.

MR. MARCUS: -- we own four hundred and sixty-seven radio stations and thirteen TV stations --

COMMISSIONER NESS: So --

MR. MARCUS: -- including four LMAs.

COMMISSIONER NESS: So you've profited tremendously from the great liberalization under the 1996 Telecom Act. Is that not right?

MR. MARCUS: Well, I don't know if profit is the right word. We've been able to consolidate.

COMMISSIONER NESS: Is there any reason why today you could not contribute substantially to a fund to provide for minority ownership that's run independently? Is there anything preventing you from doing so today?

MR. MARCUS: The instability of the regulatory scheme.

COMMISSIONER NESS: Is preventing you from making a contribution.

MR. MARCUS: That's correct.

COMMISSIONER NESS: Is there anything -- I'll ask this generally of the panel. Is there anything preventing companies today from owning, for example, a cable channel in their market? I would point out, in Washington, D.C., there is Channel 8 which is owned by Albritt -- a subsidiary of Albritt Communications Broadcast Company. It provides for the opportunity to amortize the cost of providing the news operation.

Is there anything that's preventing a company today from owning an internet business, from owning a satellite channel, from owning magazines in the marketplace, from owning broadcast properties outside of the marketplace? Is there anything that's preventing these companies from participating in the vast assortment of communications outlets with the exception of a very narrow, specific situation within the local market?

MR. McCARTHY: I think that -- you certainly can lease cable news channels. But I would sort of turn that question around and say the -- the ability of our competitors to do far more than we can.

And TCI could buy the Dallas Morning News, for example, in Dallas if it wished. We couldn't buy a cable system. We couldn't buy another TV station in that market. You know, Microsoft could come in and buy most or all of the media facilities in any market. It's regulatory parity that is the issue.

We have -- we have some freedom and we've used that freedom in developing cable news networks. But we don't have as much freedom as our competitors.

COMMISSIONER NESS: Mr. McCarthy, I would suggest that you have an opportunity for a second channel in your marketplace. In fact, you have an opportunity with the digital broadcast system to provide a wide assortment of programming in your market for the public. And that's what certainly we are hoping will be happening as we convert from analog to digital.

MR. McCARTHY: But Commissioner Ness, I think that you have to -- and I'm sure you're aware that no one is watching. There are very few digital TV sets out there. And this is going to take a long time --

COMMISSIONER NESS: No one was watching television when it first went on the air, I'm sure --

MR. McCARTHY: Well --

COMMISSIONER NESS: -- many years ago.

MR. McCARTHY: -- we all have to, when we make investments, see the return.

COMMISSIONER NESS: Nobody was listening to FM radio when that first went on the air.

MR. McCARTHY: And we're hopeful that this will do as well as FM radio. But the fight is at the local level, the fight is for the viewer's eyeballs competing with the cable operators for the fragmentation, trying to fight back against the fragmentation of the video marketplace.

And in order to -- to do that, we have to have additional power in the marketplace so that we can attract those eyeballs. And we as a company, and I know Belo as a company and many others, are willing to make the commitment to develop those stations. But -- and we have made the commitment to develop those stations.

And I would -- I would maintain that if we can't do this, that there will be further fragmentation of the marketplace. And we've seen this. If you look twenty years ago at the network share, what it was and what it is today, and it continues to erode, it is going more towards the cable operators, more towards -- and as the cable operators cluster, more towards local. And we have to have the ability to fight back.

CHAIRMAN KENNARD: Mr. Marcus, I'm afraid that's going to have to be the last word. We've gone over time in large measure because this has been such a fascinating panel. And I --

MR. MARCUS: I rarely get the last word at the Commission, sir.

CHAIRMAN KENNARD: Okay. We do have a closing statement from Commissioner Ness.

COMMISSIONER NESS: Just basically a closing thought. This was a quotation from a leading TV journalist in an interview on "Fresh Air", which is a public broadcast radio program.

"It is true we all work for bigger organizations now. The fewer large organizations there are owning more media, in very general terms, the potential for that being worse for the media and not better is just obvious because when you have a lot of media owned by a lot of people, this is an obvious opportunity for much more free expression. Now, the direct corollary is not that because we are owned by", in this instance, "Disney that we're all suddenly choking to death. Quite the opposite. But I think axiomatically speaking, yes, more media in fewer hands obviously has potential peril." And that speaker was Peter Jennings.

CHAIRMAN KENNARD: And that will be the last word. Thank you very much.

(Whereupon, at 12:50 p.m. on Friday, February 12, 1999, the hearing was adjourned.)

REPORTER'S CERTIFICATE

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CASE TITLE: FCC EN BANC; LOCAL BROADCAST OWNERSHIP

HEARING DATE: February 12, 1999

LOCATION: Washington, DC

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