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COMMENTS OF THE CONSUMER FEDERATION OF AMERICA AND CONSUMERS UNION

COMMENTING ORGANIZATIONS

The Consumer Federation of America (CFA) is a non-profit association of some 280 pro-consumer groups, with a combined membership of 50 million. It was founded in 1968 to advance the consumer interest through advocacy and education.

Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 4 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

ISSUES BEFORE THE COMMISSION

The Commission concludes the introduction to the Notice of Inquiry in this proceeding with the following observation: "Given the importance of localism, we... seek comment on whether market forces will provide enough incentive for a broadcast station to

satisfy a particular policy goal, or whether regulation is needed.”¹ This suggests that policies to promote localism and diversity in the broadcast media stand on the following two pillars:

- First, the broadcast media play an extremely important role in our political dialogue.
- Second, economic incentives and market forces are inadequate to ensure the production of content.

In a sense these two pillars represent the most important factors on the demand side and the supply side of the marketplace of ideas.

- What does society need from the media to ensure vibrant democratic discourse?
- What can society produce, through the operation of market forces?

As the Commission frames the issue, if the gap between what society needs and what society gets from the commercial mass media is sufficiently large, public policy must step in. We show in these two papers that this gap is severe.

As initial comments in this proceeding we submit two studies that deal with the two elements of the above statement.

In the first paper, entitled *Television and Political Discourse* (Attachment A), we demonstrate the immensely important role that television plays in the political process, both as a source of news and information for the public and as the dominant medium for influencing public opinion in the political process. We show that the pressures or commercialism in the media damage journalism and democratic discourse.

In the second paper, entitled *Media Markets Failures in Providing Diversity and Localism* (Attachment B), we demonstrate that the assumption made by the Commission two

¹ “Notice of Inquiry,” *In the Matter of Broadcast Localism*, MB Docket No. 04-233, July 1, 2004, para. 7.

decades ago “that market forces in an increasingly competitive environment, would encourage broadcasters to accomplish this goal,² is wrong.

MEDIA POLICY IS NOT JUST ABOUT ECONOMICS

At the outset, however, it is important to recognize that the Commission’s framing of the issue misrepresents the fundamental nature of the problem. Simply put, the needs of citizens cannot be reduced to the needs of consumers. Sunstein’s observations with respect to the Internet apply to all media. “We should evaluate new communications technologies, including the Internet, by asking how they affect us as citizens, not mostly, and certainly not only, by asking how they affect us as consumers.”³ Competition and economics in the commercial market may help to meet both sets of needs – needs as consumers *and* citizens. But, when the two come into conflict, citizens’ needs for democratic discourse should take precedence over the commercial marketplace of the mass media.⁴ The goal of media policy should be to promote a vigorous forum for democratic discourse.

We prefer to call it the “forum for democratic discourse” rather than the “marketplace of ideas,” because the marketplace metaphor is far too commercial. While the basic concept underlying the marketplace of ideas is sound - ideas competing for attention and support in an open public arena - the picture of a marketplace fails to capture the fundamental qualitative difference between the nature of action and interaction in the commercial marketplace and the forum for democratic discourse. The objective of the commercial marketplace is to exchange goods and services to improve efficiency and produce profit. The objective of the forum for

² Id.

³ Sunstein, Cass, *Republic.com* (Princeton: Princeton University Press, 2001), p. 106.

⁴ Id, p. 122.

democratic discourse is to promote a “robust exchange of views”⁵ that produces “participation, understanding and truth.”⁶

Consistent with this view, the origin of broadcast regulation does not rest on market failure. It rests on the need to promote vibrant democratic discourse and flows from a compromise between the free speech rights of citizens and the need to manage interference in the public airwaves. The primary goal of public policy should be to promote the widest possible empowerment of speakers, which has little to do with the economics of the commercial mass media.

FAILURE OF DEREGULATION TO PRODUCE ADEQUATE LOCALISM AND DIVERSITY IN THE MEDIA

Even within the unnecessarily narrow framework that the Commission sets, however, the attached studies show that the experiment in deregulation has failed to meet society’s needs.

When information and advertising are considered together, television is the most important medium of communications for purpose of elections. It is a close second to newspapers as a source of information, and in influence over public opinion, but it is far and away the dominant medium for political advertising.

Deregulation has failed to create unconcentrated, competitive television broadcast markets. A handful of entities still dominate the dial when it comes to news and information. Although there has been a slight improvement over the past two decades, measured by audience, local television markets are concentrated. Nationwide, the number of owners of local TV stations has declined by one-third, since deregulation began. The number of

⁵ *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (DC Cir. 2002)

⁶ *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

broadcast newsrooms has been flat, or declined slightly. The empirical evidence shows that minorities are systematically underserved. Owners of media outlets have sought to use their media outlets to influence the political process and owners have engaged in censorial behavior to influence public opinion.

Over that same period, the population that the media serves has grown in size and diversity. Counting the number of outlets without reference to the population they serve or the issues they must deal with ignores the needs of the citizenry for information. It also ignores the growing mismatch between the huge corporate conglomerates that produce and distribute news and the individual citizen.

Although it is certainly true that educated citizens today have access to much more information available than they did twenty-five years ago, it is also true that they need more information. The population has grown in size and diversity. Mobility, globalization of the economy, internationalization of communications, and social fragmentation place greater demands on the communications network to enable citizens to be informed about increasingly complex issues, to express their opinions more effectively in civic discourse and to remain connected to their communities.

The broad parameters of change in American society over the past three decades are so profound that we can safely conclude that a much more diverse set of media institutions and outlets is needed to disseminate information. We focus on the past three decades because many of the rules governing the structure of media ownership were adopted in the early 1970s. For the purposes of this analysis, we start with the household as the consumption unit. TV markets are defined in terms of households. The bulk of newspaper distribution is home delivery.

The number of households has increased by 67 percent in the past two decades.⁷ This is twice as fast as the increase in the population. This reflects a dramatic change in the composition of households units. The number of married families has declined, while single parent households have increased sharply.

At the same time, there has been a dramatic change in the racial and ethnic make-up of the population. The share of Hispanics and Asian/Pacific Islanders has doubled. Combining these two trends produces a stunning increase in the diversity of the population.

While the population has become increasingly diverse, it has been drawn more tightly into a more complex world.⁸ In 1970, exports and imports equaled about eight percent of gross national product. In 2000, the figure was twenty percent. Global financial markets, in which the U.S. is the leading actor, have grown dramatically. In 1970, the goods and services produced by the U. S. economy equaled about fifteen percent of global financial transactions. By 2000, they equaled only two percent.

The most dramatic changes can be seen in the movement of people. In 1970, two percent of the American population traveled abroad. By 2000, that number had grown tenfold to equal twenty percent of the population. Similarly, foreigners traveling to the U.S. equaled two percent of the population in 1970. By 2000, it had increased to equal sixteen percent of the population. Foreign born, non-citizens resident in the U.S. equaled five percent of the population in 1970. Today they equal ten percent and their racial and ethnic make-up has changed dramatically. In 1970, they were predominantly Europeans. Today they are predominantly Hispanics and Asians.

⁷ U.S. Bureau of the Census, *Statistical Abstract of the United States: 2001* (U.S. Department of Commerce, 2001), Table 50. *Statistical Abstract of the United States: 1986*, p. 35.

⁸ U.S. Bureau of the Census, *Statistical Abstract of the United States: 2001* (U.S. Department of Commerce, 2001), Table 1, 647, 1258, 1259, 1297; *Statistical Abstract of the United States: 1986*, p. 406, 407.

DIRECTIONS FOR PUBLIC POLICY

The failure of the commercial mass media to fulfill society's needs for "the widest possible dissemination of information from diverse and antagonistic sources," particularly as it applies to local issues is so severe that the Commission should aggressively pursue three primary thrusts of public policy. We need a critical mass and mix of independent outlets – local/national, commercial/noncommercial, professional/partisan – to ensure the media's role in democratic discourse, but there is no simple formula.

With respect to the commercial broadcast media, public policy should prevent further consolidation. Media markets are already too concentrated. To prevent the abuse of market power, the rules that ensure fairness during election campaigns should be strengthened. Broadcasters have shown their willingness to use their powerful electronic voices to influence elections, but citizens overwhelmingly demand fairness in gaining access to the airwaves. To capitalize on the reach of commercial media in promoting civic discourse, public policy can also strengthen the obligations and incentives to air public interest programming.

Institutional independence and diversity should be promoted. Institutional diversity involves not only different points of view, but also more importantly different structures of media presentation – different business models, journalistic culture and tradition. It supports the special expertise and culture of certain media, such as the newspaper tradition of in-depth investigative journalism. The quality of investigative reporting and the accessibility of different types of institutions to leaders and the public are promoted by institutional diversity. The more numerous the independent outlets, the more likely they are to pursue investigative journalism and to be local, but that is not uniformly so.

One of the key aspects of institutional diversity is to promote noncommercial media. The airwaves have been dominated by commercial interests since their initial exploitation as a means of communications, but the possibility exists for both professional and partisan interests to have a space in the spectrum. Non-commercial alternatives can play a large role in adding diversity and to democratic discourse.

A much wider distribution of citizens' right to broadcast through unlicensed use of the airwaves is technologically possible and should be promoted. Similarly, enhanced noncommercial access to the airwaves, because technology has increased the available capacity, is also a higher goal than merely promoting commercial operations, no matter how efficient they are.

**ATTACHMENT A:
TELEVISION AND POLITICAL DISCOURSE:
USAGE PATTERNS, SOCIAL PROCESSES AND PUBLIC SUPPORT
FOR BROADCASTER RESPONSIBILITIES TO
PROMOTE LOCALISM AND DIVERSITY**

INTRODUCTION

One of the most important reasons that localism and diversity should remain critical focal points of broadcast media policy is the immense political and social-psychological impact that television has, particularly on elections. There are at least three aspects to the immense impact of television on the political process that contribute to a strong basis for policies to promote localism and diversity.

- Citizens rely on television for news and information.
- Television influences citizens' perception particularly when politicians rely on television to influence citizens.
- There is also a growing consensus that television fundamentally affects the process of democratic discourse.

Our comments in the media ownership proceedings have shown that the social scientific literature supports these three observations strongly.¹ This paper reports on survey research conducted by the Consumer Federation of America and Consumers Union that confirms the findings of the social science literature.

CITIZEN USE OF THE MEDIA USE OF THE MEDIA

In January of 2004, a national random sample survey was conducted to assess the relative importance of media sources for news and information about national and local

¹ See Comments of Consumers Union, Consumer Federation of America, Civil Rights Forum, Center for Digital Democracy, Leadership Conference on Civil Rights and Media Access Project, "In the Matter of Cross-Ownership of Broadcast Stations and Newspapers; Newspaper-Radio Cross-Ownership Waiver Policy: Order and Notice of Proposed Rulemaking, MM Docket No. 01-235, 96-197, December 3, 2001; Reply Comments of Consumers Union, Consumer Federation of America, Civil Rights Forum, Media Access Project, Center for Digital Democracy, and Civil Rights Forum," *In the Matter of Cross-Ownership of Broadcast Stations and Newspapers; Newspaper-Radio Cross-Ownership Waiver Policy: Order and Notice of Proposed Rulemaking*, MM Docket No. 01-235, 96-197, February 15, 2002, , pp. 58-59, 79-82; see also Cooper, Mark, *Media Ownership and Democracy in the Digital Information Age* (Palo Alto: Center for Internet and Society, 2004).

events.² The survey was designed in part to address a critical methodological flaw in the FCC's analysis of media sources³ which was based on conducted as one of the Media Ownership Working Group (MOWG) projects.⁴ Ultimately, the Third Circuit Appeals Court stayed and remanded the FCC's proposed rules in part because of the mishandling of the assessment of media influence.⁵ A brief discussion of the background of this controversy helps to frame the critical issue of the importance of media outlets as sources of news and information.

In establishing new standards for when a local broadcaster may own newspapers in a community, the FCC highlighted the need to understand what media people actually use the most to obtain local news and information,⁶ to ensure that its rules accurately reflect the influence of each medium in local markets.⁷ Unfortunately, the Commission never conducted or found a survey that asked the most important question it claimed to care about: which media people *rely on most* for local news and information. This unfortunate lack of data was a correctible error. The FCC could have asked the proper question by commissioning another

² The survey instrument was administered by Opinion Research Corporation as part of their Caravan Survey, which consisted of a national sample of 1011 respondents.

³ Cooper, Mark [Abracadabra! Hocus Pocus! Making Media Market Power Disappear with the FCC's Diversity Index](#) (Washington, D.C.: Consumer Federation of America, Consumers Union, July 21, 2003).

⁴ Nielsen Media Research, *Consumer Survey on Media Usage* (Washington, D.C.: Federal Communications Commission, September 2002), Media Ownership Working Group Study 8.

⁵ *Prometheus Radio Project v. FCC*, 373 F.3d 372, 402 (3d Cir. 2004).

⁶ "Although all content in visual and aural media have the potential to express viewpoints, we find that viewpoint diversity is most easily measured through news and public affairs programming. Not only is news programming more easily measured than other types of content containing viewpoints, but it relates most directly to the Commission's core policy objective of facilitating robust democratic discourse in the media. Accordingly, we have sought in this proceeding to measure how certain ownership structures affect news output." *FCC Report and Order, 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, Docket No. 02-277* (hereafter *FCC Ownership Rules Order*, at ¶32.

⁷ "We have concluded that various media are substitutes in providing viewpoint diversity, but we have no reason to believe that all media are of equal importance. Indeed the responses to the survey make it clear that some media are more important than others, suggesting a need to assign relative weights to the various media," *FCC Ownership Rules Order*, at ¶409.

survey. Although it chose not to do so, we were able to correct this and other major errors in the FCC's survey approach to media weights by conducting our own survey.⁸

The Right Questions and the Right Way to Ask Them

In its effort to identify the most important sources of news, the FCC asked a question that combined both national and local news: "What single source do you use most often for local or national news and current affairs?" This, of course, destroys the possibility of using this question to specifically assess the importance of local media. Therefore, the FCC fell back on a much weaker question about local sources of news: "What source, if any, have you used in the past 7 days for local news and current affairs?"⁹ Obviously, this question doesn't necessarily tell anything about what people use or rely upon the most for local news and information.

We corrected this problem in our survey. We used the identical wording of the FCC, but we asked separate questions about national and local sources of news. To distinguish the national from local object of the question, we gave examples. Furthermore, because the criticism of the FCC approach stems in part from reliance on a "weak" question about the frequency of use that failed to directly address the importance of sources, we asked a second question about each source that was intended to get at the importance of the sources in determining public opinion.¹⁰ In order to accommodate multiple sources of information, we

⁸ More technical and detailed discussions of the survey flaws addressed in this paper as well as other technical flaws in the FCC approach can be found in Cooper, *Media Ownership*, Chapters 7 and 8.

⁹ The FCC also asked the question in an unbalanced manner. That is, it directly asked all the respondents who mention a given media in response to the first question, whether they had gotten any news from each of the other sources. The fewer the respondents who gave a medium in response to the first question, the greater the number who were directly prompted about it on the second round. The FCC then gave equal weights to the first and second responses. This has the effect of artificially increasing the weight of the lesser sources (since more people are prompted) especially when the question is about weak exposure to a source.

¹⁰ It is worth noting that this is the underlying impetus to public policy concerns about ownership, as the D.C. Circuit Court of Appeals noted in *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (DC Cir. 2002),

adopted the approach used by the Pew Research Center for People and the Press.¹¹ The Interviewer reads the same list of potential sources twice:

Now thinking about national issues, like the Presidential election or the war in Iraq, what single source do you use most often for news and information?

And what do you use second most often?

Which single source is most important in determining your opinion about national issues?

And what source is second most important?

Now thinking about local issues, like the a city council election or school, police and fire department services, what single source do you use most often for news and information?

And what do you use second most often?

Which single source is most important in determining your opinion about local issues?

And what source is second most important?

Sources of Local News Differ Dramatically from Sources of National News

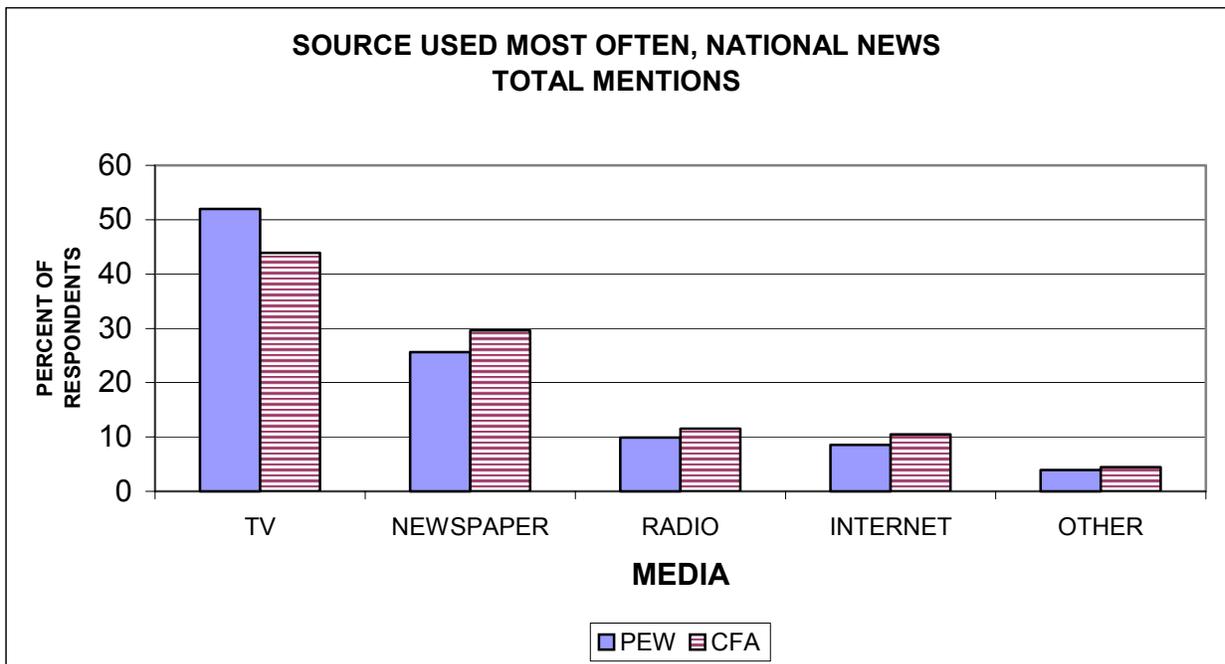
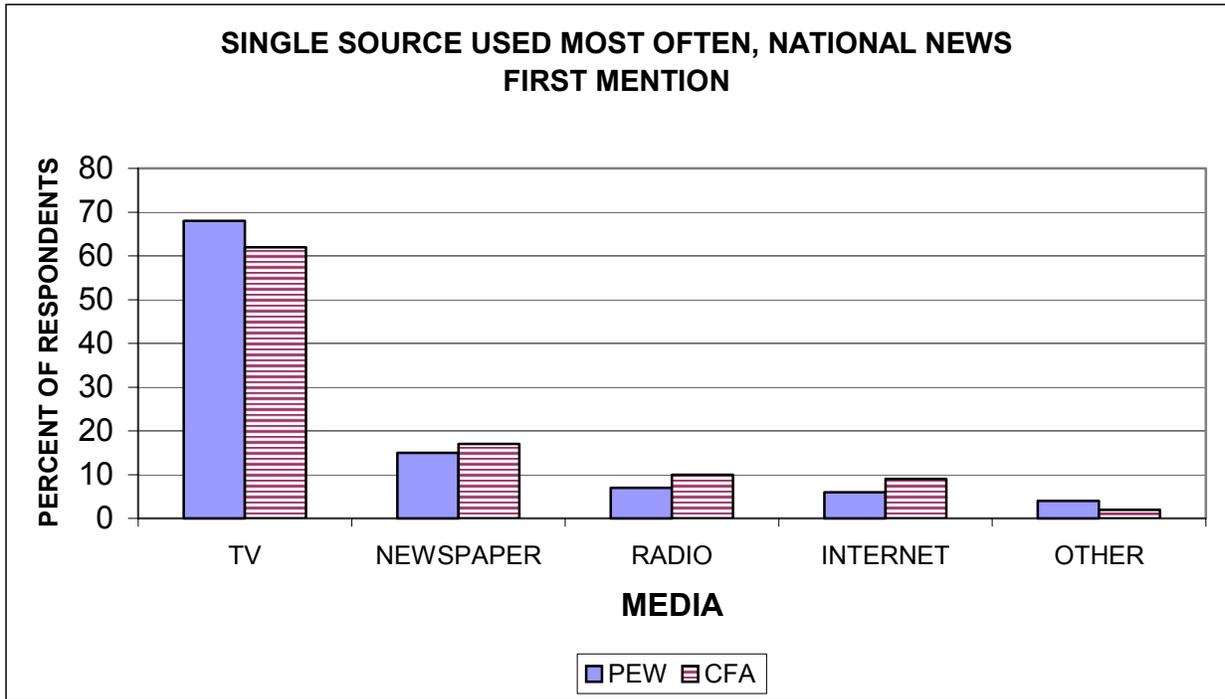
To begin the analysis, we compare our wording and approach to asking people about their most frequent sources of news and information to the Dec. 19, 2003 – Jan. 4, 2004 survey results obtained by The Pew Research Center for The People & The Press.

The results for both the first mentions and the total mentions are very similar. For national news, television dominates in both surveys, getting the first mention over 60% of the time (see Exhibit 1). Newspapers are next, with first mentions in the mid teens. Radio and the Internet are around 10% or slightly less.

“the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level.” First Amendment jurisprudence is driven by the recognition that ownership of media outlets can translate into the ability to affect public opinion on the regional level and diversity of ownership reduces the possibility of ‘inordinate ‘ influence.

¹¹ “Perception of Partisan Bias Seen as Growing—Especially by Democrats” Pew survey (released Jan. 11, 2004), go to <http://people-press.org/reports/display.php3?ReportID=200>

Exhibit 1: National Sources of News – CFA Compared to Pew

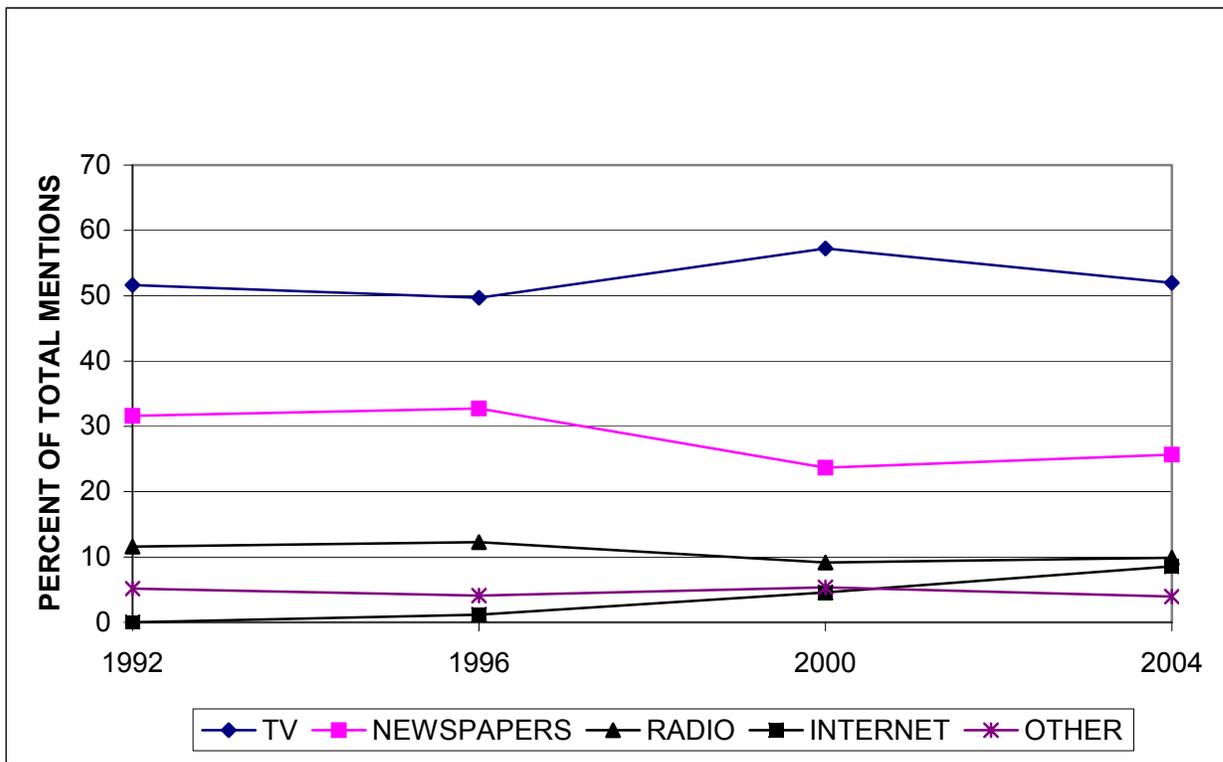


Source: Source: Consumer Federation of America/Consumers Union Poll, January 2004; The Pew Research Center For The People & The Press, *Cable and Internet Loom Large in Fragmented Political News Universe*, January 11, 2003.

In both surveys, newspapers move up as a percentage of total mentions, to the mid-twenties, while TV declines to around or slightly below 50%. Throughout this analysis, whenever we show the sum of first and second mentions, we present them as a percentage of the total mentions. This is essentially what the FCC did by creating an index that summed to 100%. Radio and the Internet remain at around 10%.

In fact, these national results have been quite stable for over a decade (see Exhibit 2). Over the course of the past dozen years, the Internet appears to have reduced newspapers, radio and other sources by a few percentage points.

Exhibit 2: Trends of Most Used Media: Early in Presidential Election Years



Source: Sources: Graber, Doris A., *Processing Politics: Learning from Television in the Internet Age* (Chicago: University of Chicago Press, 2001), p. 3; Nielsen, *Consumer Survey on Media Usage* (Federal Communications Commission, Media Ownership Working Group, September 2002). The Pew Research Center For The People & The Press, *Cable and Internet Loom Large in Fragmented Political News Universe*, January 11, 2003; Source: Consumer Federation of America/Consumers Union Poll, January 2004; The Pew Research Center For The People & The Press, *Cable and Internet Loom Large in Fragmented Political News Universe*, January 11, 2003.

However, a careful analysis of major sources for local news and information tells a very different story. Our survey shows that the difference between sources of national and local news is quite dramatic and consistent with widely recognized patterns of media usage (see Exhibit 3).

Exhibit 3: Frequency of Use and Importance of Sources of Local and National News and Information

	FIRST MENTION		TOTAL MENTIONS	
	Local	National	Local	National
MOST OFTEN USED				
Dailies	35	14	30	21
Weeklies	22	3	20	6
Broadcast	21	27	24	23
Cable	6	35	9	25
Internet	2	10	4	12
Radio	7	9	13	11
Magazines	0	1	0	2
MOST IMPORTANT				
Dailies	34	16	29	22
Weeklies	18	3	17	6
Broadcast	21	24	24	20
Cable	6	30	10	23
Internet	3	10	5	9
Radio	8	9	14	10
Magazines	0	2	0	1

Source: Consumer Federation of America/Consumers Union Survey, Poll, January 2004.

Newspapers are a much more important source of local news. Local newspapers are the first mentions of 57% of the respondents compared to only 15% for national news.

Television drops from 62% (for national news) to 27% (for local news). Note, however, that

broadcast television remains quite important. The Internet drops from 10% (for national news) to 2% (for local news). Radio is constant at just under 10% for both national and local news.

For total mentions we found the same pattern. Newspapers are much more frequently mentioned for local news, TV and the Internet less so. Broadcast TV is cited at roughly the same level for both local and national news. Radio is relatively constant.

The results for the responses to the question asking about “the most important news source” track the results for the responses to “the most often used news source” quite closely. For national news, TV is most frequently cited, followed by newspapers, radio and the Internet. Note that television is somewhat less likely to be cited as important (54% of first mentions) than most used (62% of first mentions). For local news, the pattern of first mentions is almost identical to that for most used. Broadcast television is the second most often cited source on influence. It is relative constant across local and national.

The ability of respondents to distinguish between different media for different types of news is reinforced by their nuanced responses to the television question. Our survey question distinguished between cable and broadcast as a source of news. The FCC acknowledged that it had problems with the responses to these questions on its survey instrument, noting that “[a]lthough the responses to one survey question in MOWG [Media Ownership Working Group] study No. 8 suggests that cable is a significant source of local news and current affairs, other data from the study casts some doubt on this result... Our experience suggests that the local cable news response is too high.”¹²

¹² FCC *Ownership Rules Order* at para 413-414.

Our questions, which give respondents concrete referents for local and national types of events, solve this problem. Approximately 35% of respondents gave cable as their first mention for national news, but only 6% gave it as their first mention for local news. In contrast, broadcast TV was given as the first mention for national news by 27% of the respondents and 21% mentioned it first for local news. This is consistent with the evidence in the FCC's media ownership record that cable does not provide a significant independent source of local news, while broadcast is a very significant source of local news.

The cable/broadcast difference is critical for understanding the role of the media in civic discourse. Repeated claims about the abundance of programming available affected the framework in which media ownership rules were written by the FCC. Our survey shows that the FCC's references to an abundance of national entertainment channels – “hundreds of choices” – are largely irrelevant to the Commission's central obligation to promote diversity and competition in local sources of information.

PUBLIC SUPPORT FOR RESPONSIBLE BROADCASTER BEHAVIOR AND PUBLIC INTEREST OBLIGATIONS

Given the important role of television, we should not be surprised to find that citizens believe it has special responsibilities to inform and advance democratic discourse. Exhibit 4 shows responses to two surveys conducted over the past two years that dealt with various aspects the public responsibilities of broadcasters.

Exhibit 4: Responsibilities of Broadcasters

	Level of Agreement			
	Strong very, complete	Somewhat		
Public Interest Obligations				
<i>TV broadcasters have the responsibility to act in the Public's interest in their programming decisions</i>	51	39		
Create a public or community trust fund to support Public programs	36	43		
Types of programming				
<i>Produce or air programs that cover local news</i>	81	17		
Report on local news and events	68	25		
<i>Produce or air programs that reflect the ethnic & cultural Make-up of your community</i>	36	41		
Produce or air programs that reflect the ethnic & cultural Make-up of your community	35	42		
Produce public affairs programs that discuss local issues	43	43		
Airing Candidates				
<i>Provide equal time to both candidates</i>	69	23		
<i>Inappropriate to air a program that is critical of one candidate without providing an equal opportunity to present an opposing point of view.</i>	43	27		
Attitudes about Sinclair airing "Stolen Honor"				
	Yes	No		
<i>Aware of Sinclair's plan to air "Stolen Honor"</i>	41	59		
	All Respondents		Aware only	
	Yes	No	Yes	No
<i>Support airing "Stolen Honor"</i>	36	31	51	41
<i>Should air opposite point of view</i>	71	10	78	14

Source: Consumer Federation of America, *Media Policy Goals Survey*, September 2002, Consumers Union and Consumer Federation of America, *Fairness in Media Survey*, October 21, 2004.

The earlier survey was a national random sample telephone survey.¹³ The more recent survey was a random sample online survey. It was conducted as a rapid response to the controversy over Sinclair's plans to preempt network programming and broadcast "Stolen Honor."¹⁴ However, respondents were asked general questions before the topic of "Stolen Honor" was introduced. Although 41% of the respondents were aware of Sinclair's plans, there was no difference between those aware and unaware in the responses to the general questions.

Although wording varied between the two surveys and different aspect of the public interest obligations of broadcasters were addressed, there was generally widespread support for public responsibilities for broadcasters.

Ninety percent of respondents (51% strongly) believe broadcasters should act in the public interest in their programming decisions. Seventy-nine percent of respondents (43% strongly) support creating a public or community trust fund to support public programming. There are similarly high levels of support for covering local news (over 90%) and programming that reflects the cultural and ethnic diversity of the community (over three-quarters). Eighty-six percent (43% strongly) support airing public affairs programs that discuss local issues.

Respondents express strong support for giving candidates equal time (92% overall, 69% strongly). They feel it would be inappropriate to air a show that is critical of a candidate without providing an equal opportunity to respond (70% overall, 43% strongly).

¹³ Consumer Federation of America, *Media Policy Goals Survey*, September 2002.

¹⁴ Consumers Union and Consumer Federation of America, *Fairness in Media Survey*, October 21, 2004.

The public was divided over whether Sinclair should air “Stolen Honor” but united in feeling that if it did air the show, it should air the opposite point of view as well. Over three-quarters of those aware of the show support the airing of the opposite point of view. Over 90 percent of those who said the show should not be aired said that if it was aired, the opposite point of view should be aired as well.

THE DOMINANT ROLE OF TELEVISION

The importance of TV rests on more than its role as a source of information. TV has come to dominate mass media in political discourse,¹⁵ by influencing on attitudes and behaviors,¹⁶ especially in election campaigns. Television and radio have long been recognized as occupying different product spaces¹⁷ although radio’s role may be changing.¹⁸ Generally, radio is seen as having less of an impact than television.¹⁹ However, the difference

¹⁵ Albarran, Alan B. and John W. Dimmick, “An Assessment of Utility and Competitive Superiority of in the Video Entertainment Industries,” *Journal of Media Economics*, 1993 (6); Bennett, W. Lance, Regina G. Lawrence, “News Icons and the Mainstreaming of Social Change,” *Journal of Communication*, 1995 (45); McLeod, Douglas M., “Communicating Deviance: The Effects of Television News Coverage of Social Protests,” *Journal of Broadcasting & Electronic Media*, 1995 (39); Dimmick, John, B. “The Theory of the Niche and Spending on Mass Media: The Case of the Video Revolution,” *Journal of Media Economics*, 1997 (10); Sparks, Glenn G., Marianne Pellechia, Chris Irvine, “Does Television News About UFOs Affect Viewers’ UFO Beliefs?: An Experimental Investigation,” *Communication Quarterly*, 1998 (46); Walma Van Der Molen, Juliette H., Tom H. A. Van Der Voort, “The Impact of Television, Print, and Audio on Children’s Recall of the News,” *Human Communication Research*, 2001 (26).

¹⁶ Wilkins, Karin Gwinn, “The Role of Media in Public Disengagement from Political Life,” *Journal of Broadcasting & Electronic Media*, 2000 (44).

¹⁷ Clarke, Pere and Eric Fredin, “Newspapers, Television and Political Reasoning,” *Public Opinion Quarterly*, 1978 (summer); Robinson, John P. and Mark R. Levy, “New Media Use and the Informed Public: A 1990s Update,” *Journal of Communications*, 1996 (spring).

¹⁸ The role of radio talk shows is the new development. Johnson, Thomas J., Mahmoud A.M. Braima, Jayanthi Sothirajah, “Doing the Traditional Media Sidestep: Comparing Effects of the Internet and Other Nontraditional Media with Traditional Media in the 1996 Presidential Campaign,” *Journalism & Mass Communication Quarterly*, 1999 (76), find that nontraditional media do not have an impact on a variety of measures of knowledge and perceptions about the 1996 presidential campaign and to the extent they do, it was specifically radio talk shows, influencing views of Clinton negatively (see also Moy, Patricia, Michael Pfau, LeeAnn Kahlor, “Media Use and Public Confidence in Democratic Institutions,” *Journal of Broadcasting & Electronic Media*, 1999 (43)).

¹⁹ Berkowitz, D. and D. Pritchard, “Political Knowledge and Communication Resources,” *Journalism Quarterly*, 1989 (66); Chaffee, S. H. and X. Zhao and G. Leshner, “Political Knowledge and the Campaign Media of 1992,” *Communications Research*, 1994 (21); D Drew and D. Weaver, “Voter Learning in the 1988 Presidential Election: Did the Media Matter?” *Journalism Quarterly*, 1991 (68).

between TV and radio may be in the citizens' exposure to political advertising on TV, while radio talk shows have a different impact.²⁰ Broadcast does not compete effectively with newspapers in the news function.²¹

Framing and Agenda Setting

The broadcast media play a special role in influencing the agenda of public policy issues and the public's perception of those issues.²² The agenda setting and influence of perception that takes place during election campaigns frames issues.²³ For example, studies have shown that subtle race cues in campaign communications may activate racial attitudes,

²⁰ Johnson, Braima and Sothirajah, 2000, juxtapose the earlier finding of a lack of influence for radio with more recent findings that radio talk shows have an impact. See also, Johnson, Braima and Sothirajah, 1999, and Stamm, K., M Johnson and B. Martin, "Differences Among Newspapers, Television and Radio in their Contribution to Knowledge of the Contract with America," *Journalism and Mass Communications Quarterly*, 1997 (74).

²¹ Stepp, Carl Sessions, "Whatever Happened to Competition," *American Journalism Review* (June 2001). "Wasn't it television and radio that were going to kill newspapers? "I don't really consider them competition in that old-school way," stresses Florida Sun-Sentinel editor Earl Maucker. "They reach a different kind of audience with a different kind of news... Publisher Gremillion, a former TV executive himself, seconds the point, "I don't believe people are watching TV as a substitute for reading the newspaper..." ...Many newspapers are increasingly writing off local TV news as a serious threat, treating local stations instead as potential partners who can help spread the newspapers' brand name to new and bigger audiences."

²² Kim, Sei-Hill, Dietram A. Scheufele and James Shanahan, "Think About It This Way: Attribute Agenda Setting Function of the Press and the Public's Evaluation of a Local Issue," *Journalism and Mass Communications Quarterly*, 79, 2002, p. 7.; Chaffee, Steven and Stacy Frank, "How Americans Get Their Political Information: Print versus Broadcast News," *The Annals of the American Academy of Political and Social Science*, 546, 1996; Jack M. McLeod, Dietram A. Scheufele, and Patricia Moy, "Community, Communications, and Participation: The Role of Mass Media and Interpersonal Discussion in Local Political Participation," *Political Communication*, 16, 1999; Dietram A. Scheufele, "Agenda-setting, Priming and Framing Revisited: Another Look at Cognitive Effects of Political Communications," *Mass Communications & Society*, 3 (2000) and Maxwell Macomb's and Donald L. Shaw, "The Agenda-Setting Function of Mass Media," *Public Opinion quarterly*, 36, 1972.

²³ Valentino, Nicholas A., Vincent L. Hutchings and Ismail K. White, "Cues that Matter: How Political Ads Prime Racial Issues During Campaigns," *American Political Science Review*, 96, 2002, p. 75; Edsall, Thomas B. and Mary D. and Edsall, *Chain Reaction: The Impact of Race, Rights and Taxes on American Politics* (Norton, New York: 1991); Jamieson, Kathleen Hall, *Dirty Politics: Deception, Distraction and Democracy*, (Oxford University Press, New York: 1992); Gillens, Martin, "Race Coding and White Opposition to Welfare," *American Political Science Review*, 90, 1996; Mendelberg, Tali, "Executing Hortons: Racial Crime in the 1988 Presidential Campaign," *Public Opinion Quarterly*, 61, 1997, *The Race Card: campaign Strategy, Implicit Messages and the Norms of Equality* (Princeton University Press, Princeton: 2001); Valentino, Nicholas A. "Crime News and the Priming of Racial Attitudes During the Evaluation of the President," *Public Opinion Quarterly*, 63, 1999.

thereby altering the foundations of mass political decision-making.²⁴ While race may be a particularly prominent case of influence over attitudes and agenda-setting, the media play a powerful role across a broad range of issues.²⁵

The importance of visual images in *priming* the audience has been affirmed, while the understanding of the mechanisms through which the effect operates grows.

Findings suggest that visual news images (a) influence people's information processing in ways that can be understood only by taking into account individual's predispositions and values, and (b) at the same time appear to have a particular ability to trigger consideration that spread through one's mental framework to other evaluations.²⁶

The special role of television in providing information and influencing elections is well-recognized. Research attention now focuses on how television affects election

²⁴ The references cited in support of this proposition include Mendelberg, 2001; Coltrane, Scott and Melinda Messineo, "The Perpetuation of Subtle Prejudice: Race and Gender Imagery in the 1990's Television Advertising," *Sex Roles*, 42, 1990; Entman, Robert M., and Andrew Rojecki, *The Black Image in the White Mind: Media and Race in America* (Chicago: University of Chicago Press, 2000); Gray, Herman, *Watching Race Television and the Struggle for Blackness* (Chicago: University of Chicago Press, 1995); Dixon, Travis, L. and Daniel Linz, "Overrepresentation and Underrepresentation of African Americans and Latinos as Lawbreakers on Television News," *Communications Research*, 50, 2000, ; Gilliam, Franklin D., Jr., and Shanto Iyengar, "Prime Suspects: The Influence of Local Television News on the Viewing Public," *American Journal of Political Science*, 44, 2000; Peffley, Mark, Todd Shields and Bruce Williams, "The Intersection of Race and Television," *Political Communications*, 13, 1996.

²⁵ Kim, Shefuele and Shanahan, p. 381. Graber, Doris, *Mass Media and American Politics* (Washington, D.C.: Congressional Quarterly, 1997); Paletz, David L., *The Media in American Politics: Contents and Consequences* (New York: Longman, 1999); Just, Marion, R., Ann N. Crigler, Dean F. Alger, Timothy E. Cook, Montague Kern, and Darrell M. West, *Crosstalk: Citizens, Candidates and the Media in a Presidential Campaign* (Chicago: University of Chicago Press, 1996); Kahn, Kim F. and Patrick J. Kenney, *The Spectacle of U.S. Senate Campaign* (Chicago: University of Chicago Press, 1999); Iyengar and Kinder, *News That Matters* (Chicago, University of Illinois Press, 1987); McCombs, Maxwell E. and Donald Shaw, "The Agenda-setting Function of the Mass Media," *Public Opinion Quarterly*, 36, 1972.

²⁶ Domke, David, David Perlmutter and Meg Spratt, "The Primes of Our Times? An Examination of the 'Power' of Visual Images," *Journalism*, 3, 2002, p. 131. The authors present a detailed social psychological and even neurological discussion of the reasons why and ways in which visual images have a greater impact, but the politically oriented research that they cite as consistent with their findings include Krosnick, J. A. and D. R. Kinder, "Altering the Foundation of Support for the President Through Priming," *American Political Science Review*, 84, 1990; Pan, Z. and G. M. Kosicki, "Priming and Media Impact on the Evaluation the President's Performance," *Communications Research*, 24, 1997; Just, M. R., A. N. Crigler and W. R. Neuman, "Cognitive and Affective Dimensions of Political Conceptualization," in A. N. Crigler (ed.) *The Psychology of Political Communications* (Ann Arbor: University of Michigan Press, 1996); Iyengar and Kinder.

campaigns and public opinion. “[V]oters do learn about candidates and their position on issues (policy) from candidate advertising.”²⁷

Advertising

The impact of television is pervasive throughout all elections.²⁸ As one author puts it:

Television has become society’s primary source of information, and local television news is more likely to be used by viewers than national news broadcasts. Therefore, how such election news is relayed on local television is increasingly important in our political system.

Candidates and campaign consultants believe that television advertising is pivotal to winning a state-level campaign...

Research confirms; that television spots influence election outcomes at all levels.²⁹

The impact of television is not only limited to news coverage, but also, and perhaps even more importantly, applies to advertising and the interaction between advertising and news. TV in general, and network TV in particular, has become the premier vehicle for political advertising. The differential impact of television advertising is clear.

Clearly, television is a unique communications medium unlike any other, including print, radio, and traditional public address. Unlike most other media, television incorporates a significant nonverbal component, which not only serve to suppress the importance of content but also requires little deliberative message processing...

²⁷ Hansen, Glenn, J. and William Benoit, “Presidential Television Advertising and Public Policy Priorities, 1952–2002,” *Communications Studies*, 53, 2002, p. 285. The studies cited in support of this proposition include Patterson, T. E., and McClure, R. D., *The Unseeing Eye: The Myth of Television Power in National Politics* (New York: Putnam books, 1976); Kern, M., *30 Second Politics: Political Advertising in the Eighties* (New York: Praeger, 1988); Brians, C.L. and M. P. Wattenberg, “Campaigns Issue Knowledge and Salience: Comparing Reception for TV Commercials, TV News, and Newspapers,” *American Journal of Political Science*, 40, 1996.

²⁸ Brazeal, LeAnn M, and William L. Benoit, “A Functional Analysis of congressional Television Spots,” *Communications Quarterly*, 49, 2001, pp. 346-437.

²⁹ Cater, Fico and McCabe, p. 42.. In support of this statement the authors cite Joslyn, R., “the Impact of Campaign Spot Advertising Ads,” *Journalism Quarterly*, 7, 1981; Mulder, R., “The Effects of Televised Political Ads in the 1995 Chicago Mayoral Election,” *Journalism Quarterly*, 56, 1979; and Pfau, M., and H. C. Kenski, *Attack Politics* (New York: Praeger, 1990).

A number of empirical studies have concluded that reliance on information from television leads to less understanding of policy issues than newspapers. Studies also indicate that when people use television for political news, they emerge less informed than those of equal education and political interest who avoid the medium.³⁰

Certainly the huge amounts spent on TV advertising by candidates attests to its importance. The audience that is most susceptible to advertising and news coverage by this account is precisely the audience on which general elections focus – the undecided middle – thereby justifying the spending. Whereas candidates must focus on the committed, active party base in primaries, they must shift their attention to the less aware, less committed middle of the political spectrum to get elected.³¹

TELEVISION AND THE POLITICAL PROCESS

The News Production Cycle of Commercial Mass Media

There is yet a more fundamental manner in which television affects political dialogue. Many media critics across the political spectrum have argued that hypercommercialism combined with the expansion of media outlets deeply affects the news reporting process, particularly as it relates to politics. On the one hand, there are more television outlets needing

³⁰ Sinclair, Jon, R., “Reforming Television’s Role in American Political Campaigns: Rationale for the Elimination of Paid Political Advertisements,” *Communications and the Law*, March 1995.

³¹ Gwiasda, Gregory, W., “Network News Coverage of Campaign Advertisements: Media’s Ability to Reinforce Campaign Messages,” *American Politics Research*, 29, 2001, p. 461; Kaid, L. L., et al., “Television News and Presidential Campaigns: The Legitimation of Televised Political Advertising,” *Social Science Quarterly*, 74, 1993; Ansolahere, S and S. Iyengar, “Riding the Waive and Claiming Ownership Over Issues: The Joint Effect of Advertising and News Coverage in Campaigns,” *Public Opinion Quarterly*, 58, 1995, Lemert, et al., *News Verdicts, the Debates, and Presidential Campaigns* (New York: Praeger, 1991); Hansen and Benoit, pp. 284. While Zaller, J. R., *The Nature and Origins of Mass Opinion* (New York: Cambridge University Press, 1992) is cited as the origin of the hypothesis on effect, the author does note that Joslyn, M. and S. Cecolli, “Attentiveness to Television News and Opinion change in the fall of 1992 Election Campaign,” *Political Behavior*, 18, 1996, find that the most attentive are most influenced. Benoit, William L. and Glenn Hansen, “Issue Adaptation of Presidential Television Spots and Debates to Primary and General Audiences,” *Communications Research Reports*, 19, 2002.

to fill more space.³² On the other hand, they need to attract more viewers to be profitable. The media's schedule and perpetual news cycle become the driving force, emphasizing speed, simplicity and routinization.³³ The news production process is transformed.

The problems stem largely from the very nature of commercially supplied news in a big country. News organizations are responsible for supplying an always-new product to large numbers of people, regularly and on time. As a result, news must be mass-produced, virtually requiring an industrial process that takes place on a kind of assembly line.³⁴

The tight schedules and competition for attention put their stamp on the newsgathering and reporting process.³⁵ Reporting becomes highly condensed and selective.³⁶ Planned events and personalities are the easiest to cover. Short pieces require extreme simplification. Stories become stylized so they can be easily conveyed. Time pressures create a tendency to not only run quickly with a story but to uncritically pass through manufactured news.³⁷ Entertainment and aesthetic values dictate the nature of the picture and getting good video images becomes a critical need.³⁸ Staging gives the news the predictability it needs, but results in typecasting and posing.³⁹

Competition drives news outlets to seek blockbuster scoops and to play the big story more intensely and longer, to hold the larger audiences that have been attracted.⁴⁰ The search to find and maintain the audience's attention drives the media towards exaggeration and emotionalism at the expense of analysis.

³² Kovach, Bill and Tom Rosenstiel, *Warp Speed: America in the Age of Mixed Media* (New York: The Century Foundation Press, 1999).

³³ Gans, Herbert J., *Democracy and the News* (Oxford: Oxford University Press, 2003), p. 50; Kovach and Rosenstiel, p. 6.

³⁴ Gans, p. 49.

³⁵ Street, John, *Mass Media, Politics and Democracy* (New York: Palgrave, 2001), pp. 36-52.

³⁶ Graber, Doris, *Processing Politics* (Chicago: University of Chicago Press, 2001), p. 113-114.

³⁷ Kovach and Rosenstiel, p. 21, 44.

³⁸ Meyer, Thomas, *Media Democracy*. (Cambridge: Polity Press, 2002), p. 32-35.

³⁹ Meyer, p. 67; Graber, p. 112-114; Jones, Nicholas, *Soundbites and Spindoctors: How Politicians Manipulate the Media – and Visa Versa* (London: Cassel, 1995).

⁴⁰ Kovach and Rosenstiel, p. 7-8.

Four types of news are ideally suited to perform this function. Celebrity personalities become the centerpiece because of the easy point of focus on highly visible individuals.⁴¹ Scandal attracts audiences. The personal travails of prominent figures in titillating scandals are grist for the media mill, attracting attention without threatening the audience. This news may not be happy, but it fills the preference for happy news because it involves someone else's troubles of no direct relevance to public policy or the public's welfare. The horse race and hoopla – the game – are another easy way to frame the news and to produce constant updating of who is ahead.⁴² Who wins and who loses is much easier to portray than the complexity of what is at stake. Verbal duels⁴³ and loud, often one-sided, arguments find audiences more easily than reasoned, balanced debates.⁴⁴ Talk show pundits grab attention with extreme positions, usually negative attacks on targets that are not in the room to defend themselves.

The Impact on Journalism and Politics

Both journalism and politics suffer as a result of this process. Pressures to submit to heavy profit-maximizing strategies that foster financial gain at the expense of the journalistic values prevail. As a result, “There has been an enormous increase in expenditure on public relations by both government and business... these powerful institutions subsidize the cost of

⁴¹ Street, p. 47-49; Meyerowitz, J., *No Sense of Place: The Effect of Electronic Media on Social Behavior* (New York: Oxford, 1985).

⁴² Street, p. 47; Graber, p. 111-112; Gitlin, T., “Bits and Blips: Chunk News, Savvy Talk and the Bifurcation of American Politics,” in P. Dahlgren and C. Sparks (eds), *Communications and Citizenship: Journalism and the Public Sphere* (London: Routledge, 1991). p. 119-136.

⁴³ Meyer, p. 35; Kovach and Rosenstiel, p. Ch. 7; Street, p. 44)

⁴⁴ Barker, David, C., *Rushed to Judgment* (New York: Columbia University Press, 2002).

gathering and processing the news in order to influence positively the way they are reported.”⁴⁵

Politicians conform and cater to the demands of the media, while they leverage their ability to manipulate their public image. The politicians acquiesce in a Faustian bargain. “In exchange for their ‘tactical’ submission to the media rules, political actors gain a well-founded expectation that they will be invited to help shape the way the media portray them.”⁴⁶ Their interaction with the media becomes a form of extracted publicity and serves as photo-ops that place them in the most favorable theatrical light. Political entities submit to the media’s dictatorship over the depiction of parties and personalities, “in which both politics and the media recognize only images of themselves, thereby losing sight of the real world.”⁴⁷

Journalism degenerates into a dance⁴⁸ between reporters and political handlers in which the spinmeisters have the upper hand. Spinmeisters become gatekeepers who can punish or reward with access to politicians and who control the scheduling of events. They can stonewall some or give exclusives to others. As a result, “top-down news turns journalists into messengers of the very political, governmental, and other leaders who are... felt to be untrustworthy and unresponsive by significant numbers of poll respondents.”⁴⁹ The media produces a blend of news and free advertising for the candidates.⁵⁰ As with all advertising, the point may be to give a misimpression rather than convey accurate information. Hence,

⁴⁵ Levine, Peter, “Can the Internet Rescue Democracy? Toward an On-Line Commons,” in Ronald Hayuk and Kevin Mattson (eds.), *Democracy’s Moment: Reforming the American Political System for the 21st Century* (Lanham, ME: Rowman and Littlefield, 2002), p. 124.

⁴⁶ Meyer, p. 58.

⁴⁷ Meyer, p. 133; Gans, p. 47-48.

⁴⁸ Sparrow, Bartholomew H., 1999, *Uncertain Guardians: The News Media as A Political Institution* (Baltimore, Johns Hopkins), p. 28-38.

⁴⁹ Gans, p. 49.

⁵⁰ Meyer, p. 53; Dorner, A., *Politainment* (Frankfurt/Main: Surhkamp, 2001).

journalistic values are marred.⁵¹ Dependence on well-connected sources and pressures to get a story out first short-circuit the application of traditional standards of reporting. Discourse degenerates into a stream of stage-managed, entertainment-oriented, and issueless politics.⁵²

The watchdog function is short-circuited by close relationships.⁵³ This awards too much attention to too few political figures and views and sets the stage for politicians to manage their public identities through manipulation of the media's tendencies. Parties and ordinary group affiliations recede, as individuals and lead institutions become the center of attention.

The fashion in which stories are selected and the time-frame within which these stories are developed, in accordance with mass media's pursuit of big headlines and profits, have undercut politicians' ability to realize legitimate political agendas.⁵⁴ Instead, parties and political players shape their decisions and actions within the framework of how the media will present them.⁵⁵

Without an ongoing dialogue of the conditions that enable the reported events to take place, the public cannot adequately formulate opinions; hence, they cannot act or mobilize in an educated manner. Public involvement in policy formation suffers not only because of the shift in focus fostered by the media, but also because of the short-time frame demanded by the media. The recognition of the news as being reported 'outside of time' highlights the

⁵¹ Graber, p. 88.

⁵² Gans, p. 50-51.

⁵³ Curran, James, *Media and Power* (London: Routledge, 2002), p. 150.

⁵⁴ Street, p. 57-58, 83, 90.

⁵⁵ Gans, p. 83; Cook, Timothy E., *Governing with the New: The News Media as a Political Institution* (Chicago: University of Chicago Press, 1998).

troubling difference between the media's timeline and the timeline necessary for political agendas to be carried out.⁵⁶

The critical elements of responsibility, causality and connectedness between events are lost. "Abbreviating the time interval normally demanded by the political process down to what the media's production schedule permits means abridging the entire process by deleting the procedural components that qualify it as democratic."⁵⁷ Insisting that politicians' rush to get their views to their constituents before they can be swayed in an opposing direction further truncates debate.⁵⁸ The rapid-fire sequence of simple, emotional snapshots staged to increase popularity replaces discourse as the basis of politics.

CONCLUSION

This paper has examined three reasons that support public policy to promote localism and diversity in the broadcast media. There is a fourth reason that localism should be a primary focal point of media policy in America – our federalist political system makes government essentially a local matter.

In spite of three-quarters of a century of Congressional policy to promote localism in the broadcast media and Supreme Court acceptance of these policies, in the recent media ownership proceeding, the chief expert witness for the national broadcast networks declared localism to be an unjustified preoccupation of the Commission that lacks a coherent basis. In his words:

The Commission's preoccupation with localism is difficult to explain or justify. Why should the government seek to promote local content as opposed to, and especially at the expense of, any other category of ideas? Once can readily imagine categories of ideas more central to the political, social,

⁵⁶ Meyer, p. 24.

⁵⁷ Meyer, p. 106.

⁵⁸ Meyer, p. 104.

educational, aesthetic or spiritual lives of Americans. Further, to fasten on any category of ideas readily runs afoul of First Amendment values. In short, a focus on local content or local outlets appears to lack a coherent policy basis.⁵⁹

This statement is wrong on every count. To begin with, a policy of promoting localism does not run afoul of the First Amendment. The Supreme Court has rejected this claim repeatedly over the past seventy-five years. Second, given our federal system, local government is in fact our central political institution. Third, we define many of our social and aesthetic values in local terms. For example, local courts and juries decide a wide range of civil and criminal issues based on what are essentially community understandings of what a “reasonable man” would think or do, depending on local conditions. We take great pride and see great strength in the local grounding of our federal system.⁶⁰ Having vibrant local media outlets to promote good local government and strong social ties in local communities is an essential part of our democracy.

Political Process

No matter how strongly national and international issues affect our society or how prominent they become, there is much truth to the saying that all politics in America are local. This is because of the fundamental federal structure of our national government.

National elections are essentially local. The extreme concentration of the 2004 presidential election on so-called “battleground” states reminds us that we elect the president

⁵⁹ Bruce N. Owen, “Statement on Media Ownership Rules,” Attachment to *Comments of Fox Entertainment Group and Fox Television Stations, Inc., National Broadcasting Company, Inc. and Telemundo Group, Inc., and Viacom*, 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, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, MB Docket No. 02-277, MM Dockets 02-235, 01-317, 00-244, 2 January 2003, p. 10.

⁶⁰ Alexis de Tocqueville’s well known celebration of local associations started with “the permanent associations which are established by law under the names of townships, cities, and counties, a vast number of others are formed and maintained by the agency of private individuals,” cited in Ronald J. Terchek and Thomas C. Conte, Eds., *Theories of Democracy* (Lanham, MD: Rowan & Littlefield, 2001), cited in p. 27.

on a state-by-state basis. We elect senators on a state-wide basis and our representatives on the basis of small single-member districts.⁶¹ These are local races.

More importantly, we reserve a host of public policy decisions that are vital to the quality of life and the fabric of our society – police, emergency services, education, land-use, to name just a few – for local units of government. Only defense is solely national policy. Personal transfer payments – social and income security and welfare – are also largely federal, but even income security and welfare have many state and local variations. Three-quarters or more of spending on education, police and parks and recreation is accounted for by state and local governments, most of it at the local level. About two-thirds of all government spending on community development and natural resources are spent by state and local governments, equally divided between state and local.⁶²

Social Processes

A host of social processes are grounded in the local community. The primary referent for identity and community has traditionally been and remains significantly local.⁶³ A primary focus on political participation and mobilization captures the most critical aspect for media policy. There are both sociological and psychological reasons why local ties support participation.

⁶¹ Alexander Keyssar, *The Right to Vote* (New York: Basic Books, 2000).

⁶² U.S. Census Bureau, *Statistical Abstract of the United States: 2002* (Washington, D.C.: U.S. Department of Commerce, 2002), Tables 414-416, 453.

⁶³ Jeremy Rifkin, *The Age of Access* (New York, Jeremy P. Tarcher/Putnam, 2000), pp. 7-9. John Dewey, *The Public and its Problems* (Athens, Ohio: Swallow Press, 1954); Carmen Sirianni and Lewis Friedland, *Civic Innovation in America: Community Empowerment, Public Policy, and the Movement for Civic Renewal* (Berkeley: University of California Press, 2001), especially Chapter 5.

From a practical point of view, for example, getting out the vote thrives on local connections.⁶⁴ Knowledge of the local area and local individuals are vastly superior as resources for mobilizing participation. The sociability of the political participation – working together, voting together – provides social reinforcement, trust and psychological gratification.

Localism matters by design, not accident. The concern about localism is not a quaint yearning for a distant romantic past, it is the principle on which our democracy is founded. Thus, the legal, political and social bases of localism in our political system provide a strong basis for policies to promote localism. These are reinforced by the key role of local relations in culture and political participation and the paramount role of television in affecting political dialogue. The immense influence of television on political discourse underscores the need for diversity to promote multiple points of view.

The impact that the powerful commercial forces affecting television have on political discourse argues strongly for non-commercial space where a more thoughtful discourse can be conducted. Traditionally, that space has been created by obligations to air public interest programming or requirements to conditions that limit the purely commercial inclinations of broadcasters. This analysis suggests that although such policies serve the goal of promoting diversity and localism, because the forces of commercialism have become so strong in a deregulatory age, additional policies should be implemented to significantly expand the non-commercial arena for democratic discourse in the broadcast media.

⁶⁴ John Mark Hanson, “The Majoritarian Impulse and the Declining Significance of Place,” in Gerald M. Pomper and Marc D. Weiner, Eds., *The Future of American Democratic Politics* (New Brunswick: Rutgers University Press, 2003).

**ATTACHMENT B:
MARKET FAILURES OF COMMERCIAL MASS MEDIA
TO MEET SOCIETY'S NEED
FOR LOCALISM AND DIVERSITY**

INTRODUCTION

The central issue in the localism proceeding, as defined by the Federal Communications Commission in the Notice of Inquiry, stems from a finding made two decades ago.

Even as the Commission deregulated many behavioral rules for broadcasters in the 1980s, it did not deviate from the notion that they must serve their local communities. Rather, the Commission at that time found that market forces, in an increasingly competitive environment, would encourage broadcasters to accomplish this goal, and that certain rules were no longer necessary.¹

The Commission declares that every rule must pass this hurdle.

For each of the public policy goals discussed below, we seek comment on the particular mechanism needed to ensure that licensees satisfy the state goal. We seek comment on whether market forces will provide enough incentive for a broadcast station to satisfy a particular policy goal, or whether regulation is needed.²

The Commission explicitly cites this assumption in its discussion of broadcaster Communications with Communities, defined as “the way in which broadcasters obtained input from their local communities regarding matters of local interest, in order ensure that they air programming that response to those interests.”³ In the discussion of the Nature and Amount of Community Responsive Programming, the Commission reiterated the question – “should the Commission continue to rely on market forces and the issue-responsive programming requirement to encourage broadcast stations to air community-responsive programming?”⁴

Although the Commission does not restate the hurdle for other policies, Political Programming and Underserved Audiences, it cites criticism of the performance of

1. ¹ “Notice of Inquiry,” *In the Matter of Broadcast Localism*, MB Docket No. 04-233, July 1, 2004, para.

² *Id.*, para 7.

³ *Id.*, para 9.

⁴ *Id.*, para. 15.

broadcasters in both of the areas. It did not cite such criticism in other areas. Implicitly, it suggests that market incentives may not be adequate to ensure that the goals are being met in these areas.

This paper demonstrates that the assumption that economic incentives in a largely unregulated marketplace will lead broadcasters to meet the needs of their local communities is wrong. Three market failures undermine the ability of commercial broadcasters to meet society's needs for a diverse and responsive media:

- Media markets undervalue diversity and localism, serving instead the needs of the majority through a lowest-common-denominator orientation.
- The economic market power of media owners results in “undue concentration of economic power” and an “inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level.”⁵
- There are positive social externalities that flow from a diverse and responsive media that cannot be captured by the commercial media, even if media markets were vigorously competitive.

MEDIA MARKETS UNDERVALUE DIVERSITY AND LOCALISM

Market Fundamentals Create Oligopolies

The problem in media markets is not a question of the theoretical connection between competition and democratic discourse. Leading analysts of industrial organization have long recognized the convergence between truly competitive markets and democratic values.⁶

Atomistic competition is seen to promote individualistic, impersonal decisions with freedom of opportunity and relatively low resource requirements for entry. The dispersion of power that typifies atomistically competitive markets is extremely attractive as a base for

⁵.*Sinclair Broadcasting, Inc. v. FCC*, 160 F.3d 148 (D.C. Circ. 2002).

⁶ F.M. Scherer & David Ross, *Industrial Market Structure and Economic Performance* (Boston: Houghton Mifflin, 3d ed. 1990), p. 18.

democracy.⁷ The underlying dynamic of success in competitive economies that promotes fluidity because of a lack of barriers to entry is a second key characteristic. A third political merit of a competitive market is its freedom of opportunity. “When the no-barriers-to-entry condition of perfect competition is satisfied, individuals are free to choose whatever trade or profession they prefer, limited only by their own talent and skill and by their ability to raise the (presumably modest) amount of capital required.”⁸

The problem in contemporary mass media markets is that they have moved quite far from the competitive form of organization. In fact, the pursuit of efficiency through economies of scale and network effects has pushed the industry toward oligopoly or monopoly. Efficiency that results from large economies of scale also leads toward small numbers of competitors and can degenerate into inefficient abuse of monopoly power.⁹ This is a source of concern and requires constant vigilance in all commercial markets, but in media markets, where the impact reverberates so powerfully in the political process, these tendencies must be prevented from distorting civic discourse.

It has long been recognized that the technologies and cost structure of commercial mass media production in the 20th century are not conducive to vigorous, atomistic competition. Mass media have unique economic characteristics.¹⁰ The conceptual underpinnings of the argument are well-known to media market analysts. On the supply-side,

⁷ Id. at 19.

⁸ Id.

⁹ Mark Cooper, “Antitrust as Consumer Protection: Lessons from the Microsoft Case,” *Hastings Law Journal*, 52, 2001.

¹⁰ See Yochai Benkler, “Intellectual Property and the Organization of Information Production,” 22 *International Review of Law and Economics*. 81 (2002), available at <http://www.law.nyu.edu/benkler/IP&Organization.pdf>, (last visited Jan. 24, 2003) [hereinafter Benkler, *Intellectual Property*]; Carl Shapiro & Hal R. Varian, *Information Rules: A Strategic Guide to the Network Economy* (Boston: Harvard Business School Press, 1999), pp. 22-23.

media markets exhibit high first copy costs or high fixed costs.¹¹ On the demand-side, media market products are in some important respects nonsubstitutable or exhibit strong group-specific preferences.¹² To the extent that economics is a consideration, economic competition in commercial mass media markets cannot assure diversity and antagonism.¹³

Underserved Minorities

The “welfare” effect of these characteristics is to cause the market to fail to meet the information needs of some groups in society. This results because groups express strong preferences for specific types of programming or content. Programming that is targeted at whites is not highly substitutable for programming that is targeted at blacks, from the point of view of blacks. If fixed costs and group preferences are strong, producers must decide at whom to target their content. Given the profit maximizing incentive to recover the high costs from the larger audience, they target the majority and the minority is less well served.

¹¹ Baker, C. Edwin, *Media, Markets, and Democracy* (NY: Cambridge U. Press, 2002), pp 8-14.

¹² Joel Waldfogel, *Who Benefits Whom in Local Television Markets?*, November 2001 (hereafter Waldfogel, Television). Other papers in the series of studies of “preference externalities” were made a part of the record in conjunction with Joel Waldfogel’s appearance at the FCC Roundtable, including, *Preference Externalities: An Empirical Study of Who Benefits Whom in Differentiated Product Markets*, 2000 (hereafter Waldfogel, Radio); with Peter Siegelman, *Race and Radio: Preference Externalities, Minority Ownership and the Provision of Programming to Minorities*, 2001 (hereafter Siegelman and Waldfogel); with Felix Oberholzer-Gee, *Electoral Acceleration: The Effect of Minority Population on Minority Voter Turnout* (2001); with Lisa George, *Who Benefits Whom in Daily Newspaper Markets?* (2000); as well as the statement *Comments on Consolidation and Localism* (2001); with Felix Oberholzer-Gee, *Tiebout Acceleration: Political Participation in Heterogeneous Jurisdictions* (2001) (hereafter Participation). Baker, *Democracy*, p. 43.

¹³ Steven T. Berry and Joel Waldfogel, “Public Radio in the United States: Does it Correct Market Failure or Cannibalize Commercial Stations?,” *Journal of Public Economics*, 71, 1999, point out free entry may not accomplish the economic goals set out for it either. There is evidence of the anticompetitive behaviors expected to be associated with reductions in competition, such as price increases and excess profits. M. O. Wirth, “The Effects of Market Structure on Television News Pricing,” *Journal of Broadcasting*, 1984; J. Simon, W. J. Primeaux and E. Rice, “The Price Effects of Monopoly Ownership in Newspapers,” *Antitrust Bulletin*, 1986; R. Rubinovitz, *Market Power and Price Increases for Basic Cable Service Since Deregulation*, (Economic Analysis Regulatory Group, Department of Justice, August 6, 1991); B. J. Bates, “Station Trafficking in Radio: The Impact of Deregulation,” *Journal of Broadcasting and Electronic Media*, 1993; W.B. Ray, “FCC: The Ups and Downs of Radio-TV Regulation (Iowa: Iowa State University Press, 1990); Wat W. Hopkins, “The Supreme Court Defines the Forum for Democratic Discourse,” *Journalism and Mass Communications Quarterly*, Spring 1996; C.M. Firestone and J. M. Schement, *Toward an Information Bill of Rights and Responsibilities* (Washington: Aspen Institute, 1995); Duncan H. Brown, “The Academy’s Response to the Call for a Marketplace Approach to Broadcast Regulation,” 11 *Critical Studies in Mass Communications*, 257, 1994; Benkler, *Free As The Air*, *New York University Law Review*, 74, 1999.

The tendency to underserve minority points of view also springs from the role of advertising, which introduces a substantial disconnection between what consumers want and what the market produces.¹⁴ First, to a significant extent, because advertisers account for such a large share of the revenue of the mass media, the market produces what advertisers want as much as, if not more than, what consumers want. Second, because advertising in particular, and the media in general, revolves around influencing people's choices, there is a sense in which the industry creates its own demand.¹⁵ The tendency to avoid controversy and seek a lowest common denominator is augmented by the presence of advertisers, expressing their preferences in the market.¹⁶

As articulated and empirically demonstrated by Joel Waldfogel, this might be termed an economic theory of discrimination “because it gives a non-discriminatory reason why markets will deliver fewer products – and, one might infer, lower utility – to ‘preference minorities,’ small groups of individuals with atypical preferences.”⁹⁶ Discrimination results not from biases or psychological factors, but from impersonal economic processes.

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

The fundamental conditions needed to produce compartmentalized preference externalities are large fixed costs and preferences that differ sharply across groups of consumers. These conditions are likely to hold, to greater or lesser extents, in a variety of media markets – newspapers, magazines, television, and movies.⁹⁷

¹⁴ Waldfogel, *Television*, p. 1. Baker, *Democracy; Advertising and a Democratic Press* (Princeton: Princeton University Press,

¹⁵ Sunstein, *Republic*, discusses the implications for democracy, pp. 108-109.

¹⁶ Baker, *Advertising*; Krotoszy and Blaiklock, p. 831.

This poses a fundamental challenge to the validity of the assumption that markets allocate resources efficiently.

Friedman has eloquently argued that markets avoid the tyrannies of the majority endemic to allocation through collective choice. Mounting evidence that minority consumer welfare depends on local minority population in local media markets indicates that, for this industry at least, the difference between market and collective choice allocation is a matter of degree, not kind. It is important to understand the relationship between market demographic composition and the targeting of programming content because related research documents a relationship between the presence of black-targeted media and the tendency for blacks to vote.⁹⁸

The tyranny of the majority in media markets is linked to the tyranny of the majority in politics because the media are the primary means of political communications.

We present evidence that electoral competition leads candidates to propose policies that are supported by proportionately larger groups and that members of these groups are more likely to turn out if they find the proposed policies more appealing. In addition, we show that candidates find it easier to direct campaign efforts at larger groups because many existing media outlets cater to this audience...

Channels of communication that are used to disseminate political information rarely exist for the sole purpose of informing potential voters. The number of channels that candidates have at their disposal reflects the cost structure of printing newspapers, establishing radio stations, and founding political groups. To the extent that these activities carry fixed costs, channels that cater to small groups are less likely to exist. The welfare implications – if one views the decision to vote as the decision to “consume” an election -- are analogous to those of differentiated markets with fixed costs.¹⁷

Reduced Localism

The specific concern with localism in mass media policy also finds support in the research literature. Baker formulates the need to have policies that promote viewpoint diversity to the tendency of the commercial media to underserve the less powerful in

¹⁷ Oberholzer-Gee and Waldfogel, *Participation*, pp. 36-37.

society.¹⁸ In order for the media to meet the needs of these groups, it must inform and mobilize them.

[P]luralist democracy hopes to generate fair bargains as a result of groups' pressing their interests. In this process, the media should perform several tasks. First, the press should provide individuals and organized groups with information that indicates when their interests are at stake. Second, the media should help mobilize people to participate and promote their divergent interests. . . . Third, for pluralist democracy to work, information about popular demands must flow properly - that is, given the practical gap between citizens and policymakers, the press should make policymakers aware of the content and strength of people's demands.¹⁹

Baker links the need to have policies that promote viewpoint diversity to the tendency of the commercial media to under serve the less powerful in society.¹⁰⁹ In order for the media to meet the needs of these groups, it must inform and mobilize them.

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That these needs have traditionally been centered in localism is understandable. The primary referent for identity and community has traditionally been and remains significantly local.²⁰ The link between localism and deconcentration of the media seems obvious and

¹⁸ Baker, *Media Markets*, pp. 96-97.

¹⁹ Baker, *Democracy*, p. 16.

²⁰ Jeremy Rifkin, *The Age of Access* (New York, Jeremy P. Tarcher/Putnam, 2000), pp. 7-9. John Dewey, *The Public and its Problems* (Athens, Ohio: Swallow Press, 1954); Carmen Sirianni and Lewis Friedland, *Civic Innovation in America: Community Empowerment, Public Policy, and the Movement for Civic Renewal* (Berkeley: University of California Press, 2001), especially Chapter 5.

changes in electronic media distribution technologies have not significantly altered this fundamental relationship.²¹

Concentrated markets have important implications for democratic discourse. Concentration drains resources from journalistic enterprises²² and restricts the free marketplace of ideas²³ and information.²⁴ Conglomerates are driven by advertisers, who exercise influence over content.²⁵ Dangers ranging from favorable reviews of a broadcaster's

²¹ Krotoszynski and Blaiklock, pp. 866.

²² Robert McChesney, *The Problem of the Media* (New York: Monthly Review Press, 2004), Ben H. Bagdikian, *The New Media Monopoly* (Boston: Beacon Press, 2004); Thomas Meyer, Thomas, *Media Democracy*. (Cambridge: Polity Press, 2002), J. Meyerowitz, J., 1985, *No Sense of Place: The Effect of Electronic Media on Social Behavior* (New York: Oxford, 1985); Layton, Charles, "What do Readers Really Want?", *American Journalism Review*, March 1999, reprinted in Gene Roberts and Thomas Kunkel, *Breach of Faith*; McConnell, Bill and Susanne Ault, "Fox TV's Strategy: Two by Two, Duopolies are Key to the Company's Goal of Becoming a Major Local Presence," *Broadcasting and Cable*, July 30, 2001; Trigoboff, Dan, "Chri-Craft, Fox Moves In: The Duopoly Marriage in Three Markets Comes with Some Consolidation," *Broadcasting and Cable*, August 6, 2001; Trigoboff, Dan, "Rios Heads KCOP News," *Broadcasting and Cable*, October 14, 2002. Beam, Randal, A., "What it Means to Be a Market-Oriented Newspaper," *Newspaper Research Journal*, 16, 1995, "Size of Corporate Parent Drives Market Orientation," *Newspaper Research Journal*, 23, 2002; Vane, Sharyn, "Taking Care of Business," *American Journalism Review*, March 2002; *The Business of News, the News About Business*, Neiman Reports, Summer 1999; Thomas Kunkel and Gene Roberts, "The Age of Corporate Newspapering; Leaving Readers Behind," *American Journalism Review*, May 2001; On coverage of the 1996 Telecommunications Act see, Martin Gilens, and Craig Hertzman, "Corporate Ownership and News Bias: Newspaper Coverage of the 1996 Telecommunications Act," Paper delivered at the Annual Meeting of the American Political Science Association, August, 1997, p. 8.

²³ Alger, Dean, *MEGAMEDIA: How giant Corporations Dominate Mass Media, Distort Competition and Endanger Democracy* (Rowman & Littlefield, 1998), Chapter 6, *The Media and Politics* (Harcourt Brace College, 2nd edition, 1996). Media Studies Center Survey, University of Connecticut, Jan. 18, 1999. Ken Auletta, "The State of the American Newspaper," *American Journalism Review*, June 1998; Lisa Rabasca, "Benefits, Costs and Convergence," *Presstime*, p. 3.

²⁴ Davis, Charles and Stephanie Craft, "New Media Synergy: Emergence of Institutional Conflict of Interest," *Journal of Mass Media Ethics*, 15m 2000, pp. 222-223.

²⁵ Just, Marion, Rosalind Levine and Kathleen Regan, "News for Sale: Half of Stations Report Sponsor Pressure on News Decision," *Columbia Journalism Review-Project for Excellence in Journalism*, November/December 2001, p. 2.

programming²⁶ or loss of coverage,²⁷ to positive editorials/opinion articles about business interests of a broadcaster or politicians.²⁸

There is strong evidence across a number of media types that minorities are underserved, suffering from a form of tyranny of the majority in media markets.²⁹ A long tradition of more qualitative research also supports the conclusion that minority market segments are less well served.³⁰ Greater concentration results in less diversity of ownership,³¹ and diversity of ownership across geographic, ethnic and gender lines is correlated with diversity of programming.³² Minority owners are more likely to present minority points of

²⁶ Joe Strupp, "Three Point Play," *Editor and Publisher*, August 21, 2000, p. 23; Lucia Moses, "TV or not TV? Few Newspapers are Camera Shy, But Sometimes Two Into One Just Doesn't Go," *Editor and Cable*, August 21, 2000, p. 22. Roberts, Gene, *Leaving Readers Behind*, 10.

²⁷ Elimination of beats, Belo, pp. 8-9. Albert Karr, "Television News Tunes Out Airwaves Auction Battle," *Wall Street Journal*, May 1, 1996, p. B1

²⁸ See Quincy Illinois Visitors Guide, 2001 edition; Bill McConnel, "The National Acquirers: Whether Better for News or Fatter Profits, Media Companies want in on TV/Newspaper Cross-ownership," *Broadcasting and Cable*, December 10, 2001;

²⁹ These findings have been reinforced by recent findings of other scholars, as a 2002 article in *Journal of Broadcasting and Electronic Media* makes clear Napoli, Philip, "Audience Valuation and Minority Media: An Analysis of the Determinants of the Value of Radio Audiences," *Journal of Broadcasting and Electronic Media*, 46, 2002, pp. 180-181. The author notes agreement with Ofori, K. A., *When Being No. 1 is not Enough: The Impact of Advertising Practices on Minority-Owned and Minority-Targeted Broadcast Stations* (Civil Rights Forum on Communications Policy, 1999); Webster, J. G. and P. F. Phalen, *The Mass Audience: Rediscovering the Dominant Model* (New Jersey: Erlbaum, 1997); Owen, Bruce and Steven Wildman, *Video Economics* (Cambridge, MA: Harvard University Press, 1992. Baker, Advertising

³⁰ Hamilton, J. T., *Channeling Violence: the Economic Market for Violent Television Programming* (Princeton: Princeton University Press, 1998); Wildman, Steven, "One-way Flows and the Economics of Audience Making," in J. Entema and D.C. Whitney (eds.), *Audience Making: How the Media create the audience* (thousand Oaks CA: Sage Publications, 1994); Wildman, Steve and T. Karamanis, "The Economics of Minority Programming," in A. Garner (ed.) *Investing in Diversity: Advancing Opportunities for Minorities in Media* (Washington, D.C.: Aspen Institute, 1998); and Owen and Wildman.

³¹ William D. Bradford, "Discrimination in Capital Markets, Broadcast/Wireless Spectrum Service Providers and Auction Outcomes," (School of Business Administration, Univ. of Washington, December 5, 2000).

³² M. Fife, *The Impact of Minority Ownership on Broadcast Program Content: A Case Study of WGPR-TV's Local News Content* (Washington: National Association of Broadcasters, 1979); M. Fife, *The Impact of Minority Ownership on Broadcast Program Content: A Multi-Market Study* (Washington: National Association of Broadcasters, 1986); Congressional Research Service, *Minority Broadcast Station Ownership and Broadcast Programming: Is There a Nexus?* (Washington: Library of Congress, 1988); T. A. Hart, Jr., "The Case for Minority Broadcast Ownership," *Gannet Center Journal*, 1988; K. A. Wimmer, "Deregulation and the Future of Pluralism in the Mass Media: The Prospects for Positive Policy Reform," *Mass Communications Review*, 1988; T. G. Gauger, "The Constitutionality of the FCC's Use of Race and Sex in Granting Broadcast Licenses," *Northwestern Law Review*, 1989; H. Klieman, "Content Diversity and the FCC's Minority and Gender Licensing

view just as females are more likely to present a female point of view,³³ in the speakers, formats and content they put forward.

Concentration of national and local markets into national chains reinforces the tendencies of media to ignore local needs.³⁴ The important role of the media in informing citizens about local affairs is well-documented.³⁵ Localism suffers a fate similar to that of minority-oriented programming at the hands of national chains.³⁶ It is well-documented that the dictates of mass audiences create a largest market share/lowest common denominator

Policies," *Journal of Broadcasting and Electronic Media*, 1991; L. A. Collins-Jarvis, "Gender Representation in an Electronic City Hall: Female Adoption of Santa Monica's PEN System," *Journal of Broadcasting and Electronic Media*, 1993; Stephen Lacy, Mary Alice Shaver, and Charles St. Cyr, "The Effects of Public Ownership and Newspaper Competition on the Financial Performance of Newspaper Corporation: A Replication and Extension," *Journalism and Mass Communications Quarterly*, Summer 1996; Akousa Barthewell Evans, "Are Minority Preferences Necessary? Another Look at the Radio Broadcasting Industry," *Yale Law and Policy Review*, 8, 1990; Jeff Dubin and Matthew L. Spitzer, "Testing Minority Preferences in Broadcasting," *Southern California Law Review*, 68, 1995; Christine Bachen, Allen Hammond, Laurie Mason, and Stephanie Craft, *Diversity of Programming in the Broadcast Spectrum: Is there a Link Between Owner Race or Ethnicity and News and Public Affairs Programming?* (Santa Clara University, December 1999); Laurie Mason, Christine M. Bachen and Stephanie L. Craft, "Support for FCC Minority Ownership Policy: How Broadcast Station Owner Race or Ethnicity Affects News and Public Affairs Programming Diversity," *Comm. Law Policy*, 6, 2001.

³³ See Stephen Lacy, Mary Alice Shaver and Charles St. Cyr, "The Effects of Public Ownership and Newspaper Competition on the Financial Performance of Newspaper Corporation: A Replication and Extension," *Journalism and Mass Communications Quarterly*, Summer 1996; T. G. Gauger, "The Constitutionality of the FCC's Use of Race and Sex in Granting Broadcast Licenses," *Northwestern Law Review*, 1989; H. Klieman, "Content Diversity and the FCC's Minority and Gender Licensing Policies," *Journal of Broadcasting and Electronic Media*, 1991; L. A. Collins-Jarvis, "Gender Representation in an Electronic City Hall: Female Adoption of Santa Monica's PEN System," *Journal of Broadcasting and Electronic Media*, 1993; Martha M. Lauzen and David Dozier, "Making a Difference in Prime Time: Women on Screen and Behind the Scenes in 1995-1996 Television Season," *Journal of Broadcasting and Electronic Media*, Winter 1999; Patrick B. O'Sullivan, "The Nexus Between Broadcast Licensing Gender Preferences and Programming Diversity: What Does the Social Scientific Evidence Say?" (*Department of Communication, Santa Barbara, CA.*, 2000).

³⁴ Krotoszynski and Blaiklock, pp. 871...875-876,

³⁵ Kim, Sei-Hill, Dietram A. Scheufele and James Shanahan, "Think About It This Way: Attribute Agenda Setting Function of the Press and the Public's Evaluation of a Local Issue," *Journalism and Mass Communications Quarterly*, 79, 2002, p. 7; Chaffee, Steven and Stacy Frank, "How Americans Get Their Political Information: Print versus Broadcast News," *The Annals of the American Academy of Political and Social Science*, 546, 1996; Jack M. McLeod, Dietram A. Scheufele, and Patricia Moy, "Community, Communications, and Participation: The Role of Mass Media and Interpersonal Discussion in Local Political Participation," *Political Communication*, 16, 1999.

³⁶ Joel Waldfogel, *Who Benefits Whom in Local Television Markets?*, November 2001; with Lisa George, *Who Benefits Whom in Daily Newspaper Markets?* (2000); as well as the statement *Comments on Consolidation and Localism*, Federal Communications, 2001.

ethic that undercuts the ability to deliver culturally-diverse,³⁷ locally-oriented³⁸ and public-interest programming.³⁹ News and public affairs programming is particularly vulnerable to these economic pressures.⁴⁰ As concentration grows, this programming is reduced.⁴¹

Unfortunately, the coverage that disappears tends to deal with schools, localized government

³⁷ V. A. Stone, "Deregulation Felt Mainly in Large-Market Radio and Independent TV," *Communicator*, April 1987, p. 12; P. Aufderheide, "After the Fairness Doctrine: Controversial Broadcast Programming and the Public Interest," *Journal of Communication*, 1990, pp. 50-51; M. L. McKean and V. A. Stone, "Why Stations Don't Do News," *Communicator*, 1991, pp. 23-24; V. A. Stone, "New Staffs Change Little in Radio, Take Cuts in Major Markets TV," *RNDA*, 1988; K. L. Slattery and E. A. Kakanen, "Sensationalism Versus Public Affairs Content of Local TV News: Pennsylvania Revisited," *Journal of Broadcasting and Electronic Media*, 1994; J. M. Bernstein and S. Lacy, "Contextual Coverage of Government by Local Television News," *Journalism Quarterly*, 1992; R. L. Carrol, "Market Size and TV News Values," *Journalism Quarterly*, 1989; D. K. Scott and R. H. Gopbetz, "Hard News/Soft News Content of the National Broadcast Networks: 1972-1987," *Journalism Quarterly*, 1992; V. E. Ferrall, "The Impact of Television Deregulation," *Journal of Communications*, 1992; pp. 21... 28... 30.

³⁸ Karen L. Slattery, Ernest A. Hakanen and Mark Doremus, "The Expression of Localism: Local TV News Coverage in the New Video Marketplace," *Journal of Broadcasting and Electronic Media*, 40, 1996; Raymond L. Carroll and C.A. Tuggle, "The World Outside: Local TV News Treatment of Imported News," *Journalism and Mass Communications Quarterly*, Spring 1997; Charles Fairchild, "Deterritorializing Radio: Deregulation and the Continuing Triumph of the Corporatist Perspective in the USA," *Media, Culture & Society*, 1999, 21; Layton, Charles and Jennifer Dorroh, "Sad State," *American Journalism Review*, June 2002. Kathryn Olson, "Exploiting the Tension between the New Media's "Objective" and Adversarial Roles: The Role Imbalance Attach and its Use of the Implied Audience," *Communications Quarterly* 42:1, 1994, pp. 40-41; A. G. Stavitsky, "The Changing Conception of Localism in U.S. Public Radio," *Journal of Broadcasting and Electronic Media*, 1994.

³⁹ Bagdikian, *The New Monopoly* (Boston: Beacon Press, 2000), pp. 182...188; P. Clarke and E. Fredin, "Newspapers, Television, and Political Reasoning," *Public Opinion Quarterly*, 1978; M. Pfau, "A Channel Approach to Television Influence," *Journal of Broadcasting and Electronic Media*, 1990; D. T. Cundy, "Political Commercials and Candidate Image," in L. L. Kai, et al., (ed.) *New Perspectives in Political Advertising* G. J. O'Keefe, "Political Malaise and Reliance on the Media," *Journalism Quarterly*, 1980; S. Becker and H. C. Choi, "Media Use, Issue/Image Discrimination," *Communications Research*, 1987; J. P. Robinson and D. K. Davis, "Television News and the Informed Public: An Information Process Approach," *Journal of Communication*, 1990; Paul S. Voakes, Jack Kapfer, David Kurpius and David Shano-yeon Chern, "Diversity in the News: A Conceptual and Methodological Framework," *Journalism and Mass Communications Quarterly*, Autumn 1996.; Bishop, Ronal and Ernest A. Hakanen, "In the Public Interest? The State of local Television Programming Fifteen Years After Deregulation," *Journal of Communications Inquiry*, 26, 2002.

⁴⁰ J. H. McManus, "What Kind of a Commodity is News?," *Communications Research*, 1992; Olson.

⁴¹ Bagdakian, *Media Monopoly*, pp. 220-221; D. L. Paletz and R. M. Entmen, *Media, Power, Politics*, (New York: Free Press, 1981). N. Postman, *Amusing Ourselves to Death: Public Discourse in the Age of Show Business* (New York: Penguin Press, 1985); S. Lacy, "The Financial Commitment Approaches to News Media Competition," *Journal of Media Economics*, 1992.

affairs, and other community-strengthening material that enables people to live secure, educated lives.⁴²

The radio industry, which has been subject to the most unfettered process of “rationalization,” demonstrates how local content can be homogenized off the air.⁴³ The industry is focused on “perfecting the art of seeming local.”⁴⁴

The growing impact of homogenization in the TV industry, stimulated by the lifting of national ownership limits and restrictions on vertical integration into programming, is also unmistakable.⁴⁵ Insertion of local programming is restricted or eliminated. Stories of local importance are driven out of the high visibility hours or off the air.⁴⁶ Pooled news services reduce the ability of local stations to present local stories and eventually erode the capability to produce them.

Waldfoegel finds important localism effects operating in the media that support this view. He finds that the preference externality operates in non-prime time programming

⁴² Street, John, *Mass Media, Politics and Democracy* (New York: Palgrave, 2001); Kovach, Bill and Tom Rosenstiel, *Warp Speed: America in the Age of Mixed Media* (New York: The Century Foundation Press, 1999).

⁴³ Gans, Herbert J., *Democracy and the News* (Oxford: Oxford University Press, 2003), p. 50; Kovach and Rosenstiel, *Warp Speed: America in the Age of Mixed Media* (New York: The Century Fund Press, 1999); Meyerowitz, J., *No Sense of Place: The Effect of Electronic Media on Social Behavior* (New York: Oxford, 1985); McChesny, The Problem of the Media, Bass Jack, “Newspaper Monopoly,” in Roberts, Gene, Thomas Kunkel, and Charles Clayton (eds.), *Leaving Readers Behind* (Fayetteville: University of Arkansas Press, 2001); Pat Gish and Tom Gish, “We Still Scream: The Perils and Pleasures of Running a Small-Town Newspaper,” and Shipp, E. R., “Excuses, Excuses: How Editors and Reporters Justify Ignoring Stories,” in William Serrin (ed.), *The Business of Journalism* (New York: New Press, 2000). Complaints about the failure to cover larger national and international stories also abound (see Phillips, Peter and Project Censored, *Censored 2003* (New York: Seven Stories, 2002); Borjesson, Kristina, *Into the BUZZSAW* (Amherst, New York, Prometheus Books, 2002).

⁴⁴ Fairchild, pp. 557-559, Kathy Bachman, “Music Outlets Tune in More News Reports,” *MediaWeek*, October 29, 2001.

⁴⁵ Mathews, Anna Wilde, “A Giant Radio Chain is Perfecting the Art of Seeming Local,” *Wall Street Journal*, February 25, 2002, p. A1; Staples, Brent, “The Trouble with Corporate Radio: The Day the Protest Music Died,” *The New York Times*, February 20, 2003 p. A30.

⁴⁶ McChesny, The Problem with the Media; Bagdikian, The New Media Monopoly; Network Affiliated Stations Alliance, “Petition for Inquiry into Network Practices.” (Federal Communications Commission, March 8, 2001).

⁴⁶ Stephen Lacy, David C. Coulson, and Charles St. Cyr, “The Impact of Beat Competition on City Hall Coverage,” *Journalism & Mass Communication Quarterly*, 76, 1999

because it is subject to greater local control and therefore can be more responsive to local market conditions:

The local data indicate, to a greater extent than the national prime time or cable data, both the distance between black and white preferences and the fact that local programming, far more than national programming, caters to those preferences.⁴⁷

While the economics of television gives rise to strong concerns about localism,⁴⁸

Waldfoegel sees indications of similar localism effects in newspaper markets as well, supporting the conclusion that “content origin matters.”⁴⁹

Positive Externalities of Civic Discourse are Lost

Baker also sees a threat in concentrated ownership to the important watchdog function that is a positive externalities of media products.⁵⁰ Positive externalities are benefits to society as a whole that flow from actions that cannot be captured by producers and consumers because they are not internalized in market transactions. Since the full gains from trade cannot be captured, the market tends to produce too little, from the societal point of view. The public at large benefits from the watchdog function beyond the value that individual media firms can capture in their market transactions (advertising revenue and viewer payments).⁵¹ Left unrestrained, the marketplace will produce fewer watchdog activities conducted by less rigorous institutions. Abuses are less likely to be uncovered and more likely to occur because the deterrent of the threat of exposure will be diminished.⁵²

⁴⁷ Waldfoegel, Local Television, p. 13.

⁴⁸ Krotoszynski and Blaiklock, pp. 866,

⁴⁹ Waldfoegel, Localism, p. 9.

⁵⁰ Baker, Democracy, p. 64

⁵¹ Baker, Democracy, p. 64, Baker uses investigative journalism as an example.

⁵² Baker, Democracy, p. 64.

Baker uses investigative journalism as an example. Abuses are less likely to be uncovered and more likely to occur because the deterrent of the threat of exposure will be diminished.

One item both news entities “sell” is exposure on the content of investigative journalism. Not just the readers or listeners but all members of the community benefit from whatever reform or better government or improved corporate behavior that occurs due to these stories. This journalism can create huge positive externalities. The paper’s limited number of purchasers cannot be expected to pay the full value of this benefit - they have no reason to pay for the value received by non-readers. Even more (economically) troubling, a major benefit of the existence of news organizations that engage in relatively effective investigative journalism is that this journalism deters wrong doing by governmental or corporate actors - but deterred behavior produces no story for the journalism to report and hence for the media entity to sell. The paper has no opportunity to internalize these benefits of its journalism - an economic explanation for there being less of this type of journalism than a straight welfare economics analysis justifies.⁵³

The positive externalities that Baker identifies with respect to the watchdog and experiential functions are part of a larger category of externalities associated with information products, particularly civic discourse content. Information products are seen as possessing attributes of public goods to a significant degree. Sunstein makes this broader point in regard to television.

Even if broadcasters did provide each viewer with what he or she wanted, a significant problem would remain, and from the economic point of view, this is probably the most serious of all. Information is a public good, and once one person knows something (about for example, product hazards, asthma, official misconduct, poverty, welfare reform, or abuse of power), the benefits of that knowledge will probably accrue to others.⁵⁴

Note that two of the central issues noted by Sunstein are positive externalities in the political arena on which Baker’s analysis is centrally focused – official misconduct and abuse

⁵³ Baker, *Democracy*, p. 64.

⁵⁴ Sunstein, Cass, “Television and the Public Interest,” *California Law Review*, 8, 2002, p. 517.

of power. These are but two of many externalities of information production.⁵⁵ Simply put, the existence of multiple outlets providing more examples of similar shows does not accomplish the goal of providing greater diversity of points of view.⁵⁶

For most analysts of the role of the media in our democracy, institutions play a critical role in mediating between individuals and the political process. Some draw the link between the institution and the investigative role.

Democratic governance requires a free press not just in the sense of a diversity of expression. It requires the *institution* of a free press. It requires media with the financial wherewithal and political independence to engage in sustained investigative journalism, to expose the errors and excesses of government and other powerful political and economic actors...

Our best hope for democratic governance in this world is far messier than the ideal republic of yeomen. It requires mediating institutions and associations, private and public concentrations of wealth and power, and varied mechanisms

⁵⁵ As the works of Benkler and others have shown, the public good quality of information production goes well beyond the realm of the media and civic discourse and is especially critical to a period that is called an information age. See Benkler, Yochai, "Intellectual Property and the Organization of Information Production," *International Journal of Law and Economics*, forthcoming; "Coase's Penguin, or Linux and the Nature of the Firm," *Conference on the Public Domain* "Duke University Law School (November 9-11, 2001); "The Battle Over the Institutional Ecosystem in the Digital Environment," *Communications of the ACM*, 44:2, 2001; "From Consumers to Users: Shifting the Deeper Structure of Regulation Toward Sustainable Commons and User Access," *Federal Communications Law Journal*, 56, 2000. Lawrence Lessig's analysis of the impact of communications structures on innovation is another body of work that focuses on the nexus between choices about economic/institutional structures, public goods, and political action (see *Code* and *The Future of Ideas: The Fate of the Commons in a Connected World* (New York: Random House, 2001)). The narrow focus here on media and civic discourse reflects the nature of this proceeding and in no way is intended to belittle the broader public goods concerns.

⁵⁶ Evidence that increasing variety does not increase diversity can be found in Dejong, A.S. and B. J. Bates, "Channel Diversity in Cable Television," *Journal of Broadcasting and Electronic Media*, 1991; Grant, A. E., "The Promise Fulfilled? An Empirical Analysis of Program Diversity on Television," *The Journal of Media Economics*, 1994; Hellman, Heikki and Martii Soramaki, "Competition and Content in the U.S. Video Market," *Journal of Media Economics*, 7, 1994; Lin, C.A. "Diversity of Network Prime-Time Program Formats During the 1980s," *Journal of Media Economics*, 8, 1995; Kubey, Robert, Mark Shifflet, Niranjala Weerakkody, and Stephen Ukeiley, "Demographic Diversity on Cable: Have the New Cable Channels Made a Difference in the Representation of Gender, Race, and Age?," *Journal of Broadcasting and Electronic Media*, 39, 1995. For other nations see Deakin, Simon and Stephen Pratten, "Reinventing the Market? Competition and Regulatory Change in Broadcasting," *Journal of Law and Society*, 26, 1999; Li, Hairong and Janice L. Bukovac, "Cognitive Impact of Banner Ad Characteristics: an Experimental Study," *Journalism & Mass Communication Quarterly*, 76, 1999; Kilborn, Richard W. , "Shaping the Real," *European Journal of Communication*, 13, 1998; Blumer, Jay G. and Carolyn Martin Spicer, "Prospects for Creativity in the New Television Marketplace: Evidence from Program-Makers," *Journal of Communications*, 40, 1990, p. 78.

to maintain multiple balances of power within government, within civil society, and between government and civil society.⁵⁷

Baker finds one base for structural policy to limit ownership in the need to promote institutions with different structures,⁵⁸ driven by different institutional imperatives.⁵⁹ One of the central benefits of promoting deconcentrated and diverse media markets is to provide a self-checking function on the media. The media need to be accountable to the public, but that function cannot, as a general matter, be provided by government action in our political system. It can best be provided by the media themselves, as long as there is vigorous antagonism between sources of news and information.⁶⁰ The ongoing trend of conglomeration and cross-media ownership in the industry and the potential for a substantial increase in these developments raises a qualitatively new type of problem – the potential for institutional conflicts of interest arises.⁶¹

The central fact that all of these discussions share is that market forces provide neither adequate incentives to produce the high quality media product, nor adequate incentives to distribute sufficient amounts of diverse content necessary to meet consumer and citizen needs. Sunstein states the general proposition as follows.

Individual choices by individual viewers are highly likely to produce too little public interest programming in light of the fact that the benefits of viewing such programming are not fully “internalized” by individual viewers. Thus, individually rational decisions may inflict costs on others at the same time that they fail to confer benefits on others. In this respect, the problem “is not that people choose unwisely as individuals, but that the collective consequences of

⁵⁷ Netanal, Neil, *Is the Commercial Mass Media Necessary, or Even Desirable, for Liberal Democracy*, TPRC Conference on Information, Communications, and Internet Policy, October 2001, pp. 20-24.

⁵⁸ Shah, Rajiv, J. Jay P. Kesan, *The Role of Institutions in the Design of Communications Technologies*, TPRC Conference on Information, Communications, and Internet Policy, October 2001.

⁵⁹ Baker, *Media Markets*, p. 120.

⁶⁰ Krotoszynski and Blaiklock, pp. 867.

⁶¹ Davis, Charles and Stephanie Craft, “New Media Synergy: Emergence of Institutional Conflict of Interest,” *Journal of Mass Media Ethics*, 15m 2000, pp. 222-223.

their choices often turn out to be very different from what they desire or anticipate.”⁶²

CONCENTRATED OWNERSHIP DISTORTS DEMOCRATIC DISCOURSE

Ownership Influence Content

Baker presents a lengthy discussion of the political implications of the monopolistic media market. The first point is that it results in market power, traditionally measured as monopoly profits.⁶³ For media markets, however, economic profits can be used (dissipated) in another important way. Media monopolists can use their market power to influence content or policy directly.

The weak competition that results from the economic structure of media markets allows owners to earn monopoly profits and to use monopoly rents to pursue their personal agendas. The claim that ownership of the media does not matter to the selection and presentation of content is not plausible.⁶⁴ Whatever their political preferences are, media owners are in a uniquely powerful position to influence civic discourse. They can use both the economic resources made available by their market power (as can monopolists in any industry) and the unique role of the media in politics to pursue those preferences.

One set of behaviors that is particularly problematic for Baker involves undemocratic uses of media market power in pursuit of the private interests of owners through manipulation, cooptation and censorious behaviors.⁶⁵ This can undermine the watchdog role of the press or distort coverage of events, when it suits their interests. The chilling effect need not be conscious or overt. Powerful media owners tend to be very visible figures in their

⁶² Sunstein, *Television*, p. 517, citing Robert H. Frank and Phillip J. Cook, *The Winner Take All Society* (1999), p. 191, as well as Pierre Bourdieu, *On Television* (New York: The New Press, 1998), and C. Edwin Baker, “Giving the Audience What it Wants,” *Ohio State Law Journal* 58, 1997.

⁶³ Baker, *Democracy*, p. 73.

⁶⁴ Krostoszynski and Blaiklock, pp. 832...833.

⁶⁵ Baker, *Democracy*, p. 73.

political and policy preferences. Employees and institutions instinctively toe the line and self-censor out of an instinct for self-preservation, which dampens antagonism in the media.⁶⁶

Given the behaviors of network owners in selecting for programming over the past couple of years, it hardly seems necessary to defend the proposition that media ownership matters. It is clear that they will put their commercial interests above the public interest and their political interest above their commercial interests at key moments. The anecdotal evidence that is so fresh in our minds is backed up by systematic social science evidence.

Even though this is not Waldfogel's central concern, when he looks at the question of ownership, he finds support for the view that ownership matters beyond "simple" economics. Waldfogel finds in his study of radio markets that "black owners enter in situations that white owners avoid."⁶⁷ He continues to consider possible explanations for this behavior and offers a hypothesis that relies on owner preferences,

A second possibility is that black owners enter for "ideological" reasons, which means they are willing to forego some profits in order to provide a particular sort of programming. This hypothesis would rationalize the observation that black-owned and targeted stations have fewer listeners, on average, that [sic] their white-owned counterparts (in markets with both white and black-owned, black-targeted stations). Black owners' willingness to accept smaller returns could explain why greater black ownership increases black-targeted programming: additional black owners are willing to enter low-profitability market niches (programming to small black audiences) that whites would not enter.⁶⁸

Perhaps Waldfogel puts the word "ideology" in quotes to blunt its negative connotation. Baker presents the policy implications in terms that are familiar and relevant to the arena of diversity policy in civic discourse.

⁶⁶ Krotoszynski and Blaiklock, p. 867,

Employees are unlikely to criticize their employers, and this truism holds true for the fourth Estate.

⁶⁷ Siegelman and Waldfogel, p. 23.

⁶⁸ Siegelman and Waldfogel, p. 25.

Choice, not merely market forces, influences quality. Choice explains the variation both within and between ownership categories. Moreover, quality may provide some efficiencies and management qualities that sometimes increase the enterprise's potential for profits or quality. However, the incentives for executives (editors and publishers) in chain firms as well as the added pressures of public ownership are likely to be directed toward focusing on increasing profits. Possibly due to price of membership or involvement within a community that leads to dedication or desires to form status in that community, local ownership might be sociologically predicted to lead to greater commitment to and greater choice to serve values other than the bottom line.⁶⁹

The empirical evidence on news coverage of events,⁷⁰ the ongoing battle between the networks over bias in reporting⁷¹ and the use of political advertising reinforces the longstanding opinion of the courts⁷² that ownership matters a great deal⁷³ and is a good proxy

⁶⁹ Baker, Democracy, p. 47.

⁷⁰ Carter, Sue, Frederick Fico, and Joycelyn A. McCabe, "Partisan and Structural Balance in Local Television Election Coverage," *Journalism and Mass Communications Quarterly*, 79, 2002, p. 50. Kahn, Kim Fridkin and Patrick J. Kenny, "The Slant of News: How Editorial Endorsements Influence Campaign Coverage and Citizens' Views of Candidates," *American Political Science Review*, 96, 2002, p. 381; James H. Snider, and Benjamin I. Page, "Does Media Ownership Affect Media Stands? The Case of the Telecommunications Act of 1996," Paper delivered at the Annual Meeting of the Midwest Political Science Association, April, 1997; Page, Benjamin I., *Who Deliberates* (Chicago, University of Chicago Press: 1996) J. McManus, "How Objective is Local Television News?," *Mass Communications Review*, 1991; Rowse, Edward, *Slanted News: A Case Study of the Nixon and Stevenson Fund Stories* (Boston, Beacon: 1957).

⁷¹ Alterman, Eric, *What Liberal Media: The Truth About Bias and the News* (New York: Basic Books, 2002); Borjesson, Kristina, *Into the Buzzsaw*, (Amhest, N.Y.: Prometheus Books, 2002); Goldberg, Bernard, *Bias* (Washington, D.C.: Regnery, 2002), p. 190; Bob Woodward *Bush At War* (2002), p. 207, Kelly, Michael, "Left Everlasting," *Washington Post*, December 11, 2002, p. a-33. Klugman, Paul, "In Media Res," *New York Times*, November 29, 2002, p. A-39. which Ailes disputed (see Grove, Lloyd, "The Reliable Source," *Washington Post*, November 19, 2002). "Ackerman, Seth, *The Most Biased Name in News* (FAIR, August 2002), *Cable News Wars: Interviews* (PBS, Online Newshour, March 2002), p. 2; S. Robert Lichter, "Depends on How You Define 'Bias'," *Washington Post*, December 18, 2002, A-19.

⁷² Hansen, Glenn, J. and William Benoit, "Presidential Television Advertising and Public Policy Priorities, 1952-2002," *Communications Studies*, 53, 2002, p. 285; Gwiasda, Gregory, W., "Network News Coverage of Campaign Advertisements: Media's Ability to Reinforce Campaign Messages," *American Politics Research*, 29, 2001, p. 461; Brazeal, LeAnn M, and William L. Benoit, "A Functional Analysis of Congressional Television Spots," *Communications Quarterly*, 49, 2001, pp. 346-437; Mulder, R., "The Effects of Televised Political Ads in the 1995 Chicago Mayoral Election," *Journalism Quarterly*, 56, 1997; Baker, Edwin C. "Giving the Audience What it Wants," *Ohio State Law Journal* 58, 1997; Jenkins, K., "Learning to Love those Expensive Campaigns," *U.S. News and World Report*, 122, 1997; Brians, C.L. and M. P. Wattenberg, "Campaigns Issue Knowledge and Salience: Comparing Reception for TV Commercials, TV News, and Newspapers," *American Journal of Political Science*, 40, 1996.. Jon R. Sinclair, "Reforming Television's Role in American Political Campaigns: Rationale for the Elimination of Paid Political Advertisements," *Communications and the Law*, March 1995; Zhao, X and G. L. Bleske, "Measurement Effects in Comparing Voter Learning From Television News and Campaign Advertisements," *Journalism and Mass Communications Quarterly*, 72, 1995; Sinclair, J. "Reforming Television's Role in American Political Campaigns: Rationale for

for diversity.⁷⁴ Other empirical evidence clearly suggests that concentration – fewer independent owners -- in media markets has a negative effect on diversity.⁷⁵ The quality of the programming is also compromised.⁷⁶

A study by Snider and Page looked at the decision to allow TV stations to have additional digital spectrum without paying for it, while other parts of the spectrum were being

the Elimination of Paid Political Advertisements,” *Communications and the Law*, 17, 1995; Baker, Edwin C., *Advertising and a Democratic Press* (Princeton: Princeton University Press, 1994).; Kaid, L. L., et al., “Television News and Presidential Campaigns: The Legitimation of Televised Political Advertising,” *Social Science Quarterly*, 74, 1993; Ansolahere, S and S. Iyengar, “Riding the Waive and Claiming Ownership Over Issues: The Joint Effect of Advertising and News Coverage in Campaigns,” *Public Opinion Quarterly*, 58, 1995, Lemert, et al., *News Verdicts, the Debates, and Presidential Campaigns* (New York: Praeger, 1991); Pfau, M., and H. C. Kenski, *Attack Politics* (New York: Praeger, 1990; Kern, M., *30 Second Politics: Political Advertising in the Eighties* (New York: Praeger, 1988); Zhao, X and S. H. Chaffee, “Campaign Advertisements Versus Television News as Sources of Political Issue Information,” *Public Opinion Quarterly*, 59, 1995; Joslyn, R., “the Impact of Campaign Spot Advertising Ads,” *Journalism Quarterly*, 7, 1981.

⁷³ Soloski, John, “Economics and Management: The Real Influence of Newspaper Groups,” *Newspaper Research Journal*, 1, 1979; W. L. Bennet, *News, The Politics of Illusion* (New York: Longmans, 1988); J. C. Busterna, “Television Ownership Effects on Programming and Idea Diversity: Baseline Data,” *Journal of Media Economics*, 1988; E. S. Edwards and N. Chomsky, *Manufacturing Consent* (New York: Pantheon, 1988); Glasser, Theodore L. David S. Allen and S. Elizabeth Banks, “The Influence of Chain Ownership on News Play: A case Study,” *Journalism Quarterly*, 66, 1989; J. Katz, “Memo to Local News Directors,” *Columbia Journalism Review*, 1990; J. McManus, “Local News: Not a Pretty Picture,” *Columbia Journalism Review*, 1990; Monroe E. Price, “Public Broadcasting and the Crisis of Corporate Governance,” *Cardozo Arts & Entertainment*, 17, 1999.

⁷⁴ *Fox Television Stations, Inc., v. FCC*, 280 F.3d 1027, pp. 12-13.

⁷⁵ H. J. Levin, “Program Duplication, Diversity, and Effective Viewer Choices: Some Empirical Findings,” *American Economic Review*, 1971; S. Lacy, “A Model of Demand for News: Impact of Competition on Newspaper Content,” *Journalism Quarterly*, 1989; T. J. Johnson and W. Wanta, “Newspaper Circulation and Message Diversity in an Urban Market,” *Mass Communications Review*, 1993; W. R. Davie and J. S. Lee, “Television News Technology: Do More Sources Mean Less Diversity,” *Journal of Broadcasting and Electronic Media*, 1993, p. 455; W. Wanta and T. J. Johnson, “Content Changes in the St. Louis Post-Dispatch During Different Market Situations,” *Journal of Media Economics*, 1994; D. C. Coulson, “Impact of Ownership on Newspaper Quality,” *Journalism Quarterly*, 1994; D. C. Coulson and Anne Hansen, “The Louisville Courier-Journal’s News Content After Purchase by Gannet,” *Journalism and Mass Communications Quarterly*, 1995; Petros Iosifides, “Diversity versus Concentration in the Deregulated Mass Media,” *Journalism and Mass Communications Quarterly*, Spring 1999; Lacy, Stephen and Todd F. Simon, “Competition in the Newspaper Industry,” in *The Economics and Regulation of United States Newspapers* (Norwood, NJ: Ablex, 1999)..

⁷⁶ B. R. Litman, “The Television Networks, Competition and Program Diversity,” *Journal of Broadcasting*, 1979; B. R. Litman and J. Bridges, “An Economic Analysis of Daily Newspaper Performance,” *Newspaper Research Journal*, 1986; J. C. Buterna, “Television Station Ownership Effects on Programming and Idea Diversity: Baseline Data,” *Journal of Media Economics*, 1988; J. Kwitny, “The High Cost of High Profits,” *Washington Journalism Review*, 1990; A. Powers, “Competition, Conduct, and Ratings in Local Television News: Applying the Industrial Organization Model,” *Journal of Media Economics*, 1993.

auctioned for other commercial uses.⁷⁷ The editorial positions of media corporations that owned newspapers and had significant TV station ownership (at least 20% of revenues from that source) were compared to the editorial stands on the spectrum give-away/auction issue to the stands of newspapers owned by companies having little or no TV station ownership. The findings were striking: “Among newspapers that editorialized on the subject, every one whose owners got little TV revenue editorialized against the spectrum 'giveaway,' whereas every one with high TV revenues editorialized in favor of giving broadcasters free use of spectrum.”⁷⁸

Coverage of the ownership implications of the 1996 Telecommunications Act, or lack thereof, leads to a similar conclusion.⁷⁹ The analysis found that the ABC, CBS and NBC network news combined devoted only 19.5 minutes to the Telecom Act during the entire 9 months it was in the process (early May 1995-early February 1996); and most of that was about the v-chip and the "Internet Decency Act" side issues. Most crucially and tellingly, there was essentially no meaningful coverage of the elimination or reduction of ownership limits and the probable consequences of such actions for more concentrated control of mass media, nor was there meaningful attention given to the give-away of the extra spectrum for transition to digital, high-definition TV. Thus, there was a profound failure to inform the

⁷⁷ James H. Snider, and Benjamin I. Page, "Does Media Ownership Affect Media Stands? The Case of the Telecommunications Act of 1996," Paper delivered at the Annual Meeting of the Midwest Political Science Association, April, 1997.

⁷⁸ Snider and Page, p. 7-8.

⁷⁹ Alger, Dean, *MEGAMEDIA: How giant Corporations Dominate Mass Media, Distort Competition and Endanger Democracy* (Rowman & Littlefield, 1998), Chapter 6, *The Media and Politics* (Harcourt Brace College, 2nd edition, 1996).

public on a pending policy decision which would greatly benefit the media corporations and which had profound implications for democracy and the public good.⁸⁰

Ownership and Access

Baker takes the ownership/localism argument an important step farther. Baker argues that the experiences of civic discourse for minorities and the public at large are deeply affected by ownership. Large, monopolistic structures make it more difficult for opinion leaders within minority or niche communities to gain experience in the industry.

[A] *complex democracy* may benefit society as a whole... And a complex democracy may require media entities that not only provide particular content but that are experienced as being owned, or at least controlled, by different groups or by people who identify as and are identified by others as being members of or having allegiances to particular groups. If so, the ownership pattern called for by this democratic theory would have significant positive externalities, but an antitrust analysis would remain blind to the costs of any merger that undermines this distribution.⁸¹

PAST CHANGES IN PUBLIC POLICY HAVE RESULTED IN INCREASED CONCENTRATION IN BROADCAST MARKETS

Analyzing Market Structure

As the Commission notes, over the past two decades there have been a series of deregulatory events that affected ownership. Mergers and consolidation of ownership followed quickly after each major deregulatory move. As a result, there has been sharp increase in concentration and a decrease in diversity of ownership in local and national markets. We examine both the long term trends in the media industries as well as the industry reactions to specific regulatory changes.

⁸⁰ Also see Albert Karr, "Television News Tunes Out Airwaves Auction Battle," *Wall Street Journal*, May 1, 1996, p. B1

⁸¹ Baker, *Democracy*, pp. 67-68.

In order to assess this trend we use the approach to analyzing market structure taken by the Department of Justice. It analyzes the level of concentration as measured by the Herfindahl-Hirschman Index (HHI).⁸² This measure takes the market share of each firm, squares it, sums the result, and multiplies by 10,000. A second method frequently used by economists to quantify market concentration is to calculate the market share of the largest four firms (four firm concentration ratio or CR4).

Under its *Merger Guidelines*, the DOJ considers a market with an HHI of 1000 or less to be unconcentrated. Such a market would have the equivalent of ten equal-sized competitors. In such a market, the four firm concentration ratio would be 40 percent. Any market with a concentration above this level is deemed to be a source of concern. The DOJ considers an HHI of 1800 as the point at which a market is highly concentrated. This level falls between five and six equal-sized competitors. The four firm concentration ratio would be 67 percent.

William Shepherd describes these thresholds in terms of four firm concentration ratios as follows:⁸³ “Tight Oligopoly: The leading four firms combined have 60-100 percent of the market; collusion among them is relatively easy. Loose Oligopoly: The leading four firms combined have 40 percent or less of the market; collusion among them to fix prices is virtually impossible.”

As a practical matter, using the Department of Justice *Merger Guidelines* and general economic literature, we apply the following categories to describe media markets:

Monopoly – 1 dominant firm

⁸² U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines*, 1997.

⁸³ Shepherd, William G., *The Economics of Industrial Organization* (Englewood Cliffs, NJ: Prentice Hall, 1985), p. 389.

Duopoly – 2, relatively equal-sized, firms that dominate the market

Tight oligopoly – 3 to 5 large firms

Moderately concentrated – 6 to 9 firms

Unconcentrated – 10 or more firms

Atomistic competition – 50 firms

Aggregate Patterns

In the aggregate, the number of owners of full power TV stations and full power radio stations has each declined by about one third. Local media markets are all highly concentrated (see Table 1). Broadcast television markets have an average HHI of about 2000. Even in the largest markets the concentration of audiences is at or above the highly concentrated level. On average, radio markets are even higher, around 3000. The top twenty-five markets are somewhat less concentrated, but all fall in the moderately concentrated zone.

Five media conglomerates – Disney-ABC, GE-NBC-Telemundo, Viacom-CBS, Time Warner-WB, News Corp.-Fox – dominate the TV dial (see Table 2). They own the seven highest rated networks and all of the national news networks. They account for over 90 percent of the news viewership and 80 percent of prime time viewing, as well as programming and writing budgets.⁸⁴

⁸⁴ Cooper, Media Ownership, p. 145.

Table 1: Concentration In Broadcast Media Markets

Product And Market	Early 1980s			Early 1990s			Early 2000s		
	HHI	CR4	#	HHI	CR4	#	HHI	CR4	#
<u>BROADCAST TV</u>									
NATIONAL									
# Of Owners			540						360
# of Newsrooms			940						850
Prime Time Shows	500			500	35		1360	65	
LOCAL STATIONS	3000			2600			2400		
<u>RADIO</u>									
NATIONAL									
# of Owners	5100								3800
# of Newsrooms	6000								4500
Revenue	100			125			1033	52	
Listeners							1130	49	
LOCAL									
Revenue	800			2103			3084		
Audience by Market Size									
TOP 10				61			81		
TOP 25				64			83		
TOP 50				72			86		
51-100				83			94		
101-285				86			95		

Sources: Owners: "Notice of Proposed Rulemaking," *In the Matter of Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992 Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996 The Commission's Cable Horizontal and Vertical Ownership Limits and Attribution Rules Review of the Commission's Regulations Governing Attribution Of Broadcast and Cable/MDS Interests Review of the Commission's Regulations and Policies Affecting Investment In the Broadcast Industry Reexamination of the Commission's Cross-Interest Policy*, CS Docket No. 98-82, CS Docket No. 96-85, MM Docket No. 92-264, MM Docket No. 94-150, MM Docket No. 92-51, MM Docket No. 87-154, September 13, 2001, p. 6; Prime Time: Mara Enstein, *Program Diversity and the Program Selection Process on Broadcast Network Television* (Federal Communications Commission, Media Bureau Staff Research Paper, No. 5, September 2002); *Prime Time Power and Politics: The Financial Interest and Syndication Rules and Their Impact on the Structure and Practices of the Television Industry* (Ph.D. Dissertation, Department of Culture and Communications, New York University, 2000). Vernon Stone, News Operations at U.S. Radio Stations, News Operations at TV Stations; Radio: Keith Brown and George Williams, *Consolidation and Advertising Prices in Local Radio Markets* (Federal Communications Commission, Media Bureau Staff Research Paper, September 2002); Peter DiCola and Kristin Thomson, *Radio Deregulation: Has It Served Citizens and Musicians* (Future of Music Coalition, 2002).

**Table 2:
Five Corporation Dominate the Television Dial:
Broadcast Networks, News and Cable Programming**

CORPORATE PARENT	DISNEY	GE	VIACOM	TIME WARNER	NEWS CORP.
BROADCAST NETWORK	ABC	NBC TELEMOND	CBS UPN	WB	FOX
NEWS BROADCAST CABLE	ABC news	NBC news MSNBC CNBC	CBS news	CNN Headline	Fox Fox news
CABLE NETWORKS					
General	ESPN Lifetime	USA	NICK	TBS TNT	Fox Sports
Emerging Mass	Family	SciFi	TV Land	Court	
Older Trending	A&E Bravo History			TCM	FMC
Younger Trending	Disney Toon Disney		Comedy MTV NickToons	TOON	FX
Emerging Niche	LMN Soapnet		BET Jazz ESPN2 CMT Spike VH1 VH1 Class VH1 Count MTV2 MTV Espan MTV Hits Nick Gas Noggins	Oxygen	Speed Nat. Geog
	ESPN Class				

“Comments of American Cable Association,” *Inquiry Concerning A La Carte, Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 12, 2004; Booz Allen, Hamilton, *The A La Carte Paradox: Higher Consumer Costs and Reduced Programming Diversity*, July 2004

Prime Time Programming After Repeal Of The Fin-Syn Rules

In the early 1990s, the Financial and Syndication rules were repealed by the FCC. These rules had limited the amount of prime time programming that the national networks could produce and own. The limit had been set at 25 percent. The FCC abandoned the rules altogether.

During the 1980s, when the Fin-Syn rules were in effect, prime time, as a market, was not very concentrated (see Table 1 above). Judged both by the HHI and the CR4 the market was unconcentrated. Repeal of the rules resulted in a sharp increase in concentration. The HHI for prime time programming now is well into the moderately concentrated range. The CR4 indicates a tight oligopoly.

The increase in concentration was accompanied by a dramatic shift toward production by the networks. The big three networks went from an ownership share of programming of 17 percent in 1989 to 48 percent in 2002 through growth and mergers. Of course, the repeal of the Fin-Syn rules made the mergers “attractive.” “New” networks, all of which had been based in major studios, push the network total to 75 percent. Other major studios now account for a very small share of prime time programming. Larger independents, who accounted for 20 to 30 percent under the Fin-Syn rules, now account for less than 10 percent. Smaller producers accounted for about two-fifths of the prime time programming in the 1980s. These producers now account for only one-twentieth of prime time shows.

Radio After the 1996 Act Relaxed Many Restrictions

Until 1996, there were limits on the number of radio station licenses that a single person (corporation) could hold in a local market and nationally. The 1996 Act eliminated the national cap and loosened the local limit. We examine the trend of mergers in the radio

industry. The consolidation of radio markets in a short period of time after the relaxation of structural limits in the 1996 Act is striking. The radio industry has become concentrated at every level.

Even at the national level, where one might think that the existence of a market fragmented into 285 geographic areas and populated by over 10,000 stations would limit the possibility of concentration, we find that the market is moderately concentrated when measured by listeners and revenues. In both cases, the HHI exceeds 1000, the equivalent of ten equal-sized competitors.⁸⁵ Just five years earlier, the national HHI was 125, the equivalent of 80 equal-sized competitors. In a very short period, the national market has gone from being atomistically competitive to a loose oligopoly.

A second view of the national market – product types or formats – also reveals a startling level of concentration. All radio formats have become at least loose oligopolies (four firm concentration ratios greater than 40 percent) and the majority have become tight oligopolies (four firm concentration ratios greater than 60 percent).⁸⁶ On a listener-weighted basis, the average format is a tight oligopoly.

However, the radio market is primarily a local market. At that level, the concentration is even greater. The average local market had the equivalent of five equal-sized competitors in 1995 (HHI of 2103). By 2000, that had increased by almost 1000 points to just over 3000, the equivalent of three equal-sized competitors. The relaxation of the rules allowed the larger markets to become much more concentrated, increasing from the tight oligopoly level to very tight oligopolies.

⁸⁵ Brown and Williams, p. 10.

⁸⁶ DiCola, Peter and Kristin Thomson, *Radio Deregulation: Has It Served Citizens and Musicians* (Future of Music Coalition, 2002), pp. 37-39. Nineteen of 30 self reported formats are tight oligopolies, while 13 of 19 BIA formats are and 8 of 13 *Radio and Records* categories are.

Even in 1996, most markets were tight oligopolies. However, the merger wave unleashed by the Telecommunications Act of 1996 allowed about half of all markets to become effectively duopolies and almost ten percent of markets to become effective monopolies, while all loose oligopolies were eliminated. The top 50 markets were where the 1996 Act had the biggest impact. One-sixth of the larger radio markets were loose oligopolies in 1996 and five-sixths were tight oligopolies. None were duopolies. By 2002, the loose oligopolies were eliminated and one-quarter of the markets were duopolies. Perhaps the most notable feature of the radio market has been the remarkable growth of Clear Channel. That a single firm would grow from the cap of 40 stations nationwide to 1200, in less than a decade, would never have been predicted by architects of the 1996 Act.

Expansion of National Networks After The Cap was Lifted

A second major rule change in the 1996 Act, involved the national cap on TV licenses. In the early 1990s, national TV networks were limited to directly owning stations that reached only 25 percent of the nation. Stations that are directly owned and operated by the networks, referred to as O&Os, exercise no programming independence. Programming decisions are made at the national headquarters. Networks can, of course, have network affiliations with independently owned TV stations, so that national shows could reach every household in the nation, but the affiliates exercise independent judgment about what to air by preempting shows. The 1996 Act raised the limit to 35 percent and empowered the FCC to re-examine that limit on a biennial basis.

In 1995 there were approximately 200 groups of stations that accounted for the vast majority of all television broadcasting. The limit on ownership was 12 stations and/or 25 percent of the national audience. These groups accounted for over 90 percent of all VHF

stations and 60 percent of all UHF stations. Virtually none of the 200 groups is even close to these limits. There were eight groups that were at least somewhat constrained by the current rules, and even these are not entirely constrained.

Three groups were at the 12 station limit. Of these, only one (FOX) was to be close enough to the coverage limit that it could not move into the largest market in the nation that it does not serve, if it chose to rearrange its holdings. The other two groups at the 12 station limit (Silver King and New World) were farther from the coverage limit.

Only 2 groups were close enough to the 25 percent limit to have to be concerned about further acquisitions (ABC and NBC). Although these are already in the largest markets, depending on the size of an additional market into which they wanted to move, they could run up against the coverage limit.

Within less than a decade, the national landscape had changed dramatically. Fox and NBC had blown past the 35 percent cap set by Congress and were allowed to hold onto their properties pending the final resolution of court cases, an outcome that was endorsed by Congress. Tribune was well above the former caps. Sinclair fought to maintain and expand its network, which relied on a counting methodology that counted UHF stations at 50 percent.

TV After Relaxation of the Duopoly Rule

Until the passage of the Telecommunications Act of 1996, no single person (corporation) could hold more than one TV broadcast license in the same market. The 1996 Act authorized the FCC to reconsider this ban. In 1998, the FCC completed its duopoly rulemaking and decided to allow duopolies in markets where there were more than eight other commercial TV stations.

At least one merger took place in over two-thirds of all the markets where they were allowed. In larger markets where five or more mergers were allowed, at least one merger took place in every market (i.e. there are no markets without a merger). In markets where multiple mergers were permitted, however, only about 36 percent of all the possible mergers have taken place. In smaller markets, at least one merger took place in about half the markets where they were allowed.

Production of News and Public Affairs

The justification for raising of the national cap on network ownership the duopoly rule was to strengthen the hand of the national networks (NBC, ABC, CBS, Fox) and chains (like Sinclair and Paxon). They claim that increased scale allows them to produce more and higher quality news and public interest programming. The systematic evidence does not support these claims.

Over the course of the two decades of deregulation, while the number of stations has almost doubled, the number of television newsrooms has not increased. It has probably declined somewhat – by about 10 percent.

The media industry claims that duopolies increase the quantity and quality of news, but the evidence does not support this conclusion (see Table 3). Increases in news coverage are equal in duopoly and non-duopoly markets. More importantly, the loss of independent hours of news in duopoly markets exceeds the gain in the total hours of news in those markets. In other words, we get a little more quantity at a severe cost to quality (independent hours of news). Conversely, the ban on duopolies promotes diversity of viewpoints (measured by ownership) without detracting from the quantity of news.

An econometric analysis is consistent with these findings.⁸⁷ It finds a small increase in the *probability* that a station will cover news (from 66.5 to 74.5 percent), but no statistically significant differences in the amount of news. Because the networks disregard ownership, the study did not examine the loss of independent news. Also the network-sponsored econometric study cannot address the question of causality. It did not inquire as to whether the duopolists added news after a duopoly was created or merely bought stations that already produced news.

TABLE 3: Duopolies Do Not Produce Larger Increases in News Hours

	DUOPOLY ^{a/}			NON-DUOPOLY ^{b/}		
	# of Markets	Change in Hours of News	Lost Hours of Independent News	# of Markets	Change in Hours of News	
FOX	9	+1.7	-2.5	16	+1.9	
NBC	6	+4.4	-12.0	10	+3.9	
TOT/ AVG.	15	+2.8	-6.3	26	+2.7	

Source: *Comments of Fox Entertainment Group and Fox Television Stations, Inc., National Broadcasting Company, Inc. and Telemundo Group, Inc., and Viacom, News Programming Exhibit No.1 Fox Entertainment Group Inc. and Fox Television Stations, Inc., News Programming Exhibit No.2 National Broadcasting Company, Inc. and Telemundo Communications Group, Inc.,*” 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, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, MB Docket No. 02-277, MM Dockets 02-235, 01-317, 00-244, January 2, 2003.

a/ Viacom data does not provide sufficient detail to conduct the lost hours analysis.

b/ Fox shows much larger gains for non-duopolies when it goes back to its pre-acquisition of stations, which in many cases is a decade or more ago. Use of this data would make non-duopolies appear even more valuable. This analysis uses changes since 11/2000.

⁸⁷ Crandall, Robert W., *the Economic Impact of Providing Service to Multiple Local Broadcast Stations Within a Single Geographic Market*, attached to Comments of Sinclair Inc., ” *In the Matter of Cross-Ownership of Broadcast Stations and Newspapers; Newspaper-Radio Cross-Ownership Waiver Policy: Order and Notice of Proposed Rulemaking*, MM Docket No. 01-235, 96-197, December 3, 2001.

An examination of the detailed data provided by FOX and NBC shows that they did not add news to any stations that did not already carry it and, in one case, they eliminated the news at a duopoly station.⁴⁸¹ Thus, the networks mistakenly ascribed a positive effect to duopolies where none exists. In terms of news carriage, the networks were not able to show a positive effect in the amount of news carried, and completely ignored the negative effect of the loss of an independent news voice.

A recent study from the Project for Excellence in Journalism affirms these conclusions.

But overall the data strongly suggest regulatory changes that encourage heavy concentration of ownership in local television by a few large corporations will erode the quality of news Americans receive.

Among the findings:

Smaller station groups overall tended to produce higher quality newscasts than stations owned by larger companies—by a significant margin.

Network affiliated stations tended to produce higher quality newscasts than network owned and operated stations—also by a large margin.

Stations with cross-ownership—in which the parent company also owns a newspaper in the same market—tended to produce higher quality newscasts.

Local ownership offered some protection against newscasts being very poor, but did not encourage superior quality.”⁸⁸

A recent analysis of local public affairs programming also contradicts the claim of the large broadcasters.⁸⁹ A sample of media markets covering a two week period shows that only 41 percent of the commercial stations aired any local public affairs programming. In sharp contrast, over 90 percent of public stations aired such programming. Commercial

⁸⁸ Project for Excellence in Journalism, *Does Ownership Matter in Local Television News: A Five-Year Study of Ownership and Quality*, February 17, 2003, executive summary.

⁸⁹ Michael Yan and Philip Napoli, “Market Structure, Stations Ownership, and Local Public Affairs Programming on Local Broadcast Television,” paper presented at the Telecommunications Policy Research Conference, October 2004.

stations aired just 45 minutes of such programming in the two week period. Local stations owned by the major national networks aired just over 37 minutes of local public affairs shows, while independently owned stations aired 110 minutes.⁹⁰ Public (noncommercial) stations aired over 6 hours.

The Notice of Inquiry noted that analysis of election coverage shows local issues are neglected. That research also arrives at the same conclusion on the impact of chains on local coverage as the Pew study cited above.

The research indicated that, during the 2000 election, the majority of the subject stations aired less than one minute of “candidate-centered discourse,” per night before election events. During 2002, only 44% of the 10,000 news broadcasts studied contained any campaign coverage at all, and only 14% of the campaign stories that were aired focused on local elections. The research also suggested that larger station groups aired less local campaign news than smaller and mid-sized station group owners.⁹¹

Preliminary analysis of the 2004 election, released in October 2004, found similarly troubling patterns in the 2004 election.⁹² The study is based on the analysis of a sample of news shows and election coverage by 44 local ABC, CBS, NBC and Fox stations in 11 markets during the hours of 5:00 pm to 11:30 pm in week of October 4 to October 10, 2004.

Election coverage was not given a great deal of attention, with just 2.5 minutes per half hour, less than after advertising (8 minutes), sports and weather (.4), and crime (2.5). In battleground states, campaign ads have outnumbered campaign stories during local news shows – six minutes to three minutes. In non-battleground states, campaign ads occupied 1.5

⁹⁰ The finding of greater responsiveness of local media to local needs in program variety has been well documented in recent years in a series of studies of “preference externalities,” see Waldfoegel, Television), Preference Externalities; Siegelman and Waldfoegel; George and Waldfoegel, See also “Survey Shows Solid Growth in TV News and Staffing,” *Communicator*, September 2004, p. 6 (only 759 TV stations in the U.S. offer any local news at all).

⁹¹ FCC, Notice of Inquiry, para 21, citing “Testimony of Dean Martin Kaplan, given at the Congressional hearing on localism.

⁹² Local News Archive, *Local TV News Ignores Local and State Campaigns*, October 21, 2004.

minutes while election news stories averaged about 2 minutes. Even more troubling for localism, the presidential race received far more attention than local races. While 80 percent of the news stories were devoted to the presidential campaign, only 5 percent were devoted to local election. Even where senators were running, the presidential election got 75 percent of the news coverage – 68 percent in those states where the senate races are considered a toss-up. Campaign issues (as opposed to campaign strategy and the horserace) were covered in 42 percent of the stories about local elections, but 29 percent of the stories covering the presidential election.⁹³ Doing the math, we find that about one-quarter of the campaign stories on the local news covered issues in the presidential campaign, but only about one-fiftieth covered local campaign issues.

Based on the amount of time devoted to debates, an average of just under three hours per station, it appears that all of the stations aired the presidential and vice presidential debates the occurred during the study period. Beyond that, the stations devoted about half an hour to “town hall meetings, election-based talk shows, or other campaign-related programming.”

The use of these extremely valuable hours of broadcasting for the coverage of elections in a critical week is roughly as follows: just over 6 percent was taken up by the presidential debates, about 2.5 percent was taken up with advertising, just under 2 percent was taken up by news coverage just under 1.5 percent was devoted to town hall type election events or talk. In total, local elections certainly accounted for less than 3 percent.

⁹³ Interim Report, *Local TV News Ignores Local and State Campaigns* (Lear Center Local News Archive, Oct. 21, 2004), <http://www.learcenter.org/pdf/LCLNInterim2004.pdf>

CONCLUSION: THE FORUM FOR DEMOCRATIC DISCOURSE

We have shown in this paper that there is substantial evidence that deregulated markets will not provide society with the responsive diverse local broadcast that democracy needs to thrive. It is critically important to recognize that the resulting need for aggressive policy to promote localism and diversity in no way conflicts with constitutional First Amendment principles. The FCC needs to be careful in how it promotes localism and diversity, but it should not be reluctant to do so.

For over almost eighty years, since the first legislation dealing with radio,⁹⁴ Congress and the Supreme Court have recognized the importance of localism. For over sixty years, since the landmark ruling in *Associated Press*,⁹⁵ the Supreme Court has expressed a bold aspiration for the First Amendment in the electronic age.⁹⁶ The Court has declared that “the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.”⁹⁷ Diversity and antagonism are fundamental forces that support democracy.⁹⁸ Moreover, the First Amendment is not limited to preventing government from impeding the free flow of ideas. As Justice Black wrote, “[s]urely a command that the government itself shall not impede the free flow of ideas does not afford

⁹⁴ *Radio Act of 1927*

⁹⁵ *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

⁹⁶ Benkler, Yochai, presents this broad view in *Free as the Air to Common Use: First Amendment Constraints on the Enclosure of the Public Domain* 74 N.Y.U. Law Review 354 (1999) and brings it to bear on the foundation of broadcast jurisprudence in *Free Markets v. Free Speech: A Resilient Red Lion and its Critics*, (Robert Corn-Revere, ed.) 8 Int'l J. L. & Information Tech. 214 (2000).

⁹⁷ *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

⁹⁸ Krotoszynski, and Blaiklock, p. 867, “If Madison was correct in asserting that he best safeguard of liberty is to set faction against faction, the Commission’s approach to dividing ownership among multiple constituencies makes a great deal of sense.” Sunstein, Cass, *Republic.com* (Princeton: Princeton University Press, 2001), p. 40. “It is here that the Constitution’s framers made a substantial break with conventional republican thought, focusing on the potential uses of diversity for democratic debate. For them, heterogeneity, far from being an obstacle, would be a creative force, improving deliberation and producing better outcomes... Alexander Hamilton invoked this point to defend discussion among diverse people within a bicameral legislature, urging in what could be taken as a direct response to Brutus, that “the jarring of parties... will promote deliberation.”

non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom.”⁹⁹

One of the most obvious and immediate implications of this First Amendment jurisprudence is that democratic discourse demands more protection than mere commerce. As Justice Frankfurter put it in his concurrence in *Associated Press*,

A free press is indispensable to the workings of our democratic society. The business of the press... is the promotion of truth regarding public matters by furnishing the basis for an understanding of them. Truth and understanding are not wares like peanuts and potatoes. And so, the incidence of restraints upon the promotion of truth through denial of access to the basis for understanding calls into play considerations very different from comparable restraints in a cooperative enterprise having merely a commercial aspect.¹⁰⁰

The Court has also stressed that the objective is to have citizens be active participants in democratic debate. As Justice Brandeis explained in his concurrence in *Whitney v. California*,

Those who won our independence believed that the final end of the State was to make men free to develop their faculties; . . . that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of American government.¹⁰¹

The desire for active participation and the duty to discuss have important implications. Justice Brandeis’ admonition against turning citizens into passive ‘couch potatoes’ reinforces the distinction between citizen and consumer suggested by Justice Frankfurter.¹⁰² It reminds us that citizens must enter the debate not simply as passive consumers (listeners or viewers),

⁹⁹ *Associated Press*

¹⁰⁰ *Associated Press*,

¹⁰¹ 274 U.S. 357 (1927).

¹⁰² Sunstein, (Republic, pp. 46-47) cites this passage in a discussion that notes that “with respect to a system of freedom of speech, the conflict between consumer sovereignty and political sovereignty can be found in an unexpected place: the great constitutional dissents of Supreme Court Justices Oliver Wendell Holmes and Louis Brandeis... Note Brandeis’s suggestion that the greatest threat to freedom is an “inert people,” and his insistence, altogether foreign to Holmes; the public discussion is not only a right but a “political duty”... On Brandeis’s self-consciously republican conception of free speech, unrestricted consumer choice is not an appropriate foundation for policy in a context where the very formation of preferences, and the organizing processes of the democratic order, are at stake.”

but also as active speakers. One goal is to ensure that they are well informed, receiving good, diverse information; but an equal if not higher goal is that citizens must have the opportunity to speak and be heard.¹⁰³

While *Associated Press* was an antitrust, newspaper case, the Court has applied it to every form of electronic media involving regulatory law. The statement with respect to television broadcast media can be found in *Red Lion*.¹⁰⁴

It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the government itself or a private licensee.

Over the years, the Supreme Court has articulated a multifaceted concept of the public interest in diversity and antagonism in the media. In *Red Lion* the court upheld the limitations on ownership because “[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount... [It is] the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here.” This reaffirms the aspiration to provide access for the people to a wide range of information.

A second aspect was articulated by the Court in *FCC v. NCCB*,¹⁰⁵ “on the theory that diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints, as well as by preventing undue concentration of economic power.”¹⁰⁶ The D.C. Circuit Court in *Sinclair* restated the broad purpose in promoting the public interest when it stated “the greater the diversity of ownership in a particular area, the

¹⁰³ *Id.*, p. 115, “A principle function of a democratic system is to ensure that through representative or participatory processes, new or submerged voices, or novel depictions of where interests lie and what they in fact are, are heard and understood.”

¹⁰⁴ *Red Lion Broadcasting v. FCC*, 395 US 367 (1969).

¹⁰⁵ *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. (1978).

¹⁰⁶ *Id.*, at 775, 780-81.

less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level”¹⁰⁷

The need to preserve these principles in the face of technological change is recognized in *Red Lion*.

The ability of new technology to produce sounds more raucous than those of the human voice justifies restrictions on the sound level, and on the hours and places of use, of sound trucks so long as the restrictions are reasonable and applied without discrimination. Just as the government may limit the use of sound-amplifying equipment potentially so noisy that it drowns out civilized private speech, so may the government limit the use of broadcast equipment. The right of free speech of a broadcaster, the user of a sound truck, or any other individual does not embrace a right to snuff out the free speech of others.¹⁰⁸

This citation also raises the other important tradition of First Amendment jurisprudence – that a speaker’s analysis takes precedence. Speech, *Red Lion*, reminds us, is special since “speech concerning public affairs is more than self-expression; it is the essence of self-government.”¹⁰⁹ Here of course, we encounter a unique characteristic of electronic media, the problem of scarcity.

Starting with an early radio case, *National Broadcasting Co. Inc. et. al. v. United States*, the Supreme Court found that “its facilities are limited; they are not available to all who may wish to use them; the radio spectrum simply is not large enough to accommodate everybody.”¹¹⁰ A quarter of a century later, with respect to television, in *Red Lion* the unique nature of electronic speech was underscored when the court noted that “where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right

¹⁰⁷ 284 F.3d at 160.

¹⁰⁸ *Red Lion Broadcasting v. FCC*, 395 US 367 (1969).

¹⁰⁹ *Red Lion Broadcasting v. FCC*, 395 US 367 (1969).

¹¹⁰ 319 U.S. 190 (1943) 70.

of every individual to speak, write, or publish.”¹¹¹ A decade later in *FCC v. National Citizens Commission for Broadcasting* the Court again examined the disproportional relationship between potential speakers and electronic voices.

Because of the problem of interference between broadcast signals, a finite number of frequencies can be used productively; **this number is far exceeded by the number of persons wishing to broadcast to the public.**¹¹²

In fact, in the *Sinclair Broadcast Group v. FCC* decision, which dealt with local media markets, the court went to considerable lengths to reject Sinclair’s claim that its First Amendment rights had been harmed by the duopoly rule.

[B]ecause there is no unbridgeable First Amendment right comparable to the right of every individual to speak, write or publish, to hold a broadcast license, Sinclair does not have a First Amendment right to hold a broadcast license where it would not, under the *Local Ownership Order*, satisfy the public interest. In *NCCB* the Supreme Court upheld an ownership restriction analogous to the *Local Ownership Order*, based on the same reasons of diversity and competition, in recognition that such an ownership limitation significantly furthers the First Amendment interest in a robust exchange of viewpoints.

The multiple objectives of promoting the dissemination of information and participation while preventing the undue concentration of economic power defines the objective of the public interest to create the objective of a robust exchange of views. Red Lion asserts “That the ‘public interest’ in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public.”¹¹³ *Turner I*,¹¹⁴ frames it in equally aggressive terms stating that “[a] diverse and robust marketplace of ideas is the foundation of our democracy.”¹¹⁵

¹¹¹ *Red Lion Broadcasting v. FCC*, 395 US 367 (1969).

¹¹² *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

¹¹³ *Red Lion*, at 390

¹¹⁴ *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 638-39 (1994) ("*Turner I*"); *Time Warner Entertainment Co., L.P. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001) ("*Time Warner III*").

¹¹⁵ 512 U.S. at 663-64

Both the *Fox* and *Sinclair* decisions that gave part of the impetus to the FCC's media rulemakings reiterate the principle that restraints on the economic interests of licensees is legitimate in the effort to promote the public interest in diversity. As the D.C. Circuit noted in *Fox*,

“An industry with a larger number of owners may well be less efficient than a more concentrated industry. Both consumer satisfaction and potential operating cost savings may be sacrificed as a result of the Rule. But that is not to say the Rule is unreasonable because the Congress may, in the regulation of broadcasting, constitutionally pursue values other than efficiency – including in particular diversity in programming, for which diversity of ownership is perhaps an aspirational but surely not an irrational proxy. Simply put, it is not unreasonable – and therefore not unconstitutional – for the Congress to prefer having in the aggregate more voices heard.”¹¹⁶

The *Sinclair* decision notes that in 1995 the Commission had already argued “the merger guidelines of the Justice Department and the Federal Trade Commission might be too low as their purpose lay in defining the point at which antitrust scrutiny is required, and not in encouraging a wide array of voices and viewpoints.”¹¹⁷

The adjectives used by the courts describe a bold aspiration for the First Amendment articulated over 75 years. The oldest citation above given is from 1927, the year the Radio Act was passed. The youngest was from 2002. The goal is clear, uninhibited, robust, vigorous debate about all important issues among citizens who have access to the necessary information beyond what merely commercial interests would provide and whose voices can be heard, free of undue concentration of economic power or the inordinate effect through editorial control of a single person or group. Since the number of broadcast licenses remains vastly smaller than the number of citizen speakers, the public interest continues to demand,

¹¹⁶ *Fox v. FCC*

¹¹⁷ *Sinclair*

among other things, the dispersion of ownership, public interest obligations on commercial media companies, and expansion of noncommercial alternatives.