1 COMMISSIONER TRISTANI: If I could interject a
2 moment --
3 CHAIRMAN KENNARD: Please. I understand that you
4 have to leave, so --
5 COMMISSIONER TRISTANI: I have to leave.
6 CHAIRMAN KENNARD: -- by all means.
7 COMMISSIONER TRISTANI: And I would like to thank
8 the panelists for their incisive remarks. I'm going to
9 watch what you're going to say now as to the questions
10 later. And a prior engagement makes me leave. But I want
11 to thank all of you.
12 And I want to thank in particular those panelists
13 that have reminded us of the critical role that broadcasting
14 plays in our society. Thank you, Mr. Chairman.
15 CHAIRMAN KENNARD: Thank you very much, Commission
16 Tristani. And my thanks to the panelists, as well. Mr.
17 Yudkoff, I would be interested in your response to Mr.
18 Schwartzman's testimony. What about these thirty percent of
19 stations that are providing no local news at all? And we
20 understand that there are very compelling efficiencies
21 whenever we allow one of these combinations. But what is
22 the benefit to the public?
23 And your -- discussion of I believe it was the
24 Erie situation where you talked about it was -- the LMA was
25 really essential for that station to be able to survive.

1 But what do you tell the public when we see stations that
2 are providing no news and no public affairs, none of the
3 local programming that makes free over-the-air television so
4 important?
5 MR. YUDKOFF: Well, we know that the result of
6 LMAs has been a significant increase in the amount of local
7 news because a short time ago, your Commission put out an
8 FCC inquiry. And the result of that was that we learned
9 that fifty-four percent of the brokerage stations are
10 producing local news which compares to twenty-three percent
11 of all non-network affiliated stations producing local news.
12 That is an astonishing statistic because most of
13 the stations that are time brokered were either bankrupt or
14 near bankrupt. So they don't even reflect the average of
15 all non-network affiliated stations.
16 The reason that most owners if they have the
17 financial wherewithal want to produce local news, they want
18 to, is because it attracts the public away from the non-
19 local competitors. It is the single most powerful mechanism
20 for differentiating ourselves from the sixty cable channels
21 that in aggregate have more audience share than the leading
22 station in any of our markets. So I actually think that
23 LMAs have been a tremendous driver for an increase in local
24 news, speaking statistically.
25 CHAIRMAN KENNARD: But what about the class of

1 stations -- and I'm not exactly sure what percentage there
2 is. But I'm -- confident there is a class of stations out
3 there that could operate as stand-alone stations, providing
4 an opportunity for yet another voice in the marketplace,
5 that are operating under LMAs and not providing any
6 significant additional public-interest programming.
7 I mean, what -- in that class of station, what is
8 the benefit to the public and why should a combination like
9 that deserve regulatory relief from this Commission?
10 MR. YUDKOFF: I think that the issue is -- the
11 issue I'm most experienced with is in mid-sized and small
12 markets where the dilemma for the -- if you want to increase
13 the number of voices in the market, the dilemma is that with
14 a fixed pool of revenue, that that, even more than
15 regulation, sets a finite limit on the number of stations or
16 the quality of local programming that the marginal station
17 can produce.
18 And if you want to add to that, either in terms of
19 number of voices or the amount of local programming, other
20 than increasing the amount of revenue which, regrettably, is
21 not in your power to do, you can allow us to share some of
22 the costs. And that is the -- that is the only other
23 mechanism I'm aware of to allow stations that don't have the
24 wherewithal or choose not to produce local programming or
25 local news, to have the resources to do that.

1 CHAIRMAN KENNARD: And is it your testimony that
2 duopoly relief should be confined to those smaller and mid-
3 sized markets where these efficiencies are really necessary
4 in order to promote local programming?
5 MR. YUDKOFF: Sir, that's really beyond my
6 expertise. I -- I really operate in mid-sized and small
7 markets. I'm not really prepared to speak to large market
8 issues.
9 CHAIRMAN KENNARD: Commissioner Ness, anyone else?
10 COMMISSIONER NESS: Your testimony, however, said
11 that duopolies should be open to all. Does that also
12 suggest that -- or are you saying -- is it your testimony
13 that two healthy, financially healthy stations operating in
14 a market ought to be able to -- to merge?
15 MR. YUDKOFF: I think that one of the benefits
16 that you will see from duopoly generally is by economizing
17 on redundant costs that the viewer doesn't see or doesn't
18 care about will increase the level of competitiveness in the
19 areas that viewers do care about because all of the markets
20 in which I'm familiar with are extremely heated in their
21 competition for pleasing the viewer. And I think that what
22 you will be doing is putting more on the screen for the
23 viewers and creating less in the back room that no viewer
24 appreciates or understands.
25 COMMISSIONER NESS: But isn't there a cost

1 involved there and the cost being the reduction of an
2 independent editorial voice?
3 MR. YUDKOFF: Well, I think that there are already
4 antitrust regulations that set limits on the level of
5 concentration in markets. But I also think what you're
6 doing is creating new voices in a market because you are --
7 you are creating the economics where stations that are
8 either not on the air or even more frequently are these
9 twenty-three percent of stations that don't produce local
10 news or local programming, they have the economic resources
11 to enter into that competitive fray.
12 COMMISSIONER NESS: Well, certainly, there is a
13 difference between stations that economically are not viable
14 or which have been struggling economically and can't survive
15 without support. I think there -- one could draw a
16 distinction between that kind of situation and a kind of
17 situation where you have perfectly healthy stations
18 competing in the marketplace. And now you're suggesting I
19 believe that they ought to be allowed to combine.
20 MR. YUDKOFF: Well, Commissioner, that is -- we're
21 just speaking about the extremes right now. Most of the
22 stations fall somewhere on the spectrum.
23 For example, in a small market, to go from an
24 entertainment-only station to a news station requires a
25 minimum capital investment of about a million dollars.

1 That's a bare-bones investment. Jeff Marcus will smile. In
2 one of his bigger market stations, it's many times. that.
3 But the least you can get the news on the air with
4 is about a million dollar capital investment. I certify to
5 you that in a lot of these small markets, operators just
6 cannot make the numbers work if they have to put a million
7 dollars up before turning the lights on a local news, even
8 though you may rightfully regard them as a reasonably
9 successful, profitable station.
10 If they were allowed to share the capital
11 infrastructure with another station in the market, to take
12 one element of the example, that would allow them to much
13 more economically get into the business of providing
14 additional news voice in the market, even though they would
15 not meet your test of being an unprofitable station.
16 COMMISSIONER NESS: Should it be permitted then in
17 every market that we take the number of stations and divide
18 it by half so that every single station ought to be able to
19 merge with another station?
20 MR. YUDKOFF: I think subject to some kind of
21 antitrust restrictions, the answer would be yes.
22 COMMISSIONER NESS: So the ones who happen to be
23 at the gate last or that did not take advantage of the
24 duopoly rules to have LMAs presently would end up not being
25 able to combine because everyone else had combined

1 previously?

2 MR. YUDKOFF: I think that would vary from market-
3 to-market because I think there will also be situations
4 where there will be new entrants in the market or marginally
5 competitive stations will become vibrant new competitors in
6 the market. So we would have to look at it across each
7 individual market in that sense.

8 CHAIRMAN KENNARD: Mr. Marcus, you testified that
9 you didn't believe that there was any reduction in diversity
10 as a result of consolidation in the last few years. And I
11 think as we've seen from our -- this panel and the panel
12 before, that that's certainly a debateable proposition.

13 But what I don't think is debateable based on what
14 I've heard today is that there has certainly been a
15 reduction in ownership diversity; that is, we're seeing more
16 and more licenses concentrated in fewer and fewer hands.

17 And I think that the end of your testimony, you
18 sort of acknowledged that by indicating that you were
19 interested in exploring ways that we can increase the
20 numbers of minority and women-owned stations in the country
21 which we know to be a declining number based on studies over
22 the last few years. Can you give us a little bit more
23 testimony about what you had in mind specifically in that
24 area?

25 MR. MARCUS: Well, let me say, first of all, that

1 the reduction of minority and women owners and other
2 individual owners has not been a result of these people
3 being forced out of the business. These people have all
4 sold out at enormous profits and fulfilling the American
5 dream. This is something that many -- many of us all dream
6 of doing in building a business and selling it at a profit.
7 But I would also say that the top three radio
8 broadcasters, which own approximately a thousand stations,
9 represent less than ten percent of the total radio stations
10 in the country. And if you measure it by revenue, it's less
11 than thirty percent. So there is a lot of independent and
12 smaller ownership structures that are still out there.
13 Having said that, if we define diversity, not only
14 by format, but by ownership, by gender, by -- by ethnic
15 background, and we believe that there -- there is a desire
16 to see that enhanced, then we are interested, and I know
17 many others are interested in helping with that.
18 And we are proposing that against the backdrop of
19 enlightened regulation, that we would be willing to have a
20 major role in setting up a fund, a venture capital fund,
21 that would match capital with opportunity for those
22 qualified radio or television operators; that is, media
23 operators, people that can demonstrate a history and an
24 ability to run these assets. And we would back them.
25 We would have this run not by Chancellor, not by

1 someone else, but by professional management. And we would
2 invest in this altogether to try and fulfill that aspect of
3 diversity.
4 CHAIRMAN KENNARD: Very interesting idea. Any
5 other comments on what Mr. Marcus has just said? Mr.
6 McCarthy?
7 MR. McCARTHY: Mr. Chairman, I think that it would
8 be well for the Commission to recognize that there are
9 some -- there are two clear incentives at work here which
10 Victor Miller alluded to and several of the panelists of
11 both panels. And that is that -- Commissioner Ness pointed
12 out, is that news is profitable. And when I say news these
13 days, part of that is public affairs also under the old
14 Commission's definitions.
15 One, news is profitable. And then -- and in most
16 of these markets, particularly the larger markets, there is
17 a race, a very competitive race, to seize the franchise and
18 to hold that franchise and extend your brand into
19 different -- different forms like cable news channels or
20 LMAs because that's the only thing that's distinctive about
21 local television, is that we have a large component of our
22 broadcast day that is locally originated -- or locally
23 originated programming and that's news and some syndicated
24 product.
25 And there is this incentive that is in operation

1 in the penalty of what the Commission is doing. And it
2 would be fair to recognize that incentive. And it's shown
3 up in the LMAs from the standpoint of there definitely being
4 new news programming put on that is differentiating news
5 programming. It isn't just re-purposed. You've heard that
6 word a lot obviously. Well, we all have, the re-purposing.
7 But the only way you can -- and this is the second
8 incentive I'm speaking to. The only way you can continue
9 extending your brand and extending your ability to use your
10 news in non-entertainment programming is not have it be
11 similar. In other words, ownership diversity -- I don't
12 think you can say that ownership diversity means there is
13 not viewpoint diversity.
14 In other words, we operate an LMA in Seattle. It
15 isn't -- it has a news programming on -- a program on its
16 own. It isn't the same program as our KING in Seattle.
17 That wouldn't make sense from the standpoint of developing
18 the franchise. In other words, you've got to differentiate
19 your programming from all of the other video outlets. And
20 then you've got to differentiate your programming to a great
21 extent on our cable news networks.
22 We don't run -- we don't simply just re-purpose
23 our programming and so you're just watching the main station
24 at a different time. I think those two incentives are very
25 powerful incentives. And they're at work now and could

1 certainly underpin a relaxation of the duopoly rule.

2 CHAIRMAN KENNARD: Mr. Morris?

3 MR. WONDER: Chairman, I would like to speak on

4 one particular thing that was said a moment ago. I had the

5 pleasure of reading a comment recently that was made about

6 Stevie Wonder. And they were talking -- it was said in a

7 sarcastic way that I was impoverished.

8 The reality is that the very reason that I'm able

9 to be here today as Stevie Wonder, born as Steven Morris, is

10 because of the radio station that was a minority-owned

11 station in Inkster, Michigan, WCHB, which is a daytime

12 station.

13 And it was through me listening to the music and

14 listening to the news and information that inspired me to as

15 a little kid, far against my mother's rules -- I went and I

16 took one of the radios she had and kind of put some plugs in

17 different places and tried to broadcast through the house

18 and got a whipping.

19 But the point I'm making is never did I imagine

20 that I was going to be the -- the owner of a radio station.

21 But I -- when coming to Los Angeles and hearing the station

22 that was licensed by the city of Compton, KJLH, was so

23 inspired by how much it sounded similar to the format of

24 music and information as did the station that was an AM

25 station in Inkston, Michigan.

1 The truth of the matter is that I a few years ago
2 was approached to sell that station, to give it up. And I
3 could have gotten myself forty or fifty million dollars. I
4 love playing with money. It's okay.
5 But the -- the real important thing for me is that
6 I wanted to -- far more important than -- than getting some
7 money, I wanted to make sure that the voice of a community
8 would be consistently heard and that it would open up a
9 place of communication so that not that -- not just that
10 minority community, but all various peoples of this melting
11 pot that is to be called the United States, various cultures
12 could be heard and united. I just wanted to make that
13 point.
14 CHAIRMAN KENNARD: Thank you very much. Mr.
15 Schwartzman.
16 MR. SCHWARTZMAN: I would like to make three
17 points as fast as I can. First, you're getting some spin
18 here. I do this by recollection and I hope I'm right. But
19 I believe that Mr. Miller's published revenue projections
20 for television for 1999 and 2000 is a nine to twelve percent
21 growth which is about three times what he was talking about
22 this morning.
23 We are hearing about everybody does news and news
24 is -- is important; it's profitable. A major market group-
25 owner issued the statement that says, "After long and" --

1 this is Broadcasting Magazine -- "After long and careful" --
2 Broadcasting and Cable Magazine, I'm an old-timer.
3 "After long and careful evaluation, we have
4 concluded there is more than enough news programming in our
5 market. The company said it could said it could better
6 serve its viewers with entertainment programming. I don't
7 think our strategy includes news."
8 This is what's going on. In fact, some of the
9 companies again -- I hate to pick on Mr. Miller -- but some
10 of the companies that he's -- whose stock he's recommending
11 are going around to Wall Street saying, "We cut costs; we
12 eliminate news departments."
13 One company brags it has no local programming
14 staffs at all in all of its stations. The only thing they
15 have in place at each of the communities where they own
16 stations are salesmen. Everything else comes in by
17 satellite. "What a wonderful business; why don't you invest
18 with me." That's really what's going on here.
19 Number two, if you want to go along the lines of
20 Mr. Marcus' suggestion, I think that is a very promising
21 one, to try to find ways for meaningful amounts of capital.
22 And as you know, Mr. Chairman, better than anybody else on
23 earth, the amount of money that's been put together for
24 those kind of ventures in the past has been so small as to
25 be completely ineffective.

1 It's got to be a large amount of money to really
2 be meaningful given the valuations here because you're going
3 to have to get stations. You're going to have to buy off
4 all of the people who are here who have got all the value.
5 If you're going to do that, you need very strong
6 safeguards. Otherwise, you are going to have the LMA
7 situation which, again, the Commission could help clarify by
8 not sitting on appeals clarifying what the relationships
9 with LMAs should be for years and years and years.
10 Number three, let's not get hung up on labels.
11 This is not about news. I'm not saying it has to be news
12 programming. What is news programming?
13 If you focus on locally-originated programming, if
14 you focus on programming that discusses the way Commission
15 traditionally approached it, issues of concern to the
16 community -- give broadcasters tremendous latitude, but make
17 them commit in exchange for any kind of relief. Make them
18 commit to programming which comes from places or is of a
19 nature to remediate the loss and diversity that comes with
20 allowing some sort of common ownership.
21 You can have that cause and effect and you can do
22 it in a way that will not cause discomfort intestinally for
23 some of the people who don't like looking at content. I
24 think it's possible to do that, but it does not involve the
25 bright lines that your staff understandably favors.

1 MR McCARTHY: Mr. Chairman, could I just take
2 thirty seconds to respond to that?
3 CHAIRMAN KENNARD: Certainly. Go ahead.
4 MR. McCARTHY: Because it isn't what's going on
5 really. The only way you're going to get a franchise in
6 your -- in your market is to produce a lot of non-
7 entertainment programming, news/public affairs being a
8 significant component. And we -- the study I referred to
9 when Commissioner Tristani said, you know, "Show me the
10 figures."
11 We commissioned a study which Wiley, Rine and
12 Fielding did for the Gore commission which said, "Take
13 seventeen markets" -- which happened to be the markets Belo
14 was in -- "take the four" -- "the four main networks and
15 take a program week, and eliminate all the commercial
16 content; use the Commission's old program categories of non-
17 entertainment programming -- news, public affairs and all
18 the other non-entertainment programming exclusive of
19 sports -- and let's see what a hundred and sixty-eight hours
20 a week" -- "let's see what percent of that week these
21 stations do."
22 The average was close to twenty-five percent of
23 the program week, was non-entertainment programming. And
24 the reason they're doing that is so -- because you've got to
25 -- with your non-entertainment programming, your community

1 service, you've got to differentiate yourself and
2 distinguish yourself from all the other video outlets and
3 you've got to get that franchise and extend that franchise.
4 And we can't -- we're limited as to how we can
5 extend that franchise. But it's -- it's definitely in the
6 public interest in my view.
7 CHAIRMAN KENNARD: But isn't the case, Mr.
8 McCarthy, that those market incentives may be there and
9 driving some broadcasters, but others have a different
10 business plan and that's not part of it. And I think that's
11 why we're seeing this discrepancy between what Mr.
12 Schwartzman is saying and what you were saying.
13 There are some stations that are doing local
14 programming and non-entertainment programming. But there is
15 a class of stations that aren't. And we are being called
16 upon to draw some line here. And that's what we're
17 obviously grappling with. Jeff.
18 MR. MARCUS: Mr. Chairman, I would maintain that
19 you really are going to have in the future two classes of
20 over-the-air broadcasters. You're going to have the ones
21 that believe in localism and the ones that don't because the
22 race is to localism.
23 Cable companies over the last several years have
24 focused on clustering. And there has been trading and
25 swapping and buying and selling so that one company has the

1 majority share of the market, if not the entire market.

2 And what they do once they get that is they go for

3 a local news channel. And they go for local -- local

4 programming channels. And the old issue of the access

5 channels not being meaningful, all of a sudden they become

6 meaningful because they can deliver the entire market. And

7 they have all of this service that they can attract viewers

8 with and now advertisers with.

9 So as broadcasters, our only defense is to go

10 local because we can't compete with the fifty or eighty

11 channels on -- on the cable system. And in order to go

12 local, we need the fire power to come back at these cable

13 companies. And I feel sort of strange arguing against my

14 old industry. But we need the fire power to come back

15 against the cable industry. And that's why LMAs and duopoly

16 is important.

17 Not everybody goes for entertainment programming.

18 We do news. Our differentiation in the marketplace -- and

19 the reason our LMAs are becoming successful is because we

20 focus on local news because that's what people want to see.

21 CHAIRMAN KENNARD: Thank you. Mr. Frank.

22 MR. FRANK: Sir, the issue -- I agree with Jeff

23 Marcus. The issue is localism. And -- and -- but the other

24 side of that is that when two competitors combine -- when --

25 when a company combines with another competitor, it

1 adversely affects the marketplace for everyone else in the
2 marketplace.
3 And you do lose the diversity of viewpoint and you
4 do lose perhaps the public service. And those are the
5 overriding principles.
6 You know, we've talked a lot about stations that
7 are in trouble. Many of us who have taken over stations
8 have taken them over in our company in Miami and in Detroit
9 where the ratings were three shares, five shares; very, very
10 low. And today, they are number one stations.
11 There is a period of hard work and investment.
12 And that's what it takes to move a station up into the
13 marketplace. And it is -- oftentimes we believe localism is
14 the way to do that.
15 But just because you have a small share in the
16 marketplace at this time does not mean you are a failing
17 station and does mean you should be an exception to the LMA
18 rule. When you allow -- when you allow LMAs and duopolies,
19 what you do is really go against that principal of localism
20 and diversity in public service.
21 CHAIRMAN KENNARD: Mr. Yudkoff.
22 MR. YUDKOFF: Mr. Chairman, I just wanted to come
23 back to the important issue of diversity of ownership. I
24 run an investment fund that invests in the broadcast
25 business. And the reason we exist is to back inchoate

1 entrepreneurs and help them to get into the broadcast
2 businesses profitably to us.
3 I think that the most realistic way to make sure
4 there is a diversity of ownership is to have a diversity in
5 the management pool of broadcast properties which is the
6 pool that these entrepreneurs realistically come from.
7 I think that a much less practical way to ensure a
8 diversity of ownership is to regulate such that the small
9 market stations, which are the most likely point of entry
10 for entrepreneurs, are minimally economically viable. I
11 don't think that will help having a diverse group of
12 entrepreneurs unless that diversity comes from entirely
13 other sources like -- like diverse owners who happen to be
14 independently wealthy, completely aside from the
15 broadcasting industry.
16 CHAIRMAN KENNARD: Ms. Slade.
17 MS. SLADE: I would like to say one thing. I'm in
18 the radio side of the business. And we've just been through
19 this consolidation. So you have existing operators that you
20 can pull from, you've got a factual base if you want. You
21 can ascertain what happened with the ownership rules
22 changing. You -- we know what happened as far as ownership.
23 There are fewer minorities. There are more conglomerates.
24 Can we assess what happened in the radio side of
25 the business before we make all the changes in the

1 television side? I mean, before we go into a television
2 duopoly, can we see what impact it had from a public
3 interest standpoint, from a diversity of interest
4 standpoint, from a diversity of viewpoint standpoint? Can
5 we make those assessments, ascertainments? I mean, can you
6 do that for us before you change the rules?
7 Because as a small operator, I'm the one competing
8 out there. And it's very difficult to compete with
9 conglomerates. Just a case in point, I have a finite amount
10 of inventory. I pitch, do my best. My numbers are what
11 they are. I get the buy or I don't.
12 If I'm competing with someone that owns five, six,
13 seven, eight radio stations and a television station and a
14 billboard company, they're packaging it all together.
15 They've got one-stop advertising. It's very difficult to
16 compete.
17 Now, we do okay. But as you raise the bar and
18 raise the bar, at some point you'll go under. When I came
19 into this business ten years ago, there were five black-
20 owned and operated facilities in Los Angeles. We are the
21 only one now. And that's because the owner made a
22 commitment to stay in the business.
23 We are committed to this industry. But the bar
24 keeps raising and my competitors are not playing with the
25 same rule book. I have a finite amount of inventory. They

1 buy another station. It's very difficult. So I would
2 submit or recommend that you evaluate what's already
3 happened on the radio side before you make massive changes
4 on the television side.
5 CHAIRMAN KENNARD: Thank you. Commissioner
6 Furchgott-Roth.
7 COMMISSIONER FURCHGOTT-ROTH: Thank you, Mr.
8 Chairman. I believe, Mr. Schwartzman, the answer to number
9 nine down is tension. But some of this may be an academic
10 exercise. We received yesterday a letter from several
11 leading members of Congress giving us some guidance that's
12 kind of unequivocal.
13 "There is no" -- and I quote, "There is no
14 question that all local marketing agreements have been
15 grandfathered permanently." And they go on to cite parts of
16 the '96 Act.
17 They go further to state, "The concept of
18 grandfathering is fairly straight-forward. These
19 arrangements should continue as long as the parties agree.
20 Local broadcasters have invested hundreds of millions of
21 dollars in these arrangements. They have served the public
22 interest. It would be unfair and inconsistent with the law
23 to now impose post-hoc limitations. The agreements should
24 be renewable and freely transferable. Any restrictions such
25 as imposing a term of years, limiting transferability, or

1 limiting an LMA to its initial contract term are flatly
2 inconsistent with the concept of grandfathering."
3 Many of you on the panel have testified frequently
4 before Congress and have some sense of how strongly they
5 feel about some issues. And I just wondered if you could
6 give us, the FCC, some guidance about doing something that
7 might not be consistent with such a straight-forward,
8 unambiguous message.
9 MR. SCHWARTZMAN: Commissioner, you are, to be
10 sure, an independent regulatory body which is more clearly
11 an arm of Congress than any other part of the governmental
12 body. But you are an independent regulatory commission.
13 You are delegated authority and you are charged with
14 interpreting the laws.
15 Members of Congress who write the laws have some
16 very useful things to say. But it's decided by you and by
17 the courts. Members of Congress who provide what is
18 referred to by the courts as post-enactment legislative
19 history don't always find that it's follows.
20 And while I value the interpretations and the
21 suggestions that these members of Congress may have received
22 as to what that letter may have contained as they sat down
23 together and wrote it and assembled all the cases and
24 reviewed their extensive knowledge of LMAs, I'm reminded
25 that we frequently see amicus briefs filed by members of

1 Congress. Most recently, one comes to mind is the census
2 case the Supreme Court decided on different sides.
3 We had this before -- before the Commission
4 judicial review of the Iowa Utility Board case. They both
5 can't be right. That's why you're there. And your job is
6 to interpret the law; not do what a member of Congress tells
7 you in a letter you should do in interpreting the law.
8 MR. McCARTHY: Here is the hope for editorial
9 diversity again. I disagree. And I don't think you can
10 follow all of the -- the track record of the adoption of the
11 1996 Telecommunications Act without reading Congressional
12 intent, legislative intent, that the Commission was asked to
13 review some of these -- these rules, some of which go back
14 to the '60s and with the purpose of rescinding those that no
15 longer had any credibility in the marketplace we're in.
16 And the companion acts of Congress essentially de-
17 regulating the other telecommunications providers I think is
18 a very strong indicator of Congressional intent. I -- I
19 agree with you wholeheartedly that LMAs were intended to be
20 grandfathered.
21 And the newspaper broadcast cross-ownership rule
22 and all the other rules which had their beginnings in the
23 '60s and '70s, the purpose of -- of putting in this -- this
24 by any old review is saying, "Well, we'll defer to a certain
25 extent to the Commission." But bear in mind, this is what

1 we -- this is how strongly we feel about these. We're
2 starting to de-regulate the other ones. And the purpose is
3 you look at them and de-regulate what doesn't make any
4 sense, duopoly certainly being one of them.
5 MR. MARCUS: I would only add that I would agree
6 with Mr. McCarthy. And I think the language and the
7 legislative intent is very clear. And we see these letters
8 coming to the Commission with greater frequency because I
9 think the people that were a part of the process are
10 concerned that the process may not be carried out. And so I
11 would -- I would say that the intention of Congress needs to
12 be followed here.
13 And if that were the case, if that were to happen,
14 then I think that we would see greater opportunities for new
15 entrants, minority and other new entrants into the -- into
16 the business because there would be much more activity in
17 the duopoly side and the LMA side.
18 And certainly, those of us that would like to
19 invest in the -- in the venture side of it to bring on new
20 entrants would feel that the laws that were adopted in 1996
21 and codified further in 1997 were being followed. We have
22 to have a stable regulatory scheme. We have to be able to
23 rely on what's been passed and not have the rules changing
24 all the time because we are making major, major investments
25 that are based upon -- on a regulatory scheme that has to

1 remain intact.

2 CHAIRMAN KENNARD: Let me just say one thing about

3 this point because I'm the one that most of these letters

4 are addressed to. And I look at them all. And I study them

5 carefully.

6 And I have not seen since I've been Chairman or

7 when I was General Counsel at this Agency, I have never seen

8 a controversial issue where there has been unanimity in the

9 letters that we have received from Congress. And this issue

10 is no different. Commissioner Ness?

11 COMMISSIONER NESS: Mr. Marcus, just following up

12 on your last point. How many stations do you own presently?

13 MR. MARCUS: When all the pending transactions

14 close --

15 COMMISSIONER NESS: Please.

16 MR. MARCUS: -- we own four hundred and sixty-

17 seven radio stations and thirteen TV stations --

18 COMMISSIONER NESS: So --

19 MR. MARCUS: -- including four LMAs.

20 COMMISSIONER NESS: So you've profited

21 tremendously from the great liberalization under the 1996

22 Telecom Act. Is that not right?

23 MR. MARCUS: Well, I don't know if profit is the

24 right word. We've been able to consolidate.

25 COMMISSIONER NESS: Is there any reason why today

1 you could not contribute substantially to a fund to provide
2 for minority ownership that's run independently? Is there
3 anything preventing you from doing so today?
4 MR. MARCUS: The instability of the regulatory
5 scheme.
6 COMMISSIONER NESS: Is preventing you from making
7 a contribution.
8 MR. MARCUS: That's correct.
9 COMMISSIONER NESS: Is there anything -- I'll ask
10 this generally of the panel. Is there anything preventing
11 companies today from owning, for example, a cable channel in
12 their market? I would point out, in Washington, D.C., there
13 is Channel 8 which is owned by Albritt -- a subsidiary of
14 Albritt Communications Broadcast Company. It provides for
15 the opportunity to amortize the cost of providing the news
16 operation.
17 Is there anything that's preventing a company
18 today from owning an internet business, from owning a
19 satellite channel, from owning magazines in the marketplace,
20 from owning broadcast properties outside of the marketplace?
21 Is there anything that's preventing these companies from
22 participating in the vast assortment of communications
23 outlets with the exception of a very narrow, specific
24 situation within the local market?
25 MR. McCARTHY: I think that -- you certainly can

1 lease cable news channels. But I would sort of turn that
2 question around and say the -- the ability of our
3 competitors to do far more than we can.
4 And TCI could buy the Dallas Morning News, for
5 example, in Dallas if it wished. We couldn't buy a cable
6 system. We couldn't buy another TV station in that market.
7 You know, Microsoft could come in and buy most or all of the
8 media facilities in any market. It's regulatory parity that
9 is the issue.
10 We have -- we have some freedom and we've used
11 that freedom in developing cable news networks. But we
12 don't have as much freedom as our competitors.
13 COMMISSIONER NESS: Mr. McCarthy, I would suggest
14 that you have an opportunity for a second channel in your
15 marketplace. In fact, you have an opportunity with the
16 digital broadcast system to provide a wide assortment of
17 programming in your market for the public. And that's what
18 certainly we are hoping will be happening as we convert from
19 analog to digital.
20 MR. McCARTHY: But Commissioner Ness, I think that
21 you have to -- and I'm sure you're aware that no one is
22 watching. There are very few digital TV sets out there.
23 And this is going to take a long time --
24 COMMISSIONER NESS: No one was watching television
25 when it first went on the air, I'm sure --

1 MR. McCARTHY: Well --

2 COMMISSIONER NESS: -- many years ago.

3 MR. McCARTHY: -- we all have to, when we make

4 investments, see the return.

5 COMMISSIONER NESS: Nobody was listening to FM

6 radio when that first went on the air.

7 MR. McCARTHY: And we're hopeful that this will do

8 as well as FM radio. But the fight is at the local level,

9 the fight is for the viewer's eyeballs competing with the

10 cable operators for the fragmentation, trying to fight back

11 against the fragmentation of the video marketplace.

12 And in order to -- to do that, we have to have

13 additional power in the marketplace so that we can attract

14 those eyeballs. And we as a company, and I know Belo as a

15 company and many others, are willing to make the commitment

16 to develop those stations. But -- and we have made the

17 commitment to develop those stations.

18 And I would -- I would maintain that if we can't

19 do this, that there will be further fragmentation of the

20 marketplace. And we've seen this. If you look twenty years

21 ago at the network share, what it was and what it is today,

22 and it continues to erode, it is going more towards the

23 cable operators, more towards -- and as the cable operators

24 cluster, more towards local. And we have to have the

25 ability to fight back.

1 CHAIRMAN KENNARD: Mr. Marcus, I'm afraid that's
2 going to have to be the last word. We've gone over time in
3 large measure because this has been such a fascinating
4 panel. And I --
5 MR. MARCUS: I rarely get the last word at the
6 Commission, sir.
7 CHAIRMAN KENNARD: Okay. We do have a closing
8 statement from Commissioner Ness.
9 COMMISSIONER NESS: Just basically a closing
10 thought. This was a quotation from a leading TV journalist
11 in an interview on "Fresh Air", which is a public broadcast
12 radio program.
13 "It is true we all work for bigger organizations
14 now. The fewer large organizations there are owning more
15 media, in very general terms, the potential for that being
16 worse for the media and not better is just obvious because
17 when you have a lot of media owned by a lot of people, this
18 is an obvious opportunity for much more free expression.
19 Now, the direct corollary is not that because we
20 are owned by", in this instance, "Disney that we're all
21 suddenly choking to death. Quite the opposite. But I think
22 axiomatically speaking, yes, more media in fewer hands
23 obviously has potential peril." And that speaker was Peter
24 Jennings.
25 CHAIRMAN KENNARD: And that will be the last word.

1 Thank you very much.

2 (Whereupon, at 12:50 p.m. on Friday, February 12,

3 1999, the hearing was adjourned.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: N/A

CASE TITLE: FCC EN BANC; LOCAL BROADCAST OWNERSHIP

HEARING DATE: February 12, 1999

LOCATION: Washington, DC

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: 2-12-99

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