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MEDIA
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**TESTIMONY OF
ANDREW JAY SCHWARTZMAN
PRESIDENT, MEDIA ACCESS PROJECT**

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

***En Banc* Hearing on Local TV Ownership Rules**

February 12, 1999

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STATEMENT OF ANDREW JAY SCHWARTZMAN

Broadcasting is, and remains, the most powerful and effective medium of local expression ever created. The imminent conversion of both radio and TV to digital transmission insures that local TV and radio will maintain their unique role in our lives for a long time to come.

This is what I will discuss:

- Broadcasters have leveraged their local monopoly power at the expense of real localism. For more and more broadcasters, localism is a marketing device, not a commitment to local public service.
- Broadcasters' exaggerated and self-serving prophecies of incipient, if not imminent, financial woes to justify regulatory relief are no more valid than they have been in the past. Historically, the biggest threat broadcasters face is from the debt service they voluntarily incur.
- The Commission should retain firm limits on local broadcast ownership, and condition any new waiver policies upon receipt of specific, enforceable and concrete commitments to provide service and diversity which remediates at least part of the harm caused by new ownership concentration.
- The prospect of liberalized local cross-ownership brings special importance to retaining the Commission's cross-interest policy. I vehemently oppose its modification or repeal.
- Whatever else the Commission should do, it should not countenance use of LMAs or any other device designed to evade its ownership rules. If the Commission wishes to authorize increased local ownership it should do so directly. Anyone entering an LMA did so with the intent of doing something not otherwise permitted by FCC rules. LMA operators should have the same right to seek a waiver of ownership rules as any other broadcaster, but their tactics should not be rewarded with special treatment.

I urge you not to shrink from protecting and expanding diversity. The easy part of the job is make decisions where everything can be thoroughly quantified. But the Communications Act contemplates that the Commission making just such difficult judgments. The fact that evaluating diversity may be more subjective is a good reason to employ content-neutral, viewpoint-neutral structural policies such as ownership rules. It is not a justification to refuse to act.

Diversity and localism matter. Concentrated broadcast ownership diminishes both. In re-enacting the public interest standard, and in placing attention on local ownership, and in affording protection for local TV stations in their service areas Congress has also restated its endorsement of diversity policies and its insistence on licensing broadcasters locally.

Repeal of local ownership rules to create larger local station combinations, increased TV/radio cross-ownership, and TV duopolies may well generate economic efficiencies. However, this does not automatically translate to more, or more varied, programming. It does not insure that broadcasters address the needs of citizens who are demographically unattractive. And it most certainly does not replenish the creative gene pool to insure that broadcasting can stay in touch with ethnic and social diversification of American society.

Many of the people in this room have heard me say that we have the best system of broadcasting in the world, and that this is because, not in spite of, policies established by the Communications Act of 1934. I fear this is less true today than in the past. There is, as there should be, a lot of good programming, and dedicated public service in this country, but the American people are not receiving their fair share of the supposed benefits of changed ownership rules.

My hometown radio station, WVOX in New Rochelle, New York, is a good example of what we have now, and may lose. It is owner-operated, by a colorful man known to many people here today, Bill O'Shaughnessy. He and I don't agree on much, but his station covers his community, its issues and responds to its tastes. He appears to be prosperous.

Stations like WVOX are endangered by the megachains, for reasons others here can explain better than I. But this local contact is important, and it is being replaced more and more by distantly-manned, computer formatted, distant signal syndicated, management by formula broadcasters who have local licenses, but no local ties.

What does localism mean to broadcasters? Well, to the Television Bureau of Advertising, it is a marketing idea. Its new ad campaign proudly extols the special, localized nature of consumer tastes, telling advertisers that they can "connect your brand to local communities, and hit people where they live."

If TV broadcasters can derive premium revenues by connecting brands to communities, they ought to be to find a way to provide mean even a minute per week of locally originated programming. Many radio stations, and more and more major market TV stations, do not.

They ought to be able to staff stations with programming personnel, not just salesmen, and to have independent news programming or other coverage of local affairs reflecting the different perspective of every station owner in the market.

I will spare you the long version of this seemingly endless debate, but history is relevant and instructive. About 15 years ago, responding to concerns of some - but by no means all - broadcasters about the threat of competition from DBS and from cable, the Commission began to lift limits on broadcast station ownership. It promised an even healthier industry which would generate new and diverse programming.

There followed what was, by standards of the time, a frenzy of mergers and consolidation. By 1990, talk turned from program service to debt service. The problem was not competition, it was greed. As loan defaults and bankruptcies became more frequent, the Commission staff issued a stunningly unprophetic report predicting the demise of broadcasting as we knew it unless there was immediate and substantial changes in the Commission's ownership rules. See, *Broadcast Television in a Multichannel Workplace*, 6 FCCRcd 3996 (1991).

Times are good again, but the inaccuracy of past predictions doesn't stop broadcasters from perceiving new threats, and demanding - yet again - relaxation of the ownership rules.

In considering whether to ease duopoly, cross-ownership and other rules, the Commission should view broadcasting's prospects as broadcasters *really* see them, not as they are recast for your consumption. While some broadcasters have told the FCC that competition from other multichannel providers necessitates relaxation of the multiple ownership rules, that is not what they tell each other. It is not what their promotional arm, the Television Bureau of Advertising, says. It is not what they say on Wall Street. And it is not what their balance sheets show.

Stations are trading at or near historic valuations, regularly reaching 10, 12 and 14 times cash flow. Stock prices are soaring. And, most depressingly of all, to our amazement and judicially reviewable dismay, the members of this Commission have irrationally and - literally inexplicably - voted yet another multibillion dollar handout to TV broadcasters by permitting

them to use free publicly owned spectrum for home shopping without having to pay fees.

Broadcasting is in fine shape. Look at the CPMs. The fragmentation of audience makes broadcasters' unique and exclusive reach into every home all the more valuable. Audiences may grow less quickly, but each viewer is increasingly more valuable. The cost per thousand for spot TV is 25-30% above what it was five years ago.¹

Just last month, *Broadcasting and Cable* began its annual advertising outlook by saying that "industry [is] upbeat about the millennium."² David Poltrak of CBS pooh-poohed the slow erosion of network audiences, pointing out that the networks "still deliver mass audiences."³

Neil Braun, until recently the President of the NBC Television Network, gave this explanation of why broadcasting has a bright future:

*Why didn't the explosion in channel choices across cable and satellite spectrum diminish the allure of broadcast television?...First, cable has come to be viewed by savvy marketers not as a competitor to broadcast television, but as a complement to it...[T]he advertising capabilities that the two offer are markedly different. Each cable network's strength is delivering a niche audience over time, while each broadcast network delivers a mass market fast and often. ****Second, with increased choices in everything...only strong brands will prosper. For example, the powerful Peacock brand makes possible a symbiotic relationship between NBC's cable and broadcast properties***Third, the notion of broadcast television's "declining share" has obscured the reality of tremendous growth. The size of the audience pie continues to expand**** Fourth, the increasing fragmentation of society-and the audience-makes broadcast television even more valuable. To make the next sale, an advertiser has to reach all the ready to buy consumers. Broadcast television reaches 97 percent of U.S. homes every week.⁴*

The networks are, as always, the loudest whiners. The notion that networks may not

¹See Attachment A. According to TvB, The CPM for thirty second early evening spot was \$4.62 in 1993, and \$6.58 in 1998.

²*Broadcasting and Cable*, 1/4/99, p. 30.

³*Id.*

⁴Neil Braun, "Why cable hasn't killed broadcasting" (Guest Commentary), *Electronic Media*, 3/17/97, p. 16.

make money is much more a function of accounting tradition than reality. It has long been useful to allocate profits to locally-owned stations, but as an integrated distribution mechanism, networks and stations together have always done well, and continue to do well. Moreover, the repeal of financial interest and syndication rules has generated profitability in the networks' production and studio divisions. Most recently, the network public relations machine focussed attention on how cable networks are tapping into a small portion of network prime time audiences with off-network syndicated material; the stories never mentioned that the networks now own all or part of those programs and therefore profit from cable's transmission of them.

The prospects of local TV are even better. Reporting a consensus projection of 5% ad revenue growth, *Broadcasting and Cable* concludes that "Analysts said local broadcast stations will continue to attract increased advertising dollars despite declining audience share brought on by surging cable television viewership,..." *Id.* I would add that much, even most, of cable viewership is of retransmitted broadcast service.

To discuss the real impact of cable, I will rely on the TvB, the industry's promotional arm. Its recent factsheet, "*Ten Cable Facts You Should Know*," included here as Attachment B, shows why broadcasting still extracts a premium cost per thousand. It forcefully makes the case that broadcasters deliver vastly superior audience size and demographics and complete demographic penetration:

1. *Cable penetration high; individual cable networks low.*
2. *Cable is cannibalizing itself.*
3. *Broadcast delivery is 17 times greater than cable.*
4. *On the level playing field, broadcast has an advantage of 82%.*
5. *Cable road blocks negate targeting value.*
6. *Broadcast delivers millions; cable delivers thousands.*
7. *Cable viewing: (A few watch a lot, most watch very little.)*
8. *The "Cable Faithful" - small and not particularly desirable.*

9. *Industry nomenclature can be misleading.*

10. *Cable networks don't deliver their audience evenly.*

Broadcasters' gloom and doom scenario overlooks other facts as well. As we have explained in our prior comments, they:

- Ignore the consolidation that has already taken place, and continues to take place, in broadcasting.
- Overstate the number and power of current multichannel video competitors, and understate the extent to which broadcasters also have ownership interests in these competitors.
- Fail to mention how digital television technologies promise to convert broadcasters from single channel to multichannel providers.
- Make unsubstantiated promises of public benefits from economies of scale that would result from common ownership.

However welcome it may be, the emergence of new multichannel providers does not counteract the loss of diversity which would accompany relaxation of the duopoly rule. The fact that several different technologies may soon deliver programming does little to change this, since multiple and cross ownership of these distribution technologies means that their programming will be under common editorial control of the same entities now dominating the program production. And, although the number of broadcast stations has doubled, increasing multiple ownership may have actually *decreased* the number of independent voices.

If the Commission were to liberalize waiver policies for duopolies and TV cross-ownership, it should do so only in compelling circumstances, and only when applicants make specific, *enforceable* and reviewable promises of additional programming that goes beyond the "public interest programming" already required of them. Unsubstantiated, self serving promises that cost savings will be shared with the public are worthless.

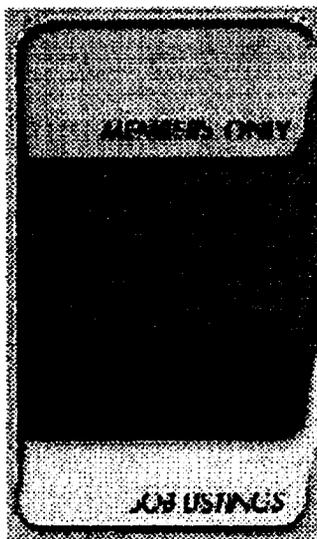
However, no special sympathy should be directed at operators of LMAs. As one of the leading members of the Communications Bar said to me, the term itself is a euphemism for the

phrase "unlawful transfer of control." Broadcasters shamelessly describe LMAs as being a device which permits otherwise impermissible ownership. Since 1991, when there was exactly one LMA known to the Commission, we have submitted objections to LMAs in the dockets now before you. Our timely objections and the Commission's clear statement that their status was in doubt is more than ample notice to meet any legal or equitable standard.

As long as the ownership of LMAs is not attributable to the real party in interest, the Commission's ownership rules have no meaning. Please: pick a permissible ownership limit and enforce it. I may not like the number you choose, but it will have meaning. As long as there are LMAs you needn't bother to have rules.

Parties urging that the Commission grandfather old LMAs and permit new ones have neither statutory or equitable reasons to do so. LMAs evade the ownership rules, and facilitate unauthorized transfers of control. Worst of all they fuel cynicism and disrespect.

ATTACHMENT A



TRENDS IN MEDIA

**SPOT TELEVISION COST AND CPM TRENDS
TOP 100 MARKETS/30-SECOND COMMERCIAL**

	HOUSEHOLDS PER RATING PT.	COST PER HH RATING PT.	COST PER 1000 HOMES
LATE NEWS (M-F):			
1982	703,092	\$4,482	\$6.37
1983	717,905	4,421	6.16
1984	722,326	5,104	7.07
1985	732,211	5,731	7.83
1986	739,414	5,498	7.44
1987	752,863	5,808	7.71
1988	762,958	6,424	8.42
1989	774,048	6,016	7.77
1990	790,405	6,416	8.12
1991	798,727	6,739	8.44
1992	790,891	7,184	9.08
1993	799,836	7,210	9.01
1994	808,886	7,673	9.49
1995	817,608	8,503	10.40
1996	820,662	10,545	12.85
1997	829,690	10,608	12.79
1998	838,790	10,440	12.45
LATE NIGHT (M-F):			
1982	703,092	\$3,648	\$5.19
1983	717,905	3,267	4.55
1984	722,326	3,460	4.79
1985	732,211	3,837	5.24

network, you must buy multiple spots during a time period (road blocking) on various cable channels, i.e. CNN, Lifetime, MTV, A&E, etc., thereby losing the targeting benefits of cable.

6. Broadcast delivers millions; cable delivers thousands. Both cable and broadcast produce high indices among high-income demos as well as among men 25-54 in HH with \$60,000+ incomes. The difference is that broadcast delivers high density.

(Source: NMR/PNAD, Various Analyses.)

7. Cable viewing: (A few watch a lot, most watch very little.)

Heavy cable viewers (15% of the total) watch cable 23 hours a week, more than all other cable viewers combined.

(Source: CBS/NTI Custom Analysis, Nov. 1997)

8. The "Cable Faithful"...small and not particularly desirable. Heavy cable viewers are less affluent and less educated than the total cable audience and the total U.S. population.

(Source: CBS/NTI Custom Analysis, Nov. 1997)

9. Industry nomenclature can be misleading. Take "Cable Households" and "Non-cable Households," for example. ALL cable households are also broadcast households, and non-cable households are ONLY broadcast households.

10. Cable networks don't deliver their audience evenly. Like all national media, there is inconsistency market by market. A program with a 1.1 rating in "market A" may get a 0.3 in "market B". You have no control.

[Back to Broadcast vs. Cable: The True Story](#)

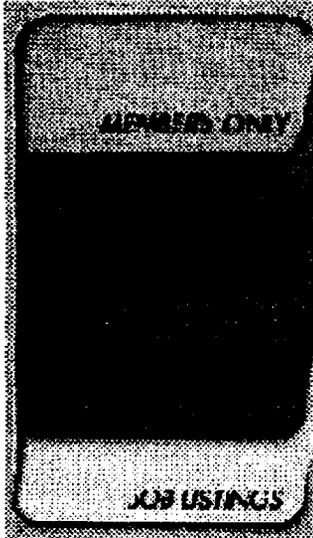
1986	739,414	3,803	5.14
1987	752,863	4,052	5.38
1988	762,958	4,509	5.91
1989	774,048	4,665	6.03
1990	790,405	4,954	6.27
1991	798,727	4,819	6.03
1992	790,891	5,169	6.54
1993	799,836	5,117	6.40
1994	808,886	5,144	6.36
1995	817,608	5,523	6.76
1996	820,662	7,352	8.96
1997	829,690	7,409	8.93
1998	838,790	7,417	8.84

SOURCES:

MEDIA MARKET GUIDE, 1ST QUARTER EACH YEAR (COSTS)
 NIELSEN MEDIA RESEARCH, NSI (HOUSEHOLDS)

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ATTACHMENT B



■ CABLE AND BROADCASTING FACTS YOU SHOULD KNOW ■

1. Cable penetration high; individual cable networks low. Wired cable penetration is currently 67.2% of TV households. No single cable network comes close to reaching that figure during an average week. TBS has the highest net weekly circulation with 43%, while The Learning Channel, at #10 reaches only 24%. The major broadcast networks typically score in the mid to high 80s.

(Source: NMR/NTI Jan'98, NCAR 1st Q '98.)

2. Cable is cannibalizing itself. Cable claims ratings increases. Taking a closer look, we see that cable's Primetime delivery in Feb. '97 was 19.5, while, Feb. '98 averaged a 22.1. If you divide these ratings by the number of existing cable networks (133 in '97 vs. 148 in '98) the result is an average rating of 0.15 for both periods... no change. All the increase appears to be coming from the new networks.

(Source: NMR/NCAR, 2/97 & 2/98, Primetime; NCTA, Estimated Cable Network Counts.)

3. Broadcast delivery is 17 times greater than cable. The 35 measured cable networks in Feb. '97, averaged a 0.5, as did the 40 networks measured in Feb. '98. For the same periods, the 6 broadcast networks averaged an 8.9 and 8.8 respectively. During these periods, the average broadcast network delivery was 17 times greater than the major cable networks.

(Source: NMR/NCAR, 2/97 & 2/98, Cable Primetime; NMR/NTI, Ranking-Plus, 2/97-2/98, Primetime Broadcast Networks.)

4. On the level playing field, broadcast has an advantage of 82%. When comparing itself to broadcast, cable invariably uses All ad-supported national & regional cable networks, and typically only ABC, CBS, FOX & NBC. Completely ignored are WB, UPN, Univision & Telemundo, and 200+ Independent stations. Apples to apples, we win.

(Source: NMR/NCAR, Primetime Ratings, Sept. '97-May '98.)

5. Cable road blocks negate targeting value. Cable claims that it can reach a very select audience. Then they tell you to achieve the same cume rating on cable as ONE spot on a broadcast