COMMISSIONER TRISTANI: If I could interject a moment --

CHAIRMAN KENNARD: Please. I understand that you have to leave, so --

COMMISSIONER TRISTANI: I have to leave.

CHAIRMAN KENNARD: -- by all means.

COMMISSIONER TRISTANI: And I would like to thank the panelists for their incisive remarks. I'm going to watch what you're going to say now as to the questions later. And a prior engagement makes me leave. But I want to thank all of you.

And I want to thank in particular those panelists that have reminded us of the critical role that broadcasting plays in our society. Thank you, Mr. Chairman.

CHAIRMAN KENNARD: Thank you very much, Commission Tristani. And my thanks to the panelists, as well. Mr. Yudkoff, I would be interested in your response to Mr. Schwartzman's testimony. What about these thirty percent of stations that are providing no local news at all? And we understand that there are very compelling efficiencies whenever we allow one of these combinations. But what is the benefit to the public?

And your -- discussion of I believe it was the Erie situation where you talked about it was -- the LMA was really essential for that station to be able to survive.

But what do you tell the public when we see stations that are providing no news and no public affairs, none of the local programming that makes free over-the-air television so important?

MR. YUDKOFF: Well, we know that the result of LMAs has been a significant increase in the amount of local news because a short time ago, your Commission put out an FCC inquiry. And the result of that was that we learned that fifty-four percent of the brokerage stations are producing local news which compares to twenty-three percent of all non-network affiliated stations producing local news.

That is an astonishing statistic because most of the stations that are time brokered were either bankrupt or near bankrupt. So they don't even reflect the average of all non-network affiliated stations.

The reason that most owners if they have the financial wherewithal want to produce local news, they want to, is because it attracts the public away from the non-local competitors. It is the single most powerful mechanism for differentiating ourselves from the sixty cable channels that in aggregate have more audience share than the leading station in any of our markets. So I actually think that LMAs have been a tremendous driver for an increase in local news, speaking statistically.

CHAIRMAN KENNARD: But what about the class of stations -- and I'm not exactly sure what percentage there is. But I'm -- confident there is a class of stations out there that could operate as stand-alone stations, providing an opportunity for yet another voice in the marketplace, that are operating under LMAs and not providing any significant additional public-interest programming.

I mean, what -- in that class of station, what is the benefit to the public and why should a combination like that deserve regulatory relief from this Commission?

MR. YUDKOFF: I think that the issue is -- the issue I'm most experienced with is in mid-sized and small markets where the dilemma for the -- if you want to increase the number of voices in the market, the dilemma is that with a fixed pool of revenue, that that, even more than regulation, sets a finite limit on the number of stations or the quality of local programming that the marginal station can produce.

And if you want to add to that, either in terms of number of voices or the amount of local programming, other than increasing the amount of revenue which, regrettably, is not in your power to do, you can allow us to share some of the costs. And that is the -- that is the only other mechanism I'm aware of to allow stations that don't have the wherewithal or choose not to produce local programming or local news, to have the resources to do that.

CHAIRMAN KENNARD: And is it your testimony that duopoly relief should be confined to those smaller and mid-sized markets where these efficiencies are really necessary in order to promote local programming?

MR. YUDKOFF: Sir, that's really beyond my expertise. I -- I really operate in mid-sized and small markets. I'm not really prepared to speak to large market issues.

CHAIRMAN KENNARD: Commissioner Ness, anyone else?

COMMISSIONER NESS: Your testimony, however, said that duopolies should be open to all. Does that also suggest that -- or are you saying -- is it your testimony that two healthy, financially healthy stations operating in a market ought to be able to -- to merge?

MR. YUDKOFF: I think that one of the benefits that you will see from duopoly generally is by economizing on redundant costs that the viewer doesn't see or doesn't care about will increase the level of competitiveness in the areas that viewers do care about because all of the markets in which I'm familiar with are extremely heated in their competition for pleasing the viewer. And I think that what you will be doing is putting more on the screen for the viewers and creating less in the back room that no viewer appreciates or understands.

COMMISSIONER NESS: But isn't there a cost involved there and the cost being the reduction of an independent editorial voice?

MR. YUDKOFF: Well, I think that there are already antitrust regulations that set limits on the level of concentration in markets. But I also think what you're doing is creating new voices in a market because you are -- you are creating the economics where stations that are either not on the air or even more frequently are these twenty-three percent of stations that don't produce local news or local programming, they have the economic resources to enter into that competitive fray.

COMMISSIONER NESS: Well, certainly, there is a difference between stations that economically are not viable or which have been struggling economically and can't survive without support. I think there -- one could draw a distinction between that kind of situation and a kind of situation where you have perfectly healthy stations competing in the marketplace. And now you're suggesting I believe that they ought to be allowed to combine.

MR. YUDKOFF: Well, Commissioner, that is -- we're just speaking about the extremes right now. Most of the stations fall somewhere on the spectrum.

For example, in a small market, to go from an entertainment-only station to a news station requires a minimum capital investment of about a million dollars.

That's a bare-bones investment. Jeff Marcus will smile. In one of his bigger market stations, it's many times. that.

But the least you can get the news on the air with is about a million dollar capital investment. I certify to you that in a lot of these small markets, operators just cannot make the numbers work if they have to put a million dollars up before turning the lights on a local news, even though you may rightfully regard them as a reasonably successful, profitable station.

If they were allowed to share the capital infrastructure with another station in the market, to take one element of the example, that would allow them to much more economically get into the business of providing additional news voice in the market, even though they would not meet your test of being an unprofitable station.

COMMISSIONER NESS: Should it be permitted then in every market that we take the number of stations and divide it by half so that every single station ought to be able to merge with another station?

MR. YUDKOFF: I think subject to some kind of antitrust restrictions, the answer would be yes.

COMMISSIONER NESS: So the ones who happen to be at the gate last or that did not take advantage of the duopoly rules to have LMAs presently would end up not being able to combine because everyone else had combined previously?

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

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

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

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

MR. MARCUS: Well, let me say, first of all, that the reduction of minority and women owners and other individual owners has not been a result of these people being forced out of the business. These people have all sold out at enormous profits and fulfilling the American dream. This is something that many -- many of us all dream of doing in building a business and selling it at a profit.

But I would also say that the top three radio broadcasters, which own approximately a thousand stations, represent less than ten percent of the total radio stations in the country. And if you measure it by revenue, it's less than thirty percent. So there is a lot of independent and smaller ownership structures that are still out there.

Having said that, if we define diversity, not only by format, but by ownership, by gender, by -- by ethnic background, and we believe that there -- there is a desire to see that enhanced, then we are interested, and I know many others are interested in helping with that.

And we are proposing that against the backdrop of enlightened regulation, that we would be willing to have a major role in setting up a fund, a venture capital fund, that would match capital with opportunity for those qualified radio or television operators; that is, media operators, people that can demonstrate a history and an ability to run these assets. And we would back them.

We would have this run not by Chancellor, not by someone else, but by professional management. And we would invest in this altogether to try and fulfill that aspect of diversity.

CHAIRMAN KENNARD: Very interesting idea. Any other comments on what Mr. Marcus has just said? Mr. McCarthy?

MR. McCARTHY: Mr. Chairman, I think that it would be well for the Commission to recognize that there are some -- there are two clear incentives at work here which Victor Miller alluded to and several of the panelists of both panels. And that is that -- Commissioner Ness pointed out, is that news is profitable. And when I say news these days, part of that is public affairs also under the old Commission's definitions.

One, news is profitable. And then -- and in most of these markets, particularly the larger markets, there is a race, a very competitive race, to seize the franchise and to hold that franchise and extend your brand into different -- different forms like cable news channels or LMAs because that's the only thing that's distinctive about local television, is that we have a large component of our broadcast day that is locally originated -- or locally originated programming and that's news and some syndicated product.

And there is this incentive that is in operation in the penalty of what the Commission is doing. And it would be fair to recognize that incentive. And it's shown up in the LMAs from the standpoint of there definitely being new news programming put on that is differentiating news programming. It isn't just re-purposed. You've heard that word a lot obviously. Well, we all have, the re-purposing.

But the only way you can -- and this is the second incentive I'm speaking to. The only way you can continue extending your brand and extending your ability to use your news in non-entertainment programming is not have it be similar. In other words, ownership diversity -- I don't think you can say that ownership diversity means there is not viewpoint diversity.

In other words, we operate an LMA in Seattle. It isn't -- it has a news programming on -- a program on its own. It isn't the same program as our KING in Seattle. That wouldn't make sense from the standpoint of developing the franchise. In other words, you've got to differentiate your programming from all of the other video outlets. And then you've got to differentiate your programming to a great extent on our cable news networks.

We don't run -- we don't simply just re-purpose our programming and so you're just watching the main station at a different time. I think those two incentives are very powerful incentives. And they're at work now and could certainly underpin a relaxation of the duopoly rule.

CHAIRMAN KENNARD: Mr. Morris?

MR. WONDER: Chairman, I would like to speak on one particular thing that was said a moment ago. I had the pleasure of reading a comment recently that was made about Stevie Wonder. And they were talking -- it was said in a sarcastic way that I was impoverished.

The reality is that the very reason that I'm able to be here today as Stevie Wonder, born as Steven Morris, is because of the radio station that was a minority-owned station in Inkster, Michigan, WCHB, which is a daytime station.

And it was through me listening to the music and listening to the news and information that inspired me to as a little kid, far against my mother's rules -- I went and I took one of the radios she had and kind of put some plugs in different places and tried to broadcast through the house and got a whipping.

But the point I'm making is never did I imagine that I was going to be the -- the owner of a radio station. But I -- when coming to Los Angeles and hearing the station that was licensed by the city of Compton, KJLH, was so inspired by how much it sounded similar to the format of music and information as did the station that was an AM station in Inkston, Michigan.

The truth of the matter is that I a few years ago was approached to sell that station, to give it up. And I could have gotten myself forty or fifty million dollars. I love playing with money. It's okay.

But the -- the real important thing for me is that I wanted to -- far more important than -- than getting some money, I wanted to make sure that the voice of a community would be consistently heard and that it would open up a place of communication so that not that -- not just that minority community, but all various peoples of this melting pot that is to be called the United States, various cultures could be heard and united. I just wanted to make that point.

CHAIRMAN KENNARD: Thank you very much. Mr. Schwartzman.

MR. SCHWARTZMAN: I would like to make three points as fast as I can. First, you're getting some spin here. I do this by recollection and I hope I'm right. But I believe that Mr. Miller's published revenue projections for television for 1999 and 2000 is a nine to twelve percent growth which is about three times what he was talking about this morning.

We are hearing about everybody does news and news is -- is important; it's profitable. A major market group-owner issued the statement that says, "After long and" --

this is Broadcasting Magazine -- "After long and careful" -- Broadcasting and Cable Magazine, I'm an old-timer.

"After long and careful evaluation, we have concluded there is more than enough news programming in our market. The company said it could said it could better serve its viewers with entertainment programming. I don't think our strategy includes news."

This is what's going on. In fact, some of the companies again -- I hate to pick on Mr. Miller -- but some of the companies that he's -- whose stock he's recommending are going around to Wall Street saying, "We cut costs; we eliminate news departments."

One company brags it has no local programming staffs at all in all of its stations. The only thing they have in place at each of the communities where they own stations are salesmen. Everything else comes in by satellite. "What a wonderful business; why don't you invest with me." That's really what's going on here.

Number two, if you want to go along the lines of Mr. Marcus' suggestion, I think that is a very promising one, to try to find ways for meaningful amounts of capital. And as you know, Mr. Chairman, better than anybody else on earth, the amount of money that's been put together for those kind of ventures in the past has been so small as to be completely ineffective.

It's got to be a large amount of money to really be meaningful given the valuations here because you're going to have to get stations. You're going to have to buy off all of the people who are here who have got all the value.

If you're going to do that, you need very strong safeguards. Otherwise, you are going to have the LMA situation which, again, the Commission could help clarify by not sitting on appeals clarifying what the relationships with LMAs should be for years and years and years.

Number three, let's not get hung up on labels. This is not about news. I'm not saying it has to be news programming. What is news programming?

If you focus on locally-originated programming, if you focus on programming that discusses the way Commission traditionally approached it, issues of concern to the community -- give broadcasters tremendous latitude, but make them commit in exchange for any kind of relief. Make them commit to programming which comes from places or is of a nature to remediate the loss and diversity that comes with allowing some sort of common ownership.

You can have that cause and effect and you can do it in a way that will not cause discomfort intestinally for some of the people who don't like looking at content. I think it's possible to do that, but it does not involve the bright lines that your staff understandably favors.

MR McCARTHY: Mr. Chairman, could I just take thirty seconds to respond to that?

CHAIRMAN KENNARD: Certainly. Go ahead.

MR. McCARTHY: Because it isn't what's going on really. The only way you're going to get a franchise in your -- in your market is to produce a lot of non-entertainment programming, news/public affairs being a significant component. And we -- the study I referred to when Commissioner Tristani said, you know, "Show me the figures."

We commissioned a study which Wiley, Rine and Fielding did for the Gore commission which said, "Take seventeen markets" -- which happened to be the markets Belo was in -- "take the four" -- "the four main networks and take a program week, and eliminate all the commercial content; use the Commission's old program categories of non-entertainment programming -- news, public affairs and all the other non-entertainment programming exclusive of sports -- and let's see what a hundred and sixty-eight hours a week" -- "let's see what percent of that week these stations do."

The average was close to twenty-five percent of the program week, was non-entertainment programming. And the reason they're doing that is so -- because you've got to -- with your non-entertainment programming, your community service, you've got to differentiate yourself and distinguish yourself from all the other video outlets and you've got to get that franchise and extend that franchise.

And we can't -- we're limited as to how we can extend that franchise. But it's -- it's definitely in the public interest in my view.

CHAIRMAN KENNARD: But isn't the case, Mr. McCarthy, that those market incentives may be there and driving some broadcasters, but others have a different business plan and that's not part of it. And I think that's why we're seeing this discrepancy between what Mr. Schwartzman is saying and what you were saying.

There are some stations that are doing local programming and non-entertainment programming. But there is a class of stations that aren't. And we are being called upon to draw some line here. And that's what we're obviously grappling with. Jeff.

MR. MARCUS: Mr. Chairman, I would maintain that you really are going to have in the future two classes of over-the-air broadcasters. You're going to have the ones that believe in localism and the ones that don't because the race is to localism.

Cable companies over the last several years have focused on clustering. And there has been trading and swapping and buying and selling so that one company has the majority share of the market, if not the entire market.

And what they do once they get that is they go for a local news channel. And they go for local -- local programming channels. And the old issue of the access channels not being meaningful, all of a sudden they become meaningful because they can deliver the entire market. And they have all of this service that they can attract viewers with and now advertisers with.

So as broadcasters, our only defense is to go local because we can't compete with the fifty or eighty channels on -- on the cable system. And in order to go local, we need the fire power to come back at these cable companies. And I feel sort of strange arguing against my old industry. But we need the fire power to come back against the cable industry. And that's why LMAs and duopoly is important.

Not everybody goes for entertainment programming. We do news. Our differentiation in the marketplace -- and the reason our LMAs are becoming successful is because we focus on local news because that's what people want to see.

CHAIRMAN KENNARD: Thank you. Mr. Frank.

MR. FRANK: Sir, the issue -- I agree with Jeff Marcus. The issue is localism. And -- and -- but the other side of that is that when two competitors combine -- when -- when a company combines with another competitor, it adversely affects the marketplace for everyone else in the marketplace.

And you do lose the diversity of viewpoint and you do lose perhaps the public service. And those are the overriding principles.

You know, we've talked a lot about stations that are in trouble. Many of us who have taken over stations have taken them over in our company in Miami and in Detroit where the ratings were three shares, five shares; very, very low. And today, they are number one stations.

There is a period of hard work and investment. And that's what it takes to move a station up into the marketplace. And it is -- oftentimes we believe localism is the way to do that.

But just because you have a small share in the marketplace at this time does not mean you are a failing station and does mean you should be an exception to the LMA rule. When you allow -- when you allow LMAs and duopolies, what you do is really go against that principal of localism and diversity in public service.

CHAIRMAN KENNARD: Mr. Yudkoff.

MR. YUDKOFF: Mr. Chairman, I just wanted to come back to the important issue of diversity of ownership. I run an investment fund that invests in the broadcast business. And the reason we exist is to back inchoate entrepreneurs and help them to get into the broadcast businesses profitably to us.

I think that the most realistic way to make sure there is a diversity of ownership is to have a diversity in the management pool of broadcast properties which is the pool that these entrepreneurs realistically come from.

I think that a much less practical way to ensure a diversity of ownership is to regulate such that the small market stations, which are the most likely point of entry for entrepreneurs, are minimally economically viable. I don't think that will help having a diverse group of entrepreneurs unless that diversity comes from entirely other sources like -- like diverse owners who happen to be independently wealthy, completely aside from the broadcasting industry.

CHAIRMAN KENNARD: Ms. Slade.

MS. SLADE: I would like to say one thing. I'm in the radio side of the business. And we've just been through this consolidation. So you have existing operators that you can pull from, you've got a factual base if you want. You can ascertain what happened with the ownership rules changing. You -- we know what happened as far as ownership. There are fewer minorities. There are more conglomerates.

Can we assess what happened in the radio side of the business before we make all the changes in the television side? I mean, before we go into a television duopoly, can we see what impact it had from a public interest standpoint, from a diversity of interest standpoint, from a diversity of viewpoint standpoint? Can we make those assessments, ascertainments? I mean, can you do that for us before you change the rules?

Because as a small operator, I'm the one competing out there. And it's very difficult to compete with conglomerates. Just a case in point, I have a finite amount of inventory. I pitch, do my best. My numbers are what they are. I get the buy or I don't.

If I'm competing with someone that owns five, six, seven, eight radio stations and a television station and a billboard company, they're packaging it all together. They've got one-stop advertising. It's very difficult to compete.

Now, we do okay. But as you raise the bar and raise the bar, at some point you'll go under. When I came into this business ten years ago, there were five black-owned and operated facilities in Los Angeles. We are the only one now. And that's because the owner made a commitment to stay in the business.

We are committed to this industry. But the bar keeps raising and my competitors are not playing with the same rule book. I have a finite amount of inventory. They buy another station. It's very difficult. So I would submit or recommend that you evaluate what's already happened on the radio side before you make massive changes on the television side.

CHAIRMAN KENNARD: Thank you. Commissioner Furchgott-Roth.

COMMISSIONER FURCHGOTT-ROTH: Thank you, Mr. Chairman. I believe, Mr. Schwartzman, the answer to number nine down is tension. But some of this may be an academic exercise. We received yesterday a letter from several leading members of Congress giving us some guidance that's kind of unequivocal.

"There is no" -- and I quote, "There is no question that all local marketing agreements have been grandfathered permanently." And they go on to cite parts of the '96 Act.

They go further to state, "The concept of grandfathering is fairly straight-forward. These arrangements should continue as long as the parties agree. Local broadcasters have invested hundreds of millions of dollars in these arrangements. They have served the public interest. It would be unfair and inconsistent with the law to now impose post-hoc limitations. The agreements should be renewable and freely transferable. Any restrictions such as imposing a term of years, limiting transferability, or limiting an LMA to its initial contract term are flatly inconsistent with the concept of grandfathering."

Many of you on the panel have testified frequently before Congress and have some sense of how strongly they feel about some issues. And I just wondered if you could give us, the FCC, some guidance about doing something that might not be consistent with such a straight-forward, unambiguous message.

MR. SCHWARTZMAN: Commissioner, you are, to be sure, an independent regulatory body which is more clearly an arm of Congress than any other part of the governmental body. But you are an independent regulatory commission. You are delegated authority and you are charged with interpreting the laws.

Members of Congress who write the laws have some very useful things to say. But it's decided by you and by the courts. Members of Congress who provide what is referred to by the courts as post-enactment legislative history don't always find that it's follows.

And while I value the interpretations and the suggestions that these members of Congress may have received as to what that letter may have contained as they sat down together and wrote it and assembled all the cases and reviewed their extensive knowledge of LMAs, I'm reminded that we frequently see amicus briefs filed by members of

Congress. Most recently, one comes to mind is the census case the Supreme Court decided on different sides.

We had this before -- before the Commission judicial review of the Iowa Utility Board case. They both can't be right. That's why you're there. And your job is to interpret the law; not do what a member of Congress tells you in a letter you should do in interpreting the law.

MR. McCARTHY: Here is the hope for editorial diversity again. I disagree. And I don't think you can follow all of the -- the track record of the adoption of the 1996 Telecommunications Act without reading Congressional intent, legislative intent, that the Commission was asked to review some of these -- these rules, some of which go back to the '60s and with the purpose of rescinding those that no longer had any credibility in the marketplace we're in.

And the companion acts of Congress essentially de-regulating the other telecommunications providers I think is a very strong indicator of Congressional intent. I -- I agree with you wholeheartedly that LMAs were intended to be grandfathered.

And the newspaper broadcast cross-ownership rule and all the other rules which had their beginnings in the '60s and '70s, the purpose of -- of putting in this -- this by any old review is saying, "Well, we'll defer to a certain extent to the Commission." But bear in mind, this is what we -- this is how strongly we feel about these. We're starting to de-regulate the other ones. And the purpose is you look at them and de-regulate what doesn't make any sense, duopoly certainly being one of them.

MR. MARCUS: I would only add that I would agree with Mr. McCarthy. And I think the language and the legislative intent is very clear. And we see these letters coming to the Commission with greater frequency because I think the people that were a part of the process are concerned that the process may not be carried out. And so I would -- I would say that the intention of Congress needs to be followed here.

And if that were the case, if that were to happen, then I think that we would see greater opportunities for new entrants, minority and other new entrants into the -- into the business because there would be much more activity in the duopoly side and the LMA side.

And certainly, those of us that would like to invest in the -- in the venture side of it to bring on new entrants would feel that the laws that were adopted in 1996 and codified further in 1997 were being followed. We have to have a stable regulatory scheme. We have to be able to rely on what's been passed and not have the rules changing all the time because we are making major, major investments that are based upon -- on a regulatory scheme that has to remain intact.

CHAIRMAN KENNARD: Let me just say one thing about this point because I'm the one that most of these letters are addressed to. And I look at them all. And I study them carefully.

And I have not seen since I've been Chairman or when I was General Counsel at this Agency, I have never seen a controversial issue where there has been unanimity in the letters that we have received from Congress. And this issue is no different. Commissioner Ness?

COMMISSIONER NESS: Mr. Marcus, just following up on your last point. How many stations do you own presently?

MR. MARCUS: When all the pending transactions close --

COMMISSIONER NESS: Please.

MR. MARCUS: -- we own four hundred and sixty-seven radio stations and thirteen TV stations --

COMMISSIONER NESS: So --

MR. MARCUS: -- including four LMAs.

COMMISSIONER NESS: So you've profited tremendously from the great liberalization under the 1996 Telecom Act. Is that not right?

MR. MARCUS: Well, I don't know if profit is the right word. We've been able to consolidate.

COMMISSIONER NESS: Is there any reason why today you could not contribute substantially to a fund to provide for minority ownership that's run independently? Is there anything preventing you from doing so today?

MR. MARCUS: The instability of the regulatory scheme.

COMMISSIONER NESS: Is preventing you from making a contribution.

MR. MARCUS: That's correct.

COMMISSIONER NESS: Is there anything -- I'll ask this generally of the panel. Is there anything preventing companies today from owning, for example, a cable channel in their market? I would point out, in Washington, D.C., there is Channel 8 which is owned by Albritt -- a subsidiary of Albritt Communications Broadcast Company. It provides for the opportunity to amortize the cost of providing the news operation.

Is there anything that's preventing a company today from owning an internet business, from owning a satellite channel, from owning magazines in the marketplace, from owning broadcast properties outside of the marketplace? Is there anything that's preventing these companies from participating in the vast assortment of communications outlets with the exception of a very narrow, specific situation within the local market?

MR. McCARTHY: I think that -- you certainly can lease cable news channels. But I would sort of turn that question around and say the -- the ability of our competitors to do far more than we can.

And TCI could buy the Dallas Morning News, for example, in Dallas if it wished. We couldn't buy a cable system. We couldn't buy another TV station in that market. You know, Microsoft could come in and buy most or all of the media facilities in any market. It's regulatory parity that is the issue.

We have -- we have some freedom and we've used that freedom in developing cable news networks. But we don't have as much freedom as our competitors.

COMMISSIONER NESS: Mr. McCarthy, I would suggest that you have an opportunity for a second channel in your marketplace. In fact, you have an opportunity with the digital broadcast system to provide a wide assortment of programming in your market for the public. And that's what certainly we are hoping will be happening as we convert from analog to digital.

MR. McCARTHY: But Commissioner Ness, I think that you have to -- and I'm sure you're aware that no one is watching. There are very few digital TV sets out there. And this is going to take a long time --

COMMISSIONER NESS: No one was watching television when it first went on the air, I'm sure --

MR. McCARTHY: Well --

COMMISSIONER NESS: -- many years ago.

MR. McCARTHY: -- we all have to, when we make investments, see the return.

COMMISSIONER NESS: Nobody was listening to FM radio when that first went on the air.

MR. McCARTHY: And we're hopeful that this will do as well as FM radio. But the fight is at the local level, the fight is for the viewer's eyeballs competing with the cable operators for the fragmentation, trying to fight back against the fragmentation of the video marketplace.

And in order to -- to do that, we have to have additional power in the marketplace so that we can attract those eyeballs. And we as a company, and I know Belo as a company and many others, are willing to make the commitment to develop those stations. But -- and we have made the commitment to develop those stations.

And I would -- I would maintain that if we can't do this, that there will be further fragmentation of the marketplace. And we've seen this. If you look twenty years ago at the network share, what it was and what it is today, and it continues to erode, it is going more towards the cable operators, more towards -- and as the cable operators cluster, more towards local. And we have to have the ability to fight back.

CHAIRMAN KENNARD: Mr. Marcus, I'm afraid that's going to have to be the last word. We've gone over time in large measure because this has been such a fascinating panel. And I --

MR. MARCUS: I rarely get the last word at the Commission, sir.

CHAIRMAN KENNARD: Okay. We do have a closing statement from Commissioner Ness.

COMMISSIONER NESS: Just basically a closing thought. This was a quotation from a leading TV journalist in an interview on "Fresh Air", which is a public broadcast radio program.

"It is true we all work for bigger organizations now. The fewer large organizations there are owning more media, in very general terms, the potential for that being worse for the media and not better is just obvious because when you have a lot of media owned by a lot of people, this is an obvious opportunity for much more free expression.

Now, the direct corollary is not that because we are owned by", in this instance, "Disney that we're all suddenly choking to death. Quite the opposite. But I think axiomatically speaking, yes, more media in fewer hands obviously has potential peril." And that speaker was Peter Jennings.

CHAIRMAN KENNARD: And that will be the last word.

Thank you very much.

(Whereupon, at 12:50 p.m. on Friday, February 12, 1999, the hearing was adjourned.)

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

Sharon Bellamy

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

Date: 2-18-99

Bonnie Nieman

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PROOFREADER'S CERTIFICATE

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

Date: 2-22-99

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