UNITED STATES
FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION ) MM Docket Nos. 01-235, 
) 96-197, 92-264, 94-150, 
ROUNDTABLE DISCUSSION ON ) 87-514 and CS Docket 
MEDIA OWNERSHIP POLICIES ) Nos. 98-92 and 96-85

Pages: 1 through 189
Place: Washington, D.C.
Date: October 29, 2001

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005-4018
(202) 628-4888
hrc@concentric.net
The parties met, pursuant to the notice, at 12:05 p.m.
Introduction and Welcome

Michael K. Powell, Chairman
Federal Communications Commission

Ownership Policies and Competition

Panelists:

Stanley Besen Charles River Associates
Mark Cooper Consumer Federation
W. Robert Majure U.S. Department of Justice
Bruce Owen Economists Incorporated

Moderators:

James Bird and David Sappington
Federal Communications Commission

Ownership Policies, Diversity and Localism

Panelists:

Douglas Gomery University of Maryland
Philip Napoli Fordham University
Joel Waldfogel University of Pennsylvania

Moderators:

Jonathan Levy and Joel Rabinovitz
Federal Communications Commission

Concluding Observations

Moderators:

Jane Mago and Robert Pepper
Federal Communications Commission
MR. FERREE: Good afternoon. Welcome to the media ownership roundtable. I am Ken Ferree and I'm chief of the Cable Services Bureau here at the FCC and I'm happy to see such a good turnout today. I'm sure you won't be disappointed.

We have assembled a really terrific team of experts, both academics and economists, to come to discuss and debate today issues that are really central to the FCC's media ownership limits.

Among other things, the panelists who we will introduce to you momentarily will discuss the relationship between the FCC's media ownership limits and actual market performance, the relative merits of an ex-ante approach in this context versus a case-by-case approach, the product markets that are relevant to FCC consideration of media ownership limits or restrictions, and the costs and benefits of various kinds of ownership limits.

In addition, we hope to have a lively and provocative debate in the second panel today on the meaning of diversity in this context and the relationship of diversity concerns to media ownership limits, as well as the extent to which outlet diversity actually produces source or viewpoint diversity.

Heritage Reporting Corporation
(202) 628-4888
In addition, the second panel today will be discussing the meaning of localism in this context and answering the question, we hope, or at least providing some insight into the question about whether local ownership actually translates into increased locally oriented programming.

Before we get to what I am sure will be a provocative and educational discussion, it is my pleasure to introduce our chairman, Chairman Michael K. Powell, to formally kick off the media ownership roundtable.

MR. POWELL: Good afternoon and welcome to all of you to the commission.

As I have long believed and outlined more fully last week, I believe that the media landscape has changed dramatically but it doesn't necessarily that fact in and of itself tell us specifically what the most optimal way to regulate that media landscape is.

I have long felt frustrated that these debates over specific rules, specific policies or directions are to extraordinarily high and superficial level unsubstantiated or supported by either empirical evidence or a review of past experiences. Many of the rules that we continue to steward today have their origins in an era 30 years ago in which certainly not only in the nature of the competitive marketplaces but the nature and quality of media and the way
that consumers access it as well was fundamentally
different.

And it has been my conclusion and those of many of
my colleagues here that increasingly the debate over the
proper regulatory media foundation is ultimately
unsatisfying if there isn't a concomitant effort to build
and substantiate through a better record and a better
development of an analytical basis for having those debates.

And so as we announced, we are going to put
together a media working group here at the commission whose
objective is to go out and do that work with the cooperation
and assistance of many other people, including some of those
who will be participating today, this being in some ways the
first installment of that activity.

The hope is that we build and leave a legacy of
data analysis with some rigor on which meaningful debates
about media ownership policy can be had as opposed to more
superficial, often highly politicized benchmarks for that
debate, and so this is the first installment.

Ken has me nervous using words like provocative
and stimulating. The last thing I want ultimately this to
be is nothing but an academic exercise. It's not an
academic exercise as far as the commission is concerned with
its cherished responsibilities under the public interest
standard. We actually have to do it. We actually have to
have the courage of our convictions in establishing rules
and procedures on which much will depend going forward, so I
would hope that not only this group but others would work
toward that direction and it is not, I hope, at the end of
the day another policy paper in the long kind of train of
such things that have often proliferated the space.

So I thank all this group for their participation
and understand the seriousness with which we take what we
will hopefully learn from you and thank you very much for
being here and joining us in this effort.

Thank you.
(Appause.)

MR. FERREE: Thank you, Mr. Chairman.

I should say at the outset that all three
commissioners have been generous enough with their time,
that they will be visiting with us for at least part of the
roundtable today. Commissioners Copps and Abernathy will be
saying a few words before the second panel this afternoon,
but at this point I would like to prevail upon Commissioner
Martin to offer a few remarks before the first panel, if you
would be so kind.

MR. MARTIN: Thanks, Ken. And thank you all for
being here today.

As the chairman alluded to, the media marketplace
has changed dramatically since a lot of our ownership rules
were put into place, but the underlying goals of our rules, promotion of competition, diversity and localism haven't changed and that's the real challenge that we all end up facing, is how do we square those underlying goals with the current media marketplace. It is a great challenge for the commission.

I know Paul Gallant and Ken who will be working group that the chairman mentioned will be doing a great job in trying to make sure and build an adequate record for us, but I think an important component of that is the work that you all are starting today. And so I just wanted to make sure I came by and thanked you for being here and trying to tackle some of those difficult issues and trying to help us determine how to balance those competing interests and try to determine how we can promote those underlying goals with today's converging and changing dramatically media landscape.

So with that in mind, I will let you all get to it and I just want to say thank you all. Thanks.

(Applause.)

MR. FERREE: Thank you, Commissioner Martin.

As I said at the outset, I am eagerly looking forward to the debate and discussion that we will be engaged in today. The issues that this roundtable will face really are central to the FCC's ongoing review of its ownership
rules, restrictions and limits.

From my own perspective, as we send drafts of items to the chairman and the commissioners that involve ownership limits or restrictions, it is really critically important that they be founded upon a strong factual basis and that the analytical thinking and the economic thinking that goes into them be very thorough and rigorous.

I see today's roundtable and the media ownership working group that the chairman mentioned in his opening remarks as really tools to help provide us with that factual foundation and to help inform our thinking in terms of the economic analysis that goes into those items. So I am looking forward to hearing these panelists tackle those issues head on.

Finally, I want to express the FCC's gratitude to these panelists for making time in their busy schedules to come visit with us today.

Now, without further delay, I would like to introduce and turn the proceedings over to the moderators of the first panel, Jim Bird from the FCC's Office of General Counsel, and David Sappington of the FCC's Chief Economist.

MR. BIRD: Thank you, Ken. First, I would like to cover shortly the procedures we are going to be using for this forum. Each presenter will be given 20 minutes to present their presentation and those time limits will be
strictly enforced. If you look in that direction, you will
be given warnings at ten minutes, five minutes, one minute
and out of time. Just so that we can make sure everyone has
a chance to say what they came to say.

At the end of those presentations, there will be
time for discussion. This panel is focused on the
competition issues and the second panel will be focused on
diversity issues. We have two panels not because we believe
those issues are completely separate, but because they are
more easily presented in that fashion.

Following those, there will be additional time for
discussion when the relationships of those as well as any
other issues can be raised.

In preparation for this panel, we sent the
participants two general questions to stimulate and focus
their thinking. The first concerned the harms that might
arise in the absence of government intervention other than
standard anti-trust intervention in the marketplaces
involved and how those harms might be related to the
characteristics of these particular industries.

The second question was what were the best
policies the agency might use to address those harms. What
we are looking for as both the chairman and Chief Ferree
have noted is a greater soundness of empirical data, not
just statements but empirical data and sound theory, to
The questions that will occur after the present presentations will come from any of the participants in both this panel or from the afternoon panel if they would like to ask questions of this panel.

I will now turn it over to David Sappington who will introduce each of the speakers before they make their presentation.

MR. SAPPINGTON: Thank you very much, Jim. And thank you all again for coming.

Our first speaker today will be Stan Besen. Stan is a vice president at Charles River Associates here in Washington, D.C. Stan received his Ph.D. in economics from Yale University in 1964 and has since authored many, many important works on telecommunications and media policy and he has also served on the editorial boards of leading academic journals.

Stan has taught at Rice University, Columbia University and the Georgetown University Law Center and he has also provided invaluable service to the Executive Office of the President, the Office of Technology Assessment and, last but not least, the Federal Communications Commission.

We are certainly delighted to have Stan here today and look forward to his characteristically insightful
MR. BESEN: It probably goes without saying, but I will say it anyhow, that the views expressed here today are my own. I am going to talk about sort of two broad areas: one, the substance of policy, but I also want to say some equally important things about the commission's processes for getting policies right.

Some 17 years ago, Lee Johnson and I wrote a report for the Rand Corporation assessing FCC ownership policy, probably still available at Rand, back at the old days, and we focused on two things: the substance of the commission rules and also the sort of underlying evidence that supported or didn't support the rules that were then in place. I just want to read you a couple of things where I think they're still true.

First we said "There is little evidence that high concentration within a service in the same market results in anti-competitive behavior. Where there are many competing stations in a local market, some combinations that are now prevented by FCC rules may be possible without great concern that the public will be harmed."

We went on to say "Some markets are presently quite unconcentrated, that even combinations of stations in the same service in these markets would probably not create market power."
And then we made the incredibly bold statement, "For example, the FCC might well approve a combination of two AM stations in the Los Angeles market where there are presently more than three dozen radio stations." We were ahead of our time.

I think the problem, as the chairman has already indicated, there still remains a legacy of FCC rules which do not take into account the competitive conditions in local markets. As a result, particular types of combinations are forbidden, regardless of the nature and extent of the competitive constraints that we face by the merging parties.

Now, an exception, and an important exception, to this is the relatively recent change in the duopoly rules where combinations of television stations in the same market were previously not permitted, regardless of the extent of competition from other stations, the are now allowed if they do not result in too large an increase in concentration, that is accomplished by placing limits on which stations can be combined; and if they do not result in too high a level of concentration, that is accomplished by placing a floor to the number of independently-owned stations after the combination.

This, of course, mirrors in a rough sort of way the Department of Justice and Federal Trade Commission merger guidelines, the first being the delta and the other
is the post-merger level of concentration.

Although I do not necessarily subscribe to the particulars of the current rule, the elimination of the blanket prohibition on duopolies is clearly a step in the right direction.

Two further steps in that direction would be to apply this more flexible approach to the application of other local ownership rules and to take into account competition for other media in applying these rules. After all, the commission's cross-ownership rules are predicated on the belief that there is competition between media, yet the application of the within media rules seems to ignore this competition.

Fourth, because the commission rules typically ignore local market conditions, they are impervious to changes in those conditions. For example, the duopoly rules remained unchanged for many years, despite a very substantial increase in the number of broadcast stations in all markets.

If the commission rules were self-adjusting, it would not have to go through a time consuming and onerous rule making process whenever changes in market conditions justified changes in the combinations that it wishes to permit.

Fifth, despite the fact that these rules have...
existed for decades, many decades, actually, the commission
still generally cannot point to a study or studies that
justifies the maintenance of many of these rules. Moreover,
the studies on which the commission might rely do not always
ask the right questions.

For example, they tend to ask whether particular
types of combinations lead to bad outcomes, for example,
higher ad rates instead of asking under what conditions
those combinations lead to bad outcomes.

As the Court of Appeals in the D.C. Circuit
recently noted in a slightly different context in Turner II,
there is a gap between "the economic commonplace that all
other things equal collusion is less likely when there are
more firms" and the answer "to the question of what the
appropriate horizontal limit is."

Sixth, the commission probably relies excessively
on analysis produced by outside parties or, perhaps more
accurately, the commission does not perform enough of its
own analysis to inform its deliberations. My footnote here
says perhaps the commission actually performs such analyses,
but chooses not to publicize them. If so, it would be
salutary for the commission to make the results of such
analysis public so that others could comment on it.

This, I think, is in contrast to what I think is
increasing behavior on the part of the antitrust agencies
who know that they will have to present and defend an affirmative case if they choose to challenge a transaction in the courts. My own experience recently has been in dealing with the antitrust agencies that frequently if you show them yours, they will show you theirs, and so there is often a quite constructive interchange of ideas and analysis that I think frequently leads to better outcomes.

Seventh, a somewhat idealized version of the process -- and I said I wouldn't say anything about process -- a somewhat idealized version of the process I would propose for considering revisions of the local ownership rules are the following:

First, the commission would issue a notice of proposed rule making which would contain both a statement of the rule it proposes to adopt and the particular evidence which it believes supports the proposed rule.

Next, interested parties would submit comments in which they represent their analysis that would criticize the commission's analysis or both.

This process would be facilitated if the commission were to make available to outside parties the data on which its own analysis relied. And by the way, again my own experience with the antitrust agencies is recently we have showed them our data and they've showed us theirs and it's frequently, again, led to better outcomes.
Finally, the commission would issue an order in which it responded to the critics. This would be facilitated if the parties provided their own data to the commission and the commission defended its own analysis.

Eighth, this process is not entirely unprecedented, even at the commission. And I'll go back to the good old days.

When I served on the commission's network inquiries special staff in the late 1970s, back when there was only one telephone company and only three networks, we explicitly asked the parties not to continue to file comments on the issues we had been tasked to analyze, choosing instead to perform our own analysis which we then released for public comments in the form of preliminary reports.

We had actually inherited a large number of comments when we arrived. We didn't find them terribly useful and we just simply told the parties, we'll go first.

We released our comments to the parties, to the public. We then got written comments on our preliminary reports. We responded to the critics. Actually responded to the critics in writing. I can go back and find detailed rejoinders to I must say the equally bad comments that continued to be provided even after we put out our reports, but we took them seriously enough to respond to them.
Finally, we released our own report. I think this process is actually one that works. It puts a burden on the commission, but I think one that is appropriate for the commission to bear.

More recently the commission took a similar approach when it performed its own study of the effects of over building on cable television rates in order to determine the rollback in rates it would impose on cable operators. It then put the study out for public comments and importantly made the underlying data available to outside parties.

Although I disagree with the substance of the commission's analysis and believe the commission did not take the criticisms of its work as seriously as it should have, nonetheless, I think the approach that was taken in that proceeding was clearly the right one.

How are we doing on time? Lots of time.

So I can now talk about the national ownership rules. I would say the same things in terms of process about those rules as I would about the local rules.

This is nine. The commission's local ownership rules are grounded at least in theory on standard economic analysis of the horizontal interaction between direct competitors. By contrast, the commission's national ownership rules appear to be based on concerns about
monopsony power, particularly in the purchase of programming, and on vertical foreclosure.

In a fundamental way, the commission concern about the effects of national ownership concentration on monopsony is misplaced. To understand this, note that the textbook economic model on which the adverse effects of monopsony is based assumes two things: there is a single buyer and that the single buyer pays the same price for everything he buys. Thus, for example, a monopsony employer of labor reduces the wage paid to all workers, thus resulting in a reduction in the number of workers that are employed. That's how he exercises monopsony power.

By contrast, the purchase of programming involves the negotiation of individual prices on each unit purchased. In this case, the inefficiency typically ascribed to monopsony does not arise.

Moreover, and this is the second point concerning the multiplicity of buyers of these products, large national buyers may actually be less likely than are small ones to attempt to exploit any local market power they may have because they realize that doing so is likely to have an effect on the amount and quality of programming that is supplied to them.

Indeed, relatively small buyers probably have the greatest incentive to free ride -- I'm the only the person
who has ever said this -- so that the commission's monopsony analysis largely ignores the fact that the products in question are public goods which the costs are shared by a large number of buyers.

Twelfth, next to the last, probably most important, the assumption that buyers with large national footprints have monopsony power ignores the fact that the number of large national buyers has actually increased substantially over time. You can't actually have lots of monopsonies out there buying from you. It's a contradiction in terms.

It's really difficult to argue, for example, that the large station groups for which monopsony power was a great concern have monopsony power when they must compete, for example, with a myriad of cable program services for much of the programming.

Finally, a word about vertical foreclosure. The most important thing to note about vertical foreclosure is that determining whether a foreclosure strategy would be profitable requires a balancing of the gains from foreclosure against the costs. These costs take the form of lost sales, either because the foreclosing firm's product is denied to rivals or because the foreclosing firm's own sales to final consumers decline because the failure to carry a rival's product reduces the quality of its own offerings.
The analysis of this balancing is far from straightforward, depending not only on the size of the putative foreclosing firm or firms but also on, among other things, various margins, the availability of substitutes for the firm's products to rivals, and the importance of the products of rivals in determining the quality of a firm's own offerings.

And, again, to quote the Court of Appeals in Turner II, normally a company's ability to exercise market power depends not only on its share of the market, but also on the elasticities of supply and demand, which in turn are determined by the availability of competition.

I'll start talking really very fast.

I think the commission should take seriously -- I do take seriously -- the admonitions of the Court of Appeals in Turner II. It's an admonition for the commission to do better. I think the suggestions for dealing with process that I described earlier would be helpful in that regard as well.

I yield the balance of my time.

MR. SAPPINGTON: Thank you very much, Stan.

Proceeding in alphabetical order, our next speaker is Mark Cooper. Dr. Cooper is the director of research at the Consumer Federation of America and he's also the president of Citizens Research, an independent consulting firm.
At the Consumer Federation of America, Mark is responsible for energy, telecommunications and economic policy analysis and, like Stan, Mark holds a Ph.D. from Yale University. Mark's Ph.D. is in sociology in 1979.

Mark has also published numerous articles in both trade journals and academic journals.

Mark has vast experience as an expert witness in more than 250 cases in a variety of different areas and we are very grateful to Mark for taking time from his busy schedule to share some of his considerable expertise with us today and we are very interested in his perspective as a leading representative of consumers' rights and interests.

MR. COOPER: It's interesting that Stan focuses on Turner II. CFA is appealing that to the Supreme Court, we would have liked the FCC to join us, and so we have a somewhat different interpretation of the governing Supreme Court case law. In fact, that's where I want to start because the economic discussion must be imbedded within the legal and public policy framework that we think governs this area.

And time and time again the Congress and the courts have concluded that the central principle of media policy in this country is to promote "the widest possible dissemination of information from diverse and antagonistic
sources" and I am going stress the words information
diverse and antagonistic.

They have applied this principle to both print and
electronic media under both the antitrust laws and the
communications act. And so when we look at the governing
Supreme Court case law, we conclude that diversity has full
legal stature as an independent policy consideration in
defining media industry structure. And it's clear to the
people in this room that Turner II does not take that view
of the law.

Civic discourse in the marketplace of ideas is not
the same as entertainment variety in commercial media
markets. Antagonism of ideas is not the same as competition
between products.

Now, when we look at the empirical evidence, we
conclude that ownership matters. One of the fundamental
questions in the notices. Not only because owners influence
what gets aired and how it is played, but also because there
are ways in which the success of commercial media can be
antithetical to a vibrant marketplace of ideas.

When we look out at the media landscape, we see
different types of media representing distinct product and
geographic markets. And, again, Stan talked about all these
new products converging in markets. We see distinct product
in geographic markets.
While the advocates of convergence would like to equate all media, the reality is that different media serve different needs. They have different content and differ widely in their impact and effect. People use different media in different ways, spend vastly different amounts of time consuming different media and in different environments and they consume those media under different circumstances and pay for them in different ways. And so these are distinct markets across which we see less competition than some others.

We believe that if you look at the evidence, horizontal concentration, vertical integration and conglomeration in media markets threatens to impoverish the marketplace of ideas. Profit maximization in increasingly centralized dominant firms has a tendency to drive out professionalism in journalism and to squeeze out public interest programming.

It emphasizes lowest common denominator products that systematically exclude minority audiences, avoid unpopular points of view, and eschew controversy.

Increasingly, commercialized national media homogenize local news out of existence and undermine the ability of investigative reporting to check waste, fraud and abuse of power in both governments and corporations.

Not only does our marketplace of ideas require, to
paraphrase an important jurist, a variety of lights focused
on issues from different angles, but as the world becomes
more and more complex, we also need to bring lights of
differing intensity to bear on issues. Some media are
narrow and shallow, other media are broad and deep, and we
need to preserve the specialization of the different media
types.

Now, our concern does not stop with the impact of
concentration, integration and conglomeration of ownership
on diversity in the marketplace of ideas, however. As the
commission well knows, we have offered frequent opinions
about the impact of these factors in commercial markets.
And when we look at these commercial markets, we are not
overly impressed with the competitive intensity we see out
there.

Consider the much maligned 30 percent cap on the
ownership of cable systems. As defined by the FCC, the cap
is absolutely not a limitation or barrier to competition.
Any cable operator who wants to compete and serve a market
share larger than 30 percent is welcome to do so by building
new systems.

Most people don't recall that there is a clause
which says if you over build somebody, we won't count that
against your cap. So that by entering existing territories,
by over building existing operators, by truly competing for
customers, a cable operator could own systems that serve 100 percent of the markets in this nation. If they did so, they would actually be doing something that we hear a great deal about these days, creating facilities-based competition.

The only reason that the cable operators complain about the 30 percent cap is that they do not actually want to compete with each other. They never have. They just want to buy each other out. We conclude that the 30 percent cap is not a barrier to competition, it is a barrier to the accumulation of market power through acquisition.

Lifting the cap is a bad idea in our view because it would increase the large vertically integrated company's ability to influence the program market. Monopsony power under the antitrust laws actually becomes a problem at fairly low levels of concentration. You can easily win antitrust cases at 30 to 40 percent, which is in the neighborhood of where the cap has been set.

Lifting the cap would also reinforce the market power at the point of sale by expanding the scope for regional monopolies which increase the economies of scale and scope necessary for entry into the cable market.

In the old days, I used to also say that raising the cap would remove potential competitors, but given the sad history of this industry and its complete failure to ever compete head to head, I will forego the claim to that
Now, this is our opening statement in what we believe should be a long and careful, thorough investigation into the question of media ownership. These are rules which need to be considered very carefully before they are changed. They are critical to the nature and quality of our democracy.

The commission should not assume that because we have failed to achieve a perfectly wonderfully diverse marketplace we would be better off without these rules. It certainly should not assume or hope that some revolution which hasn't taken place will somehow or another discipline the forces that exist in the marketplace after some remarkable transformation. And here you will hear a great deal about new media, changes in the marketplace.

In fact, when we look out there, there has been a lot less change than meets the eye. Broadcast networks today are predominantly national, accounting for approximately 60 percent of all national advertising revenues. Newspapers are local, accounting for approximately 60 percent of all local advertising revenues. There has been very little shift in market shares.

In 1985, just after the cable act was passed, broadcast accounted for a tad less than one-third of all advertising revenues spent in these media markets. Today,
they account for a tad more than one-third.

In 1985, newspapers accounted for just over half of all advertising dollars. In 2000, they accounted for just under a half.

In 1985, radio accounted for one-seventh of advertising dollars. In 2000, it accounted for one-seventh of all advertising dollars.

In 1985, of course, the much touted Internet was just beginning its commercial phase. It accounted for almost no viewing time and no advertising dollars. Fifteen years later, it accounts for approximately 4 percent of all viewing time and 2 percent of all advertising dollars.

There is no doubt that the Internet has provided a wonderful revolution. It's a productivity device for the conduct of daily activities. It's just not the mass media revolution that we hear about. Some day in the future, it may be, but it is not today and it should not be assumed that it will be.

I also appreciate the notion that there is an immense amount of additional diversity available out there. That is probably true, but let me make a point. I want to make a point about what I call a PDA, a personal diversity appliance. When I was a kid growing up, I had a wonderful PDA available to me in the 1950s, I have now dated myself, in which I could literally listen to broadcast stations from...
all over the country and, in fact, all over the world. 

I brought one with me. It's a short wave radio. And this gave me access to an infinite supply of information. But its existence no more changes the problem of promoting a vibrant marketplace of ideas than Internet radio does today, when the booming voices of broadcast media still can drown out the faint whispers of Internet radio. We all do hope that that will change, but we cannot depend and rely upon it.

And let me make it clear I understand that this commission cannot make people listen. They cannot tell people what to listen to, but they can through structural rules actually improve the chance that people will hear and that is the commission's job. So let me suggest four ways in which the mere existence of diversity out there in cyber space -- and, of course, when I was a kid listening to that shortwave radio, I had no idea how those signals managed to get there, but they did.

Structural policy can make it easier to hear civic discourse because it is spoken by a louder voice and ensure that people who want to speak with different voices have access to the more influential types of media. And remember I started from a typology of different types of media.

It can ensure a level playing field or a more level playing field so that the unpopular voices are not
denied the resources necessary to make civic discourse attractive.

It can prevent the narrowing of focus so that important issues that might attract attention are not excluded from the more influential forms of media.

And, finally, it can force the mingling of ideas so that accidental exposure is more likely.

Now, under the First Amendment, we understand we can never tell people what to say and we certainly cannot tell them what to listen to. But under the Communications Act, we can organize the structure of the industry to increase the probability that more people will engage in and be engaged by civic discourse.

And I realize that I have gone well beyond the simple economic questions that this roundtable begins with and these are important questions, but in fact economics will determine who gets to speak and what is heard and so therefore we must remember that economics works towards the broader goal, which is absolutely less concrete, less easy to measure, but no less important.

Thank you.

MR. SAPPINGTON: Thank you very much, Mark.

Our third speaker today is Robert Majure, who is the assistant chief of the Economic Regulatory Section in the Antitrust Division of the United States Department of
Justice.

Bob has served the Department of Justice for seven years now, where he has supervised the economic analysis of potential antitrust concerns in the media and telecommunications industries, among others.

Bob received his Ph.D. in economics from MIT in 1994 and is the author of many important works on antitrust analysis.

I have had the privilege of working with Bob in the past and so can testify to his exceptional skills in the antitrust field and we are delighted that Bob is able to serve on this panel today as a representative of the U.S. Department of Justice, although I suspect that the views he will share with us today are his own and not necessarily those of the department.

Welcome, Bob.

MR. MAJURE: Thanks. And I can confirm that. These are just my own views. Thanks. That saves about five minutes of my talk.

Actually, with all due respect to Jim, I looked through the material that was sent over and there were far more than two questions in there. Maybe this shows that there is more need for cooperation between DOJ and FCC, but I looked through and found three that I thought were the key questions. And on those, there's only one of those that I
really feel like I am in a position to say anything useful here, but I will go through the other ones and kind of explain why I don't think I know anything.

The first question this panel, I think, starts with is whether there are harms to the public interest from a potential acquisition or potential harms that could not be dealt with in an antitrust challenge.

Well, I'm not really sure what the public interest means. I have heard any number of things put forward as if they were the public interest. I heard one regulator say in deciding a merger that he didn't know what the public interest was, but he could identify the public as the shareholders of the companies involved and the interest is their rate of return, so he knew how to vote. I don't think I agree with that, but I'm not sure I could prove that that's not the public interest.

But in the interests of trying to contain this to the role of competition, I'm going to put forward the assumption that the public interest is limited to something like the efficiency of markets and if that's the way we're going to think about the public interest, I don't think it's meaningful to ask the question whether there would be a difference in the way the public interest is protected under either the regulatory powers of the FCC or under the antitrust analysis of the Department of Justice or the FTC.
As a working hypothesis, I would say that the analysis is going to be the same, whether it's the FCC judging exactly where to set an ownership limit or the DOJ trying to decide which case to prosecute if there wasn't such a limit or whether it's a combination of those. The economic analysis is really going to be the same.

So having established that as my own definition of the public interest here, the next question becomes easy to answer because the next question put to this panel was assuming the issues and the analysis are the same, is there a reason to prefer establishing a blanket rule versus examining each case?

So if we think that the analysis is going to be the same whichever agency is doing it, then this political economy question becomes one of whether there is a -- how you trade off the costs and benefits of a one-size-fits-all approach, which would mostly be the -- the costs would mostly be that occasionally that one-size-fits-all isn't going to fit and the benefits are that you don't have to do each intensive investigation to review every single transaction that comes along.

I don't have a whole lot to say about that tradeoff, it's a political economy question and I'm not a political economist, but I'm comfortable saying that there are plenty of cases where it might make sense to go either
way. In fact, if you look at what the Justice Department has done in a couple of things that don't look too dissimilar from the situations this panel is considering in radio mergers, when the '96 act lifted the radio version of the ownership limits, after reviewing several of these things and figuring out that one radio market looked a lot like another radio market, somebody from the Department of Justice stood up and said, you know, we've looked at some of these and we think we're going to challenge ones that are above this threshold. I forget what we picked, 35, 40 percent? It tended to slide over time, but they stood up and said that's going to be in essence a rebuttable presumption.

And so we kind of had a compromise hybrid version of an ownership cap of our own. People were free to go in and challenge that because everybody is free to make us go to court and, you know, that's not a bad way to proceed on setting an ownership limit, either. Maybe it's not the kind of free and open process that Stan is advocating, but rebuttable presumptions are another thing to be thought of in this weighing the costs and benefits of one-size-fits-all or not.

But, as I said, I don't really know much about how you allocate resources on a global political basis, so I'm going to turn to the third question and the third question I
saw this panel being asked is how would changing the
ownership rules affect the broader package of regulations,
which I would include antitrust in that, governing the
industry in its vertical relationships?

This to me is the most interesting part of these
questions and I want to focus on this question because I
think it's easy to overlook the role that ownership rules
play in making other regulations a success or failure. Put
another way, one of the places where potentially the
analysis or the ability of the different agencies to proceed
would be at a peak is where the public interest benefit or
the inefficiency of the market that a potential deal raises
might be caused by constraining the efficiency of the
regulation available.

We've seen numerous cases where a proposed deal
made it more difficult for the agency involved, the
regulatory agency, to pursue other goals that they had and I
believe it's feasible to include that in an antitrust
challenge, but perhaps a lot easier for the agency itself to
look out for its interests there.

So to put some meat on this, let me talk about how
I think one instance of this works and that is the ownership
caps and non-discrimination. So consider a hypothetical.
I'm an economist, I can do that.

The hypothetical would be that a firm controls all
programming and it has distribution outlets that reach, say, 20 percent of the market, so the potential audience for that programming, all right? There's an unrelated firm that serves the rest of the audience, one firm, 10 firms, 20 firms, whatever, but there's an unaffiliated group of distributors serving those other customers. And entrant wants to break in and serve this distribution market that this monopolist programming serves.

Now, most people's initial reaction would be that the program access rules have prevented this from being a problem and I'll exempt Stan from that most people, but put simply I think that regulation requires -- to put that regulation simply, it requires that a uniform price be set for the programming in the affiliated and the unaffiliated markets.

Now, holding aside the questions of how this could possibly work when there are volume discounts and complex contracts and non-pecuniary exchanges and all the other things that people would like to argue about whenever they consider the program access rules, the observed fact is that we see DBS providers, for example, have amassed a large share of viewers and so in some sense the program access rules must have worked, right? Despite all these shortcomings.

But let's change the hypothetical around a little
bit. Instead of 20 percent of the market, the distribution market, let's say that this firm controlled 80 percent of the market.

Now, the same program access rules would tend to generate a much higher price in the face of this potential entry now in the larger -- when the monopolist owns a larger share of the distribution outlet. And to see that, you kind of have to look at exactly how the regulation has its power. Where does that regulation get any constraining power from?

And the regulation creates a disincentive to raise prices to the competitor by linking that price to the price in the unaffiliated market and in some sense saying that a higher price to that competitor in your own service territory comes at a cost of having to raise the price in these other unaffiliated distribution channels.

And we can see that that's clearly a cost to the firm because otherwise if the prices weren't linked they would have set the price in the unaffiliated markets at an optimal level. It's an unaffiliated market. There's no reason to be tinkering with things over there.

That's optimal for the firm, it might be the monopoly level or I think we assume that in the hypothetical, but they wouldn't want to raise that price in that market.

Now, as the market share and distribution grows,
the relative importance of the affiliated market grows, it becomes cheaper to discriminate against an entrant. When the share that a single firm owns of distribution has gone from 20 to 80 percent, we've basically cut the price of discriminating into a quarter of what it was before. It's starting to get pretty affordable.

The result is that you would see higher prices to the entrant and to consumers in the unaffiliated market. In the extreme, the programmer would not be constrained at all and could set an arbitrarily high price.

I don't think this is just a hypothetical kind of concern. I would draw similarities to this kind of situation in several of the merger cases that the DOJ and the FTC and the FCC have been involved in recently on the side of Internet content. The AOL-Time Warner case and the AT&T-Media One cases, the consent decrees there may be written in terms of monopsony power, but that's just the flip side of this kind of concern with whether or not the relationship between content and distribution channel is being influenced by one side or the other that transaction.

I would also say that there are strong similarities, that this kind of concern has come up in situations of the ownership of local sports programming by cable systems that are geographically concentrated in a local market and there you get to see the same kind of
effect writ small, if you will, because the ownership cap at the national level isn't going to bind somebody, they could have 90 percent of a market that was the relevant market for something that's inherently local content like local sports programming. And there you see -- I guess the Philadelphia decision is up on appeal now, you see the concern being that the monopoly or the near monopoly of the distribution channel makes it cheap to raise prices to the unaffiliated content providers, that you can have a concern with a company's interest in distributing its programming to the entire world, notwithstanding the impossibility of what Stan mentioned.

Anyway, this is not to say that any merger that otherwise would have violated the ownership caps ought to be challenged. I'm just trying to say that one of the pieces to that analysis, one of the pieces to either the FCC's analysis or to the antitrust authority's analysis ought to be whether or not a particular change in ownership levels is going to have an effect on the efficacy or the efficiency of regulatory options that are available to the regulator. And I think that is a piece that the commission should take into account as they set whatever kind of rule they are going to set.

I'll yield my time, too.

MR. SAPPINGTON: Thank you very much, Bob. And I
appreciate you and all our panelists staying on time. I think Joel is looking for something to do and he's out of a job at the moment because you all are being so timely. We appreciate it.

Our final speaker on this first panel today is Bruce Owen.

Dr. Owen is the president of Economists, Inc., which is a consulting firm specializing in antitrust and regulatory issues.

Bruce earned his Ph.D. from Stanford University in 1970. He has taught at Stanford University and continues to teach law and economics in the Stanford in Washington internship program.

Bruce, like Bob, brings considerable antitrust expertise to this panel because Bruce has served as a chief economist of the antitrust division of the U.S. Department of Justice during the Carter administration and Bruce also served as the chief economist of the Office of Telecommunications Policy during the Nixon administration.

Bruce is widely published in leading journals and has written many books, including his classic work entitled Video Economics.

It is a great pleasure to welcome Bruce to this distinguished panel of experts.

MR. OWEN: Thank you, Dave. I, too, got this list
of questions, but with respect to the session on competition policy there was a first question, which I'll quote, "What harms to competition and industry performance would likely arise in the media industry if no government intervention other than standard antitrust enforcement were imposed?"

And, of course, my answer to that is none and all the rest of the questions assume a different answer, so I'm done.

Now, what do I do with the remaining 19 minutes?

Well, actually, I did think of something else to say. I agree with the general proposition that antitrust policy and particularly the methodology that's embodied in the FTC-DOJ merger guidelines is the soundest and most reliable basis in existence for dealing with the issues to which the FCC media ownership limits have been addressed in the past.

The methods of the merger guidelines, of course, are not limited to mergers. Portions of the guidelines are used and useful in analyzing monopoly issues and vertical restraints issues. Not all of the guidelines are relevant to that. There is a difference between Section 7 of the Clayton Act and Section 2 of the Sherman Act and the merger guideline standards are based on the goal of ensuring that mergers don't make the state of competition worse, which is not the same as the goal of Section 2 of the Sherman Act.
For those of you who are antitrust junkies, that means that you can make the cellophane fallacy in Section 2, but you can't make it in Section 7. No junkies?

If one takes a guidelines approach to media ownership, it's clear that over the last 30 years nearly every relevant advertising and programming market has become less concentrated. This suggests obviously that ownership limits that might previously have been beneficial may no longer be useful or may even be harmful to consumer interests.

Rather than repeat what some of my fellow panelists have already said -- I wrote that before I heard them, but I predicted what they would say -- I would like to take the rest of this time to step back and discuss the purposes of competition policy in this context.

I tried to do this in a way that makes competition policy a useful context for the issues facing the commission today, including the issues that Mark raised, which I think are very important. Diversity is not any less a market outcome than prices and quantities and profits.

We need to understand that competition is not an end in itself. I don't know of any religion that embraces competition and, indeed, some could be said to reject it. There is nothing in the Constitution about competition. Competition is simply a socially useful process for
allocating resources. Experience has shown that competition, even if imperfect, generally produces greater and more reliable benefits for consumers than the alternatives. The alternatives I mean are, for example, monopoly, regulated monopoly, regulated competition, central planning and collectivization.

Based on this pragmatic approach, we generally proceed on the rebuttable presumption that free markets are a desirable policy objective when they are burdened neither by monopoly nor by regulation.

Every free market produces not just a set of outcomes measured in terms of prices, outputs, productivity, technological progress and so on, but also a natural structural, a natural market structure. In some cases, the natural market structure is rather concentrated. In the extreme, there can even be a so-called natural monopoly. Traditional antitrust and especially merger policy seeks to prevent concentration when it is not normal.

Economically sound antitrust enforcement seeks to stop mergers that will tend to reduce consumer welfare by raising prices and to prevent monopolies from arising for reasons other than a superior ability to benefit consumers. And, of course, I am describing an ideal that may not always be achieved in practice.

FCC ownership policies such as the ownership caps
and the cross-ownership rules appear to accept the idea that
competition is a good thing. However, such rules implicitly
reject the sufficiency of the antitrust approach. More
specifically, the ownership rules reject certain natural
market outcomes, even those that are not the results of
mergers. I think we have to ask what lies behind this
policy choice.

Speaking hypothetically, there might be pragmatic
reasons to reject the use of traditional antitrust
enforcement standards in media industries. I want to make a
distinction here and for the next few minutes between the
merger guidelines standards and the merger guidelines
methodologies.

Imagine, for example, that empirical studies by
the commission demonstrated significant adverse effects on
the price of advertising in local media markets when HHI
levels exceeded 800. That might justify the commission's
use of 800 rather than 1000 or 1800 as a safe harbor or it
might justify an ownership cap of 800 rather than 1000 or
1800, depending on the nature of the empirical findings.

The problem is, of course, that the merger
guideline standards are of general applicability. Their
numerical values, frankly, are arbitrary. That's the dirty
secret of the merger guidelines. Certainly, they are not
necessarily applicable to any given industry.
The commission's traditional ownership policies might alternatively, hypothetically, be justified on the basis of what is sometimes called judicial economy. For example, the nature and definition of local advertising markets might be so well established through prior experience that the appropriate standards necessary to prevent mergers would be obvious.

As Rob described in the case of radio mergers, everyone would save time if we just adopt the rule of thumb. I don't, however, think that any of these reasons has been the basis for the commission's historical ownership policies. Certainly the commission has never explicitly based its ownership policies on principles of competition policy modified to reflect more relevant standards or enforcement economies. The commission has simply used its preexisting regulatory categories based on such factors as frequency range, modulation technique, type of wire used and so on, rather than relevant market definitions in the merger guideline sense.

The problem is that this approach has been discredited. It's the approach of the Brown Shoe case, an old merger case at the Supreme Court, which for all I know is still good law, but it's very bad economics. None of the commission's historical ownership policies can possibly be regarded as growing out of the economic analytical approach
embodied in today's merger guidelines methodologies. And it
is the merger guidelines methodologies rather than their
particular standards that defines rational state of the art
policy in this area. I think that may be one of the things
that lies behind the D.C. Circuit opinion that people are
quoting in this area.

So what does lie behind the commission's
historical ownership policies?

I think it would be most accurate to say that a
principal basis for the commission's historical media
ownership policies has been the assumption that natural
market outcomes would produce insufficient diversity of
content or sources or ease of access, terms that are not
usually well defined when used by the commission, I must
say.

Hiding just beneath the surface of that diversity
principle has been the more ancient notion that the radio
spectrum as a nationalized resource should be shared fairly
among its various claimants. If I were more cynical --
fortunately, I'm not -- I might have said that the idea was
to share fairly the rents created by the commission's
spectrum allocation policies.

Now, recently, fairness has achieved a new
legitimacy in economics. We used to pretty much ignore it
because we couldn't say anything about it and therefore it
wasn't important. There is a new sub-discipline in economics called behavioral economics in which people take issues such as fairness quite seriously and they've discovered the consumers do as well and even business people bargaining about things seem to take notions of fairness seriously. That is to say they have placed value on the fairness of an outcome in addition to the substance of the outcome in dollar terms.

So lest we be in the position of those defunct economists that Kane said were the dictators of policy in any age, let's keep up to date on the economics that include the newer subdisciplines as well.

Having said that, I think that lurking deeper still in the commission's historical ownership policies is elected and even appointed officials' genuine fear of their own vulnerability to the popular media.

The content diversity issues can be and have been subjected to economic analysis. There are indeed economic characteristics of media content that make it difficult to presume that a competitive market outcome is necessarily optimal. Half a century ago, Peter Steiner made the point that some listener demand structures would be better served by a radio monopolist than by radio competitors. Later, work by Michael Spence and others has generalized this finding.
I think it is fair to say today that the public good character of programming is one of many imperfections that impair the functioning of competitive markets. Nevertheless, no one has identified any practical intervention by which government could reliably improve this situation, certainly not by ownership rules.

A different but nevertheless still economic analysis is called for when it comes to issues of source diversity and ease of access by minority or dissident or simply new voices. And here where is I think we should take the issues raised by Mark quite seriously, but I think the task is not whether they should be taken seriously -- the question is not whether to take them seriously, but how to address them rigorously.

I think it is useful to think quite literally of a marketplace of ideas. Is there evidence that freedom from government regulation in this marketplace would or could lead to concentration accompanied by barriers to entry so that the messages of speakers who would otherwise have an audience are kept out with adverse political or economic effects?

Once again, rigorous analysis proceeds first by defining the relevant market. We have to ask with respect to each member of the potential audience for a given message what alternatives are available at what cost, both in terms
of other messages with like content and in terms of maybe a
link with audiences.

What is obvious is it is extremely unlikely that
any such market would be limited to a single medium or
technology or frequency range or a modulation type or a type
of wire or section of the USC. Source diversity and access
issues require further comment.

There may indeed principle be legitimate concerns
associated with barriers to entry in any market. But no
sensible remedy for such barriers can guarantee a right of
access to an audience attracted by somebody else's message,
at least not without mowing down whole fields of consumer
welfare nurtured by alignments of producer incentives with
audience demands.

It's a different thing, of course, to have cheap
access to the opportunity to attract one's own audience
based on the value of one's own message. Promotion of this
goal requires the government to avoid policies that restrict
the supply of resources used in producing and transmitting
messages. This is perfectly consistent with the antitrust
approach to markets, including advertising markets.

Once again, I am not aware of any commission
ownership policies none of which expand media capacity that
can play a useful role in this important area with the
possible exception of the vertical rules, which I will
discuss in a minute.

A question remains as to whether the effective operation of media markets from a political point of view requires a different stricter competition standard than would be applied in advertising markets. For example, while an HHI as high as 1800 might be regarded as tolerable in a relevant market for advertising, should we regard it as tolerable in a relevant market for the expression of ideas?

Well, an immediate problem with asking the question that way is that HHIs measure outcomes, not ease of access. Even a commodious common carrier media with trivial transmission prices might display a very high HHI simply because society's tastes produce that result. Popular culture is by definition popular.

Ex post equilibrium HHIs say nothing useful about ex ante freedom of expression. It's hard to make economic sense of a policy objective based on ensuring the economic success of unpopular and hence unprofitable messages.

Finding an appropriate measure of the opportunity for source diversity is an empirical challenge for competition policy and for the commission in its ownership policy debates. But once again, I don't know of any reason to suppose that the commission's previous ownership policies have or could have any useful effect in this area or even to assume that there is a problem that calls for a solution.
The last area I will touch on has to do with vertical markets.

The theory that monopsony problems might arise if a sufficiently large concentration of MSOs were permitted is a respectable starting point for an argument leading to an ownership cap. After all, this was the basis of the decision at the time of the MFJ to have more than one RBOC arise from the ashes of AT&T. That was the first fire.

But a necessary first step, as always, is market definition. In this case, we need to ask whether program suppliers or the inputs they employ have other ways to reach the audience besides MSOs. If the answer is yes, an MSO ownership cap makes no sense.

As Stan pointed out, unlike telephone switch gear, programs are public goods and a buyer with market power has no incentive to restrict purchases of a given program in order to reduce the price it pays if the program is a public good.

The so-called program access rules or discrimination rules are based on a very similar theory of vertical restraints. Bob has already discussed this.

I suppose that someone might construct an infant industry story justifying such a rule, although it would have to be premised on evidence that integrated MSOs would engage in discrimination or exclusive dealing, that new
MVPDs lacked access to attractive programming from other sources, and that consumers would not be better off with differentiated programming, but no one has put forth such a theory or gathered such evidence.

And, anyway, direct-to-home satellite broadcasting has clearly passed beyond the infant industry stage.

So long as the program access rules stay in place, the reduce the incentives of MSOs to invest in marginal new programming sources, exactly the enterprises most likely to widen content diversity. By offering them the opportunity to free ride on the investments of others, the rules also disencourage the newer MVPDs from offering differentiated products to their subscribers, potentially reducing consumer welfare.

Because we can compare the behavior of on-integrated programmers with those subject to the rule, once again it ought to be possible to test some aspects of these theories.

Finally, I would like to say a word about efficiencies. I haven't emphasized the issue of weighing efficiencies against anti-competitive effects because that is part of the merger guidelines methodology in a case-by-case analysis. In practice, of course, the antitrust agencies regard efficiency claims with considerable suspicion, but the commission need not do that.
The problem is that any natural market concentration reflects a triumph of efficiencies over market power. In the extreme, a so-called natural monopoly is able to deliver goods to consumers at a low price because its economies of sale more than offset its monopoly pricing. Antitrust policy attacks such a firm only if its market power is abused.

The consumer benefits of the natural level of concentration are worth sacrificing to whatever other policy goals the commission is pursuing. It might be sensible to insist that any such judgment be based in part on a quantitative assessment of the lost consumer benefits. Even if the other goals cannot be quantified, at least we would know how much we are paying to achieve them.

Thank you.

MR. BIRD: Thank you. Well, we've heard four very interesting presentations and we're now moving into the period for questions.

I think before -- as we open that, I think I'd first like to ask any members of the panel if any of them has a burning question for one of the other members.

MR. BESEN: Well, since I have ten minutes of my time reserved because I yielded it --

A PARTICIPANT: What?

MR. BESEN: I yielded it, but I think --
A PARTICIPANT: You yielded it, you didn't reserve it.

MR. BESEN: I can reclaim it. I'm going to try to reclaim it.

Let me go back to the sort of the two -- well, I think I'm going to respond primarily to Bob and Mr. Cooper. The sort of two points I want to emphasize that I think -- or I thought when I came here were really quite uncontroversial and I will reiterate them, I still think they're uncontroversial are the following.

First, that any rule that is impervious to very, very large changes in market conditions can't be right. Somehow or other the commission cannot have adopted rules or pick rules at a point in time based on whatever the then existing market conditions were -- it would be remarkable for those conditions, for those rules in fact to be the right ones decades later with enormous changes underlying circumstances.

Second, whatever rules the commission adopts it seems to me uncontroversial that the commission ought to have some decent level of support, hopefully quantitative support for those rules. I thought when I started and I still think that those propositions are uncontroversial.

Now, Bob seems to ascribe some views to me, maybe he didn't mean to, but I thought he said he described my
position as free and open and as characterizing certain outcomes as impossible. I didn't mean to. I didn't think I think I said that in my remarks, but just to be clear, maybe there is an agreement, so let me just say what I think.

Again, the point I think is that if one believes that certain structures lead to bad outcomes, one ought to do the analysis to show that. That's a task I think it's appropriate for the commission to bear. If it's going to adopt a rule, it needs more, as the Court of Appeals said, more than some sort of conceptual idea that a particular change directionally produces a bad outcome because it's going to effect -- if it does that, it's only going to argue that nobody can own more than one radio station in the smallest market and couldn't own a second anywhere else, for example.

So you've got to do the analysis, you've got to actually sort of connect the structure relief that you're proposing to the harm that you're going to identify.

Now, there are a number -- I think Bob's quite right to sort of focus on this question of what's the right political economy here, what's the right -- how should one approach this?

When Lee Johnson and I wrote our paper originally, we actually were very ambitious and talked about a case-by-case approach the commission might adopt and
obviously there are substantial costs in doing that.

   Another alternative which I think is presumably relativeli attractive is the kind of self-adjusting rule that I described earlier. Another possibility will be a fairly tight rule with waivers freely granted or a sort of rebuttable presumption. Somebody could come along and say, you know, you've got this rule, but I think you've got it wrong, it's wrongly applied here.

   What I think is not an appropriate rule is one that in fact is impervious to changes in market conditions. Whatever choice one wants to make, that can't be the right one. And, in fact, even going back to a point that Bruce made, not only is it one of the dirty secrets of the merger guidelines that in fact the numbers did not come down on a tablet from Mount Sinai, but moreover that they're not actually rigorously employed by the agency. You can actually go to the agency and try to argue that in fact in this particular case higher concentration doesn't lead to bad outcomes.

   I recently had an experience with the department in which we did just that. They in fact are open to evidence suggesting that the guideline standards may be in applicable in particular circumstances.

   Now, Mark Cooper's arguments sound to me a lot like -- I can't imagine him saying much different if this
was 1975, but a lot has changed since then. In fact, when I came the commission in 1978, we inherited a notice of proposed of rule making -- actually, a notice of inquiry -- which had us focusing on a number of fairly narrow rules, the rules regulating the relationship between the networks and program suppliers, the networks and their affiliates. And we said wait a minute, this world is about to change a lot.

Viewing the market as narrowly construed as you have construed it and now sort of worrying about sort of tinkering with rules designed to make this reasonably concentrated market work better is just wrongheaded. What you ought to be focusing on, this is a word that Bruce raised and I think it's worth emphasizing, what you should be focusing on is entry.

Entry is important. If you want to deal with these problems, getting more players into the market is really ultimately the answer. Whatever else our analysis did during this period of time, the one thing that we surely got right was that. And the world is not the same 20 years later, while you might have a hard time appreciating that here, there are more broadcast stations, there are more broadcast networks, there are a lot more cable subscribers. There's DBS, one or two operators as the case may be. There are a lot of cable programming services.

Heritage Reporting Corporation
(202) 628-4888
There are a lot of minority programming. I'm an inveterate channel flipper. There's such minorities as Spanish speakers, people interested in black entertainment. News junkies, sports fanatics. People who like watching the Rockville City Council on sort of a regular basis. You can get a lot of stuff that you couldn't get then.

And part of this, this is perhaps the last point, part of that is in fact related to a point that Bruce made, it's the point about Steiner. Steiner said some of the time you really get more diversity, more variety, if somebody controls more than one channel.

Now, we didn't actually -- Bruce said we didn't actually adopt a rule to -- there was no really good way for us to sort of take advantage of that insight, but in fact we sort have. We let cable operators control the programming on lots of channels. We let broadcasters own more than one broadcast station in the same market.

I wouldn't say we did it because they all read and believe Steiner, but in fact one of the justifications for that or one of the potential benefits from that change in policy is precisely the additional diversity in programming that's made possible.

Again, you've got to take into account changed conditions and you've got to do the analysis.

MR. SAPPINGTON: Thank you very much, Stan. I
think you've brought up issues directed both at Bob and at Mark, so why don't we let the two of them if they have anything to say just go on.

MR. COOPER: Let me address some of it directly and some of it indirectly.

The question of the political economy is interesting because in fact this idea of trying to find what's behind the rules -- it actually varies from rule to rule. For instance, in the cable horizontal cap, there's a clear political economy there that Congress acted and they are the chief political economists in our society, at least that's the way our democracy works, and they expressed a series of ideas, one of which was that we ought to have more rigorous standards at the FCC than the antitrust division, and I think each of the rules you will find a different political economy in terms of the process. And on that particular rule, the Congress is quite clear in the basis of its reasoning, the decision to charge the FCC with that cap and then whether or not the FCC did a good job is the second question.

As I said, we are appealing the question of whether the Court can read diversity out of the act the way they did in that proceeding or ignore the fact that any cable operator who wants to serve 100 percent of the country can do so under this rule, a fact which the Court never even
Second of all, the interesting thing is that we hear about this tremendous amount of change and Stan actually did it, but if you go back and read his sentence, he said diversity and variety, two words that he put together. And, in fact, when you look at this, what you frequently find is we get an ounce of variety and we lose a pound of diversity so that these two merging stations may actually add a new entertainment program, but we lose an entirely independent voice and everyone in that marketplace loses that voice, even though a very small number of people get a little bit more entertainment, perhaps not information.

Two other points. The amount of change and 1975 is an interesting date. Change for change's sake needs to be assessed. In 1975, when these rules were written, if you look at the previous 25 years in media markets and ask yourself how much change has taken place between 1950 and 1975, you will have discovered an immense amount of change. TV was a fairly small player in 1950 and it was, of course, the dominant medium in 1975.

And so the fact that an immense amount of change took place was not a basis in and of itself for saying we don't need some rules to govern this and there's been a certain amount of change since 1975 to 2000, so change for
change's sake needs to be considered very carefully.

What we will do in our comments is we will look at things per capita. We will look at the structure of the population and ask, yes, there are more outlets, but there are more people and more markets and the question is how do they get served?

Finally, with respect to antitrust, and I guess the dirty little secrets of antitrust are sneaking out, the HHI is not only an arbitrary number, but its direct relationship to anything else is also somewhat fuzzy. As has been suggested that you can walk into the Justice Department and argue that a higher level of concentration will not lead to any negative impacts because HHI does not look at the elasticities of demand, and you can come in and argue for higher elasticities, of course, we wish we could come in and argue that lower levels of concentration have bigger impacts as perhaps in the electric utility industry we have learned that the elasticities of supply and demand are so low that even unconcentrated markets result in market power.

And actually if you look at the FCC's analysis of the cable industry, you find a very low relative to many other consumer markets elasticity of demand. You do not find a cross price elasticity with DBS which we heard about. So that there is a good deal of empirical evidence and
that's the final point.

These rules were not adopted without examples being offered of these kinds of outcomes. The commission has complaints before it about anti-competitive behaviors. The mergers that have gone forward have had conditions placed upon them about anti-competitive deals between vertically integrated programming entities.

The question then becomes whether or not the rules have to be based upon statistical tendencies and modal outcomes in the industry or a significant probability or possibility that anti-competitive events will take place. In this political economy, certainly under the horizontal caps, the Congress asserted its conclusion that that probability was sufficient that it wanted a rule.

Now, the Court has tried to replace that judgment and we are litigating that, but in certain natural market outcomes that are too concentrated, we simply are unwilling to allow the agency to spend a lot of time chasing anti-competitive behavior after the fact than take prophylactic steps to prevent them before the fact.

Now, this is a philosophical difference about which evidence the commission needs to look at. We believe you can sustain these rules on the basis of that level of evidence that identifies market outcomes that will be more concentrated than we can tolerate because they result in

Heritage Reporting Corporation
(202) 628-4888
repeated examples of anti-competitive outcomes or outcomes that diminish diversity, which is, of course, a very high value in the statute.

MR. MAJURE: If I could just say a couple of things?

I guess I have to defend or explain the dirty little secret of the HHI. I didn't know it was a secret.

No, I mean, the big thing to bear in mind and the thing that often gets lost but what I think everybody up here is saying is that those HHI guidelines, that whole merger guideline, the whole guidelines analysis is put forth as a screening device. It is in essence a fairly easily rebuttable presumption, the safe harbor -- at least in one direction.

And I think, Mark, I think you have been in to talk about electricity markets.

I mean, you know, I actually would personally say that's an example of a situation where somebody in a fairly unconcentrated market changes in ownership could make big differences in what the regulatory feasibility is just because of the way a lot of those electricity auction markets work. But that's not for here.

The main thing is that nobody should take those 1800 or delta numbers which I can't even quote as meaning anything in an absolute sense. We put those forward in
essence as an easily rebutted presumption and the right
analysis that we do, the analysis that we do is to look at
the real factors of the particular market.

And I'm glad to hear Stan saying that we seem to
be a doing a decent job of that, at least. I think, you
know, Stan's saying that we -- he sees a possibility of harm
from some of these vertical things. I think that's the
right way to take it, is that there is an analysis to be
done here. And the rules, whatever rules are put in place,
whether they're case by case or a modifying rule or
whatever, yes, it ought to take into account the fact that
you might learn something over time. But at the same time,
it might ought to take into account the fact that at any
given point in time you might not know something.

So I've heard several references to Steiner and
the various people who have come after looking at this
question of whether a monopolist or a concentrated industry
would produce more or less diversity than an unconcentrated
industry, whether they would be more willing to be unpopular
on at least one channel, I think that is an important
question to exactly what rule you have, but it's worth
noting that that's a question that depending on which way
the answer is going to go you might be in favor of some of
these ownership limits and against some of the other ones.
And there's a degree to which you have to kind of make a
stab at this and just take -- even if I don't know exactly which one on of these outcomes is right, I can't just say that because I don't know I'm neither going to try and preserve things like the program access rules and I'm not going to try and preserve multiple channels in the same market. I have to make a guess of which one of those is right and base it on as much information as I can, but that's going to lead me to cut one way on one set of rules and maybe a different way on a different set of rules.

MR. SAPPINGTON: Thank you, Bob.

Well, we're certainly having some healthy disagreement on these important issues. I think there's also one point of agreement, which is that the what the commission needs to do is have a careful study of the industry in order to make sound policy.

What I'd like to ask each of the panelists to do is say if you were in charge of this study, what is the first question you would ask and what is the set of data you would go out to try to collect to answer this question?

Anyone who would like to take the first shot at that is welcome.

MR. COOPER: I'll offer one thing and it is -- you have described here the process of how the agency gathers information and the way the agency gathers information is it tells the industry to throw information at it and tries to
digest it and then people tend to throw criticism of that back. It may be time -- and the agency has begun to do that, certainly in the cable in looking at price and elasticities demand in cable, it may time for the agency to gather its own data, to commission its own acquisition of data rather than relying on industry data.

And, frankly, I would at a much more granular level than, boy, there's a lot more outlets out there, the question is are there voices out there, how do they reach people, remembering that the weight of each voice is not equal and we have filed comments in a variety of proceedings where sometimes you count voices and sometimes you look at market shares.

The issue here is, as I have tried to lay out in the beginning, the question of how we promote, ensure not only the availability, but the ability to be heard and to encourage discourse. If we end up with an industry structure where certain voices are very loud and booming and certain voices are very faint, we will have lost a significant amount. So the question becomes who listens? Why are some voices so loud and some voices so faint?

And in the end, rather than regulate the approach to that, we think structure matters and asking those questions of how many independent voices there are, on which media, what does the impact of each media have, rather than
simply assuming they're all equal combining them, leads, as we have said -- we have filed today the initial analysis we did of those markets to suggest that they are very, very distinct, and from the point of view of civic discourse, they have a dramatically different impact. And so the fact that you have Internet radio does not offset the fact that you do not have a lot of diversity in a different medium.

MR. BESEN: I think you have a different answer depending on sort of whether you're talking about the horizontal local market rules or the national market rules. One thing that is very fortunate about this industry is that the world has essentially generated a very nice set of natural experiments. We have several hundred markets with widely diverse market structures. Potentially, at least, lots of outcomes to observe.

Some involve data that are routinely collected and published by market research firms or other kinds of groups. Some would require evidence to be gathered by the commission. That's what we did at the network inquiry. But it's in fact quite feasible for the commission to try to relate local market structures to outcomes. There is a lot of data. This is in fact a particularly good industry for one to undertake that kind of analysis.

I think it's done much, much -- it's not done nearly often enough and for many of the commission's rules
that kind of analysis, I think, would yield big dividends. In particular, it might well permit the commission to identify with some rigor where the appropriate boundaries are between permissible and impermissible transactions. The monopsony and vertical stuff is sort of inherently more complicated. It doesn't quite have the nice -- sort of the kind of data structure properties that local market competition analysis does, but you can still do various things.

Bruce already alluded to one example, which is there are contentions about various kinds of behavior involving favoritism. In fact, there have been various attempts to study those, although I think probably not by the commission actually. Again, it's a case of the commission sort of digesting what other people have done. But if in fact foreclosures of this sort really is a significant problem, one ought to be able to identify that in the data.

The other thing I think this sort of relates to something that Bob said before, it goes back to some question of the incentives. It ought to be possible, and with I think some difficulty, but with some degree of rigor, to try to identify whether in fact parties do given underlying elasticities, given market shares, margins and the like, to in fact determine whether or not various types
of foreclosure which are theoretically possible in fact are consistent with the underlying incentives of those firms.

The department actually does this, I know other people do it, there's no reason why the commission couldn't. It's a harder piece of analysis, but I think that's in fact what the Court really asked the commission to do in Turner II.

MR. SAPPINGTON: Thank you, Stan.

Bob or Bruce, did you want to try to address that unfair question?

MR. OWEN: I will. Yes. I agree with what Stan just said, but in terms of progress to be made, it seems absolutely clear to me that the most progress to be made by the application of empirical techniques and some rigorous thinking is in the area of the concerns raised by Mark Cooper. Certainly non-economists take these issues serious.

I mean, I think Mark is completely wrong, for example, when he talks about outcomes as indicative of freedom of expression as opposed to the notion of opportunities to speak. I think the line that you will end up walking along if you take that seriously and try and make it rigorous is entry barriers and finding a metric of entry barriers that makes an operational rule or an operational test of a rule. We don't really have that in economics. We are way far away from the same level of sophistication with

Heritage Reporting Corporation
(202) 628-4888
respect to entry barriers that we are in the area of concentration and its effects.

I think that's really the biggest challenge and it's the last remaining subjective area. It's the last area where at least in principle nobody has come up with an accepted schedule of accepted rigorous approaches to the underlying policy problem. If the commission could do that, it really would be a major achievement.

MR. MAJURE: And I would just say that I would agree with Stan, that the data that I would want to collect is definitely the data about the local markets and the diversity, using the diversity you have there for a source of information.

I can't really tell you what the first question I'd want to answer is because there's really -- you know, there's at least three different types of markets involved here. You have the advertising competition and you have the content markets and you also have this very difficult to pin down issue of competition and its relationship to kind of this quality variable of diversity and even there, even just at the level of diversity not in a political sense, it's difficult to get a firm prediction out of the theory to even test.

So I would say that I would look through that local market experience and I think you can even get
something on the vertical relationships, vertical incentive there because there is local content and you can look at what has happened in the local -- the relationship between local structure and local content.

MR. SAPPINGTON: Thank you very much.

Were there other questions that people wanted to pose from our afternoon panel or from our other FCC people or should I continue firing these unfair questions at people?

MR. GOMERY: Could I say one thing?

I'd just like to -- I think if there is a commonality here, which I would like to support, and that is not just what Stan suggested in terms of local experiments, but a consistent, predictable, long-term set of data collection as a task by the commission I think would be very, very important.

MR. BESEN: One of the really curious things that a while back in the new deregulation the commission stopped collecting.

MR. GOMERY: Thank you. I appreciate the point. He's making it for me. And there's many other examples as well. And so what you get is a discontinuous set of data about variables that you would like to see and how they operate and I'm not sure I agree with Mark's point of comparing 1950 and 1975 and 1975 and today and kind of
looking back and trying to figure out the past, but you can't do that because the data that existed, if you look -- I mean, one difference, just study the size of an annual report of the FCC every year as it's changed over time and you get exactly what Stan's predicted, as deregulation comes in, the industry is generated by people who are making arguments towards the commission in their point of view.

So I would make a recommendation that if something comes out of all of this it would be a continuous set of data that -- as a kind of defract economist, we have macro economics from 1929 on, that is we know GDP and GNP, but before that we don't have it and so all analysis starts then. Gee, surprise. And I think we really need it in this industry and I don't think we can rely because of industry changes on the industry generating itself in a continuous manner.

MR. SAPPINGTON: Thank you, Doug.

Changing gears a little bit, and I think this is an issue that Bruce touched on in his talk, what we've identified here is some of the potential problems that the commission rules might help to address and we've so far, though, focused on ownership rules and cross-ownership restrictions as the possible solution to these problems.

I was just wondering if people had thoughts on other potential remedies to these problems that might do
better than or work in conjunction with ownership rules or
cross-ownership restrictions.

MR. COOPER: Our central concern in this
particular industry is that when you -- well, as a matter of
general principle, certainly antitrust prefers structure to
conduct remedies. They're more difficult to administer.
You get constant complaints about micro managing the
industry and so as a general proposition, structure is
generally preferred to conduct.

And when you get into areas that deal with the
First Amendment, structure is immeasurably preferable to
content. You need to stay as far away from content
regulation as you can. We frequently hear now as under the
30 percent cap that that is somehow infringing the content
and, in fact, it does not.

So from our point of view, the difficulty here is
that anything but structure gets you into very, very
dangerous waters and so we outlined in our statement the
idea that structure should promote the opportunity and the
diversity we want preferable to content and conduct types of
regulation.

MR. SAPPINGTON: Anyone else have any thoughts on
rules other than ownership restrictions?

MR. OWEN: Well, I think implicit in what Stan and
I have been saying is that an approach like the antitrust
division's approach to mergers might very well be useful, if that's what you mean by alternatives to ownership rules when it comes to reviewing transactions.

Unfortunately, that really doesn't address the issue of natural market outcomes that are achieved naturally as opposed to through mergers. And I suppose that if there is a problem there, that is what you need to address with ownership rules and caps and so on. I just don't know that there is a problem these days that needs to be solved. That's what you need evidence about before you can do it.

MR. BESEN: And actually Bruce alluded to a problem about sort of efficiencies related to one of the rules we're talking about, we're talking about the program access rule, I presume that's an alternative that you're describing. And I think we've talked a lot here about sort of potentially anti-competitive effects. I think Bruce did say a few words about efficiency. I think it's worth emphasizing.

You have this question of somehow maintaining incentives for the creation of the underlying product. Everybody wants the product when the risks have been incurred and the costs have taken place and you're free to have 100 percent of the losses for all the unsuccessful ventures that you back, but any ones that are successful you're expected to share them. Well, that produces a kind
of skewed outcome.

To the degree that you in fact limit ownership and then sort of compound that by requiring in fact your programming to be offered to other people, you do in fact have this incentive effect.

So if the commission is going to do an appropriate balancing when it considers alternatives like the access rules, it has to take into account both the potential competitive concerns that Bob addressed, but also the fact that these rules may well have the effect of limiting the creation of the product that you're in fact trying to support in the first place.

MR. MAJURE: I would echo Mark and I think pretty much everybody here in saying that while you may have to have some conduct regulation as it were you want to do as little of that as possible or make it as simple as possible because that's the place where it's very easy to get into the really kind of difficult to unwind effects that Stan's talking about.

I would agree that antitrust has a strong preference for structure over conduct and I think it's well justified, even here.

MR. BIRD: I'd like to ask whether there are particular characteristics of the industries, and I know that the media are not one industry, they are many, which
might lend themselves to a rule structure as opposed to a case-by-case structure or vice versa more than others.

Some that have been raised in various proceedings here, for instance, are where there has been an industry that for whatever reason has been highly concentrated and then Congress has given us a mandate to deconcentrate it. Is that the kind of a structure where rules might be more appropriate than they would be in other types of industries?

Another possibility would be where one of the inputs is restricted, such as when spectrum is allocated to radio and television stations.

(Pause.)

MR. BIRD: Do you want me to rephrase the question?

MR. MAJURE: Yes, please. Well, I mean, what I think the question is is whether there's anything that just in a general sense you would say is the characteristic of an industry that's kind of prone to having rules of thumb or whatever versus having a case-by-case analysis. And the one thing that jumps out at me is it ought to be an industry where you have -- it ought to be an industry where you have seen a lot of either concentration or deals or whatever that are in the range you're talking about and you have some basis for saying I kind of know what's going to happen here.
I find the information problem that Stan identified to be probably the most important aspect of whether you're going to set the rule in the right place or not. And unless you can find something that looks very similar or has a very close parallel, the chance is you are going to make a mistake in setting a blanket per se type of rule seem greatest when you have the least experience. When you're only going to see one merger that ever crosses this cap, it's very hard to know exactly what's going to happen. But if it's the forty-second merger you've seen in this industry, you might have much better ex ante, a better prior of what is going to happen.

MR. COOPER: It's absolutely clear that there is one case where we prefer rules to structural limits and that's where we have a natural monopoly. Certainly as a society when we see something that is going to end up in a natural monopoly and we are concerned about the abuse of market power in the national monopoly, we do tend to regulate it.

Obviously we have been moving in the opposite direction for some time, but if you identify situations in which you do not expect what I like to atomistic competition, although almost no one supports atomistic competition any more, where you do not believe that the market will support a sufficient number of rivals to produce
vigorous competition. And I always remind people in my view, two is not enough.

The merger guidelines suggest that we need six, at least six is where we can start to be comfortable and ten is where we can really feel comfortable. But in areas where we see a likelihood of very small numbers, monopolies and duopolies, then clearly our society has been much more willing to intervene with rules rather than to break out those natural monopolies or duopolies.

MR. BESEN: I think the danger in some sense is less in having a rule than the kind of rule one has. It might be the case, I wouldn't argue this for a fact, that the rules were about right given the market structure in this industry in 1975. Maybe that's right.

What is sort of unforgivable is to the extent that a rules stays in place for a long time despite the fact that not a lot happens and you can end up with really quite inefficient outcomes because you've created artificial constraints in terms of the kinds of firms that could be organized. And a lot of these rules have just been around for a long time and I would hate to have them replaced by another set of sort of equally fixed rules that don't adapt to changing circumstances in the future as well.

MR. OWEN: Let me just expand on that a little bit. There are rules and there are rules. There are rules
that say you can only own one station of a given modulation type in a market and there are rules that say when it comes to deciding about transactions, mergers, for example, the rule is that you can't exceed a given HHI in a properly defined relevant market. That's a rule that contains within it quite a lot of flexibility as conditions change. It isn't subject to the same difficulties that Stan just described.

The other thing that troubles me a little bit about the question or the issues raised by the question is we keep talking implicitly as if everything was about merger analysis. There's transaction, there's case-by-case analysis, absolute limits versus mergers. You know, a lot of things can lead to concentration above whatever the appropriate policy standard is other than mergers like natural growth or anti-competitive practices.

What does it mean to have equitable adjustment rule versus case-by-case analysis, for example, in the vertical area that we have discussed? What is case-by-case analysis in the vertical area? Acting on complaints of discrimination? Is it the kind of case-by-case analysis that actually takes place in Section 2 cases?

That's a good deal less clear cut than the kind of transaction-related rule that we have been discussing.

MR. COOPER: We participated in a variety of ways
in the Microsoft case and I have an article in which I declare that we believe in a rule of reason as long as we have reasonable rules. And I would suggest that I have given you an interesting example and I have two more now.

When a rule is based on a presumption about the nature of behavior, I would look at the kinds of activities that are allowed and see whether or not they take place, so I made the point that any of these cable operators who complain about being constrained by the 30 percent cap could have gone out and over built people and got to 100. That suggests to me that they are seeking to leverage their market power in the core area.

I believe it's the case that you can avoid the program access rules if you're not vertically integrated. I believe and the other example I would like to give is all the Baby Bells were allowed to enter the long distance business outside their service territories and, boy, they did not put a lot of effort into competing fairly for long distance on the other side of the country; rather, they complained and moaned and pushed to do it where they had market power to leverage.

And so one of the interesting things as a simple proposition is give people the flexibility that they don't ask for, but that's the best test of whether or not they're really willing to go out and compete.
So I would suggest that the absence of all this competitive behavior where it is allowed is a good indicator that the rule was getting at the problem it had in mind, the leveraging of those core sources of market power.

MR. SAPPINGTON: One other added benefit of your proposal is that there will not be too many petitions to the commission.

Were there other questions that our afternoon panelists wanted to raise or bring up?

MR. WALDFOGEL: I wanted to ask a question about what might be the difference or perhaps what should be the difference between FCC scrutiny of things like mergers and DOJ scrutiny and this is maybe for Bob, I think, because he said -- I believe he said either that there was no difference or should be no difference.

You can correct me if I'm wrong, but, for example, things like the non-paying consumers, that is to say the listeners to radio, are they explicitly taken into account by the DOJ? And, if not, should they be by the FCC?

And, for that matter, if there are other kinds of outcomes that might be affected by the media, are they being taken into account by DOJ? And, if not, might they be taken into account by other agencies?

MR. MAJURE: I might need to get Stan to restate the question for me, but --
MR. COOPER: What do you take into account when you consider radio mergers? What criterion do you apply?

MR. WALDFOGEL: I mean, after all, the efficiency of broadcasting requires that a service with benefit in excess of cost be provided and the beneficiaries are the listeners or viewers as well as the advertisers. And the market, of course, directly the sellers take into account revenue from advertisers.

My understanding was the DOJ had explicit criteria for worrying about what happens to the paid prices, but there are other users whose benefits full efficiency requires taking into account and I wonder does DOJ think about those and maybe you shouldn't, maybe you should just worry about advertisers there, but fully efficiency requires worrying about both. Should some other agency worry about those other beneficiaries?

MR. MAJURE: Well, actually, put that way, I think the answer is that we do consider the viewers or the listeners, the audience competition because I don't think you can really do just an advertising competition and pretend that that's all that a station is going to be worried about, but one of the differences that we haven't talked about here at all that does become relevant in this kind of analysis is the burden of proof.

You know, we have the burden of proof when we go
to challenge a transaction or code of conduct or whatever
and the FCC, I guess, as it modifies its rules can either
choose to give itself the burden of proof or not.

But, you know, quality competition or the
competition for viewers in this particular case is a
difficult thing to -- it's a more difficult thing to wrap a
case around, to make clearly understandable to a judge who
has no experience in this industry and so it's definitely in
the cases we've filed not the first count. But if I
remember correctly, the Long Island radio case we did have a
count in about competition for listeners.

MR. COOPER: Bruce reduced the public interest to
efficiency. The Communications Act does not. And so the
public interest is fuzzy, sometimes it's very specific as
under the '92 amendment, so it would be my view that merger
review under the public interest standard is broader than
antitrust, although it is quite clear that the Department of
Justice is perfectly capable of bringing cases on issues
other than price.

In theory, one of the biggest cases of the 21st
century is the Microsoft case and it was not essentially
concerned about price, it was concerned about qualitative
things. But in our view, the Communications Act has a
broader charge to the commission in its merger review.

MR. OWEN: If I can just add a note about the
Justice Department approach to media mergers, one of the first cases I ever worked on at the Justice Department was a magazine merger and actually magazines charge people, or at least some of them do, and the attorneys who were doing the investigation were concentrating on advertising markets and I said, well, why don't we look at readers as well and they said, oh, that's too hard. We've learned through experience that it's just easier to focus on advertisers.

And then the same issue came up with a newspaper merger. I asked about subscription prices and newsstand prices and so on. The response was the only reason that newspapers charge subscribers for newspapers is to prove to the advertisers that the readers really want it and they would charge nothing if they could. So I sort of gave up on pursuing that. But the real reason I gave up was not because these seemed to be arguments that were so compelling that they couldn't be overcome by some sort of logical response, but rather because of the point that Bob made earlier, namely, there are theories about content. The effects of different competitive structures on the efficiency of content aren't terribly useful to us in the same way that predictions about the effects of concentration on price are useful.

MR. GOMERY: But doesn't that exactly demonstrate the case in the sense that the Congress if they've ever
expressed anything -- and the newspaper industry exactly has
given a presumed set of exceptions to encourage what they
think will be a potentially better outcome in the newspaper
industry and rather than having quote natural selection to a
single newspaper in every community has said that they will
do all these things, et cetera, about newspapers.

MR. OWEN: You're talking about the Newspaper
Preservation Act?

MR. GOMERY: Yes.

MR. OWEN: Well --

MR. GOMERY: I'm not saying I agree with it, but
I'm saying that Congress has expressed it quite clearly and
has not made an economic decision about it, has made a
decision based on other criteria. I don't think an
economist using a neoclassical model would say that makes
any sense, but I think that Congress has said repeatedly for
30 years that to them it does make sense.

MR. BESEN: I'm really interested in what the
second panel is going to say on this subject because I've
sort of been around people who have talked about diversity
for a really long time --

I've been around for a long time listening to
people to talk about this. It's really, really, really hard
to be rigorous about it. Maybe we're just guilty of looking
where the light is and that's possible, but I've been around
some really pretty smart people who've tried hard to think about this. One of the smartest people I know is Tom Krattenmaker. He was on the network inquiry with me, we let him think about diversity all he liked. He made a little -- he made very little progress, I think, no knock on Tom. And we all ended doing the stuff that we could do because that's what people do.

If one is going to talk about diversity, it seems to me one has some burden to try to introduce an element of rigor into this.

MR. GOMERY: Why is rigor the only criteria?

MR. BESEN: Because we don't know how to judge any other way. Then it's just your vague opinion against my vague opinion and how's the commission or anybody else going to judge?

MR. GOMERY: Rigor is based on a certain set of analysis of the world about how economists break down the world and the fact is if you -- can you give me a second rather than squint your face?

If you look at universities, there in fact are a diversity -- a wide range of views of how to understand the world. You can argue that neoclassical economics is superior to anthropology or superior to sociology or superior to something else by certain criteria, but that doesn't make it the only appropriate and by its criterion...
Mr. Besen: I didn't say that, to be clear. Economics is rigorous. I would be delighted with any other rigorous system that would shed light on this question.

Mr. Gomery: But you didn't answer the question of why rigor is the primary criteria and, as best I gather, the only criteria.

Mr. Besen: I'm sorry, the only criterion?

Mr. Gomery: You could say it's not rigorous, okay, I agree with you, but why is rigor the only criteria?

Mr. Besen: Well, I guess I just don't know how to deal with sort of fuzzy stuff.

Mr. Sappington: Well, Doug, did you have any follow-up to that?

Mr. Gomery: Is there a way --

(Audience comments.)

Mr. Gomery: Maybe we should just do that, then. We'll leave that issue for the next panel.

Mr. Sappington: Jonathan?

Mr. Levy: I wonder if I could just try re-asking David's last question with a little bit less finesse than he employed.

He asked whether there were some other policy tools besides ownership regulation that might be usefully considered to accomplish some of the same goals that we've
been talking about and he elicited some comments on the subject of program access regulations, but there's another alternative that I'd like to toss out briefly for comment, particularly in light of what Bruce Owen was saying about diversity and the necessity for some kind of a consideration, a principled or organized consideration of barriers to entry.

And what I have in mind are cable leased access regulations. There are actually other regulations that mandate access to distribution capacity, of DBS, for example, but just to keep it sort of, you know, short if not sweet, I wonder if people would be willing to say something about the cable leased access rates.

And I know this is one that Stan has -- there's another old Rand report on this subject that Stan could dust off at a minimum and also it's clear that he has an interest in the Rockville City Council which is not commercial leased access.

MR. BESEN: Actually, there are more things I've done subsequently in filings to the commission. I think it's sort of basically back to the question that Bruce raised earlier, which is there are costs that are incurred by the cable operator that in a sense others would like to free ride on. Now, you may not like that term, but to some degree that's what's going on.
In any event, you face a remarkably difficult sort of -- kind of balancing test because it's not enough simply to mandate access, as you will, you want to mandate the terms of access and so that turns out to be something that's sort of far from straightforward. And you sort of again are kind of trying to balance these whatever benefits you're trying to achieve by promoting access without at the same time adversely affecting the incentives of cable operators to build systems and upgrade them and the like.

The commission, as you probably know better than I, sort of muddled through on this score, but I think it would be fair to say, not to use a dirty word here, that the commission has never sort of rigorously supported the set of rules that it ended up adopting.

MR. OWEN: This raises the standard essential facilities doctrine issues. In an antitrust context, that's the equivalent of the regulatory question that you're asking: when is it appropriate to take the investment of a firm and open it up to use by its rivals in a related market?

And, as Stan pointed out, there are some serious incentive problems associated with doing that opening up, ex ante incentive problems, if the rule is in place. And historically in antitrust, we have employed the essential facilities doctrine very sparingly. It's really at least
supposedly the most extreme cases like skiing in Aspen where we go to these extremes. Sometimes the Supreme Court goes off the rails.

I guess what this suggests is that the courts at least have been without exception reluctant to take the risks associated with distorting investment incentives more or less across the board in order to achieve the benefits of an open access rule or an access rule and the regulation that necessarily goes with it if the access is going to be meaningful.

I think that one lesson the commission might take from this is that they ought to be very careful before imposing a rule like that, at least a serious rule, as opposed to the rules that you have in this area.

MR. COOPER: Well, certainly the notion of leased access is one that make sense to us. We always hear about the serious disincentives and so forth but in the end we frequently see the facilities be deployed. The important thing for us, and we have stressed this, is not to think that one bit of access in one medium solves the problem and that's sort of the thing we've been stressing here, is that the need for additional rules in additional media markets is important.

So whether it's a structural rule in one market and a regulation in another market where we do observe a
monopoly or a duopoly, there are a variety of a set of rules out there or instruments out there and they ought to be applied across the media markets, not assuming that, well, you've got access here, you don't need it any place else. The impact of that medium is different than the other media.

This question of the incentives, I don't think the commission has come close in those rules to undermining incentives if you look at the behaviors across this industry. The '92 act has allowed both the satellite industry to come into existence and the cable industry to expand and so the lack of incentives, the assault on the incentives of the cable operators, whether it's from program access or leased access or public interest access, clearly has not provided the sort of disincentive that you hear the industry moaning and groaning about.

MR. FERREE: Dave and Jim, I'm afraid that's going to have to be the last word for the first panel.

I want to remind the audience we are going to reconvene at 2:30 for the second panel. And by the way, the materials from this roundtable will be on the FCC website at www.fcc.gov\ownership.

We'll see you at 2:30.

(A brief recess was taken.)

MR. FERREE: Thank you. We are prepared to begin the second panel. I was reminded once again just to give
you the website address where these materials will be posted. That is at www.fcc.gov\ownership.

Before we begin the second panel, Commissioners Abernathy and Copps have kindly agreed to come down and say a few words about the roundtable, so I will turn it over to Commissioner Abernathy.

Thank you.

MS. ABERNATHY: Hi, guys. Thanks, Ken.

I am very, very pleased that you are spending so much time on this issue. It is very, very timely as we are struggling with the role of media ownership policies and promoting diversity and localism and competition and what we really need is we need a lot more and better information just about where the market is going, how it's developing, what are the competitive drivers, how are consumers accepting and taking these technologies.

So the roundtable format from my perspective is perfect to really explore all of these questions and address these issues and ensure that we develop the kind of record that leads to a rational decision and appropriate decision that best serves the consumers. And I am confident based on what I have heard that you guys are getting into the depth, the nitty gritty details of these issues and that's perfect.

So thanks so much for coming today. Your thoughts and your perspectives are critical to the ultimate decisions
that we'll be making and I know as busy as everyone is that
this takes a good chunk out of your day, but we do
appreciate your time and your effort as well as the folks
from the FCC who are also incredibly busy and are taking
their time to work on this.

So thank you very much and I look forward to
reading the results and reading a summary of what happens
today.

Thank you.

(Applause.)

MR. FERREE: Thank you, Commissioner Abernathy. I have to raise this microphone after you speak, but
Commissioner Copps is going to follow me and I know he needs
the microphone raised as well.

Commissioner Copps has also agreed to come down
and say a few words before this panel.

Commissioner Copps?

MR. COPPS: Thank you, sir. I don't know if I
need it quite that tall.

Good afternoon. I am delighted to welcome you
here and to witness some of the Roundtable on Ownership,
Diversity and Localism. Diversity -- I don't know how we're
doing on that.

These are important questions that you all are
dealing with. They go to the fundamentals of what the
Federal Communications Commission does. They take me, for one, to my primary obligation as a member of this commission, which is the public interest. We need to get a better fix on these questions, the realities of competition, the realities of voices and choices and diversity and we need to spend some time on that and we need to spend some money on that.

I was delighted to learn this morning about the announcement of the media ownership working group. I think that's a good idea. I do not know a lot yet about the exact plans or parameters that that group is going to be following as it goes forward, but I do think it needs two things to be a success. One of those is resources.

It's not going to be a success unless the commission puts adequate resources into finding out the answers to some of these questions that you're discussing here today and that doesn't mean that I expect that at the end of the day all of a sudden we're going to have this wonderful database that everybody's vote is automatically taken to a certain conclusion.

We may still have divergences in how we vote but everybody on this commission will have to hinge their arguments or rest their arguments on a little more solid foundation than is currently the situation with the data we have. It's not that the data is poor, it's just that we...
need more of it.

The second thing this working group needs is stakeholder input and that's why I'm delighted to see so many folks here today. I hope it will really reach out to our traditional stakeholders and to non-traditional stakeholders. Every American is a stakeholder in the great communications revolution of our time and we need to be soliciting input and eliciting input from as many folks, as many stakeholders, as many viewpoints as possible, so I applaud you for getting us started down that road today. I am very much looking forward to your discussion.

I join Kathleen in thanking each of you for taking time from your very busy schedules to be with us, to share your perspective and your insights and your judgment and we are very much in your debt for doing so.

Thank you.

(Applause.

MR. FERREE: Thank you, Commissioner Copps. I know you've been a strong advocate and a strong proponent of gathering the best information possible in this area and this roundtable is intended to be a step in that direction. If we could just get that first panel to tell us what data exactly it is we're supposed to be looking for out there, that would be terrifically helpful.

The second panel today will address the question
of ownership limits, diversity and localism and the
moderators for this panel are Jonathan Levy from the FCC's
Office of Plans and Policy and Joel Rabinovitz in the
General Counsel's office.

      MR. LEVY:  Thanks very much, Ken.
      Welcome to the session that's dealing with the
really hard questions. We have three distinguished
panelists.
      On my left here, Douglas Gomery is a professor of
media economics and history at the University of Maryland,
author of 11 books, one of which is particularly relevant to
today's discussion, Who Owns the Media?, jointly produced
with Ben Compaine.
      On my immediate right, Philip Napoli is an
assistant professor of communications and media management
in the Graduate School of Business Administration at Fordham
University and his research focuses primarily on media
institutions and media policy and he is also the author of a
few books, including Foundations of Communications Policy:
Principles and Process in the Regulation of Electronic
Media.
      Next to him is Joel Waldfogel, a professor of
business and public policy at the Wharton School of the
University of Pennsylvania, and Joel is also a faculty
research fellow at the National Bureau of Economic Research.
He is the author of several important journal articles relating to media and diversity.

I would like to mention at the outset here that at the back of the room there are packets containing somewhat more detailed biographies of our speakers as well as copies of their short prepared statements, so in addition to the web address that Ken Ferree gave you, there's also some hard copies back there.

As with the first panel, we sent our panelists in this session two multi-part questions that we asked them to think about and try to address in today's discussion and let me just briefly summarize those before we begin the panelists' presentations.

The commission has long been committed to promoting diversity. Historically, the commission has distinguished among source outlet and viewpoint diversity. That's sort of the set up proposition and then there are a series of related questions, including what precisely should be the commission's goals with regard to diversity; in what ways, if any, does outlet, that is to ownership diversity, ensure the type of diversity that the commission should be promoting; and then we have a few other questions, including the now standard plea for being pointed to empirical to support the conclusions in this area.

The second question has to do with promoting
localism. Is localism properly interpreted as local production of content, local selection of content, the production of information about local affairs or something else? And then what does the empirical evidence indicate about the relationship between local ownership of media and the extent to which content is local, content diversity and quality and also viewpoint diversity?

As with the first panel, we will be limiting presentations to 20 minutes and I think we have a timekeeper over here somewhere who will be monitoring that.

So without further ado, I will turn it over to Douglas.

MR. GOMERY: Thank you, Jonathan. I appreciate being invited to this. I think I take it as an honor to be amongst colleagues whose work I have read and admired and respected for years. Since I'm a tenured professor at a university, I have no disclosures to deny or anything like that, it's just basically me.

It was funny, I think, when we started that as people were kind of trying to figure out what this panel was, it was labeled -- and I wrote this down -- economists and academics. So I think this is the academics side of what's going on. So in the nature of full disclosure, I have to confess that I am a partial economist. I have a B.A. in economics, an M.A. in economics, and I would say
given the earlier discussion, a pedigree that puts me in good company.

I took micro economics from Peter Steiner. I just didn't read it, I heard Dr. Steiner at that point, Peter, give the lecture on it. But all that did was convince me to get out of economics. And so I didn't go to a business school and I'm not in an economics department, I'm in a communications program.

So I actually, I think, understood pretty much as opposed to the person who had to retype all the words, what the terms were this morning, but I fundamentally have to argue that that's probably not the best way to go about it. So let me make four points to try to help with the discussion. They are in the paper that Jonathan referred to, so if you want to see the version with a few extra words and commas put in, I suggest you read that.

My first point is I think the reason we are here, at least as I've heard the introductions and all the various discussions is not because the market is working so well, because it's not working so well. It's what I learned as Peter Steiner Lecture No. 7 called market failures, that sometimes the market doesn't work in terms of coming to the best conclusion that we would like. It's expressed by complaints in terms of people, it's expressed in filings. It's expressed in a whole variety of ways.
I remember when I read Henderson and Quant there's a whole lot of assumptions embedded in neoclassical economics and one of them, just for example, is that you're talking about homogeneous goods and services.

Well, I think if there's anything that's true about communication that I've learned as a historian over the years is that this is not a homogeneous set of services. The term "country radio" I can assure you as a country music fan means a lot of things in a lot of different ways to a lot of different people. It's not just a simple category that we can do.

So I would say that what we're here for is what economists, I think, would call negative externalities, that the market is not working, people are upset about it, people are complaining and they're complaining because of effects that they think are out there, whether the effects are put down correctly or not, but they believe that these effects are real and important in their lives.

I recommend as a study for this James Hamilton's Channeling Violence, which really tries to look at negative externalities of TV violence, because I think he really does zero in, to agree with Stan, rigorously on how this presumed market failure and he tries to deal with it in the way it affects people and how people have tried to deal with it and I don't think I would recommend to the commission that the
goal be that there be no violence on television -- I love "Buffy the Vampire Slayer" -- but that it be dealt with in some context and the context does not have to be neoclassical economics. The context can be a variety of ways: anthropology, sociology, et cetera. I'm not going to defend all of those or go into them or even pretend I even know them.

What I try to do is look at them, at these players as they were called this morning, as a large significant, lasting powerful -- Mark Cooper's words were louder -- institutions. So I confess that coming out of the University of Wisconsin many, many years ago, John R. Cummings et al. were still there in spirit and institutional economics can help us try to understand them. And that's where social economic and political factors intertwine. It's not just a political economy, it's a lot of other things as well.

If Who Owns the Media? has any value at all, it's that it really -- it showed me in trying to put that together that there were these institutions and they didn't just operate as traditional economic units.

A second point is what we're talking about then is if people -- I'm agreeing with myself -- that we're talking about performance, we're talking about how well these institutions do. And let me suggest several criteria.
besides the one that was the obvious single criteria this morning and that was efficiency. The efficiency criteria has kind of taken over Washington discourse. I give Milton Friedman and the long list of Chicago Nobel Prize winners, they have convinced the world that efficiency is what will solve our problems.

Let me just suggest Denis McQuail and his book, *Media Performance*, which Philip will talk about later, suggests at least several others, so I will list six.

First is efficiency. I won't talk about it, you heard about it.

Number two I would talk about multiple voices. I think that that's important in the kind of politics of all this. We've heard some discussion of it, but I think it's central. It's not just an add-on, it's right there along with efficiency as among the criteria we should consider.

We should consider public order. I don't have to explain this example in the last few days, the last few months. The media have been the source of how we knew about 9-11. That's how we got the information. None of us, I assume or one, maybe two people were in this room, but it affected all our lives and how we came to deal with it.

Number four, we're interested in something about cultural quality. We like to think that we have progressed as a society, we are more educated and that what comes
through our culture, the word popular culture was used earlier, is something of quality, not some vast wasteland or whatever, but something that the commission can do to encourage that we have good programming, not just undifferentiable programming.

Fifth, I was surprised earlier it wasn't talked about, technical change. The commission has had a long history of trying to do something about incentives about technical change, here I think economists are right, with some success and some lack of success.

And, sixth, the one that is squishy, I do agree, I don't know how you get your hands about it, I studied it in graduate school and if you think this is hard, you should be my spouse who has to do the economics of Medicare and talk about public health, then you're really talking about -- that's equity.

We like to think that we live in a world in which equals are treated equally, but how do we do that? How do we come to that conclusion? Who are we talking about? It was mentioned about stakeholders. It's all of us. But we're not all of us nicely invited here.

So I think there are criteria that go beyond efficiency. I've suggested multiple voices, political, cultural quality, technical change, inequity, there could be others, but I think that they ought to be at least put on

Heritage Reporting Corporation
(202) 628-4888
the table and then debated about how they intertwine.

My third point is that if there is market failure and we are dealing with performance, then what we're obviously dealing with is improving performance. We're not trying to go backwards, we're trying to go somewhere ahead, that we're better.

I thought it was explained quite well, but I'll have to say that improving performance for Business Week, for publicly held companies is "a total return for the year, a total return for the past three years, sales growth for the year, sales growth for three years, profit growth for the year, profit growth for the past three years, net margin and return on equity."

Well, that's a very precise, specific definition of what performance is and how you can judge that and quantify it, et cetera.

But I think this is more than simply just a return on equity or return on profit, but trying to struggle with -- and it's not easy -- this public interest obligation that the Congress has kept in from -- I notice John had the 1934 act -- and kept in throughout -- and I was stunned as an observer to read that as the debate went on that it remained in the '96 act. I mean, there's a constancy there, there's a constancy that this public interest obligation ought to be there and that's finally, I get to the question
that Jonathan raised, and that is that's where both
diversity and localism come in, it seems to me, at that
point of trying to specify the public interest.

I applaud diversity. I think it's very, very
important, but I struggle with it a little bit
differentially than was displayed earlier. Yes, we have
BET, we have Lifetime, we have Univision, we have the
Discovery Channel. I'll vote for the Tacoma Park board
meetings as more interesting than Rockville and have watched
both.

A PARTICIPANT: You're one of the few.

MR. GOMERY: No, no. You want a study -- if I get
an extra minute -- children now -- it's been shown by
psychologists, now learn much more quickly how to use a
remote control, it's about age six months, than they do
language or any other skill in life. So don't think that
just because there's a hundred channels that children who
haven't mastered language, don't know what a percentage is
and will complain about filling out their income tax for the
rest of their lives don't know how to flip and get what they
want to see.

But the problem with that kind of recognition of
diversity is that in the end someone has to choose which
among those that I am able to select. You know, it's not an
accident that Rockville and Tacoma Park are on. I live in
Montgomery County. Guess what? Montgomery County board, when they negotiated the contract, selected those of the ones that I should see and some others that I shouldn't see. I'm a big fan of movies. I wanted Turner Classic Movies for a very long time. The previous owner of the cable company kept putting out questionnaires, every time it came back that Turner Classic Movies was the one that everybody wanted to see, but they couldn't cut a deal acceptable to their profit margins and we didn't get it until we got a new cable company, another cable company bought it out.

I'll bring up the bugaboo that's been kind of lurking around the building all day and that is, of course, Direct TV and Echostar. We were promised in 1996 lots of choice in terms of who owned and who would give us this diversity through direct satellite and, of course, we're down now, as best I gather, according to CBS News this morning as I woke up with my radio, to one. So it's not just that we have a lot of choices, it's who selects those choices for us.

Secondly, in terms of localism, that's been another commission trait for a very, very long time and it seems to me if it's possible even harder than diversity. And it's harder because network economics, radio or television or whatever, just make it one that is very, very
difficult to fight.

Point four. Meeting the public interest. Let me say that I do believe the commission has its own peculiar Washington way -- you have to live in this tribal town for a while to understand that goes on in these things -- has tried to struggle with it. And let me just make three recommendations at the end, just to give you my take on the deal and things that I would suggest people look into or try to -- plug problem --

I think although radio was free -- I think, for example, Pat Aufderheide's wonderful study, *Communications Policy and the Public Interest*, and others have really demonstrated that it hasn't worked. What we've gotten are fewer companies owning radio stations and despite the labeling of various formats I think much less diversity.

I can only do country music, of course, I haven't done a study, but there's now a huge dispute in the country music world about how radio has really hurt the development of the art form because all stations have this bias towards a star system that doesn't help the traditions that have been developed in the past, focuses only on certain artists, et cetera, et cetera. You get a homogeneity, so I guess in a sense I'm arguing against myself.

So I would number one suggest that that be revisited. I think the -- I don't think that's worked and I
think I long for the older radio days when there were lots of crazy non-rigorous rules, but we did get much more diversity in radio.

Number two, on the 13th of September the commission asked for comments on relaxing the newspaper-TV station cross-ownership rule. I'm about to be piled on here now, and I can feel it, but I actually think that's not a bad rule. I know it was developed historically for a lot of other reasons, but what we have today are more newspapers monopolies than ever. And so I'm not sure why we should give the right to these newspaper monopolies to own television stations. Where is that in the public interest of the United States of America?

I think we get some more diversity and the possibility of some localism if we kept the rule. Maybe that's not why it was started, but I still think it works.

A final point, the cable rules, on the 13th of September, the commission called for comments on relaxing the cable ownership rule. That's been discussed. Mark provided some interesting examples. And I agree with Mark there as well.

Even the politicians who have now begun a little bit to react to the Direct TV dish merger realize, you know, Jim Bunning not my favorite pitcher, but a Senator from Kentucky, put it, you know, my constituents now have two
choices. I don't think that's a real good idea and I think that if we can have at least some differences in institutions in the cable industry, then that's good. I don't see anything wrong with that.

So my final points, to sum up, externalities need to be considered. I think we need to look at other models than neoclassical economics and try to connect with different disciplines and specifically I think that I would recommend to the commission as a humble stakeholder, one person with one remote control, that they rethink the radio ownership policy, they keep the newspaper rule and they keep the cable rule.

Thank you very much.

MR. LEVY: Thanks, Douglas. I've got a slightly different take on Jim Bunning than you do. He actually is one of my favorite pitchers, possible because I was fortunate enough to see him pitch a no-hitter in person against the Boston Red Sox.

MR. GOMERY: I unfortunately lived in Philadelphia when they lost the pennant after being ahead -- with 20 days to go, they blew the 1964 pennant, so I do confess my Jim Bunning bias.

MR. LEVY: I liked him when he played for the Detroit Tigers. Anyway, that's neither here nor there.

Neither here nor there.
Our next speaker is Phil Napoli.

MR. NAPOLI: Thanks, Jonathan.

I'm going to try to discuss both diversity and localism from, as the title suggests, a policy analysis perspective. I have sort of two goals here. One is to try to build on what we actually talked about in the previous session with this idea of bringing some sort of empirical rigor to these -- again, to use a term used last session -- more fuzzy policy principles.

I do believe that there is plenty of room for empirical analysis, but the first thing we need to do is develop very clear and precise definitions and effective empirical analysis will grow from that.

So that's what I'm going to try to do first and then, second, also, I took the request for data perhaps a little too literally and I spent the past couple of weeks doing a lot of numbers crunching, so I'm going to try to present some analyses that bear on both the diversity and localism issues.

Starting with diversity, this is my take and it's a bit different from the traditional FCC source outlet viewpoint diversity, but all those components are actually embedded in this. This is my take on diversity, its components, its subcomponents, and its assumed relationships, source diversity, which I shall define as
leading to content diversity, which in turn leading to exposure diversity. And I'll define these as quickly as I can.

Source diversity includes within it both diversity of ownership and that can be defined both in terms of ownership of the programming or ownership of the outlet. Also included within my definition of source diversity is this notion of workforce diversity and that's reflected in -- what's their current status these days -- the EEO rules which I understand are heading back to the Supreme Court, right? The notion of employing different ethnicities and genders in the workforce. That also falls within this concept of source diversity.

Content diversity which is really to me where the greatest struggles have lied and the greatest sort of desperation as far as how we go about measuring these issues, really, I think all the source diversity components are fairly easily measurable. The FCC traditionally uses a notion of viewpoint diversity which gets into the notion of different perspectives, different takes on different issues, et cetera, also and more commonly used, though certainly a lot less precise is the notion of format or program type diversity, different types of cable channels, different radio formats, different program genres, et cetera.
is the notion of demographic diversity, best reflected, I think, in some of the statements of former Chairman Kinnard as well as in recent complaints from groups such as the NAACP reflecting the notion that media content does not reflect sufficient diversity of genders and ethnic groups, et cetera.

What I'm hoping is clear that I'm mapping out is the basic steps to the necessary types of empirical assessments that need to be done in that and these all in fact represent fairly -- I wouldn't say easy, but measurable concepts that could be applied to the assessment of any type of structural base regulations.

And, lastly, this is where I think I go a bit beyond traditional policy thinking is the notion of exposure diversity, which reflects this notion that in fact when we look back to the marketplace of ideas metaphor that sort of guides diversity policy, the notion that the diversity of available information leads to better informed voters, say, or, for that matter, from an economic theory standpoint, more satisfied consumers by providing people with the ability to expose themselves and to consume a diversity of ideas or consume information from a diversity of sources, et cetera.

I define that two ways. Horizontal exposure to diversity refers to the notion of how diverse is media
consumption across audiences, that is, how are audiences distributed across available content options; vertical diversity referring more to the notion of how is one individual's exposure to diversity, how does that appear. That is how many different types of content does an individual expose themselves to or sources, et cetera.

And the reason I want to propose this as a dimension of our policy thinking in this area really adds some relationship to the traditional economic policy issues, which is that we don't make policy very often without some sense of how it's going to affect behavior. We don't necessarily directly regulate in the context of where consumers can spend their money or how they can spend their money, but we change interest rates and make other policies under assumptions about how consumer behavior will change in response to that.

I think the same should hold true for media policy, that media policy should be guided with a greater understanding of how changes in the structural or content dimensions of the media system actually affect individuals or audiences in the aggregate in terms of their media consumption patterns. Not to say that we should be regulating in the name of trying to manipulate audience exposure patterns, but at least make policy with an understanding of how exposure patterns will change if the
media system or market is changed structurally in one way or another.

That being said, when we look to diversity policy, one thing that I think sometimes gets neglected is barriers to diversity. A study that the FCC actually commissioned back in '99 addressed the issue of minority formatted versus non-minority targeted format radio stations and to what extent did minority formatted radio stations earn less on a per audience member basis than non-minority formatted radio stations. And the measure that's used here is a power ratio which real briefly is a measure of a station's share of advertising dollars in a market divided by its audience share in a market. So the higher your power ratio the better job you're doing of monetizing your audience.

And we looked to minority-targeted versus non-minority-targeted stations and here I actually went beyond what was done in '99 and have audience data, so minority-targeted stations are those stations with an audience composition of greater than 50 percent minority.

Minority-targeted stations power ratio of .82, non-minority-targeted stations power ratio of 1.06, suggesting a significant difference between stations that do target minorities and stations that don't.

And what I'm sort of building towards here is this notion that media policy should not just look at policies...
designed to establish media outlets that provide diverse content or support under served audiences, but that the maintenance of these outlets might need some attention because there are some economic handicaps that they might suffer.

I won't go through this one in a ton of detail, just to let you know that I also conducted a fairly obviously detailed analysis that looked at a variety of market level and station level factors primarily concerned with whether -- and this is in the handout, too, so better there than me running through all these -- with whether market and station level factors affect a station's power ratio.

And what we found, again, to focus on the most relevant information, is that the greater the extent to which a station's audience is comprised of either African-American or Hispanic listeners, the lower are those stations' power ratios. So this was again trying to provide a more substantive, multi-variant analysis that looked at a range of factors.

I also have some interaction terms in here which looked at the question of whether or not that relationship between minority composition and power ratios was a function of the nature of the individual markets in which these stations served and no real significant effects there, but
the key thing was a significant relationship between minority composition and station power ratios suggesting that minority audiences tend to be undervalued relative to majority audiences by advertisers.

That might be a factor think about as we consider the preservation of minority-targeted media outlets because we do know, and I think Joel's research has shown this, that minority-owned media outlets do tend to have a much greater likelihood of presenting content that appeals to niche audiences.

Okay. A quick switch of gears to diversity issues. I'll get to that actually in a minute.

When we look at diversity policy, I just want to start with thinking about what have been the traditional rationales and when we think about the traditional rationales for -- I'm sorry, did I say diversity? Localism policies now. They've been both political and cultural.

Politically, we think about localism -- and you have to remember that localism policies don't just exist within a media context, they are the logic that underlies localized control of schools and local governments, et cetera. And there is value in the nation of decentralized decision making, political value, cultural value. Decisions made locally so that content will reflect local cultural preferences, viewpoints, et cetera.
1 So we have both these political and these cultural
2 rationales for localism policies in the United States and
3 we'll keep those as a backdrop for assessing the logic of
4 localism policies as they currently exist.
5
6 In practice, when we talk about how localism has
7 been put into practice from a policy standpoint, there's
8 been first a focus on the notion of local ownership. That
9 is, trying to preserve media outlets in which the ownership
10 is based in the market that's being served. That's been a
11 fairly common concern and someone hopefully will have some
12 data that's relevant to that today
13
14 In addition to that, there's been the notion of
15 local programming and that dimension of localism has been
16 defined two ways, first within the context of locally
17 produced content and second within the context of content
18 that addresses local interests and concerns.
19
20 The general presumption that has existed is that
21 content produced locally is more likely to be content that
22 addresses local interests and concerns. Obviously, one is a
23 fairly content neutral component. Where is it produced? Is
24 it filmed locally, is it produced by the local station?
25
26 In some cases, that's been the defining standard
27 for assessing localism policies. In other cases, we've used
28 a more rigorous standard. That is, how about that content?
29 Is it actually directed at local interests and concerns?
And one of the key issues that I think requires a lot more empirical attention is whether or not there is any kind of relationship between the point of origin of content and whether that content indeed addresses local interests and concerns. And so again that's taking us, as in the diversity case, into a level of analysis that I don't think has been particularly common in policy making, requiring methods that I don't think are too commonplace in traditional economics based policy analysis.

So in an effort to try to get at some of this, whether or not, for instance, local ownership has any relationship to local content, we did a study that looked at in particularly in this case public affairs programming, public affairs programming as a limited measure of the extent to which a television outlet is providing content that addresses local interests and concerns.

Certainly I think you can broaden the definition beyond this, but in this particular case we were able to get data on local public affairs programming and the question we looked at first was do stations that are owned locally present more or less local public affairs programming than stations that are not owned locally?

And we looked to that, we had a sample of 111 stations, a random sample drawn nationwide, and we looked at their program schedules and we contacted them in those cases.
where we needed some help in determining whether or not a program was a local public affairs program. That is a program produced locally and fitting the commission's definition of a public affairs program.

And what we found in this case was that if a station was locally-owned it devoted about 1.5 hours for this two-week period that we studied to local public affairs programming. In contrast, if a station was not owed locally, that station devoted about .85 hours during that two-week time period to local public affairs programming.

I should emphasize, though, that that difference on the surface seems fairly significant, but did not quite reach the levels of statistical significance that we generally like to see. So real strong evidence there of a relationship between local ownership and local public affairs programming.

That being said, we went a bit further and looked at a variety of, again, marketplace factors, station level variables, things that might help us understand what leads a station to present localized content, at least in this case in the form of local public affairs programming.

What we found, we looked at market demos, television households, average household income, minority population. We looked at competitive conditions, how many public television stations were in the market, what level of
cable penetration was there, how many commercial television
stations were in the market. And then our primary concern
there was station characteristics. Station revenues,
whether it was VHF or UHF, whether it was a network
affiliate.

And then most important, the two at the bottom,
was the station owned locally, that was number one I was
interested in, and, number two, what was the national
audience reach of the owner of that station, trying to get a
sense of whether or not, for example, the 35 percent
ownership cap would have any bearing on the issue of local
public affairs programming. That is so the larger the total
audience reach for the group that owned this station that we
were studying, we wanted to see if there was any
relationship between group size as far as audience,
household audience reach and local public affairs
programming.

And in this case, what we found was no meaningful
significant relationship. That is, there doesn't appear to
be a relationship between local ownership or station group
size and levels of locally produced public affairs
programming. So if local public affairs programming is
something that the commission would like to see more of, it
doesn't appear, at least based on this sample, that
structural regulation in the form of local ownership or
audience based ownership caps is an effective means of addressing that.

However, when we expanded a little to widen the definition of public affairs programming to include not only programming produced locally, but all public affairs programming, including syndicated programming or network feed public affairs programming like Meet the Press, et cetera, we get some slightly different results. We find, for example, whether a station is a big four network affiliate is positively related to the provision of public affairs programming, which is not surprising given that the big four networks, I think all of them at this point, provide some form of Sunday morning public affairs programming.

However, I think the other important result here is the fact that local ownership does emerge as significant in this context. That is, local owners were significantly more likely to provide more public affairs programming under this broader definition of public affairs programming. So perhaps if we think about local public service a bit more broadly and accept the notion that perhaps localized interests can in fact be served by choosing content not produced locally, the best example I saw in this sample that we generated was stations in Florida that were carrying syndicated public affairs programming dealing with senior
citizen issues.

Now, it wasn't produced locally, but that to me reflects some effort to program to local interests and concerns. So it really would depend on what sort of definition of public affairs programming we would consider most important.

But in this case, we ended up with significant explanatory power. And, again, I know I'm sort of flying through the methods and all the statistics that are presented here, I don't have a lot of time, but I just wanted to present this as an example of the type of research that I think could be done on a much larger scale. This is an issue that came up in the last session. I have some ideas about the type of databases that we could really exploit to get at some of these fuzzier issues about localism and diversity.

What it requires, though, is a willingness to engage in and I think to accept, which is the aspect of this I'm a little concerned about, data and analyses that don't fit conventional economics based approaches to a policy analysis. And I think once we accept diversity and localism as policy objectives on par with competition, we have to be equally willing to accept methods and data that might not fit traditional models.

So to wrap upon the localism issue, I think we
might need to question whether local ownership has the
effects that we would expect, but also do a lot more
research into whether or not local production of content
does mean content that addresses local interests and
concerns.

Thanks.

MR. LEVY: Thanks very much, Phil.

Now we'll move to Joel Waldfogel.

MR. WALDFOGEL: If I could just get this computer
working properly -- let's see.

Can we project this again?

Oh, there we go. Great. Okay.

I should say I'm an academic and an economist, an
unrepentant economist, in fact, and a fan of rigor on top of
all of that, so I just wanted to get that out in the open.

A PARTICIPANT: And how do you feel about Jim
Bunning?

MR. WALDFOGEL: I have no views, although I do
live in Philadelphia, so maybe that qualifies me for
something.

I guess my talk is of the following nature. I've
been doing empirical work on topics, I guess, related to
things we're talking about for the last few years and I
wanted to review some of the findings I have that I think
are relevant both to consolidation and to localism and so
that's the hope anyway.

I guess what I want to do is talk a little bit as we go about the following things. First, media markets and minorities in context, then a bit of the recent history of what's been happening to ownership, some review of studies I've done on the effects of consolidation on both programming content and on behavior and then a missing bullet in this slide is the next step and the last step of the talk is to discuss localism and some preliminary results and some new research I've been doing that's, I think, relevant to that. And as we go, maybe we'll talk about new media and maybe we'll talk about other types of research needed.

So setting the stage for thinking about media markets and particularly local media markets and minorities, an important fact that many people know but maybe not everyone knows is that content preferences differ very sharply between blacks and whites, between Hispanics and non-Hispanics and this is obviously evident in radio where a handful of formats attract two-thirds of black listening and collectively attract something like 5 percent of non-black listening; where a single type of radio station, that is one that is Spanish language -- and, of course, that really reflects many types of stations, but all those that have Spanish language collectively attract about half of Hispanic
listening and less than a percent of non-Hispanic listening.

One could go on and on. In television top rated shows among whites tend to be bottom rated among blacks and vice versa. In newspapers, in markets that have multiple papers, typically the preferences are quite different for the product. But just a fundamental fact about media products again is that preferences differ strongly across groups.

Now, another fundamental fact is that these products tend to have fairly high fixed costs relative to the size of the market and as a consequence there are comparatively few products per market. Now, I'm thinking especially here about local products and as we go we should talk about the extent to which the multiplicity of national products is or is not relevant to local markets, but in newspaper markets, for example, there is typically a handful of daily newspapers, or fewer, depending on how you count. In radio stations, there are on average about 25 stations available on the dial across the top 200 or so markets, et cetera. So these are fairly small numbers of products relative to the size of the market.

And this raises the question of what I would term who benefits whom. If there are big fixed costs to providing some product, we only get that product if enough people actually want it. So if I want a certain kind of
programming, it only arrives and is available for me if a lot of other folks also want that kind of programming. So it turns out in some studies that I have looked at that, for example, the number of radio stations targeted to blacks is sensitive to the number of blacks in the market, not sensitive to the number of whites. If anything, it decreases in the number of whites. The extent to which the newspaper appeals to blacks is sensitive have the fraction of blacks in the market, et cetera.

Generically, I guess, in local media markets, one's satisfaction as a consumer depends on the number or fraction of persons who share one's product preferences. Now, as a consequence of all this, markets tend to deliver less satisfaction to small groups with atypical preferences and there is evidence, I think, in some papers I provided that you can get your hands on if you're interested.

Now, I should say, since I'm an unrepentant economist, that this is not necessarily inefficient. It may or may not be inefficient, but I want to be clear that this is not necessarily saying that that is an inefficient outcome.

Okay. That's just the backdrop against which I think about some of these things.

A little bit of recent history that probably many
of you know better than I, there's been a lot of consolidation, especially in radio but in other media as well, increased ownership concentration and a reduction in the number typically of minority-owned outlets. And there's a question about whether this is a problem. And I don't take it on faith that this is a problem.

There is an interesting and deep question about how would we know whether this is a problem and so I've proposed that we would like to look at the following things at least to help us think about this. It's still not an easy question, but at a minimum we want to know what are the effects of these changes in ownership on programming, what are the effects on the tendencies for different types of persons to consume, that is to read, to watch, to listen. And beyond that, and here I guess I -- maybe I step away from traditional economic outcomes, but I propose we might want to look at other kinds of outcomes like political participation.

There's a question of whether media are special, are media unlike widgets, whatever are widgets are, because the consumption of media products affects the way in which we participate in political contests or, to put it in a drier way, that economists like to think that, you know, media affects our costs of political participation because it provides us with information, both through the content.
and the advertising.

In any event, these are outcomes that may be especially important for media more so than other kinds of products whose antitrust scrutiny, et cetera, that DOJ usually is charged with.

And, by the way, these kinds of outcomes or these kinds of effects are, I think, also the kinds of effects one wants to look at in thinking about localism and I'll try to get to that, too.

All right. The effects of consolidation on content. It goes back to Steiner and it's been discussed many times today that ownership concentration or increased ownership concentration may promote variety and that's sort of been true in principle for a long time. I've actually recently done some work with Steve Berry looking at radio markets and since 1996, the telecoms act, there has been an enormous amount of consolidation, huge increases in ownership concentration and if you look at that, you do see that markets with greater increases in ownership concentration have greater increases in the number of programming formats on the air, so two cheers for monopoly.

Similarly, if one looks at newspaper markets, my doctoral student, now a professor at Michigan State, Lisa George, did a nice paper, part of her dissertation, looking at a similar question in newspaper markets and increased
concentration in newspaper markets tends to lead to more variety in the sense that the products sort of have more topics covered or if there are multiple products they are spaced farther apart.

So part of the story here is that Steiner's conjecture seems to have some evidence to support it. There are questions about whether this is real variety as opposed to Sunoco variety -- you know, at Sunoco where they have two types of gas and many types of pumps -- but nonetheless, the evidence here -- am I am firmly believer that we should have evidence -- says something nice about consolidation.

It's not clear here, however, in the data I've looked at whether this is particularly good for minorities, so that's an open question, but anyway let me move on from that.

There's a separate question beyond simply ownership concentration which is about kind of racial identity of the owner, if you'd like. Now, it's not obvious particularly to an unrepentant economist why the race of an owner would make any difference whatsoever to the sort of content offered on a station.

Now, it's a fact that most black-targeted radio stations are white-owned, okay? So that even makes it less obvious in some sense what one should expect. But if you look at the data, and I've done this in a paper or two with...
Peter Siegalman, if you look at cross markets or over time, markets with more black-owned stations have more black-targeted programming after accounting for the stuff that should have determined it. Markets with changes on a black-owned stations have changes in the number of black-targeted stations. So ownership does seem in equilibrium to have an effect on the amount of content targeted at a group, okay?

So one view about worrying about the race of owners is that it's just a concern over who gets rents, that there's no effect of such policies. But the evidence that we've mustered suggests or indicates to us that these policies are not inconsequential. That is, policies that I guess used to exist promoting minority ownership of stations. It still doesn't indicate whether it's a good time or a bad thing, but it's not inconsequential, so it can't be dismissed on the ground that it's merely rent transfer.

Okay. Let me talk a little bit about consolidation and its affects on behavior. Media are arguably important to political behavior because media allow the communication of content and also allow advertisers access to audiences, so presumably if you want to get a black-targeted political message to the audience you intend and not sort of pay for a lot of listeners you didn't want
to target, you'd like to have outlets that have predominantly black audiences, so one question, again, is whether kind of the configuration of targeting has an effect on behavior and in a study I've done with a colleague at Penn, Felix Oberholster Ghee, we asked the following question: How does the tendency for blacks to turn out to vote relate to the presence or absence of black-targeted media outlets here?

And in this context, the outlets we're thinking of are local weekly newspapers and radio stations because really those are the only media outlets that sort of can be classified as black-targeted or not. One could think in TV looking at program by program, and I'll be doing that soon, I hope, in my life. In any event, when one looks at this question, one finds the following:

The tendency for blacks to vote is higher in places that have black-targeted media outlets. Furthermore, one cannot just look across cities, but also over time since there have been changes in the number of black-targeted media outlets and look to see whether this relationship appears over time as well and it does.

One might furthermore wonder whether it's about ownership or about targeting. I wish I had an equivocal answer here, I don't. Both seem to matter. When both are allowed into the empirical analysis, both seem to matter.
I don't think this is the last word on the question, but this is an example of an outcome that we might care about and it seems to be affected by the configuration of media products available.

All right. Let me talk a little bit about localism and here I'm getting -- I guess I'm getting into newer research and with all this research I'm really interested in how I can make it useful to the policy discussion and what we might think is true and not true about it. Anyway, let me keep going, though.

So localism is a hard problem. It's not clear what is meant by localism. I mean, it's not clear do we mean locally chosen programming, locally produced programming? And I don't know the answer to that.

Does local programming matter? In a multi-channel environment with many, many channels, does it matter what's offered locally if people can sort of choose any of 500 channels on the satellite?

Having said that, let me tell you a bit about what I've been looking at lately in television. I've been asking the following question in large TV markets. I've been asking, well, how does the number of apparently black-targeted half hours vary with the fraction black in the market?

So the notion here is to look at sort of viewer
level data and aggregate audiences for each half hour on each channel and ask which of these half-hour shows has an audience 90 percent or more black? And I've done it with 75 percent, 50 percent, whatever you like.

And maybe not surprisingly, markets that have a higher fraction black in their population have a lot more black-targeted local half hours. And furthermore, the tendency for blacks to watch television, that is, watch local television in that market, is higher in markets that have a larger fraction black.

Now, my first reaction to that, and I'm very interested in hearing what we all might think about this is that that suggests that the presence of 500 channels -- I mean, a made up number, but the presence of many, many non-local, nationally-originating channels isn't enough to make the local choices irrelevant because they're relevant in the sense that they induce some behavior. They are picked up in viewing behavior.

I can show you some pictures that illustrate what I'm talking about. This is a picture relating on the horizontal access the percent of local population that's black. On the vertical access is the number of these half hours that I deem black-targeted because their viewerships are 90 percent or more black-targeted.

And, by the way, this is all in non-evening prime
time hours, so it's not -- where, of course, this couldn't operate because there the programming decisions aren't made on the basis of who lives in the locale. In any event, it's a clear and obvious positive relationship.

The second part of this, as I mentioned before, is that this shows a tendency for blacks to watch television. So the positive relationship here, which is a best fit line through the triangles, shows the relationship between now the percent black on the horizontal axis and on the vertical axis this is the number of half hours of non-evening prime time, basically local programming watched per week.

And so it rises across markets with the fraction black and this is for blacks. The flat line is for non-blacks or primarily whites, but everybody else who is not black.

So this suggests to me that local programming decisions are not inconsequential. I don't know if that's a bold pronouncement or not, but that's what it suggests.

Let me finally talk a little bit about some work I've been doing on the effects of localism on behavior where here the meaning of localism has to do with the introduction of national newspapers into local markets and the question here is how is it that national newspapers affect both the positioning of the incumbent local papers, the local dailies, as well as the behavior of the targeted audiences
for these national papers?

And the preliminary results are as follows. As you have increases in the circulation of these national dailies, you have reductions in the circulation of the local papers among the audiences targeted by these national papers. You have some repositioning, the local papers seem to become more local, they move some of the reporters out of national and foreign opinion stuff and toward local things. But local political participation by audiences targeted by these national products seems to decline in local elections, although not in presidential elections that are, of course, covered by both national and local papers.

Now, all of this suggests that content origin matters. I can't tell you that it's a good thing or a bad thing, there is a mix of things going on. Because on the one hand some set of consumers is being distracted from local affairs while on the other hand the local products maybe are becoming more informative about local affairs, although they may or may not be more read than they were, but it's not inconsequential. The competition between national and local media products have some consequences for outcomes that we may care about.

It's in some sense a decision above my pay grade to decide whether it's a good thing or a bad thing, but I think those who need to make these decisions might want to
have this information at their disposal. This, too, is research I've been doing with Lisa George at Michigan State.

Let me just conclude by -- well, thanking those who organized this for involving me, but also applauding the commission's plan to really put together data in a systematic way. It's a very feasible project to do so. It's work, it's a fair amount of work, but it's very feasible and I think putting data together in a way and making them accessible to interested parties would really promote some research and would also make the process of evaluating things as they come up within the commission much easier.

I think at various times I've visited the commission over the years I hear overworked economists saying, you know, we don't have time to undertake certain kinds of things and I think having a standing database or series of databases could make it very easy or comparatively easy to quickly answer certain kinds of questions.

Thank you very much.

MR. RABINOVITZ: Thank you very much. I want to thank all of the panelists for your comments. We seem to have gotten much more concrete examples in the non-economic part of the discussion than we have in the economic part.

MR. WALDFOGELE: Them's fighting words.

MR. RABINOVITZ: Actually, leading off of your
last comment, what kind of data should we be looking for? I mean, specific --

MR. WALDFOGEL: For each media, there are good audience data. So, for example, for radio, Arbitron has very detailed data by gender, by day part, by -- and they also have it by race for large markets. For TV, there is Nielson data. For newspapers, there's Audit Bureau of Circulations data that has circulation of every newspaper by zip code, except the New York Times, they don't participate, but I think -- and then in conjunction with that you want to have information on the prices paid by advertisers.

Now, of course, it's hard to get real data on prices because rate cards are not really prices although they're sort of prices, but nonetheless one could try. There are data on prices in all these media. There are also data on the prices of subscriptions, that is, prices paid by the consumers, the direct consumers of the information as opposed to the advertisers for, I think, all these media it's possible to get some information.

But on top of a medium by medium data set, I think one wants to have some data that allows you to look at cross consumption patterns, so that means household data that asks people what newspaper do you read, what radio station or stations do you listen to or what TV stations do you watch and do you use the Internet, et cetera. And such data sets
do exist. I don't know how good they all are, but I think it would be important to have those in addition to the medium by medium data.

MR. RABINOVITZ: Suggestions by others?

MR. NAPOLI: I'll just build on that, really, what Joel is saying, but then in addition to that, I would suggest also on top of it some systematic efforts to gather and analyze media content across a variety of dimensions. We haven't done a decent job of using real basic metrics of content differences, whether it's radio station program format or television program types, and I think we could do better than that and in addition to that go beyond that and start to use some of the methods that have been used even to sort of quantitatively assess presence or absence of bias, that's a term that's often used in assessing media content, and use those more as a way of assessing the level of diversity of viewpoints and perspectives we see on issues.

And so I think we could delve deeper into the nature of media content. And, again, not necessarily within the context of trying to manipulate the nature of media content one way or the other, but just in terms of getting a sense, again, maybe at the market by market level of how structural conditions seem to be related to content conditions.
MR. COOPER: Another point that Joel didn't emphasize, he described the media data. Underlying his data is a link to demographic and voting behavior patterns which really gives it a great deal of power. So when you gather that data, you need to keep the hook out there. You may not want to gather the census data, but you need to keep that zip code or the census block data available so other people can come along and link it to that voting pattern behavior because in a certain sense that's the payoff in the marketplace of ideas.

MR. GOMERY: I'm a little skeptical, I guess I don't feel comfortable here, but the data that's generated for the media is generated by profit-seeking companies. They ask certain questions and the questions are the ones that the people that they sell their data to want answered, not necessarily the questions you would want to make policy about. So I think -- I'm going to be killed now, but, you know, spend more money, generate your own data.

MR. RABINOVITZ: But we may have to follow up, so what should be asking for? If we're going to be asking for data and not relying on stuff that's already out there, what should we be asking for?

MR. GOMERY: I think data generally -- I mean, I'd like to hear what my colleagues have to say about this, data generally is sold because advertisers desire it. And the
question then is what other kinds of data that might be interesting or information or potentially generated would be the kind of data that advertisers would not want. That's the -- Mark was talking about that in terms of zip codes and voting behavior and Al of the kind of -- the thing that doesn't have any real market value.

MR. NAPOLI: I think it would be very valuable if the commission performed its own annual or semi-annual media usage surveys along the types that larger market research firms do perform that address the nature of -- and it could go beyond issues of diversity and localism, but direct data on how people are using new technologies in the home and things like that.

I think we hardly make sufficient use of consumer behavior data in media policy. I mean, we assume that the audience makes their own decisions, but I think if we knew more about how audiences were responding to changes in their media environment we could make policies that took that into account.

So I think if we just -- large scale surveys of media usage patterns, what we're watching, what we're not watching, how many stations on average do we listen to, all sorts of methods that, again, same techniques that are employed by the commercial firms, but I don't see why there couldn't be an internally generated annual or semi-annual
MR. OWEN: It strikes me that the data that the commission should gather are the data relevant to testing the hypotheses that are useful to the commission in making policy, as opposed to all the data in sight and that one can think of, which, of course, is what an academic wants because it presents unlimited opportunities to do papers. But you can't decide what data to collect until you know what questions you're asking and that means formulating the framework of the policy analysis and deciding what the goals are and so on. So the data question comes second, not first.

MR. NAPOLI: The data would, I think, address exactly the type of questions that Joel and I were kicking around. I mean, I think Joel is doing a good job already of showing very creative uses of under used data for addressing clear communications policy issues. So we're thinking outside the box a little bit.

MR. OWEN: The results are fascinating. The issue is whether they are in fact -- and Joel has very carefully said he's agnostic about their policy relevance and that's up to the commission and its staff.

MR. NAPOLI: Right.

MR. COOPER: But at the same time, the commission asks the question does ownership matter and his data
suggests it does, I mean, which is a fundamental threshold question and so who owns it looks like it matters, who is in the market looks like it matters. Whether there's local or national control looks like it matters in this data. And so you may not have a precise notion of exactly what the Congress meant when it gave you that prescription in the statute but these are questions, I think, that the commission has actually identified and both of these suggest that under, you know, a certain set of circumstances -- and I think there's a lot more evidence out there, that both of these fellows are building on literature reviews, but these are very precisely honed to answer those kinds of questions. So these are answerable questions in a reasonably rigorous fashion. Now we can slip in sociological rigor, you see? There's plenty of sociological rigor in the world, you know, the economists think they know what costs are and I've been in enough regulatory proceedings to know that they may not, as this commission may know in the rate proceedings. There's a lot of sociological rigor that exists as well in this kind of data, who votes -- voting is a sociological act. And Joel didn't ask who they voted for.

MR. WALDFOGEL: No, the CPS didn't ask.

Just on Bruce's -- I mean, Bruce is right that we need to know what the question is before we go collecting data, but in some sense we need to know what the public
interest standard means and I know we're supposed to tell
you, but in some sense you need to tell us so we know what
to --

I mean, let me toss it out as a question. Is
voting something that the FCC wants to care about? That is,
whether people vote, if indeed media affect it?

You don't have to answer that if you don't want
to, but that strikes me as the kind of question we need to
begin to ask to answer Bruce's question because it's true,
we could collect data on a lot of things that would turn out
not to be relevant.

MR. RABINOVITZ: I'd like to invite the first
panel, do you have any questions of the second panel?

MR. BESEN: This is a question for Joel. I think
I agree with Bruce, it's all sort of really interesting.
I'm interested in sort of the question of causation because
I think it's always complicated in these things.

I'm interested in sort of how you would interpret
or really worry about issues of causation. I mean, it's
sort of -- you could almost think of, well, who ought to own
the station? Well, it's the guy who knows about the format
that makes the most money on it, and so you may in fact
observe a kind of correlation that is in fact not being
driven in the first instance by what appears to be exogenous
choice of who the owner is. And I just wonder how you sort
of worry about that.

MR. WALDFOGEL: That's a standard and very good question. So I say that markets with more black owners have more black content. I think you're talking about -- if I were saying stations that are black-owned are more likely than station that aren't to be broadcasting black content, then I'd be very vulnerable to this concern because under one view of all this, if you were to, say, by helicopter drop add a black-owned radio station into a market, black-owned and black-targeted, would it simply reduce by one the number of white-owned, black-targeted stations, okay? But the experiment -- and what I'm finding is that that's not true.

MR. BESEN: I'm sorry, what's not true?

MR. WALDFOGEL: It's not true that it reduces -- that it's purely -- that it displaces a white-owned, black-targeted station. That, rather, an additional black-owned station in the market raises the number of black-targeted stations in the market.

So I'm not making this statement at the level of the station, as has been done in some previous research. I mean, I agree that's not very informative. It's true that virtually every black-owned station is black targeted, but that doesn't answer anything interesting about the effect of ownership on targeting.
The interesting question in my view is if you have more black-owned stations, does it actually increase in equilibrium the number of black-targeted stations or does it simply displace a white-owned black-targeted station?

MR. BESEN: But why is not the number of black-owned stations themselves potentially an endogenous variable?

MR. WALDFOGEL: Oh, it is potentially an endogenous variable, but I have two nice instruments for it. In the cross-section, we're way inside baseball here, but we can do this if we have to, in the cross-section, the natural instrument is the size of the black population, but a much nicer instrument in the over time comparison is that after the telecoms act, a lot of consolidation occurred which meant that there was a lot of exogenous selling by singleton owners to groups.

And the singletons were disproportionately -- or I should say the black owners were disproportionately singleton, so there was a lot of change in the number of black-owned stations in markets that was arguably exogenous.

So I do worry about that and I do this a variety of ways and it's true of the change and it's true in the instrument that changed, it's true in the cross-section and the instrument of the cross-section.

So I agree with you that that's -- although it's
inside baseball, it's a very important inside baseball
question, but I think we tried to be careful about that and
it seems to not evaporate under this sort of scrutiny.

MR. COOPER: Let me ask a question about some of
the findings I'm troubled by. Obviously, the last
exposition is something you think is very important.

In finding the effects of increasing variety, and
you're careful to use the word variety, in markets where
there's been an increase in concentration, I would have two
questions, and I've obviously looked at these studies
carefully. One, is that true at all levels of concentration
or does it tend to adhere in markets that had lots of
stations, that lose a station end up with more variety,
whereas markets that had a small number of stations that
loses a station doesn't? And that would be an important
question for this commission in picking a threshold as they
have done in the policy of where they'll allow mergers to
take place.

And so I'm concerned that if we say, well,
allowing mergers in any market increases variety, if it only
works in large markets where I'm losing the seventh or
eighth station, that is an important public policy question.

Second of all, how big are the variety effects?

MR. WALDFOGEL: The answer to the first question
is I don't know and I think the answer to the second
question is I don't have it at my fingertips, so I also
don't know, but I should say a little bit more about that.

The variety effects are stronger in the sense of statistical significance when one also controls for number of stations, so conditional on the number of stations the number of varieties goes up. Or to say it a different way, increased concentration is clearly good for the number of formats available per station. So you might think of it as reducing duplication.

When you just do it on the absolute number of varieties in the market, the results are a little less strong. They tend to emerge, but they sometimes don't. But the other one, that is, you might think of it as -- well, the duplication result is pretty clear.

MR. OWEN: I have just a very narrow question for Philip, actually. In one of your regressions, you used the power ratio and I understand that, I've seen lots of radio consultants and radio stations use that criterion to measure performance in a business sense and I've always been curious about it because it seems to me that since we know that different demographic groups are worth different amounts to advertisers, that you would expect to see some variation in that ratio across stations, but I don't know what it has to do with, for example, profitability because the cost of attracting audiences in different demographic groups may
very well be different.

For example, the fact that a black-owned station on average has a lower power ratio than a non-black-owned station is consistent with the hypothesis that black-owned stations are more profitable because their costs might be lower.

So the question is how do you control for that effect when you're using power ratios as an indication of the performance of the station?

MR. NAPOLI: In other words, it's sort of account for the grocery costs, essentially. Yes. This certainly doesn't do it, but within the radio context, I would think if we're operating under that assumption that black-owned radio stations operate under lower production costs, which I guess is what you're possibly suggesting, right?

MR. OWEN: I don't know.

MR. NAPOLI: In that direction at least we would still suffer, I think, the possibility of audience diversion just from the basic notion of higher production costs leading to larger potential audiences and audiences, again, which we do see when we study audience behavior within minority communities, which is that a greater likelihood of them diverting to majority content, and that may very well be a function of -- your stuff shows, I think, that a little bit, too -- of the higher production costs that are there.
So profitability, it may be the case that a station can operate at a very low level and maintain reasonable levels of profitability, but I don't know that that also equates with equivalent levels of quality content of serving all diverse audience bases, which, again, do we care about that? That's the value-based decision.

MR. WALDFOGEL: I just want to make an efficiency comment about this line. I think the reason why Phil's result is potentially very interesting is that again we ought to have a station if its value to listeners plus its value to advertisers exceeds its costs.

Part of that valuation doesn't get incorporated, that is, the valuation that listeners place on it cannot be incorporated, it cannot be appropriated as revenue by the station owner, which means we're left relying on the extent to which advertisers value listeners to drive whether we offer stations.

If stations with predominantly black audiences are for whatever reason, if it's entirely discriminatory, if for whatever reason such stations are less valuable to advertisers, then we will as a natural market consequence get less black-targeted programming. And remember, whether the programming had ought to exist depends partly on this unpriced component, the value that black listeners place on the programming.
Now, to the question of whether lower prices simply reflect more competition, we have to remember that most markets have very few black-targeted radio stations. And I shouldn't just state it as an assertion, but rather maybe as a suggested exercise. You could look and see in your data how this varies with the number of black-targeted radio stations in the market. You might also put city fixed effects in there to see if it's a robust result.

But if it's true, then it's just another reason why markets would be delivering smaller amounts of programming to that community and there are reasons to suspect the allocation might have been inefficient to begin with and this could make it worse. Could. Could. I'm an unrepentant economist.

MR. RABINOVITZ: Let me switch topics a little bit to ask a question about diversity. The first panel was fairly clearly that they wanted to shy away from both format and viewpoint diversity and that we should be looking at structural solutions or structural questions anyway.

My question is to this panel do you agree and, if so, at least in the radio field, given that Congress has set limits on the number of owners per market, is there anything left for the FCC to do?

Maybe start over here. That end of the table has been busy.
MR. GOMERY: I'm willing to throw in my two cents for no pay. I think that I have to agree with what Mark said earlier this morning, which I think -- I keep thinking morning/afternoon, earlier in the panel and that is that the politics of making particular rules of behavior is just a politics that's not going to work. I don't think that's real politics today. So unless there's some kind of change in the world, I think you're going to have to deal with ownership.

MR. WALDFOGEL: This is a really hard question and I'm about to say I don't know the answer and then go on to speak. That really proves I'm an economist. But perhaps as with merger questions, maybe there's an incremental issue. If one had evidence that would lead one to believe that some outcome that one had decided to care about, like whether people vote -- and, again, I don't know whether we should care about that, although we certainly shouldn't dismiss it out of hand, if we had reason to believe that a certain proposed change in rules was going to have an effect on that, a negative effect, then maybe we would want to use that possibility of scrutiny at the point of a proposed merger as a way to regulate. I don't know, but it's a thought.

Again, as with antitrust where we don't go out and break up monopolies that are fairly gained, but we don't
allow people to merge to them, maybe similarly we shouldn't allow people to merge to situations that raise the costs of informing parts of the electorate. I don't know. Just a thought.

MR. NAPOLI: When I think about it, I mean, really, one of the underlying reasons we're all here is because of the persistence of the courts in demanding evidence that a particular policy as an intended outcome -- I can't remember the court case now where the court asked the question whether or not source diversity in and of itself was an outcome worth pursuing absent evidence that it did produce content diversity. So perhaps to a certain degree -- and I think a lot of our analysis and the FCC's analysis is going to be guided in this direction which is what is it the courts want.

And if they need -- you know, it seems to me that at this point policies that ultimately do impact viewpoint diversity, the court seemed to presume that sort of intention, that it needs to be demonstrated. I think there are plenty of potentially reasons why we might try to justify ownership type diversity policies in and of themselves, but I think we're way past that ever flying with the courts.

MR. LEVY: I wonder if I could just push a little further on the question of viewpoint diversity and how you
might measure it. I think from your discussion as well as others we have at least a decent shot of defining what we mean by localism and then one could measure it and analyze it, et cetera, but in terms of diversity, I don't think that we've really gotten quite as far down that road yet.

I mean, we have one sort of proposed almost indirect measure of the impact in terms of the effect on voting patterns, but if we for the moment confine ourselves to the political arena and the sort of analysis that Mark opened up his discussion with this morning, is there anything -- other than the indirect effect that Joel -- the indirect measure perhaps that Joel has proposed, are there any other ideas that any of you could offer that would allow us to come to a relevant definition of diversity really in this sort of political and promoting citizenship context?

MR. NAPOLI: So in other words, basically moving beyond the presumption that each individual source represents a different viewpoint, I mean, that's the most basic level, but I think we could go beyond that and some examples -- again, this involves the examination of media content which, again, may or may not be something that people are sort of willing to incorporate into policy decision making.

But let's say for example looking at the diversity of the number of different news stories covered, that is,
how much overlap do we see versus lack of overlap between electronic or print media outlets in a market? Or we go and employ the methods that have been used for primarily political reasons to try to assess whether there is a liberal or conservative bias in our news media outlets.

The studies that use those methods are often -- the sources of them are such that we often just dismiss the studies, but in fact there is a fairly developing -- you know, fairly sophisticated methods of trying to assess media content in a reasonably objective way, so you might look at individual issues and just look at the basics of, you know, is the coverage positively or negatively predisposed on particular positions or issues.

I mean, this really got into the nature of what the fairness doctrine was trying to get at, but, of course, no one ever went and assessed the nature of viewpoints that were there. I'm not suggesting a need return to the fairness doctrine at all, but I'm just saying that some of the methods that we could have used to assess the nature of these regulations on content could be used.

Assess media content -- you know, again, you employ two or three individuals analyzing the content, make a determination as to what level of agreement there is between all these different analysts and then if there's a sufficient level of agreement, then you say, okay, we have a
measure of trying to assess what level of conservative or liberal perspective we see here or how many different stories are receiving coverage, how many different issues are receiving coverage in the news media and then you can construct potentially diversity indices, I think, in that direction.

MR. LEVY: Anybody else rash enough to take a crack at this?

MR. COOPER: I will assure you that that sort of content analysis will drive the proponents of rigor nuts.

MR. NAPOLI: Actually, let me just -- that was my concern from the last session, is that's exactly it. You could show these as quantitative and statistically rigorous within the parameters of this particular methodology, but we are talking about a methodology that has never had any significant place in policy making.

And, yes, if this just bumps up against the wall of this is a foreign methodology then, yes, this is dead in the water. But at the same time, we were asked to come up here and talk about policy objectives that are inherently non-economic in their orientation and I can't imagine how that could be pursued absent research methods that are non-economic in orientation.

MR. OWEN: The problem with the content diversity measures is that the definitions of content categories don't
have any deeper basis than either industry categories or the researcher's intuition.

MR. NAPOLI: We sort of have that problem when we define media markets, though, for economic analysis, don't we?

MR. OWEN: No. We have a test for media markets.

MR. NAPOLI: I'm just remembering Harold Furchtgott-Roth's dissents every time. He disagree with the annual reports just on the basis of he didn't agree that these markets were defined properly. I mean, there seems to be an incredible amount of subjectivity there. Movie theaters, should they be incorporated into the definition of assessment of competition in multi-channel programming?

MR. OWEN: One of the points we were trying to make this morning, or some of us were trying to make, is that there are widely accepted methods of answering that very question in a -- and I hate to say it -- rigorous way using empirical methods that are embodied in the merger guidelines. You have the hypothetical monopolist test and the 5 percent and so on.

So it's not a matter of intuition as to whether to include movie theaters. There's a widely accepted answer to how to do that.

MR. NAPOLI: Well, I don't think we're at any kind of consensus, though, on that, are we?
MR. OWEN: In antitrust, we are. I agree we're not in some regulatory agencies or some regulatory areas at that consensus.

MR. NAPOLI: Like media.

MR. OWEN: Well, that remains to be seen. That's why we're here, right?

I wanted to come back to Jonathan's question about source diversity. I don't see how we can measure source diversity without knowing what the purpose is of wanting to measure source diversity. And it's only in answering that question that you might possibly see some way to measure it. Unless, of course, it's an end in itself, but that can't be true unless you have a definition of what it is and now we're running in a circle.

MR. LEVY: Let me try and break the circle a little bit. I don't think that it's an end in itself. I think that the ends have to do, at least one of the ends, has to do with an informed public that can better exercise its responsibilities as citizens and voters and there are some external effects of that, of course, the more responsible you are as a citizen and voter it helps me as well.

So I think that's sort of a rough description of what one of the ends might be. I think what we have and, again, from the -- just going to back to the quotation that
Mark cited this morning, I think we have a suggestion that one way that you get to that, you know, is having the multitude of tongues, information or points of view from a multitude of tongues and the question is -- a question, then, is, well, how do you ensure that that multitude of tongues is able to -- is, are able to express itself? And I think that the commission at least traditionally has gone down that path and come to some conclusions regarding -- or come to the conclusion that one way of approaching this is to guarantee or to ensure that there is a certain minimum number of independent outlets, media outlets available within certain relevant local markets. And maybe this is a path or a technique that long ago reached a dead end, perhaps rigor mortis has set in and some of us didn't notice it.

If that's the case, I'll ask the board of coroners here to repeat the verdict and if it's not the case, then maybe someone could give us some suggestion as to who should resuscitate the patient here.

MR. OWEN: I don't want to monopolize the nihilistic point of view here, but you made a jump. You said the way to achieve these good citizenship benefits, political benefits, is by increasing the number of sources of information and so on and that's certainly plausible, but it's equally plausible, it seems to me, that one could have
much better citizens if we simply had a benign monopolist
informing them of their duties and giving them the
information they need to exercise them.

I don't know why it follows that an increase in
the number of sources makes better citizens as opposed to a
decrease in the number of sources. It's the same issue as
with program content diversity. We don't have a theory that
tell subpoenas that. We have a hope or a belief or
something -- intuition, but until you can actually
demonstrate that relationship, it seems kind of extreme to
go off and base ownership policies that may have significant
costs for the public on those intuitions.

MR. COOPER: Well, again, I'll be the opposite
side of nihilism, whatever that is, touchy-feely, perhaps.
Quite the contrary, I mean, clearly we have a judgment by
the Congress that competing sources is better than a benign
dictatorship and that's clearly a strong message.

We also have -- the interesting thing is that each
of the individual propositions in my view of the literature
out there, and it may not be econometric literature although
some of it is, is that each of the propositions -- who owns
it matters, what people hear matters; the separate
propositions actually are well supported as we will endeavor
to demonstrate in the filing of our comments. So that not
only has Congress made a clear judgment, and if you look at
their legislative history, they cite facts and behaviors that led them to that judgment, but we also think and we have filed these as comments at the commission that the ongoing body of research supports the fundamental assumptions that the senators and representatives stood up and said we think ownership matters, we think there are under served minorities who will be neglected by the market unless we have policies, so that each of the individual propositions is well supported and the political statement is quite strong.

Obviously, the courts are now moving to raise other issues about whether Congress had the right to make that judgment. We may have a constitutional challenge, or whether the FCC marshalled enough evidence to support a specific rule, but where we are today, I think, is clear congressional judgment, good fuzzy evidence, and courts which may be moving around on us.

MR. BESEN: I think I understand what Bruce is asking for and if it is, I think what he's suggesting is the following. You have a structural sort of idea, which is the more different owners the better.

MR. COOPER: I didn't quite say that, but --

MR. BESEN: But without any attempt to link that to something else, okay? Then sort of the next step is sort of along the lines, I think, of what these guys are doing is
saying, well, we can in fact link these to some outcomes, observable outcomes, okay? And that's actually progress.

The question that's sort of next and the sort of harder question is, well, are those outcomes -- if we get more of one of those outcomes is that good or bad? Joel was actually very cautious about what he would say.

As economists, we think we know that if the outcome is higher prices, we say higher prices, bad, we think -- we have sort of a long history of doing that. This is maybe a sort of enterprise in its infancy in which one goes to the sort of -- again, it's progress to identify measurable relationships between structures and outcome. Also hard, these are not easy things to do, and the next sort of issue would be, I think probably even harder, is to try to determine whether these observable outcomes in fact are linked to something that we really want to accomplish or have the commission accomplish.

And that's what -- I think none of us wants to stop -- I shouldn't say that. I think neither Bruce nor I wants to stop at the first point, okay?

Joel, who has moved us to the second point and Philip has as well, I think we all want to get that far and the question is can we get further than that, can we determine whether in fact these outcomes are worth having.

MR. COOPER: I will reiterate, you get to -- if
you want to debate that issue, you go down to Capitol Hill and that's where you tell them this value is not worth it. They have already spoken. They have affixed a value on this stuff. My concern is that the economists now are trying to hijack the agenda, the political economy and the answer is that you don't get to say only efficiency matters.

If you want to convince Congress that only efficiency matters, you have to go down on the other side of Pennsylvania Avenue and do it. That's my point, is that you can't hijack by agenda.

MR. LEVY: I think Jane should have a chance.

MS. MAGO: I just want to inject a question that was related to the last set of questions.

The outcomes, my role would be eventually to have to go to court and defend all these things, and I wanted to know how we can control to know that the observable outcomes that we are identifying are in fact related to the media or the specific changes that we're talking about.

Like for example, your example on voting patterns that you raised a few minutes ago. Is it because there was a change in something that happened in the media, in the mass media, or is it something that happened in the newspapers, is it something that happened in the local community that caused people to suddenly decide that they wanted to go out and vote? How do we control for all those

Heritage Reporting Corporation
(202) 628-4888
factors?

MR. BESEN: Rigorously.

MR. WALDFOGEL: Well, I agree. That's the task of an empirical study is to try to answer that question, I mean, especially when one is trying to say A is causing B, then one has to do a lot of things. It goes way inside baseball talk about all of it now, but in the case of a newspaper study, I have data on the circulation of a particular national paper at various points in time in every local market across the country, I have data on the circulation of the local papers in every zip code at various points in time, and methodologically -- the spirit of the exercise is to say, well, how does the change in the circulation of the major paper, national paper, how does that relate to the circulation of the local papers in zip codes that are heavily populated by the folks targeted by the national paper?

So I don't know if having said that that that answers your question. I control for all the stuff in the CPS that I think is plausibly related to voting, et cetera. There is a deeper question maybe as to what extent can empirical evidence be useful for courts, to what extent can empirical evidence either be poked holes in or countered by other empirical evidence that sort of balance there is no evidence. I don't know. I'll show you the studies when
they're ready and you can decide if they'd be convincing to a judge.

MS. MAGO: Not me, the commissioners.

MR. WALDFOGEL: Okay.

MR. FERREE: Okay. That will be the last word for this panel.

The final segment of today's program is a brief wrap up that will be led by Jane Mago, the General Counsel of the FCC, and Robert Pepper, the chief of the FCC's Office of Plans and Policy.

So I'll turn it over to Bob and Jane.

MR. PEPPER: To some extent, what we thought about for this last section is really a continuation of the discussion that has already begun, which is the integration of the two panels in terms of the kinds of questions that we need to answer and make recommendations to the commissioners so that they actually get to answer and the kinds of data that we need to muster in order to do that because I think as one of the themes that we've heard all afternoon is that in fact the courts are requiring us to be more rigorous and I think that there is an important point to be made that empirical does not necessarily just mean economic analysis or research.

There are a variety of different empirical measures including sort of traditional economic measures and
just an observation is that in fact for people who are familiar with traditional content analysis, it actually is a very systematic, verifiable -- I'll say art form, because it's not a science, but in fact it can be done in ways that would meet the same kind of rigor that you would apply to traditional economic measures.

Now, we typically have not done that or used that for the kinds of questions that the commission addresses, but it's not out of the question that that kind of analysis could inform the process here.

For example, in listening to some of the stuff that Joel talked about, going back to this question of localism, it strikes me that potentially there could be based upon your findings a tension with one particular rule that was raised earlier, which is the newspaper-broadcast cross-ownership rule, a tension between notions of diversity in terms of we can actually figure out sort of definitionally what that means, is it source, is it content, or some of the other measures.

I forgot your third one, Phil.

Exposure. Thank you. Tension between diversity and localism, given some of the findings that Joel found in terms of newspaper, you know, national newspapers, I'm kind of curious what you mean by national newspaper, versus local newspaper and then in terms of the local content, but you
could identify a situation where you might have a reduction in diversity, but an increase in local content. And then, of course, there's a tradeoff.

I'm not sure how you would measure what the tradeoff is and what the value judgment would be that you would use to say, well, in those benefits costs, you know, we're going to value one over the other -- I'm not quite sure.

So one of the questions for the entire panel that I would have is we've talked around some of these definitions and how would one go about thinking about how do you value these competing values, if you will?

Anybody?

MR. NAPOLI: You guys are supposed to decide that.

MS. MAGO: We're asking for your help.

MR. NAPOLI: Ultimately, that's something we're going to end up facing, a situation where we find a policy that is very beneficial potentially from a diversity standpoint or a localism standpoint and not necessarily beneficial from a competition standpoint, creating some sort of hierarchy of values is something that I'm not sure -- I mean, I think at best it could go back to grounding in that third step, I think, that we were talking about before in terms of behaviors, but I think that's the hardest question you could ask because we're in the realm of value judgments.
again. And I don't know that anybody, whether it's Congress
or anyone here at the commission or any academics, have ever
done a good job of saying this is what should be priority
one and this is what should be priority two. So I guess I
just failed to answer that question completely.

MR. PEPPER: Well, maybe --

MR. OWEN: You're not going to use consumer
welfare, which is what economists try and use, as the
measure of what's good policy and what's bad policy. And if
you're going to have more than one variable, some of which
may not matter to consumers, the political goals may not
matter to any given consumer or they may place much lower
value on it than they ought to from a citizenship point of
view, then you're simply going to have to have a
multi-variant decision process in which whoever is
responsible for making the decision has to make the
tradeoff.

Now, all you can do is provide them with the
relevant information, but if you're going to increase
diversity, however you're going to measure it, by X, then
it's going to cost you Y in terms of consumer welfare as
it's traditionally measured. And that's it. You just give
that information to the decision maker. And their
preference function determines the outcome.

MR. GOMERY: It's like I gave six, there's
hundreds and I think the point is that he's exactly right,  
someone is going to have to ultimately create a hierarchy.  

   MR. NAPOLI: Or it could be possible conceivably  
that diversity is a component of consumer welfare as well,  
right?  

   MR. OWEN: If it's entirely included in consumer  
welfare measures, then we don't need to worry about it  
separately, right?  

   MR. COOPER: Well, but at the same time --  

   MR. OWEN: It should be incorporated.  

   MR. COOPER: Underlying consumer welfare is that,  
for instance, and we heard a little about fairness, all  
dollars are always equal and at least there's an awful lot  
of public policy that recognizes that dollars aren't equal  
and we're willing to transfer them in a sense of fairness  
from one class of customers who have lots -- or consumers or  
citizens have lots of dollars to other sets of consumers who  
have a lot fewer dollars because we sort of understand that  
they attach more value to the individual dollar and we have  
a lifeline program which is based on some premise about  
consumer welfare and so forth.  

   So even with the pure economics, most economists  
and Bruce was quite clear, he said traditional economics  
starts from the simple assumption we don't do equity and now  
there are new forms of economics that say, well, fairness
clearly influences behavior.

So in the end, it's all a lot fuzzier than we make it out.

MR. OWEN: Well, I agreed with you up until the last statement. The commission has always been in the business of transferring income from one group to the other from the beginning. I mean, there's no point in -- talk about dirty little secrets, I mean, that's been one of the main motivations for the existence of the commission and it's silly to ignore that. But that's quantifiable.

I mean, if you think a purpose of the commission, a legitimate objective, is transferring money from rich people to poor people or white people to black people or whatever, or the reverse in the case of the commission's historical policies with respect to spectrum allocation issues at least, measure it. Make it explicit.

MR. BESEN: There's actually something quite odd about Bob's question. It sort of suggests that after these guys do really rigorous analysis and can provide you the relationship between market structure and a variety of outcomes, you're now stuck having to sort of figure out what it all means. And it somehow suggests that you were better off back in the days when you didn't know anything about this and you could just simply say, well, diversity trumps economics or the reverse.
I've got to believe that somehow having more information is better, right? I mean, we've all suggested all along that there's something hard about this side of the problem and I don't think anybody here would deny it, but you can't be saying, I hope, we shouldn't be doing any of this because if we ever actually learned about these effects we'd have this terrible problem of deciding which ones we cared about.

You ought to be forced to decide which ones you care about and so it can't be -- you should be starting to do some of the thinking that Bruce has suggested that you do.

MS. MAGO: Let me interject here. I want to try something and see if this works and I don't know whether it will or not.

Assuming that economists like to assume things, let me put out a proposition and I want to ask each of you to just give a short answer on it.

If I assume that the concern that the commission has is to encourage consumers or to enable consumers to have the information that they need at any given point in time, what should I measure? What would I be looking for? What should I measure?

It doesn't make sense, right? You're looking at me --
MR. WALDFOGEL: Information about what?

MS. MAGO: Information that they need to be able to run their lives, do what they want to do. Basic information, not about anything particular with government, not about anything particular, but the information that they want to have about whatever is of interest to them. I'll start there.

MR. WALDFOGEL: I think it's just too broad a question for me. Information about what products are available in the marketplace, political issues, I mean, there's so many things. It's not clear to me how I could answer that given the potentially very large range of types of information that one conceivably could be interested in.

MS. MAGO: Does anybody else want to --

MR. COOPER: If it's civic discourse, if it's information as opposed to entertainment, the series of questions I would ask is it available, in which media, how many eyeballs are in that media and who is the source, what sources are putting it out. I mean, those were the list of things we saw as the -- I'm worried about the influence of the information and that's sort of who says it in what media, how is it presented, those are the critical factors which determine how much influence that information has on the listener.

MR. OWEN: I don't know that I can help, at least
in the measurement level. I mean, ultimately -- and this is a very personal view -- I think there's a problem if there's some information out there for which there is a consumer demand that can't get through because of an imperfection in the market or because of a regulation, for that matter. And that's what you should be looking for or looking for examples of and that's what you should be seeking to remedy. And I don't know how else to think about that problem.

MR. WALDFOGE: I'd just like to pick up on something Bruce just said. There seems to be floating around here the idea that there is efficiency and then there is this other stuff and that somehow all the promotion of whatever you call it, whether you want to call it variety, diversity, is not efficiency, it's some other stuff.

And I think we have to think about the kind of good this is and remember that there are users whose value is important, whose valuation of the good, the information, is important, but not priced and you can enhance efficiency in principle in some instances by providing things, jiggering with market outcomes, okay?

This is a context that in principle ought to be fraught with market failure, although of course once you say that you raise all kinds of problems because, you know, my market failure may not be yours.

But still we have to remember just by the nature
of this good that talking about promoting different kinds of
programming is not necessarily walking away from efficiency.

Suppose notwithstanding the variety among country
stations you have a market with four country stations and no
black-targeted stations, you can imagine a social planner
adding either a fifth country station or a first
black-targeted station.

Now, again, if black-targeted stations are quite
differentiated and in the absence of that station being
there black listeners would not be listeners, whereas the
fifth country station would just allow some of the existing
country listeners to chose a slightly more preferred option,
it's easy to imagine, given that the users don't get to pay
their evaluation that adding the black station would be more
efficient, okay? But it may well not be what the market
would do.

So in principle, there can be promotion of
diversity that is efficiency enhancing. It's a separate
issue, though, than how do you identify those circumstances?
Empirically, what do you need? And that's, of course, much
harder. But there is no lack of theoretical rigor in that
argument. There is a lack of data, but I just want to say
that it's not just efficiency and some other stuff. There
are efficiency reasons to want to promote diversity of some
sorts.
MR. NAPOLI: I agree with Joel, first of all, on that one. Actually, this is tough because I guess fundamentally there's the issue of the challenge of trying to measure that which is not available, products that have not found their way to market. To me, the best standard of assessment that we have is to first look at what is the theoretical maximum potential which is constrained basically by media technology and then perhaps crafting that into some means of assessing the extent to which a particular media market or a media industry is reaching its full potential.

We don't necessarily have to expect it to reach its full potential as far as maximum diversity or variety of products, but perhaps somewhere in there could be a threshold by which we say within this context we're seeing sort of this level -- operating at this level of diversity capacity, so to speak. I haven't worked out any more detail on it than that, but perhaps that could be sort of a framework for addressing a question like that.

MR. GOMERY: My problem is again with the question and all I can think of is lots and lots of -- what's not been discussed here today and that is "entertainment" or is the most difficult to get a handle on, but it seems to me that there is a very strong argument to be made that many, many categorized entertainment shows are also highly informational and so to kind of dismiss them and say, you
know, when the person watches "West Wing" he or she doesn't learn anything about the presidential process and is just being entertained by a drama seems to be kind of not the way to ask the question.

So then I'm back to agreeing with Stan, which is how do you maximize as much possible that can be there, if everything counts?

MS. MAGO: I think what you've just identified is the problem with trying to figure out --

MR. GOMERY: Well, thank you. I'll take credit for that.

MS. MAGO: It's the problem with trying to figure out what you would do with the content analysis. I mean, we kicked around a little while ago the thoughts of how we would go about measuring some sort of a content valuation and do you look just at public affairs programming, do you look just at commercials or whatever else?

MR. GOMERY: I vowed that I wouldn't pick on my other panelists, but I guess I'll now break it. I don't think it's as simple as they do. I think that the concept genre, which is what the concept they're using is, or in radio terms format, is created on an industry level, it's created on a consumer level, it's created by T.V. Guide, it's created by listings, it's created by a lot of things. And, first of all, it changes. It's not a kind of set thing
in stone. There's histories. We had lots of certain kinds of television programs in the 1950s we don't have today and vice versa.

And I think I would ask them, I mean, a format that I'm familiar with in radio is called urban contemporary and urban contemporary is defined as, at least as I think I understand it, by the radio industry as one that appeals to both blacks and whites. Well, that makes sense, it's more of the population to appeal to and potentially higher advertising dollars. But then that really complicates the issue if you can't draw the categories.

So I think categories, making categories like that is really tough.

MS. MAGO: So let me reveal what I was up to. Would it be easier to answer my question if I had asked you to assume that the concern was ensuring that there were multiple sources of programming, not necessarily multiple owners of media, but multiple sources of the programming that's on the media? Would it be easier to answer what to measure under those circumstances?

MR. BESEN: Yes, but it might be the wrong question.

MS. MAGO: Elaborate.

MR. BESEN: Well, you can count them and you can sort of count how many different owners. The answer to that
question, I suppose, is if you were to maximize that kind of
diversity, nobody could own more than one of anything.
That's presumably not what you had in mind.

MS. MAGO: No, I was talking about programming on
the media, not necessarily --

MR. BESEN: You said source diversity.

MS. MAGO: Source diversity for programming. If I
get my programming from multiple sources for my one
television station or my one radio station, if my goal is to
maximize that source programming.

MR. NAPOLI: As in actual program producers, then.

MS. MAGO: Right. Right.

MR. NAPOLI: Okay.

MS. MAGO: Would it be easier to measure that?

MR. NAPOLI: Well, I think you guys have done a
fairly good job of that already. I mean, the copyright
holder criteria in terms of measuring how many different
program owners are out there. I mean, as far as assessing
that particular level of analysis, I don't think that's hard
at all. Translating that to the rest of the question from
before about the extent to which it helps enable consumers
to have the info they need, I don't know if that makes it
any easier.

MR. BESEN: See, the problem is you could only use
that rule, I think, if you -- sort of it's one to a customer
for whatever it is you're counting because once you go to
two you're already starting to do tradeoffs. You're already
starting to ask whether there are other benefits from having
somebody own more than one of whatever it is we're talking
about owning. So at some level it's pristine, it's easy to
implement, but it may not get you to the right answer.

And once you get past that point, which we are
past that point, the question is, well, where do you stop?
And it's hard to know when to stop at five or six or seven
without linking the incremental property being owned by
somebody to some external outcome. At least I have
difficulty knowing how to stop once I'm past that no more
than one to a customer.

MR. OWEN: Maybe for a change I could tell you
what Stan is trying to say.

Think of the choices. Suppose you were concerned
about program sources, okay? And think of just these two of
many alternative ways of measuring that. You could use HHIs
based on their revenues or you could count noses. Which is
the right measure?

Well, we can't answer that question until you tell
us why you think the concentration of sources is important
because one or the other would be appropriate, or some
third, to your purpose.

MR. LEVY: I'm probably going to regret this, but
that won't stop me.

When we came up with these questions initially, one of them was actually designed to sort of elicit a discussion of this particular methodological issue and the question, perhaps it wasn't as artfully framed as it could have been, but it tried to ask about the counting noses approach. You know, could that in some way be justified by a goal of reducing the probability that an important message would not be made accessible to the public?

I mean, you could consider a series of different possible channels of communication to the public and you could make -- I'm just making this up a little bit as I go along -- you could make some assumption about the preferences of the owner of each one and you could perhaps try and calculate the probability that they would each independently make a decision to censor or not to grant access or not to choose to sell access to a particular viewpoint and this is a -- I mean, at least in principle, I think, this gets away from once you've gone from one to a customer you're sort of off into terra incognita here. I mean, you could think about -- you could possibly look at it from the point of view of sort of reducing the blocking probability for any particular message that was trying to be transmitted to the public.

MR. BESEN: But it certainly could not be
monotonic.

MR. LEVY: No, I didn't say it wouldn't be monotonic. I would say that it would at least -- that it's not sort of an all or nothing proposition. It's not that once you get beyond one to a customer -- it's not just a situation where you have one to a customer or everything else. I mean, you could consider an increase in the number of independent channels as reducing the probability that a particular message would be blocked by everybody.

MR. COOPER: To go back to the much maligned antitrust merger guidelines, clearly there are judgments being made. The quote I always use is that with fewer than six, we know we have oligopoly, with more than 50 we think we have competition and everything else in between is unclear. And then we've now added the ten as the moderately concentrated guidelines.

And there's no reason to believe that -- I mean, that judgment is just as vague as this question of is six enough or seven enough. Those are hard judgments.

My concern is to remember that radio noses and video noses are very different and big video noses and little video noses are also different. And so I'm not sure I want to count just noses. I worry about the other measure, which is the market share defined in a variety of ways.
MR. OWEN: Your question is would it be useful to look at the effect of different ownership rules or industry structures on the probability that an important idea or concept would be blocked by the owners?

MR. LEVY: Yes.

MR. OWEN: What's important mean? If it's important in the sense that it's associated with high consumer values, then that's just an efficiency question, right? Which we have tools -- I don't know what the answer is offhand, but presumably we have tools for dealing with it. If it's the commission's idea or the Congress' idea or the Constitution's idea of what's important, then I don't think we have any systematic way of addressing it.

MR. LEVY: I certainly agree that important is an undefined term and I guess it may be the case that, you know, you don't necessarily know in advance what's important or what isn't, so you might want some sort of an insurance built into the mechanism.

MR. NAPOLI: That's even the unimportant stuff, too.

MR. LEVY: Well, it's stuff that you don't know in advance.

MR. OWEN: The question is how much unimportant stuff, that is, stuff that consumers would rather not have or takes up channel space and replaces stuff that they would
prefer to have, you're willing to impose upon the public in order to get whatever the commission thinks is important through?

MR. LEVY: That's exactly the tradeoff.

MR. PEPPER: Maybe we could come back for just a second to something that Doug said which you said it as an assertion and I don't think that actually it was discussed and that is you're saying we're here because the market is not working, that we have market failures. That's your judgment. And I guess I'd like to test that judgment with the other panelists on a variety of these dimensions that you laid out.

I mean, is Doug correct? And then how would we actually know it in terms of measure that and the question then is we've had all these rules in place so if in fact Doug is correct are the rules part of the problem or are they potentially part of the solution?

MR. GOMERY: I'm the only one ineligible to answer that question, so I'll shut up.

MR. COOPER: Obviously I've made the point for the specific rules that have congressional intent specifically stated. Then Congress has made a judgment about market failure and obviously the '92 act has a lot of talk about market failure. So that's one sort of decided by the political process.
Whether or not we agree that we want to debate whether Congress was right or wrong, that's a different question.

I guess for some of the other rules, I would emphasize the opposite side which is the assumption that because the rules haven't quieted all the complaining we can't assume that they're a problem rather than part of the solution. We still have complaining about ownership, we still have concerns raised about media diversity, certainly ownership diversity. The commission published some papers about that.

So it's a bold assumption to go on and say that if we got rid of these rules things would be better. And so I go the opposite way and say that I don't see the rules as part of the problem, they're not the perfect solution, but it needs to be demonstrated to me that removing the rules would make things better, as opposed to simply saying they haven't done good enough and therefore we can get rid of them.

MR. PEPPER: Stan?

MR. BESEN: I guess the first thing is I don't think the existence of complaints about the outcome in a market is sort of the best evidence about whether that market is working very well. I think probably French peasants complain about the low prices for agricultural
products they sell even in markets that probably work quite
well. So I think that's not the sort of best evidence to
employ.

We all know these markets don't work perfectly.
Everybody has said this. In various ways, people have said
this: public goods, unpriced products. In one way or
another, everybody who has ever studied this set of markets
knows that they don't satisfy the textbook standards for
efficient outcomes. We sort of all know that.

We are all muddling through in terms of trying to
figure out whether the outcomes are sort of better or worse
as a result of the policies that are being adopted. No one
here, I'm sure, is under the illusion that the commission
policy will bring us to nirvana any time soon.

It seems to me the kinds of things that at least
to me demonstrably improve things, and we may have a
difference of opinion about this, is the commission's sort
of kind of willingness which basically started in the 1970s
to in fact allow more competitive outlets. I mean, that was
a really good thing.

I think somebody might, I suppose, argue that
there is something sort of bad about that, but I think for
the most part we began having unsatisfied minority
preferences satisfied in ways that weren't before. When we
all started out doing this, people complained that the three
broadcast networks all produced just all of the same stuff.

Remember? Everybody quoted Steiner. But it was just more of the same, it was just -- and we began to get -- I hate to use the word -- more diverse programmed here as a result. That was a good thing. I mean, that was sort of, it seems to me, demonstrably a good thing.

The things we're talking about here are in some sense inherently harder to connect to those kinds of outcomes and you could sort of say would allowing two stations to combine, does that improve the extent to which viewers are happy? I think in some circumstances it will. I think you can sort of look at programming and other things, but can you sort of prove that rigorously? I suspect not.

MR. PEPPER: So Doug's statement goes unchallenged?

MR. GOMERY: No, no, no. I'm glad to listen to this. I also partly made it in the sense to raise the value issue, I mean, that someone said and it's getting too late, but someone said -- I think it was Joel, that my market failure is not his market failure per se in terms of that and that's all I tried to do.

I mean, I agree absolutely with Stan. I think that's why we're here. But then it instantly raises the values issue and that's why -- oh, God, I'm going to say
this -- that's why I thought it was the most efficient
way to actually bring up the problem because I thought
let's start from the beginning and not spin around these
other things. And then you get to performance which
is value laden and always at the end of an economics
textbook, if this not that, can I throw in a little bit
of Kenneth Arrow and all of that business and welfare
economics that I learned, but in the end there's not going
to be a magic bullet answer to say if I knew these ten
things I would know how to conquer them. It's not what you
want to hear, but --

MS. MAGO: Joel has a comment.

MR. WALDFOGEL: Let me make a statement that will
make me seem even more naive than I actually am. If I were
thinking about broadcast issues, especially radio, but maybe
other markets as well, from scratch, I would begin by
worrying about the fact that there are zero marginal costs
adding additional consumers and then realize that maybe
sometimes I'm not pricing at all, sometimes I'm not price
discriminating right and so I would think, okay, so maybe
there would be some things that had ought to get provided
that won't and so the next thing I'd think about was
subsidies.

And, of course, they do that over at CPB but not
at FCC and they're not a government agency, but in fact when
you think about broadcasting, especially radio, you can think about stuff that they do and ask, for example, does it seem to cannibalize what commercial stations do or does it instead possibly correct market failure.

I guess I'm tossing out a research agenda that would probably lead you nowhere, but in some sense is the natural thing to ask when you're thinking about this kind of good and the policy agenda that will surely lead you nowhere is to think about, you know, well, do you guys ever talk to the CPB?

I mean, I know you can't worry about content for First Amendment kinds of reasons, but CPB is the only game in town for trying to -- well, one might hope that they are trying to correct market failure, but they're probably doing something else entirely. I shouldn't have said that.

So I guess this is probably to Doug's question about, you know, is the market failing, I agree that complaints from the peasants don't indicate that the prices are wrong, but at the same time, by its very nature, this is a market we wouldn't expect to work very well and we might start from first principles for a few minutes -- not today, maybe -- and think about where would we best or most expect things that had ought to get provided to not get provided?
I mean, we could take the nihilist -- Bruce's good definition and easily acceptable definition about stuff that markets ought to do. I mean, when there are transactions that ought to be consummated in the sense that the buyer valuation exceeds the seller cost of doing so, they had ought to get consummated. And yet it's easy to imagine lots of circumstances in particular where there are small groups who intensely want something where that won't happen, where market failure inhibits that from happening.

And you might for a few minutes some day start from that presumption and then ask where would we expect the market to get it wrong and think about whether there are any mechanisms in place to help that.

But I realize that that might lead you down lots of roads that are hopeless, but I still think I ought to say it.

MR. OWEN: Speaking of hopeless roads --

MS. MAGO: Our job was to be provocative. I'm hoping this is working.

MR. OWEN: You know, a lot of the problems in the diversity area arise from the point that Joel has made repeatedly and that is that there's no way for consumers, viewers, listeners, to express the intensity of their preferences with money, which is the way we allocate most other goods, like including First Amendment goods like
There's also this other thread, of course, which is outside the scope of our discussion which is what are we doing anyway with all the spectrum devoted to broadcasting? You know, a solution to this problem could kill several birds with one stone, would be to solve the problem that these poor cell phone folks have, let them have the spectrum and then television would be entirely subscription based. And I suppose satellite radio is a movement in that direction with respect to radio.

And I wonder if we would be here debating the policy problems of diversity in the magazine industry which it would then be like. I believe we would, assuming they were jurisdiction.

MR. GOMERY: But that was one of my points, and that is we would be because the institutions that were created under previous rules will be there to lobby and promote and defend the structure that created their profitability and so once you started down the road, somebody else said this --

MR. OWEN: I think Mr. Jefferson missed that.

MR. GOMERY: Yes.

MR. FERREE: Okay. On that note, I'm going to bring this roundtable to a close.

Do you want to drag this on a little longer now?
MR. GOMERY: No, no, I certainly believe that that
was closure.

MR. FERREE: I want to thank the panelists and
those few brave souls who have hung in with us all
afternoon. Thank you very much.
(Whereupon, at 4:50 p.m, the roundtable discussion
was concluded.)
REPORTER'S CERTIFICATE

FCC DOCKET NO.: 01-235

CASE TITLE: Roundtable Discussions on Media Ownership

HEARING DATE: October 29, 2001

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 10/29/01

Jan Jablonsky
Official Reporter
Heritage Reporting Corporation
1220 L Street, N.W., Suite 600
Washington, D.C. 20005-4018

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 10/29/01

Edna Thomas
Official Transcriber
Heritage Reporting Corporation

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 10/29/01

Carlos Gamez
Official Proofreader
Heritage Reporting Corporation

Heritage Reporting Corporation
(202) 628-4888