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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
2002 Biennial Regulatory Review – Review of the)	MB Docket No. 02-277
Commission’s Broadcast Ownership Rules and)	
Other Rules Adopted Pursuant to Section 202 of)	
The Telecommunications Act of 1996)	
)	
Cross-Ownership of Broadcast Stations and)	MM Docket No. 01-235
Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations)	
In Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244

SUBMITTED BY SANDRA M. ORTIZ

IN THE MATTER OF 2002 BIENNIAL REGULATORY REVIEW

I, Sandra M. Ortiz, submit the attached transcript of comments and presentations made during a Public Forum on Media Ownership Issues held on April 28, 2003 at the University of Southern California, Los Angeles, California.

The forum was hosted by the University of Southern California’s Center for Communication Law & Policy, which is administered by the USC Law School and USC’s Annenberg School for Communication. Among those participating in the Public Forum were Commissioner Michael Copps, Commissioner Jonathan Adelstein and Representative Xavier Becerra.

1 **MS. ORTIZ:** And the videotape will be submitted to the FCC
2 as part of its official record in this proceeding. It will
3 also be provided on the web as a delayed webcast.

4 In choosing the panelists we tried to keep in mind two of
5 the commission's goals: Diversity and localism. Certainly the
6 speakers invited represented those goals. And although a
7 number of the people who were invited could not attend for some
8 very good reasons, a number of people from the entertainment
9 industry are -- are now facing sweeps, which is an important
10 industry objective for them, and also the networks in just a
11 few days will be unveiling their new series and are preparing
12 for that. We were really happy to get the people that have
13 made the time to attend this event.

14 Everyone here has one goal, which is to discuss these
15 issues in a full and open and honest a manner as possible. And
16 I know that we all share the goal of providing a comfortable
17 and respectful environment for the diversity of perspectives
18 that will be presented here today. You each have received
19 pamphlet as you walked in with the agenda, a description of the
20 six ownership rules that are currently being considered by the
21 Federal Communications Commission, a description of the Center
22 for Communication Law and Policy, and biographical information
23 on each of the panelists and speakers who will be here today.

24 There is one -- there was also an addendum with two
25 additional panelists who were added as of Friday when

1 there's -- they were able to free up their schedules to attend
2 this event, and then we had a very welcome surprise
3 announcement this morning that yet another panelist for whom we
4 do not have biographical information to pass out will be
5 joining us via video conferencing. In fact, Marty, are you
6 there? I think Marty may be there already.

7 **MR. KAPLAN:** Yes, I am Sandra. Thank you.

8 **MS. ORTIZ:** Hi Marty. So, please -- we're going to
9 keep -- we're going to keep introductions to a minimum here
10 because you do have the biographical information before you and
11 we have a lot to cover here today. There -- the agenda -- if
12 you look through the agenda you will notice that there are two
13 breaks. They may need to be shortened from the 15 minutes that
14 we have there since we did have so many panelists who were able
15 to attend. If we have time, we would welcome written questions
16 from all of you. I will have students on -- around in the --
17 in the room taking those questions on note cards and if we have
18 time at the end of the panels, we'll certainly pose those
19 questions to the panelists.

20 We also have a public comment period at the end of the
21 event starting at about 12:45. The sign-up list is at the
22 registration desk for those of you who are interested in
23 signing up. We're going to ask you to keep those comments as
24 brief as possible to allow as many people to speak as possible
25 and try to keep them to about three minutes.

1 There's also MCLE credit available for those of you who
2 are interested in that. And that's available at the sign-up
3 desk as well. Just get those -- those papers there. And there
4 are restrooms -- a number of restrooms throughout the
5 facilities. Women's restroom right outside this room. A men's
6 restroom directly up the elevator and a number of others. So
7 if you have any questions about how to find the restrooms,
8 please just ask.

9 I'd like now to introduce the commissioners and other
10 speakers that we have for the introduction this morning. First
11 of all I'd like to introduce Commissioner Michael Copps, one of
12 the two democratic appointees to the FCC. Commissioner Copps
13 and Commissioner Adelstein, who is joining us by video
14 conferencing, are the two commissioners who have most
15 diligently traveled across the country attending
16 community-sponsored events like this and calling tirelessly for
17 a more informed public discussion of these issues prior to any
18 rule making.

19 I thank both commissioners for attending and for their
20 efforts on behalf of the public.

21 Commissioner Copps, would you like to join me up here?

22 **COMMISSIONER COPPS:** Thank you and good morning. I
23 appreciate your -- your nice words there about my -- my
24 efforts. You don't always get nice introductions like that. I
25 was out in the middle west last week giving a talk and I think

1 the person who introduced me was trying to be nice enough about
2 it, but he said, "Now we're going to hear the real dope from
3 Washington." There might be some folks in the audience who
4 share that evaluation. I don't know.

5 Thanks for inviting me to participate in this forum. And
6 more importantly thanks to the Annenberg School and Geoff Cowan
7 and everybody who worked so hard to put this together. And
8 particular thanks to you, Sandra Ortiz, for struggling against
9 the absolutely Herculean odds and blizzards on President's Day
10 and everything else you had to contend with to put this
11 together.

12 I also want to recognize the presence here this morning of
13 my friend and a great public servant, Representative Xavier
14 Becerra, who represents the 31st District of California. He's
15 been a champion on so many issues, including media ownership
16 and media diversity. Thank you, sir, for -- for being with us.

17 I'm not a person much given to hyperbole, I don't think.
18 But I believe that apart from matters of war and peace that are
19 front and center in our national attention right now, no
20 meeting taking place anywhere in America today is tackling
21 issues as important to the future of our country as this one
22 right here.

23 At the FCC we are racing towards a critically important
24 vote on whether to keep or modify or scrap many of our media
25 concentration protections. And these rules, as Sandra said,

1 are -- are laid out for you in your material so I won't go
2 through them here. They are important. Some will say, what's
3 so earth-shaking about them? What's important about it is that
4 there's a potential here to remake our entire media landscape
5 for better or for worse, for many, many years to come. The
6 stakes are enormous. There's no way around it. We're talking
7 about fundamental values and democratic virtues. Things like
8 localism, diversity, competition, maintaining a multiplicity of
9 voices and choices that sustain the marketplace of ideas and
10 undergird our precious system of democracy. And those are not
11 abstractions. They go to what kinds of entertainment and
12 information we and our children will be watching and hearing.
13 This is about everything we see and hear and read through the
14 media because at stake is how TV, radio and newspapers and even
15 the Internet are going to look, the role that they're going to
16 be playing in each and every one of our lives and who's going
17 to be controlling them and for what purposes. That's pretty
18 important stuff.

19 And here's my concern. We are on the verge of
20 dramatically altering our nation's media landscape without the
21 kind of national dialogue and debate that these issues so
22 clearly merit. Thirty-five days are all that's left if
23 Chairman Powell continues to insist that the role be called on
24 June 2nd.

25 So in just over a month, we will have voted on this.

1 Changed the rules. Reconfigured the media landscape and told
2 the world, "Sorry, there's no opportunity or time for public
3 comment on what we just put into place." Right after that I
4 think you can prepare to see a veritable gold rush of media
5 company buying and selling. That's what the Wall Street
6 Journal referenced just the other day in exactly those terms.
7 And I'm told of one merger and acquisition firm that's going
8 around the cities calling media companies saying, "We would
9 like to be your broker." Well, maybe that's what merger and
10 acquisition firms are supposed to do. I just wonder who's
11 going to be America's broker in all of this. And somehow I had
12 the quaint idea that maybe the FCC was supposed to -- supposed
13 to pay some attention from that perspective.

14 Three-quarters of the American people, the Pew research
15 people tell us, don't even know this is taking place. They
16 haven't been told by the Commission. They haven't been told
17 like by media. This is like a state secret. And it's amazing.
18 We're going to have a substantially changed system in place
19 before most people even know it's up for grabs. And up for
20 grabs is the right term because I travel around the country
21 holding my own hearings and attending forums like these. I
22 hear about deals in the making. Like newspaper and broadcast
23 cross-ownership agreements where the terms are already decided,
24 the deal is done, the agreement is written, the signature
25 blocks are there. All they're waiting on is the Commission to

1 vote on June 2nd.

2 One problem with all this is that just 35 days out, we
3 don't have a draft proposal to look at. We don't know what
4 we'll be voting on yet. At least I, speaking as one
5 commissioner, don't know what we're going to be voting on. We
6 don't have the details. We don't even have the broad
7 configuration of what the new system will be. And when the
8 proposal is finally put on the table, it's going to say, "Eyes
9 only. Don't circulate this outside the Commission." So we're
10 not going to tee it up for public comment or expert analysis
11 before we vote. This is the way the Commission usually does
12 business, we're told. But I submit this is too important to be
13 treated on a business-as-usual basis.

14 Thirty-five days out we still lack understanding of what
15 the consequences, intended and unintended, of this new regimen
16 will be. So we don't know where we're going, we haven't
17 studied very well where we've been. Put those two things
18 together and you have a sure-fire recipe for disaster. So let
19 me lay out a few principles for this proceeding over the next
20 35 days.

21 First, I think we ought to start with the premise that
22 it's not anybody, any company's property we're talking about.
23 It's the people's property we're dealing with. We're not
24 talking about airwaves that a broadcaster or a company owns.
25 We're talking about public airwaves and how they should be used

1 to advance the interest of the American people. No company has
2 a God-given right to use these airwaves for strictly commercial
3 purposes. Yes, they can be run as a business. That's a
4 decision this country took a long, long time ago, but it's a
5 very special business. It was when those rules were first put
6 out. It is today. Because licensees granted the right
7 temporarily to use these airwaves are using public property for
8 primarily public purposes in behalf of the public interest.

9 The Supreme Court laid out the direction for us long ago
10 when it wrote, "It is the purpose of the First Amendment to
11 preserve an uninhibited marketplace of ideas in which truth
12 will ultimately prevail rather than to countenance
13 monopolization of that market, whether it be by the government
14 itself or a private licensee." If we began each debate in the
15 FCC in that context, we'd do a much better job as a commission.

16 Second, we need to address all of the broad range of
17 issues that have been raised in this proceeding. Some say this
18 is just an ordinary examination of our rules, finagling with a
19 few numbers. We do this every two years. Don't get excited.
20 Don't worry about it. Let's not kid ourselves. This is the
21 granddaddy of all reviews. It's going to set where the next
22 review's go for several years, and it goes to the heart and
23 soul of how the media is going to look for years to come. We
24 have opened up virtually all of our rules that shape the media
25 landscape.

1 So when this item does come our way, I hope it will deal
2 with these issues expansively, answer all the questions that we
3 initially raised in the proceeding that we put out last
4 September and respond to the many questions that we didn't
5 raise but public commentators raise, questions deserving of
6 answers.

7 Certainly we shouldn't narrow -- limit ourselves to the
8 narrow question of whether to scrap or significantly modify
9 limits. Some parties have addressed a need to require more
10 independent programming in our airwaves so that a few
11 conglomerates do not control all of the creative entertainment
12 that we see. I believe that these proposals should receive the
13 serious attention they deserve in our decision.

14 For years we limited both horizontal or distributional
15 consolidation as well as vertical or production concentration.
16 Then we loosened the vertical. Now we're loosening the
17 horizontal further. Let's look instead for some sort of an
18 arrangement where there's a little sense of balance.

19 Others have suggested the need for an effective license
20 renewal process, under which the Commission would once again
21 actually consider the matter in which a station has served the
22 public interest when it comes up to renew its license. We used
23 to do that years ago, but the system has evolved, I think
24 unfortunately, into one of basically of postcard license
25 renewal. Unless there is a major complaint against a station,

1 the license is almost automatically renewed.

2 A real honest to goodness license renewal process,
3 predicated on advancing the public interest, might do more for
4 broadcasting than all these other rules put together. And if
5 it's properly designed, it could avoid micro management on a
6 day-to-day basis in favor of a comprehensive look at how a
7 station has discharged its public responsibilities over the
8 term of its license.

9 I hope we will at least talk about this. On a little
10 different level, another issue I hope the item addresses is the
11 so-called UHF discount. In this modern TV world with digital
12 coming our way, is there still good reason count a UHF station
13 as only half a VHF station in terms of audience reach? Any
14 audience reach cap is immediately breached when a station can
15 reach a 100,000 people but only has to count half of them.

16 My point is that this is the time to look and focus
17 broadly and comprehensively. That's what we were told where we
18 were going. Now I want to see an item proves it, and I will be
19 disappointed if when we see these proposals these kinds of
20 issues are not broached and addressed and this decision becomes
21 an aeroconstruct or a litmus test that reflects only somebody's
22 rush to eliminate the existing constraints on excess media
23 consolidation. If on the other hand we take a balanced
24 measured approach, engage in fact finding and open-minded
25 discussion, I believe the Commission could reach something

1 resembling a consensus. And how much better it would be to
2 have a 5-0 vote on such a great question rather than another
3 3-2 vote that encourages litigation and confusion more than it
4 brings clarity and direction. That's a result that would be
5 good for the Commission. More importantly, good for the
6 country. When the issues go to the very heart of our American
7 democracy, the American people deserve no less.

8 Third, if we change our rules, we should do so in a manner
9 that affords us the opportunity to analyze the impact of
10 increasing consolidation before the genie is let out of the
11 bottle. Radical reform can produce negative consequences that
12 would be difficult to fix. I've already mentioned the feeding
13 frenzy of consolidation that some say will follow relaxation of
14 our rules. Suppose for a moment that we vote on June 2nd to
15 eliminate or significantly loosen these rules. And suppose
16 just for the sake of argument, no matter what side of the issue
17 you're on, suppose that turns out to have been a mistake. How
18 do you put that genie back in the bottle? And the simple
19 answer is you won't, because you can't.

20 Before we plunge ahead to remake the media landscape, we
21 need to better understand the current media landscape and the
22 implications of eliminating concentration protections. I was
23 going to talk a little bit about radio, but I think other
24 people will do that here. I think many people in this audience
25 are familiar with the consequences, perhaps unintended to some

1 extent, of consolidation that followed the 1996 act and the
2 relaxation of our FCC rules and now we have one company owning
3 over 1,200 radio stations. We have lots of studies like the
4 Future of Music Coalition study finding an homogenization of
5 entertainment and music that gets airtime. We have a lot of
6 testimony on what this does to local news, public information,
7 community affairs and all of that. We need to learn from that
8 experience. There are so many answers that we just don't have
9 and just as importantly, there are so many questions that we
10 have not teed up.

11 What are the likely affects of further consolidation
12 going forward? If they're going to come with a new audience
13 cap, 40, 45, 50, 55, I don't know, 75 percent. I have no idea
14 what it's going to be. I think the Court's going to want to
15 know where we got that figure. Why don't we tee some of these
16 figures up and try to build some models and get some
17 perspective on what they're going to -- to mean?

18 What are the affects on small business? And particularly
19 on advertisers. Small advertisers trying to do business in a
20 consolidated media market. What are the possible affects on
21 our children? Where children doesn't appear one time, I don't
22 believe, in the item that we teed up dealing with this last
23 September, but some have suggested since then that there's a
24 correlation between the rising tide of violent and indecent
25 programming on the airwaves and the rising tide of media

1 consolidation. I do not know the answer to that question, if
2 there's a relationship, a causal relationship, a correlation.
3 But I do know this. I think we should at least ask the
4 question before we plunge ahead, and we should at least try to
5 amass some little basket of empirical evidence and information
6 before we vote.

7 What affects do technological changes have on the
8 ownership debate? We're in the midst of this big transition to
9 digital television a lot of people in this room are
10 instrumental in. Doesn't it change the terms of -- of the
11 media landscape if a station all of a sudden has the ability to
12 multi-cast five or six different channels? What does that do
13 to the competitive landscape in a media market? Shouldn't we
14 factor that in somehow into what we're considering? Why aren't
15 we?

16 What does further consolidation means -- mean in terms of
17 providing Hispanic Americans, and African Americans, and Asian
18 Pacific Americans, and Native Americans, and other groups the
19 kinds of programs and access and viewpoint diversity and career
20 opportunities and even advertising information that they need?
21 America's strength is after all its diversity. America
22 succeeds in the 21st century not in spite of our diversity but
23 because of our diversity. It's not a challenge to be overcome.
24 It is our greatest strength. And our media need to reflect
25 that diversity and they need to nourish that diversity. And it

1 doesn't take any rocket science to understand that changing the
2 rules of media consolidation is likely to have some affects,
3 perhaps profound affects, on different groups. We'd better try
4 to understand that before we change the rules instead of
5 creating a huge mess that we might not be able to fix after we
6 change them.

7 So we need to get this right. If we don't have an
8 adequate record, and we don't, we shouldn't hesitate to get
9 more evidence. Why let some artificial deadline prevent us
10 from obtaining adequate evidence to make an informed decision?
11 For example, if we're going to adopt some complicated new
12 formula for measuring diversity, we should provide the public
13 an opportunity to comment before it is adopted. It seems to me
14 that if we took a couple of months to do that to circulate such
15 ideas and to get comment, they'd have a much better chance of
16 withstanding court scrutiny when -- when you go to -- go to
17 court, because then you'll have a set of numbers that has -- at
18 least has seen the light of day and had some chance to be
19 commented on.

20 Some accuse me of delay. I reject that charge. I went
21 into this last year believing that the Commission, if the
22 Commission really worked at it, got around the country, looking
23 at the problem, collecting data, really reaching out, that we
24 would have had a shot at building an adequate record for a
25 timely vote this year. And I've tried to do that. And my

1 friend, Commissioner Adelstein, has tried to do that. And we
2 have been traveling across the country to hold hearings and
3 attend forums such as this one today from Los Angeles and
4 Seattle to Burlington, Vermont. From Chicago to Durham, North
5 Carolina. San Francisco, where Commissioner Adelstein was over
6 the weekend. Everywhere we've been, we've learned new facts.
7 Everywhere we've been, we've gotten new granular information.
8 Everywhere we've been, we've gotten new perspectives. And
9 we've come to understand how important this issue is to the
10 American people. And I have seen a truly sobering outpouring
11 of concern wherever we have gone. People don't have any
12 trouble understanding this issue. It's not that complicated.
13 There are huge questions that people understand that go to
14 their rights as citizens and rights as consumers both. If more
15 people knew, if the Commission did its job of public outreach,
16 and if big media, especially the television networks, which
17 have done such an absolutely dreadful job, atrocious job, in
18 covering this issue, if more people knew what was going on, I
19 think you would see an outpouring and a grassroots issue in
20 this country like we haven't seen in a long, long time.

21 I know this forum will add to our knowledge and provide us
22 with additional perspectives. But one final thought for those
23 of you who are interested in this issue. Don't let it end
24 here. You cannot allow that. You have to take what you learn
25 today, share it with others, do your part, and do even more

1 than your part to encourage the fullest possible national
2 discussion of these issues in the few weeks that remain.
3 Thirty-five days and counting down before Chairman Powell
4 closes the discussion and forces the vote.

5 As an FCC Commissioner, I have a duty to encourage this
6 kind of discussion and to build a record, but I think as
7 American citizens each person in this room does too.

8 Thank you very much for your attention.

9 **MS. ORTIZ:** Thank you, Commissioner Copps. That was
10 really -- makes this whole event worthwhile for us.

11 I'd like now to introduce Commissioner Jonathan Adelstein,
12 who is joining us from Washington, D.C., having just returned
13 from an event like this in San Francisco as mentioned by
14 Commissioner Copps. Commissioner Adelstein has been traveling
15 across the country also attending similar events in just the
16 five months since he has been confirmed. He has added his
17 voice to the call for public discussion and media coverage of
18 the issues related to this rule-making process. Commissioner
19 Adelstein.

20 **COMMISSIONER ADELSTEIN:** First I'd like to commend my --
21 my colleague, Commissioner Copps, for an incredibly principled
22 statement today, for an incredibly visionary statement and a
23 comprehensive one. I'd like to be a little more brief and I
24 wish I could be with you there today, but urgent business here
25 in Washington prevented me from doing that. And I want to

1 thank USC and Sandra Ortiz for your tenacity in getting this
2 rescheduled. It's well worth doing. It's critical that we do
3 this.

4 As you mentioned, I just came back from San Francisco City
5 Hall where I attended a similar hearing on Saturday that was
6 sponsored by USF and Stanford and Berkeley. And I want to
7 report to Southern California what we heard from your neighbors
8 to the north.

9 Hundreds of people took time from a beautiful Saturday to
10 attend that event, and they were lined up outside the hallway
11 for hours to get in. Now not one member of the public said
12 they want to see their media become more concentrated. They
13 said they believe the airwaves belong to the public and
14 demanded the FCC watch out for their interests, ahead of the
15 interests of the media giants in this country. And I replied
16 to them that such a charge, as I understood it, was our duty
17 under the law.

18 People said they were alarmed that they haven't heard
19 about this. They're mortified by the direction that it's
20 taking and they want to know what they can do about it. Well,
21 I relate to them the sad truth that we're rushing headlong
22 towards June 2nd when Chairman Powell is determined to finalize
23 these new rules. To me it's like going straight to the Super
24 Bowl without even having begun the regular season.

25 They wondered why the national media haven't covered this

1 story. I think the Saturday event itself might have been a
2 good case study in why they didn't. Two public radio stations
3 came by to broadcast the entire hearing live, but there was no
4 mention of it on commercial radio. And only one television
5 station showed up to cover it. KRON TV, which happens to be an
6 independent station that's not affiliated with any network. I
7 wonder why that is that none of the networks showed up. This
8 is as important of an issue as any other that this country
9 faces apart from war and peace, but the network media aren't
10 covering it.

11 I'm beginning to wonder if the media is incapable of
12 covering itself in this county. There's growing evidence from
13 the coverage of this very issue that ownership clearly affects
14 what gets covered. It's not just what you hear, it's what you
15 don't hear. Now when the history of this is written, and
16 Commissioner Copps and I are historians by training, this may
17 well go down as one of the most disgraceful chapters in the
18 history of American journalism. If the press doesn't own up to
19 what's happening now, they certainly won't in the future when
20 the big companies get even bigger by swallowing up their
21 competitors. Journalists will find themselves even more
22 intimidated in the future as fewer owners gain even more power.
23 Those who risk their careers by reporting the truth, whether or
24 not it's convenient for their owners, will find even fewer
25 competitive options for employment. If the free press doesn't

1 stand up for the free press, it's already lost its independence
2 and it will only get worse.

3 Now, if we at the FCC make the tragic mistake of allowing
4 too much further media consolidation, we won't be able to undo
5 it. Once companies merge the FCC never asks them to unmerge.
6 You can't put the toothpaste back in the tube. The FCC can
7 unalterably change the face of the American media for
8 generations to come.

9 Now, our chairman, Michael Powell, has vowed that nothing
10 will stop the agency from overhauling these rules by June 2nd.
11 He even dismissed a bipartisan request from Congress for more
12 time, including requests from your own senator, Senator Barbara
13 Boxer. He also dismissed a similar request from the
14 Congressional Hispanic Caucus, which is concerned about the
15 impact of increasing media consolidation on the Latino
16 community, as well they should be. And they're well
17 represented today by Congressman Becerra, who will be
18 participating in just a few minutes.

19 The chairman casts aside these congressional requests,
20 saying he'll go for it full-steam ahead, despite these mounting
21 concerns. So June 2nd will become the defining moment for
22 America's media ownership rules. I think it's critical for us
23 here at the FCC to hear more from Congress and from the public
24 before then, as Commissioner Copps so eloquently stated. But
25 it's tough for them to comment on this with any precision when

1 they have no specifics about what the FCC's proposing. Now,
2 since the FCC's charged with serving the public interest, it
3 should never be afraid of public comment. It only strengthens
4 the ultimate product and it helps us avoid some of the
5 unintended consequences that my colleague discussed.

6 On an issue of this magnitude, the FCC has a legal and a
7 moral obligation to provide the public with more specific
8 details before sealing it into federal regulations. That's
9 why, as a backstop, I recently asked the chairman to alert the
10 public to at least the broad outlines of what we're planning to
11 do, to do that in an open forum. I even suggested we could
12 hold such a public briefing very soon to accommodate his
13 June 2nd timeframe despite the fact I think that that timeframe
14 is too truncated and it's a rush to judgment. Even this would
15 go a long way toward helping the public understand what's
16 happening within the confined walls of the FCC. But sadly, he
17 rejected my proposal along with the others.

18 I've got to ask, what's the rush to make major changes
19 now? I think that we can make changes that are good changes.
20 I think we can work towards a consensus, as Commissioner Capps
21 indicated. We should focus on putting a workable structure in
22 place, one that can survive scrutiny by the courts. And I
23 think that that could be enhanced if we were to have more
24 public comment and that over time we can adjust the levels to
25 allow for greater consolidation after we've proven that the

1 initial levels didn't hurt the public. The law requires the
2 FCC to review these rules anyway every two years, so why not
3 start with a conservative step and then consider greater
4 loosening in the future as we learn more about the impact of
5 consolidation on the vital public interest principles of
6 localism and diversity.

7 Now, those of you in L.A. well know about newspaper magnet
8 William Randolph Hearst. He understood the key power of local
9 news outlets. When asked why he preferred concentrating on
10 newspapers with a limited regional appeal rather than spending
11 more energy on motion pictures, which he was also involved
12 with, knowing that they had a worldwide audience, he replied
13 very pithily. He said, "I thought of it, but I decided against
14 it because you can -- **[SPEAKER CUT OFF HERE]**

15 **MS. ORTIZ:** Well, we lost him, but we're going to get him
16 back. In the meantime, I think we will move on in the interest
17 of time to our next speaker and see if Commissioner Adelstein
18 can join us after that once we get a connection reestablished.
19 So now I'd like to introduce Representative Xavier Becerra, who
20 is a ten-year veteran of the House of Representatives.

21 Representative Becerra, who is Xavier to me since we've
22 been personal friends and law school classmates, is a member of
23 the Congressional Hispanic Caucus and currently serves as the
24 chairman of the Hispanic Caucus's telecommunications and
25 technology taskforce among his other duties in Washington.

1 Xavier.

2 **CONGRESSMAN BECERRA:** I still want to hear the punch line.
3 He was getting -- he was getting going. Good morning, and let
4 me begin by thanking Sandra Ortiz. It is sort of like a
5 reunion here to see Sandra and very proud to see what she has
6 been able to do here at USC, and I hope that she continues to
7 shed light on some of these important issues and thank you very
8 much for ensuring that Los Angeles did have a -- a hearing here
9 to discuss this very, very important issue of media ownership.
10 To USC, for recognizing the importance of this issue and
11 providing the forum, I want to say thank you as well. And
12 to -- by the way, Robin Kaufman was great and thank you Sandra,
13 for her assistance as well in making this happen. And to
14 Commissioner Capps, who I know has championed these issues far
15 before we had notice that there would be a review of media
16 ownership rules, and to Commissioner Adelstein, who's taken
17 this task on since day one when he first was sworn in. I know
18 it was a task just to get him onto the FCC as he went through
19 the process of getting him Senate confirmation, so I'm pleased
20 that the two of you have participated. I wish we could say
21 that we had all of the members of the Commission here today
22 because it is so very important. In fact, it would've been
23 great just to have them participate in a handful of these as a
24 majority of the Commission. But since we don't have a
25 majority, we're certainly lucky enough to have two of the five

1 members of the Commission with us participating and offering
2 their words as well.

3 I want to just focus on a few things because I know that
4 you have experts here. You have excellent panelists to -- to
5 make presentations. I'd like to just, for the record, mention
6 a few of the points that many of my colleagues and I have been
7 working on in Washington, D.C. First and foremost of course,
8 the -- the public owns the airwaves. We all know that. And it
9 was Congress that created the FCC to give it the opportunities
10 to help manage those airwaves for the public's benefit. I hope
11 that my colleagues and I will be prepared to act as well, based
12 on what the FCC does or doesn't do, in trying to protect the
13 public's interest with regard to those airwaves and perhaps
14 we'll have to undertake a review of the FCC if we don't find
15 that the FCC is willing to undertake a thorough and
16 comprehensive review of these media ownership rules on its own
17 and give the public an opportunity to provide input as well.

18 This seems like a runaway train. We have right now a
19 little bit more than a month to review these rules, yet we're
20 reviewing them in isolation because we're not being provided by
21 the Communications Commission the opportunity to know what they
22 think. What the Commission thinks before it decides to issue
23 its final rules, which seems to be working backwards. And for
24 many of us it's of great concern. Many of us in Congress,
25 Senate and House have expressed in writing our desire to have

1 proposed rules issued prior to any final rules being enacted by
2 the FCC, and we'd like to have an opportunity for full public
3 comment, not just for members of Congress but for the public in
4 general on those proposed rules before they become final.

5 But it seems as well that we have a hear-no-evil,
6 see-no-evil attitude by those who could communicate the
7 information to us, and there, by that I mean, as I think both
8 chairmen just mentioned, are our media outlets. Our -- our
9 major media outlets, I believe, have done a dramatically poor
10 job of getting the information out there. And unfortunately,
11 you talk about hear-no-evil and see-no-evil, that can't be an
12 excuse because they're the ones that produce what we hear and
13 what we see.

14 So I hope that this will be a clarion call for the media,
15 all the media, to come forward and help the public have a
16 better understanding of what is occurring over the next several
17 weeks. And I hope longer than just the five or so six weeks
18 that we have left before comment is to close and rules will be
19 issued.

20 I want to mention a couple of other things. Diversity.
21 It seems to me as we talk about diversity ownership within the
22 media universe, we forget perhaps the most common meaning of
23 the word diversity in America these days. And to me diversity
24 within the media would also include our ethnic and racial
25 diversity so that -- and of course gender diversity -- so that

1 we don't just talk about big versus small, rural versus urban,
2 but we also talk about the fact that in too much of America
3 most of America is excluded and certainly minority and women
4 are also very much excluded within the means of ownership of
5 our media outlets. And I hope, as Chairman Copps had mentioned
6 and I believe that Chairman Adelstein would also have
7 discussed, that there is a need to incorporate the needs of our
8 minority communities of women when we talk about ownership
9 opportunities within the media.

10 And having said that I would also hope that we would all
11 urge upon the FCC transparency, as much as possible that what
12 goes on within the FCC occur within the light of day. And if
13 it weren't for Chairman -- I wish you were chairman --
14 Commissioner Copps and now Commissioner Adelstein trying to go
15 out there and inform the public, I suspect most people in
16 America would have little understanding of what may be about to
17 occur in America. So I applaud the efforts of our two
18 commissioners participating today, but I hope that the FCC, the
19 Commission as a whole, recognizes that this must be done in a
20 transparent fashion so that we can all say, when the results
21 are finally in, that we all understood and had an opportunity
22 to comment.

23 And finally, let me focus on a few issues that are of
24 great concern to the Congressional Hispanic Caucus, to Latinos
25 throughout this country, and certainly to minorities generally

1 throughout this country, and I would include women as well.

2 Ownership. I mentioned it earlier. We've got to do
3 something about this consolidation that's occurring because
4 it's -- it's not just a matter of getting big, it's -- it's a
5 matter of a few, for the most part, white males, getting very
6 big, and we've got to stop that from happening because if we
7 want to have a diversity of view reflected in what goes out,
8 whether it's broadcast, radio, print, you need to have that
9 diversity of perspective that comes only from your background,
10 from the opportunities to have been one who grew up from those
11 origins. I would hope that the FCC, and I know Commissioner
12 Copps has been one who has always promoted this, but I hope
13 that the entire membership of the FCC will recognize this as
14 well.

15 Secondly, expertise. We're about to have final rules
16 issued soon by an organization which, for the most part, I
17 don't believe reflects the needs, desires, the background, the
18 history of women and minorities. And I would pose a question
19 that perhaps Chairman -- Commissioner Copps and also
20 Commissioner Adelstein -- I keep -- I'm -- I'm -- I'm hoping
21 more than anything else, I guess, that Commissioner, you'll
22 become a chairman. Maybe after 2004 that'll happen. But
23 getting -- moving on to other things.

24 I hope that what we can do is find that there will be ways
25 for us to address not just the ownership issue but also what

1 the FCC brings to the table in terms of expertise and resources
2 to address the issues that are important to minorities, African
3 Americans, Asian Americans, Native Americans, Latinos and
4 women. Who do you have on your staff to guide you on some of
5 these very important principles and will you have people of
6 color and women who can guide you in making those decisions? I
7 would pose that question to the chairman, Mr. Powell, to see
8 where that takes us.

9 And finally, finally, when it comes to the issues -- when
10 it comes to the issues of how minorities are treated, I hope
11 that we'll recognize as well that we have to tackle some very
12 important issues that in some cases the media outlets have very
13 little control over. Nielsen and Arbitron do a tremendous job
14 of trying to gauge ratings, but in some cases I think they do a
15 very flawed job in that regard. And too often they don't take
16 into account how many people of color, how many women are truly
17 watching what they really want, and I believe it will be time
18 soon that we examine whether the monopolies that we allow
19 Arbitron and Nielsen to maintain within the rating system will
20 be a subject of review by the FCC, or certainly I hope by
21 Congress because it seems to me that if we want to give the
22 media the best opportunity to do a good -- not only a good job
23 but a tremendous job of doing well with the airwaves that the
24 public has given to them, then we have to make sure that they
25 have the best information on which to make their decision and

1 that's where Nielsen and Arbitron truly require some oversight.

2 I would only make the final point that I believe with --
3 as Chairman Copps -- Mr. Copps -- Commissioner Copps -- it's --
4 it's ingrained, sorry -- that Commissioner Copps made, that
5 perhaps what we should do is truly look at the licensing issue.
6 That might give us a better sense of what people are doing so
7 that instead of after the fact, after a media organization has
8 not done a good job, but before we give them a license that we
9 determine what they will do and find out if they follow
10 through. I think that's a wise course of action.

11 I appreciate, Sandra, what you have done here. I'm
12 pleased to see so many people here. I hope we have some media
13 representation that will report on what goes on here today, and
14 I hope and pray that this will not be the last, certainly not
15 within the five-week period, that we hear from the chairman and
16 the commissioners on this very important issue. Thank you so
17 very much.

18 **MS. ORTIZ:** I'd also like to recognize that Congresswoman
19 Diane Watson, who could not be here today because she's flying
20 back to Washington -- the congressional recess is ending -- I
21 think Congressman Becerra is running off to catch a flight
22 also -- but she -- Congresswoman Diane Watson, who is chair of
23 the Congressional Entertainment Caucus did send a
24 representative, her press secretary, Lois Hill-Hale, who is
25 with us today and will be reporting back to the congresswoman

1 about today's events.

2 I'm also pleased to report that we have Commissioner
3 Adelstein back on line, and we'd like to hear the end -- the
4 end of that -- that setup that you had intrigued us with when
5 we got cut off so suddenly. So -- excuse me -- Commissioner
6 Adelstein.

7 **COMMISSIONER ADELSTEIN:** Well, thank you so much for
8 bringing me back. Am I back up? It's working?

9 **MS. ORTIZ:** Back up.

10 **COMMISSIONER ADELSTEIN:** All right. Well, if -- if an FCC
11 Commissioner can't telecommute, who can?

12 I was speaking about your very own William Randolph
13 Hearst, somebody of great interest to the people in L.A. and
14 somebody you know a lot about. And I'm not sure when it cut
15 off, but I was trying to say that he was trying to decide, you
16 know, people -- he was in the -- he was in the movie business
17 and he was in the newspaper business, and when he was asked why
18 he was concentrating on newspapers with a limited regional
19 appeal rather than spending his energy on motion pictures with
20 a worldwide audience, he pithily replied, "I thought of it.
21 But I decided against it. Because you can crush a man with
22 journalism and you can't with motion pictures." Well, we may
23 well be on the verge of creating a new Citizen Kane for the
24 21st century or maybe a handful of them.

25 The FCC should proceed with a lot more caution because

1 caution and speed don't mix well, particularly not when our
2 safeguards of democracy are at stake. Diverse views fuel our
3 public debate and they strengthen our democracy. We need more
4 voices in the nation's media but not just from one
5 ventriloquist. Each of you should be a part of this dialogue.
6 That's why I'm so glad we're doing what we're doing here today.
7 I can't emphasize enough the importance of your participation.
8 If we're to craft media ownership rules that best serve the
9 public interest, we've got to hear from the public. That's why
10 Commissioner Copps and I are traveling around the country to
11 hear your voices. And I'm so pleased that Commissioner Copps
12 has shown such great leadership. He was there before I got
13 there and he did a great job of setting this -- setting this
14 up.

15 So good luck and know that you're engaged in what is the
16 most critical dialogue taking place in America today. And
17 thank you for letting me be a part of it, and thank you for
18 letting me come back in after a little audio disruption there.
19 I really appreciate it. This is a great honor to be with you
20 today. Back to Sandra.

21 **MS. ORTIZ:** Thank you, Commissioner Adelstein. I'd now
22 like to introduce Matt Spitzer, who is dean of the USC Law
23 School. Dean Spitzer founded the Center for Communication Law
24 and Policy and has written extensively on telecommunications
25 issues. Dean Spitzer.

1 **DEAN SPITZER:** Pardon me. I think it works better this
2 way. You get fewer of the exploding P's in this configuration.
3 I want to say welcome to everyone. USC Law and -- Law School
4 and Annenberg School jointly sponsor the Center for
5 Communication Law and Policy. Sandra Ortiz is our executive
6 director and has put together this -- I should say this
7 conference twice and for that I want to thank her. I want to
8 thank Commissioner Capps and Adelstein and all the other
9 participants here today. I look forward to a great success.

10 I want to say two things. Then I'll sit down. I'll try
11 to be brief. First, I want to talk sort of about the tone of
12 the proceedings and second I want to introduce Christopher Yoo.

13 First, about the tone. This is not a corporate boardroom.
14 It's not a guild hall. It's an academic setting. And as such,
15 I'll give you the two-minute version of my introductory lecture
16 to my administrative law course about the difference between
17 private interest and public justifications.

18 Private interests are perfectly fine for motivating you to
19 action. But they're not always the things you can talk about
20 effectively in public as good reasons for doing something.

21 For example, I'm a teacher. I'm an educator here at USC.
22 It is entirely possible that the advent of online educational
23 schools will cost me my job. There are now online law schools
24 which are growing very rapidly. Most people who know about the
25 law school world expect about -- okay -- expect about -- about

1 a third of us to fail within the next 20 years. That is, we
2 become history. My salary, if I'm still working 20 years, will
3 almost certainly be lower than it is today because of
4 competition from online schools. None of this is a
5 justification for invoking governmental regulation to suppress
6 online education, in spite of the fact that I and others like
7 me will be hurt and that old institutions that have been around
8 for many years will be swept away. Instead, you need to make
9 arguments about students being better or worse served, being
10 better or worse educated and so forth in order to make public
11 interest --

12 (End of Side A of Tape 1, Beginning of Side B.)

13 **DEAN SPITZER:** My industry segment will disappear or even
14 I will have less creative control over my work. Why? Because
15 public interest arguments are those that are designed to
16 produce -- pardon me -- public interest arguments are sort are
17 sort of the following nature. The set of rules that govern
18 industry structure will produce an output that either produces
19 less interesting, less creative fare that is not as interesting
20 to viewers and listeners. That's a public interest argument.

21 Perhaps the industry structure produces less news in
22 public affairs that allow citizens to make informed decisions.
23 Perhaps it produces higher ad rates, which ripple through the
24 cost of purchased goods and thereby transfer large amounts of
25 money from the public to sellers of ad time. All right. These

1 would be public interest arguments. However, saying it so
2 doesn't make it so.

3 At an academic setting empirical testing is, in my
4 opinion, and by the way in the opinion of the D.C. circuit,
5 absolutely necessary. Once you've said the argument, you still
6 have to back it up.

7 Okay. I'll move on. I think the microphone is telling me
8 I've said enough in this regard and so I will. Instead I'll
9 move on to introducing our speaker. Christopher Yoo is going
10 to give us a legal overview of ownership regulations.
11 Christopher is a professor at Vanderbilt. He's prolific. He
12 writes on law and economics of telecommunication, including
13 broadcasting and cable TV. I particularly recommend an
14 extremely extensive survey and synthesis of the law about
15 vertical integration as applied to broadcasting and cable.
16 It's in the Yale Journal on Regulation. And if you don't do it
17 at least give it to someone in your General Counsel's office to
18 read because someone should know this stuff.

19 At any rate, the definition in academia of a sophisticated
20 scholar is "someone who thinks a lot like I do." And -- but
21 only -- and only sometimes do we have the qualifier "but does
22 it a little better." And so it's -- it's my pleasure to
23 introduce a sophisticated young scholar, Christopher Yoo.

24 **MR. YOO:** Well, part of the sophistication is the high
25 tech toys I get to play with. So if you'll bear with me while

1 the screen comes down.

2 It's an occupational hazard as a teacher. I'm really
3 troubled without a blackboard, so I'm afraid this is the best
4 I'm going to be able to do here.

5 My job here is to provide a legal overview of the media
6 regulations that are comprising the biennial review that will
7 culminate apparently on June 2nd by the -- with the announced
8 attention -- intention of the Federal Communications Commission
9 to revisit a large number of media ownership rules. These
10 media ownership rules have been in play since at least the
11 1970's unchanged and have their seeds, many of them -- or their
12 origins, back in the 1930's. And I believe that we are at an
13 unprecedented crossroads in U.S. media policy for several
14 reasons.

15 First is, there are an emergence of tremendous new
16 communications technologies that have opened up the policy
17 space since these rules were last revisited in the 1970's.
18 There's a tremendous expansion in the number of broadcast
19 outlets, television stations. As recently as 1980, the average
20 household received fewer than four. The average U.S. household
21 now receives in excess of 13 over-the-air broadcast signals.
22 Cable, direct broadcast satellite systems have transformed the
23 television environment, Internet, through generation wireless
24 in the offing, all of which have dramatically changed the
25 policy environment in which we operate.

1 Second is significant changes to the legal environment.
2 The first of which is the biennial review process initiated by
3 the Telecommunications Act of 1996. For the first time the
4 federal statute requires the Federal Communications Commission
5 to revisit all of its ownership regulations every two years
6 with the presumption that absent adequate justification that
7 they will be repealed. The other thing that's happened that's
8 dramatically changed the environment is a number of recent
9 judicial decisions that have struck down a number of these
10 longstanding ownership policies. Two were decided in 2002, one
11 was decided in 2001, and they have raised serious questions
12 about whether the continuing vitality of a lot of these rules
13 and whether they'll continue to exist.

14 And lastly, I think there's a great deal of new thinking
15 about regulation. I think the seminal moment occurred when
16 President Clinton, a democrat, said, "The era of big government
17 is over." That opened up a brand new dialogue wherein people
18 of all parts of the political spectrum are willing to think
19 about new solutions to old problems and rethink the way we
20 approach classic regulatory issues.

21 The net result is many of the rules that we are going to
22 talk about today are up for grabs for the first time in 60
23 years since they were originally promulgated, and it's created
24 a tremendous amount of interest in what the future of the
25 industry will hold.

1 There are six rules under scrutiny and they actually can
2 be -- they can be categorized in three different ways, into
3 three different pairs. The first set of rules affect local
4 ownership limits. Local ownership limits within a medium.
5 Specifically there's two of these. First is, how many radio
6 stations you can own in Los Angeles. That is one medium.
7 Radio. One locality. Los Angeles or New York or Chicago. And
8 there are limits to the number of radio stations that any --
9 historically been limits that any one entity can own.
10 Similarly there are limits to the number of television stations
11 within one medium, within one geographic area, that an entity
12 can own.

13 The second set of rules also deal with local ownership but
14 not within one medium but across media. In fact -- and there
15 are two rules that are relevant in the proceedings. The first
16 is the radio-television cross-ownership limits. It's not
17 within radio, not within television, but how many radio and
18 television combinations can you own in Los Angeles or Nashville
19 or Atlanta or any of the cities in the United States.

20 The other cross-ownership restriction that's being
21 discussed is a newspaper-broadcast cross-ownership ban that has
22 been in place since the 1970's. A newspaper cannot own its --
23 newspaper broadcast -- that's broadcasting, including both
24 radio and television -- as a matter of rule cannot own a
25 newspaper -- a newspaper cannot own a radio or television

1 station in the same city in which it operates.

2 And lastly, there's two sets of restrictions currently
3 being debated that are really focused not on local markets but
4 on national markets. The first of which is called the national
5 television station ownership rule that limits the ability --
6 the number of stations that a entity can own nationwide.
7 That's aside from the number you can own in Los Angeles, but
8 can a Los Angeles owner own one in New York, in Chicago, in
9 Seattle and the different cities?

10 And the last thing is what they call the dual network
11 rule. How many broadcast television networks can one company
12 own? All of these are currently being considered and they're
13 all going to be decided apparently in June.

14 Taking them one at a time. The first set of rules is the
15 local ownership limits within one medium starting with radio.
16 How many radio stations can one company own in any one city?
17 The original rule prohibited any company or any person from
18 owning more than one radio in the same city. Radio station in
19 the same city. The concern was that if there -- since there
20 were so few stations in any one market, allowing any entity to
21 control more than one them would give them an inordinate amount
22 of control over the points of view expressed in that market.

23 What has happened since these rules were promulgated back
24 in the 1930's, what happens is we've had a radical expansion in
25 the number of radio stations that are now available compared to

1 what existed in the 1930's or even what existed in the 1970's.
2 And in fact, as the number of radio stations expands radically,
3 the concern that any two of them would be controlled by the
4 same entity diminishes because the problems go down.

5 Second, there is a realization that group ownership of
6 radio stations within a market allows the realization of
7 certain efficiencies. Two small-share stations can combine one
8 sales force and make sales calls more effectively. And if
9 they're niche radio stations that are pointed at different
10 markets, they can cross-sell advertising to a single advertiser
11 and it makes it possible. The FCC has recognized through a
12 series of rule-makings that it's made it more possible for them
13 to deliver more programming.

14 So instead of a blanket ban, they've now adopted what's
15 called -- what I'll call a tiered approach. The tiered
16 approach is really determined by the number of radio stations
17 in a particular market. The different tiers and the amount of
18 the ownership restrictions are determined by the number of
19 stations in the market. Now L.A. will be 45 or more, the next
20 tier down is 30 to 44, 15 to 29 and on farther down. The more
21 stations that are on the market, the more you allow individual
22 stations -- you can allow individual stations to be under the
23 same ownership and not have the kind of public interest and
24 anti-competitive concerns that have animated these rules.

25 And the rules as they exist today, if you have 45 or more

1 stations in the market, you get eight. If you have 14 or fewer
2 you get five. You can combine five and on down. There is one
3 thing I'd like to point out about this, is that if you look at
4 the way the tiers are set up, the distinctive aspect about this
5 is it only counts the number of other radio stations in the
6 market. So in measuring what's competition, they're looking
7 solely within one media, radiom -- medium radio.

8 And they don't largely take into account other media.
9 There's an almost identical set of -- analogous set of
10 restrictions that apply to television. Again, it began
11 originally as a bar on stations owner -- owning more than one
12 television station in the market. That was very appropriate
13 when most parts of the country could not receive more than
14 three or four broadcast signals over the air. As I stated, in
15 the current environment the average U.S. household receives 13
16 broadcast stations over the air and it's now -- changed the
17 concern that these sorts of combinations would raise.

18 Again, we've adopted a tiered approach. The tiered
19 approach focuses on the number of independent voices in the
20 market. If there are eight or more, one rule applies. If
21 there are seven or fewer, a different rule applies. Number of
22 voices means station groups. In other words, if two -- if
23 two -- two stations under common ownership, they're one
24 independent voice in the market. And the answer is if there
25 are seven or fewer independent voices in the market,

1 combinations of television stations are not allowed. If there
2 are eight or more combinations of television stations are
3 allowed, so long as the stations that are combining are not in
4 the top four stations in the market.

5 Again, the number of voices here is limited to television
6 voices. And looking at the amount of competition that will
7 relieve our concern for this kind of combination, we are only
8 looking at television. This is critically important because
9 this rule was invalidated by the courts in 2002. For precisely
10 its willingness to consider only television voices and is in
11 direct contrast with the next one I'd like to talk about, which
12 is where we start the cross-ownership rules.

13 So we're moving beyond where we're looking within one
14 medium and we're now looking at the number of stations that can
15 be owned jointly. There's a radio-television cross-ownership
16 rule within the same market that limits the number of
17 combinations of radio and television. Again, the original rule
18 dating back to the 1930's said one to a market. You can have
19 one AM radio station or one FM radio station or one television
20 station, but you could not own both. Both radio and television
21 or both AM and FM. As the market has broadened and the
22 technologies made it possible for us to have more, they've
23 created, again, another tiered approach based on the number of
24 independent voices in the market. Here we have three tiers.
25 One with 20 or more voices. Ten to 19, or nine or fewer, and

1 you allow a varying number of increasing level of concentration
2 and co-ownership depending on the number of voices in the
3 market.

4 Here's the critical difference, though. The voices -- in
5 counting of voices, it's no longer restricted to just radio and
6 television. This particular rule starts to acknowledge that we
7 have new communications media in the world and this rule
8 includes cable and newspapers in the count of the number of
9 voices underlying the competition that relieves the concerns
10 that we have.

11 The reason this is important is that the difference in
12 approach between this and the television cross-ownership rule
13 is what led the courts to strike down the television local --
14 the local television ownership rule. They said, why is it that
15 a voice -- newspaper and cable, count as voices for purposes of
16 the radio-television cross-ownership rule, but newspaper and
17 cable does not count as a voice in the local television
18 ownership rule? They say there may be an explanation for that,
19 but you haven't explained why you would draw such a distinction
20 and they vacated the rule as -- I'm sorry -- they remanded the
21 rule as arbitrary and capricious, and it's currently being
22 reconsidered by the FCC.

23 The other rule that's up is cross-ownership is not radio
24 television, it's newspaper-broadcast. Again it has its
25 origins. The current rule existed -- created in the 1970's

1 bars any newspaper from owning any broadcast outlet. And in
2 fact what's -- what's notable from the purposes of our
3 standpoint is this is not a tiered approach. It does not
4 matter how many other broadcast outlets or cable outlets or
5 radio outlets would be in the market. The newspaper
6 cross-ownership ban stands as an absolute bar no matter how
7 diverse the underlying media market is. There's another key
8 fact to this, is that in fact 54 broadcast-newspaper
9 combinations do exist. Fifty-four of them were either
10 grandfathered in or granted permanent waivers, and they now
11 exist. And it's one of the interesting things of the ongoing
12 review is, what has been the impact? It's a natural experiment
13 that we can start to understand the role of newspaper-broadcast
14 cross-ownership. This is one of the few rules that made it all
15 the way to the Supreme Court in its current form. It was
16 sustained by the Supreme Court in 1978 against a First
17 Amendment challenge, and it's currently being reconsidered by
18 the FCC, those initiated prior to the current view in 2001.
19 And that's part of an ongoing process that the FCC has taken
20 even outside the biennial process to evaluate its rules.

21 The other two rules are the ones national in focus.
22 This -- the national television station ownership rule limits
23 the number of stations you can own nationwide. The concerns
24 are different. This is owning a station in New York and L.A.
25 It will not reduce competition in L.A. You will have the same

1 number of choices in L.A., the same number of choices in New
2 York. What is really concerned is its impact on the national
3 market for advertising, the national market for program
4 production. And the original rule prohibited ownership of more
5 than three stations nationwide. And this has gone beyond a
6 series of liberalizing moves that became a rule -- started as a
7 rule of three, became a rule of five, rule of seven, rule of
8 twelve, steady broadening because they realize that there are
9 efficiencies if you own a station in Atlanta and L.A. and
10 Chicago; managerial efficiencies, operational efficiencies that
11 can make it very effective. And in fact what happened in the
12 1996 act, they abolished any absolute limitation on the number
13 of stations you can own. Subject to one very large caveat.
14 The caveat is that the combined reach of any station group
15 cannot exceed 35 percent of the national audience. This is
16 part of the -- this is a major issue because currently, after
17 the Viacom-CBS merger, Viacom is now currently in violation of
18 this at excess of 40 percent, granted waivers by the FCC, and
19 Fox's acquisition of Chris-Craft now exceeds the 30 -- they now
20 exceed the 35 percent cap.

21 As part of the biennial review process, the FCC considered
22 whether they should remove this rule in 2000 and they declined
23 to do so. The reason this is very much up for grabs right now
24 is judicial -- the courts have ruled that the FCC's decision
25 not to reconsider the national television station ownership

1 rule was arbitrary and capricious and they sent it back to the
2 FCC for reconsideration.

3 The last of the rules is the dual network rule. The dual
4 network rule originally was drafted because of the NBC blue and
5 red network, which was -- we had two networks in the same
6 control. Started off as a radio rule and they had -- again
7 they had the problems with the blue and red network in
8 television. In the rule -- the solution the FCC had was to
9 prohibit any company or any person from owning more than one
10 television network. In the world of cable and cable networks
11 and where there are 200 -- in excess of 200 cable networks
12 operating and 70 more on the drawing boards at any time, this
13 rule has been under reconsideration for quite some time, and in
14 fact there's -- certain recent merger activity placed
15 particularly strong deregulatory pressure on it. Viacom's
16 acquisition of CBS put it in a position where it had an
17 ownership interest above CBS and UPN. So there was a
18 reconsideration to the rule. The current rule allows ownership
19 of two networks unless both of the networks are in the top
20 four. That is ABC, CBS, NBC and Fox. CBS can own UPN. NBC
21 can own PAX. But the only thing -- the only merger that would
22 be barred under these rules would be a combination of the four
23 leading broadcast networks.

24 So those are the big -- those are the six rules. A very
25 quick perusal through them to give you a flavor of what's going

1 on. What are the policy considerations that are going to
2 underlie all of this?

3 Well, the first I would say is, this is often discussed in
4 terms of very bipolar terms where all the rules were almost
5 identical and it's a choice between regulation and
6 deregulation. I don't think that's true. All these different
7 rules will have different impacts on different segments of the
8 industry and different parts of the inputs that provide the
9 industry. It will affect the guilds differently. It will
10 affect the networks differently. It will affect the cable
11 station -- the cable operators and the television stations very
12 differently. And people who attempt to reduce this debate into
13 a clash between regulation and deregulation I think will
14 misunderstand the issues and misserve the people they're
15 representing because there will be winners and losers of
16 extremely unusual stripes no matter how these rules come out.

17 The other thing is the -- the other dominant theme that's
18 driving all this is the emergence of new media. Cable and
19 other forms, DBS now control 86 percent of the market. The
20 world in which these rules were written where broadcast
21 networks were three and dominated the television landscape is a
22 very, very different world. And its opened up the policy space
23 in fascinating ways.

24 The other thing that's interesting is the emergence of new
25 media -- not all media are created equal, and we have a very

1 complicated set of questions about, do you just count a radio
2 voice the same as you count a television voice? And even among
3 television voices, some are louder than others. Market share
4 matters and simply adding up the voices does not give you a
5 sufficiently sophisticated understanding of exactly how
6 competitive a market is.

7 The other thing is the economics of information. There's
8 a growing number of -- of insights provided by this. The
9 basic -- the most fundamental concept is what people call first
10 copy cost. Anyone who creates any information good knows that
11 all the costs are created in the first copy and the subsequent
12 copies are extremely cheap. That's true of movies, it's true
13 of music, it's true of newspaper and local information. And
14 what's fascinating is that the economics of information suggest
15 that some amount of media consolidation might be good. There's
16 a story out of Boston that a new -- this Boston newspaper
17 sought a waiver of the newspaper-broadcast cross-ownership ban,
18 saying that if you allow us to do that we will get another
19 newspaper into Boston. And if you don't allow us to take the
20 same content we develop for the newspaper and roll it out
21 across both outlets, we won't make enough revenues to survive.

22 That tells me that the relationship between consolidation
23 and local content and diversity of content and competition can
24 be quite ambiguous. Under certain circumstances, allowing
25 consolidation to occur can in fact enhance the amount of local

1 content and diversity of information available.

2 The last is there are significant efficiencies in media
3 consolidation. I'll give you an example out of my own hometown
4 of Nashville. Currently, UPN, WB and Fox jointly market
5 advertising time. Why? Because none of their shares
6 individually is enough to support a solo sales force, and
7 they're all targeting towards different segments of the market.
8 And a sales call can't meet a particular advertiser's needs,
9 and they find that it's much more effective for them to do so.
10 Would that be true in every market? Not necessarily. But it's
11 clear that we've now opened up the way we think about these
12 issues and ways to consider the possibility that consolidation
13 might actually allow new fledgling networks to succeed where
14 they otherwise couldn't.

15 Two last points. Legal considerations are on the table.
16 First is what Professor Spitzer -- Dean Spitzer -- mentioned is
17 the importance of empirical evidence. The 1996 acts that
18 requires the FCC to consider whether a rule is no longer
19 necessary is the result of meaningful economic competition, and
20 the courts have interpreted as requiring the FCC to have a
21 solid empirical foundation. A factual foundation for
22 everything it does. This has been a tremendous change. In the
23 past the FCC has been willing to wait and see what happens in
24 the market. It's pretty clear where this new regime as a legal
25 matter, waiting and seeing is no longer an option for the FCC,

1 at least under the D.C. circuit's interpretation of that.

2 The other problem is the empirical studies are quite mixed
3 on the affect of consolidation, and I think the fairest read as
4 a person who is not -- doesn't have any particular dog in this
5 fight is that if anything, it suggests that consolidation is
6 neutral with regard to diversity, localism and competition.
7 And in fact a large number of the studies suggest that allowing
8 more consolidation to occur would produce more diverse and more
9 local content on the airwaves and in the general media. That
10 is a controversial proposition. There are 12 studies by the
11 FCC. Some were criticized by their -- the people who want to
12 keep the regime going, but there's a very vibrant literature
13 that's largely getting -- not getting the attention it
14 belongs -- deserves.

15 And the last thing from a legal standpoint is what led to
16 the strike down of the one rules is that you'll discover that
17 the tiers and the willingness to consider alternative voices
18 are generally contradictory, and there is not really a unified
19 approach taken by the FCC. In fact, that's anathema to a legal
20 scholar. Being consistent across the board is one of the
21 obligations administrative agencies have, and it's one of the
22 problems that the FCC is confronting about how to unify all
23 this around a consistent perspective.

24 The last comment I will make is that this is only the big
25 major round in what's going to certainly be an enduring fight.

1 There are a number of other issues waiting in the wings. The
2 national cable ownership rules and the channel capacity rules
3 recently struck down by the courts are up for reconsideration
4 as well. There is a cable DBS cross-ownership proposal up,
5 digital television, whether they have to be carried on cable
6 and what public interest obligations they'll bear. The
7 deployment of third generation wireless devices waits in the
8 offing. There have been a number of proposals to revive a rule
9 called FINSYN, the financial and syndication rules, which will
10 be of tremendous interest to the next panel. And whatever the
11 resolution happens on June 2nd, this will only be another
12 round, although a major round in what is almost certain to be a
13 very long and protracted debate about the media ownership rules
14 that will govern the media in the future. Thank you.

15 **MS. ORTIZ:** Thank you, Professor Woo. I want to point out
16 something I'm sure you're all aware of, which is we are running
17 very late. That's the problem -- the challenge we faced in
18 paring down a full-day event to a half-day event is that we had
19 such incredible speakers and we want to give them the time to
20 make their statements.

21 We're now going to start the first panel. We are going to
22 allow the panelists to have their time because that's why we
23 are all here and that's why they've made the time to be here
24 and try to make up some of the time during the breaks. And
25 frankly, the event will probably go just a little bit late

1 because I don't want to cut short the public comment period
2 either. Our real deadline at the end of the day is making sure
3 that Commissioner Copps gets out of here in time to catch his
4 flight and we, I think, have a little -- I may feel more
5 comfortable with the leeway we have than he feels comfortable,
6 but we'll see how that goes.

7 I would like to now introduce Tracy Westen, who will be
8 moderating both of the panels today. Tracy is an adjunct
9 professor of media law at the USC Annenberg School for
10 Communication. He is also a former deputy director of the
11 Federal Trade Communications Bureau of Consumer Protection and
12 founder and director of the Los Angeles-based Center for
13 Governmental Studies, which promotes a more open, responsive
14 government. Tracy also spent two years as a legal advisor at
15 the FCC not so long ago. Tracy.

16 **MR. WESTEN:** Thank you, Sandra. This first panel is
17 Economics and Diversity in Programming, and it raises the
18 question, why focus on entertainment? Why is entertainment
19 important and relevant to an FCC proceeding on ownership of the
20 media?

21 Well, as Justice Harlan once said, "One man's
22 entertainment teaches another doctrine." The line between
23 entertainment and news is, for better or worse, increasingly
24 illusory. Entertainment informs. News entertains. Both are
25 essential to a functioning democracy. The core question here,

1 I think, is what rules allowing concentration of ownership and
2 control over the media will unleash the greatest burst of
3 creativity, diversity and competition that our nation wants,
4 needs and deserves? Do new channels, new media outlets and
5 globalization require media conglomeration or media
6 organizations to bulk up, so to speak, to increase their
7 ability to present high quality entertainment? Or will greater
8 concentration squeeze out diversity and creativity and
9 innovation in programming?

10 It seems that the FCC addresses these major controversial
11 issues almost every 30 years. In the 1940's, the FCC addressed
12 network ownership and the contractual relationships between the
13 networks and their affiliates, adopting rules, some of which
14 are still with us today. In the 1970's, the FCC adopted the
15 Financial Interest and Syndication Rules and the Prime Time
16 Access Rules, some of which were repealed in the 1990's. And
17 30 years after that, in the 2000's, the FCC is again addressing
18 these very important questions in an environment of more
19 channels, increased technology, different regulatory approaches
20 and different approaches to the First Amendment.

21 We have with us today an extraordinary panel. Their bios
22 are listed in your packets, so I will not spend time repeating
23 them all because time is short. If you've checked your
24 watches, this panel is already halfway over. So we will extend
25 the time and try and give each speaker about ten minutes. I

1 will remind them at about the eight- or nine-minute mark that
2 the time is coming to a close. We will proceed in the order
3 from your left all the way over to the right. We also, I
4 believe, have a speaker, Martin Franks, by video conference,
5 who will speak at the end of this presentation.

6 So let's start with Mark Pedowitz, on your far left,
7 Executive Vice President of ABC Entertainment Television Group,
8 oversees ABC Late Night and ABC Kids' Programming.

9 **MR. PEDOWITZ:** Thank you, Tracy. My name is Mark Pedowitz,
10 and I am Executive Vice President of the ABC Entertainment
11 Television Group. My responsibilities include negotiating the
12 business arrangements for the right to exhibit entertainment
13 programming on the ABC Television Network and overseeing
14 production of business for Touchstone Television. I have
15 extensive experience in the business relationship between
16 program producers and networks. Prior to joining ABC in 1991,
17 I helped (inaudible) for a legal position in an MGM/MCA
18 (inaudible) entertainment and (inaudible) company. To put it
19 simply, I have been on every side of the table regarding the
20 licensing and programming for television networks. With me
21 today is (inaudible), President of the ABC Television Network,
22 who will be available to answer any questions you may have.

23 My comments today will focus on recent efforts to
24 re-regulate programming aspects of network television. Based
25 on my experience, there is absolutely no factual or legal basis

1 for the government to wade into the marketplace with network
2 television programming. Today's television business bears no
3 resemblance to the free network world and (inaudible) the basis
4 for government regulation of network programming practices.

5 Despite the fact that there will always be complaints
6 about TV programming, and despite a hazy and forgetful
7 nostalgia for what some call the Golden Age of Television, the
8 indisputable fact is that the American consumer today enjoys a
9 greater quantity, quality and variety of television programming
10 than at any time in our nation's history.

11 In the early 1970's, the television industry consisted of
12 almost entirely of three broadcast networks. For example, in
13 1975, the three-network share of prime time programming was 93
14 percent. Seeking greater diversity and choice for consumers,
15 for advertisers and for program producers, the government set
16 out on a two-pronged effort, to create greater competition.
17 First, the government imposed FCC rules and judicial consent
18 decrees to regulate the business relationship between network
19 and program producers. These became the financial interest and
20 syndication provisions, and they were premised on the concern
21 that program producers had only three places to try to license
22 their shows. The second part of the government program was an
23 effort to stimulate more competition and more options for the
24 television viewer.

25 By the early 1990's, the effort to create more channels of

1 television choice succeeded. The factual and legal basis for
2 the financial interest and syndication restrictions were now
3 antiquated in the marketplace. Viewers could choose programs
4 from four broadcast networks and more than 100 new cable
5 networks. Similarly, program producers could offer their
6 programs to far more outlets than had existed in the early
7 1970's. Although disputes continued between networks and
8 program producers, the access bottleneck of the original three
9 networks had been broken. Despite the elimination of the three
10 network (inaudible) by the early 1990's, production entities
11 have benefited from the financial interest and syndication
12 rules fought long and hard to retain those restrictions;
13 however, following a strong review by the Seventh Circuit Court
14 of Appeals, (inaudible) Communication versus the FCC, the FCC
15 chose to repeal its rules and then (inaudible) the Department
16 of Justice successfully asked the courts to vacate (inaudible)
17 consent decree.

18 Given the many networks to which program producers could
19 seek to license their programs, there was no longer any factual
20 or legal basis for continued government intervention into the
21 business relationship between network and program producers.
22 In striking down the rule, the Seventh Circuit stated very
23 plainly that the FCC could not ignore the fact that the
24 networks as of 1992 had lost market power. The court that
25 dissolved the consent decree found that when all is said and

1 done about the changes in the television industry since 1980,
2 it could hardly be said that 34 percent, for an average
3 slightly more than 11 percent, the reach of NBC, ABC or CBS
4 amounts to a marketplace power, the basis of the consent
5 judgments. The Seventh Circuit went so far as to express new
6 skepticism about whether the rules ever made any sense. They
7 found, as a result of the rules, television production became a
8 riskier business and the production of prime time programming
9 became more concentrated. The court added the basis for the
10 rules was never very clear, and they have done nothing other
11 than insulate independent producers from competition from new
12 producers and from the networks.

13 It is remarkable that ten years after (inaudible) factual
14 basis for these ill-conceived rules (inaudible). There are
15 those who suggest that it should be brought back to life.
16 Whatever self-interest might motivate their clinical agenda,
17 the law in this area is clear. The rules cannot be re-imposed
18 unless market conditions needed to justify them can be shown to
19 exist today, and it is indisputably evident that they do not.
20 The courts found, in 1992 and 1993, the rules could not be
21 justified on the strength of network power that then existed.
22 As I describe in a moment, it is indisputable that the
23 networks' market power has only continued to erode since the
24 early 1990's. (Inaudible.) Michelle, thank you.

25 Here is a chart that shows the universe of broadcast

1 television networks in 1970, 30. And here is a chart that
2 lists over 300 networks and cable programming services in
3 existence today. Since the repeal of the financial interest
4 and syndication rules in 1993, the television marketplace has
5 become even more competitive and diverse. Today, if you
6 include Fox Broadcasting, the total four networks' share of
7 prime time viewing is now under 45 percent. If a producer or
8 production company is unable to develop or license a program
9 with ABC, they can take their program to a broadcast network
10 competitor, NBC, CBS, UPN, WB, FOX, PBS or PAX. Or they can
11 take their program to one of the more of hundreds of cable
12 networks such as USA, SCI-FI Channel, Lifetime, HBO, TNT,
13 Showtime, A&E, FX, Hallmark, Bravo, or even to a first-run
14 television syndicator such as Universal, King World, Tribune,
15 Sony, Warner Brothers. The proponents of regulation cannot
16 credibly argue that these new networks or outlets are weaker
17 alternatives to the original three broadcast networks. Indeed,
18 the contrary is true. Here is a chart that tracks the audience
19 growth of new cable networks as compared to the audience
20 decline of the four strongest broadcast networks. As you can
21 see, the lines actually cross in 2001, with the result that the
22 new cable networks now command a larger share of the viewing
23 than do the four largest broadcast networks. While it is true
24 that on most nights, each of the four largest broadcast
25 networks have larger audiences than any one individual cable

1 network, there is irrefutably more competition today than was
2 the case when the rules were struck down.

3 (Gap in tape) -- that the deals cut in this environment
4 reflect those underlying economics. That is precisely how one
5 would expect the competitive marketplace to respond. For our
6 part, we have fought to keep pace with these eroding economics
7 in a number of ways. First, we have sought to extend the
8 initial term of our series deals from an average of six to
9 seven -- from an average of six years to an average of seven or
10 eight years or, in certain instances, to negotiate perpetual
11 licensing. This is intended to provide us with greater
12 commercial protection against huge license fee increases when
13 we seek to renew a hit show. I am sure that you are all
14 familiar with the many millions of dollars demanded by
15 producers for renewals of hit shows such as Friends, ER,
16 Frazier or Roseanne.

17 Second, we have sought to revise our license deals to
18 allow us to re-purpose or re-exhibit a program in close
19 proximity to its initial broadcast. The goals are to advertise
20 the increased cost of programming over a greater number of
21 exhibitions across different platforms and to provide greater
22 opportunity in the fractionalized viewing marketplace where the
23 viewers find and sample (inaudible).

24 ABC's 2002-2003 schedule has consisted of a mix of three
25 categories of programming: 1) Those that are produced entirely

1 by independent producers; 2) Those that are produced through a
2 joint production agreement with Touchstone Television, which is
3 owned by Disney; and 3) Those that are produced entirely by
4 Touchstone Television. This season's shows that fall in the
5 first category, entirely independently produced programs, have
6 included Dragnet, NYPD Blue, The Practice, George Lopez, Drew
7 Carey, Whose Line is it Anyway, The Mole, and Profiles From the
8 Front Lines.

9 For next season, ABC has ordered comedy and drama pilots
10 to go along with from independent producers, including Warner
11 Brothers, (Inaudible) and Warner Brothers, Wonderland
12 Production and Warner Brothers, the Tannenbaum Company and
13 Warner Brothers, Universal Television, Jersey Television and
14 Universal, Grant Gray Television and 20th Century Fox, Imagine
15 Television and 20th Century Fox, and Carson (inaudible).

16 **MR. WESTEN:** Mark, we'll need to get you to wrap up.

17 **MR. PEDOWITZ:** ABC has also ordered four reality pilots
18 from independent producers. In closing, I want to stress that
19 the government's long-term efforts to stimulate more diversity
20 and competition in television was achieved. The extraordinary
21 competition and diversity in television today provides no
22 factual or legal basis for government intervention into
23 business relationships between networks and program producers.

24 **MR. WESTEN:** Thank you. Our second panelist is David
25 Kissinger, president of Universal Television Productions, and

1 the former president of USA Studios programming, oversees Emmy
2 Award winning NBC drama series, Law and Order. David.

3 **MR. KISSINGER:** Thank you. Well, I have a rather brief
4 statement so hopefully I can help move this schedule along. I
5 think that it's quite telling that a representative from
6 Universal Television is here today as a spokesperson for the
7 little guy. I think that tells you about as much about media
8 consolidation as anything.

9 And what it really tells you, while Mark makes a, I think,
10 very cogent case for the circumstances that were on the ground
11 when the FINSYN rules were eliminated, one has to think back to
12 what the opponents of abolishing the FINSYN rules warned might
13 be the worst possible outcome. And let's think about some of
14 the scenarios that were posed, the eradication of the
15 independent production community. Well, that has come to pass
16 with almost extraordinary efficiency and completeness.

17 And again, for the president of Universal Television to be
18 on this panel representing what is remaining of that community
19 tells you a lot about how complete that disappearance has been.

20 Now, Mark does make a very, I think, eloquent case about
21 the diversity that is available to the viewing audience, and I
22 don't think that anybody can be cavalier about dismissing the
23 fact that television now does present to viewers as many
24 choices as ever in the history of the medium. However, that
25 does not change the fact that network broadcast is a unique

1 platform with a unique set of opportunities and obligations,
2 and there are many people for whom that is the only available
3 television viewing experience. There are 43 million American
4 households that only have access to broadcast network
5 television. And for those people the revolution in this
6 business over the last ten years has had, I would argue, a very
7 concrete impact.

8 It is not a coincidence that simultaneous with the
9 elimination of the independent production community, you see
10 the explosion of the reality programming phenomenon. That is a
11 direct confluence of the economic pressures upon the companies
12 that are now almost exclusively doing the programming and the
13 shift in the creative process that has occurred as a result of
14 this. Now, what do I mean by that? It is not, and believe me,
15 I am not trying to demonize the executives who work in these
16 vertically integrated companies. I am one of them. It just so
17 happens that the vertically integrated company for which I work
18 does not yet include a broadcast network. It does include some
19 very powerful cable networks.

20 (End of Side B, Tape 1. Beginning of Side A, Tape 2.)

21 **MR. KISSINGER:** Create somewhat of a creative firewall
22 between the networks and the product. The firewall no longer
23 exists. There is now no difference in most cases between the
24 network executives and the studio executives and that has a
25 fundamental impact on the nature of the creative process. The

1 network executives are also under extraordinary pressure
2 because the quarterly reports of the companies for which they
3 work are so fundamentally influenced by the ratings of a
4 broadcast network to get those ratings up fast.

5 And again, this is not to demonize those executives, but
6 the reality is that that results in a quick-fix mentality.
7 Studios, to the extent they are driven only by building value
8 for a studio, can afford not to be thinking, and really must
9 think on other than a quarterly basis. Networks have a
10 different set of imperatives. And so it, at any given moment,
11 makes more sense for a network to say, "Well, let's go with
12 Mr. Personality because that looks like, for this week, that
13 will result in a short-term fix." Frequently that is to the
14 detriment of the network's long-term interest. It's certainly,
15 I would argue, not contributing to the interest of the viewer
16 in any objective sense.

17 And I would illustrate, Mark makes the point that cable
18 networks have experienced enormous growth over the last ten
19 years and that is certainly true. But there's a very good test
20 case for the massive disparity between the strength of
21 networks -- broadcast networks and cable networks, and that is
22 a show that both ABC and USA are now sharing in a repurposing
23 model called Monk.

24 Monk is a terrific show, which we at Universal Television
25 produce, and it is in fact the highest rated series in the

1 history of basic cable. However, when it is shown on ABC on
2 Thursday night, the most competitive night on network
3 television, its audience is, I think, easily quadruple the size
4 of its audience on the USA network on its very best night. So
5 to me that simply illustrates that there is a massive
6 discrepancy between the power of the broadcast cable platform
7 and the cable platform.

8 Now, we at Universal Television are not advocating some
9 extreme solution to this. We have yet to join with the
10 proposal that would reinstitute a set aside of 25 percent of
11 the broadcast network schedules for independently produced
12 programming. We're still looking seriously at that, and I
13 think it really does warrant very respectful consideration from
14 all of us in this business who do have an obligation to try to
15 serve the interest of the viewing public.

16 I think that's where I'll leave it.

17 **MR. WESTEN:** Thank you, David.

18 Our next panelist is Jerry Isenberg, professor, executive
19 director of Electronic Media Programs at the USC School of
20 Cinema TV. He's been chair of the Caucus for Producers,
21 Writers, and Directors since 1968, and has produced over 100
22 films and television projects.

23 **MR. ISENBERG:** I don't think I was the Chair that long.

24 **MR. WESTEN:** Since.

25 **MR. ISENBERG:** Commissioner Copps proposed an interesting

1 question, at least it's very interesting to me because it's
2 been basically my field of study. And that is, is there a
3 relationship between business structure and creativity? And
4 after 30 years in this business, as a network executive at ABC,
5 as an independent producer, as an entrepreneurial owner of
6 product, and as a studio head, or at least a major independent
7 studio head, my answer is unquestionably yes.

8 Business structure affects creativity. And if I can
9 explain a little bit about why, if you look at the elements
10 that are necessary to have a creative environment, you find out
11 that true creativity is risky. It involves starting off on a
12 project without knowing exactly what the end result will be.
13 If you know the end result, you're not creating, you're
14 executing. You can't put it on a time table. It takes time,
15 and you don't know when it's going to come out. It is risky.
16 It takes experimentation. It requires vision, resources, power
17 to execute, and an environment that is free from fear because
18 fear will just kill it. Any creativity you have and you get
19 scared of your job or you get scared of the result, you tend to
20 shut down.

21 Then you look at the corporate environment that we have
22 created over these last years with the merger of virtually all
23 media into six major companies, and Mark, you know, named all
24 these outlets. All these outlets are owned by the same six
25 companies. We have, I'd say, 90 percent of what's seen on

1 television to 95 percent is owned by the same six companies.
2 There may be a lot of stations, but it's all Viacom or Disney,
3 or whatever.

4 **MR. WESTEN:** Let me please ask the audience to hold your
5 comments down until we reach the end of the panel.

6 **MR. ISENBERG:** I love it. Why?

7 **MR. WESTEN:** In fairness to all the panelists.

8 **MR. ISENBERG:** Okay. So what we have created is six major
9 companies that operate on different principles than the
10 entrepreneurial principles that govern independent production
11 and actually the networks back in the days of Paley and
12 Goldenson, and Sarnoff because in those days the owners were
13 directly related, or the chief executives were directly related
14 to the product. They had a responsibility for the product that
15 was personal. They had to go home and explain to their wife
16 and their friends why it was on the air. They also, as has
17 been said earlier, recognized they had a public responsibility.
18 That they were using the public's airwaves, which were supposed
19 to be for the public's benefit. And somehow or other, we have
20 now created an environment where the corporations treat the
21 airwaves as a corporate asset for their benefit. It's
22 completely different.

23 Secondly, today's program decision makers operate by
24 business plans. We've just seen that there, if you look at
25 today's New York Times, it'll reference Mark's network and the

1 classic short-term thinking that produced four nights of
2 Millionaire and destroyed ABC for the next five years. Disney
3 needed to run a profit, and they needed to do it fast. And
4 Millionaire was making lots of money, so that became the way it
5 went about.

6 In the environment where short-term profitability and
7 short-term ratings and the immediacy of ratings is key, the
8 program executives on the line operate from fear and they
9 operate from short-term results. They also, as in any
10 bureaucracy, have to protect their butts for the decisions they
11 made because no matter what anybody thinks, every time you make
12 a decision in this business, 70 percent of the time you're
13 wrong. Maybe 80 percent.

14 So how does an executive protect themselves? By creating
15 rationales they can use for their management for the decisions,
16 proven formats. What you get by the way is imitation, because
17 if Law and Order worked, let's do another Law and Order. If
18 CSI works, let's do two more CSI. If reality works and it's
19 because of sex, let's make it sexier. So it's that kind of
20 thinking that is bureaucratic, not entrepreneurial. That's not
21 the thinking that was in television 30 years ago. Yes, we've
22 got a lot more programming.

23 There are three freedoms at stake when we talk about
24 creative freedom. The first is the freedom to develop ideas or
25 to choose ideas. The second is the freedom to choose the

1 people to execute the ideas. And the third is the freedom to
2 execute those ideas without oversight, without, you know, the
3 kind of invasive oversight by people who supposedly shouldn't
4 be doing this.

5 What we have created in the removal of FINSYN and
6 consolidation is this circumstance where the network executives
7 have created for themselves and arrogated to themselves a level
8 of power that is inappropriate to creativity.

9 In theory, a network executive's job is twofold. One,
10 select from a random -- from a number of ideas, and once the
11 ideas are selected, ensure that the ideas are executed
12 according to the standards of the network. In theory, the
13 producers, the writers, and the directors who have been doing
14 this for God knows how many years -- and if you look at the
15 average age of a network executive, it's somewhere between 25
16 and 30, and most network executives, like I was, hope to
17 graduate from being a network executive to being a producer --
18 the arrogation of power into the network executive is an
19 inverted structure. It's put power in the wrong place. So
20 what we're getting is a destructive environment for creative
21 people in which any form of struggle is looked on by that
22 network, which now, most of the time owns the product, as
23 you're now a troublemaker, you're done. So we've got a
24 community, a creative community, operating on great levels of
25 fear. By the way, that's not -- I'm not talking about David

1 Kelley and Dick Wolf because, you know, it's like every other
2 business, the top five percent, they just float through all of
3 this, but I'm talking about the great bulk.

4 So what has happened to the programming, and how is this
5 reflected in the programming? Well, the first one I'll pick
6 out is TV movies, which in the '70s were one of the great
7 formats for creativity, expression, you know, great projects
8 done. It is a dead form in free television. The audience has
9 rejected it completely. It's rejected it completely. Most of
10 us who make careers in this form of the business because the
11 creativity of the medium in free television is gone. And it's
12 gone because there's no independent production anymore.
13 Because that's where it was.

14 And I'll tell you a short story about the Women at
15 Brewster Place. I produced the Women at Brewster Place most of
16 you -- some of you can remember it. It's an Oprah Winfrey
17 miniseries that we did for ABC. And we developed it as a four
18 hour, and Oprah was committed, and everybody loved the script,
19 and everything was going until the ABC executive at that time
20 said, "No. We're not going to do a four hour. We want to do a
21 three hour." And the question obviously, why, and the answer
22 was, "Because we don't think this subject matter can attract a
23 big enough audience to warrant two nights." The subject matter
24 being an African American -- a movie about five or six African
25 American women, poor women. Because I was an independent

1 producer and I realized the economic viability of this project
2 died with that decision, we figured out a way to shoot a fourth
3 hour. And ABC was just beside themselves. "How can you do
4 that? We didn't pay you enough for three." And we basically
5 told them that the back end from the fourth hour would pay for
6 the cost, plus. But that wasn't the real problem for ABC. The
7 real problem for ABC was the four hours was going to exist.
8 With Oprah being Oprah, they were going to have to look at it.
9 And now they had to contend with it. And sure enough we made
10 the movie. And sure enough ABC, "We like the three hour." And
11 sure enough Oprah said, "I want the fourth hour." And ABC
12 said, "Okay." And the show went on the air, won the week, and
13 nearly won the year for them. It was the highest rated
14 miniseries in the three years. And by the way, the executive
15 in charge was fired the day after the second night. True
16 story.

17 Had there not been the independence and the
18 entrepreneurial ability to take the risk -- this is just a
19 story that's endemic. Never would've happened. Some
20 programmer would've decided and that would've been it.

21 So television movies have died in free television. They
22 exist primarily, by the way, at HBO, which is somewhat a not
23 level playing field because they spend \$8 or \$10 million
24 dollars a movie.

25 Comedy series have lost the relevancy, and we haven't had

1 a major hit, major hit. I'm talking at the level of All in the
2 Family, MASH, Cheers, maybe Friends, which is as nonrelevant as
3 one can get -- but, and excuse me not Cheers, Friends. So we
4 are looking at a comedy environment that now is beginning to
5 look like it did before Cosby came on the air, an independently
6 produced series, that says comedy is dead.

7 What is working? Reality. It's intensely exploitive.
8 It's cheap to produce. It can be done very quickly and very
9 fast. And what is the down side of all this is, in this
10 environment where the executives who are creating the shows are
11 removed from the responsibility, the public responsibility,
12 what you're getting is a level of taste and vulgarization that
13 makes you sometimes want to wince. So that form is for the
14 moment flourishing out of its exploitiveness, not out of its
15 quality.

16 The fourth form of television, we are strangely enough in
17 almost a golden age, and that is the hour-long drama. And it's
18 sort of a puzzle at one level to say, "Why is the hour drama so
19 good nowadays? Why do we have so much of it? So good and
20 everything else ain't working." And the answer is you have to
21 look at the power structure in the hour drama. The hour
22 drama -- producing 22 hours of good television in one year
23 within that -- in a singular format is an act of incredible
24 genius.

25 Bill's done it a few years and my respect for the man goes

1 on forever. He also made me an awful lot of money because I
2 had a piece of Fame. For which I'm always indebted.

3 The ability to do that is rare and valued above everything
4 else, which means the David Kelleys and the Dick Wolfs operate
5 in an environment, a creative power environment, that has
6 nothing to do with anything else. They're given incredible
7 freedom and incredible support, and you will not see that
8 support and freedom anywhere else in the television matrix.
9 And that's my answer for that.

10 I'm about out of time except I wanted to make one comment
11 about Mark's notes when he read out all those independent
12 productions, the Warner Brothers independent production and the
13 Fox independent production. I didn't know where those studios
14 became independent. But if you notice, almost every one of
15 these independents is in association with one of the six
16 majors. Except for Carsey-Werner, there are virtually no
17 dramatic or comedic series that are done independently. They
18 are all in the hands, financially, which means power, of one of
19 the six. So this illusion that there's independent production
20 over at ABC is humorous.

21 Thank you.

22 **MR. WESTEN:** Jerry, thank you.

23 We will reserve a little time at the end for any burning
24 rejoinders that any of the panelists may feel necessary.

25 Our fourth speaker is William Blinn, Emmy and Golden Globe

1 winning writer, helped create a number of series and projects
2 including The Rookies, Starsky and Hutch, Roots, and Brian's
3 Song.

4 **MR. BLINN:** Well, this is going to be fun.

5 First of all, I apologize for not wearing a tie. My
6 personal credo for wearing a tie is that someone has to have
7 died or I have to be nominated for award or I have to be
8 sleeping with someone who's nominated for an award. And I
9 checked my calendar this morning and here I am. Okay?

10 When I was a kid in high school, I was on the baseball
11 team. I was on the baseball team because I was a pretty good
12 hitter. I was also not a good fielder. The coach, who
13 probably runs a network somewhere, therefore made me the
14 catcher. The first time I was catching in a baseball game, the
15 pitcher started off by walking the first batter on four
16 pitches. He walked the second batter on four pitches, and the
17 third batter came up, no outs, two men on base, three straight
18 balls. Well, I had seen enough minor league baseball games in
19 the town where I was raised to know that you're supposed to go
20 out and calm the pitcher down. So I called timeout and I
21 walked out to the mound and about halfway there I realized that
22 I -- no one had ever told me what it is you're supposed to say
23 to a pitcher to calm him down. So I got there with my
24 15-year-old, leather, wizened, experienced face and looked at
25 his 16-year-old, leathery, jaded, world-worry face, and I said

1 after a moment, "You're in a terrible mess." He said after a
2 moment, "I know that."

3 I think that's the mind set of the room in regard to
4 broadcast and where we stand. We are in a terrible spot. We
5 think we know that. What we do not know, or it's difficult to
6 ascertain, is A) can we do something about it to slow the
7 iceberg? And if we can, what are those items that we can do?

8 The first thing I think we need to do as a community --
9 and I don't mean those of us necessarily involved in the
10 industry because the broadcast industry affects all of us
11 whether we are in it or not -- is to acknowledge that in many
12 ways we're in a place of PR denial. The mantra of competition
13 and free enterprise and diversity is fairly well known, and I
14 would offer you the following profile that exists. Which is a
15 company, a big umbrella company that owns a film studio, and
16 the film studio sells its entertainment product to a network
17 that's also owned by the big umbrella company; and after that
18 film entertainment has been shown on the network, its first run
19 rerun is sold to a cable outlet that is also owned by the same
20 umbrella company that owned the studio that owns the network.

21 This circular digestive food chain can be described in a
22 lot of ways, but I don't happen to think that competition is
23 one of those words that applies.

24 What Jerry addressed is that this monolithic corporate
25 giant, or giants, tends to homogenize what gets put out because

1 it homogenizes the creators. They are confronted with
2 something so large, with such a mind set, and they don't have
3 to be bad guys, they can be co-opted and coerced and still have
4 the best will in the world, but we are not developing our
5 rebels. And when you don't develop your rebels, you don't have
6 your rebellion, and I would offer the thought that this
7 industry, and to some degree this nation, thrives on its own
8 sense of rebellion and renewal.

9 I'm going to quote a few names that a lot of you in this
10 audience are too young to remember. But I don't know where the
11 David Suskinds are. I don't know where the Fred Coes are. I
12 don't know where the Reginald Roses are. I don't know where
13 the Paddy Chayefskys are. I do know where Paddy Chayefsky is.
14 He is in his grave, screaming, "I didn't take Network far
15 enough." And he didn't. He didn't envision people eating live
16 grubs on television. Aren't we proud? That's where we have
17 come to.

18 I hope at some point Jerry Isenberg can address an issue
19 he was aware of on an ESPN program, but I'll let him deal with
20 that when the time comes. Well, he was on the program. He
21 just has a greater facility of the facts than I do.

22 But the fact of the matter is there was a time when this
23 nation was not homogenized. There was a time when you traveled
24 30 and 40 miles, the accents changed, the politics changed, the
25 taste of the beer changed because the water changed and the

1 hops changed, and it was really a variegated kind of
2 experience. We all know that's over with. We all know the
3 Holiday Inns, the Marriotts, and the whole corporate thing
4 has -- they shrunk us, and shrunk our spirit in my opinion.
5 Certainly that has happened in television.

6 I agree with what Jerry said earlier that the hour shows
7 are in wonderful shape creatively, but then I looked down at
8 the top 20 last week. There were four hours of Law and Order,
9 two hours of American Idol, and three hours of CSI Miami,
10 Los Vegas, and Akron, Ohio wherever the hell that is. But the
11 point is diversity isn't the number of channels. That's an
12 electronic trick. Diversity involves viewpoints. In
13 particular does it involve minority viewpoints and unpopular
14 viewpoints. The names I mentioned were people who used to
15 rattle our cage. They used to reach out through the screen,
16 and grab us and say, "Goddamn it, look at the problem."
17 Edward R. Murrow, whose an Ed R. Murrow today? A documentary
18 today is Barbara Walters interviewing a star and that's called
19 news. No, it's not news.

20 I would also offer the thought, I know this is not a news
21 issue, but while there are more hours of news available in
22 terms of when you get home from whatever you're doing, if there
23 happens to be a TV program on that network that night that
24 addresses an issue, why, the news that night will address the
25 same issue and they'll talk to the star, they'll talk to

1 somebody. And the line between news and entertainment is not
2 blurred, it's smeared, and it's not a clean line. And I mean
3 that in a whole number of ways.

4 There was a time around the turn of the century, when the
5 government shook John D. Rockefeller, and as we look back on
6 that it's offered that it's because he controlled the oil. No,
7 it's not because he controlled the oil, it's because he
8 controlled the oil and the railroads. He controlled the
9 product and he controlled the method of distribution. And
10 that's -- that's a chokehold. And there's no way -- I won't
11 say there's no way out of it. I'm trying to find one.

12 We're in a world -- and it's been mentioned before, I
13 won't beat this dead horse -- the logic of networks owning
14 other networks, well, you'd have to upgrade to get it to logic.
15 And I made a note to myself not to pick on Disney and then I
16 thought, "What an oxymoronic phrase is 'picking on Disney.'"

17 So, and the -- in politics and in public life and a whole
18 number of areas, we attempt -- at least we attempt to avoid
19 conflict of interest and we even attempt to avoid the
20 appearance of conflict of interest because we know it affects
21 the voter, the viewer, the investor, whatever. Their faith is
22 important to our wellbeing. Our being the nation's wellbeing
23 in my opinion.

24 There was a program on in about half a year ago. I didn't
25 see it so I'm not commenting about the quality of the program.

1 It could have been wonderful. Live from Baghdad detailed the
2 presentation of CNN in their coverage of the first Gulf War.
3 That program was produced by HBO. HBO and CNN are joined at
4 the hip, corporately. Now again, I'm not impugning for a
5 moment the motives of any of the people involved with it. I
6 have no idea. I do know that in terms of appearance of
7 conflict of interest, we've thrown that baby out without
8 question.

9 Before the trap door under the chair opens up -- years ago
10 a man by the name of E.E. Cummings wrote a poem called a Tongue
11 of Wood. And the poem went like this:

12 There was a man with a tongue of wood, who essayed to
13 sing. And in truth it was lamentable. But there were some who
14 heard this clip-clapper of the tongue of wood and knew what it
15 was the man wished to sing. And with that the singer was
16 content.

17 I hope you've heard what I wish to sing.

18 **MR. WESTEN:** Thank you very much.

19 Our next speaker is Paula Silver, who is president of the
20 creative marketing company Beyond the Box. Her latest picture
21 being Big Fat Greek Wedding, many of you I'm sure have seen.
22 Formally of Columbia Pictures and the Walt Disney Company.
23 Paula.

24 **MS. SILVER:** Well, I don't think I can be as eloquent as
25 my colleague here, Bill.

1 But what I think is really interesting here as, you know,
2 being the person who marketed the movie My Big Fat Greek
3 Wedding, a film that nobody would make because it was about a
4 subject that nobody wanted to see, because who cares about
5 Greek people? You know, they don't get ratings. They can't be
6 tracked.

7 And so when you start looking at consolidation or
8 deregulation, deregulation is now being placed upon us or being
9 presented to the public as if it's something really good.
10 You're going to get something. Well, what you're going to get
11 is more of the same. And it's really frightening that words
12 are being used against the public's information system and
13 nobody's discussing it. It's not being discussed in the way
14 that really is accessible, and access is what's really
15 important. Television, films, it's access; it's storytelling.
16 How are we creating the culture, and what stories are we
17 communicating to other cultures about this society? I mean, if
18 the import -- if the export business of the United States, the
19 biggest one is entertainment, what messages are we sending out?
20 What stories are we telling?

21 You know, I've had the advantage of being inside a big
22 studio, and when I got to Sony it was actually Columbia
23 Pictures that I was hired to be head of and then suddenly it
24 became Sony Pictures Marketing that I was heading up. And I
25 saw how that big mammoth or behemoth of an organization had to

1 be fed in a way that I hadn't really seen from the outside.
2 For years before that I had worked for all of the studios, and
3 I might also add that of the studios I worked for none -- five
4 of them are left. And there were ten at the time, and so we're
5 looking at really, what's really happened to the whole
6 consolidation? There's no big freedom of opportunity for
7 independent, creative producers and talent and directors.

8 Well, I got inside the studio and I suddenly saw that this
9 place was one that if it was a \$35 million budget, they wanted
10 my attention. If it was \$65 million, it was really important
11 because then I was going to spend another \$35 million to market
12 that motion picture and that was going to then feed the
13 integration of that company. It was going to feed everything
14 but television because Sony couldn't own a broadcast network.
15 And so it might have had to have an arrangement with somebody
16 else, but it didn't have it's own access. And you saw how
17 everybody in the company wants to make good films, and they
18 want to make good programming, but the pressure to be in
19 business and to really worry about the bottom line is really
20 upon you. And so you say, "Okay, what do you really have to
21 pay attention to?" Well, that \$65 million movie is supposed to
22 make you back that \$200 million box office. With the
23 deregulation of theaters, you've got to feed the chains and
24 have 2,000 prints. You need to have 5 or 16 in one megaplex,
25 and so you don't really have an opportunity to nurture that

1 small film. If My Big Fat Greek Wedding hadn't been at an
2 independent, it would have never reached box office success at
3 \$250 million with a \$5 million initial investment because
4 nobody would've watched that film. Nobody would've nurtured
5 it. Nobody would've made sure that it would've stayed in
6 theaters when it was being pushed out by the bigger companies
7 that have deals, long-term deals.

8 And so you start asking yourself, "Well, what does this
9 all really mean?" When I was at Disney, I began to see what it
10 meant to be in a real vertically integrated company because we
11 were able to exploit, as it's called, or use the assets of a
12 company so that you thought that Disney's films permeated
13 everyplace. You'd go to the theme park, you'd see the trailers
14 playing in the theme park. You'd go to the Disney resorts,
15 they'd be playing in the Disney resorts. You'd go so far as to
16 actually create a TV show that looked as if it was news; but in
17 fact if you looked really carefully, it was only Disney films
18 that that were being discussed on that channel. It was a
19 little show and then suddenly we had then -- somebody actually
20 caught it eventually, but it was being sent out to the
21 audiences, the film audiences, and the television audiences if
22 it was real news. Every single show that was being discussed
23 on this little half hour was only about Disney films. And so
24 you say, okay, so that idea of owning so much, ABC and Disney
25 really owning so much, meant that suddenly your characters,

1 your stars from Disney films could suddenly be on ABC, Good
2 Morning America. They would suddenly show up on Regis and
3 Kelly -- Cathy, at the time, now Regis and Kelly. And you
4 could go through the entire day and have your stars there.

5 Well, as an independent, you don't have that access.
6 Nobody's telling ABC to take your star. Nobody's taking --
7 telling ABC to take Nia Vardalos, who may be the most brilliant
8 creator of a movie, but she's an unknown. And so trying to get
9 her booked for that publicity tour that everybody else is
10 enjoying is impossible. I mean, they went so far as to say,
11 "Well, listen. If you can promise me Tom Hanks and Rita Wilson
12 and John Corbett, maybe we'll take Nia Vardalos. And it wasn't
13 until the film had become a huge success that suddenly people
14 were looking for Nia as a story.

15 And so it's really frightening to think that these
16 conglomerates can get any more vertically integrated because it
17 really doesn't allow for the independent talent to be seen
18 anywhere.

19 Independent filmmakers, you talk about independent
20 production, there isn't -- they say there are a lot of
21 independent films. There are a lot of independent films and
22 that's because the ability to make film is much cheaper.
23 Everybody has a digital camera. And so if you have a camera,
24 you can make a film. But where does it get distributed? Where
25 do people get to see it? People make documentaries. Where are

1 they being seen? If the important stories, the white papers
2 that used to be on NBC, are not being seen of NBC, and they're
3 being made by independent filmmakers as documentaries, and
4 people look at documentaries as being spinach. And then maybe
5 it's going to be relegated to PBS, of which I was on the
6 advisory board of PBS because I believe in public service and I
7 believe in public engagement and I believe in the public story,
8 and PBS being the champion of children's programming is in
9 suddenly being pushed out of the marketplace by the
10 conglomerate of a Paramount, which now has -- not only does it
11 have Nickelodeon and MTV and VH1 and Nick-teens and
12 Nick-at-Night, it's a complete consolidation so that there's no
13 room for anybody else. All the networks have even gotten rid
14 of their kids' programming because somebody else is doing it,
15 right. And it's not PBS and yet PBS was the champion.

16 And so you say, "Okay, so now where do we take it?" Okay,
17 that's been destroyed; this has been destroyed. Our culture is
18 being destroyed. Children are being targeted now at a younger
19 age because 'tweens have disposable income. So let's market to
20 the 'tweens. Let's give them more and let's make them grow up
21 sooner, make them consumers, not creators because there's a
22 dollar line that you can maximize that way. It makes you
23 really wonder where we're really going, what values, what
24 public stories we're telling, what public service we're telling
25 our kids to be part of. And where are they going to see these

1 stories? Who's going to be doing them?

2 I'm somebody who believes that television is a really
3 powerful medium. It's the most powerful medium because it's
4 social-economically equal. You don't have to spend \$10 to go
5 to a movie theater to see it. But if all the stories are the
6 same and there's no diversity, what are we talking about? The
7 amortization of reprogramming 24 hours a day of the same show
8 so that I can see Friends on NBC and then I can see it on MSNBC
9 and then I can see it on another cable channel, that's not
10 diversity to me. That's the same. It's the same share. And
11 the viewership of cable is not there either.

12 When you go out to buy as a consumer, as a media person, I
13 say, okay, where am I going to spend my money? Well, as an
14 independent consultant for an independent film company, I don't
15 have the same network dollars. We launched My Big Fat Greek
16 Wedding with \$700,000, not \$35 million, and we had to use it
17 and we had to use it and we had to reuse it and we had to
18 really find ways to access public engagement in a way that the
19 television nation -- the television stations aren't allowing us
20 to do.

21 And so I look to see where the future is. You know, I'm
22 the mother of three children, and I want their stories to be
23 told and I want diversity to be told, and I thank Sandra for
24 having me on this panel. As you see there are no -- none of my
25 female peers are here. So where are the voices?

1 And I say that deregulation is a big, big brother opening
2 up your doors and taking control of all of us. I wake up in
3 the morning and I watch the news and I feel -- I go from
4 network to network to network, to station to station to station
5 and all the stories are the same. They're all the same. And I
6 wonder who's reporting our news and who's talking to us.

7 And I think that Commissioner Copps, we're here to support
8 you and however way we can get the voice out and the word out
9 that this is not just about networks, it's about grassroots,
10 it's about people knowing what they need to fight for. And I
11 support you.

12 **MR. WESTEN:** Our next panelist, John Taplin, is also an
13 award winning film and television producer, and currently chair
14 and CEO of Entertainer, the pioneer in on-demand video and
15 entertainment. John.

16 **MR. TAPLIN:** Thanks.

17 Like Jerry Isenberg, I started my career in the golden age
18 of the independent production company, producing films for
19 Marty Scorsese in the 70's. And I think I'm here because I
20 know what media consolidation and vertical integration feel
21 like to a small company.

22 For the last six years, along with a group of talented
23 engineers, I built the first video-on-demand company called
24 Entertainer. We had as shareholders three of the largest media
25 companies in the world, AOL/Time Warner, Sony and Vivendi

1 Universal. Some of these shareholders had board observer seats
2 and all of them had access to our most secret documents,
3 architecture, and business plans. For the first three years of
4 our life they gladly supplied us with thousands of films from
5 our service -- for our service while we slowly built and market
6 tested our software and security systems. But literally on the
7 day we deployed the service nationally, everything changed.
8 They cut off our film supply and almost immediately began to
9 plan their own competing service, Movie Link, hiring away our
10 most crucial software architects and doing everything possible
11 to destroy our company.

12 When I was first starting the company, one executive from
13 a movie company said to me, "You don't think the studios are
14 going to let you create another HBO, do you?" Well, maybe I
15 was naïve, but I said yes. And anybody who wants to know what
16 the effects of vertical integration can have on a small
17 company, I welcome them to look at our lawsuit.

18 So I guess the real question here is: Is there a role for
19 smaller independent media companies in the American system?

20 When I started in this business there were many, many
21 small production companies, and now there are six companies
22 that seem to totally control all the media. Chairman Powell
23 has had a survey done which, Professor, you referred to, which
24 somehow has convinced him that there was tremendous diversity
25 voices in the American media universe despite consolidation.

1 And so he seems determined this June to remove any remaining
2 caps on the media ownership rules that have served us very well
3 for half a century.

4 Well, I've done my own little survey and I'd like to share
5 it with you. It's centered on the radio system because I think
6 that gives us an insight of what TV will look like in a few
7 years.

8 Bill Blinn talked about a time when there was regional
9 diversity and because I work for Bob Dylan in the 60's, I can
10 tell you that there was a time when radio was different in
11 New Orleans than in Baltimore and that isn't anymore. Doesn't
12 exist.

13 But moreover, I have a friend who lives in Eugene, Oregon,
14 which is a nice, average sized, American town; and in that town
15 there are two talk radio stations. One owned by Clear Channel,
16 one owned by Cumulus. Two weeks ago he did a survey of the
17 political bias of those two stations and this is what he found:

18 Between these two stations there are 80 hours per week,
19 more than 4,000 hours per year, programmed for Republican and
20 conservative hosts of political talk radio, and not so much as
21 one second program for Democratic or liberal media.

22 Political opinions expressed on talk radio today are
23 approaching the level of uniformity that would normally be
24 achieved only in a totalitarian society. There's nothing fair,
25 balanced, or democratic about it.

1 So how did we get to this point? I believe it was a very
2 brilliant strategy planned by Newt Gingrich and the Republican
3 right in the early '80s with major allies in the media
4 business.

5 Step one was to get rid of the Fairness Doctrine.
6 Understanding television's power to manufacture consent, the
7 FCC took the view in 1949 that station licensees were public
8 trustees, and as such had an obligation to afford reasonable
9 opportunity for discussion of contrasting points of view on
10 controversial issues of public importance. The policy of the
11 FCC that became known as the Fairness Doctrine was an attempt
12 to assure that all coverage by controversial issues by
13 broadcast stations be balanced and fair.

14 For 30 years that system served our democracy well and as
15 late as 1979 the FCC asserted that fairness was quote, "The
16 sine qua non for renewing broadcast licenses," unquote.

17 The position of the FCC dramatically changed when
18 President Regan appointed Mark Fowler as Chairman in 1981. As
19 FCC Chairman, Fowler, with the Republican majority, made clear
20 his opinion that quote, "The perception of broadcasters as
21 community trustees should be replaced by a view of broadcasters
22 as marketplace participants," unquote. With Gingrich and
23 company pushing hard and the Republican FCC they were able to
24 eliminate the Fairness Doctrine in 1987, and then everything
25 changed.

1 Step two was to remove the media ownership camps.
2 Gingrich had two allies, Clear Channel and News Corp., who had
3 very clear needs at that level. News Corp. had been ordered to
4 sell the New York Post because of media cross-ownership rules
5 and Clear Channel needed to own multiple stations in a single
6 market in order to squeeze the local advertisers.

7 In some markets today Clear Channel owns almost all of the
8 stations and so the advertisers have very little choice of what
9 to buy.

10 Gingrich delivered big time by shepherding through his
11 newly controlled Congress the Telecommunications Act of 1996,
12 which essentially eliminated the public service obligations for
13 local stations.

14 These two actions, killing the Fairness Doctrine and
15 deregulating ownership rules, have led us to a situation that
16 even Barry Diller describes as a media oligopoly. I believe
17 that if the FCC and Congress continue to roll over for the
18 media cartel, our democracy is in peril.

19 Two companies will own 80 percent of the nation's radio
20 stations, five companies will own 80 percent of the nation's
21 television broadcasting, four companies will own 80 percent of
22 the nation's cable systems, and they will all fill these
23 channels with content they own and exclude content they don't
24 own, and as Bruce Springstien says it will be 57 channels and
25 nothing on. The theater of humiliation.

1 Two vastly different ideas of what our future might look
2 like stretch out before us. Down one road lies the founders'
3 original conception of an independent media as a steward to our
4 democracy. Down the other lies a world that can only be
5 described by the word "plutocracy."

6 I believe the FCC has to postpone its June deadline to
7 decide on the ownership-caps issue. It should then began a
8 comprehensive review of four issues:

9 One, would maintaining and even strengthening existing
10 ownership (inaudible) lead to a more democratic and pluralistic
11 media system that would restore the community trusteeship
12 nature of broadcasting licenses?

13 Two, should the commission mandate that cable and
14 satellite networks should also have a public service component
15 in return for the antitrust exemption given to their owners,
16 the major MSO's and media conglomerates?

17 Three, is there any reason not to restore the Fairness
18 Doctrine, in order to ensure that issues of vital public
19 importance are covered in a balanced and fair manner?

20 Four, that the commission ensure that broadband Internet
21 providers be bound by the same common carrier statute --

22 (End of Side A, Tape 2. Beginning of Side B, Tape 2.)

23 **MR. TAPLIN:** The next four weeks is probably the most
24 critical period in the history of the FCC. The media cartel
25 believes the fight is already over and they have the Republican

1 votes to lift the last vestiges of regulation from their
2 shoulders. You should understand that the Fox News motto of
3 fair and balanced is nothing but a very unsubtle attempt to
4 mock the commission's impotence in the face of the power of
5 money.

6 Ninety years ago, as he pushed for antitrust reform,
7 Woodrow Wilson said quote, "The government which was designed
8 for the people has gone into the hands of the corporate bosses,
9 the special interests. An invisible empire has been set up
10 above the forms of democracy," unquote. Let it not be said
11 that this great commission allowed that to happen to the
12 American media next month.

13 Thank you very much.

14 **MR. WESTEN:** Thank you, John.

15 Our next panelist is Darrell Hunt, professor of Race,
16 Media, and Cultural Studies at UCLA; director of UCLA's Center
17 for African American Studies, and he researches representation
18 of African Americans in primetime television. Darrell --
19 Darnell, I'm sorry.

20 **MR. HUNT:** Thank you.

21 Technology. Can you hear me?

22 This may be somewhat of an adventure because I understand
23 that my power is running low on my laptop. Didn't anticipate
24 the delays. We'll see. If not I may have to wing it without
25 the visuals here.

1 Okay, what I'd like to do this morning is to return to a
2 theme that Representative Becerra introduced very early on, and
3 that's the issue of racial and ethnic diversity. We've heard a
4 lot of talk about diversity in terms of the types of stations,
5 media products, and so forth and so on. But one of the things
6 I think that certainly bears further consideration is the
7 people themselves. I mean, who's being represented? Who is
8 doing the representing?

9 In 1999, a newspaper article was released in the
10 Los Angeles Times by Greg Braxton that caused quite a stir. It
11 seemed that in the 1999 fall season on ABC, CBS, NBC, and FOX,
12 26 new situation comedies were going to air, but it was found
13 that not one of them had a minority in a lead role. This, of
14 course, led to the famous NAACP lead coalition of advocacy
15 groups, who among other things, threatened to boycott the
16 networks if they didn't somehow amend this absence.

17 What we found, of course, in the ensuing months was a
18 quick attempt to add minority characters to some of the shows
19 that had been previously slated, and as further research would
20 show a lot of those characters were quite marginal, there to
21 basically appease the industry pressure of the period.

22 Now, the research is clear over the years about the role
23 of diversity in network television. Early studies, of course,
24 like the U.S. Commission on Civil Rights, late 1970's series,
25 Window Dressing on the Set; more recent studies like the

1 African American Television Report that I worked on with the
2 Screen Actors Guild; Primetime in Black and White, a study that
3 was released by the UCLA Center for African American Studies
4 last year; the Hollywood Writers' Report, released by the
5 Writer's Guild of America; and Fall Colors, released by
6 Children Now all point to the same troubling conclusion. And
7 that is, people of color, largely in primetime television, are
8 absent.

9 So let's look for a moment in front of the camera. If we
10 look at primetime television right now, 2003, what we see is
11 that primetime television presents a black and white world.
12 What that means is that White Americans and African Americans,
13 surprisingly to some people, are both over-represented in
14 primetime. Other groups, Latinos, Asian Americans, Native
15 Americans are virtually invisible. You don't find them.

16 I should note that for those who might see the
17 over-representation of African Americans as positive or good
18 news, when you start looking at the actual portrayals, when you
19 look at the roles themselves you find that most of the roles
20 are marginal at best; they're not your major roles; they're not
21 your more central roles. So what you have basically, is an
22 image of America being reflected back to itself, which is one
23 of largely white importance and everyone else is less
24 important.

25 Now, if we look at the minority representation gap, we

1 find it's actually increased over the last 30 years.

2 The first bar here on the graph shows you the gap between
3 the percentage of the American public -- excuse me -- that was
4 minority in 1970 and the actual, I guess, percentage or
5 proportion of minority characters in primetime. There was only
6 about a two-percent gap. Now again, these representations were
7 by no means wonderful representations, but the gap was a lot
8 smaller than it actually is today.

9 Indeed, by 1999 and 2001, we see the gap is about 11 to 10
10 percentage points. Again, most of these roles are your more
11 marginal roles.

12 Let's look behind the camera. If we look at the point
13 guards, for using that analogy, of television shows, if we look
14 at the show runners, we find that people of color again are
15 woefully underrepresented among their ranks. Black show
16 runners, for example, we found last year in our study, were
17 relegated largely to black shows with one exception. And here,
18 if you looked at the shows that were on television only six
19 percent of those shows actually employed blacks as the
20 executive producers. Ninety-four percent of shows didn't.
21 And, of course, the shows that did were your largely black
22 oriented situation comedies, most of which appeared on UPN.
23 Other minorities, Latinos, Asian Americans, again were
24 virtually invisible within the ranks of show runners on
25 television.

1 If we look at minority TV directors, we see a similar
2 pattern. Again, we're looking here at the top 40 shows from
3 2000-2001. We see that only six percent of all TV directors
4 during this period were people of color; 11 percent were women.
5 Indeed you find that white males make up about 31 to 33 percent
6 of the population, but they account for about 80 percent of all
7 TV directors. So again, you have one group that largely
8 controls how we perceive what's being presented on television
9 through, you know, actual creation of the product itself.

10 What about the people who actually come up with the
11 stories? Well, again, minority TV writers are also rare and
12 again they tend to be relegated to minority shows. Again,
13 looking at primetime 2001-2002, we find from the Writers Guild
14 that combined, all people of color, which make up about 31
15 percent of our population, only account for about eight percent
16 of screenwriters. They're underrepresented by a factor of four
17 here.

18 When we look at television, this whole question of
19 diversity, we tend to see a very interesting historical
20 pattern. The first thing we note is that it's largely an
21 insular industry that's largely controlled by white males that
22 tends to, because of the experiences that these people in
23 control have, produce homogenized products.

24 Periodically, we see advocacy groups pressure the industry
25 for more inclusion. Then, of course, the industry acts to

1 appease those critics as for example with the voluntary
2 agreements that were struck between the NAACP-led coalition a
3 few years ago in the industry. Then we enter in a period --
4 into a period where that pressure is typically diminished, and
5 guess what, business as usual practices typically return.

6 So what are the implications as we sit here today and
7 think about this whole question of consolidation, consolidation
8 of ownership? Well, of course, we can't -- I think we're all
9 here today because we're concerned with issues of democracy.
10 And the point I'd like to make is that democracy and diversity
11 go hand in hand. Prohibitions against media consolidation, of
12 course, were intended to protect the circulation of diverse
13 view points to the American public. And that, of course, was
14 considered to be a public good. And it was best represented in
15 the democratic ideal of the free market, which incidentally was
16 imagined to be composed of a multitude of small buyers and
17 sellers.

18 I can tell you, as a sociologist who studies media and who
19 studies the effect of media on society, that television is a
20 key cultural forum in our society. And network television,
21 despite its shrinking audience share, continues to serve in
22 that role, providing us with images of who is in and who is
23 out, what is true and what is false, who we are, who we ought
24 to be, as well as some sense of what the nation is as a whole.

25 And when we bring in the whole issue of diversity, of

1 course, race and ethnicity still matter. They remain important
2 markers of societal experiences. Indeed surveys and other
3 social-scientific evidence tell us that these experiences often
4 produce the very diverse array of perspectives and viewpoints
5 that the founders thought of when this whole issue of public
6 interest was being -- being conceptualized. These
7 perspectives, of course, are key as they confront many of the
8 issues that are before us as a nation.

9 So more consolidation without a mechanism for change, I
10 contend, equals more of the same. Today, a handful of
11 multinational media conglomerates control most of the nation's
12 media. And in the last ten years network ownership of its
13 programs has skyrocketed from about 17 percent to about 77
14 percent today, squeezing out what few small program providers
15 remain. As industry ownership continues to consolidate and as
16 the handful of companies that control the market continue to
17 vertically integrate, it becomes increasingly unclear as to
18 what market or other mechanisms would dissolve the patterns in
19 minority exclusion that we continue to see today.

20 In other words, in terms of racial and ethnic diversity,
21 things are bad in primetime. More consolidation of ownership
22 will only make them worse.

23 Thank you.

24 **MR. WESTEN:** Thank you, Darnell.

25 Our last panelist comes to us courtesy of video

1 conferencing. Martin, are you -- can you hear us all right?

2 Great. Martin Franks is --

3 **MR. FRANKS:** I can hear you fine.

4 **MR. WESTEN:** Martin Franks is Executive Vice President of
5 CBS Television and Senior Vice President of Viacom. And before
6 joining CBS, he was chief of staff to Senator Patrick Leahy and
7 executive director of the Democratic Congressional Campaign
8 Committee. Martin.

9 **MR. FRANKS:** Thank you.

10 I would especially like to thank Commissioner Adelstein,
11 without whom I could not have participated today.

12 The perspective I'm going to share today is shaped by 16
13 years in the broadcast network television business, all with
14 CBS. I am, however, a bit confused. And with apologies to
15 Steven Sondheim, Larry Gelbart, and Zero Mostel, a funny thing
16 happened on the way to this forum.

17 Under pressure from the U.S. Court of Appeals for the D.C.
18 Circuit, the FCC has initiated a number of proceedings looking
19 at its various media ownership rules. And as a result of the
20 very specific guidance the commission has received from the
21 Court, the FCC has asked for fresh empirical evidence to help
22 it shape its deliberations. The FCC initiated its own
23 research, and Viacom is part of a coalition that has submitted
24 several additional wide-ranging and intellectually rigorous
25 research studies. Meanwhile a number of commentators have

1 responded with decades old rhetoric, much of it only very
2 slightly cosmetically updated from arguments that go back 30 or
3 40 years.

4 And so now, on the way to today's forum, some very clever
5 people have found a way to insert into the ownership
6 proceeding, a decades old Trojan horse, the financial interest
7 and syndication rules that the Federal court struck down a
8 decade ago. Rules which one wag once termed a battle between
9 the rich and the very wealthy. I salute the Coalition for
10 Program Diversity for its cunning, but not its intellectual
11 rigor.

12 CBS is making progress in developing secondary revenue
13 streams, but the overwhelming preponderance of the revenue
14 comes from our one principal line of business, selling time
15 made available to advertisers within our programming. We
16 invest enormous amounts in that programming in order to air the
17 very best in news, sports, and entertainment so we will
18 continue to be able to amass the largest possible audience to
19 offer to advertisers.

20 To assert that CBS keeps marginal shows on the air in
21 order to generate enough episodes to make that program viable
22 in the syndication marketplace is ludicrous. Despite
23 disappointing initial ratings, we do keep some marginal shows
24 on the air and move them around the schedule, but only in
25 search of an audience, not a syndication window. And if those

1 shows still fail to find an audience, we cancel them. Not
2 because of their ownership, but because they are causing us to
3 forgo advertising revenue, our lifeblood.

4 Let me state categorically, CBS does favor certain
5 programs over others. We favor programs that garner more
6 audience than their counterparts, whatever the production
7 source.

8 A decade ago under Federal Court pressure, not unlike that
9 now present in the ownership proceeding, the FCC repealed its
10 FINSYN rules, finding that after 20 years the rules had not
11 only failed to advance program diversity but may have actually
12 inhibited that goal. At the same time the Justice Department
13 withdrew its parallel consent decree independently reaching the
14 same conclusion as the courts, that the rules did not work and
15 were counterproductive.

16 But now like the Phoenix, FINSYN rises again in the guise
17 of a 25 percent set aside for quote, "independent producers,"
18 unquote. Parenthetically, should this item advance any
19 further, I pity the poor FCC staffer charged with coming up a
20 definition of independent that is not arbitrary or capricious.
21 To say nothing of how one could fashion a 25 percent set aside
22 that would meet constitutional muster when it becomes clear
23 that such a set aside would favor one programming form over
24 another.

25 But let me stay focused on why the revised FINSYN rules

1 simply are unwarranted. Financing primetime network television
2 is both expensive and risky. Each episode of a primetime drama
3 can easily exceed \$2 million. Half-hour sitcoms are only
4 slightly less expensive, and the only guarantee is that most
5 will fail. Fail to last long enough to recoup that investment
6 in the syndication marketplace.

7 A writer-producer with a good idea pitches it to networks
8 and studios alike in search of what the program-ownership
9 debate is really all about, financing. Under the old rules
10 networks could not compete as a bank, a source of financing for
11 writer-producers. The old FINSYN rules made the major studios
12 the principal source of such financing, and as collateral and
13 to protect themselves against the huge risks inherent in
14 television production, the studios took a percentage of the
15 potential syndication profits. Exactly what networks are now
16 able to do in the post-FINSYN era.

17 It is as simple as that. More sources of venture capital
18 for writer-producers with a good idea. It is not about
19 creative freedom; it is not about program source diversity. As
20 noted earlier, it is a fight over which wealthy and powerful
21 entities will get to compete as financing sources for primetime
22 programming.

23 The networks believe that more sources of financing for
24 that programming is beneficial. Some of our opponents would
25 like to restrict that arena for themselves. We believe the

1 correct answer is self-evident and that is why we are
2 bewildered that this long-ago discredited notion has crept back
3 into the wholly unrelated ownership proceeding.

4 The proponents of the 25 percent set aside say they are
5 doing so in the name of quote, "independent producers,"
6 unquote. As you can see, while these parties may be
7 independent, only insofar as they are not affiliated with a
8 broadcast network, they certainly are not the weak, the small,
9 or the helpless, in need of government intervention or
10 protection. Rather they are large powerful entities, who are
11 asking the FCC to tilt the balance of negotiating power in
12 their favor in the marketplaces of program production, and
13 financing.

14 In short, they would like the FCC and not the marketplace
15 to chose winners and losers. The FCC's focus, however, must be
16 on the public interest, in this case the viewer. The facts
17 show that the public interest does not equal resurrection of
18 the FINSYN rules. Programming a broadcast network is a costly
19 and risky enterprise. Shackling the broadcast network's
20 ability to compete in the program financing marketplace, will
21 serve only to bolster the deep pocketed and so-called
22 independent producers at the expense of those entities who are
23 not.

24 As the United States Court of Appeals for the Seventh
25 Circuit said in overturning the FINSYN rules more than --

1 excuse me-- ten years ago and I quote, "It becomes
2 understandable why the existing producers support the financial
3 interest and syndication rules. The rules protect these
4 producers against new competition both from the networks and
5 from new producers. The ranks of the outside producers of
6 primetime programming have thinned under the regime of
7 financial interest and syndication rules. The survivors are
8 the beneficiaries of the thinning. They do not want the forest
9 restored to its pristine density. They consent to have their
10 own right to self-syndication rights curtailed as the price of
11 a like restriction on their potential competitors, on whom it
12 is likely to bear more heavily."

13 Please, before anyone falls for the FINSYN siren song,
14 remember the rules are unwarranted and they will be difficult,
15 if not impossible, to write. Particularly, with the courts
16 that have already found the rules counterproductive ready and
17 waiting to review any attempts to revive them.

18 Thank you.

19 **MR. WESTEN:** Thank you, Marty.

20 That concludes the presentations by our very excellent
21 panelists.

22 Let me first ask, does any panelist have a burning
23 addition they want to make to the discussion? If not, let me
24 ask Commission Copps if he has any question he would like to
25 put to this panel?

1 Neither being the case, let me conclude simply by saying
2 that I think the decisions facing the FCC are extraordinarily
3 difficult and important. If you went back 50 years in this
4 country and picked the average community, they would be lucky
5 if they saw three television stations. Today, 50 years later,
6 there are double or triple that number of over-the-year
7 broadcast stations, there are more radio stations, and if you
8 can afford them, a big if, there are also access to hundreds of
9 DBS channels and cable channels. As well as new developing
10 media, cellular, Internet and so forth.

11 At the same time one clear message, I think, we heard from
12 virtually all the panelists is the importance of leaving room
13 for creativity. And the relationship between structure and
14 creativity is extremely important.

15 As Repound once said, that artists are the antenna of the
16 race. The artists are those who, through their intuitions,
17 vaguely perceive the future and translate them into creative
18 tangible form. And I think its extraordinarily important that
19 whatever formula the FCC comes up with, there is some capacity
20 for building into that mathematical formula the ability to
21 measure the potential of any ownership structure for not only
22 permitting creativity, but for enhancing it and sustaining it.

23 We will take a five- to ten-minute break and then we will
24 start with our next panel.

25 Thank you very much.

1 **MS. ORTIZ:** Those of you who have signed up for the public
2 comment period, when the second panel ends, would you please
3 meet me over here by the podium so I can just explain to you
4 how we're going to do this. We'll take a break after the
5 second panel, and then start the public comment period.

6 **MR. WESTEN:** All right. Thank you for making that break
7 so quick and efficient.

8 Our current panel is on local news. Dualopoly and
9 cross-ownership rules. I think it goes without saying that
10 local news is one of the cornerstones or needs to be one of the
11 cornerstones of an American broadcasting system and American
12 democratic system. The issue is difficult because ultimately
13 the issue is not how good is local news but what's not on,
14 what's missing. And is there a relationship between what's
15 missing, if anything, and ownership and structure.

16 Now, the FCC has spent enormous effort over the last 70
17 years structuring at first AM radio and then FM radio and then
18 television, to encourage high quality and diverse local news.
19 And throughout, the FCC has struggled to increase the number of
20 broadcast stations on the assumption that more stations is
21 healthier than fewer stations and that more stations will
22 generate better news, more news, and so forth.

23 In the 1980s the FCC, and then in the 1990s, Congress
24 began to change their approach, allowing group owners to vastly
25 increase the ownership of radio in particular to where in some

1 markets up to half the audiences are now controlled by one
2 particular owner. And now the FCC is considering new revisions
3 to those rules addressing television and newspaper
4 cross-ownership and increased dualopoly ownership of let's say
5 more than one radio or more than one television station in the
6 market.

7 And these I think extraordinarily important questions, and
8 the core issue here is how to spark again the most vital
9 creative and diverse local news operations possible.

10 Do we need greater concentration of control in order to
11 give us that quality of high quality news? Or will greater
12 concentration of control decrease local news quality, pushing
13 national organizations to centralize their operations in
14 New York or Minnesota or Los Angeles?

15 And today we have with us again an extraordinarily
16 talented and diverse group of panelists. Let me again say that
17 we have about ten minutes for each presentation, and we will
18 begin on your far left with Marty Kaplan.

19 Marty is Associate Dean of the USC Annenberg School of
20 Communication. He's the director of the Norman Lear Center,
21 and a former White House speechwriter and journalist. Marty.

22 **MR. KAPLAN:** Thank you, and thank you, Commissioner Copps,
23 for encouraging us to turn out today and to be part of your
24 road show that's so important.

25 My theme today is, what do we need to know? What do we as

1 citizens need to know to live our daily lives in this society,
2 but also what do we, the FCC, need to know? It's a little
3 presumptuous to say that we are the FCC, but you are our
4 trustees, you are commissioned, someone has to commission you.
5 We commissioned you, so we have to ask ourselves collectively
6 as a society, what is it that we need to know in order to do
7 what we in the name of the FCC are about to do?

8 Since 1998, with my colleague, Dr. Matthew Hale, who's
9 here today, I've been conducting empirical studies of the
10 content of local news on broadcast television. In particular,
11 we've been looking at the quantity and quality of political
12 campaign coverage by stations across the country in races at
13 all levels of government in both primaries and general
14 elections.

15 What's motivated these studies has been Thomas Jefferson's
16 idea that Americans need to be informed in order to be good
17 citizens. Since most Americans today say that they get most of
18 their news from local television stations, the kind of
19 attention that those stations pay to campaigns and elections,
20 not in paid ads but in journalism, is a good measure of the
21 health of our democracy.

22 Our most recent study is funded by the Pew charitable
23 trusts and conducted in collaboration with the news lab at the
24 University of Wisconsin, Madison, under the direction of
25 Political Science Professor Ken Goldstein. To date, we have

1 captured and analyzed, from the 2002 midterm elections, about
2 90 percent of the campaign news stories that aired on the
3 top-rated early evening half hour and the top-rated late
4 evening half hour on 122 randomly selected stations during the
5 last seven weeks of the campaign throughout the country. The
6 stations are a representative national sample of the four
7 top-rated broadcasters in the top 50 U.S. media markets
8 covering 65 percent of the nation's households. Our data set
9 of campaign stories is culled from more than 4,000 hours of
10 local news programming, and we have analyzed to date almost
11 7,000 stories. It is the most ambitious such study ever
12 undertaken in the U.S.

13 And today I'm going to be releasing for the first time the
14 national findings of that study. And as you listen to these
15 numbers, keep in mind as a kind of baseline: When the spectrum
16 was given away for free in the late 90's it caused a creation
17 of a commission that was co-chaired by Les Moonves, the
18 president of CBS, and political scientist Norm Bernstein called
19 the public interest obligations of broadcasters in the digital
20 era.

21 The question they asked is, what is it that we the public
22 should get in exchange for giving the spectrum \$80 billion, or
23 so, worth of real estate? What do we deserve to get in return
24 for that? And their answer was A) We shouldn't have a new
25 regulation. We should do it on a voluntary basis. And

1 B) Here is the recommendation they came up with. They said
2 that in the last month of every campaign, primary and general,
3 presidential and mid-year, that every station, every night,
4 should contain five minutes of candidate discourse, of
5 candidates talking on their news. So that's the baseline, five
6 minutes a night, every station around the country, every race.

7 Here's what we found in our study: Forty-eight percent of
8 the early and late evening half hours of local news watched by
9 most Americans during the 2002 general elections, nearly a
10 majority of the broadcasts in our sample, contained no campaign
11 coverage at all. When campaign stories did air, they mostly
12 were less than 90 seconds long, they mostly contained no
13 soundbites from candidates, they mostly came in the last two
14 weeks before election day. They focused on strategy and polls,
15 the horserace stories nearly half the time. They focused on
16 statewide over local races by almost seven to one, and they
17 were out numbered by paid campaign ads by nearly four to one.

18 In other words, most Americans probably saw more primetime
19 entertainment on a single night than they saw election coverage
20 over an entire campaign season of watching local news.

21 The -- the full results will be found on our website,
22 www.localnewsarchive.org, where you can not only shortly see
23 the results nationally and by local stations, you can actually
24 gain access to and watch all 7,000 stories.

25 Today, the FCC is reported to be searching for an

1 objective formula for, as it says on its own website, a sound
2 empirical basis for FCC media ownership policies that promote
3 competition, diversity, and localism. Any such formula must
4 take account of the current reality of local news. With the
5 FCC's obligation to promote competition, diversity, and
6 localism comes the obligation to measure competition,
7 diversity, and localism. Until the FCC has empirical tools to
8 measure local news and until it has used those tools in a broad
9 sample of the nation's media markets, it will not be possible
10 to conclude that current policies can achieve the FCC's goals.
11 And it would be a riverboat gamble to overthrow those policies
12 in order to do a better job of achieving them.

13 Of course the First Amendment permits local news
14 broadcasters to air the amount and quality of news that they
15 want, subject to the FCC's licensing requirements. And yes,
16 some ways of assessing journalistic quality involve subjective
17 elements. Drawing the line between hard and soft news, for
18 example, may differ from person to person and place to place.
19 But our research on campaign news suggests that there are some
20 objective yardsticks that everyone might be able to agree on.

21 For example, we measure the percentage of broadcast news
22 time that local stations spend covering campaigns and
23 elections. The percentage of news broadcasts that contain at
24 least one campaign story. The average length of campaign
25 stories. The percentage of a station's campaign stories about

1 local races, and the frequency of length of candidate
2 soundbites. Today, no one knows what those numbers look like
3 across America. Not for individual stations, not for
4 individual media markets, and not for station ownership groups.
5 The closest that anyone has come to drawing those nationwide
6 baselines, is the Lear Center research that I've described
7 today, and our study is limited. Yet even with it's
8 limitations, our data are powerfully suggestive of what a
9 comprehensive national study could reveal.

10 For example, there is a huge range of performance among
11 the 122 stations we studied. Some stations aired the campaign
12 story on less than 20 percent of their top-rated half hours.
13 Other stations had campaign stories on more than 90 percent of
14 those broadcasts. Some stations spent only one percent of this
15 most-watched news time on campaigns. Other stations spent as
16 much as 11 percent. On some stations, an average campaign
17 story was well over two minutes long. On other stations, it
18 was just 40 seconds. Nine stations covered no local races at
19 all during their top-rated half hours. Four stations devoted
20 more than half of their political coverage to local races.
21 Other measures also demonstrate how different television
22 stations around the country can be.

23 This raises the research question of what range of news is
24 available to Americans within individual media markets, where
25 they live and watch and vote. And it brings as the policy

1 question of what ranges constitute acceptable competition,
2 diversity, and localism. Here, too, our findings are
3 suggestive.

4 Our study included 22 markets where we analyzed as many as
5 three or four stations within that market. When you look at
6 the percentage of news time they gave to campaign news and the
7 frequency and length of their campaign stories, what did we
8 find? In half of those 22 markets, virtually all the stations
9 we studied were below or at the national average on each of
10 those three measures. Localism shows a comparable result.
11 When you measure what percentage of campaign stories in those
12 22 markets went to local races within half -- with in those
13 markets what we discovered was that within half of our markets,
14 all the stations we studied were below the national average.

15 For the FCC to do its job, it must be able to relate
16 station ownership to station performance measures like these.
17 While our research was not designed to study that correlation,
18 our 122 stations do include 45 owned by large owners, with
19 audience reach above 20 percent, 54 owned by medium-sized
20 owners, and 23 by small owners.

21 It turns out that nationwide, the large owners in our
22 study carry a lower percentage of local campaign news than the
23 national average. The medium and small owners carry a higher
24 percentage of local campaign stories. Our sample picked up 24
25 markets where we have data from stations with large owners

1 competing with stations from small or medium owners, or both.
2 In two of those 24 markets we're awaiting final numbers, but in
3 16 of the remaining 22 markets, stations with small or medium
4 owners provided more coverage of local elections than with the
5 large owner. There were only two markets where large owners
6 provided more local campaign coverage.

7 Before the FCC lifts the ownership caps, wouldn't it be
8 useful to find out how owner size actually correlates to local
9 campaign coverage and to other objective measures in markets
10 around the country? What we already know from our study is
11 this: Depending on what city Americans live in, the campaign
12 coverage they get can be rich, poor, or anywhere in between.

13 Media competition, diversity, and localism -- those three
14 FCC goals -- aren't about national averages. They're about the
15 actual opportunities afforded by broadcasters to citizens
16 within individual markets. Today no one knows what that
17 complete picture actually looks like. Not for campaign news,
18 not for any other kind of news. We're happy to make our data
19 available to anyone wanting to start drawing that picture, but
20 until those ambitious studies are conducted, any major changes
21 in media ownership rules by the FCC can be no more than a roll
22 of the regulatory dice. It is difficult to imagine Thomas
23 Jefferson entrusting the future of American democracy to a
24 crapshoot.

25 Thank you.

1 **MS. TEAGUE:** -- at KCBS. When I worked at KCAL, it was
2 owned by Disney, and although Disney's taken it share of
3 bashing today, I will say that its purchase of KCAL years ago
4 and its commitment to television news and putting three hours
5 of primetime news on the air I think really has been a benefit
6 to this -- to this market. I worked for KCBS under a variety
7 of owners including Larry Tish, Westinghouse, Viacom, and there
8 was some Pillsbury guy in there somewhere. I can't even
9 remember what his relationship to us was.

10 But the other dualopolies that we're witnessing right now
11 here in this market are KNBC-TV, KVEA, and KWHY, which is part
12 of the NBC-Telemundo merger. And there's also the merger of
13 KTTV, FOX 11, and KCOP, which are now one television station,
14 or operating as one unit. So it's really -- even though we're
15 a year into the merger of KCAL and KCBS, it's really too early
16 to tell what the full effects of this are going to be.

17 But let me talk a little bit about why the KCAL and KCBS
18 merger is significant. As those of you who have spent much
19 time watching television news in Los Angeles, you know that
20 KCAL was quite a local news force in this market. It was a
21 very strong independent, non-network affiliated station. So it
22 had no obligation to any sort of networks, and it had very
23 strong news. It -- as I said, we put on the -- I was there
24 when we put on the first three-hour block of primetime news.
25 The station routinely broke into programming for breaking news,

1 regularly offered more election coverage of virtually any
2 station in Los Angeles, and offered more live election night
3 coverage of any station in the market.

4 KCBS on the other hand was -- traditionally has been kind
5 of what I call the "also ran" station among the three network
6 affiliates. And one reason for that is that even though it's
7 owned by a major corporation, it's had frequent management
8 changes, shifts -- frequent shifts in management philosophy,
9 frequent turnover of on-air talent, and really a confusion
10 among viewers about the station's identity. Whether it's, you
11 know, one -- one day it's the breaking news station, and the
12 next minute it's a, you know, long-form station and people just
13 get very confused about what it is.

14 It's also suffered from repeated budget cuts by its parent
15 corporation. I know I went through many of those when, you
16 know, the -- one of the ones that I remember the most was when
17 we were ordered to do lots of tie-ins when Survivor first came
18 on the scene. And so we went out and dutifully did our part
19 about, you know, what kind of recipes you can find for cooking
20 bugs in the wild and found people who actually did this and,
21 you know, and all of the CBS stations did this and helped make
22 Survivor a success.

23 Well, a few weeks later, you know, right after Survivor
24 aired, you know, everybody was thrilled and said, "Oh, we've
25 made so much money." And then a couple of weeks later they

1 came through and announced that our particular station hadn't
2 made its revenue targets and then we were cutting millions of
3 dollars from the budget and that was going to mean cuts within
4 the news department. So, you know, I went through many, many
5 times -- many, many situations like that, but what the result
6 of that was that it really took away the resources that that
7 particular station had to cover news.

8 I was fortunate about six years ago to be a part of an
9 effort to -- to change the station's identity to one of serious
10 investigative reporting through the creation of the special
11 assignment unit and also a branding campaign, which some of you
12 may remember, which was called What's Right With Southern
13 California. And it was, you know, having some success. We had
14 a general manager who was looking long term and trying to --
15 which was one of his big mistakes, looking long term in
16 television -- and he -- you know, we were very -- you know,
17 trying to, you know, bring the station back and put it on the
18 map for something substantive. Well, that didn't, you know,
19 last very long. They said that he wasn't spending enough time
20 on the bottom line, so he was removed. And as a result, they
21 pretty much dismantled the effort. Special Assignment still
22 exists but it's kind of, you know, a shadow of its former self.

23 In other -- in some cities, what's happened with
24 dualopolies is that the -- both stations have continued to
25 maintain their own identities and -- to the point of competing

1 with one another. Well, what's happened with KCAL and KCBS is
2 a complete blending of these two stations. And they're now
3 housed in the same location, coverage decisions for both
4 stations are made at joint editorial meetings and through one
5 assignment desk. Reporters work for both television stations
6 and, in fact, they carry mike flags, you may have seen them,
7 where you -- one side says "Channel 9", and you can just turn
8 it and the other side says "Channel 2." So one moment you're
9 Channel 2, and the next minute you're Channel 9.

10 Anchors who -- you know, traditionally that's who you
11 identify with a television station. They regularly have show
12 assignments, but they also -- there's a lot -- there's been a
13 lot of switching from, you know, from station to station. So
14 people are very confused about, you know, which station is
15 which. And one reporter told me that, you know, people say,
16 "Well, are you not there anymore?" You know, because they
17 don't -- you know, they're just very -- it's confused the
18 audience.

19 There's a real minimal effort to maintain the identity of
20 either one of these television stations. The photographers and
21 reporters are providing coverage of 11½ hours of news each
22 weekday on both of the stations, if you combine how much
23 they're doing each day, which is a lot of news, obviously. But
24 what's happening is that the reporters say that they don't have
25 enough time to do quality reporting that they once did when,

1 for example, KCAL was independent from -- from KCBS. So what's
2 happening is that they don't have -- they have to be live all
3 the time, and they don't have time to change their stories from
4 newscast to newscast.

5 But if you're at KCBS, you think, well, this is great
6 because we have all these resources. We have now two
7 helicopters to cover news. We -- you know, we have more
8 reporters than we once did because it was a station that had
9 just been drained by Viacom. And the effort seems to be at
10 this point that the -- they are trying to prop up KCBS as, you
11 know, to the -- to the detriment of KCAL.

12 So the effect seems to be a loss of identity for a once
13 strong, independent voice in Los Angeles. And that's of KCAL.
14 Since they're trying to prop up the weaker dualopoly partner.
15 Since they once made coverage decisions independently, now
16 you've got one set of voices; you have one decision. If
17 there's a story that perhaps a lot of different stations are
18 covering in the day, there would be discussions of each of the
19 television stations about, how are we going to cover this
20 story, who are we going to speak to, you know, what angle are
21 we going to take to story? Now you have one decision. And
22 they'll go to one location, as opposed to two locations. And
23 so that, I mean -- that seems like a small number. But I mean,
24 there's a lot -- you -- you add up all of those decisions that
25 are being made throughout a year and that's a lot of different

1 locations that you're not going as a result.

2 So the product has been diluted. There's, you know,
3 communities have one less outlet to get truly local news on the
4 air. People are always complaining about trying to get through
5 to anybody at television stations. I worked on the assignment
6 desk and on the planning desk for many years. You know, trying
7 to get through to anybody and get their attention about a story
8 is virtually impossible. Unless it's appeared in the paper,
9 unless somebody at this television station just happens to be
10 interest in what it is that you're pitching, you know, you're
11 really going to be out of luck. So it's even more difficult
12 now with what's going on.

13 Sure.

14 I was just going to comment. One other -- one other thing
15 that's going on is the KNBC-KVEA merger, and those -- those
16 stations are about to merge at the end of -- at the end of this
17 month and they will began to have their -- have newscasts from
18 the same location and produce news together. So it's a matter
19 of -- that one is obviously of great concern because you
20 have -- in Los Angeles you have a real competitive situation
21 between Telemundo and Univision. And to now have one of those
22 voices be taken over by NBC, it's going to be very interesting
23 to watch.

24 So in -- in conclusion, what I would urge the FCC to do is
25 to study what's going on right now because I think it's just

1 too early to be able to tell what the final outcome of all of
2 these mergers has been so far. And I just think that there's a
3 lot more information that we need and a lot more evidence that
4 we need.

5 Thank you so much for your time.

6 **MR. WESTEN:** Thank you, Sylvia.

7 Our next panelist, Jay Harris, is former publisher of the
8 San Jose Mercury News, and currently holds the Wallis Annenberg
9 Chair for Journalism and Communications at the USC Annenberg
10 School and is founding director of the Center for Study of
11 Journalism and Democracy. Jay.

12 **MR. HARRIS:** Thank you very much, Tracy.

13 Good afternoon, ladies and gentlemen. I truly appreciate
14 the opportunity to speak at this forum, and I'd like to start
15 by extending by thanks to Commissioner Copps and the FCC staff
16 participating in this forum, and to Sandra Ortiz, executive
17 director of USC Center for Communication Law and Policy, for
18 organizing it.

19 I'm particularly appreciative of your commitment to this
20 endeavor because of my concern that the public has only a
21 minimal awareness of the sweeping rule changes the FCC is now
22 considering. They do not know about the possible, if not
23 probable, long-term impact of those changes on the news media
24 the American people rely on for the information they need to
25 fulfill their responsibilities as citizens.

1 Now, the commission has invited comments on the proposed
2 rule changes and related studies and received several thousand
3 comments in response. In addition, several thousand e-mails
4 have been received and public hearings held. These facts
5 inarguably reflect a degree of public input, but the volume of
6 comment and the official process notwithstanding, I think it's
7 safe to assert that the vast majority of people outside the
8 beltway are not well or fully informed about the content or the
9 likely impact of the proposed changes.

10 And if it is true, that most Americans are generally
11 unaware of the changes being considered, the public discourse
12 and public input that are bedrock ideals of our form of
13 government have been largely illusory. So this hearing is
14 particularly welcome.

15 I approach my remarks today with a particular focus on the
16 public interest in the rejuvenation of an independent, diverse,
17 and robust American news media. It is a subject I have some
18 familiarity with having worked in journalism for more than
19 three decades and positions including stints as a local and a
20 national reporter, as executive editor of one metropolitan
21 daily and publisher of another, and as a vice president for
22 operations of one of the nation's largest newspaper companies.

23 Based on the experience and a personal familiarity with
24 the dramatic changes that have swept the news media during my
25 career, I would list the following among the most concerning of

1 the likely consequences of the changes the commission is
2 considering:

3 First, a further reduction in the quality and quantity of
4 news and information that Americans must have to fulfill their
5 responsibilities as citizens in our democracy.

6 Second, a reduction in the diversity of voices and points
7 of view in the continuing dialogue among citizens about matters
8 of public import that a true and vital democracy requires.

9 Third, the probability that the rule changes will lead
10 eventually to the further deterioration of the already
11 lamentable quality of local television news in most
12 communities.

13 And finally, the possibility that increased consolidation
14 and cross-ownership of television and newspapers in a single
15 market may lead to still more market-driven deterioration of
16 the capacity of local newspapers to serve the needs of their
17 communities.

18 You will note that I have stressed the public interest in
19 framing my concerns about the potential impact of the proposed
20 changes. I do so for two reasons. First, because I believe
21 the public interest should be the paramount consideration in
22 the development of the laws and regulations that govern our
23 society. And second, I understand the public interest to be
24 the central -- to be central to the responsible conduct of the
25 FCC's mission, from its inception in the 1930s through to this

1 day.

2 Many observers believe that the priority of ascertaining
3 and secured -- securing the public interest in its domain of
4 responsibility is not the clear cut imperative for the
5 commission that it once was.

6 The dominant trend at the commission since the mid-80's
7 has been the weakening of regulations and guidelines for the
8 broadcast industry. And the resulting impact on the public
9 interest as it is represented in broadcast news programming has
10 been decidedly negative. Local television news is the primary
11 source of news for most Americans, but the substantive content
12 of local television news reports has declined more or less
13 steadily in most markets. So has the quality of the journalism
14 local television news organizations produce.

15 During the last 20 years or so we have witnessed the
16 takeover of the vast majority of our nation's television and
17 radio news organizations by corporate conglomerates. It is
18 ever more clear that the paramount priority of these
19 corporations is not journalism in the public interest. It is
20 increasing profits and return to shareholders. This should not
21 be surprising as this is the primary purpose of these
22 businesses.

23 It must be said in fairness that there are a few among
24 them that do strive to balance the business priority of growth
25 in profits and returns with the social priority of fulfilling

1 that public trust, which journalism, regardless of the media
2 delivering it, constitutes. But such corporations are a
3 decided exception.

4 Compounding the problem of the priority on growth,
5 profits, and increased return is the now dominant pursuit of
6 the highest audience ratings, the broadest market penetration,
7 or the lowest common denominator in content. This is
8 manifested daily in many ways, not the least of which is the
9 increasing and worrisome tendency most evident in television to
10 blend news and entertainment and news and entertainment values.

11 It should not go unnoted that this period has also
12 witnessed the demise of serious journalism at most radio
13 stations in our country. And it must be said clearly that the
14 cumulative effect of these and other factors is the slow
15 starvation of American democracy, an unintentional act
16 accomplished by depriving citizens of the informational
17 sustenance they require to actively engage the responsibilities
18 of citizenship.

19 A visit to the FCC website reveals that neither in the
20 summary statement of the commission's strategic goals nor in
21 the summary statement of its six general goals for the next
22 five years is the term "public interest" to be found. This may
23 reflect the ascendant view at the commission over much of the
24 last 20 years.

25 For example, in her prepared remarks for the address to

1 the PLI conference in late 2001, Commissioner Abernathy
2 described her view of the FCC's public interest obligation.
3 "Although at times I wish I could end my inquiry into the
4 public interest with the plain language of the statute, more is
5 required of the commissioner," she said. "My regulatory
6 philosophy," she went on, "begins with the fundamental notion
7 that competitive markets function better than regulation to
8 maximize the public welfare."

9 Now, an alternative view was offered by former
10 Commissioner Tristany in remarks prepared for delivery for two
11 years earlier, on the occasion of the release of a notice of
12 inquiry on the matters of public obligations of TV broadcast
13 licensees.

14 "The most important aspect of the public interest standard
15 is this: It's the law," she said. "Congress imposed the
16 public interest standard 70 years ago and has never wavered in
17 its insistence that it apply to every broadcast licensee. The
18 difficulty, of course, is in defining the public interest," she
19 continued. "On its face the standard is broad and requires the
20 commission to exercise a great deal of discretion, and simply
21 because the task is difficult is no excuse for shirking it."

22 Whatever the view of individual commissioners, this much
23 would seem to be clear. In the proceedings at hand, the
24 commission has a responsibility to consider the full range of
25 possible and probable consequences of the rules it promulgates,

1 not just the specific intent and goals of the proposed new
2 rules. An examination of the proposed rules and the strategic
3 and five-year goals of the commission suggest a particular
4 emphasis on markets to produce public good.

5 In the same remarks in 2001, Commissioner Abernathy cited
6 her second guiding principle regarding regulation by the FCC,
7 and I quote, "Fully functioning markets deliver greater value
8 and services to consumers than heavily regulated markets do.
9 Despite the noblest intentions, governments simply cannot
10 allocate the resources, punish and reward providers, and
11 encourage innovation as efficiently as markets. The history of
12 our nation and the demise of those that adopted centrally
13 planned economies makes this proposition indisputable. While
14 there is a critical role for regulation," she concluded, "we
15 should strive to rely on and trust market forces whenever we
16 can do so consistent with the statute."

17 This represents fairly, I think, the ascendant view in
18 communications regulation over the last 20 years. But others
19 would insist that while competitive markets are generally good
20 for producing efficiency, innovation, and profits, they do not
21 produce social good or serve the public interest as a matter of
22 course.

23 I am reminded here of an article that appeared in the
24 New Yorker last year. It quoted a 1926 essay by the legendary
25 and respected economist John Maynard Keynes.

1 Let us be clear -- "Let us clear from the ground the
2 metaphysical or general principles upon which, from time to
3 time, laissez faire has been founded," Keynes wrote. "The
4 world is not so governed from above that private and social
5 interests always coincide. It is not so managed here below
6 that in practice they coincide. It is not a correct deduction
7 from the principles of economic, the enlightened -- that
8 enlightened self-interest always operates in the public
9 interest."

10 Now the effect of market forces on the American news media
11 over the last 20 years supports Lord Keynes' assessment.
12 Consider the fact. Thanks to technological developments we
13 have witnessed a significant increase in the number of networks
14 and the channels available via cable and satellite. But we
15 have seen nothing near an equivalent increase in the number or
16 percentage of public affairs, political, and news programming
17 that the FCC once listed among the usually necessary indicators
18 of broadcasting in the public interest. We have witnessed the
19 emergence of giant television conglomerates, but one of the
20 largest reportedly eliminated local news programming in two
21 communities well known to Americans. The reported reason,
22 declining advertising revenues.

23 **MR. WESTEN:** Jay, if you can take a minute.

24 **MR. HARRIS:** I will take one minute.

25 It is a paradox of our times, our culture, and our

1 national priorities that the best journalism in America today
2 is better than ever. That is true in terms of techniques of
3 craft, fairness, and professionalism, diversity of coverage and
4 of staff and of quality and comprehensive -- of
5 comprehensiveness of news reports. However, in terms of
6 serving the needs of the citizens of the democracy, as regards
7 their responsibilities as citizens, the news media on average
8 perform that function less well than they once did.

9 Fewer people than one would want take advantage of the
10 best of American journalism. There are fewer and fewer
11 independent journalistic voices and an increasing number of
12 Americans are drawn to a shallow journalism that is a creation
13 of the marketplace, including a new pseudojournalism, which is
14 really nothing more than entertainment which uses the news as
15 grist for its mill.

16 And I conclude with these two observations. More people
17 watch the O'Reilly Factor on the average night than buy the
18 New York Times on the average day. On the Friday just past, I
19 asked the political consultant James Carville his affect of
20 shows such as Hannity & Colmes, Crossfire, and the O'Reilly
21 Factor on political dialogue and civic literacy in our country.
22 Carville, as you may know -- may know, is a host on CNN's
23 Crossfire, and this is what he said. "The viewers that turn to
24 such shows use them like a drunk uses a lamppost, for support,
25 not illumination." And he concluded -- and he concluded with

1 this observation about such shows, which are growing in
2 popularity. "It's entertainment."

3 Thank you very much.

4 **MR. WESTEN:** Thank you, Jay.

5 Our next panelist is Shaun Sheehan, who is currently vice
6 president for Washington Affairs at the Tribune Company and has
7 been since 1992. And I understand from the Tribune's website
8 that they own not only the L.A. Times and KTLA, Channel 5 here
9 in L.A., but they're the only media company with newspapers,
10 television stations, and websites in the nation's top three
11 markets, New York, Los Angeles, and Chicago. Shaun.

12 **MR. SHEEHAN:** Clearly that's the reason I'm here. We had
13 the opportunity to absorb the Times Mirror Company into Tribune
14 a few years ago, driven by the Staples Center scandal as Jay
15 well remembers. And that put -- that abuts us against the
16 newspaper cross-ownership rule, which quite frankly hasn't
17 gotten much discussion here. But given the proximity of the
18 Hollywood community, I could see why it's centered on the -- on
19 the production community.

20 I'm going to limit myself to that particular rule. It's a
21 fascinating rule. It was adopted in 1975. It's legs, though,
22 really go back to the 1930's with the old chain radio rules,
23 which is where all the -- Tracy spoke to this earlier.

24 In '75 the rule was put on and yet there were two
25 startling admissions by the commission. One of which is

1 television stations, who were owned by local newspapers, put on
2 the air more news and public affairs than any other category of
3 ownership that they could find. Secondly, they could establish
4 no harm driven by these existing combinations. Given that --
5 for that very reason many of the existing combinations were
6 grandfathered going forward, including the Chicago Tribune and
7 WGN in Chicago. In those days we used to own the New York
8 Daily News. So it was the New York Daily News and WPIX.

9 Other notable examples would be Belo and Alice of the
10 Dallas of the Dallas Morning News and WFAA and Cox in Atlanta,
11 WSB in the Atlanta Constitution.

12 I mention this because it's -- it's important to bear in
13 mind that no harm was found in '75. The Courts, however,
14 finding for the commission said we're going defer to you in
15 your predictive judgement, but somewhere down the line if
16 technology drives the process, bring the issue back to us
17 because you're starting to get very close to First Amendment
18 grounds that, quite frankly, we don't think you should be
19 treading on.

20 In 1975, and the good professor went through this a bit
21 earlier, there were about 950 television stations. Now with
22 low power, there's over 4,000. There were 700, 785 -- 7,785
23 radio stations. FM was very much in its commercial infancy.
24 Now we have 13,000 radio stations. Less than 10 million people
25 subscribe to cable. You all know it's over 70 million homes

1 have cable with over 230 national cable channels. Home
2 satellite dish viewing didn't exist. It's up to about 20
3 million homes.

4 The only thing that's gone down in net numbers from 1975
5 to the present is daily newspapers. I raise this because when
6 you say "scarcity" that's the underpinning for many, many
7 things in -- in telecommunications policy. Not just ownership,
8 but also EEO rules must carry requirements, et cetera. So this
9 rule we think puts scarcity very much in play unless it's
10 ameliorated, dropped or rescinded to some extent.

11 The next big event that comes along is the '96 cable act,
12 which the professor went through in detail, and the -- the
13 notion behind requiring a biennial review is really rather
14 simple. The migration of viewership from free media to pay is
15 so pronounced that it was thought that we have to open up these
16 rules, have them looked on a biennial basis to allow these
17 companies to gain scale, and so that they can continue to do
18 their public affairs, news, and what we deem to be in the
19 public interest.

20 The overarching notion is that a free system of broadcast
21 is a national treasure and it should be preserved. It, by the
22 way, is also the reason spectrum was allocated to broadcasters
23 through the existing spectrum block to allow going to digital.
24 Now Marty offered a figure of \$80 billion. I've heard 70
25 before. It's the first time I've ever heard \$80. More

1 recently Bear Stearns looks at that number, and given the
2 deflation of the value of spectrum, it's down to about
3 \$500 million. We can quibble about that, neither here nor
4 there. But the notion of a free medium, a very, very important
5 concept to bear in mind.

6 Further as the professor noted, the onus is now on the FCC
7 to justify retention of these rules. In the newspaper rule, if
8 you couldn't find a predicate in 1975, we find it very, very
9 suspect you're going to find one in the year 2003. Now the
10 commission did go out and commission several studies. I think
11 there's 12 or 14, two or three of which look at newspaper
12 ownership. All of which conclude precisely what they found in
13 '75. Guess what? Stations that are owned by local newspapers
14 air more news and public affairs than any other category of
15 station. We think, therefore, that buttresses our case that
16 much more completely.

17 Why news? If you're in the broadcast business like I am,
18 my company is, we own 26 television stations. Given the fact
19 that you do have 230 cable channels coming in against you, the
20 only thing that really differentiates you're signal against
21 your competition is the ability to go local. And local by
22 definition is news.

23 In this market, just a few years ago we never had a
24 morning newscast. We now put on four hours a day, I believe.
25 We do an hour at noon and another hour in the evening during

1 primetime. It's an enormous commitment. And what we want to
2 do is unleash the journalistic capabilities we also have in the
3 newspaper. We have 1,100 reporters on the street with the
4 L.A. Times. That's a huge aggregate cost. There's no other
5 institution in L.A. that has that kind of value that they can
6 put out on the street, and what we're attempting to do as
7 readership declines, is we're trying to find the venues through
8 which people in the L.A. market get their news and we're trying
9 to reach them.

10 The Internet competes against us for classifieds, but it
11 doesn't compete against us for newsgathering. And we think,
12 giving all -- given all I've just mentioned, given the
13 progression of media, given the fact that there was no factual
14 underpinning in '75, given the fact that the '96 act now
15 requires that FCC to justify if there's one rule that's ripe
16 for repeal it's the newspaper rule.

17 Thank you.

18 **MR. WESTEN:** Thank you very much.

19 Our next panelist is Val Zavala, vice president of News
20 and Public Affairs at L.A. public television station KCET; also
21 co-anchor of Life and Times, which many of you have seen, and
22 she has won numerous awards for her achievements. Val.

23 **MS. ZAVALA:** Thank you. Many of you have seen and been
24 on, as I look around the room.

25 First of all I'd like to thank Commissioner Copps. This

1 is a rare opportunity for us on the West Coast to have some
2 impact on -- inside the beltway, and I hope we do.

3 And I want to just launch into localism. We've -- all the
4 experts have covered other areas, and I've been asked to speak
5 about localism because when you think about it, KCET is the
6 last remaining independent television station in Los Angeles.
7 That's scary to me because I know what kind of budget
8 challenges we're constantly facing.

9 But I also wanted to look a little bit more closely. When
10 I was asked to talk about localism, I thought, oh, I'd better
11 turn on the news and do my very own, very unofficial, less
12 meticulous survey than Marty has looked at and just kind of
13 seeing -- get a sense of how much local news is actually on the
14 local news. So I watched the three stations, between, you
15 know, 5:00 and 6:00 o'clock on Saturday. And my very
16 unofficial tally came out to be about -- this is just story
17 number -- about nine were what I call truly local. And I, by
18 the way, excluded sports and weather, and I just looked at what
19 the news content was. About nine stories were kind of local,
20 nine to ten, and about 15 were what I'd call nonlocal. But the
21 nonlocal stories, which mainly dominated by Iraq and SARS, was
22 by far -- consumed the most amount of time, and the local
23 stories tended to be 30-second (inaudible) and so forth, which
24 were comprised of things like a march against rape; although it
25 actually happened in San Jose, I'm actually cutting them some

1 slack. There were some dead tigers found at a facility that
2 was supposed to save them. Workers at a clinic came down with
3 a rash; very short story, could have been expanded on. A
4 district attorney filing murder charges against a mother in
5 Modesto; again I'm giving them some geographical slack here.
6 Travel insurance in this time of uncertainty.

7 Channel 4 did do a reprise in a sense of their restaurant
8 investigation. I guess the cockroaches were so successful in
9 the early sweeps that they're bringing it back. I shouldn't be
10 too cynical because it was, in many ways, the most sincere
11 public service effort that I saw on -- on the news on that day,
12 at least.

13 There was a house fire. Fires, of course, are standard
14 faire. An explosion in (inaudible). And then an actress -- I
15 haven't seen her -- Shelley Morrison from Will and Grace was
16 arrested for shoplifting, but at least it was a local Robinsons
17 and May store.

18 The rest of the news time, as I mentioned, was given
19 mainly to national stories, which if you were watching the news
20 you would see SARS and Iraq following, you know, in the network
21 news or preceding the local news, so there's a lot of
22 redundancy there.

23 There was also a story on Bush's tax plan, Pearl Harbor
24 homecoming, international space station, Chernobyl anniversary.
25 Important stories, yes. Local stories, no. Remember, nobody

1 in California has yet died from SARS -- let's hope it stays
2 that way.

3 And then, there's the not terribly important and not
4 terribly local. Another actor, I think it's -- is it Jamie
5 Foxx -- Jamie -- was arrested for refusing to leave a Las Vegas
6 casino. And then they have the movie reviews, which are really
7 movie ads for confidence and better luck tomorrow.

8 Now, this is, you know, fine. I suppose there were
9 some -- some valuable things in there. But bear in mind, put
10 this in perspective. This is happening in a state who is mired
11 down in the largest deficit in its history. Our local schools,
12 hospitals, housing, infrastructure, courts, city and county
13 budgets are taking a horrible beating. Virtually everything is
14 in crisis. But you certainly would not get that impression
15 from watching the local news, or a sense of what it would take
16 to solve it.

17 And also, sometimes local news can look local to those
18 people who -- just the viewer at home who doesn't understand
19 the complex system of feeds and satellites and all that kind of
20 thing. They'll watch a story, say, on blood pressure that was
21 sent down from who knows where to all the stations, narrated by
22 the local reporter, who didn't really cover the story at all.
23 And it's not that it doesn't have some good information but,
24 you'll never hear, for example, about how pregnant women who
25 live near our freeways give birth to lower birth weight

1 children, or how there's this, you know, otherwise wonderful
2 program on -- about teen pregnancies that's keeping mostly
3 minority girls in high school without getting pregnant.

4 So it's not that the things aren't valuable, but they're
5 edging out things that could be so much more valuable and
6 relevant to our communities.

7 I'm lucky in a sense. I worked for commercial news for
8 seven years and got my grounding and learned a tremendous
9 amount. But I'm also lucky that I was fired from a job at one
10 point and ended up at public television. And so I'm very happy
11 to be able to work on a program that takes localism very
12 seriously.

13 We've been on the air now, Life and Times, for more than
14 ten years. And we cover, as you know -- since I think most of
15 you here are from the area -- government, healthcare,
16 environment, education, race relations, growth, development.
17 We've looked at -- or will be soon looking at low wages that
18 are paid by otherwise lucrative casino -- casinos in -- on
19 Indian reservations. We looked at hydrogen-fueled vehicles in
20 Palm Springs, the DMV's crackdown on dangerous drivers,
21 earthquake faults underneath the troubled Belmont Center,
22 affordable rentals, et cetera, et cetera. Not to mention the
23 steady flow of interviews that allow an access by local people
24 to get on television, which is, if you watch national news,
25 doesn't happen to often.

1 We're also looking at a wonderful story coming up, a fifth
2 grade teacher here in Southern California who's doing virtual
3 miracles with poor immigrant children, who are scoring in the
4 top 10 percent of standardized tests and performing Shakespeare
5 plays. He's written a book, and we're going to feature him.

6 So this is the kind of thing we do. In addition to Huell
7 Howser, who everybody knows is up and down the state, in every
8 nook and cranny and presents Californians to other
9 Californians. And then a new state public affairs series and
10 news magazine, California Connected.

11 These things, however, are expensive. And the reason why
12 we are not an hour every night -- we're only a half hour -- the
13 reason -- I'd love to do 11½ hours worth of news, but it's
14 expensive. Even for, you know, public television viewers who
15 nevertheless still believe in sending us their \$40.

16 I do like to point out that I think it's safe to say that
17 the salary of one of the top news anchors in Los Angeles could
18 cover our production budget for half a year. So if they
19 get -- and also, localism goes beyond programming. At KCET
20 it's defined very much by our members. People who have to
21 write out a check have a relationship, have a connection to the
22 station that we care about very much, even though it also gives
23 them, they think, the right to call up and say, "Why'd you put
24 that show on television? I'm a member and so, therefore, I
25 veto it."

1 But that's a small price to pay.

2 We have an active community advisory board, outreach for
3 teachers, family day in the KCET lot, and now a new initiative
4 called KCED, which is just getting off the ground and just
5 being researched. And it will offer preschoolers and their
6 caretakers, both professional caretakers and your, you know,
7 Aunt Mildred, down the block, supporting material and a daily
8 program that will improve preschool education and readiness
9 because it is so crucial to the success of children in later
10 years.

11 So some would say, "Well, fine, wonderful, public
12 broadcast is doing all this wonderful stuff so, you know, let
13 the commercial stations do what they need to do. Public TV and
14 NPR, for that reason will pick up the slack." Again, we'd love
15 to but revenues, as you know, for nonprofits these days is
16 very, very difficult to raise.

17 We have an eight-person newsroom for a nightly program.
18 This in television is ridiculous. I'm sure anybody in TV will
19 tell you how small that is. We need to be three times that.
20 And, of course, if we -- our foundation support, which as been
21 very, very consistent and generous from the Whittier,
22 California endowment and previously the Irvine Foundation.
23 They've been there but, you know, television is still expensive
24 even by foundation standards. Only a few foundations can give
25 us the kind of grant that we need to -- to put on a nightly

1 program.

2 We also have to realize that KCET, despite the fact that
3 we've been on the air for ten years with this nice program, is
4 the exception. There are 360-something public TV stations
5 across the country, the vast majority of that can't even
6 possible put on a nightly program. Only maybe a dozen have
7 even tried. Most of them will have a weekly public affairs
8 show where you have discussion. A nightly news public
9 program -- public affairs program that really incorporates a
10 lot of local content, very unusual. WGBH in Boston did it for
11 a while. Even they lost their funding after, I think,
12 probably, seven or eight years. It's a tough thing to do. We
13 cannot simply dip our ladle into this ongoing stream of
14 revenue -- of advertising revenue. It doesn't work like that
15 in public television.

16 Cable shows address them, Bill Rosendal, for example, does
17 a lot of good public affairs, but it has limited reach. It's a
18 cable station -- or cable program. It goes to Adelphia viewers
19 only. And now who knows, after Adelphia executives have proven
20 themselves ethically challenged. We don't know where that's
21 going to go.

22 So however the debate on deregulation may be resolved, I
23 would urge some mechanism, some installation of a guarantee, an
24 incentive -- better be airtight because lawyers are great at,
25 you know -- they're like water, they'll reach into every nook

1 and cranny of the law -- but we need something that will
2 preserve and enhance coverage of truly local issues.

3 Rupert Murdoch, despite his nominal L.A. residency, really
4 doesn't care if there's a food bank problem in Los Angeles or
5 if housing development threatens to eat up Verdugo Hills or
6 social workers are overworked and underpaid. He can't worry
7 about it. I don't expect him to worry about it, but he won't
8 worry about it. Neither will the executives at General
9 Electric, Viacom, Disney, Time Warner, and apparently Micheal
10 Paul -- excuse me, Micheal Powell.

11 The Tribune Company, as you can see, as -- is part of this
12 consolidation and enjoying the benefits of it. I'm glad to
13 hear you say that the Tribune Company and those stations that
14 are owned by newspapers do more public affairs. That's very
15 encouraging to me, and I have to say, overall, I think the
16 Tribune Company coming to Los Angeles was a big improvement
17 given the couple of journalism scandals that preceded it. But
18 at the same time, if they take their reporting power and simply
19 distribute it more widely to other platforms, you're still
20 getting, you know, basically the same stories, just more wide
21 distribution. On the other hand a few -- fewer people -- if
22 too few people are reading the L.A. Times maybe that's a good
23 thing.

24 So I believe not -- I'm not saying they should read the
25 Times but if they don't maybe --

1 **MR. WESTEN:** Did you see Copps' picture in the Times this
2 morning?

3 **MS. ZAVALA:** No. Isn't that coincidental? Very good.

4 So finally, I'd -- there's a lot of talk -- my final point
5 is there's a lot of discussion about how this eats away and
6 erodes democracy. I actually think that the decline of
7 localism in news does more than threaten democracy. It's even
8 more fundamental than that. We're talking about just a basic
9 social fabric that's getting eroded. There are local churches;
10 schools; museums; businesses; sports leagues; theater groups;
11 youth orchestras; colleges; foundations, large and small;
12 myriad number of charities; civic groups; organizations, they
13 work with youths; senior citizens; disabled; the addicted; the
14 unemployed; the battered; as well as the talented; the eager;
15 the entrepreneurial; the bright and the ambitious. I know
16 because I get swamped constantly by press releases and e-mails
17 from people wanting, dying for attention, dying to get an ally
18 from -- an alliance on the part of local news stations. And as
19 Sylvia was saying, it is hard to get through to assignment
20 desks. They are the most cynical people in the world, and it's
21 really, really hard to get through to them.

22 So I hope that there's some opportunity in this change
23 that we're -- that is occurring. Localism means people can get
24 through to newsrooms. It's very important. Southern
25 California especially has 80 different languages, a growing gap

1 between the rich and the poor, a population more diverse than
2 any other state in the nation. What happens here is going to
3 be very important. And Los Angeles is not the only one, but
4 every single city in the United States needs a vital and
5 healthy local newsrooms. And so I urge you, as you consider a
6 structural change that will cast millions of Americans as mere
7 consumers in the global game of profit making, to build in
8 those assurances that local news and local reporting will not
9 just survive but thrive.

10 Thank you very much.

11 **MR. WESTEN:** Thank you, Val.

12 Our next panelist, John Connolly, has been a television,
13 film, and stage actor for over 30 years, is currently National
14 President of the American Federation of Television and Radio
15 Artists. John.

16 **MR. CONNOLLY:** Thank you very much.

17 Just a moment, I wanted to offer my greetings to many of
18 my members who are here today and even serving on the panel.
19 Clearly these questions are of central interest in the very
20 lives of media workers and that's one of the guises in which I
21 come to you today. I also want to acknowledge the
22 representation from the major broadcasting companies and media
23 companies today. I was pleasantly surprised to see delegation
24 from Disney, ABC, and Viacom. And it's always nice to meet
25 Shaun from Tribune. I think it's important that

1 representatives across the spectrum of opinion participate in
2 these forums. There's the smallest chance that we might
3 actually influence each other's perspective. So it's good
4 to -- it's good to be in the same room.

5 I don't bring the perspective of a scholar to this work.
6 I am a practitioner. This is how I earn my living, not as a
7 newscaster in this case but as a performer. The scholarly
8 work has been well reported and represented in both of these
9 panels and I really appreciate it. I do have the benefit of
10 significant amounts of objective research, which backs up to
11 some extent opinions of my -- I may express, including a very
12 important study commissioned by AFTRA, the Newspaper Guild, and
13 the Writers' Guild of America through the department of
14 professional employees of the AFL-CIO called Democracy
15 Unhinged. More media concentration means less public
16 discourse, and I would urge you all to take a look at our
17 website and take a look at it.

18 And I was also pleased to be here in this room a few weeks
19 ago to witness the presentation of Tyranny of 18 to 49, a
20 Annenberg Center discourse on demographics and the way they are
21 more narrowly driving programming choices in both entertainment
22 and news. And I think that these forces and the interplay
23 between them are things that we really need to think about and
24 I know that the Commissioners will think about in the process
25 of making these very difficult decisions they are faced with.

1 You know, it's a happy coincidence for me to be here, not
2 just as a practitioner and a representative of 80,000 media
3 workers, reporters, actors, musical artists, and hopefully soon
4 with our consolidation with the Screen Actors Guild, 150,000
5 media workers, but because of our position and our thoughts on
6 media consolidation --

7 (End of Side A, Tape 3. Beginning of Side B, Tape 3.)

8 **MR. CONNOLLY:** You know, there is -- there is genius in
9 government, sometimes. In the addition of the first ten
10 amendments to the Constitution, the Bill of Rights, there is
11 genius in that. It was not genius granted from on high. It
12 was genius forced under the force of arms because those first
13 ten amendments were in fact motivated not just by good feeling
14 and wisdom on the part of the original revolutionaries but by
15 armed conflict, which threatened the new republic if it did not
16 transform its standard of political participation from property
17 ownership to citizenship. And thus we ended up with the ten
18 amendments to the Constitution.

19 Similarly, the genius in government, which I find an
20 analogy to the first ten amendments to the Constitution, is
21 embedded in the original Communications Act. It is a simple
22 concept, which has proved more and more illusive as time has
23 gone on, and that is that the airwaves are public property.
24 This is a revolutionary concept, and a concept, which, if the
25 American people understand the implications of that ceasing to

1 exist as a practicality, could well result not perhaps in force
2 of arms discussion, but certainly in more of an uproar than
3 we've been able to experience thus far.

4 I think that Jonathan Taplin's comments in the last panel
5 were instructive in this regard.

6 When the public interest is defined, or redefined, as
7 essentially unregulated markets defining the public interest,
8 that somehow the invisible hand will merrily solve all media
9 ills, I think we're in problems. What we find, I believe, is
10 that the invisible hand fast becomes the mailed fist in the
11 velvet glove of competition solving all problems.

12 I think in part because of the '96 act, so much of this
13 has flowed from an over-enthusiastic belief and naive belief on
14 the part of the Clintonites of the democracy -- the promise of
15 democracy brought on by the dot com revolution. Well, we've
16 seen where that has ended up in terms of a promise of
17 democracy.

18 And I think, truly, the idiocy of a legal standard that
19 suggests that ownership rules should be automatically
20 eliminated if they're not constantly justified. If the public
21 owns the airwaves. If that is true.

22 Not to mention the simply practical problems -- I dare say
23 impossibility of conducting a thorough review on a biennial
24 basis. These are huge industries. Shaun gives a very
25 interesting rationale for why it ought to be biennial. Because

1 of the changes, they're very rapid, makes sense. But the
2 actual mass of information, to be able to digest, analyze, and
3 make policy on? Over a two-year period, I believe well nigh
4 impossible.

5 In terms of the local -- the way this is played out
6 locally, it's been said the duopolies, triopolies, have been
7 laid out in television. I'd like to point out that Clear
8 Channel Communications in radio has hit their eight-station
9 max. 1,250 stations nationwide, I should add. That Infinity
10 Viacom is at five stations here in the Los Angeles radio market
11 and ABC Disney with four. So we are getting some experience in
12 multiple station ownership. And indeed, I think that the FCC
13 should closely examine the cross-ownership rules that Shaun
14 discussed so ably.

15 Certainly with an eye to taking a look at how -- how can
16 cross-ownership prohibitions really function if in fact the
17 norm, because of 54 grandfathered waivers, really obviates the
18 rule? I'm not sure that it's really ever had a chance to
19 function because in every major market essentially
20 cross-ownership has been the norm rather than the rare
21 exception.

22 We've seen in -- and what we are hearing from our
23 reporters, the AFTRA reporters who work the news around the
24 country and here in Los Angeles, is as the newsrooms combine,
25 because of the economies of scale which were referred to, and

1 quite properly so, as business assessity. What in fact happens
2 over time is you have fewer worker voices, you have fewer
3 reporters with different perspectives on the news. Because you
4 have cross-utilization station to station. The firewall
5 between news and business direction in the station begins to
6 break down. And they find -- we find that more general
7 management personnel are involved in making news decisions
8 rather than news directors and the news staff. And the
9 interplay between the business needs of selling advertising,
10 keeping advertisers happy, and the needs of news, and the
11 ethics and objectivity of news reporting become compromised.
12 And in part, I believe this is inevitable and we've seen the
13 research because the economies of scale, not just in expenses
14 but in terms of revenues, drive decision making.

15 We've seen, not universally, thank God, but as close
16 enough to be within hailing distance, that sensationalism
17 begins to replace hard news in local newscasting. If it leads,
18 it bleeds is not a quip. It is a business plan. And it is a
19 problem. This is what we are hearing from the people who
20 write and deliver the news.

21 Should we actually compare, as Marty might be able to do
22 in his next study or Val in her experience -- should we
23 actually compare the numbers of minutes involved in local car
24 chases to the number of minutes debating the healthcare crisis
25 in California, the crisis of the uninsured, or the \$34 billion

1 budget hole and how we got there. The cookie-cutter market
2 pressures on radio have homogenized radio, local radio, to the
3 point of identity. And not just similar city to city
4 homogenization. In the case of Clear Channel literally the
5 elimination of local radio by use of automated voice tracking
6 out of their San Antonio facility. I'm happy to report that
7 last week, with 100 percent of the Clear Channel DJs in
8 New York, AFTRA stopped the importation of voice tracking into
9 the New York radio market cold. There will be live radio in
10 New York thanks to the solidarity of the fans and the DJs, and
11 I'm happy to report that to you.

12 Yes. Of course, I'll wrap it up.

13 There's a number of things I wanted to mention, but I'm
14 going to cut to the chase here, so to speak, and that is just
15 as an indicator of how undertold this story is:

16 There's a report that Melissa Gilbert of the Screen Actors
17 Guild and I gave to the executive council of the AFL-CIO six
18 week ago. When we reported what the process in the FCC
19 deliberations and the possible, probable outcome and the
20 timeline involved were, the look around the square hollow table
21 of the 50 highest labor leaders in the United States
22 representing 13 million people was of utter shock. They did
23 not know this was going on, and this was a pretty sophisticated
24 crowd -- despite what you may have heard or thought. And if
25 these folks with their hands on the pulse of the

1 inside-the-beltway political world were shocked, unnerved, and
2 moved to action, you can imagine the vast majority of our
3 fellow citizens who have no idea that this discussion is going
4 on. I will, in some remedy to this, be discussing with
5 President Sweeney later this week, the activation of the
6 multimillion member working families e-mail network. And we
7 will send out an alert about this discussion and urge millions
8 of our colleagues and citizens to participate in the happy
9 resolution of this discussion. Thank you.

10 **MR. WESTEN:** Thank you, John.

11 Our final speaker is Jay Levin, who's president of Share
12 with Other L.A., which creates public education around poverty
13 work. He's also chair of the Steering Committee of Media
14 Challenge and Founder of L.A. Weekly. Jay.

15 **MR. LEVIN:** Thank you. I, of course, want to thank the
16 Annenberg School and the law school and Sandra for making this
17 possible and for the Commissioner for coming.

18 I'm sitting here representing not just myself but most of
19 the -- much of the leadership and the -- of the groups that put
20 the antiwar demonstrators in the streets. Most of those people
21 came from existing social action organizations. And I -- the
22 Share With the Other L.A. campaign is a group of pro-bono media
23 volunteers who do public education about poverty in L.A.
24 County, and we work with an enormous range of coalitions and
25 grassroots organizations. So I'm here in that role as an

1 activist.

2 And in my media role, aside from founding the L.A. Weekly,
3 I've sat on boards of local -- low-power TV networks. I
4 started a cable network. I know the industry. So I -- I've
5 been on both sides of the power belt. The -- I want to thank
6 Val in particular and John as well because I've got so much to
7 say that they helped me refine it down. Val by pointing out so
8 much of the material that doesn't get covered locally.

9 The Share campaign originated to deal primarily with the
10 poverty issues in L.A. County. As we sit here right now, the
11 official poverty rate is 1.4 million people in L.A. County of
12 the 10 million people live in poverty. Now that's the official
13 rate. The actual rate is nearly 4 million people because in
14 fact the cost of living in L.A. is far higher than the national
15 cost of living, so the struggle here for people, the 40 percent
16 of our population who are not reflected in the news media, to
17 get by is overwhelming. So overwhelming that the County Health
18 Department found that 1.4 million people are "food insecure."
19 So bad is this situation that six to seven hundred thousand
20 people in the course of a year have serious bouts of hunger.
21 Of which about 500,000 of them are children. So this is the
22 county we live in, unbeknownst to the people who are not
23 suffering. This is the -- and that unbeknownstness is a pure
24 factor of the media.

25 It's a pure factor of the fact that this is not an

1 interesting story because it's not the kind bleeding that's
2 going to lead. It's not the kind of imaginations in local
3 television news that can say, let's make it -- this is -- this
4 is drama. Those people lining up at those pantries to eat --
5 to get barely nutritious food is drama. Those people who can't
6 get healthcare is drama. If we need drama, this is real drama.
7 This is happening in our community.

8 The wealth gap in this community is drama. The shift of
9 wealth nationally -- locally and nationally is drama. The
10 takeover of all media forms of -- media form and -- and the
11 control of what people get to know about social issues is
12 drama. That's not conceptualized in the local media. It's
13 certainly not conceptualized on KTLA since the -- since Tribune
14 took it over. It has never been. KTLA has actually been one
15 of the worst stations on covering the antiwar movement. It was
16 one of the worst -- had often the most misinformation about the
17 size of demonstrations. It denied -- it denied the
18 spokespeople from the movements space -- places to talk. And
19 in fact, it ignored some of the very fine reporting coming --
20 coming out in the L.A. Times.

21 L.A. Times was among those many newspapers that piece by
22 piece disproved everything Colin Powell had to say and
23 everything that the administration has had to say about why we
24 went to war in Vietnam. Every lie that was told the L.A. Times
25 reported. KTLA did not. And this -- it's not a mistake that

1 this happened, that KTLA would be -- would not do this. It's a
2 different market. It's a different world. It's a different
3 sensibility. It's a different culture. The idea that TV would
4 come -- that local TV would come in and make a difference by
5 cross-ownership belies the fact which John -- I can say in one
6 sentence because John said it so well -- belies the fact that
7 in fact the advertising culture makes a very big difference.

8 The second -- the second reason that we should not let
9 that happen on a mass level is because it doesn't end there.
10 It doesn't end when the Tribune captures these -- these
11 markets. It doesn't end because of the business -- business
12 rule called exit strategy. An exit strategy is, how do we
13 maximize our profit? And how do we increase our power and how
14 do we drive to consume and improve our bottom line? And the
15 takeover media merge in this country, in all industries, the
16 monopolizations of the media industry in particular are classic
17 examples of why -- why it will not end here.

18 So we can look down the road for 10, 15 years and maybe
19 we'll have FOX taking over the Tribune and buying Tribune
20 Company. And (inaudible) all these XTRA stations or Clear
21 Channel. Who knows where it's going to go? So it has to stop
22 somewhere. And now is a good a time as any and the rules are
23 as good a time as any. It not only has to stop, it has to go
24 in exactly the opposite direction to make it real difference.

25 Let me tell you -- let me tell you how corrupt this system

1 is, because that's so fundamental to the process here. The --
2 the core -- the core decision that was made some years ago
3 about media ownership and media control had one core -- one
4 important factor at a time that the electoral process was
5 moving into -- into having to use television and broadcast
6 for -- for campaigning. The cost of campaigning skyrocketed.
7 The TV -- the then-present TV companies fought diligently and
8 hard to make sure that they did not have to provide any public
9 airtime to candidates. So what's happened in the processes, of
10 course, is that every -- the candidates have to raise millions
11 of dollars from where the wealth is. The wealth is in -- the
12 wealth is in the hands of the corporate elite. Why is the
13 Democratic party lame? Because they have to compete there.
14 How do they keep -- how do we keep making sure that those
15 people who do get in don't -- don't buy it? Well, for one
16 thing, if we're media we -- we can threaten them with a story.
17 For another, we can buy them too.

18 So the media corporations are among the biggest campaign
19 donors. They spent millions of dollars in every election
20 cycle. To -- to guarantee that the rules don't change that
21 serve them so well. Viacom's net \$1.9 million in the last.
22 AOL-Time Warner, 1.4. The Disney Company, 1.2 million.
23 That's -- GE and -- G -- well if you combined GE, Microsoft --
24 there's 5.8 million. This is a lot of money going to -- very
25 precisely controlled hands. They know how to do this.

1 They know how to -- so what you have is -- you have, we
2 know have a system in which, unbeknownst to the public because
3 the TV networks will not tell the public that any of this is
4 happening -- we have -- we have a situation in which the
5 campaign the -- they can get from Congress, from the FCC,
6 certainly from the Bush Administration, which only acts on what
7 it's campaign donors do. There's 1,200 -- there's 1,200 key --
8 lobbying key -- key administration rules making positions in
9 the government in the various agencies. All 1,200 have been
10 filled by lobbyists from -- from the industries they're
11 supposed to regulate.

12 There is nothing that a campaign contribution -- you don't
13 see that on television. You don't see the television news
14 telling you where the -- the system is breaking down. That
15 everything -- the decisions being made in Congress that are
16 being ignored. Are being paid for -- are being paid for. You
17 don't see votes linked to it. You don't see any of this
18 coverage at all on television. You'll see some of it in the
19 newspapers, but like the war coverage, it doesn't drift over to
20 television. And for a good reason. Television doesn't want
21 mess with the system. It's a fix. They are -- they are the
22 twin pillars of what is not -- what is now an autocracy, a
23 plutocracy, an oligarchy -- name it what you want, it's not a
24 democracy. We live in the illusion of democracy. This roomful
25 and what we're doing here is an illusion of a democracy.

1 We have -- we have within the constraints of the -- the
2 social action groups and the peace groups created a new project
3 called Media Challenge. Media Challenge is -- is to mobilize
4 citizens to take on -- take on this behemoth directly, because
5 it's not -- it's not a game anymore. We have -- while we are
6 shifting huge amounts of money statewide -- and certainly
7 federally to -- to the wealthy, every single budget line that
8 affects poor people, that affects the middle class, like
9 transportation, veterans' benefits are being cut savagely.
10 With no coverage from the media, locally or nationally. We
11 are -- we are seeing a mass takeover from -- by a small group
12 at -- at the top.

13 And if that sounds Socialist, so be it. I'm -- it happens
14 to be that -- a capitalist reality that happening to us now.
15 And the -- and the -- the driving wedge to make this happen are
16 the five companies that -- that run the TV networks. They
17 control -- 58 percent of this public, unfortunately, gets its
18 bulk of its news and its sense of reality awareness from the
19 television networks, these five companies, the five companies
20 that control the TV networks. So 25 percent of them get it
21 from the conservative networks. So whatever else the rest of
22 us might think or believe or want to see happen, when push
23 comes to shove it doesn't end up in the public -- in the public
24 debate.

25 We have a world that doesn't get covered either in

1 entertainment news or in publishing news. We have a world
2 that's on the -- on the positive side, we see huge, huge, huge
3 historical awareness, awakenings and awareneses in human
4 development. In ecology -- on the NGO level and grassroots
5 economics systems that can actually work. We see -- we have
6 the most profound reason in human history to be really positive
7 and hopeful. There are extraordinary solutions out there,
8 extraordinary vision, extraordinary human beings, not one of
9 whom will ever see the light of day in television or rarely see
10 the light of day in local -- either locally. They exist in
11 this community on every level -- on every level.

12 This community is diverse and interesting and rich
13 beyond imagination. You will not find that on local
14 television. The -- one more minute -- okay. On the other hand
15 the dark side, the nuclear -- the nuclear -- the nuclear
16 holocaust. The -- that's pretending -- the depleted uranium
17 holocaust, you know. The -- the corporate malfeasance
18 holocaust. All of this is -- this is ignored. So in the most
19 essential senses, what we deal -- media -- we leave the media
20 to deal not with the most important public space. Our lives,
21 our democracy, gets left to the trivialization of media. That
22 can't go on anymore if we're going to have a life -- if we're
23 going to have a meaningful life of our health, pocketbooks and
24 wealth. And a public health consciousness. The education of
25 our children. The very way we live on the planet.

1 Where we can have a nurturing culture, which -- a
2 culture that reflects the nurturing values rather than the
3 culture that reflects these -- these competitive values. These
4 male competitive values keep -- keeps predominant. We don't
5 see any of that on TV.

6 Finally, to sum up, we're not without -- Media
7 Challenge, we've been talking to the media democracy groups.
8 We've come up with a number of things we think are extremely
9 important. Of course stopping this dead is -- is important.
10 Beyond that we want -- we want to see a return to, but even a
11 far greater -- far greater controls on the licensing of local
12 TV networks.

13 They -- the idea that they perform in the public group
14 interest before -- license renewals, of those licenses renewals
15 come up very frequently. Every three years or so -- two, three
16 years or so. That they be very, very, rigorously enforced
17 and -- and the understanding what's in the public good and
18 public interest be there. That's necessity.

19 We think there ought to be fees paid -- huge fees
20 paid in which -- for any -- for any use of public airtime or
21 the underground channel space. We think that that money should
22 go into fostering a -- as in Europe, a large segment of
23 public -- public television. And we think that -- and
24 community controlled television with whole new rules written
25 about who gets to have access.

1 And finally, we think that news as it exists -- and
2 we -- and with Media Challenge we're telling the news
3 (inaudible) we're going to do everything we can to stop you
4 directly. And we are going to do everything we can to stop
5 your legislatively. We think that the news -- news must be
6 divorced from profit. That -- that their fees have to go into
7 a fund, that other organizations and institutions get the --
8 get to make the news and decide what the news is. My time is
9 up. Thank you.

10 **MR. WESTEN:** Thank you. Let me first thank the panelists
11 for their really extraordinary contributions. Also, the USC
12 Annenberg School of Communications and the USC Law School for
13 hosting this event, Sandra Ortiz. And finally, Commissioner
14 Copps and Commissioner Adelstein, who were kind enough to join
15 our proceedings.

16 Because of the shortness of time, we want to proceed into
17 the opportunity for public comments right away. Before we
18 do -- and Sandra will take over that part of the proceeding --
19 let me just conclude with two very brief thoughts on this last
20 panel involving the First Amendment and presumptions -- a legal
21 term.

22 First, H.A. Liebling once said that freedom of the press
23 belong to the man who owns one. It can also be said that
24 freedom of speech belongs to us all. And by placing the First
25 Amendment -- by placing in the First Amendment both freedom of

1 speech and freedom of -- freedom of speech and freedom of
2 press, the framers set up a very interesting and important
3 dualism.

4 We need the press. We depend on the press for a
5 full, wide-open range of diverse and robust ideas. In fact,
6 the press is probably the only institution, private
7 institution, in the Constitution that's given protection. It's
8 the only private business that receives constitutional
9 protection and it's that important. But if the press becomes
10 too large and too concentrated, then potentially an unlimited
11 press can impair freedom of speech, our freedom of speech. To
12 express ourselves through outlets and to hear a full, wide-open
13 range of ideas. So balancing between these two freedoms is an
14 extraordinarily difficult but important task.

15 And the second involves presumptions. We never have
16 perfect information. So do we -- does the FCC loosen the
17 ownership rules unless someone can prove evidence of abuse? Or
18 does the FCC preserve, retain or even tighten the ownership
19 rules unless someone can prove that increased concentration is
20 harmless?

21 In each case it requires a presumption. A presumption
22 that greater concentration is good or a presumption that
23 greater concentration is bad.

24 The difficulty is that -- that the courts seem to be
25 saying that the FCC cannot retain the existing rules unless

1 there is shown evidence of potential harm. It's very difficult
2 to accumulate without putting it in place and trying it. In
3 the scientific world, we run experiments. In the public policy
4 world, those experiments are very difficult to run because they
5 are very hard to unravel.

6 So I would conclude by saying that the FCC is really
7 confronting an extraordinarily difficult job. And when this
8 issue gets to the United States Supreme Court, as it undoubtedly
9 will, the Court will not only have to decide whether it's
10 judgements are correct in terms of loosening or retaining
11 ownership rules. They will also probably have to begin to
12 consider the balance between freedom of speech and freedom of
13 press. And ultimately, they will have to decide whether the
14 presumptions that Congress and the courts have placed on the
15 FCC are themselves constitutional.

16 In other words, has it tilted too far in favor of
17 freedom of the press to acquire or is enough deference being
18 paid to the individual's freedom of speech, both to speak
19 through the media and to hear through the media?

20 Extraordinarily difficult and important challenges that
21 will affect, undoubtedly, our children through the next
22 century.

23 So thank you very much for being with us and let me turn
24 it over to Sandra. Thank you.

25 **MS. ORTIZ:** Those of you who signed up for public

1 comments, if you could come forward and we will get as many of
2 you in before Commissioner Copps has to leave.

3 I'm asking each of the people who are participating in the
4 public comments to -- to keep their comments to just two or
5 three minutes. And I will cut you off. And identify
6 yourselves very briefly by name and affiliation. Thank you.
7 That one? Okay.

8 **MS. PRUITT:** I'm Jean Pruitt, and I'm president of the
9 American Film Marketing Association, which represents 150
10 independent production and distribution companies. I have two
11 points. One of which is that, notwithstanding some of the
12 commentary in the first panel, it is not hard to define an
13 independent. In this industry or in any other, an independent
14 from our perspective are -- is a company whose productions are
15 funded outside the major studio system. It is not a production
16 done by the studio down the street. And it is not necessarily
17 or exclusively something edgy, done by a student with a video
18 cam off to the side.

19 It is, in fact, quite frequently a 65 to 200 million
20 dollar picture who -- which was financed independently, usually
21 by reference to going to a whole series of people and
22 distributors to try to get the money.

23 I think that as you look at what has taken place in the
24 United States since the Seventh Circuit set aside FINSYN, you
25 could conclude that we have already run the test lab on what

1 will happen if we go to total deregulation.

2 The independent industry today, by and large, cannot
3 distribute a film to a theater without a studio deal. You
4 cannot get your picture on video in Blockbuster or
5 Blockbuster's competitor without a studio deal. The
6 independents do not, by and large, produce network TV series
7 because there is no place for them. And today, there is
8 virtually no significant cable network that is acquiring
9 product from outside its own internal workings or the
10 "re-purposing from networks."

11 Why should the FCC care about that? I think they should
12 care about it for a lot of the reasons that have already been
13 stated. One of which is simply there are a lot of other
14 stories out there that will not get told if we limit the
15 production process to a few studios. But the larger reason
16 relates to two things. One of which is that the independents
17 are in fact the test lab themselves for the entire industry.

18 This is the way new voices come up the process. This is
19 the way new actors, new directors and new stories come forward.
20 Some of them are fabulous, some of them are not, but without
21 that process you limit the industry to a very narrow spectrum.
22 And that would damage the American public.

23 I think the other thing that we are seeing increasingly,
24 and it has economic and employment consequences as well as
25 subject matter consequences, is that most independent film

1 production today is largely dependent on foreign co-productions
2 and subsidies. And over time that means that the stories which
3 are being told are not U.S. stories. They are increasingly
4 shifting to stories of the jurisdiction that has helped finance
5 and make those possible. And that is a complete loss to the
6 U.S. And I would suggest that no other developed country has
7 as much trouble as the U.S. does in indicating it's concern
8 about an independent film and TV production industry.

9 And I question why we've see the FCC make protective
10 provisions for independent ISPs in the Time Warner-AOL merger
11 but turn a complete blind eye to independent producers. When
12 they are the storytellers and when they create a type of value
13 that is something beyond the pure economic. Thank you.

14 **FEMALE VOICE:** (Inaudible) step up to the podium?

15 **MS. ORTIZ:** I just think it's going to take too long
16 because he literally has to leave in ten minutes.

17 **FEMALE VOICE:** Well, I don't think it takes too long to
18 step up two steps (inaudible).

19 **MS. GOLDSTONE:** My name is A.W. Goldstone. I'm an
20 attorney and a writer, and I'm also on the steering committee
21 of Interfaith Communities United for Justice and Peace, which
22 is a progressive antiwar organization. I come here to express
23 my grave concern about the impact on our democracy of
24 concentrated ownership of news purveyors and whether monopoly
25 ownership is associated with homogenization of information

1 provided to the public and how the homogenization impacts the
2 ability of voters to meaningfully exercise their franchise.

3 In the context of recent events, I'd like to present my
4 empirical experience as a consumer of information. And my
5 experience frankly tells us that we're going absolutely in the
6 wrong direction. Because in the context of the coverage of the
7 justification and prosecution of the Iraq War, there was almost
8 complete homogenization among the six major networks in terms
9 of the information that was presented to the American people.
10 Not only that, but the point-of-view represented was almost
11 completely identified with the Executive branch and with the
12 Bush administration.

13 Throughout the buildup, the foreign press consistently
14 reported misrepresentations and fabrications by the
15 administration that were under reported or unreported by the
16 big six. Similarly, during the war, the foreign press
17 indicated that the story being told to the American people was
18 not a balanced representation of events, but a carefully
19 constructed justification for the point of view of the
20 Executive branch. As alarming as the -- thank you -- and spin
21 of the information was the administration's and majority
22 leader's characterization of nonconforming news reports as
23 treason. Treason. Looked at from the outside we would have to
24 characterize much of what was presented as news as propaganda.

25 We must ask ourselves how long this state of affairs can

1 continue before we become a democracy in name only. And
2 frankly, I think that John Taplin gave it its name, which is
3 totalitarianism.

4 I want to thank you, Commissioner Copps, for coming here
5 and for trying to publicize the urgency surrounding the
6 proposed repeal of these regulations. And, please, before you
7 leave, if you could tell us what we can do to try and prevent
8 this from happening. Thank you.

9 **MS. PRITCHARD:** I'm Rosa Pritchard, private citizen. And
10 I've got a suggestion for a way to stop this corruption. I
11 sent a long e-mail to everybody on the registration list
12 yesterday morning about important information that the national
13 media has been withholding. If you didn't receive it, please
14 pick up one of these slips with the URL link to an article I
15 wrote for Democrats.com about this before the 2002 election.
16 I'll put these slips with the URL of my piece and my e-mail
17 address on the table outside the door.

18 I contend that already the national media has gotten
19 itself into a worse cover-up trap than the Catholic church. I
20 suggested that the best way to demonstrate this is by
21 explaining the basic facts of a lawsuit against George W. Bush,
22 which have been withheld from the electorate. How many people
23 know that during the 2000 campaign, the national press kept
24 secret the fact that George W. Bush was a defendant in a
25 whistleblower lawsuit brought by the executive director of the

1 Texas Funeral Services Commission?

2 She alleged that she was fired before -- because she
3 attempted to enforce state laws allegedly violated by Service
4 Corporation International, the world's largest death care
5 corporation, a major contributor to the Bush family. She
6 alleged in her lawsuit that Governor Bush had lied under oath,
7 obstructed justice, and been guilty of influence peddling.
8 Filed in 1999, the lawsuit was at first reported in a normal
9 way by the local and national media until Bush became the GOP
10 presidential nominee, when it was disappeared. Unreported, it
11 continued to steadily advance through the discovery process,
12 including the taking of depositions that contradicted Bush's
13 sworn affidavit, throughout the campaign and through the first
14 nine months of the Bush presidency.

15 In stunning contrast to the hyping of the Paula Jones
16 case, the media kept everything about the legal developments in
17 the suit against Bush secret, including its secret settlement
18 in the Fall of 2001 by the office of Bush's co-defendant, then
19 Texas Attorney General John Cornyn, just before he announced
20 his candidacy for the U.S. Senate. The story of Cornyn's
21 involvement was then disappeared throughout his Senate
22 campaign.

23 I wrote my democrats.com article to get the information on
24 the record and to speculate that the major reason the press
25 withheld a story that might have undermined Bush's promise to

1 restore honor and integrity to the White House was their
2 understanding that his FCC appointees would further deregulate
3 monopolistic media ownership. What's apparently going on here
4 is simply greed on the part of media owners and fear on the
5 part of journalists.

6 People are naturally wary of anything that smacks of a
7 conspiracy theory, but this dynamic requires no conspiracy.
8 The bottom line is simply that when media ownership is
9 concentrated in the hands of a few, virtually no journalists
10 who want lasting careers will risk reporting information that
11 might threaten the interests of owners controlling major media
12 outlets.

13 We are not powerless to stop this corruption. This room
14 has been filled today with dramatic laments about how bad
15 things already are and how they're likely to get much worse.
16 I'll wrap it up. But we can stop this if we really want to.
17 We can get the attention of the public about this danger by
18 finding a way to tell the public about the Funeralgate lawsuit
19 and other important stories already that the already too
20 concentrating media has been withholding. People would
21 understand that something has gone drastically haywire with the
22 press if they learned that in contrast to the exhaustive
23 reporting of every alleged allegation against Clinton, the
24 media withheld the news of the legal developments in a
25 whistleblower lawsuit brought against Bush by the executive

1 director of a state agency.

2 I'm an ordinary citizen and I'm not rich, but I have no
3 doubt whatsoever that the people in this room could find a way
4 to use the information in my democrats.com piece, Media
5 Cover-up is the Key to Cornyn's Senate Race in Texas, to break
6 out the news about the danger of further deregulation by the
7 FCC. Please read my piece. Think this through. Produce an
8 information -- infomercial. Buy ads, tell your friends. Do
9 something effective, fight back now.

10 **COMMISSIONER COPPS:** Sandra, can I -- can I make a couple
11 of comments? I -- I find myself as you know -- you know where
12 I find myself right now is in a very awkward position, because
13 I have got to be on an airplane in less than two hours. And
14 I'm already cutting it -- cutting it kind of close, and I have
15 some obligations in Washington tomorrow with this issue and
16 some others that I cannot ignore. So I guess I would ask first
17 of all, is this -- this is going to continue to be taped?

18 **MS. ORTIZ:** Yes.

19 **COMMISSIONER COPPS:** Okay. So let me make two
20 suggestions. I will obviously be looking at the tape and I
21 hope these comments will continue because I think this is some
22 of the most valuable input that we get in a hearing like this.
23 In addition to that if anybody wants to e-mail me directly
24 before the tape gets there, I'm at mcopps@fcc.gov.

25 Now, let me just say a number of people have asked me and

1 I've gotten some notes, you know -- what can we do? We've only
2 got 35 days left. I think the previous speaker just hit on a
3 lot of what we can do is -- and I tried to indicate this in my
4 remarks. We've got to do everything we can to try to make this
5 a grassroots effort. It involves using the Internet. Finding
6 some -- some other spokesmen to speak out who can compel
7 network attention. We have tried to talk and strategize a
8 little bit about this last night at dinner and will continue to
9 do so. But we've got to make sure that we use the momentum
10 that has been created here now to try to make a difference
11 between now and June 2nd, and hopefully we can make a
12 difference.

13 Hopefully, we can slow things down a little bit.
14 Hopefully we can get these proposals, whatever they are, that
15 are going to be introduced out in the sunshine of public
16 opinion, before we carve them into -- into stone. And then
17 going forward from that, we need to use this momentum to make
18 sure that we can really spark a grassroots dialogue on the
19 future of media in this country. And I think -- I think we've
20 started down that road.

21 We've got a long way to go, but we -- I think we've got
22 enough momentum where maybe we can compel that. But, you know,
23 take your thoughts to the talk shows, letters to the editor,
24 your neighbors, your decision makers, your elected officials,
25 wherever you can. It's a critically important four weeks that

1 we are about to embark on here. We're at perhaps the most
2 critical for our telecommunication issues in many, many years.

3 And with that I -- I really have to make sincere and
4 abject apologies, but I'm going to have to go. But I do want
5 to hear what everybody here has to say and I do want you to
6 e-mail me. I will watch the tape, and I'm happy to talk to any
7 of these folks anytime.

8 And I want to thank you again for convening what I think
9 was a very valuable session here. I've picked up new granular
10 information and detailed information, which I will try to share
11 with my colleagues. I picked up a lot of new perspectives,
12 just drinking in the wisdom of people who have been in the
13 industry for so very, very long and really have a feel for it's
14 heart and soul. And that's important to me too. So it's
15 been -- it's been very valuable and instructive for me, and I
16 hope you will continue the dialogue here when I leave. And I
17 hope you will continue the dialogue when you leave this room
18 too with everybody else.

19 So I want to thank everybody for taking the time and
20 trouble to come out.

21 **MS. SNOW:** My name is Nancy Snow. I teach in the
22 Annenberg School for Communication and also at Cal State
23 Fullerton in the College of Communications. Washington, D.C.
24 is into liberating people in other countries' business. We,
25 the people of the United States, deserve more than our fair

1 share of liberation from our media oligopolies.

2 Brian Lowery, media writer of the LA Times, stated last
3 week on a panel that the FCC new rule changes affecting
4 consolidation and ownership of media is, in his words,
5 tremulously underreported. Probably the most underreported
6 news story of our time. In fact, the consolidation story is
7 being reported, but not on the front pages of our newspapers.
8 It is in the business and finance sections of newspapers.
9 Broadcast industry publications, where only those in the know,
10 in the biz, insiders follow this subject.

11 We have become Walter Lipman's bewildered herd. The
12 public functions like the angry mob at the gates or the
13 proverbial peanut gallery. Occasionally whining that nothing
14 is on to watch, but we know not where to turn for help. So we
15 just keep watching. In fact, I don't believe anyone here has
16 addressed the addictive qualities of watching television, which
17 were pointed out over 20 years ago by Jerry Mander in his book,
18 Four Arguments for the Elimination of Television.

19 It is truly ironic that as we sit here today discussing
20 American press ownership, the United States Government is
21 re-broadcasting Dan Rather, Tom Brokaw and Peter Jennings on
22 Iraqi TV to show the Iraqi people what a free press looks like
23 in a democracy. Before we teach others about democracy, we
24 might try practicing it here at home.

25 Media power is political power, stated in Ben Bagdikian's

1 book, The Media Monopoly. No wonder the public is largely left
2 out of this major decision that affects all our lives. We've
3 been asked to sit on the sidelines, to keep shopping, or follow
4 the N-B -- NBA playoffs, while the corporate mega-media and
5 their appointed friends in government cozy up and bring us
6 anything but a democrat --

7 (End of Side B of Tape 3. Beginning of Side A, Tape 4.)

8 **MS. SNOW:** -- applies to official Washington and other
9 corporate sources of news. One 24-hour news cycle requires
10 constant feeding. Which advertising and publicity pre-packaged
11 sources of news are only happy to nourish. In the Federal
12 Government, the largest public relations division is inside the
13 Pentagon, where government public relations specialists provide
14 Monday through Friday feeds to the national media. Embedded
15 reporters didn't just accompany the middle -- the military to
16 the Middle East, but they also sit for pre-arranged briefings
17 from Rumsfeld, Tori Clark and Ari Fleischer.

18 In the corporate media environment today, the best
19 journalist is increasingly the dutiful journalist. Who
20 understands his or her symbiotic relationship between official
21 channels of information sources and the news story product.
22 Helen Thomas, are you listening?

23 Long gone are the days of independent journalists like
24 George Seldis, who would have gladly been kicked out of his
25 first Washington press briefing in exchange for the

1 neighborhood goings on back home.

2 Just last week, a little truth emerged from the fog of
3 war. MSNBC journalist Ashleigh Banfield told a gathering of
4 students at Kansas State University, which is usually where the
5 peanut gallery gathers, that the American people didn't see
6 what happened after mortars landed in Iraq -- only the puffs of
7 smoke. There were horrors completely left out of the war
8 coverage in the United States.

9 On the other hand, what we did see was advertising,
10 converging media and official sources of news. Generals
11 basically around the clock, who gave us a nonstop flow of
12 images by cable news operators who wrap themselves in the
13 American flag and go after a certain target demographic. It
14 was, she said, "a grand and glorious picture that had a lot of
15 people watching and a lot of advertisers excited about cable TV
16 news." But it wasn't journalism.

17 I am here as a journalism professor, and I can tell you
18 whether it's in the College of Communications at Cal State
19 Fullerton or here in the Annenberg School, journalism
20 concentrations, at least in our college back at Cal State
21 Fullerton, are all but dead. While advertising and public
22 relations concentrations are thriving. Why? Because students
23 are wise to the fact that the news media business is where the
24 jobs are. Business. Not creating the next Murrow or Cronkite.

25 They know that broadcasting used to have a clear mandate

1 for public service that's been lost in the fog of
2 consolidation. Try telling someone that the American people
3 are the real landlords of the broadcast airwaves and that
4 broadcasters are enjoying rent control perks and see what kind
5 of looks you'll get. We all know the truth of what's really
6 going on here. When President Bush assured the Iraqi people
7 that Iraq's oilfields were properly owned by the Iraqi people,
8 I couldn't help but think about that other rhetoric we hear so
9 often that the American public owns the airwaves. We're
10 frankly sick of empty promises.

11 Everyone in this room needs to carry around the following
12 statement as our organizing principle. The airwaves do not
13 belong to the broadcasters. They do not belong to the
14 advertisers. The owners, by law, are the people of the United
15 States. Never doubt that a small group of thoughtful,
16 committed citizens can change this dynamic. We will. The
17 public airwaves are an entitlement not a privilege. An
18 inalienable mandate in a free and open society, not something
19 to wax philosophical over or read about in our history books.

20 If we truly want a free media, and if we truly want the
21 best advertisement of what America's story is to the world,
22 whether it's in Iraq, Afghanistan or anywhere else, then we
23 need to keep this mandate by our sides and show the world what
24 a truly free and liberated people's media looks like. Thank
25 you.

1 **MR. STARR:** Hi, my name is Steven Starr. I'm one of the
2 founders of the Los Angeles Independent Media Center. And I
3 recently had the privilege of managing KPFK, the Pacifica
4 station locally. The decisions the commissioners are studying
5 today -- we discussed today -- they'll have a profound affect,
6 as the woman said before me on the way America sees us.

7 We speak with fervor these days about freedoms -- freedom
8 of religion, freedom of speech, freedom of expression. But
9 every time Commissioner Powell declares the market as his
10 religion, which he's done frequently, one wonders if he
11 recognizes what the rest of the world thinks about his respect
12 for any of the other freedoms we speak off.

13 When former FCC Chairman Mark Fowler declared that "the
14 perception of broadcasters as community trustees should be
15 replaced by a view of broadcasting as marketplace
16 participants," the FCC apparently decided that the economics of
17 scale trumped democracy, and the efficiencies of capital
18 trumped freedom of speech.

19 Our First Amendment demands journalists serve the public
20 interest, not the political or the business interests of media
21 owners. The FCC has failed to tell us how relaxing these laws
22 will allow mainstream journalists more freedom to serve the
23 public directly. And one wonders how many television
24 journalists are sleeping well these days. A few, I think, the
25 good ones I know are deeply troubled by the parameters of the

1 journalism they are permitted to practice.

2 Case in point: The looting of Iraqi museums struck many
3 as the greatest cultural disaster in modern history, but we
4 can't find the story on television, except to see our Secretary
5 of Defense shrug and say, "Stuff happens." Five thousand years
6 of our cultural history dismissed with a shrug. One wonders
7 what seeds are planted when that's the entire conversation we
8 offer to those watching satellite-casts, all over the world.

9 I remember a time when a man we all admire said we should
10 all be judged by the content of our character and not the color
11 of our skin. Today we are here as citizens, as parents, as
12 members of a civil society to understand that America as a
13 nation will be judged in this age of media by the character of
14 our content.

15 You see, the character of our content as it proliferates
16 all over the world tells a story about America, a story that
17 people will either respect or reject. If that story isn't told
18 with diversity, if that story isn't told from a sense of place,
19 a place that allows for a broad spectrum of thought, that
20 enables ideas to be argued with passion and mutual respect,
21 then our American story isn't worth telling to the rest of the
22 world.

23 Again, it is up to this commission to understand that the
24 character of our content will be defined entirely by the
25 liberties implicit in our ideas. That our children's future

1 will be insured by the protections under which those ideas are
2 expressed. And that our security in the eyes of the world will
3 only be guaranteed by a global perception that we are here to
4 advance the prospect for democracy before capital, for human
5 diversity before market controls, and for freedom of expression
6 before shareholder demands.

7 I urge you to consider this carefully. Thank you.

8 **MR. THOMAS:** I'm Michael Turner Thomas. I'm a micro-power
9 broadcaster, unlicensed. And I can say openly that the
10 corporate media in this country has been outright hostile to
11 Africans in America. I experience it every day. I walk down
12 the street, people will approach me on a sidewalk, and they
13 will walk out into the street to avoid getting close to me.
14 Because, according to the corporate media, I am a criminal
15 because I'm of obvious African ancestry and I have a penis.

16 Well, I am none of that, other than being of obvious
17 African ancestry and having a penis.

18 I am not judged by my intellect, my intelligence, nor the
19 goodness in my heart. I'm making a point of this in particular
20 because of the limited way to combat the image of distortion
21 that is being projected by the lying, corporate media.

22 One particular case in point is the funeral of Huey
23 Newton. Channel 2, up in Oakland, broadcast something critical
24 of Huey Newton just before his funeral. And representatives of
25 that particular station showed up at his funeral, much to the

1 dismay of a lot of people to whom Huey Newton is a hero. And I
2 happen to be one of them. The people reacted by beating up the
3 members of the corporate media for that image of distortion.
4 The very next day, that very same television station that
5 presented that twisted view turned around and modified their
6 views on Huey Newton and projected a more positive image of
7 him. And, indeed, the man did well to try to promote the cause
8 for Africans in America.

9 Now, to say to engage in combat in something like this, it
10 is terrible. It shouldn't have to come that way, but looking
11 at the coup de tat -- I mean the election campaign of 2000, the
12 Philadelphia police beat up protesters for nothing. The Los
13 Angeles Police beat up protesters in this town for nothing at
14 both of the conventions for the major political parties. And,
15 of course, the media said that the police did such a great job
16 in the handling of this. They did neither. And I think that
17 we should have some recourse greater than actual combat to
18 bring some honesty and integrity to the lying, corporate media.
19 Thank you.

20 **MS. GRUMAY:** My name is Michelle Grumay and I'm a member
21 of the Screen Actors Guild. But I'm here as an individual.

22 And I wanted to address the -- Commissioner Copps about
23 this issue. I would venture to say that most Americans are not
24 aware that the airwaves even belong to the public or them. And
25 I would like to ask the commission, if the public interests

1 standard is being served, then why is the public unaware that
2 they have a right to look at their local station's license
3 renewal applications? Their TV and radio stations.

4 I just want to just say very briefly that I happened to
5 look at several stations' files recently. During the last --
6 the end of the last license renewal period. Before it was --
7 their license -- licenses were going to be renewed. And I was
8 shocked at the way I was treated.

9 At one station, I was treated like an intruder. I was
10 interrogated, I was asked who I was. Who did I represent? I
11 couldn't just be an individual. I had to represent some
12 organization. At another, they sent in the security guard when
13 I started looking -- after I first ask the person who was in
14 charge in the general manager's office could I look at the
15 file. And he said I was not allowed to look at the file.

16 Now, this is in deep contrast to the way I was treated
17 many years ago when there was a Fairness Doctrine. When we had
18 more rights. And I just like to say that this is something
19 that's really important. These -- these are public documents.
20 The stations do not go out of their way to let people know that
21 they have a right to do a license challenge. That they can
22 challenge the license renewal of their local stations. They
23 can talk about the discrimination. They can look at the files
24 and see and -- and see where -- their irregularities.

25 But if the public doesn't even know they have a right to

1 do this, if they don't even announce it anymore on public
2 service ads that say you have a right to come to your --
3 these -- our station and look at our license renewal file, I
4 think this a very important right and I think it's being
5 misused.

6 **MS. KENNEDY:** My name is Mimi Kennedy and I'm an actress.
7 I was on a show called Dharma and Greg. And I really came here
8 as a citizen, but I realized when I showed up, people might
9 have thought I came to bite the hand the feeds me. I really am
10 here not for any organization. KPFK, which is listener
11 sponsored radio, the only radio that I listen to along with
12 some of the NPR stations, alerted me to the fact that this was
13 going and I didn't write down where. So then I had to do half
14 an hour searching on the Internet to ask the right question to
15 find out where this actually was. It wasn't on the USC website
16 and it certainly wasn't on the FCC website.

17 So this brings to fore the -- whoever controls the facts
18 controls the narrative. And the problem with consolidation is
19 the facts are in fewer hands. We'd like to trust that, but we
20 simply can't. The Founding Fathers didn't, and we need
21 democracy, a multiplicity of voices, a multiplicity of people
22 collecting and interpreting facts.

23 I remember -- I'm conditioned by the Cold War and how we
24 used to laugh at the idea there were elections in the Soviet
25 Union or that they had news and it was Pravda. And we were

1 very merry about the fact that you couldn't trust it for real
2 news. I would hate to see America devolve into this, but I
3 never watch television news because a certain part of me feels
4 as if I'm watching some Pravda-like cheerleading and I won't
5 necessarily be getting the facts that I do on listener
6 sponsored radio, which I'm lucky enough to have in Los Angeles.

7 I really wanted to come here and have the FCC hear how
8 upset I am as a citizen about hate radio. I've just listened
9 to it to educate myself, and I am shocked that the devolution
10 of the airwaves that most Americans listen to has sunk to this.
11 And now I see why our democracy is becoming more difficult
12 because people feel this discourse of ridicule and threat and
13 demonization is proper patriotic discourse.

14 The FCC should certainly be ashamed of itself that it has
15 let things get so far on AM radio. I don't think further
16 consolidation will solve this problem. Therefore, I would like
17 to support the people who said here, as Marty Kaplan with his
18 Pew research study, we certainly need to not vote on anything
19 June 2nd.

20 The public isn't here because the public didn't know.
21 This isn't a public town hall. God bless us, we're providers.
22 I realize I'm here as a professional actress. Unwittingly,
23 more appropriately here as that certainly than any member of
24 the public. There is only one other person that I met here who
25 came -- I'm sure there are more of you, but in my speaking --

1 as a member of the public. So, please, FCC -- who is ever
2 watching this -- do not think this was a public town hall. The
3 public doesn't know. The public is not here and that goes back
4 to whoever controls the facts controls the narrative. The
5 facts are not out there that this is happening. The public
6 control of the airwaves is an illusion. I don't want our
7 democracy to become an illusion.

8 So absolutely hold off this vote and look at what you do
9 before you make our democracy an illusion by having fewer
10 people control the facts. And they don't have a good record
11 with this so far. Thank you.

12 **MR. FRIED:** Well, they say don't follow children and
13 animals. Let's add actresses to that. I wish I had gone
14 earlier. Thanks, first of all, for everybody who is still
15 here. I was hoping to speak to a few more people, including an
16 FCC commissioner. But I guess we have to settle for the tape.

17 My name is Alan Fried of Minneapolis and Santa Monica. I
18 split my time. I worked in the radio industry between 1977 and
19 2000, both commercial and non-commercial radio. And I have
20 worked in the Internet business related to Internet radio since
21 2000.

22 While I'm not involved with radio broadcasting currently,
23 I continue to believe in its fundamental value as a
24 communication service, for information and entertainment, and
25 its unique qualities of immediacy, portability, relatively low

1 consumer cost and ability to be used while engaging in other
2 activities. Can't really do that with television.

3 My interest in the issue of media consolidation and
4 control dates back to 1996 and the period immediately following
5 the passage of the Telecom Act of that year. I speak today as
6 a listener and as a -- I guess a former broadcaster.
7 Additionally, I'm pleased to mention that the late Minnesota
8 senator, Paul Wellstone, was one of the handful of senators who
9 did not vote for the Telecom Act. He was a good man.

10 In absentia, I would like to thank you, Commissioner
11 Copps, for your strong position on public hearings about this
12 important issue of media control. Contrary to suggestions by
13 Chairman Powell and Commissioner Abernathy that the public
14 record on this issue via paper and electronic filings is
15 sufficient, these faceless -- those faceless opinions and
16 contributions are not equal to face-to-face meetings and panels
17 at broadcasting conventions with any B executives.

18 Even hearings and forums like this one today aren't the
19 same or really equal to one-on-one meetings like you have
20 inside the beltway. But they are affording those outside the
21 beltway the opportunity for some type of face-to-face contact
22 with the FCC. And I think that's important, as others have
23 said earlier.

24 I have read and heard comments of broadcasting industry
25 figures, FCC Commissioners, and staff and pundits which have

1 referred to the broadcasting marketplace or the free market as
2 it pertains to broadcasting. They argue that the demands of
3 the marketplace should dictate the dynamics of control and of
4 content of programming. That's an appropriate concept in a
5 truly open marketplace, but broadcasting isn't an open
6 marketplace by virtue of its finite playing field. A finite
7 spectrum. Such a close, privileged marketplace of a public
8 resource requires -- no, it really demands oversight and
9 regulation in the public interest.

10 I'm not suggesting lots of regulations but enough to
11 protect the public interest. That's the fundamental role of
12 the FCC and a role that it has been charged with since radio
13 regulation began in this country in 1920's. Protection of the
14 public interest is underscored when we consider the current
15 control structure and that new entrants are now rare --
16 certainly in medium and major markets -- and that the barrier
17 to the entry that has always existed -- that spectrum issue
18 again -- has tightened.

19 Making entry even more difficult, stations have for years
20 routinely received license renewals virtually automatically.
21 It's virtually unheard of for a station to lose its license for
22 violations of rules or under license renewal challenge. If
23 it's even challenged. When the commission does act on
24 violations, overwhelmingly on technical or procedural issues,
25 stations are slapped with fines that are so small and

1 inconsequential they're considered a cost of doing business and
2 quickly forgotten.

3 In short, there is little accountability by radio and TV
4 stations, who have been afforded the privileged of holding a
5 broadcast license and different operators are virtually
6 excluded from participating or entering.

7 Having said that, I'm pleased that the commission recently
8 grew a backbone and levied fine that prompted the industry to
9 take notice. That of a \$27,000 fine a couple weeks ago against
10 WKRK in Detroit.

11 With that in mind, my point here is that there's a major
12 difference, which I have yet heard discussed in this process,
13 when invoking the concept of the expanding media marketplace.
14 A concept which is a primary justification for relaxing
15 control. There is a difference between broadcasting and
16 publishing, for instance, and between broadcasting and the
17 Internet. Anyone can start their own website and audio stream.
18 Anyone can launch a publication. Newspapers on the Internet
19 are not regulated like broadcasting and, more importantly, they
20 are not a finite class, like broadcasting. They are free
21 market enterprises. To mix them together with broadcasting
22 when discussing the issue of regulation and consolidation is
23 inappropriate unless the FCC somehow has plans to somehow
24 opening -- to open the broadcasting playing field, but I don't
25 think they are looking to do that.

1 Further, broadcasting is considered as and licensed as a
2 public service. The public has historically expected and
3 depended on news and information from radio and television.
4 And while sites on the Internet offer news and information, the
5 Net does not enjoy the penetration, affordability and reach of
6 broadcasting. And the public has yet to demand -- depend on
7 the Net, as it does broadcasting. Although that's changing, I
8 think the attitude of radio and TV as a reason for that, but I
9 digress.

10 And I appreciate the public outreach that Commissioner
11 Copps has afforded us. I trust that he and the commission will
12 hear us and act accordingly in the public interest. And I can
13 only hope that we in the future can get more time because we
14 all know that people like the NAB get plenty of it inside the
15 beltway. Thank you.

16 **MS. DILLARD:** Yes, my name is Joyce Dillard. I'm a
17 citizen who lives in the congressional district of Xavier
18 Becerra, in a community that's majority Latino, low income,
19 high in immigration.

20 And I'm here to address the lack of creativity in all
21 forms of communication, both broadcast and print. The children
22 are dying, literally. They are so depressed, it's hard to
23 describe. Communication is supposed to bring hopes and dreams.
24 It's supposed to trigger their ambitions, and we don't see
25 that.

1 We see that they love their families. We're a working
2 class community with small businesses, but the big conglomerate
3 is drug trafficking. It produces gang crime, fast money and
4 cheap thrills. We also know that the our children aren't
5 looking for their future in order to be able to afford cable or
6 the Internet or computers.

7 It was nice to see Congressman Becerra here, but very few
8 know there's a congressional Hispanic Caucus. And even less,
9 maybe I can count them on one hand, know that he's part of a
10 telecommunications and technology taskforce. In fact, we have
11 a political monopoly, but our monopoly is a one-party system.
12 It happens to be the Democratic party in our area. They do not
13 see a two-party system, free to compete and free to choose.

14 We ask that you look at this communications industry in
15 all it's form as a conduit for the future of our children.
16 They are disengaged, and it's ultimately important that they
17 cherish what our ancestors fought for and established, and
18 that's our freedom in this world. Thank you.

19 **MR. GROSH:** I'm Eric Grosh. I'm a physician. I also have
20 some training in engineering, and a concerned citizen. I have
21 been very impressed with a lot of the eloquence from the other
22 speakers, both on the panel and from the public. I've been in
23 and out -- drifting in and out of tears at some the terrific
24 words that have been spoken.

25 I just wanted to start off with a notification that I --

1 that I think I detected the fallacy of equivocation here.
2 There is a difference in the use of the term public interest, I
3 thought, between the first panel and the second panel. The
4 first panel, the measure of public interest is rating score, it
5 seemed to me. And the second panel, I think, took the correct
6 view that it's what the public good serves.

7 And I'd just also like to note a thing that came to
8 recently, the advantages of books. If you go into a bookstore
9 there is a distinct clarification of this side, these shelves
10 are devoted to nonfiction -- these sides -- these shelves are
11 devoted to fiction. And it's not all that clear on the -- on
12 the electronic media. My scientific training instructs me that
13 empirical evidence is defined as experimental evidence.

14 Now, the experiment can be carried on in a sort of formal
15 control manner or it can be viewed in the broader context of
16 the real world. And I'd just like to go over a few of the --
17 the pieces of empirical evidence that it would seem to be
18 germane to this discussion that the court order mandated.

19 Sort of at the top of the list to my mind is the question
20 that arouse after 9/11 -- why do they hate us? After 150 years
21 of aggressive war by the United States in multiple, foreign
22 military adventures, that this should be an unfathomable
23 mystery is an unfathomable mystery to me. And then George
24 Bush's -- here's the man holding the highest status office in
25 the land, has so much confidence in the PR efficacy of the

1 media that he has the temerity to answer that question with,
2 "They hate us", speaking of the -- of the 9/11 hijackers and
3 their planners -- "They hate us for our freedom." That he
4 could dare to insult our intelligence to that extent.

5 This is a piece of empirical evidence. It's like, what
6 George Carlin would call the turd in the punchbowl. It is so
7 awful that nobody wants to mention it. There are other
8 multiple bits of evidence. Another one was the fabrications
9 that proceeded the war in Iraq. That Saddam Hussein was the
10 bad guy in everything and everything -- anything and
11 everything. That he was importing Uranium from Africa, which
12 was a forgery, the documentation that supported that -- that
13 evidently persuaded Diane Feinstein and her colleagues in the
14 Senate to support the war resolution when they had not done so
15 before.

16 That he was a -- an ally of Al Qaeda in some respect.
17 That war that we -- received the signal that war is no more
18 than a sterile, bloodless video game, which is the impression
19 we get from the Pentagon war briefings.

20 And I just wanted to close by talking about -- as an
21 engineer, I learned about feedback loops. That certain -- a
22 certain action in one direction causes certain consequences in
23 another part of the loop. If you have corporations that
24 manufacture munitions also in charge of media conglomerates,
25 then they will look out for their interest up and down the

1 entire vertical structure of their entire corporation.

2 Therefore, they -- because they sell munitions they favor
3 war. If you have more war you have increased revenues.
4 Increased diversion of tax revenues from your pocket and mine
5 into the corporate coffers. Increased campaign donations --
6 contributions to politicians, who then -- this is a formula for
7 maintaining the status quo, in which we have a so-called
8 two-party system -- Democrats and Republicans are the two
9 branches of the fat-cat party.

10 The Vietnam radical -- the Vietnam War radicalized the
11 population by two, basically two factors -- the deaths of
12 Americans who were compelled to serve by a draft and the
13 prolongation of the war for almost 30 years. So they -- they
14 took the opposite tack -- let's have nothing but Blitzkrieg
15 war, fast in, fast out and eliminate the draft, so that only
16 people who nobody cares about -- the vast silent majority that
17 nobody cares about -- the poor and the disenfranchised -- are
18 subjected then to an economic draft.

19 So more war, more munitions, more corporate profit, more
20 tax revenues diverted to corporate coffers and so forth. And
21 so the cycle continues in the vast feedback loop that is
22 secured by the media. Mollifying the population by prettifying
23 war, making it a matter of taste, eliminating the blood and so
24 forth. That's -- that's basically mine.

25 **MR. KAY:** My name is Scott Kay, and I'm here as a citizen.

1 I heard all the panelists this morning, and I did not hear one
2 justification for the public benefit of further consolidation
3 of the media companies. We heard a lot today about the five or
4 six media owners and a little-told story is that those very
5 same media owners have exported tens of thousands of American
6 jobs from this country.

7 There was a recent Los Angeles Times poll about the war in
8 Iraq and the approval of the President. Sixty-nine percent of
9 the respondents gave their main source of news about the war as
10 cable news channels. Fascism has been defined as the merger of
11 corporate and government interests. Presently, we don't need a
12 Ministry of Propaganda.

13 **MR. WATTS:** Hi, my name is Gary Watts. I'm member of
14 Teamsters Local 399. I'm an active member. And I'm quite
15 concerned what the media mergers mean to my labor organization
16 as well as any other labor organization out there.

17 We need to have an outlet for our opinions, to get our
18 issues across. We are having several problems here. What I'm
19 seeing is that media mergers is not serving the public's
20 interest. When the media mergers came about in the --
21 throughout the years, it was with the intent to better serve
22 the members or better to serve the general public. And I yet -
23 I have seen this yet to happen here.

24 The only thing I see it as a self-serving interest of
25 the -- of the major media conglomerates here. What I'm

1 starting to see now is we're talking about 500 channels. I see
2 250 channels of reruns. That is not serving the general public
3 here. What I've come to find out is we have to -- let me go
4 over my notes here real quick. I'm blind here. Okay.

5 There's a lot of issues here. I'm kind of brain locked
6 here. We have to look at some of these -- these mergers. When
7 we go into these mergers we're starting to look at some -- all
8 these different business models. We're seeing some bad
9 business models starting to merge with another bad business
10 module. So it just destined for failure on this aspect here.
11 I do not see that -- any light at the end of tunnel as far as
12 benefiting the public.

13 A couple of things I do have to question. If the FCC is
14 so concerned that the public is served, they have yet to
15 mandate any type of regulation in such a manner that there must
16 be a public notification on the channels 60 or 30 days prior to
17 any media merger taking place or any FCC review taking place.
18 I've yet to see that put in -- put out on the table here. I
19 think the FCC has failed in this matter in a very large manner.
20 That's it, sorry.

21 **MR. WATALATO:** Which camera is rolling? This one? Okay.
22 My name is Ralph Watalato. I'm a graduate student at the
23 Annenberg School of Journalism. I -- when I -- when I saw a
24 lot of the speakers and a -- and a lot of what was said here, I
25 think that there is a cultural divide between people who have a

1 socialist orientation and a free-market orientation.

2 And I would like the commissioners to know that the person
3 speaking to you is a registered Republican that worked on
4 Bush's campaign up 'til 15 minutes before the polls closed. I
5 have a background as a free marketeer, and I'm very firmly
6 supportive of a free market. But I think there is a difference
7 between supporting free markets and following the dictates of
8 the law.

9 The 1996 Telecommunications Act gives you two bases that
10 you -- two -- two factors that you need to look at. One of
11 them is an economic diversity factor. The other one is an
12 ownership and viewpoint diversity factor. The first one is a
13 statutory mandate. The second one is a constitutional mandate.
14 I think, between the two, the constitutional mandate will trump
15 the statutory mandate.

16 I agree with a lot of what Mr. Levin said -- Jay Levin --
17 on the panel -- about the non-privileged voices not being heard
18 in the current media environment. I also agree with what
19 Mr. Connolly from AFTRA said about Clear Channel having killed
20 local radio and about voice tracking.

21 As a person looking for employment in the media industry,
22 I can say that there are very few opportunities today for
23 somebody to move into local radio, because everything is a
24 national broadcast. You have one person working in New York or
25 Los Angeles and the same thing -- pardon me -- the same thing

1 is broadcast -- simulcast nationwide.

2 I also agree with Mr. Kaplan, Marty Kaplan, that there is
3 a crying need for more study. I did some research for the
4 Center for Communication Law and Policy on the radio side of
5 this issue. And I will say that I spent a lot time looking for
6 studies on this issue and I couldn't find much. We really need
7 more study before we change the rules, because I do agree that
8 it is like a gamble.

9 He had a more colorful way of putting that -- the
10 riverboat gamble, it is. It really is. I agree on a -- on a
11 philosophical basis with Commissioner Abernathy, but I have to
12 say also that the very people from whom you get your
13 intellectual ammunition in the Libertarian intellectual
14 movement, in the think tanks, in places like Reason Magazine,
15 those people are heartily criticizing you because, as one of
16 the last speakers said, this is not a free market in the
17 broadcast media. It is privileged market. We don't have
18 unlimited entry into this marketplace. There are some very
19 great barriers to entry.

20 I've read FCC opinions where they have actually made the
21 argument that higher prices for stations are good and they've
22 confounded the concept of ratings with public interest.

23 I think that there are two different concepts. One of
24 them is an economic concept; the other is a viewpoint diversity
25 concept. And I think that you need -- if you're looking for

1 legal bases for your decision, you need to make a distinction
2 between the two.

3 Just as credit cards and phone cards -- I'm going to give
4 you an analogy. You go out and look for a credit card today.
5 They are required, by regulation, to give everybody the same
6 information about what their rates are. So you can have a
7 properly functioning marketplace because you have regulation.
8 You look at phone cards, well, you don't know if they are going
9 to charge you \$5 for using the phone even though they say
10 they're three cents a minute or they're going to deduct a
11 dollar every month that you don't use it, or it's not going to
12 work in three weeks.

13 You have no idea in the marketplace what compares with
14 what and, therefore, you can't have a free market. Because you
15 don't have proper information and regulation in the
16 marketplace. There is a need for some regulation to have a
17 functioning free market, and this is the FCC's job.

18 I would say in addition to greater research here in the
19 United States, that the FCC could look to some other markets in
20 other countries. I just did a thesis on Singapore. Singapore
21 is a country of three to four million people. It's only 326
22 square miles. It has 18 radio stations and 7 TV stations. And
23 yet, out of all that media, you would think there would be a
24 great diversity of media with such a small population. Only
25 three stations are not controlled by the government or by

1 government controlled corporations.

2 This is the problem that you are going to end up with in
3 the United States if you do not abide by your constitutional
4 duty to maintain viewpoint diversity. Thank you.

5 **MR. GOLDSMITH:** Hi, my name is Matt Goldsmith. I'm
6 trained as an attorney and in the arts. I graduated from law
7 school in 1980 and I've been alarmed at the changes in the
8 country since that time, both in anti -- the lack of antitrust
9 enforcement, the rise of mergers and acquisitions during that
10 time, and the sense of the idea of the villainization of the
11 public good. And of the idea of either the federal government
12 or a -- the public.

13 And I think that the we need to return to the basic
14 concepts that this country was founded under, which was a check
15 and balances system. And that's the brilliance of our
16 constitution and why it has been able to sustain itself all
17 this time is that we have three branches government. It was
18 based on the checks and balances systems, which incidentally we
19 were benefited from the study of Benjamin Franklin and also the
20 study of the Iroquois and -- tribes.

21 And we need to return, I agree with others, back to a
22 scholarship about what are the fundamentals of this country in
23 terms of democracy. Now that we're the most powerful country
24 and an example for democracy around the world and we control
25 the world, it is important that we truly understand what

1 democracy is.

2 And there needs to be an active debate in Congress, not
3 along partisan lines, but along scholarship. And that's why
4 I'm glad that the Annenberg School is participating in this. I
5 would hope that they would also do more work in terms of
6 understanding linguistics. Noam Chomsky is known -- has done
7 such important work following Marshall McLuhan, because he is a
8 linguist. And when you study the basics of language and how
9 language affects human people and communications, that's where
10 you begin to understand the most important aspects of what
11 individual decision making is about in a democracy.

12 And I would also want to point out that we've learned some
13 lessons recently. The President, the current president, George
14 Bush ran against the idea of nation building. We are now
15 nation building in Afghanistan and we're nation building in
16 Iraq. And if we're going to that kind of nation building and
17 set an example, I think its important that we set an example
18 for an openness in the principles that Jefferson and Washington
19 and Franklin and the founders of this country set in the types
20 of debate and discussion and alternative points of view and
21 access to those points of view that enabled us to come up with,
22 as they said, not the most perfect form of government but the
23 best one we have yet.

24 And the same thing has been said about capitalism. It
25 isn't perfect, but it's the best thing yet. I do think that we

1 need to look at Adam Smith. Go back to the roots of
2 capitalism. Adam Smith was a pre-capitalist and look at what
3 does it mean to have competition versus some sense of control.
4 And the same way that we had a balance between the states and
5 the federal government, we need to have a balance between
6 corporations, between individual small businesses,
7 non-corporations and the public good.

8 I think people, in seeing how this country responded after
9 9/11 and supports the military, that is not a private thing.
10 That is -- although it's funded privately -- I mean it funds
11 private businesses to create the weaponry that -- that give us
12 the technology to be the strongest military -- the public good
13 is owned by the people and that's where we should come back to
14 in this very important debate.

15 And I hope that it -- June 2nd is not the final -- final
16 vote on this. And I would further just point out that
17 Mr. Powell was part of the antitrust -- chief of the antitrust
18 branch of the Attorney General's Office before. And we need to
19 review his points of view about antitrust as well. Because
20 it's -- these issues are very much the same issues at the time
21 that this decision is made. Thank you.

22 **MS. SHEPARD:** My name is Kay Shepard. I'm a teacher, a
23 vocal instructor, and dream maker center for the inspiring
24 performing artist. We have a cultural mission to bring the
25 value of the arts into our culture. And we train artists of

1 every kind to attempt to make cultural change and bring
2 cultural awareness to the value of the arts in our society.

3 And we increasingly find it more and more difficult to get
4 works heard and have to really go to the level of an Oprah show
5 to bring something to the public.

6 I really want to thank Commissioner Copps for being here,
7 and I have a very simple request because he said he would
8 listen to us. And it is that clear instructions be given to
9 we, to us, the public for what we can do about this situation
10 in the next month.

11 In our own organization we have many people that we could
12 mobilize, but clear instructions are lacking. And
13 Commissioner, what you told us to do -- to write to people, to
14 contact people in public offices is the right instruction, I'm
15 sure. But are there specific people, specific phone numbers,
16 specific letters we could write that would do something to
17 avert this catastrophe in June?

18 And if there are, is there a way, that now that you've
19 been here that we could get these instructions fast enough to
20 do something about it? Thank you.

21 **MS. ORTIZ:** For those of you who stayed, I thank you very
22 much. I really appreciate the fact that you were patient
23 with -- with the session going long. Thanks a lot John
24 Connolly for staying too. Thank you very much.

25 (Conclusion of Recorded Material.)