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MEDIA OWNERSHIP

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

SEPTEMBER 28, 2004

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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MEDIA OWNERSHIP

TUESDAY, SEPTEMBER 28, 2004

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

The Committee met, pursuant to notice, at 9:37 a.m. in room SR–253, Russell Senate Office Building, Hon. John McCain, Chairman of the Committee, presiding.

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

The CHAIRMAN. Good morning. Today, the Committee meets for the tenth time during the 108th Congress to examine the issue of media ownership consolidation.

Since the Committee's last media ownership hearing, the United States Court of Appeals for the Third Circuit issued its decision in an appeal of the Federal Communications Commission media ownership rules by several media companies and public-interest groups. The Third Circuit found the FCC did not provide reasoned analysis to support its chosen local ownership limits and, therefore, remanded portions of the new local ownership rules back to the FCC for further review.

Therefore, today the Committee will hear testimony from academics about the Third Circuit decision and what reasoned analysis policymakers should consider as it approaches these difficult issues.

I look forward to hearing from today's witnesses.

Senator Dorgan?

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

Senator DORGAN. Mr. Chairman, thank you very much.

Mr. Chairman, it's true we've had a lot of witnesses before this Committee in many hearings, for which I am very appreciative. I think this is a very important issue, and I hope that the Federal Communications commissioners, at some point, will come back down, perhaps when we turn the year and go to a new Congress. But as you have correctly indicated, the Federal court has remanded these rules back to the FCC, and they are, I expect, now either deciding whether to appeal them or to attempt to change them.

Mr. Chairman, you won't like me to say this, perhaps, but there are some 30 to 40 million Americans who didn't have an opportunity to hear your speech at the Republican National Convention.

I wish they had. In fact, I watched your speech, thought it was quite a good speech. But there are tens of——

The CHAIRMAN. Content aside.

Senator DORGAN. Pardon me?

The CHAIRMAN. Content aside.

Senator DORGAN. No, no, I thought it was well done, and I thought the American people should have a chance to view that. Now, why would tens of millions not have an opportunity to view that? Because there are, I think, 32, 35, close to 40 million Americans who don't have pay television or cable television. They rely on the broadcast channels, and the broadcast channels, networks, the broadcast networks, decided, this year, that they would air 3 hours—one hour each night, for three nights of the Republican Convention, and 3 hours of the Democratic Convention. So, for example, the American people did not hear Barack Obama give the keynote speech at the Democratic Convention, they didn't hear Rudy Giuliani and Senator McCain give their speeches at the Republican Convention. Mr. Chairman, you wouldn't complain about that, but I will on your behalf, not so much because they didn't air that specific segment, but because a couple of people made a decision about what the American people should and should not be able to see that evening. And it describes, once again, why concentration, I think, is not in the public's interest.

I read the testimony today—some of it was amusing, and some of it interesting. Ms. Overholser uses the term "public interest," which, I think, is really central to the question here. The testimony by some suggests somehow that the airwaves belong to those who are using them for broadcast purposes. They don't, in fact. There has always been a public interest standard, dating back to the 1930s. It continues to exist. And yet it has very few shepherds here in the Congress, certainly very few shepherds at the Federal Communications Commission. And we ought to get back to the question, "What is, in fact, in the public interest?" And what does represent the responsibility of the Congress and the Federal Communications Commission in making certain that we have the kind of ownership restrictions with respect to television, radio, and broadcast properties, and also with respect to cross-ownership with newspapers, that serve the public interest.

It is every bit in the realm of the interests of this Congress to be involved in these questions. Some will suggest today it is not. That's nonsense. It is every bit within our realm to be involved in these questions on behalf of the American people.

So, Mr. Chairman, thank you for calling this hearing.

The CHAIRMAN. Thank you very much.

Our witnesses this morning are Professor C. Edwin Baker of the Nicholas F. Gallicchio Professor of Law, University of Pennsylvania Law School; Mr. Ben Compaine of Cambridge, Massachusetts; Professor Geneva Overholser, the Curtis B. Hurley Chair in Public Affairs Reporting of the Missouri School of Journalism; and Mr. Adam Thierer, Director of Telecommunications Studies at The Cato Institute.

Welcome to the witnesses. Thank you for appearing here today.

Mr. Baker, we'll begin with you—Professor Baker.

STATEMENT OF EDWIN C. BAKER, PROFESSOR, NICHOLAS F. GALLICCHIO PROFESSOR OF LAW, UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

Professor BAKER. Thank you.

You've adequately stated the holding of the Third Circuit. I should also admit that I'm one of those without cable TV, and so I missed your speech, that speech——

The CHAIRMAN. I'll send you a tape.

Professor BAKER. I want to outline four reasons why legal restrictions on mass media concentration are vitally important in a democracy.

First, the single most important reason to resist concentration in media ownership comes from the meaning of democracy. True democracy implies as wide as practical dispersal of power over public discourse. Dispersal of ownership may empirically promote diverse content, but, more importantly, dispersal directly creates a fairer, more democratic allocation of communicative power.

This distributive value, I suggest, was probably the single most important consideration that prompted nearly two million people to write, petition, or e-mail the FCC in opposition to reducing restrictions on concentration. Without more, this value judgment provides a proper basis to impose any limit on media mergers in any policy designed to increase the number of separate owners of media entities.

The Supreme Court approved the propriety of essentially this value judgment when it held that strict limits on media cross-ownership were appropriate to prevent an undue concentration of economic power in the communications realm.

Second, the widest possible dispersal of media ownership provides two safeguards of inestimable democratic significance. Concentrated ownership in any local, state, or national community creates the possibility of an individual decisionmaker exercising enormous unchecked, undemocratic, potentially irresponsible power. Although this power may seldom be exercised, no democracy should risk the danger. Dispersal of ownership structurally prevents the potential Burlesconi effect. Dispersal also increases safety by increasing the number of ultimate decisionmakers who have the power to commit journalistic resources to exposing government or corporate corruption or identifying other societal problems.

As the FCC put it 35 years ago, a proper objective is the maximum diversity of ownership. We are of the view that 60 different licensees are more desirable than 50, and even the 51st is more desirable than—51 is more desirable than 50. It might be the 51st licensee that would become the communicative channel for a solution to a severe social crisis.

Third is a largely economic argument, more technical. Economic theory predicts that media markets will radically fail to provide people with the media content they want. Two facts are important here.

First, one reason media entities fail to provide what people want relates to what economists call "externalities," both positive and negative. For example, if many non-readers of a newspapers benefit by the paper's high quality investigative journalism that deters or exposes corruption, those benefits to non-readers do not provide revenue to the paper. So it has too little profit-based incentive to produce good journalism.

Second, successful media entities tend to have particularly high operating profits.

Given these two facts, the policy goal ought to be placing ownership in the hands of people most likely to devote a large portion of the media's potentially high operating profits to providing better journalism rather than taking them out as profit income. Sociologically, both high and mid-level executives of publicly traded large media companies predictably measure their success, and are rewarded, largely based on how much profit they produce. In contrast, small, more local, more family entities, often—not always—often identify with the quality of their journalistic efforts and their service to their communities. Structurally, mergers exacerbate the undesirable focus on profit maximization.

The purchaser most willing and able to capitalize the purchased entity's potential profits is able to make the highest bid. But this high bid locks the purchaser into trying to maximize profits to pay for the purchase. In contrast, the original owner could choose to use the potential income to provide better quality products, hire more journalists, provide more hard news.

Fourth, it's a subtle point that must be put somewhat delicately. The ideal legislative policy involving the media is debatable. However, if a few media entities become too powerful, the likelihood diminishes that subsequent debates and legislative decisions will reflect Members of Congress's true informed and thoughtful evaluation of the public interest. Rather, it becomes increasingly likely that the economic interest of these huge media corporations will largely control public debate and legislative outcomes.

The Third Circuit rightly recognized that the FCC has not logically explained or justified its orders. The FCC abandoned logic and reality when it treats the Dutchess County Community College's TV station as more significant than the New York Times combined with the Times' local radio station.

Now the FCC must respond to the Third Circuit. Congress can allow this process to run its course. Still, you could take actions to give the FCC greater guidance. I will put aside my own view of an ideal legislative policy concerning media ownership. Rather, I mention two more moderate steps that you could make.

First, by resolution, Congress could indicate its view that the public interest requires the FCC to seek to prevent excessive power due to media ownership and to try to promote the maximum feasible dispersal of ownership consistent with economic viability and quality media performance.

Second, Congress could find that media cross-ownership—a newspaper/broadcasting combination, for example—creates unnecessary and potentially excessive power within local media systems. On this basis, Congress could prohibit such cross-ownership except where necessary for multimedia services to be economically feasible.

I want to end with a suggestion. The forms of democracy are going to survive. However, the quality, capacities, and wisdom of democracy are at stake in the political decisions that determine the structure of the communication order, especially in the decisions concerning the structural distribution of ownership and control over the mass media. You have a heavy responsibility.

[The prepared statement of Professor Baker follows:]

PREPARED STATEMENT OF EDWIN C. BAKER, PROFESSOR, NICHOLAS F. GALLICCHIO PROFESSOR OF LAW, UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

Thank you. I very much appreciate the opportunity to testify today.

The 3rd Circuit recently, I believe correctly, found that last year's FCC order loosening limits on media concentration was inconsistent with the evidence, patently unreasonable, and internally and logically inconsistent. On that basis the 3rd Circuit stayed the FCC order and remanded to the FCC to come up with a more reasoned result or a better supported and reasoned explanation for its action. In itself, this 3rd Circuit decision creates no need for Congressional action.

Still, I will outline four reasons why legal restricts on media concentration are vitally important in a democracy. If you agree, Congress could take steps that would give useful guidance to the FCC as it responds to the 3rd Circuit.

First, the single most important reason to resist concentration of media ownership is a value judgment. True democracy implies as wide as practical a dispersal of power within public discourse. Diversity of ownership ought to be furthered by trying to assure that diverse sorts of people own or control media entities, an aim that the 3rd Circuit noted the FCC abandoned when it scrapped its only policy fostering minority television ownership. Dispersal of ownership not only may empirically promote diverse content. More importantly, dispersal directly creates a fairer, more democratic allocation of communicative power. This distributive value, I suggest, was probably the single most significant consideration that prompted nearly two million people to write, petition, or email the FCC in opposition to reducing restrictions on concentration. Of course, value judgments are not matter of empirical investigation. Rather, without more, this provides a proper basis to impose any limit on media mergers and any policy designed to increase the number of separate owners of media entities. The Supreme Court approved the propriety of essentially this value judgment when it held that strict limits on media cross-ownership was appropriate to prevent an "undue concentration of economic power" in the communications realm.

Second, the widest possible dispersal of media ownership provides two safeguards of inestimable democratic significance. Concentrated ownership creates the possibility of individual decision-maker exercising enormous unchecked, undemocratic potentially irresponsible power in whatever local, state, or national community in which the media is concentrated. Although this power may seldom be exercised, no democracy should risk the danger. Dispersal of ownership is the structural method to prevent this potential "Berlusconi" effect. Dispersal also increases safety by increasing the number of ultimate decision makers who have the power to commit journalistic resources to exposing government or corporate corruption or identifying other societal problems. As a former FCC, echoing the Supreme Court judgment noted above put it 35 years ago: "A proper objective is the maximum diversity of ownership. We are of the view that 60 different licensees are more desirable than 50, and even that 51 are more desirable than 50. It might be the 51st licensee that would become the communication channel for a solution to a severe social crisis."

Third, is a largely economic argument that I develop in material submitted along with my testimony. Economic theory predicts that media markets will radically fail to provide people with the media content they want. Two facts are important here. First, one reason media entities fail to provide what people want relates to what economists call externalities, both positive and negative. For example, if many non-readers of a newspaper benefit by the papers' high quality investigative journalism that deters or exposes corruption, those benefits to the public do not provide revenue to the paper so it has to little profit-based incentive to produce good journalism. Second, successful media entities tend to have particularly high operating profits. In this context, the policy goal ought to be placing ownership in the hands of people most likely to devote a large portion of the media entities' potentially high operating profits to providing better journalistic products rather than trying to maximize net profits. Sociologically, both high and mid-level executives of publicly traded large media companies predictably measure their success largely by how much profit they produce. In contrast, smaller, more local, more family based entities often identify with the quality of their journalistic efforts and their service to their communities. In any event, the undesirable focus on profit-maximization is exacerbated by mergers. The purchaser most willing and able to capitalize the most potential profits of the purchased entity is able to make the high bid. But this locks in the purchaser to trying to maximize profits. In contrast, the original owner could choose to use that potential income to provide better quality products—hirer more journalists, provide more investigative journalism and more hard news.

Fourth is a subtle point that must be put somewhat delicately. The content of idea legislative policy involving the media is debatable. However, if the country allows a few media entities to become too powerful, the likelihood diminishes that subsequent debates and legislative decisions will reflect members of Congress informed and thoughtful evaluation of the public interest. Rather, it becomes increasing likely that the economic interests (or ideological interests, as we see in Italy) of these huge media corporations will be able to largely control the political debate and political outcomes.

The 3rd Circuit rightly recognized that the FCC had not logically explained or justified its order. The FCC abandons logic and reality when it treats the Dutchess County Community College's TV station as the equivalent in the communications realm of an ABC television station in NYC and more significant than the NY Times combined with the Times' local radio station.

Now the FCC must respond to the 3rd Circuit by showing that any rule changes are based on a realistic empirical industry analysis that takes account of market shares and actual industry conditions or, as I suggested, it could justify its position on defensible and consistent normative judgments. Congress can allow this process to run its course. Still, if you agreed with my arguments about media ownership, Congress could take actions to give the FCC greater guidance.

I will put aside my own view of an ideal legislative policy concerning media ownership. Rather, I mention two moderate steps that you could make.

First, by resolution, Congress could indicate its view that the public interest requires the FCC to seek to prevent excessive power due to ownership in any portion of the communications order and to try to promote the maximum feasible dispersal of ownership consistent with economic viability and quality media performance.

Second, Congress could find, as the FCC once did, that cross-ownership of different sorts of media serving a single community—a newspaper/broadcasting combination, for example—creates unnecessary and potentially excessive power within local media systems. On this basis, Congress could prohibit such cross-ownership except where the FCC found them to be necessary for multi-media service to be economically feasible.

I want to end by saying that, although the forms of democracy will survive, the quality, capacities, and wisdom of democracy are at stake in the political decisions that determine the structure of communication order, especially the decisions concerning the structural distribution of ownership and control over the mass media.

The CHAIRMAN. Thank you very much, Professor.

Mr. Compaine?

STATEMENT OF BEN COMPAINE, RESEARCHER AND WRITER ON THE INFORMATION INDUSTRY

Mr. COMPAINE. Thank you, Mr. Chairman, Senator Dorgan.

My name is Ben Compaine. I've been tracking media-ownership trends since the first edition of my book, "Who Owns the Media," was compiled in 1978. Let me note up front, I have never been employed by a major media company, nor have I been a paid consultant to one.

I start with a very different point of view. I start by questioning one of the fundamental assumptions of media ownership, that it is more concentrated than ever. The viewpoint I take is measuring whether consumers of the media, all of us, have access to a greater universe of diverse content from more sources than 15 or 20 years ago, or is there a concentration resulting in fewer sources and implicitly less diversity? This applies to entertainment, culture, news, and opinion. I would suspect we all agree that a goal is to have enough players to ensure that sources and diversity are sufficient to satisfy small, as well as mass, audiences.

I want to make three points today. First, that television is more competitive than it has ever been. Second, that radio is more concentrated, only in comparison to an extremely fragmented industry that existed before 1996. Third, that the Internet is already proving itself as a popular, ubiquitous and effective medium for expanding distribution of content, including both video and audio, for more players and access to more sources of information for consumers than we could have reasonably expected even 15 years ago. I'll elaborate on each of these points. The more comprehensive data will be coming in a study I've just finished that will be published later this year by the New Millennium Research Council.

Television. The viewer market-share of the three traditional television networks—CBS, ABC, and NBC—has declined substantially since 1980. During the 1960s and 1970s, on a typical weekday evening, the three networks averaged about 56 percent of all households with television. In 2003, on a weekday evening during prime time, those networks only had a 20 percent rating. Adding in the audiences they and their parent companies have gained through networks available by multichannel means, such as cable and satellite, in 2003, their combined audiences was less than in 1970 and into the 1980s.

Let me make that as clear as possible. In 2003, Viacom, with CBS plus all its cable networks, Disney, with ABC and all its cable networks, NBC with its newly acquired cable networks, account for 18 percent fewer households during prime time than the pre-merger, pre-cable, three-network days.

Moreover, there's the additional competition from newer networks, including Time Warner's WB and News Corporation's FOX. The five broadcast networks together aggregate to a 26 percent rating. Adding in the rating of these five broadcast networks with the cable networks owned by the same corporate families, such as CNN and HBO, with Time Warner, the five major providers of television programming account for an average 53 percent rating in December 2003. That's less than the three old broadcast networks had into the 1980s.

Turn to radio. Issues need a context. Taken out of context, the radio has seen a substantial consolidation in the last decade. The largest operator owns 8.6 percent of the almost 14,000 radio stations nationwide. But the four largest aggregate under 15 percent.

The context, however, is that of an industry that has seen an increase of six times in the number of radio stations over 35 years, with no meaningful change in the limits of station ownership. In 1947, when a de facto limit of 13 stations to an owner was in place, there were about 1,200 stations. By 1980, the limit was 14 stations, but there were over 8,700 stations. A single owner could own no more than .16 percent of stations nationally. In 1990, by which time the cap had gone to 12 stations, we were closing in on 11,000 stations.

So it should be no surprise that, like a bottle of seltzer that had been well shook, when the cap was removed in 1996 the industry burst into a long-delayed hive of activity. Even if the ownership limits had been eased from 1947 into the 1990s to maintain the same ratio of ownership to number of stations, the cap would have been about 88, and the changes we have seen in recent years would have looked far less dramatic.

Often lost in the radio discussion is that National Public Radio, a loose network of more than 700 not-for-profit stations that broadcast common national programming for much of the day, would be the second-largest radio chain. It claims to be available everywhere in the U.S.

There's also the growing interest in national satellite television/radio services. In January, they had 1.6 million subscribers. At their current rate of growth this year, they're expected to reach four million by the end of the year.

To be sure, the number of separate owners of radio stations in local markets is lower than prior to the lessening of the regulatory limits of the 1990s. Still, larger markets have 15 or more separate owners, in addition to non-commercial stations. And in most of even the smallest markets, there are more competitors in radio than broadcast television and newspapers combined.

Finally, as a segue to my comments on the Internet, thousands of radio and radio-like stations are available via the Internet, stations from around the globe. Many of those with the highest listenership were owned by non-broadcasters.

For the Internet, barely 10 years after its coming out as a consumer medium, has about two-thirds of Americans online for everything from e-mail to government forums to shipping, porn, family photos, and watching television. The Internet has already had a profound impact on access to information.

Of the five largest media companies, the websites of only one—Time Warner—are among the top ten organizations whose websites get the most unique visitors per month. The sites run by the Federal Government agencies are among the most frequented.

The number of hours spent listening to Internet radio grew by triple digits between 2003 and the same period this year. Users with broadband, more than half of Internet users now, spend far more time using the Internet radio than dial-up users. In addition, new devices are becoming available to make Internet radio accessible apart from personal computer, including access via various wireless technologies. Indeed, video and film via the Internet are on the verge of becoming mainstream. Devices are on the market that allow even today's broadband users to download movies and video programming for storage on personal video recorders for viewing at their convenience.

So what does this have to do with the Third Circuit? The Third Circuit was looking for new ways of looking at things, new ways of justifying actions of the FCC. About a year ago, this Committee heard testimony from my friend Eli Noam. He has completed some landmark work on the revenue side of the media industry. It is helpful, but only part of the mosaic that is media competition. A substantial piece of the debate must be on the sources of content and distribution avenues that are readily and inexpensively available to most consumers. We need to look beyond what percentage of the audience watches what company's shows at any given time. I think a more important measure is what viewers and listeners can, should they choose to do so, just as easily watch or listen to content from a reasonable number of other sources. Mass media, after all, means that it caters to a mass interest. It is unlikely that there should be, or could be, 20 television shows on at the same time that are all mass-interest.

As television viewers, most of us, at any given moment, are in the 75 percent that is watching one of the programs that may derive from a small number of providers. But, at other times, you're a part of the other 25 percent that is divided into many small audiences watching one of the many other providers. Both the 75 percent and the 25 percent are not the same people all the time.

So where does that leave me with some policy issues? I have one observation and question. The observation is that Congress certainly has the prerogative, but I suspect it cannot micro-manage, effectively, television and radio regulation. This is perhaps what Senator Dorgan was alluding to. I think that technology and industry are changing too fast for the way Congress does, and should, work. I believe the FCC understands forces and trends well, and should be given latitude to do its job. This is a cumbersome process, as is most of democracy, but the courts have served as a viable check on, as well as a motivator to, the Commission.

Finally, my question may be more controversial. When almost 90 percent of households view television via a cable or satellite connection—90 percent—why are we—and most of the 10 percent are folks like Professor Baker, who choose not to get it—why are we still making a regulatory distinction between broadcast and other avenues of video distribution? There is a certain paradox in CBS being fined for the Janet Jackson Super Bowl fiasco, when more than 90 percent of those viewing it were doing so over cable or satellite. If ESPN had carried the same thing, there would have been no fine, though perhaps the same controversy.

The value of a television broadcast license today is almost exclusively in the must-carry mandate that goes with it. I'll bet that if you gave broadcasters the right to retain that—which I'm not urging, but if you gave them the right to keep must-carry but turn off their transmitters, that the FCC would be flooded with returned spectrum as licensees would opt to jettison what little is left of their public DC service obligation, as well as regulation, and move their operation directly to a multichannel platform.

Thank you, and I'll be delighted to answer any questions.

[The prepared statement of Mr. Compaine follows:]

PREPARED STATEMENT OF BEN COMPAINE, RESEARCHER AND WRITER ON THE INFORMATION INDUSTRY

My name is Ben Compaine. I've been tracking media ownership trends since the first edition of my book, *Who Owns the Media?,* was compiled in 1978. Let me note up front that I have never been employed by any major media company nor have I been a paid consultant for any major media company.

The concerns you address today about media ownership are not new ones. In 1978 the Federal Trade Commission held two days of public hearings in this city as part of its investigation of mergers and acquisitions in publishing. After shifting through the anecdotal stories of the critics and the pessimistic scenarios of doomsayers, the FTC under President Carter could find no basis for any rule making, policy changes or legislative suggestions.

But the focus in 2004 is on television and radio—areas which have a richer history and basis of government regulation and court involvement. So this morning I will restrict my comments to these areas.

I start by questioning one of the fundamental assumptions of media ownership: that it is more concentrated than ever. Typical is a *Seattle Times* editorial last March that stated flatly, "The news industry in America is already far down the road to media concentration." In the same editorial they cite CNN, Fox News, National Public Radio—all separately owned sources of news that have been added to the media menu in the last two decades. None have been subtracted.

The viewpoint I take is measuring whether consumers of the media—all of us—have access to a greater universe of diverse content from more sources than 15 or 20 years ago. Or is there a concentration resulting in fewer sources and implicitly less diversity? This applies to entertainment, culture, news and opinion. I suspect we would all agree that a goal is to assure enough players to ensure that sources and diversity are sufficient to satisfy small as well as mass audiences.

I want to make three points today:

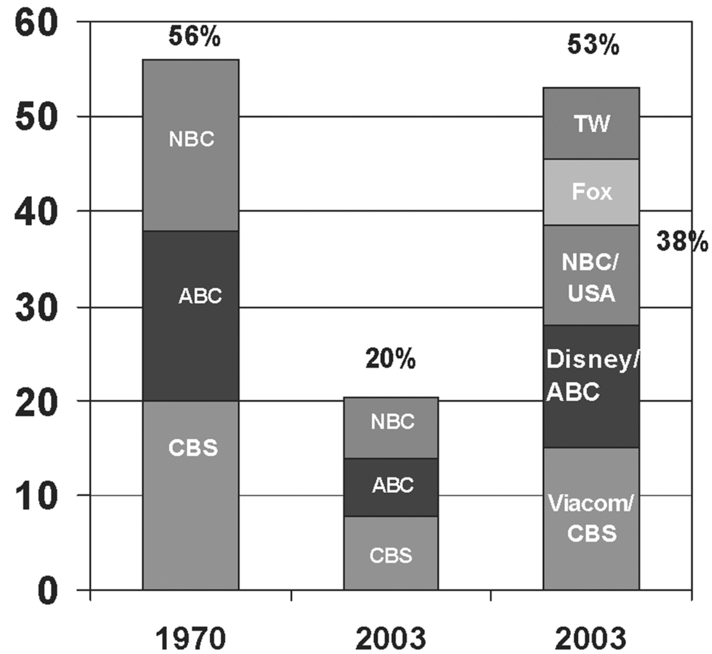
> First, that television is more competitive than it has ever been, in number of different networks and owners of networks. The audience is more fragmented than it has ever been. Far from being more concentrated, by important measures it is far less so.
>
> Second, that radio is more concentrated only in comparison to an extremely fragmented industry that existed before 1996. No other industry could have expanded 10 fold and still have no owner hold more properties at the end than at the start of that period. In absolute terms radio is still highly competitive and as diverse as ever.
>
> Third, that the Internet is already proving itself as a popular, ubiquitous and effective medium for expanding distribution of both video and audio for more players and access to more sources of information for consumers than we could have reasonably expected even 15 years ago. And the technology continues to improve to provide more competition for existing players.

I will elaborate briefly on each point. More comprehensive data on these and additional points are in a paper that I just completed that will be made available by the New Millennium Research Council here in Washington within a few weeks. I urge you to look through that paper.

Television

The viewer market share of the three traditional television networks—CBS, ABC, NBC—has declined substantially since 1980. During the 1960s and 1970s, on a typical weekday evening, the three networks on average were watched by about 56 percent of all households with televisions. (See Figure 1) In 2003 on a weekday evening during prime time those networks had only a 20 percent rating. Adding in the audiences they and their parent companies have gained through networks available by multichannel means such as cable or satellite, in 2003 their combined audience was *less than* in the 1970s and into the 1980s.

Figure 1: Network Ratings 1970 and 2003



Source: Ben Compaine, "Debunking Media Consolidation Myths: Competition in the Media Industry," New Millennium Research Council, Washington, D.C., 2004. Copyright c2004 Ben Compaine.

Let me make that as clear as possible. *In 2003, Viacom, with CBS plus all its cable networks, Disney, with ABC and its cable networks, and NBC, with its newly acquired cable networks, accounted for 18 percent fewer households during prime time than in the pre-merger, pre-cable three network days.*

Moreover, there is additional competition from newer networks, including Time Warner's WB and News Corporation's Fox. The five broadcast networks together aggregated to a 26 percent rating. Adding in the rating of these five broadcast networks with the cable networks owned by the same corporate family (*e.g.,* CNN, HBO, etc. with WB), the five major providers of television programming accounted for an average 51 percent rating in December 2003. This was less than three broadcast networks had into the 1980s.

In television we all know that there are orders of magnitude more choices today than 25 years ago and, even with numerous acquisitions and startups by the old networks and their new parents, we have more networks, from more owners than in the days of three networks and seven station limits for any owner.

Radio

On to radio. Issues need a context. Taken out of context, the radio industry has seen substantial consolidation in the last decade. The largest operator of radio stations in 2004 owned about 8.6 percent of the almost 14,000 radio stations nationwide. The four largest groups owned under 15 percent of all stations, a total not even close to any level of oligopoly by antitrust standards.

The context, however, is that of an industry that had more than tripled in the number of stations over three decades with no change in the limits of station ownership. In 1947, when a *de facto* limit of 13 stations to an owner was in place, there were about 1200 radio stations. By 1980 the limit was the same, but there were over 8700 stations. A single owner could hold no more than 0.16 percent of stations nationally. In 1990, by which time the cap had been raised to 12 stations, we were closing in on 11,000 stations.

So it should be no surprise that, like a bottle of seltzer that had been well shook, when the cap was removed in 1996 the industry burst into long delayed hive of activity. Even if the ownership limits had been eased from 1947 into the 1990s to maintain the same ratio of ownership to the number of stations, the cap would have been about 88 and the changes we have seen in recent years would have looked far less dramatic.

Often lost in the radio discussion is that National Public Radio, a loose network of more than 700 not-for-profit radio stations that broadcast common national programming for much of the day, would be the second largest radio chain. It claims to be available everywhere in the U.S. There is also the growing interest in the national satellite-distributed radio services. In the January they had 1.6 million subscribers. At their current rate of growth that is expect to reach 4 million by the end of the year.

To be sure, the number of separate owners of radio stations in local markets is lower than prior to the lessening of regulatory limits in the 1990s. Still, larger markets have 15 or more separate owners—in addition to noncommercial stations—and in most of even the smallest markets there are more competitors in radio than television and newspapers combined.

Finally, as a segue to my comments on the role of the Internet, thousands of radio and radio-like stations are available via the Internet. Stations are available from around the globe. Many of those with the highest listenership were owned by non-broadcasters. About 40 percent of listeners accessed stations from outside their local market.

Internet

Barely 10 years after its “coming out” as a consumer medium, about two-thirds of Americans are using the Internet for everything from e-mail to news to weather to government forms to shopping, porn, sharing family photos, listening to radio and watching “television.” The Internet already has profound implications for access to information.

Of the five largest media companies, the websites of only one (Time Warner) are among the top 10 organizations whose websites get the most unique visitors per month. The sites run by Federal Government agencies are among the most frequented.

In 2004 for the first time more Internet household had broadband than used dial-up connections. With research that shows that households with always-on broadband used the Internet more than narrowband users, the expectation is that Internet access for information, commerce and communications will continue to grow.

The number of hours spent listening to Internet radio grew by triple digits between 2003 and the same period in 2004. Users with broadband spend far more time using Internet radio than dial-up users.

In addition, new devices are becoming available to make Internet radio accessible apart from a personal computer, including access via various wireless technologies. Indeed, video and film via the Internet are on the verge of becoming more mainstream. As some of the local telephone carriers upgrade their systems with fiber optic cable to the curb or the home, the transmission speed of downloads will be competitive with cable and satellite services. Devices are on the market that allow even today’s broadband users to download movies and video programming for storage on personal video recorders for viewing at their convenience.

Need to Consider Choices Available, Not Choices Made

About a year ago this committee heard testimony from my friend Eli Noam. He has completed some landmark work on the revenue side of the media industry. It is helpful, yet only part of the mosaic that is media competition. A substantial piece of the debate must be on sources of content and distribution avenues that are readily and inexpensively available to most consumers. We need to look beyond what percent of the audience watches what company’s shows at any given time. A more important measure is whether viewers and listeners can, should they choose to do so, just as easily watch or listen to content from a reasonable number of other sources. “Mass media” after all, means that it caters to a mass interest. It is unlikely that there should be 20 television shows on at the same time that are all mass interest.

As television viewers, most of us at any given moment are in the 75 percent that is watching one of programs that derive from a small number of providers. But at other times, we are part of the other 25 percent that is divided into many small audiences watching one of the many others providers. Both the 75 percent and the 25 percent are not the same people all the time.

Policy Issues

My findings lead me an observation and a question for policy-makers:

- The observation is that while Congress certainly has the prerogative, it cannot micromanage effectively television and radio regulation. The technology and industry are changing too fast for the way Congress does and should work. I believe the current FCC understands the forces and trends well and should be given latitude to do its job. Though a cumbersome process—as is most of democracy—the courts have served as a viable check on as well as motivator to the Commission.
- My question may be more controversial. When almost 90 percent of households view television via a cable or satellite connection, why are we still making a regulatory distinction between broadcast and other avenues of video distribution? There is a certain paradox in CBS being fined for the Janet Jackson Super Bowl fiasco when more than 90 percent of those viewing were doing so over cable or satellite. If ESPN had carried the same thing there would have been no fine (though perhaps the same controversy). The value of a television broadcast license today is almost exclusively in the "must carry" mandate that goes with it. If that were retained should broadcasters be allowed to turn off their transmitters, my hunch is that the FCC would be flooded with returned spectrum as licensees would opt to jettison what little is left of their public service obligation and regulation and move their operation directly to a multichannel platform.

Thank you for having me here. I expect I've raised as many questions as I've answered and would be delighted to respond to any you have, now or later.

Benjamin M. Compaine

Ben Compaine is a researcher and writer on issues of the economics and technologies of the information industry. He has been a Research Consultant for the Program on Internet and Telecoms Convergence at MIT as well as executive director of the Program on Information Resources Policy at Harvard University. From 1994 to 1997 he was the Bell Atlantic Professor of Telecommunications at Temple University. From 1986 to 1994 he was President and Chief Executive of Nova Systems Inc., a software firm. He is the author, co-author or editor of 10 books. His best known book, *Who Owns The Media?* was published as an all-new third edition in 2000. Other books include *The Digital Divide: Facing a Crisis or Creating a Myth?* (2001) and *The Information Resources Policy Handbook* (1999). His articles have appeared in trade, popular, and scholarly journals, including *Telecommunications Policy, Science Digest, Foreign Policy, Reason, Daedalus* and the *Journal of Communication.* His research and teaching interests include Internet and telecommunications policy, mass media economics, and the social and cultural implications of changing information technologies. A political science major at Dickinson College, he received his M.B.A. from Harvard University and Ph.D. from Temple University. He has been a consultant and invited speaker at conferences and seminars in Europe, South America, Asia, Australia as well as in the United States and Canada.

The CHAIRMAN. Thank you.

Professor Overholser?

STATEMENT OF GENEVA OVERHOLSER, CURTIS B. HURLEY CHAIR IN PUBLIC AFFAIRS REPORTING, MISSOURI SCHOOL OF JOURNALISM, WASHINGTON, D.C. BUREAU

Professor OVERHOLSER. Thank you, Mr. Chairman. Good morning, Senators. And thanks very much for the opportunity to be here with you. It really is an honor.

I have to tell you that despite my typically lengthy academic title, in all honesty, the experience that I bring to this table this morning is in 35 years as a newspaperwoman, including as editor of the *Des Moines Register*. And it is experience that makes me care a great deal about the state of the media in the country today, and I appreciate your attention to this matter.

I would like to make one primary point. The story of media in our country today is very much like the story of the American diet. We have more different kinds of food than ever, more widely available than ever, yet many Americans are failing to get adequate nutrients, even as we grow fatter. We are overfed, but we are undernourished.

The same, I would add, is true of media. There are ever-more numerous ways to get information, but that is a very different thing from having an improved media diet. We are bombarded with information, but we are starving for journalism. It is journalism I hope this Committee will concern itself with, the original production of content serving the public interest. This is expensive to produce, and it is produced only by owners who believe it worth investing in. These owners are in decreasing supply.

They are disappearing in large part because the media-company owners find themselves compelled to return profits few other industries can even dream of. As long-time editor Harold Evans has put it, "Media companies are not having trouble staying in business; they're having trouble staying in journalism."

The FCC has it in its hands to make matters worse by enabling media owners to take their companies still further from the concerns and needs of local citizens. I doubt that I need to prove to this, of all groups, that the presence of greater numbers of media outlets has not ensured improved media performance. Certainly, the public thinks it has not.

A new Gallup Poll found media credibility at its lowest point in decades. Fifty-five percent of respondents said they have either "not very much" confidence or "none at all" in the media's fairness and accuracy.

Nor do my colleagues in the Academy report improved media performance. Again and again they find that straight news content has given way to celebrity and crime news. Stories with public-policy content decrease; conflict and sensation take their place.

These trends hold across all media in no small part because these new kinds of stories are far cheaper to produce. Now that the business of media is increasingly business, rather than news, cuts in news-gathering staff have become the norm, especially in television and radio and news magazines, but also, alas, in newspapers. There is a burgeoning of media outlets, but a constricting of journalism. As the Report on the State of the News Media 2004 put it, "Much of the new investment in journalism today, much of the information revolution generally, is in disseminating the news, not in collecting it."

I'm here to speak specifically about newspapers, whose decline in importance is greatly overstated. Newspapers continue to be important, first, in sheer numbers of readers. On any given Super Bowl Sunday, more Americans read their Sunday paper than watch the game, and I don't hear a lot of talk about football's demise in this country. Newspapers continue to be important, too, in the influential role they play in citizens' lives. A Consumers Union study this year found that Americans rely on newspapers much more than other media for local news and information. Finally, newspapers influence other media to a substantial degree because of the size of their news-gathering resources.

Yet newspapers are undergoing great strains due to the pressure of maintaining high profit margins, which necessitates short-term business focus. As one observer has said, “Being a cash cow is a strategy.” Not only do we see lower-quality news, but we see companies unwilling to serve customers in whom advertisers have no interest.

The FCC is in a position to keep this situation from worsening. Newspaper companies are already reducing competition in communities across the country by what they call clustering, buying newspapers in adjoining markets, cutting their costs, and doing away with previously independent voices and newsrooms.

The companies that own newspapers, and often own other media, of course, do not need our assistance to further increase the returns to their mostly institutional investors while reducing the number of newsrooms and newsgatherers in any given town, yet this is precisely what happens with greater consolidation.

I want to say a word here about this “gift of synergy” that we will supposedly derive from the so-called “convergence of media.” Convergence is, indeed, likely to be good for media business, but it is almost sure to be bad for journalism. Far from increasing the amount or quality of the news-gathering, convergence provides additional means of distribution. There is nothing wrong with that, per se; but consider, you have block of reporting by Reporter A, who spends a given amount of time producing that reporting and a given amount of time putting it together for his newspaper. Now his employer asks him to disseminate the same report on the radio, on the Internet, and on television. How much time does each new method of dissemination require from him? Even if it’s only half an hour, that’s an hour and a half that Reporter A could have used before for reporting. And if you think companies will increase the staff to compensate for this loss in reporting time, I have many a story to tell you. The temptation to drop these savings to the bottom line is simply too great.

My view is that diversity of ownership is important. We have fine newspapers from privately owned companies and fine newspapers from publicly held companies, and bad newspapers from both. But there is a long-term trend toward disinvestment in journalism that needs addressing in every possible way, and really affects the civic health of this country.

I welcome all models of ownership, from the few independently family owned papers remaining to institutional ownership, such as the St. Petersburg Times enjoys, to nonprofit media, such as NPR, to foundation-supported investigative reporting, like the Center for Public Integrity, which is conducting the kind of reporting that too few media are willing to invest money in anymore.

I believe that a wide range of media will serve the public best, and I welcome the democratization we see with proliferation of outlets, particularly on the Web. But we should be under no illusion about what media, by and large, are producing substantial, responsible, thorough, digging, edited news reports. It is newspapers. Every time they are combined with a local television station, there is at least one less TV reporter who might actually spy a story the profit-pressured newsroom did not. That means fewer nutrients into the local media diet.

And when the newspaper and the broadcast outlets and the Web all join into one report, what values are likely to prevail? As Robert Haiman of the Poynter Institute has put it, "There's going to be a tremendous clash of values: the journalism values of newspapers, the entertainment values of television, and the no holds barred, raw, unedited, anarchic values of the Internet." Let's guess how likely it is that those stodgy old values of journalism will win on this terrain.

I leave you with this thought. We have plenty of media today. We have an ever-declining supply of journalism. I ask you to keep that distinction in mind in the decisions before you.

Thank you.

[The prepared statement of Professor Overholser follows:]

PREPARED STATEMENT OF GENEVA OVERHOLSER, CURTIS B. HURLEY CHAIR IN PUBLIC AFFAIRS REPORTING, MISSOURI SCHOOL OF JOURNALISM, WASHINGTON, D.C. BUREAU

Good morning, and thank you for this opportunity. It is an honor to be with you.

I would like to make one primary point: The story of media in our country today is very much like the story of the American diet: We have more different kinds of food than ever, more widely available. Yet many Americans are failing to get adequate nutrients, even as we grow ever fatter. We are overfed, but we are undernourished.

The same is true of media. There are ever more numerous ways to get information, but that is a very different thing from having an improved media diet. We are bombarded with information, but we are starving for journalism. It is *journalism* I hope this committee will concern itself with: the original production of content serving the public interest. This is expensive to produce, and it is produced only by owners who believe it worth investing in. Those owners are in decreasing supply.

They are disappearing in large part because media company owners find themselves compelled to return profits few other industries can dream of. As longtime editor Harold Evans has put it, media companies are not having trouble staying in business. They are having trouble staying in journalism. The FCC has it in its hands to make matters worse by enabling media owners to take their companies still further from the concerns and needs of local citizens.

I doubt that I need to prove to this of all groups that the presence of greater numbers of media outlets has not ensured improved media performance. Certainly the public thinks it has not. A new Gallup Poll found media credibility at its lowest point in decades. Fifty-five percent of respondents said they have either "not very much" confidence or "none at all" in the media's fairness and accuracy.

Nor do my colleagues in the academy report improved media performance. Again and again they find that straight news content has given way to celebrity and crime news. Stories with public-policy content decrease; conflict and sensation take their place. These trends hold across all media, in no small part because the new kinds of stories are far cheaper to produce. Now that the business of media is increasingly business, rather than news, cuts in newsgathering staff have become the norm—especially in television and radio and newsmagazines, but also in newspapers. There is a burgeoning of media outlets, but a constricting of journalism: As the report on the State of the News Media 2004 put it: "Much of the new investment in journalism today—much of the information revolution generally—is in disseminating the news, not in collecting it."

I am here to speak specifically about newspapers, whose decline in importance is *greatly* overstated. Newspapers continue to be important, first, in numbers of readers. On any given Super Bowl Sunday, more Americans read their Sunday paper than watch the game. I hear little talk of football's demise. Newspapers continue to be important, too, in the influential role they play in citizens' lives. A Consumers Union study this year found that Americans rely on newspapers much more than other media for local news and information. Finally, newspapers influence other media to a substantial degree because of the size of their newsgathering resources.

Yet newspapers are undergoing great strains due to the pressure of maintaining high profit margins, which necessitate short-term business focus. As one observer has said, being a cash cow IS a strategy. Not only do we see lower-quality news, but we see companies unwilling to serve customers in whom advertisers have no interest. The FCC is in a position to keep this situation from worsening. Newspaper companies are already reducing competition in communities across the country by what they call "clustering"—buying newspapers in adjoining markets, cutting their costs and doing away with previously independent voices—and newsrooms. The companies that own newspapers (and often other media, of course) do not need our assistance to further increase the returns to their mostly institutional investors while reducing the number of newsrooms and newsgatherers in any given town. Yet this is precisely what happens with greater consolidation.

Let me say a word here about this gift of synergy that we will supposedly derive from so-called "convergence" of media. Convergence is indeed likely to be good for media business, but it is almost sure to be bad for journalism. Far from increasing the amount or quality of the newsgathering, convergence provides additional means of distribution. There is nothing wrong with that per se. But consider: You have a bloc of reporting by reporter A, who spends a given amount of time producing that reporting and a given amount of time putting it together for his newspaper. Now his employer asks him to disseminate the same report on the radio, on the Internet and on television. How much time does each new method of delivery require from him? Even if it's only half an hour, that's an hour and a half less time each day spent on reporting. And if you think companies will increase the staff to compensate for this loss in reporting time, I have many a story to share with you. The temptation to drop these savings to the bottom line is simply too great.

My view is that diversity of ownership is important. We have fine newspapers from privately owned companies and fine newspapers from publicly held companies—and bad newspapers from both as well. But there is a long-term trend toward disinvestment in journalism that needs addressing in every possible way. I welcome all models of ownership, from the few independent family owned papers remaining to institutional ownership such as the St. Petersburg Times enjoys, to nonprofit media such as NPR to foundation-supported investigative reporting like the Center for Public Integrity.

I believe that a wide range of media will serve the public best, and I welcome the democratization we see with the proliferation of outlets on the Web. But we should be under no illusion about what media, by and large, are producing substantial, responsible, thorough, digging, edited news reports: Newspapers. Every time they are combined with a local television station, there is at the least one less TV reporter who might actually spy a story the profit-pressured newsroom did not. That means fewer nutrients into the local media diet. And when the newspaper and the broadcast outlets and the Web all join into one report, what values are likely to prevail? As Robert Haiman of the Poynter Institute put it, "There is going to be a tremendous clash of values—the journalism values of newspapers, the entertainment values of television and the no-holds-barred, raw, unedited, anarchic values of the Internet." Let's guess how likely it is that the values of journalism will win.

I leave you with this thought: We have plenty of media today. We have an ever-declining supply of journalism. I ask you to keep that distinction in mind in the decisions before you.

Thank you.

The CHAIRMAN. Thank you very much.

Mr. Thierer?

STATEMENT OF ADAM D. THIERER, DIRECTOR, TELECOMMUNICATIONS STUDIES, CATO INSTITUTE

Mr. THIERER. Good morning. And thank you, Mr. Chairman, for your invitation to testify here this morning on the important issue of media ownership regulation.

This hearing is especially timely for me, since I have a new book on this issue due out early next year entitled, *Media Myths: Making Sense of the Debate Over Media Ownership*.

I chose that title because I have come to the conclusion, after studying this issue, that the debate over media ownership is really being driven more by a mythology than anything close to reality. That is, while critics of media liberalization have had a great deal of success employing very heated rhetoric and extremely emotional rationales for mass media regulation, claims about the lack of diversity or the end of localism and the supposed death of our democracy simply do not square with reality. Indeed, by all impartial measures, citizens are better off than they ever have been before in this country. Regardless of what the underlying business structures or ownership patterns look like, the real question in this debate must always be this: "Do citizens have more news, information, and entertainment choices at their disposal today than in the past? The answer to that question, I believe, is unambiguously yes.

There are seven leading myths about modern media I'd like to quickly summarize for you here today that my research has unearthed.

First, and probably the most commonly repeated myth, is that diversity is disappearing in media. The reality, I argue, however, could not be more different. Today's media environment is more diverse than ever before and is characterized by information abundance, not information scarcity. To the extent there is a media diversity problem today, it is that citizens suffer from what you might call information overload. The number of media options has become so overwhelming that most of us struggle to manage all of the information choices at our disposal on a given day. Consider that in 1979 most households had only six or fewer local television stations to choose from, but today they have an average of seven over-the-air broadcast television networks and an average of 102 cable or satellite options to choose from. Also, the number of radio stations in America since 1970 has roughly doubled, from around 6,700 to almost 13,500 today. And there are more magazines and periodicals and weekly being produced now than in any time in our nation's history.

A second common myth is that localism in media is disappearing. The truth is, while we not know exactly how much local fare citizens demand, citizens still receive a wealth of information about developments in their local communities. That is, although citizens are increasingly opting for more sources of national news and entertainment, local information and programming are still quite popular and certainly will not disappear in a deregulated media marketplace.

The third myth concerns concentration and the mistaken belief that only a few companies control the entire media universe. Contrary to this widely circulated myth, the media marketplace is vigorously competitive and not significantly more concentrated than in past decades. A McKinsey & Company analyst recently noted that, quote, "There are more than a hundred media companies worldwide, and entertainment media are still fragmented compared with other industries." And an FCC survey of various media markets across America from 1960 to 2000 also showed that, quote, "Collectively, the number of media outlets and owners increased tremendously over that 40 year period with an average of a 200 percent increase in the number of outlets and 140 percent increase in the number of owners." And media expert Eli Noam, of Columbia University, has nicely summarized what we must always understand, that bigness in media is a relative term, when he says, quote, "While the fish in the media pond have grown in size, the pond did grow, too, and there have been new fish and new ponds."

The fourth myth involves assertions about the future of democracy somehow being at risk in this debate, and I won't spend a lot of time on this, even though I do in my book. But these arguments strike me as quite preposterous, since the increased media availability and communications connectivity we have seen in America in recent years and decades has given us the ability to learn more about our democracy, and debate more on our democracy, than ever before.

A fifth myth is that regulation is needed to preserve high quality journalism and entertainment. I find these arguments very troubling since, at root, media quality is fundamentally a subjective matter. Government should have no say over, or even attempt to influence, the quality of news or information or entertainment in America. The good news, however, is that, with so many media outlets available today, citizens have a wider range of options from which to choose, meaning they can decide for themselves what level of quality they desire—soft news, hard news, or whatever else.

A sixth myth is that the First Amendment somehow justifies extensive media-ownership controls, or can be used as a regulatory tool to mandate access to media outlets. This is, without doubt, in my opinion, the most dangerous of all the media myths. In reality, the First Amendment was written, not as a constraint on private speech or actions, but, rather, as a direct restraint on government actions as they relate to speech. If the First Amendment is to retain its force as the bulwark against government control of the press, it cannot be used to justify ownership rules or media access mandates.

A seventh and final myth is that new technologies or media outlets, including the Internet, have little bearing on this debate. To the contrary, new technologies and outlets do have an important relationship to this debate and call into question the wisdom of the existing media ownership restrictions. In particular, the rise of the Internet and the World Wide Web is radically changing the nature of modern media in America. Anyone who thinks differently might want to ask Dan Rather this week what he thinks about the impact of new technologies on traditional media.

With 72 percent of Americans now online and spending an average of 9 hours weekly on the Internet, surfing through the roughly 170 terabytes of information available online, which is 17 times the size of the Library of Congress print collections, I do not see how anyone can seriously argue that the Internet is not fundamentally transforming our media universe. More generally, my research has found that all media compete, in the very broad sense of the term, and that citizens frequently substitute one type of media for another. What else explains cable and satellite companies stealing so much audience share from traditional broadcasters, or satellite radio networks quickly eating in traditional radio's market share, or the fact that millions of Americans now purchase or receive daily additions of national newspapers, such as the *USA Today* or the *Wall Street Journal* and the *New York Times*? This is, I believe, a healthy, competitive market at work, a market in which citizens exercise their right to be as finicky as they want in substituting one media option or outlet for another.

In conclusion, our media world has changed, and changed in almost every way, for the better. To the extent there ever was a, quote, "golden age of American media," I believe we are living in it today. There has never been a time in our nation's history when citizens have had access to more media outlets, more news, more information, or more entertainment. This conclusion is supported by a solid factual record, which I have provided—much of which—in the appendix to my testimony.

In such an age of media abundance, the question of who owns what, or how much they own of anything else, is irrelevant. No matter how large any given media outlet is today, it is ultimately just one of many fish in a large and growing media pond. Indeed, as the FCC concluded when revising these rules, quote, "The question confronting media companies today is not whether they will be able to dominate the distribution of news and information in any market, but whether they will be able to be heard at all among the cacophony of voices vying for the attention of Americans," end quote. I completely agree with the FCC. The media world has changed, and so must the rules that govern it.

Thank you for inviting me here today, Mr. Chairman, and I'm happy to discuss questions in the Q&A period.

[The prepared statement of Mr. Thierer follows:]

PREPARED STATEMENT OF ADAM D. THIERER, DIRECTOR, TELECOMMUNICATIONS STUDIES, CATO INSTITUTE

Good morning, my name is Adam Thierer and I serve as Director of Telecommunications Studies at the Cato Institute. Thank you, Mr. Chairman, for your invitation to testify here this morning on the important issue of media ownership regulation. This hearing is especially timely for me since I have a new book on this issue due out early next year entitled, *Media Myths: Making Sense of the Debate over Media Ownership*.

I chose that title because I have come to the conclusion that the debate over media ownership is being driven more by myth than reality. That is, while critics of media liberalization have had great success employing heated rhetoric and extremely emotional rationales for media regulation, claims about a lack of "diversity," the end of "localism," or the supposed "death of democracy" simply do not square with reality.

Objective facts reveal that such rhetoric and claims are baseless. Indeed, by all impartial measures, citizens are better off today than they have ever been before. Regardless of what the underlying business structures or ownership patterns look like, the real question in this debate must be this: *"Do citizens have more news, information, and entertainment choices at their disposal today than in the past?" The answer to that question is unambiguously "yes."*

There are 7 leading myths about modern media. I'll quickly summarize each one for you.

Debunking the Media Myths

The first, and probably most commonly repeated myth, is that *diversity* will disappear absent extensive government regulation of the media. The reality, however, could not be more different. *Today's media environment is more diverse than ever before and is characterized by information abundance, not scarcity.* Citizens enjoy more news and entertainment options than at any other point in history. To the extent there is a media diversity problem today, it is that citizens suffer from "information overload." The number of media options has become so overwhelming that most of us struggle to manage all the information at our disposal. Consider that in 1979 most households had 6 or fewer local television stations to choose from, but today the average U.S. household receives 7 broadcast television networks and an average of 102 cable or satellite channels per home.[1] Also, the number of radio sta-

[1] Federal Communications Commission, *In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to*

tions in America has roughly doubled from about 6,700 in 1970 to almost 13,500 today. And there are more magazines and periodicals being produced now than at any time in our nation's history. In 2003, there were 17,254 magazines produced up from 14,302 in 1993.[2]

A second common myth is that "*localism*" in media is disappearing. The truth is, while we do not really know exactly how much local fare citizens demand, *citizens still receive a wealth of information about developments in their communities.* That is, although citizens are increasingly opting for more sources of national news and entertainment, local information and programming are still popular and will not disappear in a deregulated media marketplace.

The third myth concerns *concentration* and the mistaken belief that only a few companies control the entire media universe. Contrary to this widely circulated myth, *the media marketplace is vigorously competitive and not significantly more concentrated than in past decades.* A McKinsey & Company analyst recently noted that "There are more than 100 media companies worldwide. . .and entertainment and media are still fragmented compared with other industries such as pharmaceuticals and aerospace."[3] An FCC survey of various media markets across America from 1960 to 2000 also showed that, "Collectively, the number of media outlets and owners increased tremendously over the 40-year period," with an average of a 200 percent increase in the number of outlets and a 140 percent increase in the number of owners.[4] Media expert Eli Noam of Columbia University has nicely summarized why we must understand that "bigness" is a relative term in media: "[W]hile the fish in the pond have grown in size, the pond did grow too, and there have been new fish and new ponds."[5] But, in any event, competition and concentration are not mutually exclusive. Citizens can have more choices even as the ownership grows slightly more concentrated as it has in some sectors in recent years.

The fourth myth involves assertions about the future of our *democracy* somehow being at risk. These arguments strike me as quite preposterous since *increased media availability and communications connectivity have given Americans the ability to learn and debate more about our democracy than ever before.* More importantly, civil discourse and a healthy democracy are the product of a free and open society unconstrained by government restrictions on media structures or content. If government can simply ordain any ownership structures or business arrangements it wishes in the name of serving "democracy," then it raises serious censorship concerns.

A fifth myth is that regulation is needed to preserve high *quality* journalism and entertainment. I find these arguments very troubling since, at root, *media quality is a subjective matter. Government should have no say over, or even attempt to influence the quality of news or entertainment in America.* The good news, however, is that with so many media outlets available today, citizens have a wide range of options from which to choose, meaning they can decide for themselves what level of "quality" they desire.

A sixth myth is that the *First Amendment* justifies extensive media ownership controls, or can be used as a regulatory tool to mandate access to media outlets. This is, without doubt, the most dangerous of all the media myths. In reality, *the First Amendment was not written as a constraint on private speech or actions, but rather as a direct restraint on government actions as they relate to speech.* If the First Amendment is to retain its force as a bulwark against government control of the press, it cannot be used to justify ownership rules or "media access" mandates.

A seventh and final myth is that *new technologies or media outlets,* including the Internet, have little bearing on this debate or cannot be used as justification for relaxing existing media ownership rules at all. To the contrary, *new technologies and outlets do have an important relationship to this debate and call into question the*

Section 202 of the Telecommunications Act of 1996, FCC 03–127, June 2, 2003, p. 15, *http://hraunfoss.fcc.gov/edocs__public/attachmatch/FCC-03-127A1.pdf,* cited hereafter as FCC, *Media Ownership Proceeding.*

[2] *The Magazine Handbook 2004–5,* (New York, NY: Magazine Publishers of America, 2004), p. 5, *http://www.magazine.org/content/Files/MPA%5Fhandbook%5F04.pdf.*

[3] Michael J. Wolf, "Here Comes Another Wave of Media Mergers," *The Wall Street Journal,* February 21, 2002.

[4] Scott Roberts, Jane Frenette and Dione Stearns, "A Comparison of Media Outlets and Owners for Ten Selected Markets: 1960, 1980, 2000," Federal Communications Commission, *Media Ownership Working Group Study* no. 1, September 2002, p. 2, *http://hraunfoss.fcc.gov/edocs__public/attachmatch/DOC-226838A2.pdf.*

[5] Eli M. Noam, "Media Concentration Trends in America: Just the Facts," *In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* January 2, 2003, p. 2, *http://www.citi.columbia.edu/research/readings/mediaconcentration.pdf.*

wisdom of existing media ownership restrictions. In particular, the rise of the Internet and the World Wide Web is radically changing the nature of modern media. (Anyone who thinks differently might want to ask Dan Rather what he thinks about the impact of new technologies on traditional media!) With 72 percent of Americans now online and spending an average of nine hours weekly on the Internet [6] surfing through the 170 *terabytes* of information available online—which is seventeen times the size of the Library of Congress print collections [7]—I do not see how anyone can seriously argue that the Internet is not fundamentally transforming our media universe.

More generally, my research finds that *all media compete in a broad sense and that citizens frequently substitute one type of media for another.* What else explains cable stations stealing so much audience share from traditional broadcasters, or that 88 percent of Americans now subscribe to cable and satellite TV even though "free, over-the-air" television remains at their disposal? [8] What else explains how satellite radio, an industry that did not even exist prior to December 2001, today boasts over 2 million subscribers and is rapidly eating into traditional radio's market share? Or the fact that millions of Americans purchase daily editions of national newspapers such as the *USA Today, The Wall Street Journal* and *The New York Times*? In fact, 49 percent of *The New York Times'* daily circulation is now outside the New York area and it offers home delivery in 275 markets.[9] Such statistics reveal a healthy, competitive market at work; a market in which citizens exercise their right to be as finicky as they want in substituting one media option or outlet for another.

Conclusion

Our media world has changed, and changed in almost every way for the better. To the extent there was ever a "Golden Age" of American media, we are living in it today. There has never been a time in our Nation's history when citizens had access to more media outlets, more news and information, or more entertainment. This conclusion is supported by a solid factual record. Advocates of media regulation, by contrast, continue to base their case for government regulation on emotional appeals and baseless "Chicken Little" doomsday scenarios.

In such an age of abundance, the question of who owns what, or how much they own, is irrelevant. No matter how large any given media outlet is today, it is ultimately just one of hundreds of sources of news, information and entertainment that we have at our disposal. "Indeed," as the FCC concluded when revising these rules, "the question confronting media companies today is not whether they will be able to dominate the distribution of news and information in any market, but whether they will be able to be heard at all among the cacophony of voices vying for the attention of Americans." [10]

I completely agree with the FCC. The media world has changed and so must the rules that govern it. Thank you for inviting me here today to discuss the facts about media in America.

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[6] FCC, *Media Ownership Proceeding,* p. 148.

[7] Peter Lyman and Hal R. Varian, *How Much Information?* 2003, School of Information Management and Systems, University of California at Berkeley, 2003, *http://www.sims.berkeley.edu/research/projects/how-much-info-2003/printable_report.pdf.*

[8] Federal Communications Commission, *Tenth Annual Video Competition Report,* January 5, 2004, p. 115, *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–04–5A1.pdf,* cited hereafter as FCC, *Video Competition Report.*

[9] Robert J. Samuelson, "Bull Market for Media Bias," *The Washington Post,* June 23, 2004, p. A21.

[10] FCC, *Media Ownership Proceeding,* p. 149.

The Media Universe of Yesterday and Today

Layer 1	Layer 2	Layer 3	Layer 4

The Media Environment Circa 1970

Product or Content	Distribution Mechanism	Receiving or Display Device	Personal Storage Tools
Television Programming	Broadcast TV Stations	TV Sets	none
Radio Programming	Broadcast Radio Stations	Radios, Stereos	none
Print News & Literature	Newspaper & Magazine Delivery	Bound newsprint, Books	Books, Personal Library
Advertising	TV, Radio, Mail, Magazines	Everything	none
Movies	Cinemas, Broadcast TV	Movie Theater	none
Music	Radio, Records	Radio, Stereo	Records
Telecommunications	Phone Networks	Telephones	none
Photography	Cameras	Print film	Film / Prints

The Media Environment Circa 2004

Product or Content	Distribution Mechanism	Receiving or Display Device	Personal Storage Tools
Television Programming	Broadcast TV, Cable, Satellite, Internet, VHS tapes, DVD discs	TV Sets, Computer Monitor, Personal Digital Devices	PVRs (i.e., TiVo), VCRs, DVDs, Computer discs and hard drives
Cable & Satellite Programming (+ Video on Demand)	Cable, Satellite, Internet, VHS tapes, DVD discs	TV Sets, Computer Monitor, Personal Digital Devices	PVRs (i.e., TiVo), VCRs, DVDs, Computer discs and hard drives
Radio Programming	Broadcast Radio, Satellite Radio (XM & Sirius), Internet	Home & Car Radios, Stereos, Personal Digital Devices (Walkman), Internet	CDs, tapes, Personal Digital Devices, computer discs and hard drives
Print News & Literature	Newspaper & Magazine Delivery, Internet, Software	Bound newsprint, Books, PCs, Internet websites, Personal Digital Devices (BlackBerrys)	Books, Personal Library, Personal Digital Devices, Computer discs and hard drives, Printers
Advertising	TV, Radio, Mail, Magazines, Cable, Satellite, Cell Phones, E-mail	almost anything	rarely stored
Movies	Cinemas, Broadcast TV, Cable, Satellite, Internet, Tapes, DVDs, Camcorders	Movie Theater, TV Set, Computer Monitor, Personal Digital Devices	VCRs, DVDs, Computer discs and hard drives
Music	Radio, CDs, Websites, Peer-to-Peer Networks	Radio, Stereo, Personal Digital Devices (MP3 players)	MP3s, CDs, Tapes, Personal Digital Devices, Computer discs and hard drives
Telecommunications	Phone Networks, Cellular Networks, Cable Networks, Internet Telephony, IM	Telephones, Cell Phones, Internet Phones, Personal Digital Devices (Palm Pilot)	Voice Mail, Personal Digital Devices
Internet Content & Services (+ E-Mail)	Phone Networks, Cable Networks, Wireless Networks, Power Lines, IM	Computer Monitor, Personal Digital Devices, Cell Phones, TV Set	Computer discs and hard drives, Personal Digital Devices
Video Games	Video Game Platforms, Computer Software, Websites	TV Set, Computer Monitor, Personal Digital Devices, Cell Phones	CDs / DVDs, Computer discs and hard drives
Photography	Digital Cameras, Cell Phones, Camcorders, Websites	Print film, Computer Monitor, TV set, Personal Digital Devices, Cell Phones	Prints, CDs / DVDs, Memory cards, Computer discs and hard drives, Printers

NOTE: "*Personal Digital Devices*" *refers to a broad category of handheld devices such as pagers, Palm Pilots, BlackBerrys, MP3 players, cassette and CD players, DVD players, and hybrid cell phone devices*

Table 2.—Media Outlet Ownership in Select Markets

[Comparison of Media Outlets and Owners for 10 Selected Media Markets (1960–2000)]

Market Rank	City	1960		1980		2000		% Change 1960–2000	
		Outlets	Owners	Outlets	Owners	Outlets	Owners	Outlets	Owners
# 1	*New York, NY*	89	60	154	116	184	114	107%	90%
# 29	*Kansas City, MO*	22	16	44	33	53	33	141%	106%
# 57	*Birmingham, AL*	28	20	44	34	59	38	111%	90%
# 85	*Little Rock, AR*	17	14	35	30	60	33	253%	136%
# 113	*Lancaster, PA*	14	10	21	16	25	20	79%	100%
# 141	*Burlington, VT/Plattsburgh, NY*	15	13	37	28	53	34	253%	162%
# 169	*Myrtle Beach, SC*	6	6	22	16	38	23	533%	283%
# 197	*Terre Haute, IN*	12	8	26	19	33	22	175%	175%
#225	*Charlottesville, VA*	8	5	13	10	23	14	188%	180%
# 253	*Altoona, PA*	11	9	19	12	23	15	109%	67%
								195%	*139%*

Source: Federal Communications Commission, Media Ownership Working Group, September 2002.

TABLE 3.—S-CURVES FOR VARIOUS TECHNOLOGIES

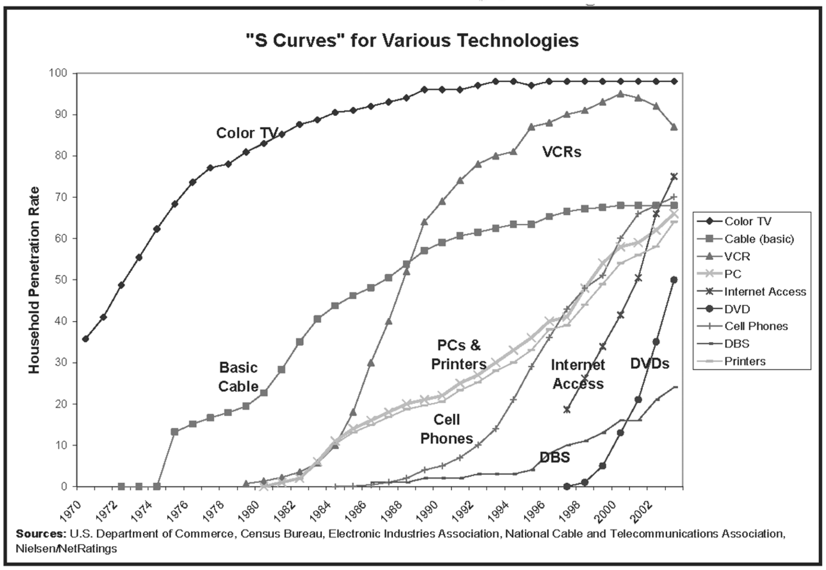


Table 4.—The Relentless March of Technology

	1970	1980	1990	2002–4
Percentage of households with *TVs*	95.3%	97.9%	98.2%	98.2%
Total number of broadcast *Television Stations*	875	NA	1,470	1,744
Average number of *TV sets* per household	1.4	1.7	2.1	2.4
Average daily time spent viewing TV (hours & minutes)	5:56	6:36	6:53	7:44
Percentage of households with *Radios*	98.6%	99%	99%	99%
Total number of broadcast *Radio Stations*	6,751	NA	10,819	13,476
Percentage of households with *VCRs*	0	1.1%	63%	87%
Percentage of households with *DVD players*	0	0	0	50%
Percentage of households with *Cell Phones*	0	0	5%	70%
Total number of cell phones subscribers	0	NA	5.2 Million	158.7 Million
Cell phone average monthly bill	NA	NA	$80.90	$49.91
Percentage of homes subscribing to *Cable Television*	6.7%	19.9%	56.4%	68%
Percentage of total households to which cable television is available	NA	42%	93%	95%
Estimated TV *market share of "Big 3"* (ABC, CBS, NBC)	55%	49%	31%	21%
Estimated TV *market share of Basic Cable*	1%	3%	20%	35%
Percentage of homes subscribing to *Direct Broadcast Satellite (DBS)* TV	0	0	1%	24%
Percentage of homes with a *Personal Computer*	0	0	22%	66%
Percentage of homes with *Internet Access*	0	0	0	74.9%

Sources: Consumer Electronics Association, *eBrain Market Research;* Cellular Telecommunications and Internet Association; *Statistical Abstract of the United States,* 2003; Federal Communications Commission; Nielsen Media Research

Table 5.—Media Trends of Yesterday and Today

circa 1970	today
Extremely high barriers to entry	Much lower entry barriers thanks to explosion of new technologies and media outlets
High distribution costs	Lower costs of distribution relative to past
Primary business strategy = One-to-many; *broad*casting; focus on appeasing mass audiences; less media specialization	Primary business strategy = One-to-one; *nar-row*casting; focus on appeasing niche or splintered audiences; hyper-specialization of media
Distinct media sectors with own sphere of influence	Greater competition/substitution among media sources and outlets
Limited media outlets; limited overall choices	Explosion of both sheer number of media outlets and overall range of choices
People complained about "information scarcity"	People complain of "information overload"
"Big 3" dominated television and control 90 percent of audience	7 broadcast TV networks and a 500-channel universe of cable and satellite choices
3 nightly national newscasts shown once per evening	Dozens of national newscasts shown on a 24–7 basis, including foreign languages
We had to go to the library to retrieve hard-to-find information	The library comes to us via the Internet and online services
Limited number of electronic communications or information devices in the home (phone, TV, radio)	In addition to many phones, TVs and radios, each home today usually has at least a few of the following: CDs, DVDs, VCRs, computers, Internet access, interactive software, cell phones and other mobile communications devices, etc.
3 minute coast-to-coast long distance call cost $1.35	3 minute coast-to-coast long distance call cost roughly 15 cents

Table 6.—The Expanding Video Programming Marketplace On Cable and Satellite TV

News: *CNN, Fox News, MSNBC, C-Span, C-Span 2, C-Span 3, BBC America*
Sports: *ESPN, ESPN News, Fox Sports, TNT, NBA TV, NFL Network, Golf Channel, Speed Channel, Outdoor Life Network*
Weather: *The Weather Channel*
Home Renovation: *Home & Garden Television, The Learning Channel, DIY*
Educational: *The History Channel, The Biography Channel (A&E), The Learning Channel, Discovery Channel, National Geographic Channel, Animal Planet*
Travel: *The Travel Channel, National Geographic Channel*
Financial: *CNNfn, CNBC, Bloomberg Television*
Shopping: *The Shopping Channel, Home Shopping Network, QVC*
Female-oriented: *WE, Oxygen, Lifetime*
Male-oriented: *Spike TV*
Family/Children-oriented: *Nickelodeon, Disney Channel, Cartoon Network, WAM (movie channel for 8–16 year olds), Noggin (2–5 years)/The N Channel (9–14 years), PBS Kids, Hallmark Channel, Discovery Kids, Animal Planet, ABC Family, Boomerang, The Family Channel (FAM), HBO Family*
African-American: *BET, Black Starz!*
Foreign/Foreign Language: *Telemundo (Spanish), Univision (Spanish), Deutsche Welle (German), BBC America (British), TV Asia, ZEE–TV Asia (South Asia) ART: Arab Radio and Television, The Filipino Channel (Philippines), Saigon Broadcasting Network (Vietnam), The International Channel, HBO Latino*
Religious: *Trinity Broadcasting Network, The Church Channel (TBN), World Harvest Television, Eternal Word Television Network*
Music: *MTV, MTV 2, VH1, VH1 Classic, Fuse, Country Music Television, Great American Country, Gospel Music Television Network*
Movies: *HBO, Showtime, Cinemax, Starz, Encore, The Movie Channel, Turner Classic Movies, AMC, IFC, Sundance, Bravo, (Action, Westerns, Mystery, Love Stories, etc . . .), Flix,*
Other or General Interest Programming: *TBS, USA Network, TNT, SciFi Channel*

Table 7.—2003 New Magazine Launches by Interest Category

Crafts/Games/Hobbies/Models (45)	Computers (10)	Teen (6)
Metro/Regional/State (45)	Women's (10)	TV/Radio/Communications/ Electronics (6)
Sports (33)	Men's (10)	Art/Antiques (5)
Automotive (29)	Children's (8)	Business/Finance (5)
Special Interest (23)	Comics/Comic Technique (8)	Motorcycles (5)
Health (19)	Entertainment/Performing Arts (7)	Bridal (3)
Home Service/Home (17)	Literary Reviews/Writing (7)	Aviation (2)
Music (15)	Photography (7)	Gaming (2)
Sex (13)	Pop Culture (7)	Gardening (2)
Ethnic (11)	Religious/Denominational (7)	Military/Naval (2)
Epicurean (11)	Dogs/Pets (6)	Science/Technology (2)
Fashion/Beauty/Grooming (11)	Dressmaking/Needlework (6)	Media Personalities (1)
Fitness (11)	Fishing/Hunting (6)	Mystery/Science Fiction (1)
Travel (11)	Political/Social Topics (6)	
		TOTAL: 440

TABLE 8.—A CLEAR CHANNEL RADIO MONOPOLY?

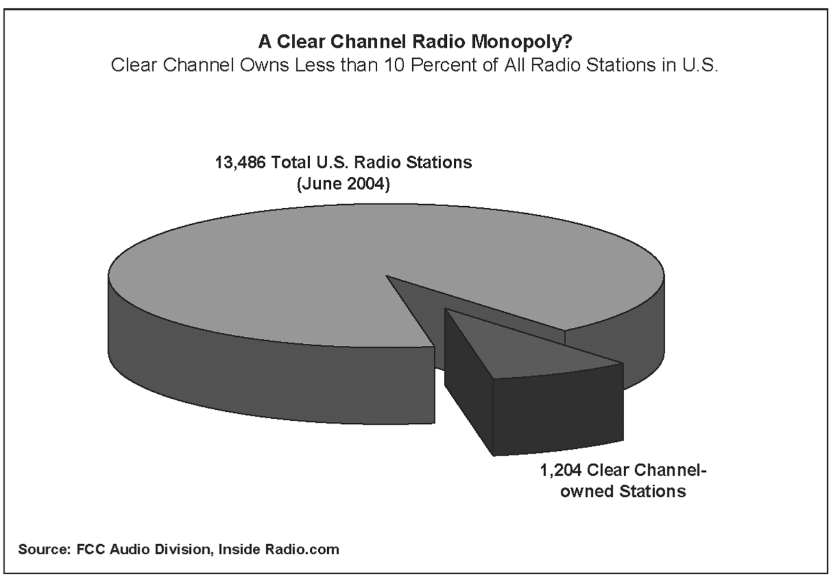


Table 9.—Internet Radio Stations

LaunchCast (*radio.yahoo.com*)
Rhapsody (*www.listen.com*)
Live 365 (*www.live365.com*)
Net Radio.com (*www.netradio.com*)
eoRadio (*www.eoradio.com*)
Totally Radio (*www.totallyradio.com*)
Soul Patrol (*http://www.soul-patrol.net*)
SnakeNet Metal Radio (*www.snakenetmetalradio.com*)
Recovery Net (*www.recoverynetradio.com*)
Beethoven.com (*www.beethoven.com*)
Web-Radio (*www.web-radio.fm*)
Radio@Netscape (*www.spinner.com*)
NPR Online (*www.npr.org*)
VH1's SonicNet.com (*http://www.sonicnet.com/*)

TABLE 10.—DO THE "BIG 3" OWN EVERYTHING?

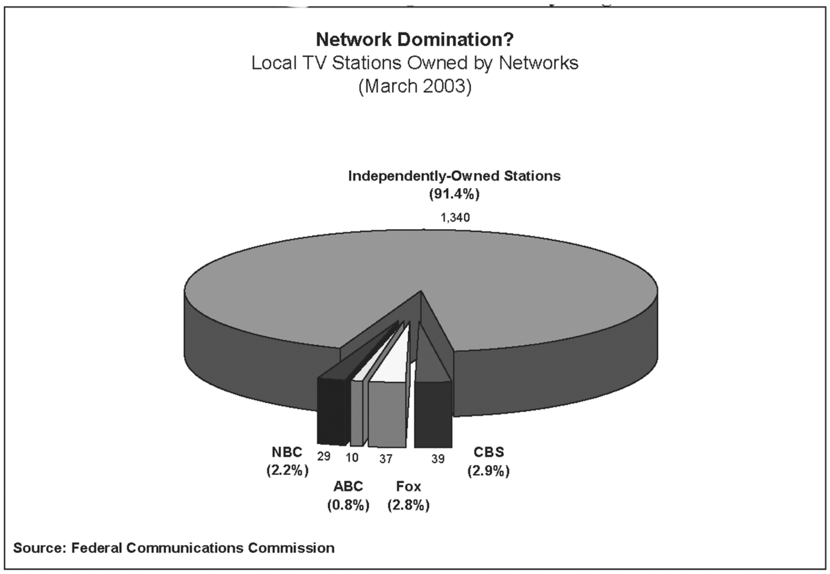
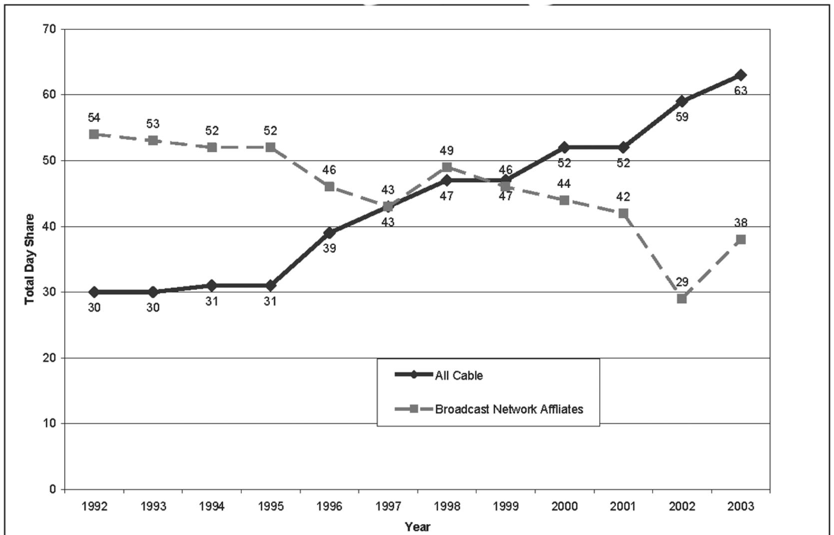


TABLE 11.—CABLE RATINGS SHARE NOW TOPS BROADCASTERS



Source: National Cable and Telecommunications Association; Cablevision Advertising Bureau analysis of Nielsen data.

TABLE 12.—AN ASSORTMENT OF MEDIA FUN FACTS

General Media Facts or Trends:

- "A weekday edition of the *New York Times* contains more information than the average person was likely to come across in a lifetime in seventeenth-century England."[11] A 1987 report estimated that more new information has been produced within the last 30 years than in the last 5000.[12]
- According to Ben Bagdikian, there are 37,000 different media outlets in America. That number jumps to 54,000 if all weeklies, semiweeklies, advertising weeklies and all periodicals are included, and to 178,000 if all "information industries" are included. And yet Bagdikian is a leading critic of media deregulation and the title of his most recent book is *The New Media Monopoly*![13]
- An FCC survey of large and small media markets across America from 1960 to 2000 revealed that, "Collectively, the number of media outlets and owners increased tremendously over the 40-year period," with an average of a 200 percent increase in the number of outlets and a 140 percent increase in the number of owners.[14]
- By 2007, the average American will spend 3,874 hours per year using major consumer media, an increase of 792 hours per year from the 3,082 hours per year that the average person spent using consumer media in 1977.[15]

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[11] Richard Saul Wurman, *Information Anxiety* (New York: Doubleday, 1989), p. 32. Likewise, William Van Winkle of *Computer Bits* magazine argues that, "A Sunday edition of the *New York Times* carries more information than the average 19th-century citizen accessed in his entire life." William Van Winkle, "Information Overload," *Computer Bits,* February 1998, *http://www.computerbits.com/archive/1998/0200/infoload.html*.

[12] Susan Hubbard, in Carol Collier Kuhlthau, ed., *Information Skills for an Information Society: A Review of Research* (Syracuse, NY: ERIC Clearinghouse on Information Resources, December 1987).

[13] Bagdikian, p. 29.

[14] Scott Roberts, Jane Frenette and Dione Stearns, "A Comparison of Media Outlets and Owners for Ten Selected Markets: 1960, 1980, 2000," Federal Communications Commission, *Media Ownership Working Group Study* no. 1, September 2002, p. 2, *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC–226838A2.pdf*.

[15] Joe Mandese, "Study: Media Overload on the Rise," *Television Week,* May 17, 2004, *http://www.tvweek.com/planning/051704study.html*.

- As of 2003, household penetration rates for various new media and communications technologies were very high and growing fast: VCR (88 percent); DVD (50 percent); DBS (24 percent); cell phones (70 percent); personal computers (66 percent); Internet access (75 percent). With the exception of VCRs, none of these technologies were in American homes in 1980.[16]
- In 2002, the average consumer spent $212 for basic cable, $100 for books, $110 for home videos, $71 for music recordings, $58 for daily newspapers, $45 for magazines, $45 for online Internet services, and $36 on movies.[17]
- A three minute coast-to-coast long-distance phone call which cost roughly $1.35 in 1970 only cost 15 cents in 2003.[18]

Television/Video Competition:

- 88 percent of Americans now subscribe to cable and satellite "pay TV" sources even though "free, over-the-air" television remains at their disposal.[19]
- The FCC has found that, "In 1979, the vast majority of households had six or fewer local television stations to choose from, three of which were typically affiliated with a broadcast network. Today the average U.S. household receives seven broadcast television networks and an average of 102 channels per home."[20]
- There are more than 308 satellite-delivered national non-broadcast television networks available for carriage over cable, DBS and other systems today. The FCC concludes, "We are moving to a system served by literally hundreds of networks serving all conceivable interests."[21]

Newspapers and Magazines:

- In 1900, the average newspaper had only 8 pages.[22] In the year 2000, by contrast, according to the *Encarta* encyclopedia, "Daily general-circulation newspapers average[d] about 65 pages during the week and more than 200 pages in the weekend edition."[23]
- There were 17,254 magazines produced in 2003, up from 14,302 in 1993. "For virtually every human interest, there is a magazine."[24]
- There were 440 new magazine launches in 2003, up from 289 new launches in 2002.[25] Another source puts the number much higher at 949 new launches last year.[26]

Radio:

- The number of radio stations in America has roughly doubled since 1970. As of March 2004, there were 13,486 radio stations in America, up from 6,751 in January 1970.

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[16] Various sources.

[17] *Plunkett's Entertainment & Media Industry Almanac 2002–2003* (Houston: Plunkett Research Ltd., 2002), p. 7.

[18] Noted in Christina Wise, "The Good Ol' Days Are Now: Cox," *Investor's Business Daily,* April 19, 2004, p. A22.

[19] Federal Communications Commission, *Tenth Annual Video Competition Report,* January 5, 2004, p. 115, *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–04–5A1.pdf,* cited hereafter as FCC, *Video Competition Report.*

[20] FCC, *Media Ownership Proceeding,* p. 15. "Non-broadcast television programming continues to proliferate. Today, there are more than 308 satellite-delivered national non-broadcast television networks available for carriage over cable, DBS and other multichannel video program distribution ("MVPD") systems. In 2002, the Commission also identified at least 86 regional non-broadcast networks, including 31 sports channels, and 32 regional and local news networks. We are moving to a system served by literally hundreds of networks serving all conceivable interests. Programming in particular abundance are sports, entertainment, and informational in nature. The four largest broadcast networks own both broadcast and cable channels. Their share of viewership is far greater than their share of the channels received by the typical American household. Of the 102 channels received by the average viewing home, the four largest broadcast networks have an ownership interest in approximately 25 percent of those channels." Ibid., pp. 48–49.

[21] FCC, *Media Ownership Proceeding,* p. 48–49.

[22] Benjamin M. Compaine, "The Newspaper Industry," in Benjamin M. Compaine and Douglas Gomery, eds., *Who Owns the Media? Competition and Concentration in the Mass Media Industry* (Mahwah, N.J.: Lawrence Erlbaum Associates, 3rd Edition, 2000), p. 7.

[23] "Newspaper," Microsoft Encarta Online Encyclopedia, 2004, *http://encarta.msn.com/encyclopedia_761564853/Newspaper.html*

[24] *The Magazine Handbook 2004–5,* (New York, NY: Magazine Publishers of America, 2004), p. 5, *http://www.magazine.org/content/Files/MPA%5Fhandbook%5F04.pdf*.

[25] *Ibid.,* p. 7.

[26] Samir Husni, *Samir Husni's Guide to New Magazines 2004,* 19th Edition, *http://www.shgncm.com/shgncm/*.

- Satellite radio (XM & Sirius), an industry that did not even exist prior to December 2001, today boasts over 2 million subscribers nationwide according to company reports.

Internet/Online Services:

- 72 percent of Americans are now online and spend an average of nine hours weekly on the Internet.[27]
- The World Wide Web contains about 170 terabytes of information on its surface; in volume this is seventeen times the size of the Library of Congress print collections.[28]
- Although less than 10 years old, online auction giant E-Bay has grown so massive that it now handles more daily trading traffic than the Nasdaq Stock Market according to CEO Meg Whitman.[29]
- Online search giant Google recently reported that its collection of 6 billion items includes "4.28 billion web pages, 880 million images, 845 million Usenet messages, and a growing collection of book-related information pages."[30]
- The Internet Archive "Wayback Machine" (*www.archive.org*) offers 30 billion web pages archived from 1996 to the present. It contains approximately 1 petabyte of data and is currently growing at a rate of 20 terabytes per month. The site notes, "This eclipses the amount of text contained in the world's largest libraries, including the Library of Congress. If you tried to place the entire contents of the archive onto floppy disks . . . and laid them end to end, it would stretch from New York, past Los Angeles, and halfway to Hawaii."[31]

The CHAIRMAN. Thank you very much.

Professor Overholser, I've noticed an interesting thing in reading local newspapers which are owned by large chains, that if you scan most any part of the first section of the paper, you see a story, the headline or the bold print, and underneath you'll see, in tiny wording, "New York Times," "Washington Post," "Knight Ridder," "Reuters." Almost totally disappearing is any local or that newspaper-owned reporters reporting on national media stories. Do you—can you comment on that?

Professor OVERHOLSER. Absolutely, Senator. I think that what you're observing is cost savings. Now, I do think it's important that local newspapers bring national and international news to a given community, and they're not likely to have their own reporters abroad. Alas, it's all too true that more of that news hole in that newspaper is taken up by wire, even to the expense—at the expense of local news, which simply is not being undertaken as much. And this phenomenon that you're observing is true on a larger scale for a newspaper like, for example, the *Des Moines Register,* would choose to do extensive agricultural reporting, which was a costly undertaking, but it was of national value. They are doing very little of it. And that story plays out across the country.

Now, what you can do about that—I mean, I think we ought to have a national commission that looks at the paltry quality of local news, because it makes a difference. But that's, of course, not immediately in your hands, except to the extent that the FCC can make that worse by creating still more means of these companies

[27] FCC, *Media Ownership Proceeding,* p. 148.

[28] Peter Lyman and Hal R. Varian, *How Much Information?* 2003, School of Information Management and Systems, University of California at Berkeley, 2003, *http://www.sims.berkeley.edu/research/projects/how-much-info-2003/printable_report.pdf.*

[29] Leslie Walker, "EBay Gathering Puts Highs, Lows On Full Display," *The Washington Post,* July 1, 2004, p. E1, *http://www.washingtonpost.com/wp-dyn/articles/A17604–2004Jun30.html.*

[30] "Google Achieves Search Milestone With Immediate Access To More Than 6 Billion Items," *Google Press Release,* February 17, 2004, *http://www.google.com/press/pressrel/6billion.html.*

[31] "Frequently Asked Questions," Internet Archive Wayback Machine, *http://www.archive.org/about/faqs.php.*

saving money, and dropping it to the bottom lines, and not serving local needs.

I mean, I'm amazed to hear my colleague say that this supposed "golden age of American media" means we have a public that knows more about democracy than ever before. I haven't seen the evidence of that.

The CHAIRMAN. Well, that leads me, Mr. Thierer, to one of your statements—in your beginning statement, "Regardless of what the underlying business structure or ownership patterns look like, the real question in this debate must be, 'Do citizens have more information and entertainment choices at their disposal today than in the past?'" Well, you regard—you disregard the fundamental problem. We have media controlled by major corporations in America, which leads to the usual media caution, which leads to the usual media consolidation, which leads to, as my friend to my right here often says, "many voices and one ventriloquist." And we see that time after time in news reporting, including an avoidance of controversial issues. That's the nature of corporate America, to avoid controversy, because they're only interested in one thing, and that's the bottom line. So I disregard—I disagree with your fundamental principle, when you say, Regardless of what the underlying business structure of ownership patterns look like. That, to me, is incredibly and extremely relevant in this discussion and debate. And I'll be glad to hear your response.

Mr. THIERER. Sure. Basically, I hear a lot of arguments in this debate, what I classify—I would classify as, sort of, a neo-conspiratorial puppet-master theory of mass media domination. The idea that somehow a handful of guys in New York or L.A. are puppeteering all media ideas or outputs or whatever else, I find this notion to be absolutely absurd. And even if there was any truth to this notion, that somehow a few guys sitting in New York or L.A. were controlling all of our thoughts, it's going to—they're going to be very hard-pressed to do that. They're going to be hard-pressed to control the people under them—the journalists, the editors. And, of course, there are so many other checks on what they are doing. All's it takes is one Drudge Report story to break news about—that something is going fishy on—in a major media outlet.

The CHAIRMAN. Well, perhaps this—obviously, you misconstrued my statement, but perhaps we should do a study, for example, of the overseas presence of the major networks in America today. It's well known that when CBS was acquired, the then-CEO went all over Europe, "You're fired, you're gone, you're done," no more news bureau in Rome, none—reduced it drastically in Moscow, take it out in London. This is true of all the networks. When you look at the presence of reporting of major television networks and reporters, the bottom line is profit and loss. I'm not talking about controlling media; I'm talking about profit and loss, Mr. Thierer. There's two different things there.

And so the facts are facts. The facts are that, as compared with the 1970s, the reporting of what's going on in the world has been dramatically—I say dramatically—reduced for cost-cutting reasons. And we'll do—we'll have some study, but, I mean, it's just a fact. And maybe that's satisfactory to you. Maybe that's fine with you. And I understand Cato's libertarian views. But I believe that when the bottom line is the only, or certainly the overriding, objective of any organization, the days of Edward R. Murrow are long, long gone.

Mr. THIERER. Could I make a couple of quick responses——

The CHAIRMAN. Sure.

Mr. THIERER.—very briefly?

First of all, as you say, the facts are the facts. And the facts are, we had far many more embedded reporters in Iraq for this most recent conflict than we did during the previous conflict or the Vietnam War or anything else. So regardless of the profitability——

The CHAIRMAN. First of all, that's not true. We had more reporters in Vietnam than we had in Iraq. But we had a new concept, and that was embedded reporters; and that was for a conflict. I'm not talking about for a conflict. And, by the way, most of those are gone now. And I'm not talking about a major conflict, which absorbs the attention of the American people. I'm talking about everyday reporting of events that are going on over the world, and that means news bureaus in capitals of countries all over the world. They have been dramatically reduced or eliminated.

Go ahead, please.

Mr. THIERER. For the major networks, I would agree that is probably the case, because, of course, a lot of their news has been cut as they face increased competition from cable and satellite television news sources. Those 24/7——

The CHAIRMAN. They're establishing news bureaus over there?

Mr. THIERER. Well, they have, certainly, a fair amount of presence across the world. Whether or not they have a bureau in every major capital is a different story. Of course, they're on the move so much that they are reporting from a lot of different regions and countries.

The CHAIRMAN. Well, we just have a fundamental difference of opinion. And I tell you, mine is shared by almost every objective journalist or expert on journalism in America.

Mr. Compaine, I also find it interesting that, quote, "My findings lead me to an observation and a question for policymakers. The observation is that, while Congress certainly has the prerogative, it cannot micromanage, effectively, television and radio regulation." Micromanage by setting an ownership cap? I'm sorry, but, again, we have a very different view of the role of Congress and our oversight responsibilities of tens, if not hundreds, of billions of dollars worth of spectrum and how it's allocated and how it's used. So, you know, I don't believe we've been micromanaging at all. We are responding—we are responding—to an unprecedented number of our constituents, of American citizens, who contacted the FCC at the time of this rulemaking, expressing their deep and abiding concern about media consolidation. That's what our job is.

There has never been more comments to the FCC on any single issue than there was on media consolidation. And for us to consider the issue of overall media ownership, and call that micro-managing, we just have a different view of what the role of Congress is.

Mr. COMPAINE. Senator, I wasn't suggesting that you shouldn't be having hearings or setting an overview. I just think that things are moving so quickly that today's 39 percent might not be the best number in four or 5 years, and that Congress isn't set up to come back every three or 4 years to look at that.

But I want to—I think I agree with you on some—well, maybe I shouldn't—maybe not; we'll see. I think that on—the thing about the—all those letters to the FCC, part of it is—it's a little bit like the question, "Do you still beat your wife?" If people are asked the question, "Should the FCC allow greater media concentration," I mean, everyone's going to say no. And I think a lot of those responses were part of that reaction, that—you know, "We don't want more concentration." And it's a much more complex question than that.

My feeling is that we should be getting all this spectrum back from the broadcasters, as I know you wanted to impart. We have much greater uses for it. When so few people are actually using over-the-air, I think that—let's, sort of, say, "Look, we've had all this trouble trying to get the public interest standard, what is it and how do we enforce it and"—why don't we just somehow say to these folks, "Return your spectrum. We'll let you stay on cable. We've got much better uses for this stuff than what you're doing for it. And you'll pay for—you know, anything that you do keep, you've got to pay for." I mean, this——

The CHAIRMAN. You just described my legislation, which was——

Mr. COMPAINE. Well——

The CHAIRMAN.—voted down, 13 to nine, and this——

Mr. COMPAINE. No, I know. And I was——

[Laughter.]

Mr. COMPAINE. That's why I say I think I agree with you more than——

The CHAIRMAN. I thank you. I thank you, Mr. Compaine. I really do.

Mr. Thierer, let me come back to you, one other point, real quick. And, look, even though we disagree, we're glad you're here. And we think that your views contribute enormously to this debate.

Under the rules the FCC issued last year, Business Week stated, quote, "Even in midsized cities such as San Antonio, for instance, one company might own the leading newspaper, two TV stations, eight radio stations, and several cable channels." Does that concern you?

Mr. THIERER. My general response to these sorts of questions is simple, that there's, sort of, an ex-ante/ex-post question in this debate, which is, Do you want preemptive, prophylactic forms of regulation governing these issues, or do you prefer to go with a typical standard we apply to all other industries in this country for market-power concerns, which are the antitrust laws, which seem to work fairly well in these other areas? I would prefer the former—the latter, rather, where we basically look at these issues and say, if there is a serious market-power problem that creeps up after we allow the rules to disappear, we'll handle it then. I think that's the better way to approach this than—instead of attempting to honestly, as Mr. Compaine says, micromanage the exactly right number. We don't know what the exactly right number is. Is 102 cable channels too many? Too few? I don't know.

The CHAIRMAN. Well, I would argue that nowhere in history have you been able to unbundle once the merger or consolidation has been completed in the media, that I know of. But, anyway——

Professor Baker, do you have a comment on that?

Professor BAKER. Actually, I think, with enough political will, debundling is possible, but it's not likely with the huge conglomerates. But the Supreme Court approved the FCC's forcing the sale of some newspaper/television combinations at a time where it was more interested in diversity than it is now.

But the general point is absolutely right. We ought to be concerned with diversity in the market, like in San Antonio, which could have been incredibly limited under the FCC's rule.

Also, as to the antitrust versus other types of regulation, antitrust law is designed to limit the situation where one company can exercise control over price. Even in situations where one company can't exercise control over price, like the price of advertising, it can exercise control over the content that most people in that area are going to receive. And when that's the case there should be a concern. And that's the reason you need different rules in the communications realm than the general antitrust concern with power over price. That's even reinforced by the fact that concerns about power over content, power over voice, is integral to our notion of democracy. So I think antitrust, though I have no criticism of it, is an inadequate standard in the communications realm.

The CHAIRMAN. Thank the witnesses.

Senator Dorgan?

Senator DORGAN. Mr. Chairman, thank you very much.

This has been an interesting discussion, and has raised a lot of questions.

First of all, have any of you ever planted corn with a tractor?

All right. Let me read you something the Farm Bureau says about radio ownership and farming, because it goes directly to the question that we're raising today. They say that, "The trend today in radio is to restrict and eliminate timely weather information, local news, up-to-the-minute market reports, and so on, affecting production agriculture. The trend today, instead of improving and maintaining these services, many radio stations are eliminating or curtailing farm news. And this relates, in large part, to media ownership rules, which allow large ownership groups to acquire multiple radio licenses."

Now, in point of fact, if you're a farmer out there, you're wondering about the weather, you're wondering about the markets, and somebody a thousand miles away buys up that local station, puts in a homogenized bit of music and fires the local newscaster. And the question is, Is that in the public interest? It might be part of the market system, but it certainly is not in the public interest. So one cannot say there are more choices, there's more competition, and good for everybody.

Now, let me just make a couple of comments, then I have a couple of questions.

Part of the argument here, Mr. Chairman, has been interesting. The circumstance of restricted choices has been described as a circumstance of expanded opportunities. Mr. Overholser, you suggested certain restaurants—we have 13,000 McDonald's restaurants in the country. Now, if those McDonald's, tomorrow, announced they have one new salad on the menu, and we were having this discussion about restaurants and menus, some of you would probably argue that there are 13,000 new choices for Americans. It's only one salad, of course. Right? But you'd be here arguing that, "Look at the diversity, look at the competition, look at the new things, look at the expanded opportunities," 13,000 new menu items. Nonsense.

And, Mr. Thierer, I think you've contributed to this discussion. I disagree strongly with you, but you contribute by being here. I appreciate that. But I must say this, I have always thought that the conservative dogma, the conservative doctrine, is one that embraces and nourishes and refreshes the notion of competition. And, in fact, I think you're arguing exactly against that point, which is surprising.

Now, I'll give you all a chance to respond to all of that. First, let's respond to the question of corn. Since you've not planted corn, you won't be too concerned about farm radio broadcasts. But do you accept the fact that these are diminishing all across the country because of changes in ownership and increasing media concentration?

Mr. COMPAINE. I would—my wife is from Kansas, and I've seen a lot of corn. But I would suggest that needs a lot more investigation, because farmers were in the lead back in the early 1980s in using online services, from the Agriculture Department and others, in getting information. Long before the Internet, the agricultural community were buying Radio Shack TRS–80s before most people had these. I suspect that many of those farmers are getting much more specific information than they can get from that radio report by going online to specific sites that are giving them exactly what they need for even a smaller geographical area and perhaps for the specific kind of corn or a specific brand.

So there may be some the—some of what you say, but I think most of it is just because farmers have found a better source of information.

Senator DORGAN. But Mr. Compaine, you're making an excuse for diminished services farmers are complaining about, so I don't understand that.

Let me make one other point, if I might, and then ask some—just a couple of questions.

Jim Goodman has appeared before this Committee a number of times. He's a broadcaster from North Carolina. And he talks about this question that some of you have raised about increased competition, increased diversity for viewers. And, you know, for example, there is, perhaps, increased competition between a program in which you see people eating maggots competing with a program of people wife swapping. I'm not sure those exist in exactly the same timeframe, but they're both on network television. And so that competition now exists. And Mr. Goodman appears before this panel, I think, on two or three occasions—he's a television owner, and he says, "You know something? I can't keep these programs off my television even if I think they're not appropriate because I am told from on high that, 'You are to broadcast those programs. If not, you'll lose the opportunity to have your affiliation with the network.' "

So, you know, this issue of competition and local ownership versus centralized control is one, I think, that's well documented by testimony at the very table that you're now sitting.

So let me ask a couple of questions. Then I have colleagues, I know, that are anxious to ask question, as well.

The point that you made, Ms. Overholser, about better journalism, you know, I, frankly, don't think we can do much about that. But I happen to think increased competition leads us in the other direction. If you have, for example, in one community, as we have in North Dakota, all of the commercial radio stations being purchased by one company, I would ask any of you, Does that advance the interest of increased choices for consumers—better news, better information—or does it retard those interests, in your judgment? I mean, this is not theory; I'm just describing the case of Minot, North Dakota. The FCC allowed one company to buy all the commercial radio stations in that community. Does that advance the interest, Mr. Thierer?

Mr. THIERER. Actually, I know Minot, South Dakota, if you check it up on the—North Dakota, I'm sorry—if you check it up on the Well Connected site, you can find that there are a few other owners of media outlets in that community.

Senator DORGAN. All the commercial radio stations——

Mr. THIERER. Oh, on the commercial radio stations—I'm talking about broadly of other types of media outlets.

Senator DORGAN. We're just talking past each other. I'm talking——

Mr. THIERER. But in a very small——

Senator DORGAN.—about commercial radio stations.

Mr. THIERER.—community, there might be a situation where one owner does own most of the media outlets, depending on the size of that community.

However, going back to your farming question, to bring this full circle, I come from a family of farmers in Illinois, and when I was home—when I was home recently visiting some of them, I saw the most amazing sight while driving out of the state. I was driving past a farm where there was actually a satellite dish, for whatever reason, affixed to an old dilapidated outhouse. Now, I don't know, I'm hoping they're not watching satellite television in there. But the point is, is that it was a great sign of the times, that there was new technology in an old agrarian setting. And if you go out and you watch farmers do their work, you see them on cell phones, you see many of them have pagers now, and Blackberries. It's an amazing technological revolution that's happening in the farming community.

Do they have enough farming news in all local newspapers and media outlets today? I don't know. Farmers are one of many constituents of news and information, and they're going to have to compete with others. And, of course, farming is on the decline, relative to other types of industry. So we have to take those realities into account, in terms of what's reported.

Of course a hundred years ago there was more agrarian reporting. There was more agriculture, in relative terms.

Senator DORGAN. Why should they expect to have to compete with others if they are the customers of a radio station in a farming community that has decided that, “We're now owned by a company a thousand miles away, and we want to do voice tracking and pour homogenized music over that radio station.” Why is that not dis-serving the very consumers for which we gave the license for that radio station to be on the air?

Mr. THIERER. But if there is—certainly there must be some sort of an audience for those stations, or else they would go off the air. Because, quite frankly, the media is a business, and a lot of people live in denial about that. The only way that that commercial station's going to remain viable in that community or any other is if it has listeners. Advertisers aren't going to shower these companies with dollars unless there's an audience.

Senator DORGAN. Well——

Mr. THIERER. Somebody must be listening.

Professor OVERHOLSER. I wonder if I can make a quick response, Senator Dorgan, to your good point, which, of course, is that you all can't keep, you know, profit pressures from causing great diminishment of journalism. But I mention it because I think is important to keep this distinction in mind. A proliferation of outlets is what everybody keeps citing to say we're good, we're better than ever, when, in fact, a decline in journalism is what we need to keep in mind. And I believe that the FCC ownership rule changes enhance the opportunity for businesses to draw still further away from their local communities.

And if you ask me, the remarkable response that you all got from your constituents after the FCC rule changes came in such degree and at that moment precisely because there are, indeed, people for whom the answer to your question, “You ask anyone, do you really want greater consolidation,” they'll say no. Indeed, there were quite a few people, including owners of newspaper companies and television companies. And the coverage of those rules was very poor. There's a marvelous *Columbia Journalism Review* article about just how poor it was. And is it a coincidence when the owners wanted these rules changes? So I think there is an important connection.

Senator DORGAN. The Chairman indicated—and I'm pleased he did—that the FCC rules that have now been remanded back, at least in part, would have allowed, in the largest cities in this country, one corporation to own three television stations, eight radio stations, the newspaper, the dominant newspaper, and the cable company itself. I think that's nuts. And I think to make the case that that somehow is moving in the public interest is absurd. This issue that there is this proliferation of opportunities for the American people—go to the news sites on the Internet, and I'll tell you that the most visited news sites on the Internet are owned by the same dominant companies that are on broadcast television, that—there are only five or six—essentially five large combines here, and there are a handful of people that are now determining what the American people see, hear, and read. And a handful of people decided that John McCain should not be heard by 40 million people who don't have cable television. Shame on them, in my judgment. And I hope——

The CHAIRMAN. I agree.

[Laughter.]

Senator DORGAN. Well, I knew John McCain would agree, because he gave a great speech, and I wish he'd have given it at our convention. But——

[Laughter.]

Senator DORGAN.—and I wish it had been—I wish it had been televised there.

But the fact is, this is a very important debate. Mr. Chairman, you've been great in doing these hearings and allowing the American people to have at least some glimpse into this controversy. I appreciate that.

And thank the witnesses for being here.

The CHAIRMAN. I thank you.

And our two colleagues have been very patient. I would point out, too, that NPR and PBS carried the conventions in their entirety, and their ratings were very good. It's interesting.

Senator NELSON. And so did C–SPAN.

The CHAIRMAN. And C–SPAN—yes, C–SPAN, as well. Yes.

Senator Fitzgerald?

Senator FITZGERALD. You can let Senator Nelson——

The CHAIRMAN. Senator Nelson?

STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Senator NELSON. Mr. Chairman, I wish you'd have given that speech at our Boston convention, as well.

[Laughter.]

Senator NELSON. Senator Dorgan, I think it's nuts, too, where you get that kind of concentration in a market. And I want to give you an example of that. I have an example of a tale of two media markets in Florida. The owners, as we were considering this media ownership rule and the cross-ownership, naturally, had come and made the arguments. Well, look at the Tampa market. Media General owns the *Tampa Tribune,* and they also own one of the prominent stations there, the NBC affiliate, Channel 8. And they pointed out the advantages of sharing the newsroom and all of that, which is a legitimate argument. But the big difference between the Tampa market, on this issue of cross-ownership, and the Orlando market is that the Tampa market has a vigorous competition between two newspapers; not just the one newspaper that also owns the television station—the *Tampa Tribune*—but a vigorous competition with the *St. Petersburg Times;* whereas, the Orlando market, the dominant newspaper, by far, is the *Orlando Sentinel.* If the *Orlando Sentinel*—the *Chicago Tribune,* in fact, owned news stations, such as the television stations, then I think you would start to move to a monopoly position away from more competition. And I just simply don't think that that's healthy.

But let me ask you about a specific that has come up here today. The majority of the FCC and Mr. Compaine and Mr. Thierer seem to think that the Internet provides a multitude of voices to compete with the media giants. The Third Circuit considered this, and they rejected that.

Now, are you aware—could you share with the Committee—of any independent websites that compete in this way? For example, do you know of any independent Internet site that has had the resources to cover the war in Iraq?

Mr. THIERER. Of course not, because a lot of those sites are small upstarts. They're not going to have those resources. In fact, the companies that have the resources are the very large companies that many people obviously on this Committee would like to break up. And you can't have it both ways. You're going to have some companies that are going to be quite large, and some that are quite small that play more of a marginal role. But the economics of America's media marketplace are not those of a corner lemonade stand. It takes a lot of scale, sometimes, to provide the resources and the types of services that we want to cover a lot of those things. At the same time, there can be a very important role played by bloggers on websites or independent news sources. I mean, think about what the Drudge Report did, whether you like it or not, regarding the impeachment of President Clinton. I mean, that is important, and that changed history. And so there are other examples like that, and there are going to be countless more as new technologies evolve in the future. That's my opinion. The Internet doesn't change everything, at least not yet, but it changes a lot.

Mr. COMPAINE. But, if I may, there—I've looked at articles about the Middle East on Al Jazeera, the Times of London, the Guardian, the Times of India, which is one of the most accessed news sites in the United States. So they're not necessarily U.S. companies, but that should be an attraction, that we can get different perspectives. You get a very different perspective reading Al Jazeera's English-language news reports than you would getting any American news report, likely. So I think that there are far more sources there.

Senator NELSON. You know, I agree with that, and I celebrate that fact, that we have that information at the access of our fingertips. Someone like you would go there. But the normal American consumer would not necessarily do that and they get this steady diet of information from their local market. And if you consolidate that, and you lessen the competition, then it just seems like we're arguing against—I'd like to hear Ms. Overholser——

Mr. THIERER. But do they only get their news from local markets? And what is a media market today? Is Tampa the relevant market? Is Orlando the relevant market? Or are Tampa and Orlando citizens also receiving a lot of news and information from other national sources? Again, FCC statistics, 88-and-a-half percent of Americans currently voluntarily open their purses and wallets and purchase cable and satellite television network subscriptions, even though they have free over-the-air television choices at their disposal. Pretty soon, that number is going to creep up and up and up, and we'll be looking at 95–97 percent penetration. At that point in time, a lot of people have voluntarily said, "Hey, I'm willing to take other sources of news. It's relevant news." And then a lot—more and more people online—that's new type of information. It's not local, it's not national; it's a little bit of both. It can be local and national.

Professor OVERHOLSER. I agree with much of this. In fact, I think the question of who competes with whom is changing. But I would like to respond to your good point, Senator Nelson, about the competition in a given city, for example, or the Tampa Bay area. I mean, you know, when I first covered the Colorado legislature 35 years ago, I would sit around that table at the legislature, and there were radio reporters from around the state, and there were reporters from newspapers around the state, and there were reporters from the AP and the UPI, et cetera, et cetera. And there is a loss in that particular decline. There may be bloggers at the table in Denver, but what I'm talking about is the kind of—it is expensive to produce a report, and people don't just go sit at the legislature and produce an edited report that the public needs to know.

Now, in the Bay Area, you've got the *St. Pete Times,* which is owned by the Poynter Institute for Media Studies, which doesn't have to ask more than 10 percent net income before taxes. It's a terrific media competition. And no doubt, there are bloggers and everybody else. But who—you know, we really do need to worry about whether we're protecting this stream of reporting that the public needs. And it's great we have this diverse blogging community. And it makes a difference. It will improve standard journalism sources. But I don't think, when we talk about putting all the local media in essentially the same hands, that we should blithely think that that won't make a real difference. It will make a real difference. You have one less television reporter, it makes a difference. People notice things in a given community; and if you don't have reporters noticing things, it won't be noticed.

Senator NELSON. Mr. Baker, did you want——

Professor BAKER. I agree with that. I mean, out—the Internet's great. And for some people, reading Al Jazeera could be great. I'm not sure what percentage of the population of Tampa does that. My guess is, it's not so large. And my guess is, Al Jazeera doesn't report much about what's going on in Tampa. And if people want local news, that's just not going to provide it.

The sources of local news that the Internet provides have not, in any study I've seen, been demonstrated to be of any significant amount. There's local discussion. Internet is great. But you need resources to produce good news, the type of journalism society has, and that's going to come from media entities.

What we need is a structure that will increase the likelihood that the people at the heads of entities are willing and able to put resources into journalism. And a conglomerated—a consolidated structure is not the structure that's going to do that. I think that's the point that—I'm very pleased, I think the Senators understand that well. It's not surprising that the Senators would understand the media quite well, but I think you've shown that very clearly. But it's of vital importance that we have people that are willing to put resources into production of good quality journalism.

Senator NELSON. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Fitzgerald?

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

Senator FITZGERALD. Thanks, Mr. Chairman.

Mr. Thierer, I wanted to ask you where you're from in Illinois.

Mr. THIERER. Born in Peoria. I know how it plays in Peoria, Senator.

Senator FITZGERALD. Oh, that's great. That's great.

Mr. THIERER. Family's in the Roanoke area.

Senator FITZGERALD. Well, fabulous, and welcome to the Committee.

Mr. THIERER. Yes.

Senator FITZGERALD. And please say "Hi" to your family.

Mr. THIERER. I will.

Senator FITZGERALD. I tend to believe that we really don't have any problems with concentration in media at the national level. As Mr. Thierer said, 88 percent of the households subscribe to cable or satellite television. We have all sorts of national news outlets in print media and in broadcast media, and there are almost an infinite variety of choices on the Internet. However, if you go into local markets, the one place I do see concentration is not so much with television or radio stations, although there could be a few small markets where one owner owns all the radio stations in town. But I see concentration among small-monopoly local newspapers. And if I think of cities around Illinois, we really only have two vigorous newspapers in Chicago. If I look at Peoria, we have the *Peoria Journal Star.* They have a monopoly in Peoria. The *Rockford Register* has a monopoly in Rockford. The *State Journal Register* has a monopoly in Springfield. The *Decatur Herald* has a monopoly in Decatur. There's a *Champaign News Gazette,* there's a *Bloomington Pantagraph.* There's one newspaper in each of those towns, and they have a monopoly. And they have a monopoly on the local, you know, political endorsements. Fortunately, all those papers I mentioned endorsed me when I ran for election.

[Laughter.]

Senator FITZGERALD. They have a monopoly on that. Candidates certainly have to go through that. If you're a car dealer in the town, and you want to advertise your latest sales, you've only got one place you can go buy ads, essentially: your local newspaper. Now, that's why many investment analysts will always tell you, if you want to own a newspaper, own one where it's a monopoly, in a small town. Never own a second newspaper in a town. When there are two newspapers in a town the size of Peoria, rarely can they survive. Typically, one of them is run out of business. And I'd bet if you go back far enough, there were more than one newspaper in all those towns I've mentioned.

But nobody seems to be mentioning this problem. And I think this is an obvious—if some of our panelists are for regulation, why not do something about local media monopolies? Shouldn't they be outlawed?

Mr. COMPAINE. This is something that I've been tracking for—back to my dissertation in 1978. There are a couple of responses. One is that these papers do have other—the local ad dealer—the local car dealer can use direct mail. Direct mail has been one of the most thriving forms of competition to newspapers. You know, whether it's hung on the door—all sorts of approaches. Eighteen percent of our advertising is spent on direct mail, still.

It's an economic problem. The newspaper industry is a declining industry. In 1930s, we sold enough newspapers for 1.3 newspapers for every household. Now we sell less—less than half the households buy a newspaper. So it's a matter of economics. As you say you can't support—there aren't enough advertisers, because advertisers are now advertising on cable—local advertisers—and direct mail, there are weekly newspapers—there just isn't enough advertising to go around to support multiple newspapers. The only reason papers today are surviving even at the lower level of investment—and the reason they can exist is because they don't have direct competition. But they have competition——

Senator FITZGERALD. And they're pretty good businesses, aren't they——

Mr. COMPAINE. Well, they are, because——

Senator FITZGERALD.—if they have a local monopoly?

Mr. COMPAINE. They are, exactly, but only because they're the only one in town. They don't have price—much pricing competition. If you look at the price of a newspaper today in real dollar terms, it's the same as it was 20 or 30 years ago. From the consumer's point of view, they can't raise prices the way monopolists can because people just aren't that interested. Despite the fact that the surveys say people say they get most of their local news from the newspapers, newspaper circulation in every one of your towns all around the country is declining, not only relative to households, but in absolute numbers. And that says something about——

Senator FITZGERALD. All right. For the panelists who favor some kind of controls to prevent concentration in media, are you at all concerned about concentration at the local level, or is it—should we just ignore it because it's only local?

Professor OVERHOLSER. Well, that's my primary concern, Senator. I think the local level—I agree with you, on the national level we probably have less to be worried about. On the local level, I'm quite concerned. I don't see it being economically likely that we'll start having additional numbers of newspapers. But if you have a local newspaper and a decent local television news and a local radio reporter, and you've got people blogging and carrying on, you'll have more vitality. I would have—I would—I mean, not only——

Senator FITZGERALD. Should we do something, though, to try to——

Professor OVERHOLSER. But what would you do?

Senator FITZGERALD.—prevent these—well, that's what I'm——

Professor OVERHOLSER. Create new——

Senator FITZGERALD. I mean, I don't favor any regulation of the media at all, really.

Professor OVERHOLSER. See, what I think is that what the FCC did was make it more likely that there would be less competition at the local level, and that, I think, is ill advised. We already have a problem with lack of competition. And if those newspapers, by the way, which we declare to be a declining business—we're not demanding two-and-a-half times the profits that most industries demand—they might actually reinvest in their news so that, for example, the *St. Pete Times,* whose circulation is growing considerably—many newspapers that actually reinvest in their newsrooms are finding that good journalism is good business. But, alas, the notion that it's a dying industry, and treating them as a cash cow, is contributing to the paucity of local news in many communities.

Senator FITZGERALD. Professor Baker?

Professor BAKER. National concentration is a problem in terms of power over the public sphere about national debates, issue agendas. But local concentration is an immediate problem of people getting inadequate nourishment of local democracy. And so, in some ways, that's the more pressing of the two, though both are important.

The policies of the government have been directed toward newspapers. And the Newspaper Preservation Act was an attempt to create more competition, to keep newspapers alive. It was a newspaper-directed regulatory policy that made an exception and treated them differently than antitrust laws do, generally.

Newspapers don't need to be a dying industry. In some countries—in Japan and the Scandinavian countries—partly due to government policy, the readership of newspapers is almost four times what it is in the United States.

The FCC rules could have an affect on this. Newspapers, as pointed out, when they invest in journalism may not maximize their profits, but they do get more readers. You can expand the readership of a local paper by having a better paper, but it's costly to do so, which is the reason why some corporate owners have decided they would rather have it be a dying industry, they'd rather cut their circulation.

If you allow consolidation, the likelihood of that type of judgment occurring more and more increases. There's also other effects—the cross-ownership of a broadcaster and a paper, the ownership of the television station and the one newspaper in a town, not only increases huge power; the tendency is for the reporters at the newspaper to have to take on new jobs, which, as was pointed out, means they can do less journalism, so you decrease the quality of the most important of the local news sources: the newspaper. At the same time, you reduce the overall expenditure of resources on journalism when you combine the broadcaster and the local newspaper.

So there are things to be done. There could be policies that were solely newspaper directed that would be perfectly constitutional and would make at least debatable sense. I've argued for some. But those aren't on the table at this point. But the things that FCC has—was doing was taking away regulations that made perfect sense in terms of maintaining both quality at the local level and competition at the local level.

Mr. THIERER. Senator, if I could make one quick point, building on your last argument about newspapers that—it is true that newspapers are in relative decline as an industry, but, by all the statistics the government currently collects, other forms of periodicals—whether they be weeklies, semiweeklies, various types of journals, magazines, newsletters—are all increasing; and, in some cases, increasing quite rapidly. In fact, I know in many communities you go home, and it's not just the local big newspaper you get, you sometimes get a free weekly reader sometimes. I get the *McLean Herald* out in my subdivision. So there are other forms of news and information, printed information, that are competing with newspapers; not keeping them traditionally to be just monopolies, but maybe quasi-monopolies. But the better news is, of course, you can go to other communities and find news now on the Internet, and download other types of information. Not all of it's going to be about your local community, but, again, some of that is being driven by a natural organic shift in our society away from local news toward national sources. I'm not sure what's made that happen. I don't know how the *USA Today* went from nothing in 1982 to the world's most popular paper today. I don't read it, I don't like it; it just happened. But that's the reality. Forty-nine percent of *The New York Times* delivery is now out-of-market to the doorstep or to business.

Professor OVERHOLSER. That happened on the backs of once-great newspapers, like the *Des Moines Register,* also owned by the Ganette Company.

[Laughter.]

The CHAIRMAN. I thank the witnesses. This has been helpful. I think it's an issue, as I mentioned in my remarks to Mr. Compaine, that has a great deal of interest around America, far more than many of us had expected when we took up this issue, because some of the aspects of it are rather arcane.

I remain concerned about continued consolidation. I think that radio is the miner's canary. And yet I am also confident that the National Association of Broadcasters, who refuse to allow even low-power FM stations to come into being—I'd be interested, sometime, in your views on that, Mr. Thierer—the blocking by the National Association of Broadcasters of low-power FM stations will probably prevail here again. But we won't give up the fight, because sooner or later people are going to be very disturbed at the situation as it is evolving, which, as I said, I think the 1,200—going from a hundred-and-some stations to 1,200 stations in just a few years is ample evidence of what can happen in other aspects of the media.

I thank the witnesses for being here today, and I thank you for your input. And you've contributed, and I appreciate you taking the time and effort to prepare your statements, present them, and respond to our questions—in your case, Mr. Thierer, insults, as we——

Mr. THIERER. I'm used to it.

[Laughter.]

The CHAIRMAN. So we look forward to continuing this debate. You've all contributed, and I appreciate it very much.

This hearing is adjourned.

[Whereupon, at 11 a.m., the hearing was adjourned.]

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