BROADCAST OWNERSHIP REGULATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

SEPTEMBER 15, 1999

Serial No. 106–77

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
59–991CC WASHINGTON : 1999

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BROADCAST OWNERSHIP REGULATIONS

WEDNESDAY, SEPTEMBER 15, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Stearns, Cox, Largent, Cubin, Shimkus, Pickering, Fossella, Ehrlich, Bliley (ex officio), Markey, Rush, Engel, Luther, Sawyer, and McCarthy.

Staff present: Linda Bloss-Baum, majority counsel; Cliff Riccio, legislative clerk; and Andy Levin, minority counsel.

Mr. TAUZIN. Good morning. Today the subcommittee meets to hear testimony on the FCC's broadcast ownership rules that apply to the number and type of broadcast properties that American media companies are permitted to own. Lately all we have to do is pick up the newspaper or in the modern world click onto any Internet news page to see the effects of broadcast ownership rules on the media outlets.

Last week's announcement about the potential merger of two media giants, CBS and Viacom, have brought these ownership issues under a very special spotlight.

This example provides a real-life illustration of how media is developing, converging and changing as we move into the next century. As much as these companies would like to grow and expand operations over a number of media outlets, several restrictions imposed by the FCC currently stand in their way of doing so.

We gather this morning to learn more about the broadcast ownership rules that exist today and how they will affect the information and entertainment that Americans will receive in the years to come. Earlier this year, I joined with Chairman Bliley, ranking member Dingell, and our counterparts in the Senate, to call upon Chairman Kennard and the FCC to reform its outdated ownership regulations. To its credit, last month the FCC revised several of its ownership rules, rules that had been in place since the time when only three major networks dominated the American airways.

While the FCC has taken a noble first step by revising a number of these restrictions, it did not address the whole problem that current market imperatives present, primarily the national ownership cap and the newspaper broadcast cross-ownership restrictions.

On August 5 the FCC permitted some television stations in the Nation's largest cities to own another station within the same market. This is the duopoly rule. However, as media companies have rushed to take advantage of these new business opportunities, they have run into a ceiling that controls the maximum number of stations they may own. By relaxing the duopoly rule did the FCC intend to lead to a transformation of local broadcast ownership? Of course we don't know. Will the proceeding go forward now? We don't know. Hopefully the testimony we will hear today will provide some of those answers.

There is legislation introduced in the House today by my good friend and colleague from Florida, Mr. Stearns. Mr. Stearns, I know you are breathing a lot easier today as the storm apparently has missed your constituents, and we are still holding our breath as Floyd is churning out there.

Mr. Stearns' bill would raise the cap to 45 percent of American households, and just this week a bill was introduced in the Senate to raise the cap to 50 percent of households. We need only to look around us to these recent merger proposals to see how easily a network can exceed this national ownership cap.

Similarly, the FCC should also reconsider its rules that restrict a newspaper from owning a local television station within its same market. The truth is that today anyone can purchase a broadcasting station, with the exception of the newspaper. A single entity can own two broadcast stations within a market, but it is nevertheless precluded from owning one station and one newspaper.

The inconsistency targets newspapers with unique restrictions that appear to be, and I think are, outdated in the technological world in which we live. Americans increasingly rely on Internet sites produced by the broadcast networks such as MSNBC for up-to-the-minute news and information. These essentially electronic newspapers can be owned by a broadcast station, yet a traditional newspaper cannot.

Again, there is legislation in the House, H.R. 598, introduced by Mr. Oxley, that would direct the Commission to repeal the newspaper broadcast cross-ownership ban within 90 days of enactment.

I suspect that our witnesses this morning will focus primarily on the need for the clarification about these two important remaining areas of broadcast fellowship. I am disappointed, frankly, that the FCC did not accept our invitation for this morning's hearing to provide some of that clarification. I was looking forward to having the Commission here to give us a sense of what we can expect to hear from them on these critical ownership issues in the future.

But we would like to use today's hearing as an opportunity to publicly call upon the FCC again to reconsider both the national ownership cap and the broadcast newspaper cross-ownership restrictions in order to allow for the maximum growth within the industry. By relaxing these remaining ownership restrictions, we can ensure the continuation of free over-the-air broadcast programming for America in years to come.

The Chair is now pleased to recognize my friend from Massachusetts, the ranking minority member, Mr. Markey, for an opening statement.

Mr. MARKEY. Thank you, Mr. Chairman, very much. I agree with you; I wish the FCC was here as well. I have a lot of questions for them as well.

During the course of today's proceedings we will hear a number of proposals to drastically eliminate mass media ownership rules. This discussion today comes in the aftermath of the FCC's recent decision addressing local media ownership issues. Last month the FCC went well beyond clarifying attribution rules, while permitting some TV duopolies on the basis of a legitimate failing station test, grandfathering, LMAs, or even permitting limited UHF, UHF/TV combinations.

The FCC decision, which I believe is the worst FCC decision since the Commission took the children's television rules off the books in the early 1980's, will lead to a rapid consolidation of local media properties in this Nation.

Its most predictable result will be to greatly accelerate mergers that create unhealthy and unnecessary TV duopolies in local communities. Moreover, as could also have been foreseen, the FCC decision will have the effect of pouring gasoline on simmering efforts to loosen other local media ownership rules.

The aggregate effect of the FCC's recent rule changes will be to encourage a communications cannibalism in mass media properties across the country. These rule changes will not create more entertainment and information sources for consumers, nor will they enhance the ability of the broadcasting medium to meet the informal and civic needs of the communities it serves, nor did the FCC condition the ability of TV stations to combine on requirements for enhanced civic service to the affected community or a boost for educational programming, nor is there any meaningful new efforts to enhance minority ownership as a result of these rule changes. Zero, nothing, nada.

Instead, these proposals will concentrate media power at the local level in the hands of a few. After the Congress and the FCC spent years struggling to create more information sources at the local level, proposals are now on the table to allow a collapse of these new choices down to just a handful. Low power TV and low power radio are not going to make up for what has been lost.

People point to the rise of cable, of DBS, of the Internet as justification for changing these rules. Cable has certainly added more channels, but cable does not offer a local news service in the vast majority of communities across the country. We have a local cable news service in Boston, but it is the exception, not the rule, for cable.

Cable offers a national media service. The same thing for satellite, it is national, and even if we successfully legislate a local-to-local provision, all this does is bring back the same local TV stations that exist today. We are not adding choices, and DBS on its own does not today and has no plans in the future to offer a substitute for the local news and information that local TV stations provide.

Next, we have the Internet. The Internet is certainly growing and some day may offer a service that replaces what local broadcast news offers for a community, but it doesn't today. It won't next month or next year. Some day it will. There are local Web sites that provide news. They typically are the Web sites of the local broadcast stations and the local newspapers themselves. When the Internet offers a community a meaningful substitute for what television broadcasters today provide, then it will make sense to adjust broadcast ownership rules.

When I arrived in Washington in 1976 we had Channel 4, 5, 7, 9, 20 and 50, the Washington Post and the Washington Star. Today in Washington we have Channel 4, 5, 7 and 9, Channel 20 and 50, the Washington Post and the Washington Times. No one goes to the Internet to find out what is happening locally in Washington. They go to their TV stations. They go to their Washington Post or Washington Times. So the justification for this huge reexamination of all of the rules unfortunately falls if the Internet is being relied upon.

For these reasons, I also believe that now is not the time to adjust the network audience reach rule or the broadcast cable cross-ownership rule. The relationship between networks and television affiliates has served our country well. Raising the level of network audience reach at this time would tip the balance between TV networks and their affiliates toward the networks. I believe it is important to keep this balance.

Again, I want to thank Chairman Tauzin for holding this very important hearing, and I am looking forward to hearing from our witnesses.

Mr. TAUZIN. I thank my friend.

I recognize the vice chair of the committee, Mr. Oxley, for an opening statement.

Mr. OXLEY. Thank you, Mr. Chairman, and now for the rest of the story, as the gentleman says on the radio.

I want to first welcome our distinguished panel of witnesses.

Mr. Chairman, I think it is only fair to commend the FCC for what it accomplished in the recent local ownership decision. Revising its rules for broadcast ownership and attribution, the Commission clearly made progress in modernizing its regulations to adapt to a rapidly evolving marketplace.

Having said that, it is just as clear to me that the commission didn't go far enough. I believe the FCC should do more to allow combinations in smaller markets, that all existing LMAs should be permanently grandfathered, and that the radio television cross-ownership rule should be repealed forthwith.

Most glaring of all, the Commission's failure to address the antiquated newspaper broadcast cross-ownership rule is, to my mind, simply perplexing.

That the FCC could correctly decide that an entity should be able to own up to two TV stations and six radio stations in a market but then conclude that a newspaper can't operate a single broadcast station defies logic. It simply makes no sense.

The newspaper broadcast ban was implemented a quarter of a century ago at a time when three networks controlled 90 percent of the TV audience. The Commission's inaction implies a belief that nothing has changed in 25 years, when in fact everything has changed except this counterproductive rule. Cable systems, new networks, independent stations, MMDS, and DBS have all exploded onto the national scene since 1975, to say nothing of the World Wide Web.

The diversity of voices has multiplied beyond what anybody could have imagined in 1975, yet the rule remains unchanged. The rule is inequitable, fosters inefficiency, hinders the ability of newspapers to compete in a multimedia environment and prevents struggling newspapers from merging with local broadcast stations to stay in business and serve the public.

As members know, I introduced legislation with the gentleman from Texas, Mr. Hall, and the gentleman to my right, Mr. Stearns, to repeal the cross-ownership ban. I invite all members to review this legislation with an eye toward supporting the reversal of this severely outdated restraint of trade.

Again, Mr. Chairman, I look forward to the testimony from our distinguished panel and I yield back.

Mr. TAUZIN. The gentlelady from Missouri, Ms. McCarthy, is recognized for an opening statement.

Ms. MCCARTHY. Thank you, Mr. Chairman. I want to thank you for holding this hearing and ask for unanimous consent to have my remarks put in the record. I do share many of the concerns that are being raised here today, and I am grateful that the panel is here and wish the FCC were here as well so that we can sort through these issues. Thank you.

Mr. TAUZIN. The gentleman from Florida Mr. Stearns is recognized.

Mr. STEARNS. Good morning and thank you, Mr. Chairman. I want to thank you and Chairman Bliley for this hearing. You and my friend Mr. Oxley have been instrumental, I think, in prodding both the committee and the Federal Communications Commission to act, as many have pointed out, to deregulate the restrictions on broadcast ownership.

In answer to my colleague from Massachusetts, in this age of high technology and near instant access to information, I don't go to many sources for my information except the Internet. I can get both local information from my hometown of Ocala as well as national information off the Internet. And sometimes there will be a day when perhaps I don't even read the newspaper, except perhaps my staff will bring my attention to something. And I think that is what you are going to see, a click of a button, once we have high-speed access to the Internet. You will get all your local news, and I can go to my hometown Ocala, I can go to the St. Petersburg Times, I can go to the Orlando Sentinel, on the Internet to find out what is happening.

When you combine that with the possibility of satellite communication broadcast as well as high-definition television, I think there is going to be indeed a huge revolution in this broadcast ownership, and I say to my colleague from Massachusetts, he has been very instrumental in trying to deregulate the satellite industry and he wants to deregulate the energy industry. So I am sort of curious why for some reason he doesn't want to deregulate the most prominent and promising field of telecommunication, and that is broadcast.

As many of you know, I introduced with my colleague Mr. Oxley and others, a comprehensive broadcast ownership bill, H.R. 942.

And I think as I pointed out earlier, we were able to get the FCC to act on August 5 to enact a good portion of this legislation to make the necessary changes, but inexplicably they failed to act on, I think, the most necessary provision that remained in my bill: They failed to rescind the ban on newspaper cross-ownership.

Let me just tell my colleagues, right now newspaper cross-ownership exists. So if people say we can't have this, let me point out that the FCC enacted legislation in 1975 to ban newspaper cross-ownership, but they grandfathered in certain ownership combinations. For instance, Newscorp still owns a new network affiliate in New York City as well as the New York Post. In Chicago, the Tribune company operates a television station WGN, and its own newspaper. In San Francisco, the San Francisco Chronicle has owned and operated the city's NBC affiliate, KRON.

So, Mr. Chairman, in a de facto way, cross-ownership exists today. And so in 25 years of grandfathering, there is not one instance of the newspapers previously mentioned attempting to gain editorial control or editorial influence over their television stations. In fact, television and radio broadcasting is a different type of media. And so I think from examples we see, there is no reason why we can't relax the ban on cross-ownership.

If such a combination ever resulted in an attempt to use their position to monopolize the market through advertising or other control, that company would then be open to antitrust violations and could be prosecuted at the Federal and State level. So I think, Mr. Chairman, we have the laws already on the books that we wouldn't have to worry about this high amount of influence.

I would urge the FCC to adopt the rest of what I have in my broadcast bill. In fact, Mr. Chairman, I hope you and others will support me when I offer my bill the latter part of this week or next week to see if we can go ahead with the remaining items in the bill.

Senator McCain, I believe, is the one in the Senate who went ahead and increased the ownership amount. So I would like to say to my colleagues that I think we are at the point now we can continue to deregulate in the broadcast industry, and I think this hearing is very important, and I commend you for it, Mr. Chairman.

Mr. TAUZIN. The Chair now recognizes the gentleman from Ohio, Mr. Sawyer for an opening statement.

Mr. SAWYER. Thank you, Mr. Chairman, and thank you for this hearing. I ask unanimous consent to insert my opening statement in the record and forego reading it to you at this point.

[The prepared statement of Hon. Thomas C. Sawyer follows:]

PREPARED STATEMENT OF HON. TOM SAWYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Thank you Mr. Chairman for holding this important hearing on broadcast ownership regulations this morning. I also want to thank our witnesses for coming to share their thoughts on this issue with us.

As we are aware, the FCC last month completed part of its biennial review of regulations as required by the Telecommunications Act of 1996. The result of the review was the relaxation of local broadcast ownership rules—eliminating the duopoly prohibition; modification of Local Marketing Agreement regulations; and revision of television/radio ownership regulations. However, the Commission did not adjust the national broadcast ownership cap which is currently set at 35%. It also kept in place the prohibition on newspaper-broadcast stations cross ownership.

While the Commission did not take action on those items I wish they would have been able to testify before us today. Perhaps they would have been able to give us an indication on whether or not they will be reviewing the national ownership caps in the near future. Nevertheless, raising the national cap and broadcast-radio media cross ownership will be the primary focus of today's hearing. I am aware that both Mr. Stearns and Mr. Oxley have separate introduced legislation that would deal with these provisions. I look forward to hearing more about their respective proposals.

I want to comment briefly that before this Subcommittee moves forward on deciding whether the national ownership caps should be raised, or even removed entirely, I believe we should take a cautious approach. Let's look at what the FCC has done with respect to the local ownership regulations. It took the Commission over three years to come up with this policy. We should allow the regulations to be implemented and then determine the affect the ruling has on the national cap. It may prove that neither Congress nor the FCC need to raise the national cap because broadcast stations may find it more beneficial owning more than one station within a local area than raising the cap. I believe it is best that we don't rush into a decision that Congress, or the Commission, may ultimately regret.

I recognize that there are several outlets available, ranging from network television to the Internet, that people use to receive their news, watch their favorite program, listen to music, or even to listen or watch a sporting event simultaneously on their home computer. At no other time in our history have as many resources been able to deliver such information. The ownership rules and regulations covering those technologies must be reviewed and adjusted for modern times. However, I hope we don't act too quickly to modify those rules and regulations just to be doing so. Careful consideration needs to be taken to understand the full effect those actions will have on preserving quality programming, promoting diversity and competition within marketplaces so that consumers and businesses benefit.

Thank you again Mr. Chairman for conducting this hearing. I look forward to hearing from our witnesses.

Mr. TAUZIN. The Chair thanks the gentleman, and with the indulgence the committee, the chairman of the full committee, Mr. Bliley, has arrived and the Chair will recognize Mr. Bliley out of order for an opening statement.

Chairman BLILEY. Thank you, Mr. Chairman. I apologize. There is another hearing going on upstairs in the Health Subcommittee.

I certainly want to thank the gentleman from Louisiana for calling this hearing this morning to examine the latest effects of the FCC's broadcast ownership rules. Earlier this year I called for the FCC to act on the broadcast ownership regulation. I was pleased to see the action to ease restriction on what properties broadcasters may purchase.

Broadcast ownership regulations were created when the three major networks solely monopolized the airways. This, as we are all aware, is no longer the case. Today, television broadcasters compete for program choice and viewing convenience more than ever before. Cable systems serve more than 65 million households. Direct broadcast satellite channels serve over 7 million subscribers and 2 million households that own home satellite dishes. That is a lot of folks who can find what they want without watching network television.

Furthermore, the Internet offers a brand new medium for video entertainment. Broadcast ownership rules do not take the Internet into account.

Needless to say, the availability of so many outlets and so much programming has dramatically changed television viewing patterns in the United States. These developments have changed the environment for broadcasters, which has resulted in substantial competition for audience share and advertising revenues of conventional over-the-air television stations.

The FCC last month took the first step in easing the burden of these broadcasters. The Commission announcement allows broadcasters to own more than one station per market and relaxes the limits for local marketing agreements. This moves the marketplace to much of the high profile media consolidation that we have witnessed as recently as this week, but the FCC did not address all of the relevant ownership rules in its consideration last month.

There is still work to be done. For example, the national ownership cap of 35 percent of U.S. households for any broadcasting company will continue to limit the broadcasters who wish to purchase new stations. In addition, I think the ban on ownership between a broadcaster and a newspaper in the same market is outdated and disadvantages newspaper publishers across the country.

Under the current rules, practically any individual or entity is able to buy a broadcast station, except for the newspaper publishing industry. This outdated restriction in my opinion runs counter to the competitive spirit driving the marketplace today. This is indeed an exciting time in the media industry. The FCC should get the rest of the job done and write rules to foster today's competitive marketplace as well as ensure a diversity of voices over the airways.

I urge the FCC to review these important remaining areas of broadcast ownership in the very short term. I look forward to hearing the panel of witnesses this morning to explain how the rules are working today, as well as hearing their predictions of how the game will play out using this rule book in the years to come.

I thank the chairman and yield back.

Mr. TAUZIN. The Chair now recognizes the gentleman from Illinois, Mr. Rush, for an opening statement.

Mr. RUSH. Again, Mr. Chairman, I thank you for having this timely hearing. Last month the FCC amended several of its broadcast ownership rules, and I was dismayed however to find that the FCC had failed to amend the newspaper broadcast ownership rule. The newspaper broadcast cross-ownership rule singles out newspapers and prohibits them from obtaining broadcast licenses.

I believe that the rule is archaic and does not reflect the new economic realities of this changing communications environment, and I look forward to the testimony of our distinguished panelists. I am very much interested in what we can do to further modernize the FCC's broadcast ownership rules.

Mr. Chairman, I do want to note that part of the testimony here—we do have the president and I want to welcome him to the committee of the Tribune Publishing Company, which is Chicago based, Mr. Jack Fuller, and I look forward to his testimony here this morning.

With that, Mr. Chairman, I yield back the balance of my time.

Mr. TAUZIN. I thank my friend, and the Chair now yields to the gentlelady from Wyoming, Mrs. Cubin, for an opening statement.

Mrs. CUBIN. Thank you, Mr. Chairman. When I came here today, I had a good idea of how I thought the solution to this discussion should be resolved, and since I have been here I already have questions. So I regret that I am not going to be able to stay for the whole hearing, but I will study the testimony. I certainly will listen to everyone's opinions and all of the facts on the issue, and thank you all for being here. I truly wish the FCC would be here as well, and thank you, Mr. Chairman, for holding this hearing.

Mr. TAUZIN. The gentleman from Minnesota, Mr. Luther.

Mr. LUTHER. Thank you, Mr. Chairman, and I certainly want to thank you and Mr. Markey for the hearing today. As complicated as these issues are, I believe as I am sure many of my colleagues do, that our focus must be on the American consumer, the American public that will be viewing the programs in this evolving market, and how we can encourage diversity and quality programming today in this media.

And so I, like you, look forward to hearing the testimony. I will try to attend for as much as possible today, and again, I very much appreciate this hearing.

Mr. TAUZIN. The Chair thanks the gentleman.

The gentleman from Oklahoma, Mr. Largent, for an opening statement. Mr. Largent does not have an opening statement. I thank the gentleman.

Mr. Shimkus is recognized.

Mr. SHIMKUS. Thank you, Mr. Chairman. And this is a very important hearing. I would like to also welcome Mr. Jack Fuller, the President of Tribune Broadcasting in Chicagoland, well respected company, along with Mr. Jim Yager, President and Chief Operating Officer of Benedek Broadcasting who operates an affiliate in my district, KHQA, Channel 7, in Quincy, Illinois.

I have learned a lot from the local broadcasters, especially importance of free over-the-air broadcasts with respect to the 1993 flood, which they covered along with the other stations around the clock, 24 hours a day. We see that coverage today as Hurricane Floyd makes its way up the eastern seaboard. I will be really monitoring the debate because that is what this debate for me is about: How do we keep free over-the-air broadcast for the public interest sake in this new arena?

And I appreciate this hearing. I think that is one of the important aspects that I will be looking at, and I yield back my time.

Mr. TAUZIN. If the gentleman would yield, I wanted to acknowledge to him that on our visit to his district, his area, in fact we saw some of the films of the coverage and how excellent it was in terms of early warning to citizens and help in those areas. I thank the gentleman.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I am glad that we are here to discuss broadcast ownership regulations. I continue to be amazed with the current high-quality viewing choices that consumers have at their disposal. I can still amaze my children when I tell them that I grew up in an age without Cable-TV, the Internet and Satellite television. The truth is that we are living in a vastly different era.

Today, there is greater competition in this medium than ever before, although much of the laws which govern this industry were written before the end of World War II. So I agree with the Chairman, that it is time we revisit current regulations and determine if the intent of the laws are still practical in this modern time.

It is no secret that I have great concern with cross ownership between broadcasting companies and newspapers. As a New Yorker, I just have to look at my neighboring State of Connecticut, which currently has only one major Newspaper covering local State issues. I am not convinced yet that having the potential for one major news outlet is where we need to be heading.

I am also deeply concerned with the lack of ethnic and racial diversity behind and in front of the camera, which exist today within the broadcast industry. I have difficulty understanding how Network programing has become less diverse since the 1970's. So while I am open to hearing the perspectives of our panelists regarding regulatory relief regarding the National Ownership Cap I am still cognizant of current realities. So as we discuss these issues today I really want to hear what the panelists are or will be doing on the issue of diversity.

Another of my concerns centers around the movement of current popular network programming to their Cable counterpart. I do not want a reality in which my constituents will have to pay to see the Oscar's, or the World Series. In essence, having the best programming only being able to be seen, if the consumer has the money to pay for it.

Additionally, I am interested in the panelists perception regarding the FCC's current revisions. Once again, I am thankful that we are having this hearing and I am looking forward to hearing from the panel.

PREPARED STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, I thank you for your courtesy in recognizing me.

Today's hearing originally was scheduled to take place just prior to the August recess. At that time, the main focus of the hearing was intended to be on the question of raising the national ownership cap—which is currently set at 35%.

Obviously much has changed in the broadcast world in the short time since. The FCC adopted sweeping changes to the local ownership rules just last month. The relaxation of these rules has unleashed a feeding frenzy which, no doubt, will continue unabated for quite some time.

In reviewing the prepared testimony of the witnesses, it appears that the new local ownership rules will take center stage today. Given the enormity of the changes, that comes as no surprise. What does give me pause is that much of the testimony focuses on the notion that these changes didn't go far enough.

Mr. Chairman, while I'm not convinced that such a sweeping change to the local ownership rules was necessary in the first place to maintain a healthy, over-the-air broadcast service—or that it will otherwise serve the public interest—I do hope the industry will take advantage of the rules in a way that proves these concerns to be without foundation.

But that proof will take some time. Until then, further relaxation of the rules—at either the local or national level—would be premature. Before acting legislatively, I believe we should know how the newly adopted rules will affect media market concentration, and what that means to both the industry players and the public.

For example, how will these local ownership changes affect the balance of power between networks and their affiliates? Given the urge to merge, and the vertical integration that is occurring between programmers and distributors, we must ask whether an increase in network ownership of local stations is in the best interest of either the station owners or their viewers.

Mr. Chairman, there is no question that changes in the telecommunications industry, and mass media in particular, are occurring at breakneck speed. We may find that the remaining rules will serve little purpose in the days to come. But I hope this Committee will proceed on these issues with due care, and make sure we don't unwittingly upset the dynamics of this industry with little sense of the ramifications.

I thank the witnesses for appearing today, and yield back the balance of my time.

Mr. TAUZIN. The Chair is pleased now to welcome our panel. The panel is, again, a very distinguished panel, and it is large, and so we will make several reminders to the panel as we begin. The first is that your written statements, by unanimous consent, without objection, are made a part of the record as well as the written statements of any of the members here or those who may come, without objection, are made a part of the record.

That being said then, we would like to keep this conversational, so if you would please not read your statements, if you will engage us as easily as you can in a conversation about these issues, we will appreciate it, so we can get into a Q and A session as rapidly as possible. So if you will please the put written statements aside and tell us the major points you wanted to make here today.

We will be limited by the 5-minute rule. We have these little lights that work. The green light indicates that you are on and when the red light hits, that is sort of like time is up, you are off the air; newspapers, you shut down; so terminate and move over, and we will go to the next witness.

That being the instructions, let me remind you of something that Thomas Friedman in his excellent book, The Lexus and the Olive Tree, once said. He said that Gutenberg made us all readers and that Xerox made us all publishers, that television made us all viewers, and that broadband on the Internet will make us all broadcasters. A rather interesting observation as we begin the ownership hearings today.

The witnesses will consist of Mr. Michael Katz, Senior Consultant of Charles River Associates; Mr. Peter Chernin, President and COO of the News Corporation; Andrew Fisher, Chairman, Network Affiliated Stations Alliance; Jim Yager, President and COO of Benedek Broadcasting; James Hedlund, President, Association of Local Television Stations; John Sturm, President, Newspaper Association of America; and finally, Jack Fuller, the President of Tribune Publishing.

Again, we are disappointed the FCC didn't join this excellent panel, but I am sure they are watching and listening, and much of what you said will be noted today, and I hope you have some comments about what the FCC is doing and why you think they are doing it or not doing it.

We will begin with Mr. Michael Katz, senior consultant of Charles River Associates. Mr. Katz, you are on, sir. Please turn your mike on so the recorder can pick it up. I think it is at the bottom.

STATEMENTS OF MICHAEL L. KATZ, SENIOR CONSULTANT, CHARLES RIVER ASSOCIATES; PETER CHERNIN, PRESIDENT AND COO, NEWS CORPORATION; ANDREW FISHER, CHAIRMAN, NETWORK AFFILIATED STATIONS ALLIANCE; K. JAMES YAGER, PRESIDENT AND COO, BENEDEK BROADCASTING, ON BEHALF OF NATIONAL ASSOCIATION OF BROADCASTERS; JAMES B. HEDLUND, PRESIDENT, ASSOCIATION OF LOCAL TELEVISION STATIONS; JOHN F. STURM, PRESIDENT AND CEO, NEWSPAPER ASSOCIATION OF AMERICA; AND JACK FULLER, PRESIDENT, TRIBUNE PUBLISHING

Mr. KATZ. Good morning, Mr. Chairman and members of the subcommittee. It is an honor and a privilege to be invited to speak before you today about the broadcast ownership rules. I am Michael Katz, and in addition to being a consultant for Charles River Associates, I am also a professor of business administration and economics at the University of California.

I have submitted a rather lengthy white paper on the subject, and I will take the chairman's words to heart and dispense with the notes I brought. You will see what should have been distributed to each of the members, some figures documenting the changes that have taken place in the broadcasting environment, and I won't review those.

I think that everyone on the panel agrees that there have been tremendous changes, and I think almost all of us on the panel agree that regulation hasn't kept up with those changes.

So let me get straight to the point and address one of the rules, the national ownership cap. My analysis indicates that relaxing the cap and eliminating it would not threaten competition, would not threaten diversity, would not threaten minority ownership and would not threaten localism.

Let me comment, particularly on two parts of that, diversity. Why do I say relaxing and eliminating the cap wouldn't threaten diversity? Because viewing and issues of diversity are local, and the rule is a national cap. There is a mismatch between that rule and the policy concern.

In terms of minority ownership, I think the short answer is the rule isn't working to promote minority ownership. There aren't very many television stations owned by minorities. Having the cap for decades has not successfully promoted minority ownership. I don't think there is any reason to believe that eliminating the cap would get rid of it.

Now, while my analysis says the rule doesn't have benefits, I think public interest analysis does indicate cost. It does limit ability of industry to organize itself in the way that allows it to take advantage of economies of scale, economies of scope, economies of coordination, and that is an issue not just for the industry but for viewers and for advertisers, because by making the industry less efficient and by reducing the industry's incentive to invest in high-quality programming, high-cost programming, it is hurting viewers. And for that reason I have concluded, based on my analysis, that the national ownership cap should be removed.

And I will just note something I think everyone on this subcommittee already knows is that the Commission itself in 1984 reached the same conclusion and, in fact, has reached a similar conclusion every few years since, yet has failed to take action; and my public interest analysis and economic analysis indicates that it is time to take action now.

Thank you.

[The prepared statement of Michael L. Katz follows:]

PREPARED STATEMENT OF MICHAEL L. KATZ, SENIOR CONSULTANT, CHARLES RIVER ASSOCIATES

Many of the regulations that still govern the broadcast television industry were adopted based on marketplace analyses conducted in the 1940s and 1950s, when television was in its infancy. During much of this period, there were only two television networks and most communities had few local stations. There were no cable systems. There was no such thing as satellite transmission, let alone direct-to-home satellite video. Video cassette recorders and video games did not yet exist. And not even academics were thinking of the Internet. In this environment, rules restricting the ownership of broadcast networks, stations, and certain non-broadcast media properties were deemed necessary to restrain the exercise of network market power and to promote competition and diversity.

Clearly, we live in a very different world today. Network "dominance" is a thing of the past. As documented in the accompanying white paper, revolutionary changes in technology and competition have fundamentally altered the competitive position of broadcast stations and networks. In particular, these changes have dramatically increased the degree of competition by introducing numerous new competitors to the marketplace.

Today, there are more broadcast television *networks* than there were commercial television *stations* when some of the rules were adopted. In addition to a larger number of networks, stations have many non-network sources of programming. There are approximately 1,200 commercial stations broadcasting today, and most households are located in markets served by 11 or more television stations. Between cable and satellite, almost every household in the U.S. has the option of purchasing multi-channel video programming service, typically offering dozens or even hundreds of channels. Approximately 78 percent of television households subscribe to some form of multi-channel video programming service. In the first week of last month, prime time and total-day ratings for basic cable exceeded the corresponding aggregate ratings for ABC, CBS, Fox, and NBC. Moreover, cable's combined subscription and advertising revenues exceed those of the broadcast networks. VCRs and video games are ubiquitous. And the rise of the Internet is one of the biggest economic and social developments of the past 50 years.

As a result of these dramatic changes, viewers, advertisers, program suppliers, networks, and stations have a large and growing variety of options available to them that were not available in the past. The existence of these options has several fundamental implications for the regulation of television broadcasting:

First, because broadcasters face much greater competition than ever before, there is no longer a need for a comprehensive set of regulations to protect viewers and advertisers from the exercise of network or station market power. Market forces, coupled with antitrust enforcement, will generally be sufficient to protect the public interest.

Second, because broadcasters have alternative channels for investment and growth, station and network owners have incentives to direct their creative and investment efforts elsewhere if their ability to engage in non-subscription, over-the-air broadcasting is artificially constrained by regulation. By reducing the economic opportunities and returns in broadcasting, regulation distorts investment decisions and drives broadcasters to direct more of their resources away from over-the-air broadcasting and toward cable and other distribution outlets.

Third, because local stations have an increased number of alternatives to affiliating with any given network, there is no need for a comprehensive set of regulations to protect stations from the exercise of network market power.

The national multiple ownership rule, under which a single entity cannot control television stations whose combined coverage exceeds 35 percent of U.S. television households, serves as an instructive example of the significance of these changes for the formulation of appropriate public policy. While the rule was originally adopted to promote the goals of competition and diversity, today it has no public interest justification. This conclusion follows from two central findings established in the accompanying white paper.

One, *there is no evidence that the national station ownership cap serves any policy goal.* The available data and economic analyses support the conclusion that:

- Elimination of the cap would not threaten competition and indeed can be expected to strengthen broadcasters as competitors;
- Elimination of the cap would not affect diversity;
- The cap does not promote minority ownership; and
- Owners whose station groups have broad national audience reaches are equally if not more committed to localism than are owners of single stations or owners whose station groups reach smaller percentages of U.S. households.

Two, *while the rule has no public interest benefits, the rule raises costs, leads to a less efficient organization of the industry, and therefore reduces program quality and raises the cost of advertising.* More specifically, the rule:

- Limits the realization of economies of scale and scope associated with common ownership of multiple stations, thus raising costs and reducing the incentives to invest in over-the-air television;
- Blocks the expansion of particularly well-run station groups, thus artificially raising costs and denying viewers and advertisers the benefits that would come from station management by owners who are especially able to serve viewer and advertiser interests; and
- Limits the ability of the broadcast networks to own stations, an arrangement which would otherwise improve the coordination between the networks and the stations that carry their programming. Restrictions on station ownership thus limit the returns and increase the risks of network investments in high-quality and innovative programming. As a result, the national ownership cap reduces

the networks' incentives to make such investments and ultimately diminishes the quality and diversity of programming.

In short, *this rule now harms the public interest rather than protects it.*

The Commission itself has repeatedly recognized over the past 15 years that limitations on national station ownership are arbitrary and unnecessary. In fact, in 1984 the Commission decided to sunset the rule completely by 1990, but Congressional opposition forced the Commission to abandon the planned sunset. Subsequently, the Commission has acknowledged that elimination of the rule would threaten neither competition nor diversity and would lead to efficiencies that would benefit the public. Yet, although careful and repeated analysis demonstrates a clear public interest in eliminating the multiple ownership cap immediately, the Commission continues to keep the rule in place.

The retention of the cap is particularly troubling (and puzzling) in the light of the Commission's recent decision to relax local ownership limits. This action only confirms that national ownership restrictions are arbitrary and unjustified. How can the Commission rationally conclude that a group owner at the current 35 percent national audience cap can purchase a *second* station in New York City without threatening competition or diversity, but cannot purchase a station in San Francisco, where it does not currently own one? How would ownership of the San Francisco station adversely affect either the diversity of programming available to New York viewers or the options available to advertisers seeking to reach New York consumers? Relaxation of the local ownership rule was clearly the correct decision, but it only serves to underscore the lack of any public interest basis for the national ownership cap.

This is not the first time that there has been concern that an inefficient regulatory regime for broadcast television is harming the public interest. Yet, over-the-air broadcasting has survived. So why is there any need to act now? The answer is twofold. First, over-the-air broadcast television faces greater competition than ever, and the effects of that competition on the nature of programming are being felt by broadcasters and viewers today. Networks are being outbid by cable networks for first-run broadcast rights to movies. And cable competition so eroded the audience for their weekday morning children's programming that the Fox network abandoned that daypart for children's television. Policy makers should be concerned when these and similar developments are the result of outmoded and unnecessary regulation rather than marketplace forces.

The second reason there is a public interest in acting now is that current policies are creating long-term costs by distorting investment incentives. Network owners have greater opportunities to redirect their investment efforts (both financial and creative) than ever before. And they are taking advantage of these opportunities. For example, ABC is launching a new soap opera channel. But instead of taking advantage of newly allocated digital broadcast spectrum to distribute the channel as a non-subscription over-the-air service, ABC is putting this new channel on cable. Similarly, when Fox decided to go into the national news business, it launched a cable network, FOX News Channel, rather than develop a national news programming service for its broadcast network.

By distorting economic returns in broadcasting, regulations inefficiently drive the networks to direct more of their financial and creative resources toward cable properties and other distribution platforms. That the networks are branching into other services is *not* the problem—it is privately and socially valuable for them to make use of their skills and assets in these other services. Rather, the problem arises when regulation *distorts* these investment decisions. It is also important to recognize that, once broadcasters start investing in a particular direction, it may be hard to reverse the effects of regulatory distortions. Consequently, the time to reform broadcast television regulation is now.

Mr. TAUZIN. Thank you. The Chair thanks the gentleman and the Chair thanks him for his brevity.

The chairman would now recognize Mr. Peter Chernin, President and COO of News Corporation, for his statement. Mr. Chernin.

STATEMENT OF PETER CHERNIN

Mr. CHERNIN. Thank you, Mr. Chairman. Mr. Chairman and members of the subcommittee, I thank you for the opportunity to address you this morning. I appear before you today to urge broad-based deregulation of the broadcasting industry, including particularly repeal or substantial relaxation of the 35 percent national cap on television station ownership.

I would hope to make three simple points this morning:

First, the 35 percent cap is rooted in a bygone era of media scarcity. Second, retention of this rule has absolutely nothing to do with localism, a concept that I believe is frequently misused in this debate. And finally, the 35 percent cap actually disserves the public interest by distorting the flow of both investment capital and programming away from free broadcast television.

Free television in general and the three original networks in particular once dominated television. As late as 1973, the three broadcast networks commanded more than 90 percent of television viewing time. Today, the four networks and new startups have been reduced to mere shadows of themselves, while thousands of new outlets have been unleashed.

In 1973 cable was in its infancy. Its main purpose was to improve broadcast picture quality. At the network level, virtually every network show was profitable. Computers were giant pieces of machinery. No one owned a videotape machine. People still changed their television with tuners. And the Internet was yet unheard of. Suffice it to say that broadcast television is not what it used to be.

This past July, basic cable networks beat the four, not the three, the four major national broadcast networks in both household ratings and share on a total basis and in prime time. In fact, the four broadcast networks have lost 11 share points just since the passage of the 1996 Telecommunications Act.

The most telling impact of this change is on the bottom line. In 1998, 15 television program services generated profits in excess of $100 million. Fourteen of those 15 were cable networks. In fact, each and every one of those 14 cable networks generated more profits than all four broadcast networks combined.

Mr. Chairman, the telecommunications world obviously has been turned upside down and there is no end in sight. In the 1996 Act, Congress recognized the rapidly changing nature of this marketplace and instructed the FCC to review broadcast ownership rules every 2 years and to, "repeal or modify any regulation it determines to no longer be in the public interest." according to my calendar, the FCC should now be preparing its second biannual review and yet they have not even made substantial progress on their first.

The FCC established the factual basis for broadcast deregulation in its recent local ownership decision. I quote from Chairman Kennard. Quote, "We are adopting commonsense rules that recognize the dramatic changes that the media marketplace has undergone since our broadcast ownership rules were adopted 30 years ago. We need to provide broadcasters with flexibility to seize opportunities and compete in this increasingly dynamic media marketplace." I couldn't agree more.

Mr. Chairman, today, the national broadcast ownership cap has little to do with serving the public interest. It is all about protecting one set of private business interests, and that is all. The powerful and profitable owners of large groups of network affiliated television stations argue that repeal of the rule would threaten the concept of localism. In fact, the real objective is twofold. First, they want to maintain outmoded governmental regulations originally adopted for public policy reasons as a way to retain leverage over the networks. And second, they want to limit potentially competing buyers as they seek to acquire ownership of even larger groups of stations.

Now, I think you have to wonder exactly who are these little guys that need protection. For example, COX, my esteemed colleague's company, is the fourth largest cable operator in America, has revenues of close to $5 billion, operates major U.S. newspapers—I believe 16—is the owner of 11 stations and 59 radio stations. The Washington Post company, another little company that needs protection, owns 6 television stations, Newsweek magazine, 24 daily and weekly newspapers, and numerous online holdings. The New York Times company, another little company, the New York Times, the Boston Globe, 18 other daily newspapers, 8 television stations, 2 radio stations. First Argyle, 32 television stations, 7 radio stations, 12 newspapers, et cetera, et cetera, on and on. These are the little groups that need protection in the battle for localism.

FOX is firmly committed to the concept of localism. We have made local news a priority. Each of our stations use operations as locally managed. In fact, in most FOX television stations, we have doubled or tripled the amount of local news we provide.

Our opponents' argument also lacks sincerity since we believe that 80 percent of all television stations today are already group-owned, and well over 90 percent of all network affiliates are group-owned. So the fact is that this 35 percent market cap is not going to protect local stations. It is going to protect the large station groups.

We also think that the 35 percent ownership cap discourages the flow of capital into free television, and we think that the largest amount of quality programming is now currently produced for broadcast television. Our company alone produced the three major Emmy award-winning series this past year, all for broadcast television and not for cable. And to the degree that we are discouraged from owning broadcasting, we will divert the flow of our capital and our creative resources away from free television into privately owned cable services.

Mr. Chairman, I thank you for your time.

[The prepared statement of Peter Chernin follows:]

PREPARED STATEMENT OF PETER CHERNIN, PRESIDENT AND CHIEF OPERATING OFFICER, NEWS CORPORATION

Mr. Chairman and members of the Subcommittee. Thank you for allowing me this opportunity to address you.

I appear before you today to urge broad-based deregulation of the broadcast industry including, in particular, repeal or substantial relaxation of the 35% national cap on television station ownership. I hope to make three simple points. First, the 35% cap, like other broadcast regulations, is rooted in a bygone era of media scarcity and is based on factual premises that no longer exist. Second, retention of this rule has nothing to do with localism—an important concept that is frequently misused in this debate. Finally, the 35% cap actually disserves the public interest by distorting the flow of both investment capital and programming away from free broadcast television and toward pay television media such as cable networks.

A. THE 35% CAP IS ROOTED IN A BYGONE ERA OF MEDIA SCARCITY AND IS BASED ON FACTUAL PREMISES THAT NO LONGER EXIST.

Free television in general, and the three original networks in particular, once dominated television. The government responded to that situation with a two-part strategy. It tightly regulated broadcast television while simultaneously stimulating the growth of new competition. These pro-competitive public policies combined with major technology advancements have created a brand new media world. Suffice it to say, the government's policy has been wildly successful. The broadcast networks have been reduced to mere shadows of their former selves while thousands of new competitive forces have been unleashed and many have even reached maturity. Unfortunately, rules like the broadcast television ownership cap tend to remain in place long after their purpose has ended.

In 1973, broadcasting was dominated by three broadcast networks whose locally owned and affiliated stations in most cities around the country commanded upwards of 90% of people's television viewing time.

Cable was in its infancy. Its main purpose was to improve the picture quality where antenna reception was inadequate, not to offer a broad array of program services. Back then, it was virtually impossible for a local television station to lose money, and at the network level, virtually every show was profitable, even if it was at the bottom of the ratings ladder. Computers were giant pieces of machinery that never got near your home, and chips were something you ate when you watched television.

No one owned a videotape machine, and channels were still changed with tuners.

Today's viewer has hundreds of shows to choose from on any given day. Consider these staggering numbers:

- 96% of all television households are passed by cable.
- More than 78% of television households subscribe to some form of subscription multichannel television service.
- There are just under 200 different national television networks now distributed, plus hundreds of additional movie channels.
- 98% of all households have at least one television remote control device.
- 94% of all homes have a videotape machine.
- 50% of all homes have a computer.
- And, a rapidly growing 33% of all homes have access to the Internet and its virtually infinite array of competitive choices.

Simply stated, free broadcast television networks are no longer a dominant force in need of regulation. The evidence is overwhelming. Consider a recent headline from the trade publication *Electronic Media.* It reads, "As tide turns, cable sails past Big 4." This past July, basic cable networks beat the four (not three), major broadcast networks in household ratings and share both on a total basis and in primetime. In fact, the four broadcast networks have lost 11 share points in household primetime audience just since passage of the Telecommunications Act of 1996.

The most telling impact of this change is on the bottom line. In 1998, 15 television program services generated cash flow in excess of $100 million. Fourteen of those 15 networks were cable networks. Only one was a broadcast network. In fact, each and every one of those 14 cable networks generated more cash flow than all 4 of the major broadcast networks combined.

Many of you understand fully how much the telecommunications world has changed and how rapidly these changes will continue going forward. As a result, Congress instructed the Federal Communications Commission in the 1996 Telecommunications Act to carefully examine outdated broadcast ownership rules every two years and to determine whether they are necessary or relevant in today's highly competitive marketplace. The Act specifically directs the FCC to determine "whether any such rules are necessary in the public interest as a result of competition," and further directs the Commission to "repeal or modify any regulation it determines to be no longer in the public interest."

Mr. Chairman, according to my calendar, the Commission should be preparing for its **second** biennial review. Yet the FCC has not even made substantial progress on the first. While the Commission delays, the video marketplace moves forward and broadcasters are being left behind.

I would encourage Congress to instruct the FCC to promptly conclude its review of its national ownership rules. I am confident that upon a thorough review of today's highly competitive marketplace the Commission will have no choice but to conclude that the national ownership cap specifically serves absolutely no public policy goal and must therefore be eliminated.

The FCC has already established the factual basis for broadcast deregulation in its recent local ownership decisions. I quote from Chairman Bill Kennard: ". . . we are adopting commonsense rules that recognize the dramatic changes that the media marketplace has undergone since our broadcast ownership rules were adopted 30 years ago . . . we need to provide broadcasters with flexibility to seize opportunities and compete in this increasingly dynamic media marketplace.'' I couldn't agree more.

The FCC concluded that the marketplace has changed so dramatically that common ownership of two stations in one market could be permitted. How could the FCC then conclude that owning one station, each in different markets, is more of a threat to competition and diversity than owning two stations in the same market? Yet, that is exactly the anomalous result of relaxing the duopoly rules but retaining the current national ownership cap. FOX, today, could buy a second station in Atlanta where we already own a station but would be prohibited by the 35% national ownership cap from buying a single station in San Francisco where we don't own any stations.

Does this result make sense? No. Simply stated, the broadcast ownership cap is rooted in a bygone era of media scarcity and is based on factual premises that no longer exists. Free broadcast television networks are no longer a dominant force in need of regulation.

B. RETENTION OF THE OWNERSHIP CAP HAS NOTHING TO DO WITH ''LOCALISM''—AN IMPORTANT CONCEPT THAT IS FREQUENTLY MIS-USED IN THIS DEBATE.

The powerful and profitable owners of large groups of network affiliate television stations are among the most vocal proponents of retention of the 35% ownership cap. They argue that repeal of the rule would threaten the concept of ''localism.'' In fact, their real objective is twofold: 1) they want to maintain outmoded government regulations originally adopted for public policy reasons to serve their private business objective of limiting what they perceive to be network leverage; and 2) more importantly, they want this same government regulation to limit potential competing buyers as they seek to acquire ownership of even larger groups of stations. The truth is that the large affiliate group owners are no more local to most communities than are the networks. Given the realities of today's television station ownership patterns, retention of the 35% rule has nothing to do with the concept of ''localism.''

''Localism'' will continue to be the cornerstone of broadcasters irrespective of the rules because ''localism'' is what sets broadcasting apart in a multichannel, fragmented viewing universe. Frankly, ''localism'' is our ''bread and butter'' as broadcasters. At its core is the ideal that a broadcast station should be operated by local management attuned to the needs and tastes of the local community. Early in the history of our industry, it was thought that local ownership was the best way to assure such management. However, over time, many of the best local owners of stations acquired other stations and grew to become owners of group stations. The FCC, itself, has conducted analyses that concluded that group owners, including the networks, were in fact among the best owners in terms of providing management and service attuned to the needs of the local communities.[1]

FOX is firmly committed to the concept of ''localism.'' We believe that local broadcasters should serve their local audience—it's a matter of public interest and it's smart business. FOX has made local news a priority of its owned station group. Each of the FOX-owned stations' news operations is independently managed. The imposition of a monolithic editorial viewpoint on commonly owned stations makes no sense. To be successful, a broadcast news operation must be responsive to local community needs, issues and concerns. All of our stations present local morning and evening newscasts[2]. Several are in the process of expanding their morning news programs that offer the ONLY exclusively LOCAL alternative to our competitors' national network morning programs.

Our opponents' argument that out-of-market ownership of a station is bad for localism also falls flat on its face upon examination of the facts. Today, station groups headquartered in a non-local city are already the dominant form of television station ownership. According to the data set forth by Dr. Michael Katz, 90% of ABC's, 98% of CBS's, 91% of FOX's and 83% of NBC's television stations are owned by station groups today. Lifting the ownership cap won't affect that. It's just one group owner acquiring another group owner. Given the FCC's explicit finding that group owners rely on local management attuned to the needs and tastes of the community, such a transfer has no impact on the concept of localism anyway.

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[1] *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Station*, 100 F.C.C.2d 17,20 (1984).

[2] The FOX-acquired Denver station is in the process of building a local news facility.

The fact is that the large and powerful group owners who are the loudest proponents of the 35% cap are no more "local" to most markets than are the network-owned station groups. For example, the owner of the FOX affiliate in San Francisco—whose company, COX, is represented by Andy Fisher who is seated with me today—is actually headquartered in Atlanta. The owner of the FOX affiliate in Boise is headquartered in Toledo. The owner of the FOX affiliate in Honolulu is headquartered in Indianapolis. The notion that FOX's acquisition of any of these stations would have an adverse impact on the concept of localism simply has no basis in fact.I have to wonder who exactly are the "little guys" that the government is so diligently trying to protect here. Again, I refer to Cox, which is: 1) the 4th largest cable operator in America [3]—where it operates almost exclusively as a local monopoly; 2) a major U.S. newspaper owner—operating 16 daily newspapers; 3) the owner of 11 television stations and 59 radio stations. And, Cox, with an estimated $4.9 billion in annual revenues [4], is hardly unique among television station owners. Interestingly, The Industry Standard, an Internet newsmagazine of the Internet economy, lists Cox's top competitors as News Corporation, Tribune Company and Time Warner.

C. RETENTION OF THE 35% BROADCAST OWNERSHIP CAP DISSERVES THE PUBLIC INTEREST BY DISTORTING THE FLOW OF INVESTMENT CAPITAL AND PROGRAMMING AWAY FROM FREE BROADCAST TELEVISION AND TOWARD THE PAY TELEVISION MEDIA.

As described in more detail in the Katz Paper, the 35% ownership cap is not only no longer necessary; its retention would actually disserve the public interest. One can argue that because free television is a public good, government policy should provide positive incentives that encourage the flow of investment capital into broadcasting. At the very least, government policy should not needlessly discourage and penalize the flow of capital into free television. And yet, that is exactly the effect of the 35% ownership cap.

Today, public policy incentives are the opposite of what they should be. If one seeks to offer news, sports, information and entertainment to the American people for free through broadcasting, the government imposes a unique set of ownership and other restrictions that do not apply to those who charge the public for access to their television program services. The result is to distort the flow of investment capital and programming away from free broadcasting and toward the pay television media such as cable networks, contrary to the best interest of the viewing public.

Today, if you offer your programs for free, the government limits the number of channels and networks that you may own both nationwide and in any particular market. By contrast, if you charge the American people access to your programs, then you may own as many channels and networks as you wish. The effect of this inverted public policy is to limit the strength of free broadcast structures in comparison to pay television structures. Since quality programming inevitably "follows the money," the end result will be increased investment in pay television and decreased quality of programming on free television.

As I mentioned earlier, 14 of 15 networks earning more than $100 million in profits were cable networks. **In fact, each and every one of those 14 cable networks generated more cash flow than did all four major broadcast networks combined.** This gross earnings disparity has begun to produce very real adverse consequences for the quality of programming on the free medium. Increasingly, cable networks are using their new economic muscle to purchase what traditionally had been the free broadcast exhibition window for popular programming. For example, theatrical motion pictures that would have been available previously on free networks like FOX are being snatched away by cable networks. Examples include "*As Good As It Gets*," "*The English Patient*," "*You've Got Mail*" and "*The American President*."

To some extent, this shift of program buying power reflects the dual revenue stream advantage of cable networks and may reflect marketplace realities. However, it is undeniable that the 35% broadcast ownership cap exacerbates the competitive difficulties of free broadcasting and makes it harder for the free medium to compete against the new pay forces. Today, the broadcast networks are not making money at the network level, but are recouping their programming investments through their station groups. The national ownership cap limits FOX to owning stations reaching 35% of television households. Therefore, for every dollar our company invests in the FOX Broadcasting network, we are able to capture only 35% of the distribution upside.

[3] 5.1 million subscribers.
[4] *The Industry Standard—The Newsmagazine of the Internet Economy.*

Our aim is not to handicap cable, or the Internet, or any new player—our only plea is that we be allowed to build free television structures with the economic strength to stay in the game against new pay television forces. It would be a public interest tragedy if the free networks were forced by regulation to focus all of their investment capital toward pay television. Paul Farhi of *The Washington Post* got it right last Sunday in his editorial entitled "Clap If You Love Mega-TV!" Farhi, in pointing out that the CBS-Viacom merger is the wave of the future, explained the reason to allow vertical integration by the networks. But, the same principle holds true for horizontal integration as well. Farhi says, ". . . [i]n a mega-media future, in a 5-million-channel world, it may be the only way to keep the humbled networks thriving."

Each of the broadcast networks spends approximately $2 billion annually to invest in programming that is offered to the American viewing public for free. Cable networks don't invest anywhere near that amount. Again, to quote Paul Farhi, ". . . [n]o cable channel reaches enough viewers to underwrite the same number of programs, with the same production values, as the networks. In fact, discounting pro wrestling, pro football and 'Rugrats,' the biggest attractions on cable are reruns of recent network shows." A significant part of the return on that $2 billion investment broadcast networks make comes to rest at the affiliate stations. At some point, we will be unable to justify such huge expenditures when our return investment is artificially limited by the 35% ownership cap. Owning additional affiliates will enable the networks to more fully realize the return on their program investments and will increase the incentives to continue investing in high quality programming for the free medium.

We think that's important, not just for the survival of network broadcasting, but for the public and their continued access to high-value sports, news and other programming on free television.

Thank you.

Mr. TAUZIN. The Chair now recognizes, representing the network affiliate stations' point of view, Mr. Andrew Fisher, Chairman of the Network Affiliated Stations Alliance.

STATEMENT OF ANDREW FISHER

Mr. FISHER. Thank you, Mr. Chairman, distinguished members of this committee, a number of whom I have had the privilege of spending some time with. My name is Andrew Fisher. I am Executive Vice President of Television Network Affiliates at COX Broadcasting. But I am here today on behalf of the Network Affiliated Stations Alliance. COX is affiliated with all four major networks, and NASA is an alliance of the affiliates of ABC, CBS, and NBC television network affiliate associations. And so I am here today really representing 700 local television stations across the country. These local television stations represent a diversity of voices and a commitment to localism that is truly unduplicated anywhere else in the world.

Mr. Chairman, generations of American children have grown up believing that nothing could put Humpty Dumpty back together again, but if the national television networks can persuade Congress to let them increase the national cap above 35 percent, they will virtually be assured of putting back together again even more market power than nearly half a century of communications policy was intended to prevent.

Back in the 1960's the television networks were in a position to demand, and they indeed did get, ownership interest in more than 90 percent of all prime time programming. The network control over programming was almost complete, notwithstanding the fact that affiliates already had the right to reject and the right to preempt network programming, and this was so even though the networks were prohibited from serving as advertising representatives to local stations, and they were required to operate under a 25 percent national audience cap.

In 1970 policymakers reacted to the developing market power of the networks by imposing the financial interests and syndication rules. As a result of these accumulated policies, the network control of prime time programming was moderated and the outcome has served the public interest. It produced a reasonable balance of power between independent program producers, the national networks and their local affiliates.

Mr. Chairman, about 6 years ago, the networks launched a frontal attack against this equilibrium by challenging its very foundations: finsyn, the right to reject, the right to preempt, the rep rule, and of course, the 25 percent cap; and their attack has been steadily rewarded. By arguing that the economics of network television were no longer profitable in the face of cable's dual revenue streams, the networks were able to eliminate finsyn in 1995, and this has led to powerful new combinations of national networks and Hollywood studios, and it has led us back to the growing network ownership of prime time programming from roughly 20 percent to more than 50 percent last year. Who can doubt that we are headed back to the pre-finsyn levels of more than 90 percent? Yet this bonanza has had no apparent effect on the network's claim that their economic sky is continuing to fall.

In 1996, Congress, under this incessant pressure to do more for the networks, reluctantly increased the national audience cap from 25 to 35 percent, and they lifted the prior 12 station ownership limit so that networks can own any number of stations under the increased cap. The question is whether the networks have allowed any of these very substantial economic benefits to flow to their bottom line, and the answer is no.

Instead, they are diverting profits by investing, as is their absolute right, in cable networks, radio expansion and the Internet, but sooner or later the-sky-is-falling rhetoric must be seen for what it is: an insatiable appetite for more and more help from the government at the expense of free over-the-air broadcast diversity and localism.

Mr. Chairman, this is a time when the networks as well as other broadcasters have just been given the green light to increase ownership concentrations of their owned and operated station through the relaxation of the one-to-a-market and duopoly rules. The marketplace for local television stations is as unsettled as I have ever seen it. No one can predict the massive changes in local television that will result, but it will be revolutionary.

For the Congress to increase network affiliated audience cap at this moment would be to move from revolutionary change to chaos. It would be the equivalent of throwing gasoline on an already raging fire of local television station consolidation. With the now emerging economic and programming power of the networks, consider what would happen to broadcast diversity and localism in a world where networks can own and control more than 90 percent of their programming, distributed through wholly owned and operated duopolies in major markets and wholly owned and operated affiliates reaching 50 percent of their audience. Collectively, independent affiliates no longer will have anything to say about program content and they will lose whatever leverage we have.

Mr. Chairman, in 1995, some affiliates with some trepidation agreed to the repeal of finsyn so the networks could strengthen their economic base. We hoped this would be enough. Indeed, FOX could not have emerged without the cap that existed at that time, and so far as free over-the-air broadcasting is concerned, we are at a cultural as well as an economic crossroads. Your deliberation about this cap will determine the outcome of whether the cherished ideals of diversity and localism and television free to the public, as articulated so plainly in the 1996 act, will survive.

Thank you, sir.

[The prepared statement of Andrew Fisher follows:]

PREPARED STATEMENT OF ANDREW FISHER, ON BEHALF OF THE NETWORK AFFILIATED STATIONS ALLIANCE

Mr. Chairman and Distinguished Members of this Committee: My name is Andrew Fisher and I am Executive Vice President, Affiliates, at Cox Broadcasting. I am here on behalf of the Network Affiliated Stations Alliance (NASA). Cox is affiliated with all four major networks, and NASA is an alliance of the affiliates of the ABC, CBS, and NBC television network affiliate associations and represents some 700 local television stations across the country. These local television stations represent a diversity of voices and a commitment to localism truly unduplicated anywhere else in the world.

Mr. Chairman, generations of American children have grown up believing that "nothing could put Humpty Dumpty back together again." But if the national television networks can persuade Congress to let them increase their national audience cap above 35 percent, they will be virtually assured of "putting back together again" even more market power than nearly half a century of communications policy was intended to prevent.

In the 1960s the television networks were in a position to demand, and they did indeed get, ownership interests in more than 90 percent of all prime time programming. The networks' control over programming was almost complete, notwithstanding the fact that affiliates already had the right to reject and the right to preempt network programming. And this was so even though networks were prohibited from serving as advertising representatives to local stations and were required to operate under a 25 percent national audience cap.

In 1970, policy makers reacted to the developing market power of the networks by imposing the financial interest and syndication rules. As a result of these accumulated policies, the networks' control of primetime programming was moderated. That outcome has well served the public interest because it produced a reasonable balance of power between independent program producers, the national networks and their local affiliates.

Mr. Chairman, about six years ago the networks launched a frontal attack against this equilibrium by challenging its very foundations: finsyn, the right to reject, the right to preempt, the rep rule and the 25 percent ownership cap. And their attack has been steadily rewarded. By arguing that the economics of network television were no longer profitable in the face of cable's dual revenue streams, the networks were able to eliminate finsyn in 1995. This has led to powerful new combinations of national networks and Hollywood studios. And it has led us back to growing network ownership of primetime programming from roughly 20 percent to more than 50 percent last year. Who can doubt that we are headed back to the pre-finsyn levels of more than 90 percent?

Yet this bonanza has had no apparent effect on the networks' claim that their economic sky is continuing to fall.

In 1996, Congress, under this incessant pressure to do more for the networks, reluctantly increased the national audience cap from 25 to 35 percent and lifted the prior 12-stations ownership limit so that networks can own any number of stations under the increased cap.

The question is whether the networks have allowed any of these very substantial economic benefits to flow to their bottom line. The answer is no. Instead they are diverting profits by investing . . . as is their absolute right . . . in cable networks, radio expansion and the Internet. But sooner or later their "sky is falling" rhetoric must be seen for what it is—an insatiable appetite for more and more help from the government at the expense of free over-the-air broadcast diversity and localism.

Mr. Chairman, this is a time when the networks (as well as other broadcasters) have just been given the green light to increase ownership concentrations of their owned and operated stations through the relaxation of the one-to-a market and duopoly rules. The marketplace for local television stations is as unsettled as I have ever seen it. No one can predict the massive changes in local television ownership that will result. But it will be revolutionary. For the Congress to increase the network national audience cap at this moment would be to move from revolutionary change to chaos. It would be the equivalent of throwing gasoline on an already raging fire of local television station consolidation.

With the now emerging economic and programming power of the networks, consider what could happen to broadcast diversity and localism in a world where networks can own and control more than 90 percent of their programming distributed through wholly owned and operated duopolies in many major markets and wholly owned and operated affiliates reaching . . . say . . . 50 percent of their national audience. Collectively, independent affiliates no longer will have anything to say about program content. They will lose what little existing collective leverage they have left through the right to reject and preempt. Independent advertising rep firms will lose their influence over programming as well. Program decisions about national news and entertainment will be the exclusive domain of New York and Hollywood. Networks will have the ability to clear their own programming on a national basis with or without their affiliates' blessing. And they will be able to repurpose . . . at will . . . their program content to cable, DBS and other multichannel providers. This will further weaken the voices and financial underpinnings of their independent affiliates.

Mr. Chairman, in 1995, some affiliates, with some trepidation, agreed to the repeal of finsyn so that the networks could strengthen their economic base. The cautious hope was that stronger networks would ensure the future of our free over-the-air system. It was assumed that the then-25 percent national ownership cap and existing network affiliate rules could continue to assure reasonable diversity and localism. Indeed, the Fox network could not have emerged without the 25 percent cap. Congress had it right when it insisted on maintaining as its primary goals, competition, diversity and localism in the Telecommunications Act of 1996. And Congress had it right when it categorically rejected just four years ago, as contrary to the public interest, raising the national audience cap for broadcast networks to 50 percent. Insofar as free over-the-air broadcasting is concerned, we are at a cultural as well as economic crossroads. Your deliberation on increasing the cap beyond 35 percent will determine the outcome about whether the cherished ideals of diversity and localism in television free to the public, as articulated so plainly in the '96 Act, will survive.

Mr. TAUZIN. The Chair is now pleased to welcome the President and COO of Benedek Broadcasting, Mr. Jim Yager.

STATEMENT OF K. JAMES YAGER

Mr. YAGER. Thank you, Mr. Chairman. Let me begin by commending you and your subcommittee for holding this hearing today on these important issues. NAB has long championed reform of the broadcast ownership rules, and we applaud the FCC for taking several steps last month in the right direction, many of which were included in Congressman Stearns' bill, H.R. 942.

Specifically, we agree with the FCC that allowing television duopolies is a positive move. In an age of rapidly increasing voices in the telecommunications world, the anachronism of limiting ownership of local TV stations to one has outgrown its usefulness.

This new rule will allow for economic efficiencies in local markets and will strengthen the ability of both stations to serve the public interest with local program. We also support the ability of TV stations to merge with local radio stations. Again, given our economic competition, this new system will allow TV stations to work together with radio to serve their audiences and to provide better local programming for listeners. Indeed, we would have supported the repeal of the old one to a market rule.

The FCC's duopoly rules put limits on radio and TV ownership that we believe provide adequate protection for diversity. There are plenty of other competitors in local markets besides radio and television stations, and removal of the radio television cross-ownership restrictions altogether would have been appropriate. We also see no reason why the Commission should count the number of media voices differently for radio/TV combinations than in the television duopoly rule.

While the FCC has moved affirmatively on a couple of fronts, there remains another issue that deserves action. Specifically, we believe that the FCC should end the current newspaper broadcast cross-ownership ban. Again, given the huge increase in telecommunication voices, it seems outdated to deny newspapers the right to have any ownership of local stations and vice versa. We see no reason for keeping this rule in place.

Let me also comment on two other rules that the FCC may be looking at. The first is a national TV ownership cap which currently limits any one company to owning stations that reach up to but no more than 35 percent of the Nation's total audience. As you will recall, prior to the 1996 Telecom Act, TV owners were limited to 12 stations and/or 25 percent of the national reach. The Telecom Act of 1996 raised that to 35 percent and eliminated the restriction on the number of stations owned.

It is NAB's view that the 35 percent audience cap ensures that ownership of television stations is not dominated by a few megacompanies and that the beneficial decentralization of ownership in television should be continued well into the new millennium. Lacking a compelling public interest justification, Congress should not modify the ownership cap and abandon an industry structure based on localism in the television marketplace, especially as we television broadcasters make the transition to digital and the changes digital create in the ownership landscape.

The second issue is the current cable broadcast ownership rule. As you know, cable systems are prohibited from owning a TV station in their local market. Here the issue is clearly the monopoly gatekeeper role that cable plays for many households and local markets. Congress has previously found that local TV stations are often at the mercy of cable operators and allowing cable systems to own local stations further concentrate that power. Moreover, the FCC has not yet established what the must-carry rules for digital television will be. Given that, we believe it extremely premature to even consider allowing cable operators to own local stations.

Mr. Chairman, we live in a rapidly changing technological world. The emergence of the Internet is just one example of the plethora of information and communications outlets available to most Americans. NAB believes strongly in ownership reform, and we support the changes that the FCC has taken. Yet we also see the many changes our industry is going through, and we believe that certain fundamental rules should be left alone for now while we sort out the evolving media environment.

Again, I thank you and Mr. Stearns for your continued interest in these important policy debates, and I welcome the opportunity to discuss these matters further at today's hearing.

[The prepared statement of K. James Yager follows:]

PREPARED STATEMENT OF JAMES YAGER, PRESIDENT AND CHIEF OPERATING OFFICER, BENEDEK BROADCASTING

Thank you, Mr. Chairman, for the opportunity to appear before the Telecommunications Subcommittee today. I am K. James Yager, President and Chief Operating Officer of Benedek Broadcasting, which owns 26 television stations in small markets across the nation. I also serve as Joint Board Chairman for the National Association of Broadcasters ("NAB"), on whose behalf I appear today. NAB represents the owners and operators of America's radio and television stations, including most networks.

My remarks today will address the Federal Communications Commission's order adopted on August 5, 1999, which substantially revised the television duopoly rule and the radio/television cross-ownership rule by easing restrictions on the ownership of multiple television and radio stations in the same local market.[1] In addition to addressing the Commission's recent *Ownership Order*, my statement will focus on other broadcast multiple ownership rules that are the subject of pending Commission proceedings.

THE REVISED LOCAL OWNERSHIP RULES

Television Duopoly Rule

The duopoly rule previously prohibited the common ownership of two television stations whose Grade B contours overlapped.[2] In the *Ownership Order*, the Commission relaxed this standard to permit the common ownership of two television stations without regard to contour overlap if the stations are in separate Nielsen Designated Market Areas ("DMAs").[3] The new rules continue to allow the common ownership of two stations within the same DMA so long as their Grade B contours do not overlap (which can occur in some geographically large western states). More significantly, the Commission will now permit common ownership of two television stations in the same DMA if: (1) at least eight independently owned and operating full-power television stations (commercial and noncommercial) will remain post-merger in the DMA, and (2) at least one of the merging stations is not among the top four-ranked stations in the market, based on audience share at the time the application to acquire the station is filed.

In addition, the Commission adopted three criteria for waiving the revised duopoly rule. Specifically, the Commission will presume a waiver of the rule is in the public interest to permit common ownership of two television stations in the same DMA where:

(1) One of the stations is a "failed" station, as supported by a showing that the station either has been off the air for at least four months immediately preceding the application for waiver, or is currently involved in involuntary bankruptcy or insolvency proceedings.

(2) One of the stations is a "failing" station, as supported by a showing that the station has had a low audience share and has been financially struggling for several years, and that the merger will produce public interest benefits.

(3) The combination will result in the construction and operation of an authorized but as yet "unbuilt" station, supported by a showing that the permittee has made reasonable efforts to construct, but has been unable to do so.

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[1] *See Report and Order* in MM Docket Nos. 91-221 and 87-8, FCC 99-209 (rel. Aug. 6, 1999) ("*Ownership Order*"). On the same day, the Commission adopted another order amending its broadcast attribution rules, which define the types of interests that are cognizable under the broadcast multiple ownership rules. *See Report and Order* in MM Docket Nos. 94-150, 92-51 and 87-154, FCC 99-207 (rel. Aug. 6, 1999).

[2] "Grade B" denotes a signal of a particular strength that describes a station's coverage area. The Grade B contour of a television station encompasses approximately a 50-70 mile radius around the station's transmitter.

[3] DMAs are county-based geographic areas determined by Nielsen Media Research, a television audience measurement service, based on television viewership in the counties that make up each DMA.

The Commission also determined to treat television Local Marketing Agreements ("LMAs") according to the same principles that already apply to radio LMAs.[4] The Commission will now attribute the time brokerage of another television station in the same market for more than 15% of the brokered station's broadcast hours per week, and will count LMAs that fall in this category for the purpose of determining the brokering licensee's compliance with the multiple ownership rules, including the television duopoly rule. If they were entered into before November 5, 1996, existing LMAs that do not comply with the new duopoly rule and waiver policies will be grandfathered, at least until the conclusion of the Commission's 2004 biennial review of all the multiple ownership rules. However, LMAs entered into on or after November 5, 1996, that do not meet the revised duopoly rule must either come into compliance with the new rule or terminate by August 5, 2001.

Radio/Television Cross-Ownership Rule

The radio/television cross-ownership rule (often referred to as the "one-to-a-market" rule) restricts joint ownership of radio and television stations serving substantial areas in common. In the *Ownership Order,* the Commission revised this rule to allow more common ownership of radio and television stations in the same market. Specifically, the new rules will permit a party to own a television station (or two television stations if permitted under the modified television duopoly rule or LMA grandfathering policy) and any of the following radio station combinations in the same market:

(1) up to six radio stations (any combination of AM or FM stations, to the extent permitted under the Commission's local radio ownership rules) in any market where at least 20 independent voices will remain post-merger;

(2) up to four radio stations (any combination of AM or FM stations, to the extent permitted under the local radio ownership rules) in any market where at least 10 independent voices will remain post-merger; and

(3) one radio station (AM or FM) regardless of the number of independent voices in the market.

In addition, in those markets where the revised cross-ownership rule will allow parties to own eight outlets in the form of two television stations and six radio stations, the Commission will permit them to own one television station and seven radio stations instead.

For purposes of this revised radio/television cross-ownership rule, the Commission will count television stations, radio stations, daily newspapers and wired cable service as "voices."

The Commission specifically declined to include other types of media (such as Direct Broadcast Satellite, Open Video Systems, Multipoint Distribution Service systems, or the Internet) in this voice count. As with the television duopoly rule, the Commission will permit waiver of the revised radio/television cross-ownership rule in the case of a "failed" station; however, no waiver standards were adopted for "failing" or "unbuilt" stations in the cross-ownership context.

Since 1996, the Commission has granted a number of radio/television cross-ownership rule waivers conditioned on the outcome of its ownership rulemaking proceeding. The majority of these conditional waivers involve radio/television combinations that will be permissible under the revised cross-ownership rule. For those conditional radio/television combinations not covered by the revised rule, as well as for those for which an application was filed on or before July 29, 1999 (if such application is ultimately granted), the Commission will allow the combinations to continue, conditioned on its review of the waivers as part of its 2004 biennial review of the cross-ownership rule.

NAB's Position on Revised Ownership Rules

In the *Ownership Order,* the Commission recognized the continued growth in the number and variety of mass media outlets, as well as the economic efficiencies and public interest benefits generated by common ownership of media outlets. NAB commends the Commission for recognizing the significant changes in the mass media marketplace and revising the television duopoly and radio/television cross-ownership rules to reflect these changes. NAB believes that the Commission generally achieved its stated goal of balancing the efficiencies and public service benefits to be gained from joint ownership of broadcast facilities with its continuing efforts to ensure diversity and competition in the broadcast services. Relaxation of these local ownership rules should also help broadcasters compete more effectively with other tele-

[4] A television LMA or time brokerage agreement is a type of contract that involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot announcements to support the programming.

communications providers. NAB wants to emphasize, however, that the Commission should have acted more boldly in its reformation of the radio/television cross-ownership rule. NAB also notes significant inconsistencies within the *Ownership Order* and the existence of certain unresolved issues relating to the implementation of the revised duopoly and cross-ownership rules.

Rather than merely revising the radio/television cross-ownership rule, the Commission should have eliminated the rule entirely. NAB believes that the television and radio duopoly rules[5] can be relied upon to ensure sufficient diversity and competition in local markets. Given the strict numerical limits placed on the ownership of television and radio stations by the duopoly rules, the additional radio/television cross-ownership rule appears redundant and unnecessary. The cross-ownership rule is certainly no longer needed to ensure diversity, in light of the growth in the number of traditional broadcast outlets and alternative media since the rule was adopted by a divided Commission in 1970.[6] Moreover, elimination of the cross-ownership rule will not adversely affect competition in local advertising markets. Radio and television broadcast stations not only compete with each other for advertising dollars, but also with other media, particularly newspapers and cable. Because the television and radio duopoly rules are more than adequate to ensure diversity and competition in today's local media markets, which are characterized by a greater variety of outlets than ever before, the Commission should have repealed the radio/television cross-ownership rule in its recent *Ownership Order*.

A comparison of the revised radio/television cross-ownership rule with the amended television duopoly rule moreover reveals significant inconsistencies, most notably in the differing "voice" count requirements. As previously described, the Commission will permit common ownership of a television station and a varying number of radio stations in the same market, depending upon the number of "independent voices" (television and radio stations, newspapers and wired cable) remaining in the market after the combination. However, the Commission will permit common ownership of two television stations in the same market only if a minimum of eight independently owned and operating television stations will remain in the market after the combination. In the context of the television duopoly rule, the Commission will not consider the other voices (radio, newspapers and cable) that it expressly determined to consider under the radio/television cross-ownership rule.

NAB contends that there is no justification for counting media voices so differently in the context of two similar multiple ownership rules. Both the television duopoly and the radio/television cross-ownership rules are intended to promote diversity and competition in local broadcast markets. Given the shared purpose of these rules, it would seem logical for the Commission to consider the same types of media when formulating the terms of both rules. NAB questions the Commission's refusal to consider other types of media (such as Direct Broadcast Satellite, Open Video Systems, Satellite Master Antenna Television systems, Multipoint Distribution Service systems or the Internet) when counting media voices in the context of the local ownership rules generally. But even assuming that the Commission correctly declined to consider such alternative mass media delivery systems, NAB strongly believes that the Commission's decision to consider cable as a voice in the cross-ownership context, but not in the television duopoly context, was illogical and arbitrary. Clearly, wired cable constitutes the strongest competitor to broadcast television in the video programming marketplace, and the Commission has recognized that the clustering of cable systems in major population centers enables cable to compete more effectively for advertising dollars. See *Ownership Order* at ¶37. For these reasons, NAB believes that the Commission erred in the *Ownership Order* in its inconsistent formulation of the television duopoly and radio/television cross-ownership rules, and should have, at the very least, counted cable as a voice under the terms of the duopoly rule.[7]

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[5] The radio duopoly rule, 47 C.F.R. § 73.3555(a)(1), restricts the number of radio stations that any party can own or control in any local market, depending upon the total number of commercial radio stations in the market. This rule also limits the number of radio stations in each service (AM or FM) that a single party can own or control in a local market.

[6] According to the Commission, the total number of radio and television stations has increased by over 85% since 1970, mainly due to the growth of the FM radio and UHF television services. *See Ownership Order* at ¶29. During that time, a number of non-traditional media delivery systems have also developed, including cable, home satellite dishes, Direct Broadcast Satellite, Open Video Systems, Satellite Master Antenna Television systems, Multipoint Distribution Service systems and the Internet.

[7] NAB also notes that the waiver standards for the two rules differ. As described above, the Commission provides for a waiver of the television duopoly rule in the case of "failed," "failing"

Continued

NAB is also concerned about the limits placed on the transferability of station combinations formed under the television duopoly and cross-ownership rules. Assume, for example, that the licensee of a top-four ranked television station acquires a second, low-ranked television station in the same market under the eight voice/top four-ranked duopoly standard. The licensee then labors to make the unsuccessful station into a top four-ranked station, and eventually decides to sell both stations. The Commission specifically stated in the *Ownership Order* that a duopoly may not automatically be transferred to a new owner if the eight voice/top four-ranked standard is not met. Thus, the licensee in this example would apparently be prohibited from assigning or transferring these two top-ranked stations to a single buyer and would be forced to split the two stations and find separate purchasers. NAB believes such limits on the transferability of station combinations will prove to be disruptive and will likely tend to discourage investment in broadcast stations.

Finally, NAB notes that the *Ownership Order* did not resolve certain issues relating to the implementation of the revised ownership rules that arise, in large part, due to the overly restrictive voice count requirements contained in those rules. The Commission itself recognized that the rules adopted in the *Ownership Order* could result in two or more applications being filed on the same day relating to stations in the same market and that, due to the voice count requirements, all applications might not be able to be granted. In a public notice released September 9, 1999, the Commission proposed to use random selection to determine the order in which applications filed on the same day will be processed. Because the Commission has already determined that television LMAs entered into before November 5, 1996 will be grandfathered, NAB assumes that this lottery proposal will not adversely affect these grandfathered arrangements. Specifically, NAB presumes that parties with grandfathered LMAs who apply for a television duopoly under the revised rule will not be forced into a lottery with other, non-grandfathered parties who, on the same day, file an application seeking to create a new duopoly in the same market. If NAB's assumption about the Commission's lottery proposal proves to be unwarranted, then NAB would have serious reservations about the fairness and practicality of any lottery to determine the order of application processing.

Given the voice count requirements adopted by the Commission in the revised television duopoly and cross-ownership rules, NAB believes that there will be a "land rush" by broadcast licensees to file assignment and transfer applications pursuant to the new rules as soon as they are permitted (*i.e.*, 60 days after publication of the new rules in the Federal Register). Multi-million dollar transactions may likely depend on how the Commission ultimately determines to resolve conflicts among applications that cannot all be granted due to voice count requirements. NAB intends to follow the resolution of these issues closely.

THE REMAINING OWNERSHIP RULES

The *Ownership Order* addressed only the television duopoly and the radio/television cross- ownership rules. Despite the Commission's statutory obligation to review its broadcast ownership rules every two years,[8] the Commission has not yet completed its review of the remaining ownership rules begun in 1998.[9] NAB will now address these other broadcast ownership regulations.

Daily Newspaper/Broadcast Cross-Ownership Rule

In 1975 the Commission adopted a rule prohibiting the common ownership of a daily newspaper and a television or radio station in the same locale. *See* 47 C.F.R. § 73.3555(d). NAB opposed the regulation at that time, and continues to believe that the prohibition should be repealed, particularly in light of the recent changes in the mass media marketplace.

There are today far more communications outlets than ever before, due to technological advances and the introduction of more broadcast facilities and alternative media outlets. This growth in the number and variety of media outlets prompted the Commission to loosen the television duopoly and radio/television cross-ownership rules just last month. NAB believes that these changes in the media marketplace alone warrant repeal of the newspaper/broadcast cross-ownership rule.

The cross-ownership rule moreover appears increasingly out-of-step with other regulations governing common ownership of communication outlets. By its terms, this rule singles out newspaper owners and effectively prohibits them from obtain-

and "unbuilt" stations, but will waive the cross-ownership rule only in the case of "failed" stations. NAB believes this dichotomy to be unjustified.

[8] *See* Section 202(h) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[9] *See Notice of Inquiry* in MM Docket No. 98-35, 13 FCC Rcd 11276 (1998).

ing broadcast licenses.[10] Not only is such a prohibition arguably discriminatory, it is contrary to the deregulation of television, radio, cable and telephone companies that has occurred since passage of the 1996 Telecommunications Act. The cross-ownership rule even adversely affects the owners of grandfathered newspaper/broadcast station combinations by preventing them from taking advantage of the efficiencies that other broadcasters are now permitted to achieve through common ownership of multiple radio and television stations. NAB can find no rational basis to support these continued prohibitions against newspaper owners, especially in light of the recent significant deregulation of other media entities.

NAB also suggests that diversity of media outlets could actually increase as a result of eliminating (or at least relaxing) the newspaper/broadcast cross-ownership rule. It is not disputed that the number of daily newspapers in this country has declined in recent years. Other newspapers are financially challenged, due in part to the considerable costs of newspaper printing and distribution and the increase in competition from other media outlets for advertising revenue. Allowing struggling newspapers to become affiliated with local broadcast operations could bolster the newspapers' financial condition and increase the likelihood of survival for otherwise marginal newspapers. According to a study commissioned by NAB in 1998, these positive economic effects associated with joint newspaper/broadcast operations are the greatest in smaller markets where there are the fewest newspapers.[11] For these reasons, NAB concludes that repeal of the newspaper/broadcast cross- ownership rule is fully justified.

Television National Cap and UHF Discount

The national television multiple ownership rule provides that no person or entity may own or control television stations that have an aggregate national audience reach exceeding 35%. For purposes of calculating this aggregate audience reach, UHF stations are "discounted"; specifically, they are attributed with only 50% of the audience within their markets. *See* 47 C.F.R. § 73.3555(e). NAB believes that both rules should be maintained.

Prior to passage of the Telecommunications Act of 1996, the Commission had generally prohibited any person or entity from owning or controlling more than 12 television stations nationwide and had set the national audience reach limitation at 25%. The Telecommunications Act, however, directed the Commission to eliminate the restrictions on the number of television stations that a person or entity could own or control nationwide and to increase the national audience reach cap to 35%. NAB believes that these television ownership limits have not been in effect long enough to warrant any modification at this time. There are, moreover, significant developments on the near horizon for the television industry that make any changes in the national ownership cap ill advised.

The television industry and the public are anticipating the advent of digital television broadcasting—providing not only far superior picture quality, but the prospect of additional program diversity over each channel. Broadcasters are currently in the midst of the digital television transition, and are planning to offer expanded high definition programming this fall. Furthermore, as a result of the Commission's recent amendment of the television duopoly and radio/television cross-ownership rules, NAB expects significant changes to occur in the ownership structure of the television industry. Until the effects of the digital transition and television regulatory changes are evident, NAB cannot support any changes in the television national ownership rule.

NAB also supports retention of the UHF discount rule. Although such factors as improved receiver designs and cable "must carry" rules [12] may be decreasing the disparity between UHF and VHF television stations, NAB does not believe that these changes are sufficient to support an alteration of the UHF discount rule.

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[10] The Commission has strictly applied the newspaper/broadcast cross-ownership rule and has granted permanent waivers of the rule very rarely and only in extraordinary circumstances. *See Stockholders of Renaissance Communications Corporation*, 12 FCC Rcd 11866 (1997) (Commission denied Tribune Company's request for permanent waiver of cross-ownership rule, noting that such permanent waivers had been granted only twice in the past 20 years).

[11] *See Study to Determine Certain Economic Implications of Broadcasting/Newspaper Cross-Ownership* by Bond & Pecaro, Inc. (July 21, 1998). This study found that efficiency gains from joint ownership of newspaper and broadcast operations could increase operating cash flow between 9% to 22%.

[12] The Cable Television Consumer Protection and Competition Act of 1992 required cable television systems to dedicate some of their channels to local broadcast television stations. The constitutionality of these must carry provisions was upheld in *Turner Broadcasting System, Inc. v. FCC*, 117 S.Ct. 1174 (1997).

In earlier comments submitted to the Commission on this issue in 1998, NAB provided two studies that described the disadvantages that a UHF station still has in comparison to a VHF station.[13] The first study concluded that UHF stations, across all networks and markets, continue to face a penalty in ratings due solely to the fact that they are UHF stations. The second study examined the financial difficulties faced by UHF stations due to the smaller audiences that typically watch UHF stations, and concluded that the average UHF network affiliate generated lower net revenues, cash flow and pre-tax profits than the average VHF affiliate. Given the findings in these two studies, NAB argues that the UHF discount is still fully justified.

At the very least, no alteration to the UHF discount rule should be considered until the Commission has adopted rules concerning "must carry" in the digital television environment. Digital carriage rights and the number of television stations choosing to remain on the UHF band following the digital broadcasting transition remain undetermined. Until the effects of these factors are known, the UHF discount rule should not be changed.

Cable/Television Cross-Ownership Rule

The cable/television cross-ownership rule effectively prohibits common ownership of a broadcast television station and a cable system in the same local community. See 47 C.F.R. § 76.501(a). The 1996 Telecommunications Act eliminated a similar statutory provision. NAB does not support changes to this cross-ownership rule, given the cable industry's position as the dominant provider of multichannel video programming.

Currently pending before the Commission is a rulemaking proceeding addressing "must carry" for local broadcast television stations in the digital environment.[14] Until the Commission establishes a clear must carry rule benefiting all local television stations, NAB asserts that it would be premature to allow the local cable operator to be the licensee of any local television station. Without a firm digital must carry obligation placed upon cable operators, there is more than just the potential for a cable operator to abuse its "gatekeeper" role and give preferred carriage to its owned and operated local station—and perhaps either non-carriage or partial carriage to local stations owned by other entities. Although NAB supports elimination of other cross-ownership regulations (such as the newspaper/broadcast and radio/television rules), in none of these regulatory areas does one competitor have the potential to eliminate or hamper the public's ability to access another competitor. That is the case, however, with cable television.

Both Congressional and Commission findings indicate that relaxation or repeal of the cable/television cross-ownership rule would be premature. As Congress has previously noted, "[t]he cable industry has become a dominant nationwide video medium . . . a cable system serving a local community with rare exception, enjoys a monopoly . . . [and] television broadcasters like other programmers can be at the mercy of a cable operator's market power." [15] In its most recent report to Congress concerning competition in the video programming market, the Commission found that "cable television continues to the primary delivery technology for the distribution of multichannel video programming and continues to occupy a dominant position" in the marketplace.[16] Thus, it is clear that local cable television operators still enjoy a gatekeeper position vis-a-vis local television broadcasters. And it is this gatekeeper role that leads NAB to oppose alteration of the cable/television cross-ownership rule, at least pending final decisions concerning digital must carry and other regulatory relationships between local broadcasters and local cable operators. Because retaining this cross-ownership rule will help maintain a competitive balance in the video marketplace, NAB supports retention of the rule.

CONCLUSION

In sum, Mr. Chairman, NAB applauds the recent action by the Commission to loosen restrictions on the ownership of multiple television and radio stations in the same market. Given the continued growth in the number and variety of media out-

[13] *See The "UHF Penalty" Demonstrated* by Stephen E. Everett, Ph.D., Director of Audience Measurement and Policy Research, National Association of Broadcasters (July 1998).

[14] *See Notice of Proposed Rulemaking* in CS Docket No. 98-120, FCC 98-153 (rel. July 10, 1998).

[15] S. Rep. No. 102-92, 102d Cong., 1st Sess., 8, 45, 69 (1991).

[16] *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fifth Annual Report,* 13 FCC Rcd 24284 at ¶ 6 (1998). This report also noted the continuing difficulties in obtaining programming experienced by multichannel video programming distributors with the potential to compete against cable operators.

lets, NAB also believes that further liberalization of the local ownership rules is warranted. In particular, NAB supports elimination of the radio/television cross-ownership rule and the newspaper/broadcast cross-ownership rule, as repeal of these regulations would produce economic and public service benefits without compromising diversity and competition in local media markets. Again, NAB wishes to express its appreciation to the members of the Telecommunications Subcommittee for the opportunity to testify and for their attention today.

Mr. TAUZIN. The Chair would now recognize Mr. Jim Hedlund, President of Association of Local Television Stations. Mr. Hedlund.

STATEMENT OF JAMES B. HEDLUND

Mr. HEDLUND. Mr. Chairman, thank you. I can report to you that unless the subcommittee keeps interrupting me with sustained applause that I should be able to finish this within your green light.

We are a trade association which represents the television stations affiliated with the FOX, UPN and WB networks, as well as some still pure independent stations. We have been on a crusade of sorts for the last 10 years to get the FCC to relax the local TV ownership rules, and as such, of course, we were rather pleased with the action the Commission took last month. We believe the FCC did the right thing in relaxing the duopoly rule, and we commend them for that.

We commend you, Mr. Chairman, and a number of your colleagues who made it very clear to the Commission that you wanted deregulation on this front, and we appreciate that.

Now, while we can say we are grateful for what the FCC did and certainly appreciate the positive steps they have taken, we still believe they did not go as far as they should go and did not go as far as we believe the Congress wanted them to go.

I have a number of suggestions which I will summarize real briefly here. First, there is a so-called independent "voices" test in the rule for duopolies which would largely limit duopolies, legalize duopolies to the largest television markets. We believe this should be revised or eliminated because, as written, it does really very little for combinations in small media markets where the economies of scale are even more important than they are in the largest markets.

Second, even if one accepts the concept of a voices test, we believe that DBS, MMDS, newspapers and cable networks should be included in the count. It is interesting that in part of the Commission's order, cable systems and newspapers are part of the voice count when it comes to TV/radio ownership in the market but they oddly disappear when it is dealing only with the television ownership.

But even if the rule was amended so that cable counted as a voice or duopoly rules, it is not enough to simply count cable as one because a broadcaster does not really compete against a cable system per se, it competes against all of the networks that are carried by that cable system: CNN, ESPN, USA and the 5,200 other cable channels that are typically made available to consumers.

So if there is to be a diversity of voices test for television duopoly, we believe that count should include all the networks available locally and not just count the number of local TV stations. And unless this voices test is changed in the manner I am recommending, we believe the Commission should revise and relax its duopoly rules in small- and medium-size markets because, as written, they would largely restrict the common ownership in small or medium markets to include at least one dead or terminally ill station to make it allowable.

The Commission has still not grandfathered permanently, as Congress instructed them to do, all of the local marketing agreements, and they should do that once and for all.

And finally, and this is a little more complex, if a voices test survives and is sustained by the Commission, we believe that in a number of instances there will be room in a market for maybe 1 or 2 duopolies, and in theory you could have 5 or 6 companies knocking on the door, each wanting one when there isn't room for that. And if that is the case, we propose that priority be given to those stations that already have a legal arrangement in the market, whether it is through a dead equity combination, an LMA or what have you, with a second station in the market.

And finally, as I think most of my colleagues have already agreed and I know that two following will agree; ALTV strongly supports the repeal of the newspaper television cross-ownership ban. We think that if it ever served a purpose, it no longer does and is outdated and should be eliminated.

Mr. Chairman, you have been very kind to hear me out. You all have been helpful. I simply ask you now to help us. The FCC has moved that ball down the field. We just ask you to give them that final push to get them into the end zone. Thank you.

[The prepared statement of James B. Hedlund follows:]

PREPARED STATEMENT OF JAMES B. HEDLUND, PRESIDENT, ASSOCIATION OF LOCAL TELEVISION STATIONS

Good Morning Mr. Chairman and members of the Committee. As president of the Association of Local Television Stations I am honored to appear before you today to discuss the Federal Communications Commission broadcast ownership rules. My testimony today will deal primarily with the revisions made to the local television ownership rules by the FCC in its August decision.[1] The FCC's Local Ownership Decision has changed the broadcast landscape. It is a step in the right direction. Nonetheless, my testimony will detail several shortcomings of the decision and outline some proposed changes.

In addition to commenting on the *Local Television Ownership Decision*, my testimony will touch briefly on the television newspaper cross ownership rule. We believe the rule should be eliminated or significantly revised.

I. THE REVISED TELEVISION DUOPOLY RULE

Since 1991, ALTV has been urging the Federal Communications Commission to relax its rules governing the ownership of two television stations in the same television market. After nearly a decade of debate, the Commission has finally taken a step forward. The decision is long overdue. Nonetheless, we believe the FCC should have gone further in relaxing the rules, especially in small and medium sized television markets.

A. Competition Is Fierce

ALTV does not mean to belabor this point. The Commission's *Local Ownership Decision* does recognize that competition to free, local over-the-air television has increased. Nonetheless, we do not believe the FCC has truly measured the impact of this competition. This is especially true with respect to competition from cable television.

We believe competition in the media marketplace has overtaken the need for a local television duopoly rule. Competition for viewers and advertising dollars in local

[1] *Report and Order* in MM Docket No. 91-221, FCC 99-209 (released August 6, 1999) (hereinafter cited as *Local Ownership Decision*)

television markets has increased dramatically since the duopoly rule was placed into the FCC's regulations in 1964. Since 1964, the number of commercial television stations has increased over 100% from 582 to 1,216.[2] Noncommercial stations increased by 361%, from 79 in 19674 to 369.[3] There are now over 1600 low power stations which did not exist in 1964. To date the number of stations in the top ten markets is 13.4 stations per market. Markets 21-30 average 9.8 stations per market and even small markets (101-110) average 5.3 stations per market.

Multichannel competition has created fierce competition at the local level. Cable has become the predominant purveyor of video product in local television markets. The rise of clustered multiple system operators (MSOs) and local cable interconnects makes cable systems an intense competitor. A recent analysis by Bear Stearns more than supports these conclusions.

Comparative Prime Time Ratings for Broadcast Networks, Pay Cable and Basic Cable Networks

	Nov. 1982 Ratings/ Share	Nov. 1990 Ratings/ Share	Nov. 1997 Ratings/ Share
Network Affiliates	49.6/80	38.1/61.9	30.1/45
Independents	8.7/14	13.0/22	7.4/12
PBS	2.4/4.0	2.3/4.0	2.5/4.0
Pay Cable	3.1/5.0	3.1/5.0	3.5/6.0
Cable Networks	1.8/3.0	11.2/16.0	21.2/34.0

Source: Bear Stearns, Cable & Broadcast, March 1999 at 102.

Basic cable networks now have a combined audience rating and share close to the combined ratings and share of the big four broadcast television networks. The audience share of the basic cable networks now exceed that of any individual big four broadcast network. Indeed, the ratings and share of the cable network audience exceeds the combined Independent and PBS share. Cable's share of television advertising dollars has exploded:

Cable Television (Percentage) Share of Total Television Advertising Dollars

	1982	1990	1997
Cable Networks	0.5%	6.4%	12.8%
Local Cable Non Network	0.1%	2.1%	5.1%

Source: Bear Stearns, Cable & Broadcast, March 1999 at 90.

There can be no doubt that this increase has come at the expense of free, over-the-air television. During this same period the local stations' share of the local and national spot market *declined* from 54.3% in 1982 to 47.6% in 1997.[4] National broadcast network shares also declined during this period. The substitutability between broadcast and cable programming is no longer an academic exercise.

Cable is not the only multichannel competitor. DBS will soon be a major competitor to both local broadcast stations and cable systems. The primary satellite companies, Direct TV and Echostar each provided hundreds of video channels to their estimated 10 million subscribers in every local market across the United States. DBS reaches every household in the United States with about 10 million current subscribers. There are an infinite number of channels available on the Internet. There is no doubt that on-line streaming of video programming will become commonplace in the very near future. The local Bell operating companies have invested hundreds of millions of dollars in multipoint multi-distribution services (MMDS). With digital compression, each service is able to offer more than 120 channels over the air. Newspapers and magazines also compete with local television stations for advertising revenue.

We believe the FCC has underestimated the importance of these competitive voices in the marketplace, especially as it applies to the new duopoly rule. As I will explain below, the FCC could have gone much further in relaxing the rule.

B. The New Duopoly Rule

Prior to the Local Ownership Decision, a single entity was prohibited from owning two local television stations if there was more than a *diminimus overlap of the sta-*

[2] *1999 Broadcast and Cable Factbook* at J45.
[3] *Id.*
[4] Bear Stearns, *Cable and Broadcast Report,* March 1999 at 90.

tion's Grade B contours. In effect, this meant that absent special circumstances, a single entity could not own two stations in the same television market.

The Local Ownership Decision revised this rule in several ways. First, it eliminated the Grade B contour overlap standard, and redefined the television station's designate market area (DMA). Second, it permitted the common ownership of two stations in the same market provided a) the top four stations in a market did not combine with each other, and b) there remained eight independently owned broadcast television voices in a local market after the combination(s) took place. Finally, the FCC would consider waivers of this rule in situations involving failed, failing or newly constructed stations. The following discussion focuses on these changes to the rule.

1. The new DMA market definition—We support the FCC's decision to change the definition of a station's local market. Instead of relying solely on Grade B contours, the Commission defined a station in terms of its Nielsen designated market area (DMA). A station's DMA is a generally recognized as the economic market for advertising and programming sales. Under the new rule, a single entity could own a station in Baltimore and Washington DC. Clearly these two metro areas should be considered separate markets.

2. FCC's requirement that eight independent voices remain in a market is problematic—We have strong reservations about the eight independent voice standard adopted by the FCC. This standard is arbitrary and inconsistent with the public interest on a number of levels. The new standard articulated by the Commission makes little sense. The Commission provides no justification for selecting eight voices as the optimum level of diversity in a local market. Why does a market need eight "independent" voices, as opposed to six, or five or four?[5] In the fifty years of television regulation, the FCC has never provided any evidence to suggest that eight independent voices provides the appropriate "diversity baseline." To the contrary, employing an eight person voice test results in several unforseen and negative results.

First, the benefits of combined local ownership are denied to consumers in medium and small markets. The irony is that the economics of free television broadcasting mean that local market combinations may be more important in small and medium sized markets than in large market. For years, television allotments in small markets remained vacant because the population of these areas could not support another independently owned, advertising-based, free television service. In fact, the pattern of LMA growth (a surrogate for duopoly) occurred primarily in medium and small markets.[6] It is in these markets where the efficiencies obtained from common ownership provide the necessary economic incentives to bring new and superior television service to the market. Absent these combinations, many of the stations in small markets will never be built or remain on the air as marginal players. In either case, the citizens of these small markets are denied the benefits of a superior free, over-the-air service because of the artificial constraints imposed by anachronistic federal rules.

As the FCC recognized in its decision, local market combinations lead to improved programming and services to the public. These benefits of improved free service should not be denied to viewers in small markets. Unfortunately, employing an "eight" person voice test means these benefits will be enjoyed only in the largest television markets.

Second, the most capricious aspect of the FCC's decision is its determination of what constitutes a "voice" under the eight voice standard. According to the Commission, only local television broadcast stations (both commercial and non commercial) will be counted as voices under the FCC duopoly rule.

> . . . [W]e are unable to reach a definitive conclusion at this time as to the extent to which other media serve as readily available substitutes for broadcast television . . . Thus we agree with those commenters who argued that different types of media, such as radio, cable television, VCRs, MMDS and newspapers, may to some extent be substitutes for broadcast television, in the absence of the factual data we requested, we have decided to exercise due caution by employing a minimum stations count that includes only broadcast televisions stations.[7]

[5] Indeed, when radio is considered the diversity baseline increases to 20 voices in large markets.

[6] Based on surveys filed with the FCC, 83% of current LMAs are located outside the top 25 television markets and 54% are located outside the top 50 markets. *See: ALTV Local marketing Agreements and the Public Interest: A Supplemental Report,* May 1998 at 7 filed in MM Docket No 91-221.

[7] *Local Ownership Decision* at para. 69.

This analysis makes little sense. The Commissions conclusion is simply factually inaccurate. It also contradicts past FCC decisions, current rules, and is internally inconsistent within the context of the August *Local Ownership Decision*.

From a factual standpoint there is simply no basis for the FCC's conclusion that it lacks definitive evidence as to the substitutability of other media. As noted previously in this testimony, there is intense competition in the marketplace—especially with regard to cable television. The factual evidence regarding substitutability occurs every day in the Nielsen ratings. The declines in audiences at broadcast networks and local stations are attributable directly to cable television. Almost every television viewer in the United States knows that you can take a remote control and switch back and forth between cable networks and broadcast channels. The FCC's recent decision is simply inexplicable.

The arbitrary nature of the FCC's decision not to count cable and others as voices in a local market conflicts with FCC precedent. In countless decisions since the 1980s the FCC observed that competition from cable television and other media has justified changes in the rules governing television.[8] All of these decisions are based on the premise that cable is a substitute for local over-the-air television. It defies logic for the FCC to now argue that it is unsure of the substitutability between cable, broadcast and other video media.

The arbitrariness of the FCC's decision is further evidenced by its own rules. On the one hand, the FCC does not believe that newspapers, cable systems and radio stations are sufficient substitutes to count as voices when analyzing a local television market under its duopoly rule. At the same time, the FCC continues to have rules limiting local common ownership of television stations and cable systems, newspapers as well as radio stations. These rules are premised on the notion that these media are substitutes in the marketplace of ideas and that common control would give one entity too much power in a local market. Under the August decision, however, they are not longer sufficient substitutes.

The Commission cannot have it both ways. If newspapers, cable, radio and other media are not substitutes for local television (hence in different markets for diversity purposes), then there is no harm to diversity if one entity owns a television station and any one of these mediums. Simply stated, the Commission's refusal to count these other media in the context of the duopoly rule, abrogates the justification for the newspaper/television broadcast cross ownership and its new radio/TV cross ownership rule.

The paradox of the FCC's position is painfully evident even within the confines of the FCC's August decision. When analyzing voices for the duopoly rule, the FCC does not count radio, believing it to be not sufficiently substitutable. Several pages later, however, television stations, cable and newspapers are considered substitutes for radio and counted as voice under the one-to-a market (radio/TV cross ownership) rule.

> We will also include in our voice count daily newspapers and cable systems because we believe that such media are an important source of news and information on issues of local concern and compete with radio and television, at least to some extent, as advertising outlets.[9]

Such a blatant contradiction cannot withstand judicial review.

Finally, while the FCC has decided that cable does count as a voice in the context of its radio/television one-to-a-market rules, it fails to properly consider the impact of the medium. Despite providing multiple channels, cable is considered a single voice in the market. There is no rational basis for this conclusion. Most cable systems provide more than 36 channels of service, including several news channels such as CSPAN, CNN, Fox, CNBC, and MSNBC. Moreover, many entertainment channels such as the Family Channel, USA and even MTV have their own news segments. Religious views are expressed over EWTN and other religious channels. Also, entertainment channels do contribute to the diversity of ideas in local markets. Counting cable as a single voice in the marketplace simply ignores the reality as to how consumers receive information.

3. FCC's waiver standards for failed, failing and new stations are insufficient to help improve programming in many markets.—Under the FCC's new rules, combinations in small markets will be limited to situations where a station has failed outright or is in the process of failing. To qualify under the failed station test the station must: (1) have been dark for at least four months, or (2) be involved in *involuntary* bankruptcy proceedings. To qualify under the failing station standard a station

[8] For example, competition from cable served as the basis for changes in the regional concentration rules (1984), increasing the national ownership rules from seven to twelve stations (1984), the financial interest and syndication rules (1994) and the prime time access cure (1995).

[9] *Local Ownership Decision* at para 113.

must have: (1) an audience share under four percent, (2) negative cash flow for three years, and (3) verifiable proof that program service will be improved. Under both standards the applicant must demonstrate that the "in-market" buyer is the only reasonably available entity willing and able to operate the failed station and that selling the station of an out-of-market buyer would result in an artificially depressed price.[10]

In effect, consumers in these markets must endure a station that is providing little or no service for a number of months, if not years, before the government restriction on purchasing the station is lifted. This creates a perverse incentive where in order to harness the efficiencies of combined local ownership, a broadcaster must wait for a station in the market to become all but insolvent before seeking to acquire the station. In other words, an "in market" station must sit buy and watch another station in the market deteriorate before having a chance to acquire the station and improve service. During this time, service to the public declines and the costs to bring the station back to a viable position escalate.

ALTV does support the waiver enacted for newly constructed stations. We believe this will provide an excellent opportunity to bring new service to the public, especially in small and medium sized markets. The opportunity to employ this waiver may be limited because most of the vacant allotment are now being used for DTV channels.

4. Lack of transferability undermines the benefits of local market combinations—Perhaps the most puzzling aspect of the FCC's decision are the limitations imposed on transferring newly formed combinations. Once formed, these combinations may not necessarily be transferred as a combination. In order to be transferred as a combination, the owners must meet the same requirements as any newly formed duopoly. In other words, these combinations are subject to the top four stations limitation and they eight station voice test. If they don't meet these requirements the combination must meet the failed or failing station test.

This approach leads to some absurd results. For example, assume a top four station combines with a very weak station in the market. Through hard work the weak station subsequently becomes one of the top four stations in the market. Under the FCC's transferability rule, these stations could not be sold as a combination. A similar result would occur if, during this time period, the number of independently owned television stations dropped below the eight station threshold.

A similar result could occur in a situation where the combination was based on the failed or failing standard. Assume a station owner makes a significant investment in the failed station and makes the station profitable. In order to sell the stations as a combination, the owner would have to withdraw all financial assistance and return one of the stations to its failed or failing status. In short, a company buys a station to pull it up from bankruptcy and then in order to sell the combination the station must return it to its failing condition.

This policy makes no sense from an investment standpoint. No station owner is going to invest in a combined facility if it is forced to break the combination apart. As with any investment, the ability to secure investment financing is directly linked to an owner's ability to transfer the stations. Securing up-front investors will become impossible, if at the time of a subsequent sale, the combination must be broken up.

II. ALL LOCAL MARKETING AGREEMENTS SHOULD HAVE BEEN GRANDFATHERED PERMANENTLY.

A. The 1996 Telecommunications Act Mandates Permanent Grandfathering

We continue to believe that Section 202(g) of the 1996 Telecommunications Act required the permanent grandfathering of all local marketing agreements. The 1996 Act states:

> Nothing in this section shall be construed to prohibit the origination, continuation, or renewal of any local marketing agreement that is in compliance with the regulations of the Commission.

The Commission reads this language in such a way as to apply a *post hoc* regulatory regime on local marketing agreements. According to the FCC's interpretation, it has the authority to craft a set of rules in 1999 that effectively curtails the rights

[10] Significantly, the FCC will accept *petitions to deny* from parties challenging the transfer In other words, the transfer of one station to another station in the same market may be delayed or stopped, pending a review that there is a third party "out of market" purchaser waiting in the wings. This is a marked departure from most broadcast transfers. Under Section 310(d) of the statute a transfer generally will be denied only in situations where the basic character of either the seller or the buyer is questioned. Now the FCC appears willing to halt and otherwise lawful transfer on the grounds that another party wants the station. Such a policy is untenable.

of pre-existing local marketing agreements. It does so by misconstruing the last phrase of section 202(g)—*any local marketing agreement that is in compliance with the rules of the Commission.* According to the FCC's logic, it has now crafted new standards for LMAs, that will govern all pre-existing local marketing agreement. Under the FCC's approach it has the authority to adopt rules that effectively eliminate new LMAs and place new constraints on their continuation and renewal.

We believe a superior reading of the language is that the FCC cannot impair the origination, continuation or renewal of any television local marketing agreements that were in compliance with the FCC's policies in existance in 1996. Such an approach is more consistent with Congressional intent, which was focused on deregulation. Unfortunately, the FCC has chosen to ignore such a construction.

Further support for our construction of the 1996 Telecommunications Act appears in the Conference Report to the 1997 Budget Reconciliation Act.

> The conferees expect that the Commission will proceed with its own independent examination in these matters. Specifically, the conferees expect that the Commission will provide additional relief (e.g VHF/UHF combinations) that it finds to be in the public interest, *and will implement the permanent grandfather requirement for local marketing agreements as provided in the Telecommunications Act of 1996.* (emphasis supplied)

Taken together, there can be little doubt that Congress intended all existing LMAs to be grandfathered permanently. Unfortunately, the FCC's decision doe not go far enough to comply with this Congressional directive.

B. Contrary to the 1996 Act, the FCC's Decision Does Not Grandfather LMAs, but Merely Grants a Five Year Reprieve.

The FCC's *Local Ownership Decision* does not truly grandfather any of the existing television local marketing agreements. To its credit, the FCC does permit most LMA combinations to remain in existence through the end of its 2004 Biennial Review. The Commission will decide whether to extend the grandfathering at that time. While the five year reprieve is helpful, it is by no means the "permanent" grandfathering required by the 1996 Telecommunications Act. Indeed, the FCC suggests it will review the existing LMAs on a case by case basis according to general criteria set forth in its decision.

C. The FCC's Decision Forces the Divestiture of TV LMAs Entered into after November 5, 1996.

More problematic is the fact that the FCC did not provide the five year transition period for any LMAs entered into after November 5, 1996. The FCC's decision refers to language in its *Second Further Notice* warning stations that, in certain circumstances, LMAs created after November 5, 1996 would not be grandfathered. We believe the FCC's decision not to grandfather these "post 1996 LMA" is arbitrary. Fundamental fairness dictates that the "post 1996 LMAs should be treated the same as all other LMAs.

First, the FCC took over three years to resolve this matter. The government could not expect the market to remain frozen for three years while the FCC made up its mind.

Second, there was no rule or policy proscribing LMAs. To the contrary, LMAs were perfectly legal under the FCC rules. The LMA relationship did not run afoul of the television duopoly rule during this period until the FCC ruled last August.

Third, the FCC cannot rely on the so-called "warning" that appeared in the *Second Further Notice.* A *Second Further Notice of Proposed Rulemaking* is not a rule. It is simply a notification that the government may change its rules. It does not operate as an enacted FCC regulation or policy. Indeed, this proceeding took almost nine years to complete, and warnings in previous notices were not enacted.

Fourth, the language in the *Second Further Notice* regarding LMAs was expressly contingent on changes in the local television duopoly rule. However, the FCC's proceeding involved a multitude of possible changes to the rule, including permitting UHF/UHF combinations in local markets. Thus, in 1996, it was impossible to know which LMA combination would run afoul of rules that were not adopted until 1999. Many LMA combinations will not have to be broken up because the duopoly rule was changed. These combinations did not run afoul of any new FCC rule.

Finally, the public interest would not be served by the premature termination of these arrangements. As the Commission observed, many of these LMAs provided improved service to the public and made substantial investments in their LMA partners. Forcing a divestiture of these combinations in two years would reduce service to the public in these markets. From a public interest standpoint, there is absolutely no difference between LMAs entered into prior to November 5, 1996 and those executed after this date.

III. THE RADIO/TELEVISION ONE-TO-A-MARKET RULE SHOULD BE REPEALED

ALTV supports the Commissions decision to relax the one-to-a-market rule. Under the revised rule, a single entity may own up to two television stations and six radio stations in the same market, provided there are at least 20 independent voices in the market. A broadcaster may own two television stations and four radio stations in markets with at least ten independent voices.

While we applaud the FCC's deregulatory efforts, we question why the rule should exist at all. Today's media marketplace is characterized by a plethora of voices. There is simply no reason to believe diversity of voices will be harmed by any radio/television combinations. Moreover, retaining the rule is somewhat contradictory given the Commission's duopoly analysis which found that radio stations are not substitutes for television. We simply see no need for the rule in toady's marketplace.

IV. THE TELEVISION/NEWSPAPER CROSS OWNERSHIP RULE SHOULD BE REPEALED

In 1975, the Commission enacted a "prospective" ban on newspaper/broadcast combinations in the same market and forced the divestiture of 16 combinations that were considered egregious.[11] This decision was made despite the finding that "there is no basis in fact or law for finding newspaper owners unqualified as a group for future broadcast ownership.[12] To the contrary the Commission praised the performance of local newspaper/broadcast combinations, noting the high level of programming performance. The FCC's rule was enacted in the hopes of securing additional diversity of ownership. The justification was that "51 voices are necessarily better than 50."

There is little doubt that the Communications landscape has changed since 1975. At that time, television broadcasting was the province of three major television networks which garnered over 90% of the television audience. There were few alternatives. Cable was in its nascent stage and there were only a handful of independent stations. There was no DBS, MMDS and Internet.

The concerns which drove the FCC to enact the newspaper/broadcast cross ownership rules simply do not exist today. Given the entire media landscape, local television/newspaper combinations cannot control the marketplace of ideas. The rule has outlived its usefulness.

The FCC's recent *Local Ownership Decision* provides further justification for eliminating the rule. In this decision, the FCC determined that newspapers should not be counted as a voice under the eight voice duopoly standard. As noted previously, the Commission did not consider newspapers to be sufficient substitutes for over-the-air television stations. If this is true, and they are not substitutes, then there would be no harm to diversity if a newspaper and television station were commonly owned in the same local market.

V. CONCLUSION

As a general matter, the FCC's Local Ownership Decision is a step in the right direction. Nonetheless, there are some significant elements of the decision that should be revisited. ALTV recommends the following changes to the rule.

- The new duopoly rule should be revised by eliminating the "eight" independent voice standard. The FCC should help foster combinations in smaller markets.
- If the FCC decides to employ a voice test for the new duopoly rule, other media such as cable television, DBS, MMDS, newspapers and the Internet should be counted as a voice. Cable should count as more than one voice in any diversity analysis.
- Once created, there should be no restrictions on the transferability of local market television combinations.
- The failed and failing station waivers should be liberalized to permit more combinations in smaller markets.
- All local marketing agreements, even those formed after November 1996, should be grandfathered permanently.
- The FCC's general five year reprieve for LMAs should be changed to a permanent grandfather.
- The revised one-to-a market (radio/television cross ownership rule) should be eliminated.
- The local newspaper/television cross ownership rule should be eliminated.

ALTV believes these steps will help free over-the-air television station provide the best possible service to the American people. We urge the Subcommittee to review

[11] *Multiple Ownership Report*, 50 FCC Rpt. at 1074 (1975)
[12] *Id.* at 1075

the FCC's ownership decisions carefully, and take corrective legislative action where appropriate.

Mr. TAUZIN. We have heard from the networks, from the association of affiliated stations, the NAB, and the local affiliations of local stations. Now we hear from the newspapers. We begin with Mr. John Sturm, the President and CEO of Newspaper Association of America.

STATEMENT OF JOHN F. STURM

Mr. STURM. Good morning, Mr. Chairman. I am John Sturm, President of the Newspaper Association of America. Our members represent approximately 87 percent of the daily newspaper circulation in the country.

Since 1975 the FCC has prohibited common ownership of a daily newspaper, neither a radio nor a television station in the same market. Put simply, if this ban is not lifted immediately, newspapers will be locked out of the imminent scramble for broadcast stations, putting them at a permanent and dramatic disadvantage vis-a-vis their media competitors.

This local ownership ban has always been onerous and we have long opposed it. The FCC has ignored repeated demonstrations and comments in related ownership proceedings that this outdated prohibition is unnecessary and counterproductive. The FCC has ignored its obligation under the Telecommunications Act of 1996 to conduct a reevaluation of all of its broadcast ownership rules, including this one, on a biannual basis to determine whether these rules are in the public interest. Never before, however, has the need for relief been so great.

Last month the Commission added insult to injury by again failing to even consider the newspaper ownership ban while at the same time relaxing many of its other broadcast ownership rules. Now the score is broadcast group owners, 8, newspaper publishers, zero, as broadcast owners will be permitted to own as many as two television stations, six radio stations in the same local market, and newspapers remain shut out.

The recent television ownership decision is a culmination of a series of deregulatory actions over the past decade by the FCC and by this Congress that recognize that fundamental changes have occurred in the media landscape, changes that are dramatic, exponential and permanent since the early 1970's.

The new FCC rules enacted in early August are expected to cause an intense but very short feeding frenzy broadcast station acquisition when they take effect. A commentator likened it to a broadcast land rush. Indeed, the race is now underway.

As you know, Viacom last week proposed to acquire CBS, and it appears to me we have now come full circle. When the record, such as it is, for the newspaper broadcast cross-ownership rule was being assembled in the seventies, the FCC was in the process of forcing CBS to divest Viacom as part of its regulatory scheme that has been long since dismantled and discarded, except, of course, for the newspaper broadcast cross-ownership rule, and newspapers still cannot even own a single radio station in their hometowns in today's multimedia society.

What is intensely frustrating to newspaper publishers and blatantly unfair is that there is no demonstrable need, rationale or basis for this rule at all. First, the FCC never found that newspaper ownership of broadcast stations somehow harmed the public interest. In fact, it found just the opposite. Once upon a time it even encouraged newspaper publishers to invest in broadcasting, and several newspaper companies, including the gentleman's company to my left, have become pioneers in radio and television.

Second, when the FCC rule took effect, the FCC grandfathered many newspaper/broadcast combinations. Some of these combinations remain today and have provided local markets with 25 years of quality service without any finding of abuse, domination or monopolizations in those markets.

Third, the rule also turns the notion of free speech on its head. Newspapers should not be discriminated against. They should be welcomed into the electronic marketplace rather than excluded from it.

Mr. Chairman, it is unfair for the FCC to continue to hold on to a baseless rule that walls off newspaper publishers from the electronic convergence that you and many others have spoken of in the past. It is unfair for the FCC to refuse to even review this outdated rule, as it has for years, in the face of vastly changed circumstances, numerous requests to do so, and a directive from this Congress to justify it in the public interest. In a nutshell, they haven't and they can't.

In August the FCC sounded the 2-minute warning in local markets. We have sought relief from this rule time and time again, and it has not been forthcoming. Thus, it should come as no surprise that we greatly favor the legislation that would lift the ban directly as the bill is introduced by two learned members of this subcommittee.

Mr. Chairman, I appreciate the opportunity to testify before you on this rule, and I look forward to your questions.

[The prepared statement of John F. Sturm follows:]

PREPARED STATEMENT OF JOHN STURM, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE NEWSPAPER ASSOCIATION OF AMERICA

Good morning Mr. Chairman, and Members of the Subcommittee. My name is John Sturm, President and Chief Executive Officer of the Newspaper Association of America ("NAA"). The NAA has more than 2,000 member newspapers in the United States and Canada, the great majority of which are daily newspapers that account for approximately 87 percent of U.S. daily circulation.

I appreciate the opportunity to discuss the newspaper broadcast cross-ownership restriction with you today. In particular, I would like to stress why it is more important today than ever before to eliminate the FCC's outdated ban on newspaper ownership of broadcast facilities, in light of changes in the marketplace and in the regulatory landscape. Put simply, if this ban is not lifted immediately, newspapers will be left out of the imminent "land rush" for broadcast stations, putting them at a permanent and dramatic disadvantage vis-a-vis their media competitors. For this reason, NAA has filed an emergency petition for relief, in which we asked the FCC to act quickly on this issue. I have included a copy of that petition with this statement, for the record.

Since 1975, the FCC has prohibited common ownership of a daily newspaper and either a radio or television station in the same local market. This ban was adopted as one of a series of ownership restrictions that might collectively have been characterized as a "one media outlet per customer per market" policy. Under that policy, the FCC has prohibited not only the common ownership of newspapers and local broadcast outlets, but also the common ownership of two local TV stations, a radio station and a local TV station, a cable system and a local TV station, or more than a specified number of local radio stations.

The newspaper cross-ownership ban has always been onerous, and we have long opposed it. The FCC, for its part, has ignored repeated demonstrations in comments in related ownership proceedings that the outdated prohibition is unnecessary and in fact counterproductive in the contemporary information marketplace. The FCC has even ignored its obligation under the Telecommunications Act of 1996 to conduct a searching re-evaluation of all of its broadcast ownership rules, including the newspaper broadcast cross-ownership ban, on a biennial basis, to determine whether they are "necessary in the public interest."

Never before, however, has the need for legislative relief been so great. Last month, the Commission added insult to injury—and deepened the injury—by again failing even to consider the newspaper cross-ownership ban while at the same time relaxing many of its other broadcast ownership rules, including both the television "duopoly" rule and the "one-to-a-market" rule. Now, broadcast group owners will be permitted to own as many as two television stations and six radio stations in the same local market. The recent television ownership decision is the culmination of a series of deregulatory actions over the past decade—by the FCC and Congress—that recognize the fundamental changes that have occurred in the information marketplace and the need for media owners to be freed from unnecessary 70s-style regulation that stifles efficiencies, innovation, and the development of new services. But for reasons the Commission has yet to explain, newspaper publishers still will not be allowed to own even a single radio station in their home towns.

The new rules are expected to cause an intense but short "feeding frenzy" of broadcast station acquisitions when they take effect in two months. One senior network executive compared this feeding frenzy to "an intense game of musical chairs . . . [where] you know you may have to get in fast." Another announced in a memo that "The race is on." Many commentators have likened it to a "broadcast land rush."

And the preparations for this land rush have already begun. As every Member of this Subcommittee knows, CBS last week proposed to merge with Viacom. Virtually every major network and large broadcast group owner is seeking to acquire more stations. And many "independent" broadcasters in major markets are working just as feverishly to be the first to sell their stations.

A belated repeal of the ban would offer scant consolation to newspaper publishers. The nation's largest broadcast group owners are poised to enhance their holdings in a private but intense "game of musical chairs." Yet without immediate relief, the newspapers' sole role in this "broadcast land rush" will be to report on it from the sidelines. And there will not be a second round.

There is no need for this to happen. Indeed, there is no need for a newspaper/ broadcast cross-ownership ban at all. In fact, newspapers have not always been prohibited from owning radio or television stations in the same local market. Instead, from the early days of radio in the 1920s up until 1975, the government actively encouraged newspapers to serve as pioneers in bringing radio—and later television—to their local communities. And newspapers heeded the FCC's call. As the FCC later acknowledged, many newspaper-owned stations "began operating long before there was hope of profit and were it not for their efforts, service would have been much delayed in many areas."

In 1975, however, despite formally recognizing the "traditions of service" of newspaper-owned broadcast stations, as well as the enormous contribution of newspapers to the development of American broadcasting, the FCC prohibited co-ownership of newspapers and broadcast stations. The Commission adopted this measure even though it did not dispute that the existing TV and radio stations owned by newspapers generally provided better service than many other stations, and especially excelled at providing thorough and well-balanced news and public affairs programming. In fact, when the cross-ownership ban was first adopted, there were 94 local newspaper/television combinations, and 380 newspaper/ radio combinations. Because of their superior record of service, the FCC "grandfathered" all but 16 of these stations, and exempted them from the coverage of the rule.

In adopting this arbitrary ban, the FCC did not claim that the public interest had ever been harmed by the common ownership of a newspaper and a TV or radio station in the same market. Nor did the Commission cite any evidence of specific anticompetitive acts by any cross-owned station. Quite the opposite. In addition to praising the newspapers' superior record of past service, the FCC expressly found that "there is no basis in fact or law for finding newspaper owners unqualified as a group for future broadcast ownership." Indeed, the FCC never even pretended that the ban was warranted by the evidentiary record. Instead, the Commission justified its decision on the ground that the ban might help foster "a mere hoped-for gain" in program diversity.

More recently, when the FCC relaxed its other broadcast ownership rules, it again explicitly recognized that "the efficiencies inherent in joint ownership and operation of [media outlets] in the same market . . . can lead to cost savings, which in turn can lead to programming and other service benefits that serve the public interest." The agency also recognized that common ownership of media outlets creates incentives to diversify programming content to maximize reach and avoid cannibalizing one's own audience.

As an empirical matter, no nexus between separate ownership and content diversity has ever been shown to exist, even where two or more broadcast stations in the same market are commonly owned. In the context of this rule, the connection between ownership and content would be even weaker. Newspaper publishing and broadcasting are distinct businesses characterized by separate operations and fiercely independent editorial control. Common ownership would not break down this separation. For all these reasons, the FCC's "media diversity" theory was a non-starter from the day the FCC first hoped that it was true.

The "diversity of voices" theory, of course, was not the only basis for the FCC's adoption of various broadcast ownership restrictions in the 1970s. The other basis often cited by the Commission was that of "scarcity," a concept that is now outdated empirically. In 1975, the broadcast marketplace was dominated by the affiliates of the original Big Three networks. Most markets had only a handful of broadcast outlets. Both the cable TV industry and FM radio were in their infancies. And neither direct broadcast satellites nor videotapes nor the Internet even existed. In that context, it is at least understandable why the FCC was attracted to a "one voice per customer" regulatory regime.

The current media marketplace, in contrast, is very different. Since 1970, when the FCC imposed its first cross-ownership rule on broadcasters, the total number of radio and television stations has increased by more than 85 percent. Currently, 10,719 cable systems pass 92 million homes and serve more than two thirds of America's television households. Direct Broadcast Satellite service provides up to 300 channels to nearly 8 million subscribers, and more than 2 million households have home satellite dishes. And in the near future, the Internet also will deliver television programming, using a new process called "streaming video."

Despite these impressive statistics, however, the growth in outlets for television programming is actually exceeded by the dynamic growth in the radio broadcasting market. Since the adoption of the newspaper/broadcast cross-ownership ban in 1975, the total number of licensed radio stations in the U.S. has increased by more than 50 percent—from 8,094 in January 1975 to 12,582 in July 1999. Much of this rise can be attributed to the rapid expansion of FM radio. The number of FM stations licensed today (8,953) is nearly triple the number (3,167) authorized in 1975. And the explosion in the number of the radio stations is outpaced by the expansion of diversity of radio programming formats. *Broadcasting and Cable Yearbook*, which tracked just fifteen formats as recently as 1982, now recognizes at least sixty-four distinct radio formats. And radio stations can now obtain programming from over 300 syndicated program suppliers. Finally, within the past five years, the Internet has transformed the information marketplace in a way unimaginable when the newspaper/broadcast cross-ownership rule was adopted a quarter century ago. It is estimated that about 106 million Americans now use the Internet'slightly more than the number that subscribe to daily newspapers. The Internet also enables anyone so inclined to elect themselves a publisher and communicate with a mass audience.

Technology, however, is not the only factor that has led to enhanced diversity in the media marketplace. Since 1975, weekly, alternative, and special-interest newspapers and magazines also have proliferated. And popular "alternative newsweeklies" contribute substantially to locally-oriented news, public affairs, and/or entertainment coverage. Local daily newspapers also must now compete against national dailies, such as *USA Today* and *The Wall Street Journal*, and special interest newspapers as well.

In all of these respects, the media marketplace today is dramatically different than it was in 1975. Whatever basis there once may have been to claim a "scarcity" of media outlets, it is today untenable to suggest that media outlets still remain a scarce resource. The FCC recognized this as early as 1985, when it noted that "in recent years there has been a significant increase in the number and types of information sources. As a consequence, we believe that the public has access to a multitude of viewpoints without the need or danger of regulatory intervention." As the FCC again admitted in last month's television ownership order, "there has been an increase in the number and types of media outlets available to local communities."

Put simply, there is no justification for the ban. Newspaper cross-ownership of broadcast outlets would not pose a threat to competition in the advertising market. In last month's television ownership order, the FCC found that newspapers and broadcast outlets are subject to intense competition for advertising dollars, not just from other newspaper and broadcast outlets but also from cable and satellite television, weekly newspapers, direct mail, yellow pages, outdoor advertising, magazines, and the Internet.

Nor would repeal of the newspaper cross ownership ban affect the democratic process. Newspaper/broadcast combinations would not, could not, and have not exerted undue influence over local political processes or public discourse. It is true that the FCC has found that newspaper-owned stations tend to provide more news and public affairs programming than other stations. But it would be perverse to rely upon this fact as a reason for *denying* newspapers the right to operate broadcast stations.

In this environment, the newspaper cross-ownership ban is not only arbitrary, irrational, and unfair to newspapers. It also hurts the American public by preventing most Americans from receiving the highest possible quality of broadcast programming—a fact the FCC has never denied. In a recent study, the Media Access Project found that 70% of TV stations air no public affairs programming. Newspapers, in contrast, bring to broadcasting a journalistic tradition, extensive reporting resources, access to capital, and community ties. They are ideally situated to provide more and better informational and educational programming.

The newspaper cross-ownership ban can also, in some cases, threaten the very viability of newspapers, as in the case of the *Washington Star*. For decades, the *Star* was owned by the same company that owned local radio and television stations WMAL. In the 1970s, however, the newspaper fell into financial distress. Unable to sustain further losses, the owner put the newspaper and the broadcast stations up for sale as a "package deal." Miraculously, a "white knight" buyer stepped forward, who was willing to spend the money necessary to resuscitate the newspaper.

But, just as the sale was being consummated, the FCC adopted the newspaper cross-ownership rule, which it applied against the *Star*'s new owner. In so doing, the FCC ignored that the *Star* and WMAL had *always* been commonly owned, and would in fact have been "grandfathered" if they had not been sold by their original owner. Instead, the FCC ordered the new owner to divest either the failing newspaper or the successful broadcast stations. The *Star* was sold at a fire sale, and it folded shortly after. It is impossible to fathom how the *Star*'s expedited demise contributed to viewpoint diversity in the Washington market or otherwise served the public interest.

What is more, continued enforcement of the ban violates Telecommunications Act of 1996. In Section 202(h) of that Act, Congress directed the FCC to review *all* of its ownership rules biennially, including the newspaper/broadcast cross-ownership rule, and to repeal those rules that no longer serve the public interest. With the end of the millennium approaching, the FCC has yet to comply with Congress's directive. It has not even conducted any meaningful review of the newspaper cross-ownership ban, let alone repealed it. Instead, the Commission has merely issued two exploratory *Notices of Inquiry* seeking public comment on the issue.

Continued enforcement of the cross-ownership ban also violates the fundamental principles of administrative law, which require agencies to reexamine those rules whose factual or legal underpinnings may have eroded. It is beyond dispute that the "media scarcity" rationale that is the factual *and* legal underpinning of the cross-ownership ban has eroded beyond repair. So in 1997, the NAA formally petitioned the Commission to reconsider the ban. For more than two years, the FCC has ignored our petition. The Commission's only action has been to incorporate the petition into the record in the illusory biennial review.

Finally, continued enforcement of the newspaper cross-ownership ban in the current marketplace and regulatory environment violates the First Amendment. Courts have consistently held that laws "favoring certain classes of speakers over others are inherently suspect" and that the government bears a heavy burden of justifying them. Under the cross-ownership ban, however, all classes of speakers are favored over newspaper publishers, who now rank with aliens and convicted felons as virtually the only parties categorically disqualified from owning broadcast stations. This discriminatory rule turns the First Amendment's guarantee of "freedom of speech" on its head. And the FCC can no longer carry its heavy burden of justifying the ban.

For all these reasons, NAA strongly supports legislation that would lift the newspaper/broadcast cross-ownership ban directly, without the need for any further FCC action, as would two bills authored by Members of this Subcommittee.

We wholeheartedly support H.R. 598, a bill introduced by Mr. Oxley that would simply eliminate the newspaper cross-ownership ban. Because of the impending "broadcast land rush," which I described earlier, time is of the essence for newspaper publishers, and we urge expeditious action. NAA also supports Section 3(a)(1) Mr. Stearns's bill, H.R. 942, which, among a host of other provisions, also would eliminate newspaper/broadcast cross-ownership restriction.

Both bills would remove the FCC from the process of deciding—or not deciding—whether the cross-ownership ban continues to serve the public interest. Both bills would be self-executing and would be enforceable through judicial review. Both bills are clear and unambiguous and would accomplish their objective. Most importantly, both bills would allow the American people again to enjoy the benefits of the journalistic tradition, extensive reporting resources, access to capital, and community ties, that qualify newspapers to provide the highest quality of programming.

Mr. Chairman, we appreciate your leadership in addressing these questions. I think this is the first time this issue has been squarely before the Congress. We also extend special appreciation to Mr. Oxley and Mr. Stearns. We look forward to working with you on this important issue.

Mr. TAUZIN. Finally, Mr. Jack Fuller, President of Tribune Publishing from Chicago, Illinois. Mr. Fuller.

STATEMENT OF JACK FULLER

Mr. FULLER. Good morning and thank you for inviting me to testify about the newspaper broadcast cross-ownership ban. My name is Jack Fuller, and I am President of Tribune Publishing Company. I have spent most of my career as a reporter, writer and editor on newspapers.

The newspaper business today and the kind of journalism that it represents is under attack from some of the biggest companies in the United States, from Microsoft to the telephone companies. I believe we can successfully compete in the new marketplace, but the Federal Government in the name of protecting diversity of voices tells us that newspapers cannot reach out to the increasing millions of Americans who choose to get their news from television instead of the daily newspaper.

I am here to tell you that the newspaper broadcast cross-ownership ban jeopardizes the richness of local news content and puts at risk the very diversity the government professes to protect.

Here is why. The cost of covering local news is increasing as traditional core cities and suburbs give way to sprawling multicounty metropolises. For a newspaper just to be there as hundreds of municipal government bodies, local school boards and other public groups meet, is itself a huge undertaking, and that is only the start of local coverage.

In Chicago, the newspaper employs nearly 600 editorial stafferS and hundreds of freelance writers, many times more than any television news operation does or could. We are working hard to find new revenue that will allow us to meet these increasing costs without sacrificing quality, but this is tougher than ever before because the market is fragmenting.

Americans are getting their news in more ways, from more sources than ever before. They are turning for their news to broadcast television, to cable television, to all news radio and increasingly to the Internet. As we approach the new millennium it is essential that serious news organizations use all these media to reach their audience. This is the only way to preserve the benefits to the whole community of the kind of serious, comprehensive local news coverage a newspaper traditionally is provided.

Let me give you a real-world example of how the newspaper broadcast cross-ownership ban actually limits the quality and diversity of information available to a community, this from our experience in south Florida. The FCC's own research established that south Florida is among the most competitive TV markets in the United States. The Miami-Fort Lauderdale DMA has 16 separately owned television stations and 4 daily newspapers, not to mention cable, satellite TV, the Internet and all the rest.

Tribune owns the Sun-Sentinel in Fort Lauderdale, and in 1997 Tribune company acquired a group of television stations that included a UHF station that ranked seventh in the Miami market. The station carried no local news when we bought it. We hoped with the help of the Sun-Sentinel to start a local news show. It would have been a branded new full service news voice in the broadcast market, but without a waiver of the cross-ownership ban, we would have had to sell the station and forego the types of joint newspaper/broadcast activities we had hoped for.

We asked the FCC to grant a waiver and the FCC declined so we went to court. The FCC said it would revisit the ban and gave us a temporary waiver in the meantime, but as a condition of that waiver we had to operate the station and the newspaper totally separately.

Since then, the FCC has done nothing to revisit the ban. The upshot is that now the station, our station, contracts with the local NBC-owned station and duplicates local programming that the NBC station creates. More perversely, as a result of the FCC's ruling in August, CBS and Viacom, both of which own stations in Miami, can pool their resources as they compete against the Tribune-owned station. So much for the diversity rationale.

Contrast this with the situation in Chicago where, with the help of the grandfathering provision of the rule, Tribune was able to put together a new 24-hour a day all news local cable channel, a very new voice in the community. It permits people who, for whatever reason, prefer to get their news on television to get the benefits of the expansive and expensive reporting resources of the Chicago Tribune. The new station contributes to the diversity of the market, a new voice, and the richness of local community content, a quality voice. I assure you that most of the multimillion dollar companies that are competing for our advertising revenue, especially those with whom we compete on the Internet, have no intention of covering local school board meetings.

I thank the committee for your commitment to seeing this issue addressed in Congress, and in particular I thank Mr. Oxley and Mr. Stearns for their work on H.R. 942 and H.R. 598 which would eliminate this cross-ownership ban. Thank you very much.

[The prepared statement of Jack Fuller follows:]

PREPARED STATEMENT OF JACK FULLER, PRESIDENT, PUBLISHING TRIBUNE COMPANY

Good morning, and thank you for inviting me to testify about broadcast ownership regulations, including the newspaper/broadcast station cross ownership ban.

My name is Jack Fuller and I am president of Tribune Publishing Company, which is part of Tribune Company of Chicago, Illinois. Tribune Company publishes the Chicago Tribune and three other daily newspapers. It also owns 18 television stations, four radio stations and has interests in the entertainment, sports, educational publishing and interactive media businesses. Tribune was one of the first newspapers that, heeding the urging of the federal government, obtained radio and television licenses to help establish those media when they were new. Likewise, we were among the very first to put our newspaper on the internet.

I have been a newspaperman almost all my life. Most of my career was spent as a reporter, writer and editor. I got into the business because I love to write and because journalism was a way of helping a self-governing society work. Only in the last decade or so did I move to the business side, where my first priority is to find a way to bring our professional newsgathering organizations through this period of radical transformation in the information marketplace. My comments today are addressed primarily at the newspaper/broadcast cross-ownership ban, because that is where I have the greatest direct experience.

As you know, Tribune has been at the forefront of the debate on this issue because we have been among those most effected by the FCC's ban. In South Florida, we have challenged the cross-ownership ban in court and have reached a stand-still agreement with the FCC. In Chicago we have operated a major daily newspaper, a radio station and a television station for years in a way we believe has added diversity to the market. This has strengthened our resolve to see this rule eliminated.

Newspapers are vital to the local communities they serve. They are a unique and critical link in informing people about what is going on around them and in creating a real sense of community. I am here to tell you that the cross-ownership prohibition stands as a serious impediment to their ability to continue in these roles.

The newspaper business is today under attack from some of the biggest companies in the United States—from Microsoft to the telephone companies. I believe we can successfully compete in the new marketplace, yet we are prohibited from taking logical steps to strengthen our ability to serve our local markets. At a time when our competitors are consolidating in huge, multi-billion dollar mergers, like the merger of CBS and Viacom announced last week or AT&T-TCI-MediaOne earlier this year, the federal government tells us that we may not make even comparatively modest consolidations that will help us serve our urban markets. At a time when media are fragmenting and Americans are getting information in more ways and from more sources than ever before, the rule acts as though there had been no increase in the diversity of the marketplace of ideas in our metropolises for 25 years.

The cross-ownership prohibition reduces the ability of the daily newspapers in our great cities to continue to deliver in the next millennium the kind of detailed and expensive-to-gather information that people need to make their sovereign choices as citizens and consumers. Here is why:

The cost of covering local news is increasing as traditional core cities and suburbs give way to sprawling, multi-county metropolitan areas. For a newspaper to cover the hundreds of municipal government boards, local school boards and other public bodies meet is a huge undertaking. This is why in Chicago, for example, the newspaper needs to employ nearly 600 editorial staffers and hundreds of freelance writers—hundreds more than any other news organization in the area and roughly four times more than any radio or television station. Moreover, newspapers have had to invest heavily in plant and equipment to be able to offer zoned editions that do justice to local news across large areas, and they will continue to have to do so. On the broadcast side, the increased costs often mean difficult decisions about which of the many important local news stories gets covered at all on any given day.

We are working hard to find new revenue streams to support our newsgathering operations and at the same time to maintain our high standards for local news coverage. But this is tougher than ever to do because the audience is fragmenting—people are presented with many more choices of where to get information—and because some of our most important revenue sources are particularly vulnerable to competition from the new media.

Let me be more specific: Years ago people may have had to be content with getting their news from a newspaper once in the morning and once in the evening. Today they can go to the paper when that is most convenient for them, or they can go to broadcast television, which often offers substantial news shows in the morning, noon, evening and at night. Or to all-news cable television. Or they can listen to all-news radio while they're commuting to work or jogging or working out. Or they can go to online services such as AOL or to the internet.

Many of these alternatives are owned by single entitles. CNN, for example, programs Headline News, CNN, CNNfn, CNN/SI, CNN International, CNN Espanol, CNN Interactive, and it also operates one of the most popular news sites on the World Wide Web.

Second, advertising spending is being spread over an increasing number of media for reaching people—not only television, radio and newspapers but also direct mail and now, importantly, the internet. Our newspapers have traditionally relied on advertising to support newsgathering. But the most common forms of classified advertising—real estate, automobiles, employment listings—are also the most vulnerable to our internet competitors. For example, Realtor.com, the largest resale homes listing service on the internet, boasted in June that it lists 1.37 million homes for sale. Springstreet.com, claims to offer 6.5 million apartments for rent. Microsoft's carpoint.com claims to have more than 100,000 automobiles for sale. Some of those listings represent advertisements taken away from newspaper classifieds—revenue taken away from our newsgathering and publishing operations. And I assure you these companies have no intention of covering municipal board meetings or other issues of local concern.

In the future it will be essential that serious news organizations use all media to reach the audience. It is important both for the viability of these organizations and for the public interest. The best approach both for news organizations and the publi is to offer comprehensive, high quality news at any time and through whatever distribution system the customer prefers. This offers customers convenience and gives news organizations the chance to spread the high costs of newsgathering across multiple distribution systems. As the audience and advertising base continue to fragment, this is the best way to preserve the benefits to the community of detailed, serious local news coverage.

On the face of it, any government restriction on who can own the means of communication offends the idea of freedom of expression embodied in the First Amendment. Ironically, we are invited today to provide justifications for repealing the rule, when the question that we have been asking for years—the question we feel should be asked—is whether there is any justification for maintaining it. The reason most often given for it today is the encouragement of a diversity of voices. Let me give you a real-life example of how the current rule does just the opposite.

South Florida is among the most competitive TV markets in the United States. The Miami-Ft. Lauderdale DMA alone has 16 separately-owned television stations. The West Palm Beach DMA just to its north has 10 more. Residents of the area can listen to 75 radio stations (33 of which are separately owned), and read seven local daily newspapers (including two in Spanish), not to mention weeklies, magazines, and specialty publications. Cable reaches 76 per cent of households, and can deliver in excess of 55 channels (including in most cases at least 20 devoted in whole or in part to news and local community coverage).

Tribune owns the Ft. Lauderdale Sun-Sentinel. In 1997, Tribune acquired a group of six television stations that included a UHF station that is seventh in the Miami market. The station carried no local news when we bought it. We asked the FCC to grant a waiver to the cross-ownership rule, and the FCC declined. We went to court. The FCC said it would revisit the rule—a rule it had adopted a quarter century ago when the communications environment was very different than it is today—and gave us a temporary waiver until it did so. As a condition of the waiver, however, we have had to operate the station and the newspaper separately. Since then, nothing has happened at the FCC.

We hoped to start a local news show on the television station with the help of the Sun-Sentinel. It would have been a brand new, full service news voice in the broadcast market. But we can't do so because of the terms of the temporary waiver. Instead, the television station contracts with the local NBC-owned station and broadcasts news that the NBC station creates. More perversely, as a result of the FCC's ruling in August, CBS and Viacom, which each own stations in Miami, can pool their resources as they compete against the Tribune-owned station. So much for the diversity rationale.

So the principal effect of the ban is to prevent our newspaper from offering its newsgathering skill and resources and its local news coverage—our voice—to persons in South Florida who choose to get their news on television. While we can (and do) share some news coverage in partnership with a competing broadcast station, this is much more modest an effort than we would be able to make with our own station.

Contrast this with the situation in Chicago, where thanks to the company's pioneering approach to broadcasting, we own one of the oldest radio stations in the country and one of the oldest television stations. And because we owned them before the cross-ownership rule was adopted, we are protected by a grandfathering provision.

In Chicago, the Tribune was able to put together a new 24-hour-a-day all-news local cable channel, a very new voice in the community. It makes its own news decisions. Its journalists operate—as all of ours do at Tribune—with appropriate professional independence. Tribune reporters and editors appear on both WGN-TV and the cable channel next to television reporters, enriching the programming and permitting the Chicago Tribune to reach people who for whatever reason prefer to get their news on television.

The Chicago approach is headed in the direction the future aims us. It is logical and in the public interest because it offers the greatest likelihood of rich and diverse local coverage on all media. And importantly, it does not place the heavy hand of government regulation on newspapers and television stations as they compete with powerful but agile new enterprises—enterprises that want our revenues but have absolutely no interest in or commitment to local news or community service.

I thank the Committee, in particularly Mr. Oxley and Mr. Stearns, for their work on H.R. 942 and H.R. 598 which would eliminate this newspaper/broadcast cross-ownership ban and for your commitment to seeing this issue addressed in the Congress. I hope the momentum continues.

As former Speaker Tip O'Neill often said "all politics is local." Well, in a similar way, all news is local news—news about education, crime and families; news about the people and places we live. Even international news is most meaningful when it is related to a community's unique interests. The cross-ownership ban impedes newspapers from providing local news the way many people want it as we enter the new millennium. It is a bad rule—bad for the country and bad for the newspapers—and it should be changed.

Mr. TAUZIN. The Chair thanks the gentleman.

Mr. Fuller, I might mention to you that before Harry Carey passed away, I had a chance to be be interviewed by him one time in Chicago at Wrigley stadium, and it was right after Ditka moved to New Orleans. I expected all kinds of questions about Ditka and the Saints and the Chicago Bears, and I anxiously awaited the interview. When it started, he said, Mr. Tauzin, "How come my damn cable rates are so high?" that was all he wanted to talk about.

The Chair will now recognize members in order of seniority and appearance and under the 5-minute rule, again. We will try to live by it. Let me start.

First of all, when Tom Tauke and I began years ago the effort to broadcast deregulation in this committee and with some success, there were then three networks, a few broadcast stations per market, no cable, no satellites, no Internet. Nobody even dreamed about an Internet in those days. Today, there are seven broadcast networks, plus.

There are more than half of American households that now live within markets that have 11 or more television stations. Over 65 percent of households now subscribe to cable. Satellites, with the help of my good friend Mr. Markey and the director of access provisions, now offer hundreds of channels to almost every household; and the Internet is upon us, and broadband is coming, and digital, transfers of Internet to television is fast upon us. And I want to get to that real quick.

In the newspaper business, will it not be possible when broadband is fully deployed, for newspapers to become broadcasters on the Internet, and the Internet itself will have merged with television in the digital age; will you not be on television with your news and your programming as a broadcaster on the Internet very soon? And if that is the case, what is the purpose of all these restrictions anyhow? Either one of you.

Mr. FULLER. Mr. Chairman, we agree with you totally. The development of the Internet as it moves to increasing bandwidth is going to involve the convergence of the things that we now think of as newspapers, meaning text and static images and video and audio actualities that we now think of as broadcast.

The Internet, as it moves to increasing bandwidth, is not going to respect the traditional distinctions we have made between the two, and the successful competitors and the ones that will serve the public interest the best will be those that can master all those resources and bring them to bear.

Mr. TAUZIN. In fact, there are 1,700 radio stations now broadcasting on the Internet. The Internet is still a limited audience but will become a broader and broader audience; but with real-time video possible in broadband, I suspect there will be an awful lot of broadcasters on the Internet, with the restriction of the copyright rules imposed nevertheless on the plane.

I suspect we haven't even begun to think through the effect of broadband broadcasting on the Internet and how it affects all these rules that were designed to regulate a world of 3 or 4 networks and no cable, no satellites, no Internet.

What relevance do these rules have in that age, Mr. Fisher and Mr. Yager, and any one of you may want to comment on that?

Mr. YAGER. Well, No. 1, I think that the broadband universe that we are looking at is going to happen. Putting a timeframe on that broadband is very, very difficult. Television sets are in 99 percent of U.S. households today. Computers are in roughly 50 percent, last number I have seen, and I think that number is kind of high.

What you are talking about in broadcast television is a universal system, a universal system that goes into the homes of all demographic groups, all economic groups. Now whether broadband gets in those homes or not is somewhat——

Mr. TAUZIN. Let me give you a time line. Legg Mason tells us that in 3 years, one-half of the households in America will have access to 2 or 3 or more providers of broadband services; that another quarter of America will have at least one provider. Three years from now, I am very concerned, they say that one-quarter will have none. That concerns me deeply, but at least in 3 years we are talking about three-quarters of America having 1, 2, 3 broadband suppliers.

It is on us, it is here, and I am asking you when it is fully here, when as much as three-quarters of America have broadband access and television is migrated to the digital age and the televisions can become the Internet monitor—in fact, there is a company now offering access to the Internet for children for $5 a month for the set-top box on your television today. I mean, if it is already this close, what relevance do these old rules of ownership structures by the FCC have in this new world?

Mr. YAGER. We are still in the world we are in, Mr. Chairman. We can't change that, and quite honestly I would not advocate rules for the new broadband world. It is going to be a very competitive world. It is going to have open access and unlimited access. In terms of radio, you can stream audio now so you are going to have a plethora of radio stations on the broadband spectrum. I would not advocate rules in that regard. But we are not there, and these rules are extremely important for broadcast over-the-air television today.

Mr. TAUZIN. Anyone else want to respond before I yield to my colleague? Mr. Chernin.

Mr. CHERNIN. Mr. Chairman, I think the issue is fundamentally one of economic, and I think the rules if anything, are more outmoded in a world where there are multiple choices, increasing niche choices. The problem with those niches is that they don't have the economic resources to support genuine broadband broadcast, and so I think the people that are most likely to serve the public are the people that are able to aggregate local news channels, local newspapers and supply that.

As one of the other gentleman said, there are 600 local school board meetings. A broadband provider is not going to be able to cover all of those.

I think what you want is you want news organizations that are capable of flowing those news services across a multiplicity of outlets. And so I think that where there is going to be much more diversity, I think there are significant economic issues that face us.

Mr. TAUZIN. The Chair yields 5 minutes to the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Mr. Fuller, do we need must-carry rules in the age of the Internet? Should we take those off the books here as well?

Mr. FULLER. I am a newspaper man, and I really don't know a whole lot about the broadcast arena.

Mr. MARKEY. These are the rules where the Tribune stations are automatically carried by all of the cable systems in the communities in which they are in.

Mr. FULLER. I think that I am uncomfortable trying to testify to what our company believes about parts of the regulatory system that I don't know much about. In general, we lean strongly to the deregulatory side.

Mr. MARKEY. So, in general, must carry.

Mr. FULLER. I didn't say that.

Mr. MARKEY. I appreciate that, because the Internet is changing everything. So my amendment will be on must carry.

Mr. Fisher.

Mr. FISHER. I am a member of the NAB Board, and as such would tell you that I have voted in favor of the must-carry rules. It is still very unclear how matters are going to turn out in terms of the business negotiations on digital television.

We have invested, for example, at COX so far in converting three of our stations at a cost of tens of millions of dollars for digital broadcasting, and as such we do not have any assurance that those digital signals will be carried on cable in our local markets.

Mr. MARKEY. I think it is very unclear, but I am hearing broadcasters say it is no longer necessary, some of them anyway, in the era of the Internet.

You know, I listened to Mr. Katz talk about the efficiency of the marketplace, and I do agree that it is highly efficient to have 3 or 4 central sources override all local communities in terms of what programming is appropriate. So if the success is sex or violence, it really is inefficient to have individual stations say, no, we don't want that in Biloxi, Mississippi, we don't want that in our communities. From an economic model, I agree with Mr. Katz, it is very inefficient. It adds an extra cost, obviously, to the networks to have to listen to these pains that are, you know, calling in from these local communities. And it is also a pain, I guess, to listen to them say we are going to preempt some of your prime time programming to show this high school football game that is very important to our local community. That is also highly inefficient.

There is no question that localism is a very inefficient value; that it would be very efficient just to have all of the programming all of the time be sent from New York and L.A. My question to you, Mr. Fisher, is do the networks ever allow their O&Os ever to preempt any of their national programming for local programming?

Mr. FISHER. I am sure there are occasions that can be cited where a network-owned station has preempted the network, but in my professional history, which includes having worked for network-owned companies as well as for independently owned companies, I do not know of an instance where that preemption occurred because of concern about local community values. That appears to be the exclusive province of those who are not owned by the network, for obvious reasons. I just don't think that a network-owned station general manager is going to call up the network and say, I know that was a wonderful decision for you, I am just not going to run it.

That is just not pragmatically the way it is, and that is in essence the issue in front of this committee. The increase of the cap simply moves program decisions about national news and network programming exclusively into the hands of Hollywood and New York.

Mr. MARKEY. Mr. Yager, what is your experience in this area?

Mr. YAGER. Well, we own a television station, not in Biloxi, but Meridian, Mississippi, that does not carry and has never carried NYPD Blue because of the local climate when that show was first announced.

Mr. MARKEY. Now, if you were purchased by a network, do you think the local general manager would be able to preempt that in Meridian, Mississippi?

Mr. YAGER. Congressman, I doubt if they would be able to preempt that. I doubt that they would. I think those program decisions would be made in New York, as Mr. Fisher said, or Hollywood.

Mr. MARKEY. Is that an important value to have, that kind of discussion within a network, that affiliates are able to speak back to New York and L.A?

Mr. YAGER. I think it is. You mean, is it important that we have it at the local level?

Mr. MARKEY. That you have that discussion at the affiliate meetings where you have the kind of clout to be able to talk to them in sufficient numbers that they understand your concern at the local level.

Mr. YAGER. I think it is absolutely critical.

Mr. TAUZIN. The gentleman from Florida, Mr. Stearns, the author of the legislation.

Mr. STEARNS. Mr. Yager, let us just follow up, if we can, with what Mr. Markey was pursuing. Isn't it true that the affiliates have the legal right to preempt the national broadcasters?

Mr. YAGER. That is correct.

Mr. STEARNS. If they want to go ahead and broadcast a local football game, they have the right to do it. There is nothing the national network can do.

Mr. YAGER. Within certain limits.

Mr. STEARNS. Yes, but so much allowed every year by the affiliates to do what they want on the local level; isn't that true?

Mr. YAGER. Those baskets, Congressman, have steadily decreased over the years that I have been in this business. We have some stations that are allowed today under contract to preempt only 15 hours of prime time programming a year.

Mr. STEARNS. Mr. Fisher, you have argued that an increase in the national ownership cap would harm localism. Where is COX cable headquartered?

Mr. FISHER. I guess Atlanta. I have no close connection with our cable company which is publicly owned, sir, but I will do the best I can here.

Mr. STEARNS. But isn't it true that COX owns stations in eight other markets, including as far away as San Francisco?

Mr. FISHER. We own television stations in nine markets, yes, sir.

Mr. STEARNS. The fact that you are headquartered in Atlanta and you have ownership in San Francisco, does that mean that you are going to ignore localism in these markets?

Mr. FISHER. Of course not; no, sir.

Mr. STEARNS. Okay. And if your answer to that question obviously is no, why do you allege that other group owners or networks would ignore localism?

Mr. FISHER. It is a wonderful question. No one who runs network affiliates feel that the networks run bad stations. The issue in front of the committee is how many people like us do you want in the business. Do you want basically four folks calling the shots in half the country, or would you like a large number of owners with a diverse number of viewpoints who are involved in the business?

So the issue of localism is not whether good local stations are run. It is how many people are going to be having a voice in the policies of the major distributors.

Mr. STEARNS. So you are talking about power and economic power is what you are concerned about—a concentration, is that what you are saying?

Mr. FISHER. In my view, would be the diversity of viewpoints available to influence programming and news in this country.

Mr. STEARNS. Let me go to Michael Katz. Mr. Fisher, you just heard him testify that lifting the national caps would make the networks too powerful and threaten the economic viability of local affiliates. What economic incentives do the networks have in undermining local stations? And don't they need strong local stations in order to ensure the efficient distribution of network programming?

Mr. KATZ. I don't think that networks do have an incentive to undermine local stations. They have every incentive to have strong local stations and the networks have incentives to promote localism. I don't think it is a correct statement to say that localism is inefficient. There are market forces that drive networks to want to serve local interests, and in fact I am told by CBS, heard this last night, that the CBS-owned and operated station in Baltimore preempted the network programming to show the Orioles game.

Now, if someone was going to debate the social value of an Orioles game, particularly since they were beating my home team, but the fact is it is an example where the O&Os—this is something of greater local interest and they showed it, and that is what one would expect is their incentive, to show local interest.

Mr. STEARNS. Mr. Fuller, Hurricane Floyd in Florida was moving ever so slowly into Florida. In my office we didn't go to the newspapers to find out what was happening. We pulled up the FEMA Web site. We pulled up the Florida Department of Emergency Services Web site. We went to the Weather Channel on the cable, and we went to Cable News Network.

Now, Mr. Markey says that he is worried about cross-ownership. Wouldn't you agree that with this huge amount of change, that the newspapers in themselves should be able to participate? Or they are in an industry that is not going to be providing information that is current; because why would I go to any newspaper when I can go to these 3 or 4 sites and instantaneously find out what is going on?

Mr. FULLER. Well, you are surely not going to wait until the morning after the hurricane passes to find out where the hurricane is going to hit. We agree with you thoroughly. The changes in the information technology are sweeping away all of the distinctions that have typically existed between us until virtually the only distinctions left are in the law.

Mr. STEARNS. Thank you, Mr. Chairman. I just give that example of Hurricane Floyd and how across this country all our citizens in this country are following and tracking it, and that is probably a very clear example of how this industry is changing so dramatically.

Mr. TAUZIN. The gentleman from Illinois, Mr. Rush, is recognized for 5 minutes.

Mr. RUSH. Thank you, Mr. Chairman. I first want to ask Mr. Fuller—Mr. Fuller, in light of the recent broadcast mergers, CBS and Viacom comes to mind, how would your paper be able to compete in this changing communications environment?

Mr. FULLER. Well, we see consolidation happening all around us, and we also see, as you know, new competitors that can come after sources of our revenue really quite easily thanks to the Internet and other electronic means, and we believe that the way we are going to be able to compete the best is to be able to do what we do best, which is do journalism and reach people across a variety of distribution systems so that we can reach them with the information we have in the way and the manner in which they want to get it. That is how we think we can compete in a consolidating environment and we think that the public will be served by it.

Mr. RUSH. Mr. Katz, you state that the national station ownership cap does not promote minority ownership. Can you expound on that, please?

Mr. KATZ. Yes. The reason for that conclusion is twofold. One, there just simply aren't very many minority-owned television stations. So, manifestly, the cap has not been successful in promoting that goal, and I don't think that should be a surprising finding, because what analysts have found, what the FCC has found, is that the biggest obstacle to minority ownership is the lack of access to capital, and the problem is that the national ownership cap does nothing to address that issue and does nothing to solve the problem.

Mr. RUSH. Thank you, Mr. Chairman. I yield back.

Mr. TAUZIN. The gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman. Mr. Sturm, you mentioned the 94 local newspaper/television combinations and the 308 newspaper/radio combinations that were grandfathered back in 1975, and that they were selected based, apparently, on their superior service. Is it also a fact that they were just in a good place at a good time?

Mr. STURM. As I mentioned in my testimony, at one time the Commission encouraged publishers to invest in radio and television. As you mentioned, as a result of that, when the Commission imposed the ban, there were several hundred newspaper/radio primarily, as well as some newspaper/television combinations that continued under the grandfather. My recollection is the Commission required divestiture of just a handful of markets where the ownership was highly concentrated, but at the time they never found that newspaper ownership was somehow against the public interest. What they did find is quality service throughout the history of cross-ownership. Why they imposed the ban under those circumstances is strange to me.

Mr. OXLEY. It does seem rather inconsistent. As a matter of fact, one could argue, it seems to me, that if you truly believe what apparently some folks at the FCC believe today, that you would be in favor of rejecting the grandfather, that is, repealing the grandfather.

Now, I am just wondering whether anybody has really thought about that, at least to be consistent.

It seems to me if we are going to deny other newspapers the ability to own stations based on the apparent lack of diversity, why wouldn't we then consider simply lifting that grandfather clause and making everybody equal?

Mr. STURM. As I tried to point out in my testimony, the grandfathers situation, and there are about 22 left in television, 34 in radio, most of them have actually gone away over the last 25 years, primarily because of the changing marketplace and the demise of the afternoon newspapers, unfortunately.

But if you are really serious about localism, the best thing in the world as I see it would be to have the local newspaper, which is truly a local medium, be able to have the ability to own broadcast stations.

Mr. OXLEY. I don't want to leave the impression I am espousing doing away with the grandfather for the Washington Post or the Chicago Trib, certainly. They may want to divest the Cubs, but that is a whole other story.

Let me ask you, Mr. Sturm, you mentioned the constitutional issue. Has a newspaper association ever gone to court to test that issue on a first amendment ground?

Mr. STURM. We really never have had the opportunity to test the rule under today's marketplace situation because the FCC has never opened a rulemaking so that we could take a final order from the Commission. Even if we lost the final order from the Commission we would, of course, be in court under a lot of theories, including the constitutional aspect of it. We have not had a chance to do so under today's marketplace situation with the great diversity of voices that are available in every market.

Mr. OXLEY. So in essence, the court wouldn't have a justiciable issue under current circumstances?

Mr. STURM. When the Tribune company applied for their waiver and appealed that case, we attempted to try to get the court to take a look at the entire rule but they refused to do so.

Mr. OXLEY. Thank you. Thank you, Mr. Chairman.

Mr. TAUZIN. The gentleman from Minnesota, Mr. Luther.

Mr. LUTHER. Thank you. Mr. Fisher, you stated, I believe, that the FOX network would have never been able to get off the ground without the 25 percent national ownership cap. Why is that true, and what would the impact be on the emerging networks if the cap were raised above 35 percent?

Mr. FISHER. Well, I think it is really self-evident. You do the station count—remember that while there are an average of 11 stations in market in the United States, a number of those in each market are public and religious. So the reality at the end of the year is, using the current duopoly rules as has been established, if the four owners can duopolize, that pretty well ties up the market, and that is what you have got. You have got the four network-affiliated stations buying the four other stations, and it is kind of hard to imagine an independently owned network ever being able to emerge again.

Mr. LUTHER. And, Mr. Chernin, I have a question of you. Did FOX advocate for retaining the national ownership cap when it was building its network back in the eighties?

Mr. CHERNIN. Absolutely not. First of all, I was there when FOX was being grown, and I categorically disagree with Mr. Fisher. You will notice that Mr. Fisher answered that question not referring to the broadcast cap of 35 percent. He referred to the duopoly rule. The fact of the matter is that the broadcast cap was lifted to 25 percent to allow the FOX network to grow, and I think that increasing the broadcasting cap encourages people to enter the networking business, and I don't see any reality to my colleague's analysis of the situation.

Mr. LUTHER. This would actually be to all of the panelists. I think everyone here is aware of how the public feels about the low marks the public gives the media today. I think they rank the media somewhere where they rank Congress, and that is not a good area to be in. But anyway, my sense of course is that the public feels that those notions of the first amendment and public spirit are sort of out the door, and it is all completely money driven today. That is my sense in talking to people when I have town meetings and invite my employers in; and they are the people I represent. My sense is that they feel that money is driving everything today.

So I guess my question to all of you is if we want to get the public to feel better about you, to have more confidence in you, what are the changes we ought to make? Would the changes you are proposing today actually create greater cynicism, greater concern on the part of the public, or would they help alleviate that? Because I think that ought to be our goal: to get some confidence back in the media.

Mr. FULLER. Let me answer first, in that we strongly believe that the responsibility for getting and keeping the public trust with the media is ours, and that the Constitution says we ought to have the right to either gather the public trust, gain the public trust or lose it, and if we lose it we will lose our business. And we believe that it is fundamentally our responsibility and not the Federal Government's.

Mr. LUTHER. If you have a monopoly, how do you lose your business?

Mr. FULLER. I have never operated in a monopoly setting. I have no idea what that feels like.

Mr. CHERNIN. First of all, I don't think that lifting the cap on broadcasters is going to create a monopoly. As we have heard from numerous testimonies, there are a huge number of different voices in every local market, and I do agree with my colleague that the public has an opportunity to vote every single moment of every single day as to how they view the performance of various broadcasters, various cable casters, various information sources, and they have the opportunity to watch you to the degree they think you are doing a good job and the opportunity not to watch you. And I think that is ultimately the best way for the public to express their true feelings.

Mr. LUTHER. Anyone else wish to comment on how we are going to improve the public's feelings about you?

Mr. HEDLUND. Congressman, I would wonder if when you said the public's opinion, the media is down about where the public's opinion of Congress is, you know that is always true. People say they hold Congress in very low esteem but they like their local Congressman, and I suspect you might find the public feels the same way. They don't like the media, but boy, they sure like their local television stations, one.

Second, yes, as commercial businesses they are money driven, no question about it, 100 percent money driven. But that is the biggest guarantee of the incentive to gain the public's confidence and trust, because if you lose it, you lose your business or you lose the share of the business you had, and that makes a big difference moneywise.

Mr. LUTHER. Thanks.

Mr. TAUZIN. Thank you, Mr. Luther. I am going to test that. I don't care how you guys feel about me, they love me at home.

The Chair recognizes the gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. Localism is funny. It is a good debate because everyone is speaking in support of localism. Obviously there are different views, as per my opening statement. But, Mr. Yager, let us talk about localism in Quincy, Illinois, for a second.

Your station KHQA competes with WGEM. Do you feel that your local station there is at a competitive disadvantage based upon the fact that WGEM is grandfathered?

Mr. YAGER. You mean the fact that the Oakley Newspaper Group or the Quincy Newspaper Group owns the Quincy newspaper together? They also own radio stations in the market. We bought that station knowing full well that the Oakley family controlled the newspaper, controlled the radio stations. That did not bother us, and Congressman, that does not bother us today. We are very good competitors. As a matter of fact, the Oakley family has now bought a station in Rockford, Illinois, where we own a CBS affiliate and compete with us there as well.

Mr. SHIMKUS. Thank you. I would just ask Mr. Fuller kind of the same question in the Chicago market, and I am asking you to speak for your competitors now obviously, because they are not present. Would your competitors in the broadcast industry say that you have a competitive advantage because of your other being grandfathered?

Mr. FULLER. Well, I don't know what they would say. I don't think that—I can't imagine that they would say that there was market concentration in our business. I was just counting it up. There are 10 daily newspapers in our market, not to mention all of the television outlets and cable outlets. I mean, I think that some of our competitors have competitive advantages of one sort and others have competitive advantages of the other sort.

That is not the issue. The issue is whether anybody has market power, and I can tell you that the idea of anybody having an overwhelming voice in a market like Chicago is just, for those of us who have tried to get our voices heard at all, is preposterous.

Mr. SHIMKUS. Thank you. Mr. Yager, let me go back to you, and correct me if I am wrong in this initial opening little statement. You have indicated your support for the Commission's recent relaxation of local ownership rules and you appear to be confident that permitting one entity to own two stations in the same market will not reduce competition and diversity. Is that correct so far?

Mr. YAGER. That is correct.

Mr. SHIMKUS. Yet you do appear to be concerned that eliminating restrictions that restrict the number of stations a single entity can own in different markets somehow would reduce competition and diversity. So my problem is, if there is a problem in differing markets, if they are not competing, if they own in a market on the East Coast and they buy into the West Coast and there is no competing aspect, how would that event impact a viewer and affect the competitive market?

Mr. YAGER. Congressman, let me say that the new duopoly rules which the Commission adopted prevents a diversity of voices. You have to have so many voices. You have to have eight different voices in that community. We disagree with the way they count those voices. We think newspapers should count in terms of television duopolies, as we think cable should count; but you are really talking about in the local marketplace, that station has to be a fourth-place station in that market for them to have a duopoly. It can't be one of the top four, under the new Commission rule which we support.

We operate in many, many markets. As a matter of fact, we do not operate in any market that has a television station. So we are not faced with the implications of that rule, and that is primarily because the largest market we operate in is number 83 in the country.

I think that there is a great difference between a network-owned megacompany that supplies programming to stations and owning two stations in an individual market. One is program supply, one is program control. The other is the operation of a local station. I think there is quite a difference, Congressman.

Mr. SHIMKUS. Mr. Katz, would you like to respond? Did you follow our discussion?

Mr. KATZ. I followed it and I have been puzzled by the Commission's decisions and how they can square having the local rules that they do with the national ones. It makes no sense to me to say that owning a second station in New York is okay but owning a second station where one is in New York and one is in San Francisco is not. I appreciate that program supply may be different from operating a station, but I don't see why that is relevant to this issue.

Mr. SHIMKUS. And, Mr. Chairman, if I could just follow up with one last question. I don't know if this has been asked but it is something—and it is to Mr. Sturm—on the impact. In my short time in this political environment, I have seen the tough competition that the newspaper industry has in large communities. In fact, many large communities have only one daily paper today.

In easing some of these rules, do you think that would bring more competition to, in large communities, of another daily to compete in local—for example, I am in the St. Louis metropolitan area. The St. Louis Post-Dispatch reigns supreme. Would easing of this obviously bring competition to that one daily newspaper?

Mr. STURM. It is difficult to predict that necessarily. I know in the St. Louis situation, while the Post-Dispatch is the primary metro daily, it is surrounded by quite a few suburban newspapers that have quite a bit of circulation in the St. Louis general metropolitan area. If you relax this rule and allowed the owners of those suburban newspapers, for example, to own a television or a radio station in St. Louis, would that perhaps allow them to expand into the center city perhaps? I can't really predict that, but it certainly wouldn't hurt.

Mr. SHIMKUS. Thank you, Mr. Chairman, for the extension. I yield back.

Mr. TAUZIN. The gentleman from New York, Mr. Engel, for a round of questions.

Mr. ENGEL. Thank you, Mr. Chairman. I have been studying this issue for a while. I started off basically opposing the raise in the cap. I have come to have the opposite position. I think in modern days, raising the cap probably makes sense, but I do have some questions.

I just want to follow up on Mr. Shimkus' question because it would seem to me that if there is a concern in raising the cap, the concern I think would be more of allowing one entity to own a second station in the same media market. That might be a concern, but I don't understand why it is a concern to allow one entity to have different stations in different media markets.

I don't understand that, and I am wondering, Mr. Yager, if you could just continue to elaborate on that because it would seem to me, if there is a fear, it should be one entity gobbling up everything in one area, not if someone owns something in San Francisco and owns it in New York. I am not really troubled by that.

Mr. YAGER. Most broadcasters do not operate in the major markets where the rule regarding two stations is going to be applied. The top 20 markets are primarily where you can own more than one television station. There are some smaller markets where you could own two television stations under the new rule.

When you get down to controlling program distribution and you control the ownership of television stations, you have a dual stream of control. Those of us who elect not to sell, who decide to maintain independence in terms of our affiliations, in terms of the way we program local stations, with megacompanies controlling 50 percent, will no longer be important to the distribution system of the networks.

Mr. ENGEL. Thank you.

Mr. Chernin, I represent a racially diverse district in New York City and the surrounding areas, and I want to just raise two questions with you, and then I hope I have some time to ask Mr. Katz a question.

Of paramount concern to my diverse constituents, of possibly raising the national ownership cap, is the fear that raising the cap would further accelerate both the lack of racial and ethnic diversity of current television programs; and B, that would make it much more difficult for minority ownership. Can you comment on that, please?

Mr. CHERNIN. Well, I fundamentally think it is a very legitimate concern, Mr. Engel, and I think it is a concern which all of us in the broadcasting business need to do a better job. We have pledged to do a better job. We have had a series of meetings with various groups, particularly the NAACP and numerous other groups. I do agree with what Mr. Katz' earlier statement was. It is clear the current system has not done an adequate job of promoting diversity either in programming or in ownership of local stations. We as a company certainly support—there has been an initiative by Mr. Karmazin and Mr. Maze to create a fund for minority ownership. We support that. I think tax credits ought to be looked at. We support that. I think as a programmer we have to do a job of serving a diverse constituency. We struggle hard to do that, and sometimes we are more successful than others, but it is hard for me to understand why keeping a cap at 25 percent as opposed to owning it is going to have a material effect one way or the other.

I think if anything, these large companies are in some ways more responsive because we have to be. We have a greater need and obligation to serve the public interest and I think have more pressure put upon us, and respond appropriately to the marketplace.

Mr. ENGEL. Mr. Katz, you testified that lack of a minority ownership is in large degree as a result of a lack of capital, and Mr. Chernin just mentioned perhaps a tax certification program. Would you be in favor of that? Should Congress be looking at that in order to create incentives for minority ownership and greater diversity in programming?

Mr. KATZ. Let me first do the usual economist disclaimer, which will say as an economist I am not going to tell you that promoting minority ownership a good or bad idea, but I am going to take it that obviously it is a good idea, and I think then it is important for Congress to look at various ways to create incentives. I think it would be preferable for the industry to be able to come up with it voluntarily. I am sure the members would prefer the industry would come up with it, rather than looking at new tax programs.

I think we should explore all of the possible avenues because, as I said, what we have today hasn't been working.

Mr. ENGEL. Thank you, Mr. Chairman.

Mr. TAUZIN. Also the gentleman from New York, Mr. Fossella, for a round of questions.

Mr. FOSSELLA. Thank you, Mr. Chairman.

Mr. Chernin, you claim that group-owned stations broadcast more issue-oriented local programming than nongroup-owned stations. What exactly about FOX demonstrates this?

Mr. CHERNIN. I can give you several examples. You know, when we purchased our stations, a number of examples, four of the stations we purchased had absolutely no local newscast when we purchased them: Chicago, Boston and Salt Lake. Within 2 to 3 years of our purchase—and Denver—3 of those 4 stations started airing locally produced news. We are in the process of building a multimillion dollar state-of-the-art facility in Denver which goes online next year to also serve that community with local news.

In five other stations, New York, Los Angeles, Philadelphia, Washington and Houston, arguably the most important markets in this country, we have tripled the amount of local news we present to the public in those markets. When we bought those stations they had 1 hour of local news. All of those stations now have 3 hours of local news. In three other stations, Memphis, Birmingham and Greensboro, we have doubled the amount of local news from 1 to 2.

In addition, as a network basis, when the FOX network was formed we generally had a group of very small underfinanced affiliates, few of whom offered any news at all.

One of the things I think we are proudest of is more than 100 FOX affiliates now offer a local—locally produced, locally editorially directed newscast, and frankly it is good business for us. These stations prosper by serving their local community, and as the owner of those stations and as to the degree which we are networked, our partners in those affiliate stations, we are dedicated to those stations performing a local service to their community. It is good business for them and we think it helps us.

Mr. FOSSELLA. By extension to Mr. Fisher, it is my understanding COX owns a FOX affiliate in El Paso, Texas.

Mr. FISHER. That is correct, sir.

Mr. FOSSELLA. What would be the impact in El Paso if COX were to sell that affiliate to FOX and presumably break the cap? What would happen? What would be the ramifications of that sale?

Mr. FISHER. It is hard to predict the future, but we know one thing and that is that the decisions about the programs that that station clears from the network, as well as the decisions about what programs it buys in the syndicated marketplace, would be made in Hollywood. No longer would it be made by an independently owned operator, and I think that is the crucial difference here. There has been a fair amount of conversation about the question of how a duopoly affects the matter of network ownership.

The real issue is simply do you want four companies deciding news and programming policies in half the country? That is a huge change from what the Nation's cultural tradition has been, and the essential difference in El Paso is simply do you want that decision being made by one of many, many independent owner organizations or do you want to tell folks who have owned television stations for many years, your time is over, it is now time for the networks to basically own most of them?

Mr. FOSSELLA. So you don't think the response from the local marketplace to bad programming would be less viewership on the new affiliate if presumably FOX were to buy it? That wouldn't be a factor?

Mr. FISHER. The viewers would make their own decisions.

Mr. FOSSELLA. Would you think that FOX, for the sake of argument, would change their programming if their viewership dropped or their advertising dollars generated by the shows dropped? Would they make that decision at all, change their decision?

Mr. FISHER. Sure. FOX, I assume—you have a gentleman here who can answer more eloquently than I—but I am sure they will make the most economically viable decision for their programming. As for the editorial content of news broadcasts, I guess you have to decide how many diverse owners do you want making those decisions about local television.

Mr. FOSSELLA. I am not familiar with the marketplace totally in El Paso, but there has got to be a few stations there, right?

Mr. FISHER. I think that there, if memory serves, are seven commercial—in fact, I believe there are seven stations overall in El Paso, sir.

Mr. FOSSELLA. So if I am a resident of El Paso and I am now watching a FOX-owned affiliate with programming from Hollywood, if it is going to affect me so much, I have how many other options, six other options, presumably?

Mr. FISHER. In the commercial world, I think 4 or 5.

Mr. FOSSELLA. So you think the fact that the decisions would now be presumably made in Hollywood, as opposed to in El Paso by an independent operator, it would change the whole marketplace, which would put FOX in violation of a cap, and so we should keep it at that? That is what your argument would be?

Mr. FISHER. It already has, sir. If you take a look at the syndicated programming decisions at the FOX station, they are made in large steps.

Mr. TAUZIN. Thank you, Mr. Fossella. Are there any other members who wish to ask the panel any other questions? Mr. Engel, would you like to follow up with any?

Mr. ENGEL. Thank you, Mr. Chairman. I just have one question that I would like to throw out for anyone who would like to answer. I raised the issue before of diversity, the networks owning and buying up more cable stations. We have a situation where a number of households in the United States do not have cable, and they are primarily the poorer households, and, therefore, primarily larger percentage of minorities.

Is it a concern that because the networks are not doing well financially that if you don't allow the cap to be lifted, that the networks may just simply transfer a lot of programming to cable stations and, therefore, leaving the regular broadcasting with slim pickings? Is that a concern or is that nothing that we should be concerned about?

Mr. CHERNIN. Mr. Engel, I would be happy to answer that. In fact, we are the largest producer of programming in the country right now. We try to produce—and I think in fact there is a pretty good argument that the health of the broadcast business has led to quality if the Emmys are any indication of quality, given that our company won the three major Emmys this past week, all for broadcast programs.

The fact of the matter is that most of our investments in recent years have been in cable networks. We started the FOX News Channel, we started the FOX Cable Network, we started the FOX Sports Network, we started the FOX Family Channel, because as a responsible business organization we felt we would get a better return on that cap that owned a cable business.

We are committed to the broadcast industry. We would like to provide the World Series to free broadcast; we would like to provide the Superbowl to free broadcast; we just provided the Emmys to free broadcast. We produce close to 30 different network television shows. But to the degree that the broadcast business becomes economically disadvantageous, as a responsibility to our shareholders we will have to dedicate those production efforts elsewhere.

So I think it is a legitimate and genuine concern to serve that portion of the population that doesn't pay $30 a month for cable or satellite or doesn't have Internet connection or home video, et cetera, et cetera.

Mr. FISHER. Could I comment as well?

Mr. ENGEL. Certainly.

Mr. FISHER. These are the same arguments the networks use when the cap has been raised before. There is some concern that based on the way in which networks count their profits, if they owned 100 percent of the country, they would still be showing today that their profits were very, very limited.

I think at some point, one has to take a deep breath and say with the revolution that the 1996 act and now the duopoly change has allowed, it is a moment to take a deep breath, because once further consolidation is allowed and only four folks are running much of the Nation's television stations, you will never get to again find out what diversity would have provided instead.

Mr. KATZ. If I could address that, I think this issue of whether or not the networks are making a lot of money or just the right amount I think is a red herring. The issue is not the overall profitability of the networks or how one does the accounting. The issue is whether or not the networks have economic incentives to invest in high-quality, high-cost programming, and I think there is agreement that if the networks owned and operated more of the stations, however the accounting is done, that they would have greater incentives to invest in that programming.

It seems to me that is the real issue for viewers, and that is what I see as the public policy issue, and that is not a question of how the networks do accounting. It is a question of their being able to coordinate with the stations and to be able to earn the return on their investment.

Mr. ENGEL. Thank you.

Mr. TAUZIN. Mr. Markey, would you have any final comments or questions, sir?

Mr. MARKEY. Only to say this, Mr. Chairman. We have many important players here in the firmament of information which ensures that our democracy thrives, and clearly we are in a new era, and I don't think I or anyone else can deny that. The decision made by the Federal Communications Commission in August has opened up a Pandora's box of issues that are going to have to be dealt with. I don't think any of us can deny that, and I think that Mr. Fuller and Mr. Yager and Mr. Chernin, all of our witnesses today, have made extremely good points that I think at the end of the day are going to have to be fully included in any deliberations of this committee or of the Federal Communications Commission.

And I am glad that you had this hearing, Mr. Chairman, because I think you are teeing up a very important debate and discussion for our country.

Mr. TAUZIN. I thank the gentleman.

Let me wrap up with a few comments. No. 1, let me put something on the record to clarify an issue. The Federal national cap is not, as some apparently believe, a cap on the amount, the total percentage of stations, television stations in America that can be owned by one entity. The cap of 35 percent does not mean that an entity cannot own more than 35 percent of the television stations in America. That is not it at all. It is a cap on the percentage of the American viewing audience that can be reached by a single entity. So that the 35 percent cap means that any network and entity is not permitted to own stations that reach more than 35 percent of the American audience.

It is very different than owning 35 percent of the television stations in America, as some I think erroneously look at this cap.

The CBS/Viacom merger presents an example of how the cap works. CBS/Viacom together would own stations that reach 41 percent of the American audience, an audience that is reached by many other stations. It is not a 41 percent monopoly of the stations in America, but the 41 percent obviously would exceed the 35 percent reach that is permitted under the current national cap.

The merger would also include a network ownership issue, a double network ownership issue, because apparently UPN is half owned by Viacom and UPN is the sixth rated network as of last year. So that there is a problem in ownership by one network of another network, and that 50 percent ownership probably would pose a problem in terms of approval of this merger and would have to be dealt with.

So these old rules, the rules of caps, the rules of ownership, directly impact how this merger proposal is going to be handled or considered by those who have to approve it and obviously impact upon some decisions that Viacom and CBS have to make in connection with their merger agreement.

Let me also finally say that we are basically talking about the ownership of delivery systems of programming. That is what a station is, a delivery system that can deliver the newspaper, gather news in a different way; it is a delivery system that allows the delivery of local and national programming over networks in one way, as opposed to a cable delivery or satellite delivery or some other delivery system.

Just yesterday I met with officials of a company that intrigued me when I discovered it on the Internet, a company called Time Domain. I am not proselytizing the company, but I want to mention it to you. Time Domain is a technology developed by a man named Larry Fullerton out of Huntsville, Alabama. It involves a new delivery system, a delivery system based upon postmodulated bands of energy. It implies the capability of very low power and very low-spectrum use of ultra-broadband delivery on a wireless system of television, radio, voice data, enormous amounts of information, over networks or just specific users. It is radar through walls. It is locatability down to the millimeter as opposed to GPS meter locatability.

If this technology is as real as its proponents say, it is an entirely new delivery system for all of the stuff we are talking about today.

In that wonderful book—Mr. Markey has read it and many of the members have read it—by Tom Friedman, The Lexus and the Olive Tree, he says that very soon that we will either live, all of us, not in a First World or a Third World, but in a fast world or slow world.

Now, here is my editorial remark. I think the FCC lives in the slow world. I really think it does. I think we all have to be thinking about the fast world, a world where these new delivery systems are going to be upon us rapidly, where broadband delivered in new systems of wireless and wired and satellite and all sorts of new mediums are going to dramatically change the way in which Americans see, view, hear, and deal with much of the information that many of your great companies or affiliates provide for us in the old slow world, the old formats. And I suspect we need to be thinking about how these old rules, while they served a great purpose for a long time, these really need to be rethought and reexamined in the light of these new delivery systems.

I suspect that when, as I said earlier, Mr. Yager, when broadband is really deployed fully to enough Americans—and I hope we are not left out in Chackbay, Louisiana—that localism will be the key to viewership. That is where you are going to get eyes, and the more we are brave enough to let these new delivery systems fully develop, fully explore their possibilities for America and for the people of the world, the more the contest for eyes will be fought on the basis of how local information is; and that is good for this country and good for everything we have fought for in broadcast and newspapers and everything else when it comes to developing a system of free speech in our great country.

So I just challenge you. Think, if you can, in this fast world and help us encourage the FCC to get out of its 1930's slow world and join the rest of us in a very fast-moving and new fast world of communications.

Thank you again. You have contributed, as Mr. Markey said, dramatically. We have heard some differences of opinion, and that always helps us, because in the end we have to consider all points of view. You have been very good about doing that today. I appreciate it.

We will come back, I am sure, to this issue very shortly, and we will keep the record open, and if you have additional comments, suggestions, information, we will appreciate you supplying it to the committee.

The committee stands adjourned.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF LEONARD J. ASPER, CHIEF OPERATING OFFICER, CANWEST GLOBAL COMMUNICATIONS CORPORATION

CanWest Global Communications Corporation ("CanWest") welcomes the opportunity to present to Members of this Subcommittee its vision of broadcasting and the foreign ownership restrictions in Section 310(b) of the Communications Act of 1934 as we enter the new millennium. The current post-cold war international climate, an unprecedented explosion of technology and media, the contributions foreign participants can make in furtherance of traditional policy goals of broadcast regulation, and recent developments associated with foreign investment and ownership opportunities in telecommunications services all support the conclusion that now is an appropriate time to review and modernize the restrictions that Section 310(b) places on foreign investment in United States broadcasting. CanWest commends the Subcommittee for considering this important issue. CanWest believes that the reciprocal approach contained in H.R. 942 will reasonably modernize Section 310(b) while continuing to safeguard the core national security interests that the law was designed to protect.

CANWEST HAS SUCCESSFULLY BROUGHT NEW AND DIVERSE PROGRAMMING CHOICES TO THE LISTENERS AND VIEWERS OF THE COUNTRIES IN WHICH IT HAS INVESTED

CanWest, based in Winnipeg, Manitoba, was founded in the early 1970's by I.H. Asper, and has traded on the Toronto Stock Exchange since 1991, and on the New York Stock Exchange since 1996. CanWest has expanded by acquiring and developing underperforming broadcast assets and through start-up of new television broadcasting properties. Although its combined revenue for fiscal year 1998 was $871.4 million (Canadian), the company is relatively small when compared to United States broadcasting companies.

Today, in Canada, the company's Global Television Network broadcasts over-the-air via eight television stations and provides service to eight of ten provinces, 28 of Canada's 31 largest English-language television markets, and more than 75 percent of Canada's total population. The network is one of two national commercial television networks in Canada. In addition to over-the-air broadcasting in Canada, CanWest recently entered the cable arena with "Global Prime," a niche 24-hour network catering to those age 50 years and over.

CanWest's business achievements are accompanied by significant participation in community and social affairs. CanWest is a perennial sponsor of the Broadcaster of the Future Awards which awards three separate media-related scholarships: Broadcaster of the Future Award for Aboriginal People, Broadcaster of the Future Award for a Canadian Visible Minority Student, and Broadcaster of the Future Award for a Canadian with a Physical Disability. CanWest also recognizes the performing arts industry as a foundation of broadcasting and honors it accordingly with substantial sponsorships and contributions. For example, CanWest recently helped the Manitoba Theatre for Young People construct a new state-of-the-art performing venue.

CanWest also encourages its employees to become involved in a variety of programs and initiatives. CanWest provides employees with a Matching Gift and Community Service Support Program. This program establishes dollar-for-dollar matching contributions for employee charitable donations, thereby supporting the interests of individual employees and encouraging their community involvement.

In addition to its extensive achievements in Canada, CanWest has made significant contributions to the media markets in Australia, New Zealand, the Republic of Ireland, and Northern Ireland. In the early 1990s, CanWest took its first step into the international arena when it acquired an interest in TV3, New Zealand's first private sector broadcaster, which was in receivership. In 1997, after TV3's success, the New Zealand government granted CanWest a license to launch TV4, New Zealand's second privately-owned network. Also in 1997, success in New Zealand prompted CanWest to acquire More FM, consisting of seven radio stations operating from Auckland, Wellington, Christchurch and Dunedin. CanWest's development of these broadcasting properties in New Zealand has been facilitated by ownership regulations in that country that allow CanWest to own 100 percent of the networks.

In 1992, CanWest led a consortium to acquire Australia's TEN Television Network. CanWest holds a 57.5 percent economic interest and a 15 percent voting interest in TEN. The Australian network reaches about 65 percent of the country's population via five wholly-owned stations, and another 25 percent of the population through affiliated stations.

Most recently, in September 1998, a CanWest-led consortium launched the TV3 Television Network in the Republic of Ireland. Headquartered in Dublin, TV3 is Ireland's first privately-owned, national television network. CanWest also owns 29.9 percent of Ulster Television plc, headquartered in Belfast, Northern Ireland. Ulster TV is the most watched television service in Northern Ireland.

Many broadcasting properties in which CanWest holds an interest share a general programming strategy: they offer a solid programming mix aimed primarily at specific target audiences, depending upon the time of day. This strategy results in a diverse programming lineup and has proven to be extremely successful for the Global Television Network as well as for TV3 New Zealand and the TEN Television Network in Australia. Other CanWest broadcasting properties cater exclusively to a particular unserved or under served audience. For example, New Zealand's TV4 is aimed at young, urban New Zealanders between the ages of 15 and 39. Since its inception, TV4 has adopted a unique style, and sometimes airs programs other networks are unlikely to show.

CanWest seeks to bring its broadcasting experience and innovation to the largest English-speaking market—the United States. CanWest however, like other foreign companies, finds its ability to participate in the U.S. market severely restricted by Section 310(b) of the Communications Act of 1934. CanWest believes that the present foreign ownership restrictions in Section 310(b) rest upon concerns that were once sound and necessary but that have become attenuated for the reasons discussed herein.

THE ORIGINAL RATIONALE FOR SECTION 310(B)

Section 310(b)'s restrictions on the foreign ownership of U.S. radio facilities trace their roots to a variety of national security concerns. The history of the foreign ownership restrictions makes clear that Congress' foremost concerns centered on wireless telecommunications and that concerns related to broadcasting followed therefrom.

The military importance of wireless communications first manifested itself with Japan's annihilation of the Russian naval fleet in 1905. Seven years later, after efforts to place the United States wireless industry under the control of the Navy failed, Congress passed the Radio Act of 1912. The 1912 Act restricted foreign ownership of radio stations in simple fashion—merely requiring that licensees be United States citizens or United States corporations. This fundamental restriction emerged out of a genuine concern that, during wartime, foreign operators of U.S. radio facilities would transmit information to enemy forces or jam American military communications.

However, the 1912 restrictions proved inadequate when two East Coast stations licensed to American subsidiaries of German corporations transmitted warnings to German vessels in violation of U.S. neutrality orders in place at the outset of World War I. Because the licensees were American corporations, they were expressly eligible for the licenses at the time, notwithstanding their indirect German ownership. The Radio Act of 1927 closed this loophole by extending restrictions to the parent corporations of licensees. In the 1912 Act, the 1927 Act, and again in the Communications Act of 1934 (which closed a final loophole by limiting foreign investment in a parent corporation to 25 percent), Congress made the judgment that a reduction in the free flow of capital was an acceptable sacrifice to safeguard national security.

Foreign ownership of wireless point-to-point communications facilities presented an evident security concern in light of the state of technology and the wartime environment earlier this century, and the limitations on foreign investment in *broadcast* licensees were derived from these national security concerns. However, in the broadcast context, concern centered not on any direct threat to military operations, but rather on the impact that a foreign licensee could have on the character and content of the information delivered to the American people. The Federal Communications Commission ("FCC") has observed that the foreign ownership restrictions safeguard domestic broadcast licenses from undue foreign influence and control, and ensure the "American character" of licensees. These purposes, according to the FCC, are particularly strong when combined with national security concerns. The legislative history supports the Commission's interpretation and clearly indicates that the dangers of propaganda disseminated through foreign-owned radio stations in the United States prior to and during war contributed to the passage of the Radio Act of 1927. Although the national security concerns that undergird Section 310(b) still exist today, for the reasons that follow CanWest believes that they have become far less acute, and therefore the relaxation of the restrictions proposed in H.R. 942 is appropriate.

CANWEST BELIEVES THAT THERE ARE MULTIPLE REASONS TO REVIEW AND MODERNIZE SECTION 310(B)

National Security Concerns Have Abated

Both technological and international geopolitical changes have contributed to the reduction of the national security concerns that underlie Section 310(b). The need to protect licenses from foreign control arose from an extraordinary confluence of conflict and technological advances that made control of communications an unusually powerful tool in shifting the balance of world power. Today, in an era of encryption and satellite communications, FCC licensees can hardly be viewed as the lynchpin of military success and domestic security. Indeed, the recent liberalization of ownership regulations for U.S. wireless telecommunications providers, in connection with the World Trade Organization (“WTO”) Agreement on Basic Telecommunications Services, manifests this fact. As previously discussed, the ownership restrictions in Section 310(b) stemmed primarily from national security concerns associated with just such wireless operations. Yet under the WTO Agreement, the U.S. now permits indirect foreign ownership of such U.S. licensees up to 100 percent. Insofar as the security concerns related to broadcast licensees were derivative of, and less acute than, those related to wireless licensees, this change in outlook is particularly instructive.

As we approach the new millennium, the present international climate bears little resemblance to the global conflicts and extended cold war that characterized much of the twentieth century. To be sure, a number of rogue nations and terrorists continue to threaten America’s security interests. However, remedies exist to address these concerns that are both more effective and more tailored than the blunt instrument of Section 310(b). For example, tighter foreign ownership restrictions, or even a complete ban could be applied to investors from certain nations identified by the State Department (e.g., the list of state sponsors of terrorism). Also, Section 606 of the Communications Act continues to vest the President with the power to control broadcast stations in the event of war or emergency.

In addition, CanWest further submits that any concerns related to national security essentially disappear when the potential foreign investor is Canadian. Canada and the United States share one of the world’s longest undefended borders, and the two countries have perhaps the closest relationship of security and defense establishments of any two nations in the world. Moreover, the Canadian economy is integrated into the United States industrial base for purposes of U.S. military planning, and with discrete exceptions, Canada and the United States have made special commitments in the North American Free Trade Agreement (“NAFTA”) to ensure North American energy security, including nondiscriminatory access for the United States to Canadian energy supplies. In short, severe restrictions on Canadian investment in broadcast licensees is not only unnecessary, but incongruous when viewed in the broader context of Canadian-American relations.

The Broadcast Medium No Longer Exercises the Degree of Control Over Access to Information That it Did When Section 310(b) Was Adopted

The limited number of communications outlets available even as recently as a decade or two ago raised the specter that foreign control over broadcast licenses could vest too much control over the flow of mass information in interests hostile to the United States and, consequently, grant foreigners the ability to dictate what Americans heard, learned, and believed. Although broadcast licensees continue to play a substantial role in informing and educating the American public—more than 50 percent of Americans still regularly view network news programs—the sea change in the media landscape has greatly diminished the potential threat posed by foreign ownership of broadcast licenses.

Today, cable television, direct broadcast satellite (“DBS”) service, and the Internet are among the many sources providing Americans with news and information. More than 181 cable networks exist in the video services marketplace—more than double the amount in existence just seven years ago. DBS subscriptions have increased by over 1.5 million so far this year, giving DBS providers in excess of 10 million subscribers, or ten percent of all television households in the U.S. It is predicted that there will be 18 million U.S. homes subscribing to DBS by 2005. The percentage of Americans who regularly get their news from the Internet has jumped from less than 10 percent to 34 percent in just five years. Individual voice diversity is manifested as never before over the Internet, where individuals or low-capital companies can reach an international audience. This chorus of voices will only grow as more and more individuals and companies craft inexpensive Web pages that can reach anywhere in the world.

Viewing all media collectively, broadcast licensees no longer exercise anywhere near the degree of control over key messages conveyed to Americans that they once did. Furthermore, the ability to deliver information to only a defined geographical area is an inherent limitation of a single broadcast license—a limitation not confronted by national cable networks, satellite programmers, or the Internet. Viewed in this context, the need to safeguard the broadcast media, in particular, and restrict the speech of non-hostile aliens is far less apparent today than it was even a decade ago and certainly can be accomplished with far less sweeping regulation than current law provides.

Relaxing Section 310(b) Will Promote the Principal Values Underpinning United States Broadcast Regulation

Over the years, the FCC has sought to fulfill its mandate to foster a mass communications framework conducive to the "public interest, convenience and necessity" by relying on two principal values: localism and diversity. These values are distinct but mutually reinforcing; they complement each other, as diverse groups and cultures bring about local and regional identities. The foreign ownership restrictions now in effect do not further either of these two principal values.

Domestic cross-ownership restrictions and restrictions on the number of television and radio stations that may be commonly owned in a single market were intended to ensure that American listeners and viewers are presented with a diversity of voices. As domestic ownership restrictions have been liberalized, some Members of Congress have expressed concern that the resulting consolidation will reduce the diversity of broadcast voices. Ironically, Section 310(b) has not been liberalized, yet doing so would create opportunities for foreign investors who can bring new capital and new and diverse voices to the broadcast industry.

CanWest, for example, has been successful in New Zealand, Australia, and elsewhere, due in large measure to its origination of new program offerings targeted at under served or unserved audiences. Indeed, CanWest is uniquely well positioned to make a meaningful contribution to viewpoint diversity. CanWest's ownership of media interests in these markets around the world affords it access to a wide array of culturally diverse programming fare and informs its programming decisions in the communities that it serves.

In addition, while CanWest may not have well-established ties to the foreign communities where it has media interests, that has not precluded CanWest from making significant contributions toward advancing the principle of localism. Though some CanWest programming may have Canadian (or, indeed, U.S.) origins, CanWest has utilized its capital and resources to develop locally-originated programs in countries where it has media interests. For example, while providing Australians with top-rated international programs such as *The Nanny, Seinfeld, Mad About You,* and *The X-Files* over the TEN Television Network, CanWest has also invested considerable resources in local production to bring the best of Australia's creative talent to its viewers. In 1999, *Good News Week,* featuring a range of prominent Australian and international personalities such as politicians and comedians, was added to the programming schedule. Another new program, *Ocean Girl,* was nominated in the international category of the British Academy of Film & Television Children's awards and supplements a children's lineup that includes locally-produced *Totally Wild* and *Cheez TV*. Other local programs include *The Panel*—a one-hour show which reviews the week's events, a drama series entitled *Breakers,* and *E! News,* catering to women 16 to 24. Locally-produced programs have also found their niche on New Zealand's TV4 and TV3. TV3 presents an award-winning localized edition of *20/20* which is complemented by an extremely successful national evening news program and a host of entertainment comedies, dramas, and game shows.

Notably, CanWest's contributions to localism have not been limited to programming. In Australia, the TEN Television Network's Young Achievement Award recognizes the accomplishments and talents of young employees. In New Zealand, TV4 is operated by a group of New Zealand executives recruited and trained by CanWest. Additionally, CanWest supports Child Flight, New Zealand's first air ambulance which transfers critically ill newborns and children up to the age of 15 to hospitals for emergency care.

Traditional Broadcasters and Consumers Should Be Afforded the Benefits of Open and Competitive Global Markets

As discussed earlier, in light of the intense national security concerns once associated with foreign investment in wireless licensees, it is notable that foreign investment in the wireless arena has been the subject of recent liberalization while restrictions applied to broadcast licensees continue to be strictly enforced. In the wireless context, the Telecommunications Act's commitment to ensure open and fair competition, and the WTO Basic Telecom Agreement facilitated the elimination of barrier's to foreign investment in the United States. In the WTO Agreement, sixty-nine WTO members agreed to open some or all of their basic wire and radio telecommunications service markets. Not only have monopolies ended in many countries, but competitors providing services can be 100 percent foreign-owned in forty-four countries.

For U.S. consumers, the new global telecommunications paradigm means reduced prices, increased quality, and innovative programming and services. For United States companies, the burgeoning global marketplace means long-awaited opportunities abroad and the availability of new foreign capital for domestic ventures. Significantly, many small U.S. broadcasters need an influx of capital as they embark upon the transition to digital television. Yet, despite the promise afforded to telecommunications companies, and the rhetoric surrounding the WTO agreement, tight restrictions on foreign investment in broadcast licenses remain in place, and the broadcast industry, both domestically and globally, is being deprived of the global flow of capital which could contribute measurably to a greater role for broadcasting in the digital era.

Broadcasters cannot continue to be confronted with intensifying competition—as video is increasingly provided over satellite, over the Internet, and over wire by cable and telephone companies—while being saddled with regulations explicitly limiting the flow of capital to that one medium. Digital broadcasting holds enormous potential that certainly could be realized sooner without the current stringent foreign ownership restrictions.

THE RECIPROCAL APPROACH CONTAINED IN H.R. 942 REFLECTS A REASONABLE MODERNIZATION OF SECTION 310(B)

CanWest believes that a reciprocal approach to foreign ownership is appropriate. H.R. 942, which would allow a foreign investor to hold an amount of capital stock of a corporation holding a broadcast license equal to what that investor's home country allows foreign investors to hold (up to a 40 percent limit), is a desirable and appropriate liberalization of the present ownership limits given today's communications marketplace.

Countries that have yet to open their markets to U.S. broadcast investment will be forced to liberalize their restrictions if they want increased opportunities for their own companies in the U.S. Moreover, such action by the U.S. would validate the action of those countries that have "gone first" in liberalizing broadcast ownership regulations. Canada is one such country. In 1995, Canada amended its 1968 Direction to the Canadian Radio-Television and Telecommunications Commission so that Canadian regulations now permit an American investor to hold up to 33.3 percent of the voting shares of a holding company, and up to 20 percent of the operating or licensee company, for a total interest of 46.7 percent. Additionally, Canada allows foreign companies to own unlimited amounts of nonvoting stock. CanWest has been at the forefront of the effort to liberalize Canadian broadcast foreign ownership laws, believing that increased competition strengthens markets.

CanWest believes that H.R. 942's reciprocal approach combined with the 40 percent maximum ownership cap will afford broadcast licenses traditional protection. Further protections applying exclusively to rogue and terrorist nations can provide additional security. As the foregoing discussion demonstrates, the current post-cold war international climate, the growth of technology and media, the contributions foreign participants can make in furtherance of traditional principles of broadcast regulation, and recent developments associated with foreign investment and ownership opportunities in telecommunications services all warrant modernization of Section 310(b). As already demonstrated in countries such as Australia and New Zealand, rather than posing a threat to national security or American viewers and listeners, increased opportunity for companies such as CanWest would enhance competition, and foster new and diverse voices in the American marketplace of ideas.

NETWORK AFFILIATED STATIONS ALLIANCE
September 29, 1999

The Honorable W.J. "BILLY" TAUZIN
Chairman
Subcommittee on Telecommunications, Trade and Consumer Protection
Committee on Commerce
U.S. House of Representatives
Washington, D.C. 20515

DEAR CHAIRMAN TAUZIN: On September 15, 1999, I was pleased to testify before the Subcommittee on behalf of the Network Affiliated Stations Alliance (NASA) regarding the critical importance of maintaining the current 35 percent national audience cap for broadcast ownership. In my testimony I emphasized that the more than 600 local television stations affiliated with the ABC, CBS and NBC networks strongly oppose any increase in the national ownership cap because it is essential to maintaining a healthy balance between national programming and local and diversified control of local TV stations. Our broadcast industry has seen radical changes in the nearly four years since the 1996 Telecommunications Act became law, and we think it would be a dangerous time to inject more upheaval and concentration of the media outlets of our nation.

On the panel with me was Michael Katz, an economist hired by the networks to prepare an economic study supporting repeal of the cap. Because we were not given the networks' study until the day of the hearing, I am submitting this letter to respond to some of the arguments presented by Mr. Katz. The Subcommittee should not conclude that the analysis submitted by the networks justifies repeal or relaxation of a rule that stands to protect diversity, localism and competition against the very real threat posed by growing national network power. Indeed, some of Katz's findings support the opposite position—that the public interest will suffer and localism and diversity decline if the networks are permitted to expand their control over local stations without limitation.

Let's be clear: The future of free, over-the-air television does *not* depend on lifting the cap. Even the networks' hired economist admitted as such: "The issue is not whether the networks will be driven out of business; they won't." As Mr. Katz recognizes, the networks will continue to prosper whether or not the 35 percent cap is repealed. However, the public will suffer irreparable harm if our unique local/national system of broadcasting is destroyed. The future of free television hinges on maintaining the cap, not dismantling it.

"Efficiency" Should Not Be The Only Goal In Our Media Policy.

Katz's primary argument is that the ownership cap harms the public interest because it "leads to a less efficient organization of the industry" and "limits the realization of economies of scale and scope associated with common ownership of multiple stations." Indeed, allowing a single company to own *all* of the nation's television (as well as radio) stations may be the most economically efficient model, but, plainly, that would be inconsistent with the national interest in encouraging many independent, antagonistic and competitive media voices. Katz asserts that "efficiency" is the only yardstick to measure the public interest. While efficiency may be a worthwhile pursuit in the world of economics, it has never been—and should not become—the only goal in formulating our nation's media policy. The damage to diversity and local service that would result from a further concentration of power in the four dominant networks cannot be justified in the name of efficiency. Congress and the FCC have long held that the public interest is best served by preserving localism and diversity in broadcast media—not by a single-minded pursuit of "efficiency" at any cost. Indeed, more than one commenter, from deTocqueville to Churchill to Lech Walesa, has observed that democracy, with its pluralistic voices, is messy and inefficient but serves the greater good and sure beats the alternatives.

Under the banner of "efficiency," Katz's position would call for the elimination of affiliates altogether, with the networks owning all of the stations that distribute their programming across the country. Indeed, Katz touts the elimination of arms-length negotiation between networks and affiliates as one of the important efficiency gains to be realized by repeat of the cap. In Mr. Katz's world, local affiliates committed to serving their communities of license and selecting the most appropriate programming for local tastes and concerns are a "market interference" or a "market externality" that would be "corrected" and made more "efficient" if the network O&Os were in control because then "coordination" with the networks would be easier. Thus, in the name of economic efficiency, to use Mr. Katz's own analysis, there would be less emphasis on tailoring program offerings to the particular communities the stations are licensed to serve because, after all, dealing with local stations just adds up "transaction costs."

In this new world, no longer will the public benefit from decentralized decision-making and localized programming decisions. Instead, decisiomnakers in New York and Hollywood will have the final word on programming decisions in diverse communities across the nation. As network market power and audience reach grows, these four voices will dampen or even drown out the many others. In Mr. Katz's sterile view of our industry, public service and community responsiveness is a "transaction cost" to be eliminated rather than a value to be served. As dedicated broadcasters, we simply disagree.

Network Power Is Not A "Thing Of The Past."

Katz asserts that increased competition in the video marketplace has rendered network dominance "a thing of the past." But this economic theory ignores the day-to-day reality of local broadcasters. Let me assure you: The networks continue to wield market power in the free, over-the-air broadcast marketplace. As Katz admits, "measured in terms of revenues, the networks collectively had their best up-front season ever in the summer of 1999." With the repeal of the financial interest and syndication rule ("fin/syn"), the increasing power and ability to move network programming to cable and satellite, and the recent relaxation of the one-to-a-market and duopoly rules, the dominance and economic strength of the networks will only continue to grow.

Katz argues that "because local stations have an increased number of alternatives to affiliating with any given network, there is no need for a comprehensive set of regulations to protect stations from the exercise of network market power." This claim does nothing more than demonstrate that Katz's academic analysis is woefully separated from the real world. Networks wield enormous power because affiliation with a major network increases significantly the value of a local station. The question is how do the networks use this economic power. They use it to get affiliates to reduce local preemptions and increase clearances of network programs. They use it to reduce compensation paid by the networks to stations to carry network commercials—which compensation funds local news in small markets. They use it to "repurpose" programming from local stations to cable channels. They even use it to impede the sale of affiliated stations by threatening to withhold consent to the transfer of the station's affiliation agreement if the station is sold to a third party, rather than to the network. These are but examples from a growing list of ways the networks use their bargaining power against diversity and localism in today's broadcast world.

Katz claims that the profitability of affiliates relative to independent stations demonstrates that affiliates have bargaining power, but that fact simply illustrates that the networks hold tremendous leverage in bargaining with affiliates. The threat of losing an affiliation with one of the big four networks looms large for affiliates at the bargaining table. (Affiliation with an emerging network is hardly comparable to affiliation with NBC or CBS.) With every station a network acquires, independent affiliates lose more of the limited collective bargaining leverage they hold.

Ownership Cap Promotes Diversity Of News And Programming Decisionmakers.

Katz claims that the ownership cap reduces incentives to invest in non-subscription over-the-air television. This argument is wrong on two counts. First, many of the networks already own stations covering 35% of the country. The question is how much more do they need to own to invest in over-the-air programming. Clearly, the networks want their O&Os covering ⅓ of the country's national audience to succeed. Second, the huge financial windfall bestowed by repeal of the fin/syn rule provides a powerful incentive to invest in quality programming. Indeed, two of the biggest deals in the past decade—ABC/Disney and CBS/Viacom—were driven by a desire to create vertical integration of programming and networks.

Katz states: "Elimination of the cap would not threaten competition and indeed can be expected to strengthen broadcasters as competitors." As shown by the increase in network-owned stations and vertical integration since the 1996 Telecommunications Act, elimination of the cap will open-wide the door for the networks to drive out competitors—squeezing out non-network station owners and bypassing local affiliates in favor of network-owned stations across the country. Even if the networks retained some affiliate relationships, the bargaining position of these remaining affiliates would be greatly weakened. Resulting affiliation arrangements inevitably would sacrifice autonomous, community-centered service in favor of national network programming decisions. Elimination of the cap will result in the concentration of industry power in the four dominant networks, driving competitors and alternative voices out of the industry.

Katz claims that the 35 percent audience cap does not promote diversity. Nonetheless, he concedes that the network station groups are the ones most likely to expand if the ownership cap is lifted. Such expansion of the network station groups will occur at the expense of individual and smaller group station owners. Repeal of the 35 percent cap thus directly threatens diversity of ownership in the broadcast industry.

Contrary To The Networks' Illogical Claim, Increasing The Cap Decreases Minority Opportunity.

Mr. Katz even goes so far as to argue that because "few stations are controlled by owners who are members of minority groups," the ownership cap does not promote minority ownership and should be repealed. The causality suggested by Mr. Katz puts the cart before the horse. In essence, he argues that because other factors—such as lack of access to capital and (ironically) the concentration triggered by the 1996 Act—restrict minority station ownership, Congress might as well eliminate one of the few means currently available to facilitate it. As Katz notes, "[i]n addition to being a small percentage of the total number of stations, minority-owned stations tend to be in small markets" and "minority station groups themselves tend to be small." These facts together make minority-owned stations among the *most* at risk in the event of increased network concentration and power. As network ownership grows, and the industry becomes increasingly vertically-integrated, the small group owners will be the first to go. Apparently, Katz would find this result more "efficient."

Increasing the ownership cap above 35 percent threatens the ideals of localism and diversity that have undergirded our national/local broadcasting service from its inception. The networks are currently healthy and strong. They have record revenues. And they stand to increase their economic and programming power even more as the full force of the repeal of fin/syn, the recently increased 35 percent national ownership cap, and the new one-to-a-market and duopoly rules continue to be felt. Affiliates have a large stake in the success of the networks—a healthy network benefits the local stations with whom they affiliate, and these benefits flow to the communities those stations serve in the form of strong and competitive local stations and quality network programming. That is why NASA supported the repeal of fin/syn so that networks could strengthen their economic base. Of course, in giving this support, affiliates believed that the existing network-affiliate rules and 25 percent national audience cap would continue to protect diversity and localism in broadcast media.

Congress has long stood firm in its commitment to localism, competition and diversity in the broadcast industry. We ask you to stand firm in that commitment and retain the 35 percent cap.

Sincerely,

ANDREW FISHER, *Chairman*
Network Affiliated Stations Alliance

cc: Chairman Tom Bliley
Rep. John Dingell, Ranking Minority Member
Rep. Ed Markey, Ranking Subcommittee Member
Members of the Subcommittee

COX ENTERPRISES, INC.
Washington, DC

MEMORANDUM

TO: House Subcommittee on Telecommunications, Trade, and Consumer Protection

FROM: Alexander V. Netchvolodoff

DATE: September 23, 1999

Re: Clarification of certain historical aspects of the 25% national audience cap

Last week, Mr. Peter Chernin representing Fox Broadcasting Company stated in testimony before the subcommittee that the FCC had granted Fox a waiver of the "fifteen percent ownership cap" to encourage the development of a fourth television network. This statement needs to be corrected for the record.

In 1985, when the Commission first adopted a national audience reach limitation for television, it decided that the appropriate cap should be set at twenty-five percent. *See Amendment of Section 73.3555 of the Commission's Rules Relating to Mul-*

tiple Ownership of AM, FM and Television Broadcast Stations, 100 FCC 2d 74 (1985). The cap remained unchanged for eleven years, until the 1996 Telecom Act raised the limit to thirty-five percent. Thus, broadcasters (including Fox) have never been subject to a fifteen percent audience reach cap. As such, there was no fifteen percent cap that the FCC could have waived for Fox.

Instead, Mr. Chernin likely confused this matter with a programming waiver Fox received from the FCC, which involved references to the number "fifteen." In particular, the FCC in 1990 granted Fox a temporary waiver of its "network rule," which defined a broadcast network as an entity providing fifteen hours of television programming per week on an interconnected basis to twenty-five or more affiliates in ten or more states. In practice, the waiver of the network rule enabled Fox to provide fifteen or more hours per week of programming to its affiliates without having to comply with the FCC's prime time access rule ("PTAR") and financial interest and syndication rules ("fin-syn-rules"). *See Fox Broadcasting Company,* 5 FCC Red 3211 (1990). The Commission concluded that this temporary waiver served the public interest primarily because it would encourage the development of a fourth competitive television network.

Consequently, the comment about a waiver of the "fifteen percent cap" almost certainly resulted from the speaker's confusion between the twenty-five percent audience reach cap and the fifteen-hour threshold in the FCC's network rule.

Finally Fox took issue with NASA testimony, submitted by Andrew Fisher, Executive Vice President of Cox Broadcasting, that the 25% national audience cap was essential to its emergence. In 1991 Fox filed comments in a FCC proceeding MM Docket No. 91-221 which was titled "Review of the Policy Implications of the Changing Video Marketplace. These Fox comments are a part of the record relied upon by the FCC in releasing its TV ownership rules just issued last month. Fox called for relaxing or eliminating a number of ownership and network rules for "emerging" networks. In arguing for elimination of the national numerical cap, Fox noted:

"The audience cap, by itself, should be more than sufficient to protect the Commission's interest in diversity of ownership." (Emphasis added)

In other words at the time of their filing (1991) Fox understood the critical importance of the then 25% national audience cap in the absence of numerical limits on station ownership.