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A COMPARATIVE ANALYSIS OF THE BROADCAST TELEVISION NATIONAL MULTIPLE OWNERSHIP RULE AND CABLE HORIZONTAL OWNERSHIP RULES

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I. INTRODUCTION AND QUALIFICATIONS

1. My name is Michael L. Katz, and I declare as follows. I am the Edward J. and Mollie Arnold Professor of Business Administration at the University of California at Berkeley. I hold a joint appointment in the Haas School of Business Administration and the Department of Economics. I serve as Director of the Center for Telecommunications and Digital Convergence at the University of California at Berkeley. I have also served on the faculty of the Department of Economics at Princeton University. I received my A.B. from Harvard University *summa cum laude* and my doctorate from Oxford University. Both degrees are in Economics.

2. I specialize in the economics of industrial organization, which includes the study of antitrust and regulatory policies. I regularly teach courses on microeconomics, business strategy, and telecommunications policy. I am the author of a microeconomics textbook, and I have published numerous articles in academic journals and books. I have written articles on several issues, including network effects, antitrust policy enforcement, and telecommunications policy. Exhibit A lists all publications that I have authored or co-authored, with the exception of a few letters to the editor on telecommunications policy. I am a coeditor of the *Journal of Economics & Management Strategy*, and I serve on the editorial board of the *California Management Review*.

3. In addition to my academic experience, I have consulted on the application of economic analysis to issues of antitrust and regulatory policy. I have served as a consultant to both the U.S. Department of Justice and the Federal Communications Commission ("the Commission") on issues of antitrust and regulatory policy in telecommunications markets. I have served as an expert witness before state and federal courts, and I have provided expert testimony before a state regulatory commission as well as Congress. In 1994 and 1995, I served as Chief Economist

of the Commission. Since leaving the Commission, I have appeared before it at several public forums.

4. I have been asked by counsel for Fox Television Stations, Inc. to analyze the relationship between the rules governing national multiple ownership of broadcast television stations and the rules governing national multiple ownership of cable television systems. Drawing on my training and experience as an economist, my review of the facts, and my knowledge of the broadcasting and cable television industries, I find the following:

- Superficially, the broadcast television national multiple ownership rule and the cable horizontal ownership rules are similar. But, in fact, the rules use very different bases for calculating whether an owner exceeds the relevant cap.

- The industries to which the rules apply also are very different. A typical cable system has much greater *absolute* programming capacity and accounts for a much greater *share* of viewers and capacity in its local area than does a television station.

- Because of the differences both in how ownership is calculated and in the underlying industries, application of the superficially similar rules leads to very different effects in practice: The cable horizontal ownership rules allow for a much greater degree of concentration than does the broadcast television national multiple ownership rule.

- Under the current rules, cable ownership is much more concentrated at the national level than is broadcast ownership. By any reasonable measure, national ownership of broadcast television stations is highly fragmented and is not concentrated. Sinclair Broadcast Group, Inc.—the largest group owner measured in terms of the number of television stations controlled—owns fewer than five percent of U.S. commercial television stations. Fox Television Stations, Inc.—the largest broadcast television group owner measured by national reach—owns stations that on average are viewed by less than three percent of U.S. television households. Similarly, Fox owned and operated stations accounted for less than four percent of national broadcast television capacity for reaching viewers.

- The Commission recently found that allowing increased concentration of cable system ownership is in the public interest. This finding is one more piece of evidence that it is in the public interest to abolish or substantially relax the broadcast television national multiple ownership rule.

The remainder of this declaration explains the factual and logical analysis that leads to these conclusions.

II. BACKGROUND

5. Both cable multiple systems operators ("MSOs") and broadcast television station group owners are subject to national ownership limits. Broadcast television ownership is governed by the national multiple ownership rule, under which a single entity cannot control stations whose combined reach exceeds 35 percent of U.S. television households.[1] Cable television ownership is governed by the cable horizontal ownership rules, under which no cable operator can control systems serving more than 30 percent of all multichannel video-programming subscribers nationwide.[2] The Commission has found that this is effectively a 36.7 percent cap on U.S. cable households.[3]

6. On the surface, the broadcast and cable rules are similar. In each case, the ownership cap is intended to prevent a single owner from acting as a media gatekeeper by exercising market power as a buyer (so-called monopsony power) or by limiting viewer options.[4] And in each case, a single owner is not allowed to control distribution systems covering more than about a third of the households reached by the respective industries.

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1 47 CFR § 73.3555(e). When a group owner holds two licenses within a single Designated Market Area, that audience is counted only once for purposes of the national reach cap. See *In the Matter of Broadcast Television National Ownership Rules, Review of the Commission's Regulations Governing Television Broadcasting, and Television Satellite Stations Review of Policy and Rules,* Report and Order, released August 6, 1999, ¶ 1.

2 47 CFR § 76.503.

3 See *In the Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992 and Horizontal Ownership Limits,* Third Report and Order, MM Docket No. 92-264 (*"Horizontal Ownership Third Report and Order"*), released October 20, 1999, ¶ 6.

4 For a summary of the rationale for the cable horizontal ownership rules see *Horizontal Ownership Third Report and Order,* ¶¶ 13-14. Proponents of the broadcast television national cap argue that it protects the public interest in several dimensions, including: (a) competition; (b) diversity; (c) minority ownership; and (d) localism. It is notable that promoting minority ownership and localism were not originally stated as rationales for the adoption of the national multiple ownership cap. See *In the Matter of Amendment of Section 73.3555 [formerly Sections 73.35, 73.240, and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations,* Report and Order, released August 3, 1984, ¶ 17.

7. While they set similar numerical limits, the broadcasting and cable television ownership rules are in fact very different. A critical difference arises in how an owner's national share is calculated. Under the cable horizontal ownership rules, only actual cable subscribers—not all homes passed—are included in the calculation of whether an MSO meets the ownership cap. Under the broadcast television national multiple ownership cap, however, all homes reached or "passed" are counted against the cap. As the data discussed below will make clear, this distinction is an extremely significant one.

8. Moreover, because they apply to such dissimilar industries, even if the rules were the same, their effects would be very different. A typical television viewer can be reached through only one cable system, and that system offers scores of channels. In contrast, a typical television viewer can choose among several broadcast stations, each of which offers only one channel of programming. Consequently, even if a broadcast station owner controlled stations with 100 percent national reach, that owner would not be able to restrict the supply of independent programming to viewers or exercise significant monopsony power in the purchase of programming—there would be too many alternative outlets through which programmers and viewers could reach one another.

9. Both because the rules are not really equal, and because the industries to which they apply are dissimilar, the application of apparently equal limits to broadcast and cable television ownership allows much greater concentration in cable television than in broadcast television. The next section documents the differences between broadcast and cable television in greater detail and examines the implications for ownership concentration.

III. THE BROADCAST TELEVISION AND CABLE TELEVISION INDUSTRIES ARE VERY DIFFERENT

10. There are a number of differences between the broadcast and cable television industries. All of these differences indicate that concentrated national ownership raises greater competitive issues in the cable industry than in the broadcast television industry.

A. Cable Viewing Markets are Much More Concentrated than are Broadcast Viewing Markets

11. One of the important differences between the two industries is in the concentration of ownership. In order to determine the degree of ownership concentration, one must define the relevant markets. Once these markets have been defined, it is possible to calculate market shares if sufficient data are available. The calculated market shares often are used to provide an indication of the presence or absence of market power, although it is widely recognized that several other factors must be taken into account as well.

12. Relevant markets are defined along two dimensions: the scope of the products included and the geographic scope. A fundamental principle by which economists define the product scope of a market is to include two goods or services in the same relevant market if consumers view them as sufficiently close substitutes, and not include them in the same relevant market if consumers do not view them as substitutes.[5] Similarly, the central approach to geographic market definition is to include products available at two locations in the same relevant market if they are viewed by consumers as being substitutes for one another, and to place them in separate markets if consumers do not view them as substitutes.[6]

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[5] See, for example, U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines*, April 2, 1992 (revised April 8, 1997) (*"Merger Guidelines"*) § 1.11, and *In the Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, FCC 97-286 (*"NYNEX-Bell Atlantic Order"*), released August 14, 1997, ¶ 50.

[6] See *Merger Guidelines*, § 1.2, and *NYNEX-Bell Atlantic Order*, ¶ 50.

13. In terms of product scope, the Commission apparently considers broadcast television and multi-channel video programming distribution ("MVPD") to be separate and distinct relevant markets, for at least some purposes.[7] It is evident that the relevant product markets are no narrower than broadcast television and MVPD. There are good reasons to conclude that the product scope relevant for the analysis of the broadcast television national multiple ownership cap is broader than broadcast television.[8] Rather than debate the appropriate scope of product markets here, however, I will examine concentration of broadcast television and MVPD "markets." By taking a narrow approach to product market definition, I am erring on the side of overstating the degree of concentration and resulting competitive concerns.

14. Now, consider the geographic boundaries of relevant markets. As the Commission has long recognized, the single most important fact in analyzing the effects of ownership concentration on viewers and advertisers is that viewing takes place at a local level.[9] This fact implies that the relevant markets for assessing the effects of concentration on viewer choice are local.

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7 In particular, the cable horizontal ownership limit is based on MVPD *subscribers* and thus appears to exclude broadcast television from consideration (*Horizontal Ownership Third Report and Order*, ¶ 5). In its annual assessment of competition in the delivery of video programming, the Commission identifies broadcasters as participants in the MVPD market, but then broadcasters are excluded as market participants in the calculations of market concentration. See *In the Matter of Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming*, Fifth Annual Report ("*Video Competition Report*"), released December 23, 1998, ¶¶ 95 and 128. The extent to which the Commission considers cable television channels to compete with broadcast television is even more difficult to discern.

8 For an overview of how cable and direct-to-the-home satellite television channels compete with broadcast television for viewers and advertising, see Michael L. Katz, "Old Rules and New Rivals: An Examination of Broadcast Television Regulation and Competition" ("*Katz White Paper*"), September 1999, at 52-82, submitted as an attachment to "Supplemental Comments of Fox Television Stations, Inc.," *In the Matter of 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, submitted 18 November 1999.

9 See, for example, *In the Matter of Amendment of Section 73.3555 [formerly Sections 73.35, 73.240, and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, Report and Order, released August 3, 1984, ¶¶ 10 and 31.

15. An examination of the data clearly demonstrates that local MVPD markets are far more concentrated than are local broadcast television markets. The vast majority of local markets have only one cable system. Direct-to-the-home satellite television provides competition, but it is limited by lack of local channels.[10] The situation in broadcast television is very different. More than half of all television markets have seven or more television stations.[11] And because markets with larger populations tend to be the ones with greater numbers of stations, the majority of television households are located in markets with 11 or more stations.[12]

16. The differences in concentration can be summarized by calculating market shares and the resulting Herfindahl-Hirschman indexes (HHIs) for local markets in cable and broadcast television.[13] The Commission, the Federal Trade Commission, and the U.S. Department of Justice all use the HHI as a measure of concentration and a rough tool for identifying markets in which the size and number of suppliers may raise competitive concerns.[14] Using national data to construct a representative local market, the Commission found that an average cable system had a market share of over 85 percent in June 1998 and the estimated HHI was 7,015.[15] As the Commission itself noted, this is far above the threshold used by the U.S. Department of Justice and the Federal Trade Commission to determine that a market is highly concentrated.

17. No broadcast station comes close to having an 85 percent market share. Table 1 illustrates the prime time shares of the affiliates of leading stations in three markets.

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10 *Video Competition Report,* ¶ 63. This disadvantage is expected to diminish as the result of legislation.

11 Warren Publishing, Inc., *Television & Cable Factbook,* Stations Volume No. 67, 1999 Edition, "Affiliations by Market," C-48 – C-51.

12 Warren Publishing, Inc., *Television & Cable Factbook,* Stations Volume No. 67, 1999 Edition, "Affiliations by Market," C-48 – C-51.

13 The HHI for a market is calculated by summing the squared market shares of the sellers in that market.

14 See, for example, *Video Competition Report,* ¶ 127, particularly footnote 562.

15 *Video Competition Report,* ¶ 128. According the Commission, cable's market share fell to 82 percent by June 1999 (*Horizontal Ownership Third Report and Order,* ¶ 29, typographical error in original).

Table 1
Prime Time Station Shares

Stations	Share of Television Households	Share of Television Viewers	Share of Broadcast Television Viewers*
New York City, #1			
WNBC: NBC	10.4	15.6	20.2
WABC: ABC	8.4	12.6	16.3
WCBS: CBS	9.0	13.5	17.5
WNYW: FOX	6.2	9.2	11.9
WWOR: UPN	3.7	5.6	7.2
WPIX: WBN	5.4	8.3	10.7
WXTV: IND	3.0	4.5	5.8
WNET: PBS	1.9	2.8	3.6
WPXN: PAX	1.4	2.1	2.7
WLNY: IND	0.5	0.8	1.0
WLIW: IND	0.5	0.8	1.0
WNJU: IND	0.4	0.7	0.9
WNJN+: IND	0.3	0.5	0.6
NY1: IND	0.2	0.2	0.3
WNYE: IND	0.1	0.1	0.1
Total	**51.4**	**77.3**	**100.0**
Indianapolis, #25			
WTHR: NBC	11.3	17.8	25.3
WRTV: ABC	7.3	11.5	16.3
WISH: CBS	10.0	15.8	22.4
WXIN: FOX	5.2	8.0	11.4
WNDY: UPN	2.3	3.6	5.1
WTTV+: WBN	5.4	8.5	12.1
WFYI: IND	1.9	2.9	4.1
WIPX: PAX	0.8	1.3	1.8
WIPB: IND	0.3	0.4	0.6
WALV: IND	0.2	0.4	0.6
WHMB: IND	0.1	0.2	0.3
Total	**44.8**	**70.4**	**100.0**
Providence - New Bedford, #50			
WJAR: NBC	12.0	18.5	34.5
WLNE: ABC	5.5	8.5	15.9
WPRI: CBS	9.0	13.8	25.7
WNAC: FOX	4.6	7.0	13.1
WLWC: WBN	2.1	3.3	6.2
WSBE: IND	0.9	1.3	2.4
WPXQ: PAX	0.8	1.2	2.2
Total	**34.9**	**53.6**	**100.0**

Source: Nielsen Media Research

* Calculated number, see text.

The three markets represent a range of sizes and are ranked 1, 25, and 50 in terms of the number of television households. All data are for May 1999.

18. Table 1 reports three measures of station shares:

- *Share of television households* (commonly known as *ratings*) refers to the percentage of television households in the station's market who viewed that station.

- *Share of television viewers* refers to the percentage of households watching television in a station's market who viewed that station. The denominator in this share calculation includes both broadcast and cable television viewing.

- *Calculated share of broadcast television viewers* is an estimate of the percentage of households watching broadcast television in a station's market who viewed that station. It is calculated by dividing the station's share of television viewers by the sum of the television viewer shares of all broadcast television stations in that relevant geographic market.

19. While one can debate whether a cable system constitutes a bottleneck asset, there is no question that a single broadcast television station does not. Any one station has too small a share of its local market. Even the largest share reported in Table 1, WJAR's share of broadcast television viewers in Providence-New Bedford, is approximately one third. Moreover, because cable channels clearly compete with broadcast channels for the majority of households, that figure—which excludes cable and direct-to-the-home satellite channels—understates the degree of competition.[16]

20. Turning to overall market concentration, one can calculate an HHI for each local market using each of the three share measures described above. These results are reported in Table 2.

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[16] Further, these figures do not reflect the fact that even a station with a small viewer share often transmits a signal that reaches as many households as the leading stations in its market. To a large extent, a station's share reflects the quality of its programming, not the physical characteristics of its signal. This fact raises a

Table 2
Herfindahl-Hirschman Indexes*

	Basis of Calculations		
Market	Share of Television Households	Share of Television Viewers	Share of Broadcast Television Viewers
New York City	594	911	1345
Indianapolis	622	1005	1732
Providence - New Bedford	607	895	2325

* See text for discussion of calculations.

conceptual issue as to whether audience shares are a proper measure of the degree to which a station is a bottleneck. This issue is addressed below by considering various measures of capacity shares.

21. Several caveats must be kept in mind when examining the figures reported in Table 2. First—and most important—because cable and direct-to-the-home satellite channels compete with broadcast channels for the majority of households, the HHIs calculated in the final column of Table 2 dramatically overstate the degree of concentration. Second, the HHI calculations in all three columns of numbers in Table 2 are overstated for various technical reasons.[17] Nevertheless, these HHI calculations demonstrate that even taking a narrow view of the product market, broadcast television markets are significantly less concentrated than are MVPD markets at the local level. Indeed, using household or television viewing shares, all three markets fall in a range generally considered "unconcentrated" by federal policymakers.[18]

B. A Given Cable System has Much Greater Capacity than Does Any Broadcast Station

22. Today, a broadcast television station carries only one programming stream. While in the future, broadcast stations may be able to multiplex, the technology is not currently deployed.[19] In contrast, a modern cable system can carry one hundred or more channels. Almost all cable

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17 *All three measures:* Because the share data are reported for households and multi-television households may view multiple programs at one time, suppliers' calculated shares can sum to more than 100 percent. Thus, the resulting HHI calculations in all of the columns can be overstated as well.

First two measures: Ratings and television viewer shares were not available for cable channels and some broadcast stations in the three television markets. Thus, it was necessary to estimate the shares of the omitted cable and broadcast channels to calculate HHIs. This was done by assuming that as many omitted channels as possible had five percent shares. For example, the reported stations for New York City had shares totaling 77.3 percent. It was assumed that there were five omitted channels: four with shares of 5 percent each, and one with a share of 2.7 percent. Because it is extremely unlikely that any of the omitted channels had individual shares that large, this procedure leads to estimated HHIs that are too large.

Final measure: Station viewer share data were not available for some broadcast stations. Hence, they were not included in the denominator used to convert the reported stations' television viewer share into their broadcast television viewer shares. Thus, the calculated shares and resulting HHI's are biased upward.

18 See, for example, *Merger Guidelines*, §1.5. These guidelines set an HHI of 1000 as an upper bound for unconcentrated markets. For the reasons discussed in the previous footnote, an HHI calculation based on a full set of data would lead to a number less than 1000 for Indianapolis using television viewer shares as the base.

19 Even if a single station is able to broadcast multiple channels in the future, any one television station still will account for only a relatively small percentage of total broadcasting capacity in its viewing market—it's broadcast rivals will also have the ability to engage in multiplexing.

systems have 30 or more channels, and over 60 percent of systems carry at least 54 channels.[20] It follows that a single cable system has a much greater influence on program distribution than does a single broadcast station. Indeed, policymakers should take into account the fact that broadcast television stations themselves are dependent on cable system operators for carriage.

C. Cable Ownership is Much More Concentrated at a National Level

23. While viewing is local, national ownership concentration can be relevant for the analysis of competition in programming markets. The reason is that there are significant economies of scale in program production. Because of these scale economies, a program supplier has to consider the potential audience for its content on a national scale when making investment and marketing decisions. If a single owner controls a large percentage of the potential programming outlets on a national basis, it may be able to exert monopsony power.

24. The Commission's current rules allow a single owner to control cable systems serving 30 percent of all MVPD subscribers. The proposed merger of AT&T and Media One would create an entity presumably up against that limit.[21] Broadcast television ownership is much less concentrated at the national level than is cable ownership.

25. There are several ways to measure the extent to which a group owner of television stations controls a large share of access to viewers and thus might be able to exert monopsony power in the programming market. By any reasonable measure, however, any one group owner has control over only a very small portion of total broadcast television capacity and audience. Consider the following facts, each of which supports this conclusion:

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20 Warren Publishing, Inc., *Television & Cable Factbook*, Cable Volume No. 67, 1999 Edition, "Channel Capacity of Existing Cable Systems."

21 The Commission recently found that TCI (now owned by AT&T) had 26.48 percent of all MVPD subscribers in 1998, while Media One had 6.32 percent (*Video Competition Report*, Table C-3).

- *Number of Stations:* Sinclair Broadcast Group, Inc. is the largest group owner measured in terms of the number of television stations controlled. Sinclair owns fewer than five percent of U.S. commercial television stations.[22] Similarly, Fox Television Stations, Inc. owns fewer than two percent of all stations.[23]

- *Audience:* Today, Fox Television Stations, Inc. is the largest broadcast television group owner measured by national reach. Fox owned and operated stations can in theory reach 40.6 percent of all U.S. television households.[24] Their actual viewing share is considerably lower. Recently, the average rating for the 22 Fox owned and operated stations over the total day was 3.7.[25] This figure indicates that on average Fox stations were actually viewed by 3.7 percent of the households these stations reached. Hence, the 22 Fox stations collectively were viewed by 1.5 percent of television households nationwide. Prime time figures are higher, but the bottom line for policy is the same. Average prime time ratings were 7.2, meaning that Fox owned and operated stations were viewed by 2.9 percent of U.S. television households.

- *Transmission Capacity:* Another way to measure whether a group owner has bottleneck control is to calculate its share of broadcast television transmission capacity.[26] Total capacity in a given local viewing area is equal to the number of broadcast channels times the number of television households in that local market. Total national transmission capacity is then equal to the sum across all of the local viewing areas. In 1998, Fox

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22 Sinclair ownership data are provided in "1999's Top 25 Television groups," available 9 November 1999 at http://www.broadcastingcable.com/policy/policy_article.asp?articleID=692239775. The total number of stations is given in Warren Publishing, Inc., *Television & Cable Factbook*, Stations Volume No. 67, 1999 Edition, "Affiliations by Market," C-1.

23 "1999's Top 25 Television groups," available 9 November 1999 at http://www.broadcastingcable.com/policy/policy_article.asp?articleID=692239775 and Warren Publishing, Inc., *Television & Cable Factbook*, Stations Volume No. 67, 1999 Edition, "Affiliations by Market," C-1.

24 This figure represents the unadjusted reach of Fox stations (*i.e.*, the UHF discount has not been applied). This was done to take a conservative approach. "1999's Top 25 Television groups," available 9 November 1999 at http://www.broadcastingcable.com/policy/policy_article.asp?articleID=692239775.

25 Nielsen Media Research data for May 1999.

26 This is a conservative measure (*e.g.*, is weighted toward finding a competitive problem even if there is none) because it ignores competition from cable channels.

stations accounted for less than four percent of national broadcast television capacity for reaching viewers.

26. None of these figures represents an ideal measure of concentration. However, the story these data tell is so clear and consistent that there is no need to refine the measures.[27] All of the evidence points to the fact that no group owner possesses bottleneck control of access to viewers. And this conclusion would continue to hold even if the size of any group owner doubled or tripled under any of these measures.

27. Even if a single company owned one television station in each market, it would control less than nine percent of broadcast television capacity (as measured by channels times market size). If a company owned one television station in every market with eight or fewer stations and owned two stations in every market with nine or more stations (as could be allowed under the local ownership rules), it still would own less than 14 percent of total broadcast distribution capacity.

28. In contrast, if one company owned a cable system in each market, that company would own approximately 85 percent of the multichannel distribution capacity.[28] Concentrated ownership of cable systems is a much greater threat to program producers than is allowing a broadcaster to attain a broad national reach.

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27 The Commission itself recently concluded that the "industry continues to be unconcentrated at the national level, with our estimate of the Herfindahl-Hirschman Index (HHI) still below 1000, increasing from 264 in 1996 to 308 in 1997." *In the matter of 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, MM Docket 98-35, released March 13, 1998, ¶ 15.

28 *Video Competition Report*, ¶ 128.

D. There is No Evidence that any Group Owner has Exercised Market Power to Limit the Supply of Programming to its Rivals.

29. Both the broadcast television and cable television national ownership limits are motivated by concern that an excessively large owner will be able to exert undue influence or exercise monopsony power in the programming market. If a firm possessed such monopsony power, it could be expected to take actions to preserve that power. One way to do so would be to restrict the supply of programming to service providers who actually or potentially compete with the firm possessing monopsony power. In theory, a firm possessing monopsony power could demand exclusive relationships with programmers that would limit the ability of rival distributors to obtain programming. Indeed, the Commission recently found that there is "credible evidence that indicates that MSOs have used their market power to cause unaffiliated programmers to refuse to sell their programming to other MVPDs."[29]

30. I am unaware of any such allegations against broadcast television group owners. Indeed, such an allegation would make no sense—given the competitive structure of broadcast television markets, a group owner could not have the market power to exercise.

IV. SUMMARY AND CONCLUSION

31. The Commission recently found that allowing increased concentration of cable system ownership is in the public interest. This finding is one more piece of evidence that it is in the public interest to relax or eliminate the broadcast television national multiple ownership rule. If a single owner can control cable systems covering 37 percent of the population without threatening diversity or competition, it follows that allowing a single owner to control television stations reaching 100 percent of the country would not threaten diversity or competition. This

[29] *Horizontal Ownership Third Report and Order*, ¶ 59.

conclusion derives from the fact that a station group with 100 percent reach still would have a national audience share (or channel capacity share) well less than an MSO with 37 percent coverage.

32. Of course, this finding is not the only basis for concluding that the broadcast television national multiple ownership cap should be eliminated. Economic and policy analyses—including those conducted by the Commission and its staff—have repeatedly found that the national multiple ownership rule does not serve the public interest.[30] As I have summarized elsewhere, the available data and economic analyses support the conclusions that:[31]

- Relaxation of the reach limit does not threaten competition and indeed can be expected to strengthen broadcast television networks as competitors.
- Diversity is relevant at the local level and is unaffected by the national cap.
- The cap is an expensive and ineffective means of promoting minority ownership.
- There is no evidence that a group owner whose stations collectively have broad national coverage is less committed to localism than is a group or individual station owner whose stations have more limited coverage.

33. The available data and economic analysis also support the conclusion that the national multiple ownership rule imposes social costs:

- The cap limits the realization of economies of scale and scope.
- The cap blocks expansion of particularly well-run station groups.

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30 For a brief history of the Commission's treatment of the rule and a public interest analysis of the rule's effects, see *Katz White Paper* at 52-82.

31 *Ibid.*

- The cap limits the abilities of networks to coordinate with stations, and thus it reduces the incentives and abilities of networks to compete for programming and promote it.

By creating these artificial costs, the broadcast television national ownership cap reduces incentives to invest in non-subscription broadcast television. The public interest would best be served by immediate elimination of the national multiple ownership cap.

EXHIBIT A. CURRICULUM VITAE OF MICHAEL L. KATZ

EMPLOYMENT

July 1987 to present **Arnold Professor of Business Administration**
Director, Center for Telecommunications and Digital Convergence
University of California at Berkeley
Joint appointment in the Economics Department and School of Business. Initial appointment as an associate professor July 1987. Promoted to full professor July 1989. Granted an endowed chair July 1995. Research on competitive strategy in systems markets, strategic standard setting, public policy in networks markets, telecommunications pricing and policy, strategic alliances, and cooperative research and development. Chaired Strategic Planning Committee, Policy and Planning Committee, Affirmative Action Committee, and the Economic Analysis and Policy Group. Teach MBA courses in business strategy and microeconomics, and doctoral courses in accounting and microeconomics. Author of economics textbook.

January 1994 to January 1996 **Chief Economist**
Federal Communications Commission
Responsible for integrating economic analysis into all aspects of Commission policy making. Reported directly to the Chairman of the Commission. Formulated and implemented regulatory policies for all industries under Commission jurisdiction, including cable and broadcast television, and local, long distance, and wireless telephony. Managed teams of lawyers and economists to design regulatory policies and procedures. Significantly strengthened Commission's ability to gather industry data and conduct empirical studies. Extensive public speaking to specialist and general audiences in the United States and abroad.

July 1981 to June 1987 **Assistant Professor of Economics**
Princeton University
Research on sophisticated pricing, standards development, cooperative R&D, and intellectual property licensing. Served as Assistant Director of Graduate Studies. Taught courses in microeconomics, industrial organization, and antitrust and regulation to undergraduate and doctoral students.

EDUCATION

D.Phil. 1982
Oxford University
Doctorate in Economics. Thesis on market segmentation and sophisticated pricing strategies.

A.B. *summa cum laude* **1978**
Harvard University
As an undergraduate, completed all courses and general examinations for doctorate in economics.

AWARDS AND HONORS

Chairman's Special Achievement Award, Federal Communications Commission, 1996.
The Earl F. Cheit Outstanding Teaching Award, Berkeley, 1992-1993 and 1988-1989.
 Honorable Mention, 1996-1997.
Alfred P. Sloan Research Fellow, 1985-1988.
National Science Foundation Graduate Fellow, 1978-1981.
John H. Williams Prize (awarded to the Harvard College student graduating in Economics with the best overall record), 1978.
National Merit Scholar, 1975-1976.

GRANTS

Berkeley Committee on Research Grant, 1996-1997.
Berkeley Program in Finance Research Grant, 1990.
Researcher, Pew Foundation grant: "Integrating Economics and National Security," 1987-1990.
Principal Investigator, National Science Foundation grants:
 "A More Complete View of Incomplete Contracts," joint with Benjamin E. Hermalin, 1991-1993.
 "Game-Playing Agents and the Use of Contracts as Precommitments," 1988-1989.
 "The Analysis of Intermediate Goods Markets: Self-Supply and Demand Interdependence," 1985-1986.
 "Imperfectly Competitive Models of Screening and Product Compatibility," 1983-1984.
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PROFESSIONAL ACTIVITY

Member of editorial boards of *California Management Review* and *Journal of Economics and Management Strategy.*

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CERTIFICATE OF SERVICE

I certify that the foregoing Comments of Fox Television Stations, Inc. was served this 8th day of September 2000 via hand delivery upon:

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Chairman
Federal Communications Commission
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Washington, DC 20554
Attn: Karen Edwards Onyeije

The Honorable Susan Ness
Commissioner
Federal Communications Commission
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Attn: David Goodfriend

The Honorable Harold W. Furchtgott-Roth
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The Honorable Michael K. Powell
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