

station off the air because its owner, an evangelical preacher, had broadcast editorials attacking the decadence of Los Angeles city government. The FRC's rationale was that the Reverend Shuler's broadcasts were "sensational rather than instructive."⁹⁸ The same could surely be said for the newspaper that the Supreme Court the year before had protected from prior restraint in *Near*, yet the state was forbidden to enjoin the publication of even a single issue—no one even contemplated shutting the paper down. The D.C. Circuit upheld the FRC's action in *Shuler*, granting the agency nearly unbridled discretion to consider the character and quality of programming. The court saw no denial of free speech, but "merely the application of the regulatory power of Congress in a field within the scope of its legislative power."⁹⁹

79. The Federal Radio Commission, of course, became the FCC when the Communications Act became law on June 19, 1934.¹⁰⁰ From its very inception, the FCC used its license-renewal powers to suppress broadcast speech that it disfavored and to promote broadcast speech that it deemed, in its euphemistic phrasing, to be "meritorious." In section 326 of the new act, Congress provided in part: "Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."¹⁰¹ Given those words, the first reported decisions of the FCC are remarkable for the extent to which the agency explicitly used the content of broadcast speech as a criterion

98. *Trinity Methodist Church*, 62 F.2d at 851.

99. *Id.*

100. Pub. L. No. 73-416, 48 Stat. 1064 (1934).

101. 47 U.S.C. § 326.

for deciding whether to renew a broadcast license.

80. The FCC's first reported license renewal proceeding concerned WSBT in South Bend, Indiana.¹⁰² Discussion of broadcast content in the FCC's decision of July 13, 1934, was brief and relatively innocuous compared to the decisions that would shortly follow. The service of WSBT was found to be "meritorious and well designed to satisfy the needs and interests of the South Bend area."¹⁰³ One statement suggests what the FCC understood to be "meritorious" programming: "A liberal policy is followed by the applicant in its cooperation with local civic and philanthropic activities and considerable time over the stations is devoted to such matters."¹⁰⁴ That statement comports with the view that broadcast regulation has had the effect, by inducing the broadcaster to include certain kinds of programming, of directing a licensee to subsidize certain favored interest groups or government initiatives.

81. The renewal process has enabled the Commission not only to encourage the broadcast of some kinds of programs, but also to discourage the broadcast of others. In March 1935, the FCC ruled on the renewal application of WHOM in Jersey City, New Jersey, in *New Jersey Broadcasting Corporation*.¹⁰⁵ The renewal application had been designated for hearing to determine "[t]he nature and character of the service rendered and the programs broadcast by Station WHOM."¹⁰⁶ The hearing examiner (the precursor to an administrative law judge) recommended that renewal be granted, "although certain programs did not serve or at least were

102. John L. Hopkins, 1 F.C.C. 117, 125-27 (1934). A Chicago station also was addressed in the renewal proceeding.

103. *Id.* at 128.

104. *Id.*

105. 1 F.C.C. 224 (1935).

106. *Id.* at 224.

of doubtful public interest.”¹⁰⁷ Reviewing the hearing examiner’s findings, the FCC recounted that “[a] careful examination of this log reveals that programs of a community, civic, charitable, religious, and educational nature constituted a substantial portion of the station’s time.”¹⁰⁸ The agency discussed at length the meritorious programs about the Society for the Prevention of Cruelty to Animals, about history, about birds, about opera, and so on. Then, however, the FCC stated:

The Commission received certain complaints concerning programs broadcast over Station WHOM by the Hill Medical Office, Modern Medical Associates, Medicated Air Institute, the Tri-Boro Racing Guide, and Barbara Toy. The Commission has made a careful review of these programs, as a result of which it is impelled to the belief that the programs broadcast by the Hill Medical Office, Modern Medical Associates, and the Medicated Air Institute were of doubtful public interest; that the programs broadcast over Station WHOM by the Tri-Boro Racing Guide and Barbara Toy did not serve public interest, convenience, and necessity. However, the large majority of programs broadcast by the station were generally meritorious and did serve public interest, convenience, and necessity, and that [sic] the programs of the Hill Medical Office, Modern Medical Associates, Medicated Air Institute, Tri-Boro Racing Guide, and Barbara Toy *have been discontinued by the station.*¹⁰⁹

Thus, in its very first year of existence, in volume 1 of the *FCC Reports*, the FCC implied in *New Jersey Broadcasting* that it was renewing the license for WHOM on the expectation that the specific programming found not to be in the public interest would not recur. The conditional nature of the FCC’s renewal decision could have been plainer only if the agency had said explicitly that WHOM could have its license renewed as long as it promised to stop broadcasting programs about horse races.

82. The instances of FCC influence over program content since 1934 are simply too

107. *Id.* at 225.

108. *Id.*

109. *Id.* at 225-26 (emphasis added).

numerous to chronicle. Some of those episodes would shock the conscience of current-day defenders of free speech, wherever they stand on the political spectrum. For example, by August 1935 the FCC sternly disapproved of another controversial subject matter—advertisements for birth control products. In *Knickerbocker Broadcasting Co.*, a renewal proceeding for WMCA in New York City, the Commission first praised the broadcaster because “[m]any of the accomplished and popular present-day radio stars were introduced to the public through the medium of the WMCA microphone.”¹¹⁰ But the Commission then castigated the broadcaster for its unacceptable content regarding birth control:

Contrasted with the above meritorious conduct, however, are the activities of Station WMCA relative to certain advertising broadcasts of the product “Birconjel,” entitled “Modern Women’s Serenade.” This program was of short duration, being broadcast for several days during March 1935. It must be termed offensive and contrary to the public interest. Mere use of the name suggests child-birth control. During the program in question sentimental or suggestive music was interwoven with talks explanatory of the objectionable subject matter. Bluntly speaking, listeners from all walks of life were advised and encouraged, in terms unequivocal, that through the use of a particular medical or chemical compound, they might avoid the consequences either of child-birth or moral impropriety. Acceptance of the program was originally declined by the station authorities, but later contracted for with considerable reluctance and caution.

. . . It was the Commission’s original impression that the imposition upon the public of *Modern Women’s Serenade*, heretofore described, was so unconscionable as to outweigh the merit incident to the good record heretofore established by the station, and make mandatory a denial of its application for renewal of license; but upon further consideration and careful scrutiny of the past *and proposed future conduct of Station WMCA*, the conclusion was reached that the continued operation of WMCA would serve public interest, convenience, or necessity.¹¹¹

Today, of course, any similar attempt by the Commission to use the license renewal process to

110. 2 F.C.C. 76, 77 (1935).

111. *Id.* (emphasis added).

stifle discussion of reproductive choice would create a major constitutional controversy.¹¹² There is no reason to suppose, however, that a regulator's propensity to condition, implicitly or explicitly, the renewal of a broadcaster's license on his avoidance of disfavored content should be limited to any one subject.

83. By 1960, the FCC issued its *Programming Statement*, which reflected the agency's belief that radio and television licensees should offer the public diverse programming.¹¹³ The FCC listed the fourteen components of balanced programming, ranging from the obvious (news, weather, sports) to the ethereal ("Opportunity for Local Self-Expression").¹¹⁴ The FCC further stated that if a broadcaster was responsive to the "tastes, needs and desires" of his community, "he has met his responsibility."¹¹⁵ Thus, the FCC's pursuit of diverse programming began with platitudes that seemed difficult for a conscientious broadcaster to avoid fulfilling in the ordinary self-interested pursuit of profit. Nevertheless, the FCC required broadcasters to explain in renewal proceedings their failures to achieve sufficiently diverse programming.¹¹⁶ Naturally, the threat of being denied renewal of one's license was a sword of Damocles over broadcasters' heads. By 1984, however, the FCC realized that competitive markets virtually guaranteed that broadcasters would meet requirements for diverse programming, such that the guidelines no longer served any useful purpose (if they ever did).¹¹⁷

112. Cf. *Rust v. Sullivan*, 500 U.S. 173 (1991).

113. *Network Programming Inquiry, Report and Statement of Policy*, 25 FED. REG. 7291 (1960) [hereinafter *1960 Programming Statement*]. The definitive analysis of that regulatory policy, from which this discussion draws, is KRATTENMAKER & POWE, *supra* note 28, at 76-81.

114. *1960 Programming Statement*, 25 FED. REG. at 7295.

115. *Id.*

116. *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, Report and Order*, MM Dkt. No. 83-670, 98 F.C.C.2d 1076, 1078 n.3 (1984).

117. *Id.* at 1080-85.

84. The Commission's most infamous attempt to regulate broadcast content was the Fairness Doctrine, which required broadcast licensees "to provide coverage of vitally important controversial issues of interest in the community served by the licensees" and "to provide a reasonable opportunity for the presentation of contrasting viewpoints on such issues."¹¹⁸ The FCC began its entanglement with fairness in its 1949 *Report on Editorializing by Broadcast Licensees*, requiring broadcasters to provide reply time for opposing viewpoints on controversial issues.¹¹⁹ The FCC codified the so-called personal attack and political editorializing rules in 1967.¹²⁰ The personal attack rule required broadcasters to give an individual or group personally attacked during a discussion of a matter of public importance time to reply. The political editorial rules required a broadcaster that presented an editorial policy favoring one political candidate to give reply time to the other. The Supreme Court upheld the constitutionality of those rules in *Red Lion*. Also in 1967, the FCC extended the Fairness Doctrine to cigarette advertising,¹²¹ but it abandoned that position in 1974, when it began to appear that the agency would have to apply the doctrine to all advertising.¹²² Still, the FCC insisted that the doctrine was constitutional. The Commission explained that "the First Amendment impels, rather than prohibits, government promotion of a system which will ensure that the public will be informed of the important issues which confront it The purpose and foundation of the Fairness

118. Concerning General Fairness Doctrine Obligations of Broadcast Licensees, Report, GEN Dkt. No. 84-282, 102 F.C.C.2d 143, 146 (1985) [hereinafter *1985 Fairness Report*.]

119. Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949); see also *Great Lakes Broadcasting Co.*, 3 FRC ANN. REP. 32 (1929), *rev'd on other grounds*, 37 F.2d 993 (D.C. Cir. 1930), *cert. dismissed*, 281 U.S. 706 (1930).

120. Amendment of Part 73 of the Rules to Provide Procedures in the Event of a Personal Attack or Where a Station Editorializes as to Political Candidates, Mem. Op. and Order, Dkt. No. 16574, 8 F.C.C.2d 721 (1967).

121. Complaint Directed to Station WCBS-TV, New York, N.Y., Concerning Fairness Doctrine, 8 F.C.C.2d 381 (1967).

122. Handling of Public Issues Under the Fairness Doctrine, Fairness Report, Dkt. No. 19260, 48 F.C.C.2d 1, 26 (1974); see also *Friends of the Earth v. FCC*, 449 F.2d 1164 (1971) (requiring Fairness Doctrine to be applied to advertisements for automobiles and gasoline).

Doctrine is therefore that of the First Amendment itself."¹²³

85. By 1985, however, the FCC explained that it was "firmly convinced that the fairness doctrine, as a matter of policy, disserves the public interest."¹²⁴ The FCC found that the growth in the number of broadcast stations reduced the need for the doctrine, that it discouraged broadcasters from addressing controversial subjects, and that it required the government to evaluate broadcast program content. Nonetheless, concerned that the doctrine might be statutorily mandated, the FCC declined to eliminate it.¹²⁵ The FCC also declined to address the argument that the doctrine was unconstitutional; the D.C. Circuit returned the case to the FCC to decide that issue.¹²⁶ Meanwhile, in another case the D.C. Circuit had concluded that the Communications Act did *not* mandate the doctrine.¹²⁷ On remand, the FCC in 1987 reiterated in *Syracuse Peace Council* its conclusion that the doctrine no longer served the public interest.¹²⁸ The FCC also concluded that the Fairness Doctrine was unconstitutional because it "chills speech and is not narrowly tailored to achieve a substantial government interest."¹²⁹ The FCC ruled that "under existing Supreme Court precedent, as set forth in *Red Lion* and its progeny, . . . the Fairness Doctrine contravenes the First Amendment and thereby disserves the public interest."¹³⁰ The FCC declared the Fairness Doctrine to be repealed. Without addressing the constitutional issue, the D.C. Circuit affirmed the FCC's decision to abandon the Fairness

123. 48 F.C.C.2d at 5-6.

124. *1985 Fairness Report*, 102 F.C.C.2d at 148.

125. *Id.* at 148.

126. *Meredith Corp. v. FCC*, 809 F.2d 863, 872 (D.C. Cir. 1987).

127. *Telecommunications Res. & Action Ctr. v. FCC*, 801 F.2d 501 (D.C. Cir.) (*TRAC*), *reh'g en banc denied*, 806 F.2d 1115 (D.C. Cir. 1986), *cert. denied*, 482 U.S. 919 (1987).

128. 2 F.C.C. Rcd. 5043, 5066 n.120 (1987), *recons. denied*, 3 F.C.C. Rcd. 2035 (1988).

129. 2 F.C.C. Rcd. at 5057.

130. *Id.*

Doctrine on the grounds that it no longer served the public interest under the Communications Act.¹³¹ A subsequent study by Professors Thomas W. Hazlett and David W. Sosa found empirical support for the proposition that the diversity of broadcast programming substantially *increased* after the abolition of the Fairness Doctrine.¹³²

D. *The Judicial Conclusion that the Newspaper-Television Cross-Ownership Rule Has Been Used to Punish Speech for Its Content*

86. One could add many more examples of the attempt, through federal regulation, to influence the content of broadcast programming. For present purposes, it is most relevant simply to note that in 1988 the Commission's administration of the very rule at issue in this proceeding was found—in Rupert Murdoch's celebrated case of political retribution, *News America Publishing, Inc. v. FCC*¹³³—to infringe freedom of speech in violation of the First Amendment.

87. The newspaper-television cross-ownership rule does not make any direct reference to content. The restrictions do not distinguish between types of speech. According to that view, the limits on newspaper ownership apply regardless of what the broadcaster wishes to say, and the limits on television station ownership apply regardless of what the newspaper publisher wishes to say. Technically, the rule is on its face content-neutral. A court, however, will deem a law that is content-neutral on its face to be content-related if there is evidence that the statute was intended to suppress certain content.¹³⁴ "Our cases have recognized," said the Supreme

131. *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989).

132. Thomas W. Hazlett & David W. Sosa, *Was the Fairness Doctrine a "Chilling Effect"? Evidence from the Postderegulation Radio Market*, 26 J. LEGAL STUD. 279 (1997).

133. 844 F.2d 800 (D.C. Cir. 1988).

134. *Texas v. Johnson*, 491 U.S. 397, 402 (1989).

Court in *Turner Broadcasting System, Inc. v. FCC*, “that even a regulation neutral on its face may be content-based if its manifest purpose is to regulate speech because of the message it conveys.”¹³⁵ The newspaper-television cross-ownership rule does single out a class of speakers—newspaper publishers in a given city, among all other possible speakers—for differential treatment. The rule can be enforced in an invidiously discriminatory manner and—as *News America* testifies—already has been. The rule presumes the speech of newspaper publishers in a particular city to be inherently suspect, and the rule limits speech solely on the basis of its source. Legislation that singles out certain speakers for differential treatment has been treated with suspicion by the Court.¹³⁶ An agency rule that did so would be no less suspicious.

88. When, in August 1987, the FCC abolished the Fairness Doctrine in *Syracuse Peace Council*,¹³⁷ the Commission concluded that the policy had deterred controversial speech by broadcasters, and that the purported scarcity of the electromagnetic spectrum could not justify regulating the content of the broadcast press.¹³⁸ The FCC, however, soon back-pedaled. Before the end of 1987, the Commission argued in *News America* that *Syracuse Peace Council* rested narrowly on the “conclusion . . . that scarcity did not justify content regulation,” and that the decision was therefore irrelevant to “structural regulation of ownership requirements,”¹³⁹ such

135. 114 S. Ct. 2445, 2461 (1994).

136. *Minneapolis Star & Trib. Co. v. Minnesota Comm’r of Revenue*, 460 U.S. 575, 584, 591–92 (1983). Justice Sandra Day O’Connor’s dissent in *Turner* explained: “Laws that treat all speakers equally are relatively poor tools for controlling public debate, and their very generality creates a substantial political check that prevents them from being unduly burdensome. Laws that single out particular speakers are substantially more dangerous, even when they do not draw explicit content distinctions.” 114 S. Ct. at 2476.

137. *Syracuse Peace Council*, 2 F.C.C. Rcd. 5043 (1987), *aff’d*, 867 F.2d 654, 656 (D.C. Cir. 1989), *cert. denied*, 493 U.S. 1019 (1990).

138. *Id.* at 5054–55 ¶ 73–80.

139. Brief for the Federal Communications Commission at 20, *News Am. Publishing, Inc. v. FCC*, 844 F.2d 800 (D.C. Cir. 1988) (No. 88-1037). The case was argued on February 11, 1988. Briefing, of course, was completed several months earlier.

For the record, I was Deputy General Counsel of the FCC at the time, and my name appeared on the agency’s

as the newspaper-television cross ownership rule invoked against Mr. Murdoch and now under examination in this Notice of Inquiry.

89. The D.C. Circuit's decision in *News America* rejected the FCC's argument that structural broadcast regulation should automatically receive a less intense standard of judicial review than content regulation. Even content-neutral FCC regulations that purport to address solely matters of market structure must be scrutinized "under a test more stringent than the 'minimum rationality' criterion typically used for conventional economic legislation under equal protection analysis."¹⁴⁰ The court characterized broadcast regulation as a continuum, such that ostensibly structural regulations can have the practical effect of restricting broadcasters' freedom of speech: "Clearly one can array possible rules on a spectrum from the purely content-based (e.g., 'No one shall criticize the President') to the purely structural (e.g., the cross-ownership rules themselves)."¹⁴¹ Along that continuum, a structural prohibition may be "structural only in form," revealing "well recognized ambiguities in the content/structure dichotomy."¹⁴² *News America*, therefore, repudiated the FCC's assertion that structural regulation is qualitatively different from content regulation. Instead, the decision implied what some economists long had argued: economic freedom and freedom of speech are inextricably linked.¹⁴³

brief to the D.C. Circuit. I recommended, unsuccessfully, to decision makers within the FCC that the agency notify Congress that the Commission could not defend in court the constitutionality of the statute in question, which imposed severe constraints on the FCC's ability to grant waivers of the newspaper-television cross-ownership rule in a manner that would have adversely affected only Mr. Murdoch's company.

140. *News America*, 844 F.2d at 802; see also *id.* at 814.

141. *Id.* at 812.

142. *Id.* (citing Geoffrey R. Stone, *Restrictions of Speech Because of Its Content: The Peculiar Case of Subject-Matter Restrictions*, 46 U. CHI. L. REV. 81 (1978)).

143. OWEN, *supra* note 28, at 21-24, 26-28 ; R.H. Coase, *The Market for Goods and the Market for Ideas*, 64 AM. ECON. REV. PAPERS & PROC. 384 (1974); Aaron Director, *The Parity of the Economic Market Place*, 7 J.L. & ECON. 1, 3-7 (1964); see generally Thomas G. Moore, *An Economic Analysis of the Concept of Freedom*, 77 J. POL. ECON. 532 (1969).

90. *News America* rejected the false distinction between content regulation and structural regulation of broadcasting. Surprisingly, in ten years, while the *FCC Record* has run into the many tens of thousands of pages, the Commission has cited *New America* only three times in the agency's own decisions, and then only for a minor proposition unrelated to *News America's* profound implications for First Amendment scrutiny of broadcast regulation.¹⁴⁴ When subjected to *New America's* more probing standard of judicial review under the First Amendment, the newspaper-television cross-ownership rule is unlikely to survive, for it rests on the rationale that, to promote "diversity of viewpoints" and "economic competition," the FCC must license spectrum and regulate the industrial organization of mass media markets in a manner that is not neutral with respect to the identity of, and the exercise of editorial control over non-broadcast speech by, the person seeking to be licensed to speak as a television broadcaster.

E. *Recapitulation*

91. From *Brinkley, Shuler, and Knickerbocker* to *News America*, federal regulation has exhibited a propensity to indulge powerful or politically fashionable interests seeking to control broadcast content. To the extent that the newspaper-television cross-ownership rule might impair freedom of speech and freedom of the press in that manner, it is suspect under the First Amendment. A high degree of skepticism should be warranted in the future with respect to any

144. The Commission has cited *New America* only for the proposition that a request for a permanent waiver of a Commission rule entails a "considerably heavier" burden of justification than a temporary waiver. *See* *Columbia Montour Broadcasting Co.*, Memorandum Opinion and Order, 1998 FCC LEXIS 2791 ¶ 18 (rel. June 11, 1998); *Stockholders of Renaissance Communications Corp.*, Memorandum Opinion and Order, 12 F.C.C. Rcd. 11,866, 11,884 ¶ 43 (1997); *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, MM Dkt. No. 96-197, 11 F.C.C. Rcd. 13,003, 13,005-06 ¶ 4 n.15 (1996).

representation by the Commission that the newspaper-television cross-ownership rule has no potential to infringe freedom of speech or freedom of the press. The *News America* decision testifies to the fact that the enforcement of the newspaper-television cross-ownership by the FCC is susceptible to influence by those in government who wish to punish publishers and broadcasters who criticize powerful public officials—politicians to whom the Commission must answer and upon whom it depends for its funding. The law found unconstitutional in *News America* was essentially an attempt to reprise *Shuler* by cloaking content control in the FCC's modern wardrobe of ostensibly structural regulation.

CONCLUSION

92. The Commission should abolish the newspaper-television cross-ownership rule. The diverse and competitive marketplace for news, information, and entertainment that the Commission sought in 1975 is here now. The Commission's continued application of the rule at this point would harm consumers rather than benefit them.

93. Spectrum "scarcity" cannot justify retaining the newspaper-television cross-ownership rule. There are no relevant distinctions between broadcasting and print. To be sure, the Supreme Court may be slow to overrule *Red Lion*. But it seems more likely that the Court will gravitate away from its antiquated conception of broadcasting as technological innovations produce a growing number of examples, familiar to the average consumer, of how spectrum is abundant rather than scarce. In any event, the Commission has the discretion under the public interest standard to find that, apart from its relevance to First Amendment law, the spectrum scarcity rationale has no basis in logic or fact to support the continued enforcement of the

newspaper-television cross-ownership rule.

94. “Pervasiveness” cannot justify retaining the newspaper-television cross-ownership rule. “Pervasiveness” posits that some kinds of speech—such as speech by local newspaper publishers, in the case of the cross-ownership rule—is too influential not to be regulated, or even suppressed. Such perverse reasoning simply underscores why the Constitution contains the First Amendment.

95. Public ownership of the spectrum cannot justify retaining the newspaper-television cross-ownership rule. The public ownership argument incorrectly presumes that the broadcaster lacks any property interest whatsoever. To the contrary, the Communications Act gave the broadcaster a limited, statutory interest in the use of a frequency during the license term. The FCC must respect the legitimate property interest of the broadcaster during the term of the license, just as a landlord must respect the legitimate property interest of a tenant during the term of a lease. Moreover, the Commission actively encourages the broadcaster to make highly specialized, *private* investment that is complementary to his receipt of a license. The public property rationale does not give the FCC the authority to appropriate the value of those private assets, and it would harm the public interest for the Commission to take actions that would discourage a broadcaster from making such investment in private property.

96. In short, none of the proffered rationales for retaining the newspaper-television cross-ownership rule withstands scrutiny. The Commission’s sustained inability to provide a legitimate rationale for continuing to enforce the newspaper-television cross-ownership rule invites the question whether the rule serves a function that is politically expedient, opaque, and durable but statutorily or constitutionally illegitimate.

97. It is possible to identify such a function, and indeed it comports with the determination by the D.C. Circuit in a prominent, litigated case, *News America*. Though ostensibly a structural regulation of the broadcast industry, the newspaper-television cross-ownership rule increases a broadcaster's vulnerability to political efforts to control content. The rule does so by raising the amount of the broadcaster's investment in his station that is at risk of loss if the FCC does not renew his license. Asset-specific investment by the broadcaster exposes him to the risk that the regulator can influence the broadcaster's content choices by threatening to terminate the revenue stream necessary to recover the portion of the cost of his asset-specific investment that remains undepreciated at the end of the current license term. The regulator's ability to block cost recovery of the broadcaster's undepreciated asset-specific investments thus can provide the lever for government control of broadcast content.

98. The FCC claims that the original purpose of the newspaper-television cross-ownership rule was to promote diversity of viewpoints and economic competition. That goal has been achieved. Abolishing the newspaper-television cross-ownership rule now would entail no sacrifice in either diversity of viewpoints or economic competition, as both have become extremely robust since the Commission's imposition of the rule in 1975. Competition and the antitrust laws are capable of preventing monopoly in the marketplace for ideas and the marketplace for advertising. On the other hand, continued enforcement of the newspaper-television cross-ownership rule would needlessly impede the efficient organization of firms in a competitive media marketplace and diminish the freedom of the press. The Commission should abolish the rule.

I hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge and belief.


J. Gregory Sidak

Subscribed and sworn to before me this 20th day of July, 1998.


Notary Public

My Commission expires: 8-14-98.