competitive behavior. Therefore, a behavioral approach to market definition is more likely to result in a correct definition of relevant markets than, for example, a purely structural approach.[5]

A relevant market for antitrust purposes has three dimensions: product, geography and time. To define a market, the boundaries of all three dimensions must be drawn, although the time dimension typically is defined by the time period embodied in the claim being studied and generally is not an issue requiring extended economic analysis. The product dimension is determined by starting with the smallest possible group of products and postulating a "small but significant and nontransitory" price increase by all firms in that market. If consumers could defeat the price increase by switching to other products (or providers), then those other products (or providers) belong in the relevant market. The definition of the relevant market is expanded in this manner until one can answer affirmatively the question: "Could a hypothetical monopoly provider of these products profitably impose on consumers a 'small but significant and nontransitory' price increase?" The product dimension will then have been defined.

We note that what matters in determining the relevant market is competition at the margin, i.e., with respect both to customers making wholesale switches among the products at issue and, as well, customers likely to switch some portion of their spending among those products. That is, the question to be addressed is whether, at the margin, the aggregate volume of dollars that move to substitute products is sufficient to constrain competitive behavior of suppliers of those products. If so, those products all belong in the same relevant market, regardless of the existence of less price-sensitive customers in that market.

The market, so defined, is likely to include both relatively strong and weak substitutes. That is, it is likely to include (1) stronger substitutes: products identical (or nearly so) in form, function and use with the product(s) at issue, i.e., those typically viewed by consumers as more or less completely interchangeable; and (2) weaker substitutes: products that typically are viewed

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5 A behavioral approach to defining relevant markets is one that takes into account: (1) the process by which competition proceeds; and (2) whether constraints on anticompetitive behavior exist. (See, for example, the *1992 Merger Guidelines* promulgated by the Department of Justice and Federal Trade Commission, ¶¶ 1.0, 1.1, 1.2 and 1.3.) An implication of this approach is that market definitions will be based upon actual competitive activity in all of its various dimensions. In contrast, a structural approach identifies the boundaries of relevant markets by relying almost exclusively on attempts to identify "substantial breaks" in a chain of substitution among products.

only as partial alternatives, so long as, either singly or in the aggregate, the degree of substitutability is sufficient to constrain competitive behavior.

III. INTRA- AND INTER-MEDIA COMPETITION

A. Background

Broadcast television stations compete, as suppliers of advertising time, for the patronage of local, regional and national advertisers.[6] Potential advertisers are interested in reaching an audience with particular demographics; to the extent that the viewers of the stations' programming match those desired demographics, the advertiser will at least consider purchasing advertising time from the stations.

More generally, advertising media, whether broadcast or print, create a product — an audience — which is marketed, through the sale of advertising time or space, to advertisers. In other words, news, information and entertainment are a medium's factor inputs; the audience is the product produced with those inputs; and advertisers are the ultimate consumers. In this respect, the various media are no different from other firms who assemble factor-inputs to create a product that is sold to ultimate customers. These relationships are illustrated in Tab A.

The advertising rates charged, for example, by a television station depend upon the characteristics of the audience it attracts — e.g., audience size, age and income. Indeed, the rates ultimately charged by the stations depend, among other things, on the following factors:

1. their relative bargaining power versus that of the advertiser;
2. the quality of their programming vis-a-vis that available in similarly-situated time slots garnering an audience with similar demographics;
3. the extent to which the stations' programming is expected to reach the prospective audience — e.g., whether delivered by cable versus over-the-air UHF or VHF signals and taking into consideration both the audience share and the quality of the advertising medium received or purchased; and
4. the availability of alternative advertising media.

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[6] This time may be sold as individual 30-second commercial spots or in blocks (e.g., for infomercials, sporting or political events).

As noted above, in addressing the question of competitive substitutability, what matters in media markets is competition at the margin. Here, this may be defined both in terms of the number of advertisers that switch to other media and the proportion of their advertising budgets that is moved to other media in response to relative price changes. The question is not whether advertisers' entire budgets are moved away from (say) broadcast television in response to a relative price increase. If, for example, the proportion of advertisers' budgets that would shift to radio is sufficient to constrain the competitive behavior of the broadcast television stations vying for their business, then radio advertising should be included within the relevant market.

B. Cross-Elasticity of Demand

Empirical estimates of cross-elasticities of demand require, at a minimum, transaction-specific information for all relevant media — e.g., prices, length of spot or size of space, time or daypart in which the spot or print ad appeared. Based on our review to date, the data required to estimate explicitly cross-elasticities of demand are not currently available. This is not surprising; as most local spot advertising rates result from oral negotiations between individual sellers and buyers of advertising time, there are generally no records, other than invoices (held both by media participants and their advertiser-customers), that may reveal the actual transaction prices for local television advertising. In addition, we are not aware of any single television station, such as WOIO, that possesses information concerning transaction prices charged by other television stations or other media. We also understand that WOIO has not commissioned or produced any studies that explicitly address this issue.[7]

Even so, information — both direct and inferential — about cross-elasticities of demand between spot advertising on broadcast television and other media is available from a number of sources. Among these are: (1) sellers and buyers within the DMA — garnered from sales materials and interviews with advertisers and advertising agencies; (2) academic and trade press; and (3) general trends in rates and advertising purchases.

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[7] We have also contacted, for example, the American Association of Advertising Agencies (AAAA), the National Cable Television Association (NCTA), the National Association of Broadcasters (NAB), the Newspaper Association of America, Cabletelevision Advertising Bureau, Advertising Research Foundation and the Association of National Advertisers. The information obtained is discussed below.

C. Sellers and Buyers Within the DMA

1. Sellers

Seller perceptions of competition are often useful in assessing the degree to which substitutes are available to their customers. Here, we consider the extent to which broadcast television stations and other media focus their competitive attention on one another and/or alter their competitive behavior in response to other media.

We understand that Malrite has assigned individual sales personnel to monitor advertisers and special promotions on radio, cable television and print media. These personnel provide weekly reports of those entities' activities to WOIO's general sales manager who, in turn, uses these materials to help his sales staff focus their competitive efforts. Malrite also monitors the extent to which it gains or loses business vis-a-vis other media. For example, as we understand it, in 1992 and 1993 The Lube Stop/Ten Minute Oil Change purchased over $125,000 in local advertising spots from WOIO; in 1994, however, it left over-the-air television advertising in favor of cable television and radio. Additional similar examples are provided in Tab B. We also understand that at least one television station in Cleveland, WKYC, has subscribed to a service provided by *Print Monitor Research*; this service monitors advertising placed in *The Plain Dealer* and provides reports to television stations that may help to design competitive strategies aimed at larger newspaper advertisers.

We note also that *The Plain Dealer* has published advertisements that explicitly target television advertisers. Sample advertisements in this regard are included as Tab C. In response to one of these advertisements, WKYC prepared selling materials (See Tab D) to stress the competitive advantages of television over newspapers.

Yellow pages publishers also monitor the extent to which advertisers use alternative media. Indeed, the Yellow Pages Publishers Association, in its *Yellow Pages, Industry Facts Booklet*, 1992-93 Edition, provides its members with profiles of the competitive strengths, weaknesses and competitive trends in television, radio, direct mail, magazines, outdoor and newspapers. In addition, the Radio Advertising Bureau, in its *Radio Marketing Guide and Fact Book for Advertisers*, 1993-1994, includes charts that profile (1) radio's reach vis-a-vis that of newspapers and television and (2) radio's prices, in cost per thousand, vis-a-vis spot television, newspapers, direct mail, outdoor and magazines. These charts are included as Tabs E, F and G.

The American Newspaper Publishers Association, in presentation materials apparently designed for sales personnel, suggests that its two greatest competitors are cable television and direct marketing; the former is capturing a greater share of its readers' time and money, while the latter is capturing an increasing share of its advertisers' spending.[8] Indeed, the Newspaper Advertising Bureau, in its manual entitled *How to Estimate The Size of the Local Advertising Market and Your Share of It*, November 1989, suggests that newspapers explicitly consider radio, television, cable television and other media as direct competitors.

Finally, we note that the Television Bureau of Advertising has prepared various materials designed to enhance the ability of television stations to compete with other media. Examples are included in Tab H.

Accordingly, from the perspective of sellers of advertising, the relevant product market likely encompasses broadcast television, other electronic media (e.g., cable television and radio) as well as print media (e.g., newspapers, direct mail, magazines and yellow pages).[9]

2. Buyers

Advertisers' reactions to changes in their competitive environment and their perceptions of different media can provide useful information on the availability of economic substitutes. To explore these areas, we conducted interviews with 11 advertisers and advertising agencies. A list of those interviewed is provided as Tab I.

The information obtained in our survey indicates that there likely exist two broad groups of advertisers: (1) relatively smaller advertisers, for whom DMA-wide coverage and, accordingly, television advertising may be relatively less important; and (2) relatively larger advertisers, for whom DMA-wide coverage may be of greater value and, accordingly, for whom television is relatively more important.

The first group indicated that they typically use a mix of media — usually including local spot television, newspaper and radio — and that their choice of which media to emphasize is

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[8] David Cox, *Who's the Competition — Really?*, American Newspaper Publishers Association, a speech given to The International Marketing Association, May 22, 1990. See, for example, pp. 5-7.

[9] This is likely the case as well in the intermediate market for audience creation (not discussed herein) within which broadcast television competes with these media for the attention of viewers and listeners and, in addition, competes with nonadvertiser supported entities, e.g., pay TV, videocassettes, noncommercial TV and radio stations.

based upon a number of factors. Among these include: (1) the anticipated audience each medium is likely to reach; (2) the frequency with which advertisers can repeat their messages; (3) the geographic area covered by the medium; (4) the type of message that they want to send — e.g., is it better suited to print or a "motion" medium; and (5) the cost of each medium. While most of those interviewed claimed that the rough proportions of their advertising budget allocated to each category of media has been essentially unchanged over the past few years, they also indicated that the market was vigorously competitive during that entire period. That is, sellers of advertising time or space vigorously contend for their patronage.

These advertisers and agencies also indicated that they were responsive to changes in relative prices; indeed, in rank order of their likely responses to an increase in a single television station's local spot rates, they indicated they would: (1) attempt to negotiate the rates down by, for example, referring to their longstanding relationship with the station; (2) play that television station against others; and (3) drop that station in favor of other television stations. In this instance, those interviewed noted that they were virtually always able to find some television station that would sell them a local spot at the rates they desired.

What matters for relevant market definition, however, is not advertisers' responses to a price increase by a single station but, instead, to an increase by a putative monopoly provider of local broadcast advertising time. In the case in which other suppliers were not available — e.g., because inventories were not available or because all sellers' prices were perceived as too high — these relatively smaller advertisers would shift their purchases, first, to radio and, then, to print media. Not surprisingly, radio was classified as a relatively stronger substitute for local television spots than print media, although the latter would, in fact, be considered in lieu of local spot TV.[10] The extent to which they would switch to other media would, of course, depend upon the magnitude of the price increases. Given that they rarely, if ever, encountered the situation in which they were unable to find another television station that was willing and able to provide local spots at rates they believed to be reasonable, most were reluctant to specify what price increase would lead them to shift a substantial portion of their business to other media. In

[10] Some of these advertisers indicated that they were relatively large users of print media and, for example, if *The Plain Dealer*'s rates were to rise relative to other media, they would likely consider moving at least a portion of their advertising budgets, and perhaps all of their business, first, to radio and, second, to local spot television.

sum, these advertisers indicated that they can and do utilize a variety of media and that they are responsive to relative price changes.

The second group constitutes the largest of WOIO's local advertisers; typically, they are represented by advertising agencies in their negotiations with the media. As noted above, they regard television advertising as a relatively more important part of their advertising focus; while they may still use a mix of media, the predominant proportion is, and has been, devoted to television. Even so, most media planners representing these advertisers agreed that their choice of which media to emphasize is based upon essentially the same set of factors considered by the smaller advertisers, including price.

As with the smaller advertisers, media planners for larger advertisers believe that the market is vigorously competitive. That is, sellers of advertising time and space vigorously contend for their patronage — indeed, most indicated that, given the large magnitude of their spending with each station, they had a substantial degree of bargaining power with which to obtain favorable terms and conditions. In rank order of their likely responses to an increase in a single television station's local spot rates, they indicated they would: (1) attempt to negotiate the rates down by, for example, threatening to stop purchasing from the station; (2) play that television station against others; and (3) drop that station in favor of other television stations. Again, as with the smaller advertisers, those interviewed noted that they were virtually always able to find a television station that would sell them local spots at the rates they desired.

Again, in the case in which they could not find other suppliers — e.g., because inventories were not available or because all sellers' prices were perceived as too high — our interviews conducted to date suggest that there are some relatively larger advertisers who probably would not shift their purchases to other media unless the relative price changes were, in their view, substantial (e.g., greater than 10 percent). In that case, the following were suggested by them as possible alternatives: (1) they might purchase national spot; (2) they might purchase network time, thereby bypassing the station altogether; and (3) they would consider radio as the primary alternative medium. In sum, these large advertisers believe they possess considerable negotiating power and believe that no station, or group of stations, profitably could afford to turn away their business — i.e., given the disaggregated, one-on-one nature of rate negotiations, the exercise of market power by broadcast television stations, either singly or in concert, would be difficult, if not impossible to sustain.

D. Academic and Trade Literature

Within the academic literature, it has been widely recognized that various media in fact compete for advertisers' dollars. For example, as Owen and Wildman[11] state:

> **The television industry, broadcast as well as cable, competes for advertising with other media, notably radio broadcasting, newspapers, and magazines.** Each of these media offers special advantages to certain types of advertisers, depending on their product, the amount and kind of information that is customarily transmitted in their advertisements, and the geographical dispersion and identifiability of their potential customers. Television is entirely unsuitable for some advertisers; for others it is almost indispensable. But **most advertisers can substitute one medium for another in response to changes in prices of advertising time or space.** Competition between television stations or networks and other media for advertising dollars may be nearly as fierce as competition among television outlets. (p. 14; emphasis added)

> **There are a number of more or less good substitutes for network advertising: spot television advertising, advertising on basic cable networks and superstations, network and spot radio, national magazines, direct mail, billboards, and newspapers.** (p. 154; emphasis added)

There are relatively few studies that quantify empirically the degree of substitutability among different media. Four such studies are discussed below. The overall conclusion afforded by these studies is that broadcast television faces a number of substitutes, e.g., cable television, radio, DBS, newspapers, magazines and direct mail.

1. Schmalensee, 1972.[12]

Schmalensee's study was concerned primarily with the responsiveness of advertising spending to changes in sales — i.e., whether firms spend more on advertising when sales increase. Using national advertising data provided by CBS, he also tested the extent to which advertisers' use of different media responded to changes in relative prices. In this regard, he finds:

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[11] Bruce M. Owen and Steven S. Wildman, Video Economics, Harvard University Press, Cambridge, MA: 1992. See also, Sydney W. Head, Christopher H. Sterling and Lemuel B. Schofield, Broadcasting in America: A Survey of Electronic Media, 7th Edition, Houghton Mifflin Company, Boston, MA: 1994. See, for example, pp. 231-233.

[12] Richard Schmalensee, The Economics of Advertising, North Holland Publishing Co., Amsterdam: 1972. Since 1981 Dr. Schmalensee has been a Special Consultant to NERA.

> ...the substitution among media was influenced by more than relative prices. ...the use of network television was increasing rapidly relative to [consumption of durable and non-durable goods], and the use of network radio was essentially steady. From 1956 through 1967, the CPM index for network television fell 11%, while for network radio it fell 33%. Also, the index for spot television rose 3% and the index for spot radio fell 8%, though the use of spot television was on the increase and that of spot radio on the decrease. Clearly, **relative price was not the whole story.**
>
> **It may well be the case that relative price effects could help explain the decline in the non-broadcast media in this period, since all the associated CPM indices rose more rapidly than the overall index.** Even here, though, the lack of a trend in magazines, the index for which rose 21%, in the presence of declines in newspapers and business papers, whose indices rose 26% and 20% is surprising. ...**The [evidence] clearly [exhibits] the replacement of other media by television.** (pp. 82-85)

He concluded that national spot advertising on broadcast television is the most responsive to "changes in the business environment," followed by spot radio, business newspapers, network television, outdoor, newspapers, magazines and network radio.

Since the Schmalensee study focused on national advertising, it likely understates the responsiveness of the demand for broadcast television spot advertising to changes in relative prices. Purely local advertisers are likely to be relatively smaller firms; in light of the results reported above, they may be more likely to turn to alternative media, such as spot radio, local newspapers or local magazines, should economic conditions warrant. Larger entities may, however, also purchase local advertising. Since they may be associated with national firms, they may regard the availability of national or network spot advertisements — i.e., purchased from the network rather than from the affiliate — as a substitute for local spots.

2. Wirth and Allen, 1979.[13]

Wirth and Allen obtained data from the FCC on 1973 advertising revenue for 124 geographic areas. Combined with information on the area's prime time audience, they calculated a measure of the "price" of advertising. They then regressed this price against a number of explanatory variables, including the number of television and radio stations in each area, and found that the number of television stations in a market is negatively related to the price of

[13] Michael O. Wirth and Bruce T. Allen, "Another Look at Crossmedia Ownership," *The Antitrust Bulletin*, Spring 1979, 87-103.

advertising. For television markets such as Cleveland — i.e., the top 50 television markets as ranked by Arbitron (and defined in much the same way as Nielsen DMAs) — they also conclude that cable television penetration reduced broadcast television prices and, therefore, revenues. That is, competition from cable television systems caused advertisers to shift at least a portion of their spending toward cable.

3. Fournier and Martin, 1983.[14]

The Fournier and Martin study focuses on realized transaction prices paid by advertisers for 30-second spot advertisements. They employ FCC data, provided by the American Association of Advertising Agencies in connection with the FCC's Network Inquiry, to estimate a hedonic model of advertising prices. Among other things, they find:

> Results regarding market concentration generally run counter to the market power hypothesis. Neither the presence of an independent VHF station nor the number of independent stations ... has a significant effect on price. Since independents provide alternative sources of supply to advertisers, the absence of price effects may **signify that stations are competing in broader markets that include** perhaps wider geographic areas and **other types of media. ... The high degree of concentration in broadcasting markets, however measured, ... overlooks some additional constraints placed on stations in their output markets.** (p. 53; emphasis added)
>
> **There is substantial evidence in this study to reject the notion that market power is present in the nonnetwork [i.e., spot] market.** While we cannot completely reject the possibility that price discrimination is evident to some degree, measures of local market structure do not significantly affect prices. **Neither *vertical* arrangements, such as network ownership of stations, nor *horizontal* concentration in local markets enables stations to raise prices significantly.** (p. 55; emphasis added)

4. Seldon and Jung, 1993.[15]

This study explicitly attempts to quantify elasticities of substitution among different advertising media. Seldon and Jung employ data on (1) total advertising expenditures for 1950 through 1987, provided by Robert Coen of McCann Erickson; and (2) cost indexes for 1960

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[14] Gary M Fournier and Donald L. Martin, "Does Government-Restricted Entry Produce Market Power?: New Evidence From The Market For Television Advertising," *The Bell Journal of Economics*, Spring 1983, 14(1), 44-56.

[15] Barry J. Seldon and Chulho Jung, "Derived Demand for Advertising Messages and Substitutability Among the Media," *The Quarterly Review of Economics and Finance*, 33(1), Spring 1993, 71-86.

through 1987 in television, radio, newspaper, magazines, farm and business publications, direct mail, outdoor media and miscellaneous media. They aggregate these expenditures into four groups: broadcast (e.g., radio and television), print (e.g., newspapers and magazines), direct mail and all other media (e.g., outdoor).

They find that all of the elasticities of substitution are positive, suggesting that "a given level of sales can be maintained by substituting advertising in other media for advertising in any particular media to varying degrees..." (p. 78) More specifically, they conclude that broadcast advertising and direct mail are fairly close substitutes, as are print advertising and direct mail. Broadcast and print advertising, while substitutes for one another, have a somewhat smaller estimated elasticity of substitution.

E. Rate and Volume Trends

It is widely recognized that newspaper advertising expenditures have been declining over time, while those for television, particularly cable television, have been growing.[16] These trends may be due to a number of factors — e.g., steady increases in the number of hours of television viewing per household, reductions in newspaper circulation over time and increases in the number of television channels available (cable, broadcast and wireless).

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[16] For example, Robert J. Coen of McCann Erickson reports (as provided in the BIA Consulting Report, *Evaluation of Media in the Cleveland DMA*) that 1990-1993 annual growth in local and national advertising expenditures in newspapers remained constant and declined 2.2 percent, respectively. This may be compared with growth in advertising expenditures on television networks of 1.2 percent, syndicated TV of 12.4 percent, national spot of 0.1 percent, local spot of 2.4 percent, cable networks of 12.2 percent and local cable of 14.5 percent. These data indicate a shift in spending from print to television and, more strongly, toward cable television.

For examples of the diversity of media used by advertisers and the relative shifts toward electronic media over time, see also, for example, (1) DDB Needham, *Media Trends 1993*; (2) Federal Communications Commission, "Broadcast Television in a Multichannel Marketplace," June 1991; (3) "Comments of the Staff of the Bureau of Economics of the Federal Trade Commission," September 24, 1992, Before the Federal Communications Commission, Washington, D.C., In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221, particularly pp. 15-18; (4) *Key Facts, 1991: Newspapers, Advertising and Marketing*, Newspaper Advertising Bureau, Inc.; (5) Albert E. Gollin, *An Assessment of Trends in U.S. Newspaper Circulation and Readership*, Newspaper Advertising Bureau, Inc., December 1991; and (6) *Media Week*: "Fast Moves for Fast Foods," January 11, 1993; "Sneaker Peek," February 1, 1993; "That's Entertainment," April 5, 1993; "The Road to Upfront: Food for Thought," May 10, 1993; "The Road to Upfront: Beverages," May 17, 1993; "The Road to Upfront: Automotive," May 31, 1993; "The Kids Krunch," July 5, 1993; "The Numbers Add Up," September 27, 1993; and "Fiscal Fitness," October 18, 1993.

As the academic studies described above suggest, among the explanations for these trends may be a change in the relative price of advertising on television vis-a-vis print media. To explore this possibility, we compared, for 1990 through 1994, the realized rate per thousand homes reached for the five largest television stations in the Cleveland DMA,[17] with *The Plain Dealer*'s milline rate.[18] While these rates, measured as a cost per thousand, do not reflect the manner in which local television spots are bought and sold — i.e., the ratings and demographics associated with individual time-slots play an important role in setting prices but are not considered explicitly here — these data provide a rough view of the manner in which television advertising rates compare over time with those for newspapers.

The results of this comparison are presented in Tab J. This illustrates that broadcast television in the Cleveland DMA has, in fact, become relatively less expensive. This is consistent with our conclusion that, at least in part, lower advertising rates may account for the general shift away from print and toward electronic media.

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[17] We calculated the realized television spot rate per thousand homes reached as the total spot revenue earned by the five major television stations in the Cleveland DMA divided by their total households reached. (See Tab J.)

[18] The milline rate equals the newspaper's open daily or Sunday rate card rate per column inch, as published by Standard Rate and Data Service in *Newspaper Rates and Data*, divided by the newspaper's daily or Sunday circulation, in thousands. (See Tab J.)

IV. BROADCAST TELEVISION

A. Nature of Competition

Even in a hypothetical market limited only to local spot advertising on broadcast television,[19] the manner in which stations vie for advertisers' business eliminates the possibility that a combination of WOIO and WUAB would facilitate the exercise of market power. There are at least two factors that contribute to this conclusion: (1) Even with cable penetration exceeding 60 percent, UHF stations, such as WOIO and WUAB, continue to be at a competitive disadvantage vis-a-vis their VHF rivals; and (2) The fact that local spot rates are determined in vigorous bilateral negotiations between individual buyers and sellers of advertising eliminates the likelihood of successful coordination among television stations and of unilateral anticompetitive conduct by

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[19] For purposes of this discussion, we exclude from consideration (1) the presence and growing importance of cable television; and (2) the anticipated future growth of video dial tones provided by (a) the nation's telephone companies, (b) wireless cable, (c) DBS (recently launched by, for example, DirecTv) due, among other things, to the marked reduction in receiving dish size, and (d) low-power television. In particular, cable television's increased use of and improvements in interconnects, as well as its increasing penetration and share (in May 1994, advertiser-supported cable's combined audience share of all households in the Cleveland DMA was about 16 percent) will only enhance its competitive position vis-a-vis broadcast television.

In this connection, we note that the Bureau of Economics of the Federal Trade Commission, in comments before the Federal Communications Commission [filed September 24, 1992; MM Docket No. 91-221] recognized the increasing variety of competitive media and the increased importance of cable television:

> The [Notice of proposed rulemaking] describes the recent substantial growth in the variety of communications sources available to consumers. These include not only broadcast and cable television, but also wireless cable, low-power television, home satellite receivers, video and audio recordings, and, soon, direct satellite audio and video services with digital audio. The NPRM notes that this multiplicity of sources poses a substantial competitive challenge to television broadcasters in seeking viewers. [pp. 5-6]
>
> Arbitron computes, for each station, the share of 'total households using television' in the station's ADI tuned to that station. These percentages can then be aggregated across all of the stations in an ADI. The sum of the audience shares of the stations in each ADI is, on average, far less than 100 percent. The average is 66 percent, with values ranging from a low of 15 percent to a high of 93 percent. This means that many households using television are not watching the broadcast stations in their ADI. This shortfall results from some combination of (1) 'out-of-market' viewing..., and (2) cable programming viewing. Thus, there are two implications relevant to market definition. First, **to the extent that cable-only viewing is substantial, the market definition process might have to consider advertising sold by cable networks and cable systems in addition to advertising sold by broadcast television stations.** ... [pp. 15-16]

The fact that cable systems derive the overwhelming majority of their revenues from subscription fees affords them the ability to price advertising slots on an incremental basis. This suggests that the competitive pressure that cable exerts on local advertising rates may be understated by its current share of advertising revenue.

any given station. Moreover, as discussed below, the recent award of the CBS affiliation to WOIO renders its demographic profile substantially different from that of WUAB and, by extension, reduces even further any possibility of anticompetitive effects resulting from the proposed combination of the two.

1. UHF Disadvantages vis-a-vis VHF

UHF television stations historically have been at a competitive disadvantage vis-a-vis their VHF rivals. UHF stations have generally reached a lower number of homes and, accordingly, obtained a smaller share of viewers. This resulted directly from UHF stations' relatively weaker broadcast signal strength[20] and typically led to lower UHF station revenue and profitability versus those for VHF stations. With the growth of cable television — i.e., greater than 60 percent of DMA television households subscribe at least to basic cable service — this disadvantage has decreased.

The UHF competitive disadvantage has not, however, been eliminated. For one thing, on average, nearly 40 percent of the available audience is still subject to the over-the-air UHF broadcast disadvantage. This is illustrated by, among other things, WOIO and WUAB's relatively lower circulation.[21] It is, of course, possible that this lower circulation may reflect the fact that the three VHF stations in Cleveland — WKYC, WJW and WEWS — were affiliated with the three major national networks and, therefore, enjoyed relatively greater demand for their programming. To test for this possibility, we compared UHF network affiliates with their VHF counterparts in those markets in which at least one network had a UHF affiliate. As shown in Tabs L, M and N, for channels with network affiliations, we find that household shares for UHF stations are routinely much lower than those for VHF stations.[22]

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[20] UHF channels utilize a shorter wave length than do their VHF counterparts and, therefore, may be affected adversely — e.g., via ghosting and loss-of-signal problems — by terrain, weather, buildings and foliage.

[21] See, for example, Exhibit B-3 from Malrite's presentation materials, included here as Tab K.

[22] Note that, to calculate national audience reach for purposes of determining compliance with the Federal Communications Commission's Multiple Ownership Rules, UHF stations are to be attributed with only 50 percent of the television households in their television market, compared with 100 percent for VHF stations. [Federal Communications Commission Rules and Regulations, Section 73.3555, ¶ (e)(3).] Moreover, with respect to the annual regulatory fees that all VHF and UHF stations must pay commencing July 26, 1994, in TV markets 11 to 25 (Cleveland is ranked 12th) VHF stations will pay $16,000, while UHF stations will pay (continued...)

Notwithstanding the recent change in the CBS affiliation from WJW — a VHF station — to WOIO, we believe that WOIO is unlikely to capture the same share of viewers as did WJW for the same programming and, as a result, will probably not be able to charge the same spot rates as did WJW. Put differently, compared with WJW while it was a CBS affiliate, WOIO will remain at a relative competitive disadvantage to WEWS and WKYC.[23] Similarly, WUAB will now be at a relatively greater competitive disadvantage versus the now FOX-affiliated station WJW — a VHF station — than it had been versus WOIO.[24]

Virtually all of the advertisers and advertising agencies that we interviewed provided information consistent with this conclusion. While most opined that the UHF disadvantage was reduced due to increased cable penetration, they also believed that WOIO, as the new CBS affiliate, will have to prove that it can garner the same audience as did WJW before they will pay equivalent rates.[25] Most believed that they could vigorously and successfully negotiate lower rates, solely as a result of the affiliation switch, vis-a-vis those charged by WJW for the same programming.

22(...continued)
$12,800, or 80 percent of the VHF fee. [Federal Communications Commission Statutory Schedule of Regulatory Fees.]

23 In addition, we understand that, unlike WJW, WOIO does not yet have a local news program to fill its early evening and 11:00 pm time slots. Several of the advertisers that we interviewed stated that, until WOIO develops a successful news program, they will continue to place those advertisements adjacent to the long-established WJW newscast. Consequently, WOIO's revenues and attractiveness to advertisers, even with the CBS affiliation, will not immediately match that of the former WJW.

24 We understand that WJW already has a highly regarded local news program. In light of the loss of CBS programming, WJW has indicated that it will move its local news to the 10:00 pm time slot, thereby increasing the degree of local competition faced by WUAB's news programming at that time. Moreover, as a CBS affiliate, WOIO will be compelled to establish a local news presence of its own (see footnote 23), thereby increasing the available number of newscast-related local spots and, by extension, reducing prices to advertisers. [It should be noted, in this connection, that approximately 22 percent of all television advertising revenue is currently news-related (Market Manager, *Standard Share of Business Report*, The Arbitron Company, August 1993).]

25 We understand that prior to its loss of the FOX affiliation, WOIO was unable to obtain the same rates for its upcoming broadcasts of NFL football as did WJW.

2. Vigorous Bilateral Rate Negotiations Mitigate the Likelihood of Anticompetitive Conduct

The manner in which local spot rates are determined substantially reduces the likelihood of anticompetitive conduct. This would be true even if there was no disparity between VHF and UHF stations in the Cleveland DMA. Here, rates for any given local advertising spot are determined in vigorous bilateral negotiations between individual television stations and both existing and prospective advertisers. As described above, the agreed-upon negotiated rate will depend upon a number of factors, including the availability of alternatives and the relative bargaining power of the parties.

We understand that less than 10 percent of Malrite's local spot rates are embodied in written contracts; instead, they result primarily from oral negotiations, often conducted over the telephone. This price-setting process is highly disaggregated and advertisers have the ability to turn quickly to, at a minimum, the other television stations within the DMA.[26] This substantially reduces, if not eliminates entirely, the ability of any station or group of stations to impose noncompetitive terms and conditions of sale on their advertiser-customers. Again, virtually all of the advertisers or advertising agencies that we interviewed provided information consistent with this conclusion: The market is vigorously competitive and advertisers routinely play one station against another in negotiating for better rates. Virtually none believed that a combination of WOIO and WUAB would reduce its ability to use the other available television stations to its advantage in rate negotiations.

3. Reduced Competitive Overlap Between WOIO and WUAB

As noted above, WJW Channel 8, a VHF station serving the Cleveland DMA, has dropped its CBS affiliation to become the local FOX affiliate. In turn, WOIO, the former FOX affiliate, has recently agreed to become affiliated with CBS. In effect, WJW and WOIO have switched affiliations, with FOX gaining a VHF channel and CBS moving to a ultra-high frequency channel. This switch increases the amount of independent programming, and the inventory available for local advertising spots, that will be carried on WJW.

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[26] The mere threat of turning to other stations may be sufficient, in some instances, to constrain a station's competitive behavior.

As a result of this change, WJW's programming mix is likely to appeal to a demographic audience that is younger than it had been when it was the CBS affiliate; this, in turn, increases the extent to which VHF station Channel 8 will compete with independent UHF station WUAB (on Channel 43). On the other hand, WOIO's programming mix as a CBS affiliate will appeal to an older audience than was the case with its earlier mix of FOX and independent programming.[27] Moreover, due to the substantial increase in network programming it will now be required to carry, its inventory of local advertising spots available for sale will decline.

Taken together, these changes will increase the degree to which WOIO will compete with the local ABC and NBC affiliates and, importantly, decrease the extent to which it will compete with WUAB (see, for example, Tab O).[28]

V. CONCLUSION

On the basis of the analyses described above, we believe that there is, in fact, sufficient information on which to infer cross-elasticities of demand among different media. More specifically, these analyses are consistent with the proposition that both electronic and print media

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[27] For example, Nielsen data for the May 1994 survey period show that, during the total broadcast week (Sunday-Saturday, 6am-2am), the percentage of WJW's adult audience (18+ years of age) 50 years of age and older was 56 percent compared with 24 percent and 35 percent for WOIO and WUAB, respectively. Similarly, the percentage of WJW's total audience (2+ years of age) under 18 years of age was 7 percent compared with 38 percent and 16 percent for WOIO and WUAB, respectively. (Nielsen *Station Index* — Cleveland, OH, Metered Market Service, Nielsen Media Research, May 1994, p. 25.)

[28] We note also that, at least in the short run, WOIO's affiliation with CBS will, if anything, increase its competitive disadvantage. For example:

- It has less time available to sell throughout the day than during its FOX affiliation because of the now larger volume of programming that it must carry as a CBS affiliate — i.e., CBS provides its affiliates approximately 92 hours of programming per week compared with 16 hours from FOX (15 of which are considered by the FCC as prime time programming).
- The prime-time access hour has been among its most profitable dayparts in which to sell advertising. Due to its affiliation with CBS, the FCC's Prime Time Access Rule precludes the station from airing off-network reruns during that time period; it will, instead, be forced to run what it believes to be less attractive first-run syndicated programming.
- WOIO has a large program inventory for which it will no longer have time slots available — again, because of the larger volume of programming provided by CBS. It is our understanding that (1) should WOIO find another television station willing to buy any program, it would first require permission from the syndicator to reassign the rights; (2) should this occur, WOIO would continue to be responsible for all remaining payments under the agreement; and (3) such resale prices typically are less than those identified in the original contract and, as a result, may not cover WOIO's remaining liability.

constitute alternatives to which WOIO and WUAB advertisers could turn should economic conditions warrant; accordingly, all such media should be included within the relevant market for assessing the likely competitive effects of this acquisition. While some of the larger advertisers may regard other media as less desirable alternatives, in general, those advertisers are likely to possess a substantial degree of bargaining power with which to constrain the ability of stations — either singly or in concert — to exercise market power. In this market, the proposed time brokerage arrangement is unlikely to affect competition adversely.

Even within a hypothetical market limited to broadcast television stations, competition among such stations is, and will remain, sufficiently vigorous to (1) constrain the ability of the proposed combination to impose terms or other conditions of sale on its advertiser-customers; and (2) substantially constrain the likelihood of coordinated behavior. The recent switch of network affiliations between WJW and WOIO will, if anything, strengthen this conclusion.

A

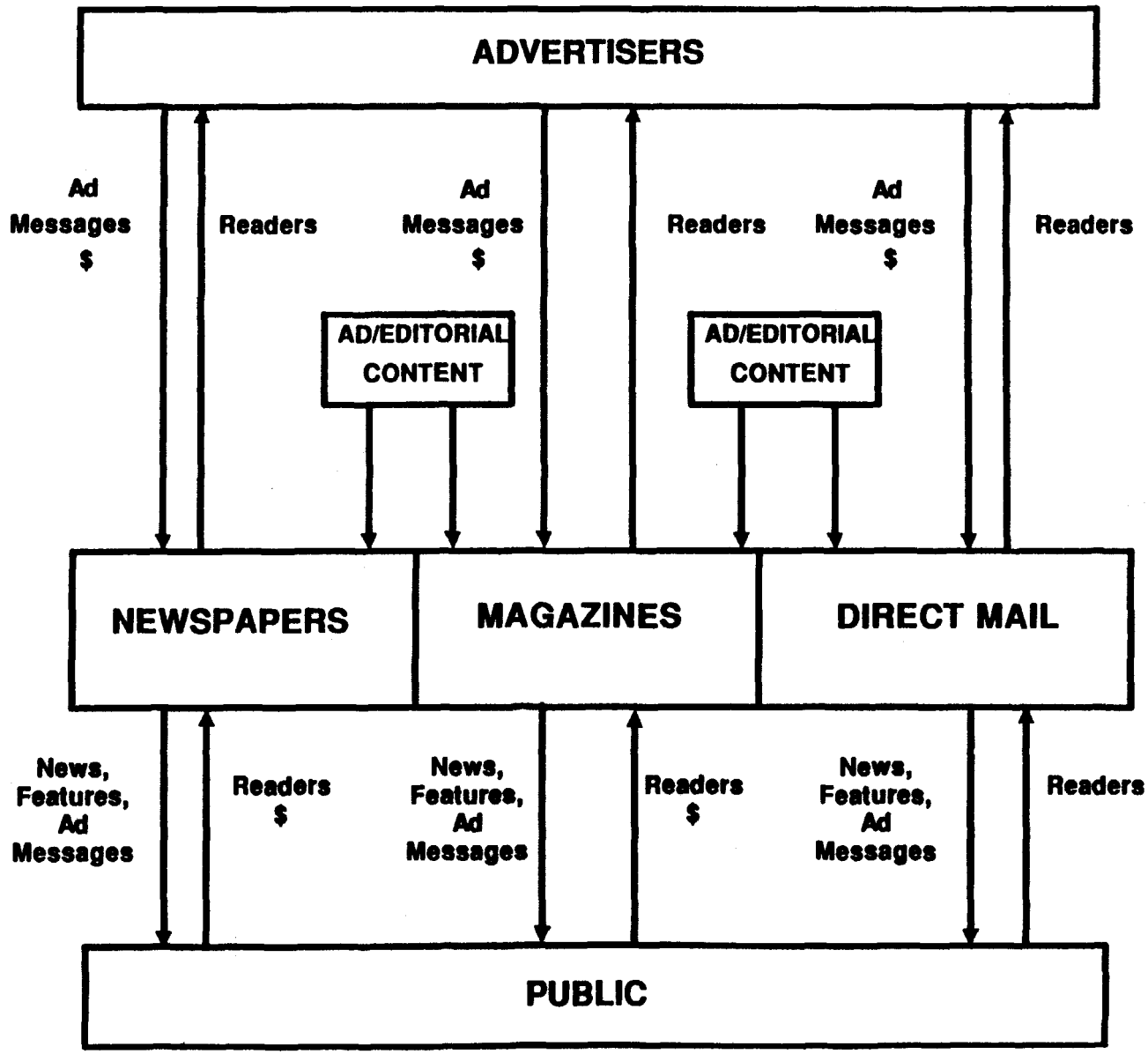
In Manufacturing, raw materials are used to begin the product creation process leading to ultimate purchase by consumers.

Raw Materials
↓ purchased/ packaged by
Producer
↓ creates
Product
↓ distributed by
Retailers
↓ purchased by
Consumers

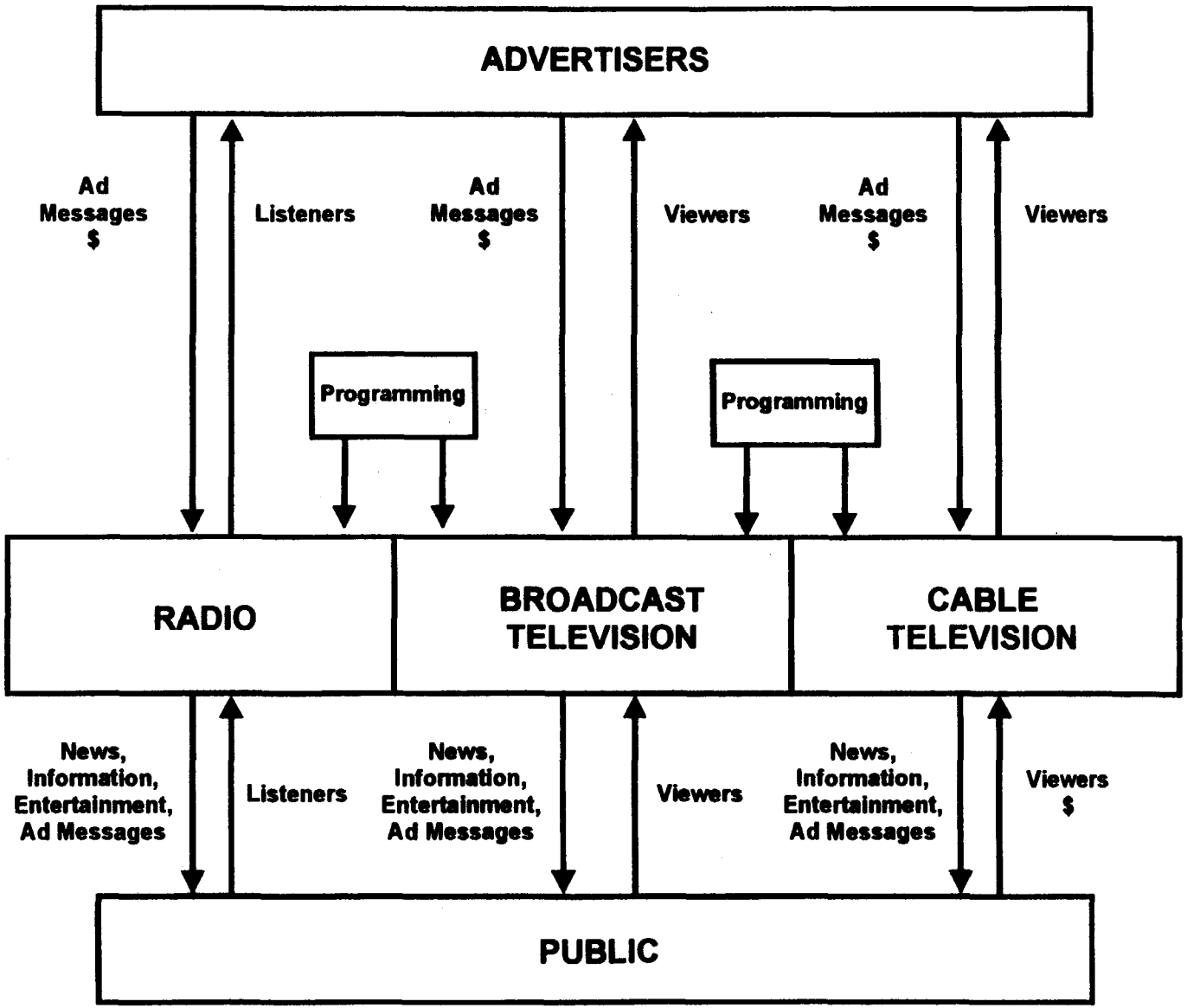
So with Media, News, Information and Entertainment are the raw materials used to begin the audience creation process leading to ultimate purchase by advertisers.

News/Information/Entertainment
↓ purchased/ packaged by
Media
↓ creates
Audience
↓ distributed by
Media
↓ purchased by
Advertisers

Print Media supply an audience to advertisers through ad/editorial content.



Electronic Media supply an audience to advertisers through programming



RECYCLED

SELECTED EXAMPLES OF ADVERTISER SWITCHING

1. THE LUBE STOP/TEN MINUTE OIL CHANGE

In 1992 and 1993, The Lube Stop purchased over $125,000 of local spot advertising on WOIO. In 1994, it replaced its broadcast television advertising with cable television and radio.

2. RTA (REGIONAL TRANSIT AUTHORITY)

In 1993, RTA purchased approximately $10,000 of local spots from WOIO. In 1994, they are devoting the majority, and possibly all, of their advertising budget to radio and print media.

3. CONSUMER CREDIT COUNSELING

Consumer Credit Counseling previously purchased only spot radio advertising (WZAK). To supplement their radio exposure, they have just begun to devote a share of their advertising budget to television.

4. CLASSIC AUTO CAMPUS

Classic auto purchased local spots on broadcast television during first and second quarter 1994. At the recommendation of their new advertising agency — i.e., due to a belief that the rates for local spot television ads were too high — they moved their entire advertising budget to radio and print media.

5. STERLING JEWELERS

The vast majority of Sterling's advertising budget is devoted to local radio spots, with broadcast television used only sparingly (e.g., for special events such as a Mother's Day Sale). They have told WOIO that this is due to their belief that broadcast television spots are relatively too expensive.

6. DOLLAR BANK

Dollar last purchased broadcast television advertising from WOIO in the spring of 1993. Because they believe broadcast television is not cost-efficient, they currently purchase spot radio and print media.

7. FIRST NATIONAL BANK (FNB)

FNB believes that broadcast television is a less cost-efficient advertising medium than are radio and print media. Consequently, they currently purchase print advertising and often use radio and cable television.

8. GEPPETTO'S

Geppetto's requests advertising avails every other quarter and then, instead, purchases Advo (direct mail) advertising. They believe that commercial production and placement of advertising in television is too expensive.

9. MAX & ERMA

Max & Erma purchased television advertising in the Fall of 1993. In the second quarter of 1994, apparently due to relatively high television rates, they moved their advertising spending from television to radio and, for specific locations, to cable television.

Source: Data provided by Malrite Communications, Inc.