ANDREW JAY SCHWARTZMAN

Andrew Jay Schwartzman is the President and CEO of Media Access Project (MAP). He has directed the organization since June, 1978.

MAP is a non-profit public interest telecommunications law firm which represents the public in promoting the First Amendment rights to speak and to hear. It seeks to promote creation of a well informed electorate by insuring vigorous debate in a free marketplace of ideas. In recent years, MAP has led efforts to insure that broad and affordable public access is provided during the deployment of advanced telecommunications networks and the Internet.

Mr. Schwartzman has appeared on behalf of MAP before the Congress, the FCC and the courts on issues such as cable TV regulation, minority and female ownership and employment in the mass media, and "equal time" laws. Among his recent accomplishments was obtaining a decision from the United States Court of Appeals which expanded candidates' rights to control when and how their commercials will be broadcast (*Becker v. FCC)*.

Mr. Schwartzman is a member of the Advisory Board of the Center for Democracy and Technology, and a board member of the Minority Media Telecommunications Council and the Safe Energy Communications Council. In 1998, was appointed to the District of Columbia Bar's Technology Task Force. Mr. Schwartzman was the Law and Regulation Contributor to *Les Brown's Encyclopedia of Television,* and is the author of the telecommunications chapter in the *Encyclopedia of the Consumer Movement*. His work has been published in major legal and general journals, including *Variety*, *Electronic Media*, *The Washington Post*, *COMM/ENT Law Journal* and *The ABA Journal*. He is a frequent guest on television and radio programs such as *The Today Show*, *Nightline*, *CNN's Reliable Sources*, network evening newscasts, and *All Things Considered*.

Mr. Schwartzman is the 1992 recipient of the United Church of Christ Office of Communication's Everett C. Parker Award.

After graduating from the University of Pennsylvania in 1968, and its law school in 1971, Schwartzman was staff counsel to the Office of Communication of the United Church of Christ. From 1974 until he took his current position, Schwartzman worked for the U.S. Department of Energy and predecessor agencies. He is married to Linda Lazarus, a hearing officer with the United States Department of Energy.

1707 L STREET, NW SUITE 400 WASHINGTON, DC 20036
VOICE: (202) 232-4300 FAX: (202) 466-7656 http://www.mediaaccess.org

MEDIA ACCESS PROJECT

TESTIMONY OF
ANDREW JAY SCHWARTZMAN
PRESIDENT, MEDIA ACCESS PROJECT

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

En Banc Hearing on Local TV Ownership Rules

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1707 L STREET, NW SUITE 400 WASHINGTON, DC 20036
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Repeal of local ownership rules to create larger local station combinations, increased TV/radio cross-ownership, and TV duopolies may well generate economic efficiencies. However, this does not automatically translate to more, or more varied, programming. It does not insure that broadcasters address the needs of citizens who are demographically unattractive. And it most certainly does not replenish the creative gene pool to insure that broadcasting can stay in touch with ethnic and social diversification of American society.

Many of the people in this room have heard me say that we have the best system of broadcasting in the world, and that this is because, not in spite of, policies established by the Communications Act of 1934. I fear this is less true today than in the past. There is, as there should be, a lot of good programming, and dedicated public service in this country, but the American people are not receiving their fair share of the supposed benefits of changed ownership rules.

My hometown radio station, WVOX in New Rochelle, New York, is a good example of what we have now, and may lose. It is owner-operated, by a colorful man known to many people here today, Bill O'Shaughnessy. He and I don't agree on much, but his station covers his community, its issues and responds to its tastes. He appears to be prosperous.

Stations like WVOX are endangered by the megachains, for reasons others here can explain better than I. But this local contact is important, and it is being replaced more and more by distantly-manned, computer formatted, distant signal syndicated, management by formula broadcasters who have local licenses, but no local ties.

What does localism mean to broadcasters? Well, to the Television Bureau of Advertising, it is a marketing idea. Its new ad campaign proudly extols the special, localized nature of consumer tastes, telling advertisers that they can "connect your brand to local communities, and hit people where they live."

If TV broadcasters can derive premium revenues by connecting brands to communities, they ought to be to find a way to provide mean even a minute per week of locally originated programming. Many radio stations, and more and more major market TV stations, do not.

them to use free publicly owned spectrum for home shopping without having to pay fees.

Broadcasting is in fine shape. Look at the CPMs. The fragmentation of audience makes broadcasters' unique and exclusive reach into every home all the more valuable. Audiences may grow less quickly, but each viewer is increasingly more valuable. The cost per thousand for spot TV is 25-30% above what it was five years ago.[1]

Just last month, *Broadcasting and Cable* began its annual advertising outlook by saying that "industry [is] upbeat about the millennium."[2] David Poltrak of CBS pooh-poohed the slow erosion of network audiences, pointing out that the networks "still deliver mass audiences."[3]

Neil Braun, until recently the President of the NBC Television Network, gave this explanation of why broadcasting has a bright future:

> ***Why didn't the explosion in channel choices across cable and satellite spectrum diminish the allure of broadcast television?...First, cable has come to be viewed by savvy marketers not as a competitor to broadcast television, but as a complement to it....[T]he advertising capabilities that the two offer are markedly different. Each cable network's strength is delivering a niche audience over time, while each broadcast network delivers a mass market fast and often.****Second, with increased choices in everything...only strong brands will prosper. For example, the powerful Peacock brand makes possible a symbiotic relationship between NBC's cable and broadcast properties***Third, the notion of broadcast television's "declining share" has obscured the reality of tremendous growth. The size of the audience pie continues to expand**** Fourth, the increasing fragmentation of society-and the audience-makes broadcast television even more valuable. To make the next sale, an advertiser has to reach all the ready to buy consumers. Broadcast television reaches 97 percent of U.S. homes every week.***[4]

The networks are, as always, the loudest whiners. The notion that networks may not

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[1]See Attachment A. According to TvB, The CPM for thirty second early evening spot was $4.62 in 1993, and $6.58 in 1998.

[2]*Broadcasting and Cable*, 1/4/99, p. 30.

[3]*Id.*

[4]Neil Braun, "Why cable hasn't killed broadcasting" (Guest Commentary), *Electronic Media*, 3/17/97, p. 16.

9. Industry nomenclature can be misleading.

10. Cable networks don't deliver their audience evenly.

Broadcasters' gloom and doom scenario overlooks other facts as well. As we have explained in our prior comments, they:

- Ignore the consolidation that has already taken place, and continues to take place, in broadcasting.
- Overstate the number and power of current multichannel video competitors, and understate the extent to which broadcasters also have ownership interests in these competitors.
- Fail to mention how digital television technologies promise to convert broadcasters from single channel to multichannel providers.
- Make unsubstantiated promises of public benefits from economies of scale that would result from common ownership.

However welcome it may be, the emergence of new multichannel providers does not counteract the loss of diversity which would accompany relaxation of the duopoly rule. The fact that several different technologies may soon deliver programming does little to change this, since multiple and cross ownership of these distribution technologies means that their programming will be under common editorial control of the same entities now dominating the program production. And, although the number of broadcast stations has doubled, increasing multiple ownership may have actually ***decreased*** the number of independent voices.

If the Commission were to liberalize waiver policies for duopolies and TV cross-ownership, it should do so only in compelling circumstances, and only when applicants make specific, ***enforceable*** and reviewable promises of additional programming that goes beyond the "public interest programming" already required of them. Unsubstantiated, self serving promises that cost savings will be shared with the public are worthless.

However, no special sympathy should be directed at operators of LMAs. As one of the leading members of the Communications Bar said to me, the term itself is a euphemism for the