

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION) MM Docket Nos. 01-235,
) 96-197, 92-264, 94-150,
ROUNDTABLE DISCUSSION ON) 87-514 and CS Docket
MEDIA OWNERSHIP POLICIES) Nos. 98-92 and 96-85

Pages: 1 through 189

Place: Washington, D.C.

Date: October 29, 2001

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005-4018
(202) 628-4888
hrc@concentric.net

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Federal Communications Commission
 445 12th Street, S.W.
 Washington, D.C.

Monday,
 October 29, 2001

The parties met, pursuant to the notice,
 at 12:05 p.m.

ROUNDTABLE ON MEDIA OWNERSHIP POLICIES

Introduction and Welcome

Michael K. Powell, Chairman
Federal Communications Commission

Ownership Policies and CompetitionPanelists:

Stanley Besen	Charles River Associates
Mark Cooper	Consumer Federation
W. Robert Majure	U.S. Department of Justice
Bruce Owen	Economists Incorporated

Moderators:

James Bird and David Sappington
Federal Communications Commission

Ownership Policies, Diversity and LocalismPanelists:

Douglas Gomery	University of Maryland
Philip Napoli	Fordham University
Joel Waldfogel	University of Pennsylvania

Moderators:

Jonathan Levy and Joel Rabinovitz
Federal Communications Commission

Concluding ObservationsModerators:

Jane Mago and Robert Pepper
Federal Communications Commission

P R O C E E D I N G S

(12:05 p.m.)

1
2
3 MR. FERREE: Good afternoon. Welcome to the media
4 ownership roundtable. I am Ken Ferree and I'm chief of the
5 Cable Services Bureau here at the FCC and I'm happy to see
6 such a good turnout today. I'm sure you won't be
7 disappointed.

8 We have assembled a really terrific team of
9 experts, both academics and economists, to come to discuss
10 and debate today issues that are really central to the FCC's
11 media ownership limits.

12 Among other things, the panelists who we will
13 introduce to you momentarily will discuss the relationship
14 between the FCC's media ownership limits and actual market
15 performance, the relative merits of an ex-ante approach in
16 this context versus a case-by-case approach, the product
17 markets that are relevant to FCC consideration of media
18 ownership limits or restrictions, and the costs and benefits
19 of various kinds of ownership limits.

20 In addition, we hope to have a lively and
21 provocative debate in the second panel today on the meaning
22 of diversity in this context and the relationship of
23 diversity concerns to media ownership limits, as well as the
24 extent to which outlet diversity actually produces source or
25 viewpoint diversity.

1 In addition, the second panel today will be
2 discussing the meaning of localism in this context and
3 answering the question, we hope, or at least providing some
4 insight into the question about whether local ownership
5 actually translates into increased locally oriented
6 programming.

7 Before we get to what I am sure will be a
8 provocative and educational discussion, it is my pleasure to
9 introduce our chairman, Chairman Michael K. Powell, to
10 formally kick off the media ownership roundtable.

11 MR. POWELL: Good afternoon and welcome to all of
12 you to the commission.

13 As I have long believed and outlined more fully
14 last week, I believe that the media landscape has changed
15 dramatically but it doesn't necessarily that fact in and of
16 itself tell us specifically what the most optimal way to
17 regulate that media landscape is.

18 I have long felt frustrated that these debates
19 over specific rules, specific policies or directions are to
20 extraordinarily high and superficial level unsubstantiated
21 or supported by either empirical evidence or a review of
22 past experiences. Many of the rules that we continue to
23 steward today have their origins in an era 30 years ago in
24 which certainly not only in the nature of the competitive
25 marketplaces but the nature and quality of media and the way

1 that consumers access it as well was fundamentally
2 different.

3 And it has been my conclusion and those of many of
4 my colleagues here that increasingly the debate over the
5 proper regulatory media foundation is ultimately
6 unsatisfying if there isn't a concomitant effort to build
7 and substantiate through a better record and a better
8 development of an analytical basis for having those debates.

9 And so as we announced, we are going to put
10 together a media working group here at the commission whose
11 objective is to go out and do that work with the cooperation
12 and assistance of many other people, including some of those
13 who will be participating today, this being in some ways the
14 first installment of that activity.

15 The hope is that we build and leave a legacy of
16 data analysis with some rigor on which meaningful debates
17 about media ownership policy can be had as opposed to more
18 superficial, often highly politicized benchmarks for that
19 debate, and so this is the first installment.

20 Ken has me nervous using words like provocative
21 and stimulating. The last thing I want ultimately this to
22 be is nothing but an academic exercise. It's not an
23 academic exercise as far as the commission is concerned with
24 its cherished responsibilities under the public interest
25 standard. We actually have to do it. We actually have to

1 have the courage of our convictions in establishing rules
2 and procedures on which much will depend going forward, so I
3 would hope that not only this group but others would work
4 toward that direction and it is not, I hope, at the end of
5 the day another policy paper in the long kind of train of
6 such things that have often proliferated the space.

7 So I thank all this group for their participation
8 and understand the seriousness with which we take what we
9 will hopefully learn from you and thank you very much for
10 being here and joining us in this effort.

11 Thank you.

12 (Applause.)

13 MR. FERREE: Thank you, Mr. Chairman.

14 I should say at the outset that all three
15 commissioners have been generous enough with their time,
16 that they will be visiting with us for at least part of the
17 roundtable today. Commissioners Copps and Abernathy will be
18 saying a few words before the second panel this afternoon,
19 but at this point I would like to prevail upon Commissioner
20 Martin to offer a few remarks before the first panel, if you
21 would be so kind.

22 MR. MARTIN: Thanks, Ken. And thank you all for
23 being here today.

24 As the chairman alluded to, the media marketplace
25 has changed dramatically since a lot of our ownership rules

1 were put into place, but the underlying goals of our rules,
2 promotion of competition, diversity and localism haven't
3 changed and that's the real challenge that we all end up
4 facing, is how do we square those underlying goals with the
5 current media marketplace. It is a great challenge for the
6 commission.

7 I know Paul Gallant and Ken who will be working
8 group that the chairman mentioned will be doing a great job
9 in trying to make sure and build an adequate record for us,
10 but I think an important component of that is the work that
11 you all are starting today. And so I just wanted to make
12 sure I came by and thanked you for being here and trying to
13 tackle some of those difficult issues and trying to help us
14 determine how to balance those competing interests and try
15 to determine how we can promote those underlying goals with
16 today's converging and changing dramatically media
17 landscape.

18 So with that in mind, I will let you all get to it
19 and I just want to say thank you all. Thanks.

20 (Applause.)

21 MR. FERREE: Thank you, Commissioner Martin.

22 As I said at the outset, I am eagerly looking
23 forward to the debate and discussion that we will be engaged
24 in today. The issues that this roundtable will face really
25 are central to the FCC's ongoing review of its ownership

1 rules, restrictions and limits.

2 From my own perspective, as we send drafts of
3 items to the chairman and the commissioners that involve
4 ownership limits or restrictions, it is really critically
5 important that they be founded upon a strong factual basis
6 and that the analytical thinking and the economic thinking
7 that goes into them be very thorough and rigorous.

8 I see today's roundtable and the media ownership
9 working group that the chairman mentioned in his opening
10 remarks as really tools to help provide us with that factual
11 foundation and to help inform our thinking in terms of the
12 economic analysis that goes into those items. So I am
13 looking forward to hearing these panelists tackle those
14 issues head on.

15 Finally, I want to express the FCC's gratitude to
16 these panelists for making time in their busy schedules to
17 come visit with us today.

18 Now, without further delay, I would like to
19 introduce and turn the proceedings over to the moderators of
20 the first panel, Jim Bird from the FCC's Office of General
21 Counsel, and David Sappington of the FCC's Chief Economist.

22 MR. BIRD: Thank you, Ken. First, I would like to
23 cover shortly the procedures we are going to be using for
24 this forum. Each presenter will be given 20 minutes to
25 present their presentation and those time limits will be

1 strictly enforced. If you look in that direction, you will
2 be given warnings at ten minutes, five minutes, one minute
3 and out of time. Just so that we can make sure everyone has
4 a chance to say what they came to say.

5 At the end of those presentations, there will be
6 time for discussion. This panel is focused on the
7 competition issues and the second panel will be focused on
8 diversity issues. We have two panels not because we believe
9 those issues are completely separate, but because they are
10 more easily presented in that fashion.

11 Following those, there will be additional time for
12 discussion when the relationships of those as well as any
13 other issues can be raised.

14 In preparation for this panel, we sent the
15 participants two general questions to stimulate and focus
16 their thinking. The first concerned the harms that might
17 arise in the absence of government intervention other than
18 standard anti-trust intervention in the marketplaces
19 involved and how those harms might be related to the
20 characteristics of these particular industries.

21 The second question was what were the best
22 policies the agency might use to address those harms. What
23 we are looking for as both the chairman and Chief Ferree
24 have noted is a greater soundness of empirical data, not
25 just statements but empirical data and sound theory, to

1 address these questions and help the agency as it moves to
2 develop sound policy.

3 The questions that will occur after the
4 presentations will come from any of the participants in both
5 this panel or from the afternoon panel if they would like to
6 ask questions of this panel.

7 I will now turn it over to David Sappington who
8 will introduce each of the speakers before they make their
9 presentation.

10 MR. SAPPINGTON: Thank you very much, Jim.

11 And thank you all again for coming.

12 Our first speaker today will be Stan Besen. Stan
13 is a vice president at Charles River Associates here in
14 Washington, D.C. Stan received his Ph.D. in economics from
15 Yale University in 1964 and has since authored many, many
16 important works on telecommunications and media policy and
17 he has also served on the editorial boards of leading
18 academic journals.

19 Stan has taught at Rice University, Columbia
20 University and the Georgetown University Law Center and he
21 has also provided invaluable service to the Executive Office
22 of the President, the Office of Technology Assessment and,
23 last but not least, the Federal Communications Commission.

24 We are certainly delighted to have Stan here today
25 and look forward to his characteristically insightful

1 observations.

2 MR. BESEN: It probably goes without saying, but I
3 will say it anyhow, that the views expressed here today are
4 my own. I am going to talk about sort of two broad areas:
5 one, the substance of policy, but I also want to say some
6 equally important things about the commission's processes
7 for getting policies right.

8 Some 17 years ago, Lee Johnson and I wrote a
9 report for the Rand Corporation assessing FCC ownership
10 policy, probably still available at Rand, back at the old
11 days, and we focused on two things: the substance of the
12 commission rules and also the sort of underlying evidence
13 that supported or didn't support the rules that were then in
14 place. I just want to read you a couple of things where I
15 think they're still true.

16 First we said "There is little evidence that high
17 concentration within a service in the same market results in
18 anti-competitive behavior. Where there are many competing
19 stations in a local market, some combinations that are now
20 prevented by FCC rules may be possible without great concern
21 that the public will be harmed."

22 We went on to say "Some markets are presently
23 quite unconcentrated, that even combinations of stations in
24 the same service in these markets would probably not create
25 market power."

1 And then we made the incredibly bold statement,
2 "For example, the FCC might well approve a combination of
3 two AM stations in the Los Angeles market where there are
4 presently more than three dozen radio stations." We were
5 ahead of our time.

6 I think the problem, as the chairman has already
7 indicated, there still remains a legacy of FCC rules which
8 do not take into account the competitive conditions in local
9 markets. As a result, particular types of combinations are
10 forbidden, regardless of the nature and extent of the
11 competitive constraints that we face by the merging parties.

12 Now, an exception, and an important exception, to
13 this is the relatively recent change in the duopoly rules
14 where combinations of television stations in the same market
15 were previously not permitted, regardless of the extent of
16 competition from other stations, the are now allowed if they
17 do not result in too large an increase in concentration,
18 that is accomplished by placing limits on which stations can
19 be combined; and if they do not result in too high a level
20 of concentration, that is accomplished by placing a floor to
21 the number of independently-owned stations after the
22 combination.

23 This, of course, mirrors in a rough sort of way
24 the Department of Justice and Federal Trade Commission
25 merger guidelines, the first being the delta and the other

1 is the post-merger level of concentration.

2 Although I do not necessarily subscribe to the
3 particulars of the current rule, the elimination of the
4 blanket prohibition on duopolies is clearly a step in the
5 right direction.

6 Two further steps in that direction would be to
7 apply this more flexible approach to the application of
8 other local ownership rules and to take into account
9 competition for other media in applying these rules. After
10 all, the commission's cross-ownership rules are predicated
11 on the belief that there is competition between media, yet
12 the application of the within media rules seems to ignore
13 this competition.

14 Fourth, because the commission rules typically
15 ignore local market conditions, they are impervious to
16 changes in those conditions. For example, the duopoly rules
17 remained unchanged for many years, despite a very
18 substantial increase in the number of broadcast stations in
19 all markets.

20 If the commission rules were self-adjusting, it
21 would not have to go through a time consuming and onerous
22 rule making process whenever changes in market conditions
23 justified changes in the combinations that it wishes to
24 permit.

25 Fifth, despite the fact that these rules have

1 existed for decades, many decades, actually, the commission
2 still generally cannot point to a study or studies that
3 justifies the maintenance of many of these rules. Moreover,
4 the studies on which the commission might rely do not always
5 ask the right questions.

6 For example, they tend to ask whether particular
7 types of combinations lead to bad outcomes, for example,
8 higher ad rates instead of asking under what conditions
9 those combinations lead to bad outcomes.

10 As the Court of Appeals in the D.C. Circuit
11 recently noted in a slightly different context in Turner II,
12 there is a gap between "the economic commonplace that all
13 other things equal collusion is less likely when there are
14 more firms" and the answer "to the question of what the
15 appropriate horizontal limit is."

16 Sixth, the commission probably relies excessively
17 on analysis produced by outside parties or, perhaps more
18 accurately, the commission does not perform enough of its
19 own analysis to inform its deliberations. My footnote here
20 says perhaps the commission actually performs such analyses,
21 but chooses not to publicize them. If so, it would be
22 salutary for the commission to make the results of such
23 analysis public so that others could comment on it.

24 This, I think, is in contrast to what I think is
25 increasing behavior on the part of the antitrust agencies

1 who know that they will have to present and defend an
2 affirmative case if they choose to challenge a transaction
3 in the courts. My own experience recently has been in
4 dealing with the antitrust agencies that frequently if you
5 show them yours, they will show you theirs, and so there is
6 often a quite constructive interchange of ideas and analysis
7 that I think frequently leads to better outcomes.

8 Seventh, a somewhat idealized version of the
9 process -- and I said I wouldn't say anything about
10 process -- a somewhat idealized version of the process I
11 would propose for considering revisions of the local
12 ownership rules are the following:

13 First, the commission would issue a notice of
14 proposed rule making which would contain both a statement of
15 the rule it proposes to adopt and the particular evidence
16 which it believes supports the proposed rule.

17 Next, interested parties would submit comments in
18 which they represent their analysis that would criticize the
19 commission's analysis or both.

20 This process would be facilitated if the
21 commission were to make available to outside parties the
22 data on which its own analysis relied. And by the way,
23 again my own experience with the antitrust agencies is
24 recently we have showed them our data and they've showed us
25 theirs and it's frequently, again, led to better outcomes.

1 Finally, the commission would issue an order in
2 which it responded to the critics. This would be
3 facilitated if the parties provided their own data to the
4 commission and the commission defended its own analysis.

5 Eighth, this process is not entirely
6 unprecedented, even at the commission. And I'll go back to
7 the good old days.

8 When I served on the commission's network
9 inquiries special staff in the late 1970s, back when there
10 was only one telephone company and only three networks, we
11 explicitly asked the parties not to continue to file
12 comments on the issues we had been tasked to analyze,
13 choosing instead to perform our own analysis which we then
14 released for public comments in the form of preliminary
15 reports.

16 We had actually inherited a large number of
17 comments when we arrived. We didn't find them terribly
18 useful and we just simply told the parties, we'll go first.

19 We released our comments to the parties, to the
20 public. We then got written comments on our preliminary
21 reports. We responded to the critics. Actually responded
22 to the critics in writing. I can go back and find detailed
23 rejoinders to I must say the equally bad comments that
24 continued to be provided even after we put out our reports,
25 but we took them seriously enough to respond to them.

1 Finally, we released our own report. I think this
2 process is actually one that works. It puts a burden on the
3 commission, but I think one that is appropriate for the
4 commission to bear.

5 More recently the commission took a similar
6 approach when it performed its own study of the effects of
7 over building on cable television rates in order to
8 determine the rollback in rates it would impose on cable
9 operators. It then put the study out for public comments
10 and importantly made the underlying data available to
11 outside parties.

12 Although I disagree with the substance of the
13 commission's analysis and believe the commission did not
14 take the criticisms of its work as seriously as it should
15 have, nonetheless, I think the approach that was taken in
16 that proceeding was clearly the right one.

17 How are we doing on time? Lots of time.

18 So I can now talk about the national ownership
19 rules. I would say the same things in terms of process
20 about those rules as I would about the local rules.

21 This is nine. The commission's local ownership
22 rules are grounded at least in theory on standard economic
23 analysis of the horizontal interaction between direct
24 competitors. By contrast, the commission's national
25 ownership rules appear to be based on concerns about

1 monopsony power, particularly in the purchase of
2 programming, and on vertical foreclosure.

3 In a fundamental way, the commission concern about
4 the effects of national ownership concentration on monopsony
5 is misplaced. To understand this, note that the textbook
6 economic model on which the adverse effects of monopsony is
7 based assumes two things: there is a single buyer and that
8 the single buyer pays the same price for everything he buys.
9 Thus, for example, a monopsony employer of labor reduces
10 the wage paid to all workers, thus resulting in a reduction
11 in the number of workers that are employed. That's how he
12 exercises monopsony power.

13 By contrast, the purchase of programming involves
14 the negotiation of individual prices on each unit purchased.
15 In this case, the inefficiency typically ascribed to
16 monopsony does not arise.

17 Moreover, and this is the second point concerning
18 the multiplicity of buyers of these products, large national
19 buyers may actually be less likely than are small ones to
20 attempt to exploit any local market power they may have
21 because they realize that doing so is likely to have an
22 effect on the amount and quality of programming that is
23 supplied to them.

24 Indeed, relatively small buyers probably have the
25 greatest incentive to free ride -- I'm the only the person

1 who has ever said this -- so that the commission's monopsony
2 analysis largely ignores the fact that the products in
3 question are public goods which the costs are shared by a
4 large number of buyers.

5 Twelfth, next to the last, probably most
6 important, the assumption that buyers with large national
7 footprints have monopsony power ignores the fact that the
8 number of large national buyers has actually increased
9 substantially over time. You can't actually have lots of
10 monopsonies out there buying from you. It's a contradiction
11 in terms.

12 It's really difficult to argue, for example, that
13 the large station groups for which monopsony power was a
14 great concern have monopsony power when they must compete,
15 for example, with a myriad of cable program services for
16 much of the programming.

17 Finally, a word about vertical foreclosure. The
18 most important thing to note about vertical foreclosure is
19 that determining whether a foreclosure strategy would be
20 profitable requires a balancing of the gains from
21 foreclosure against the costs. These costs take the form of
22 lost sales, either because the foreclosing firm's product is
23 denied to rivals or because the foreclosing firm's own sales
24 to final consumers decline because the failure to carry a
25 rival's product reduces the quality of its own offerings.

1 The analysis of this balancing is far from
2 straightforward, depending not only on the size of the
3 putative foreclosing firm or firms but also on, among other
4 things, various margins, the availability of substitutes for
5 the firm's products to rivals, and the importance of the
6 products of rivals in determining the quality of a firm's
7 own offerings.

8 And, again, to quote the Court of Appeals in
9 Turner II, normally a company's ability to exercise market
10 power depends not only on its share of the market, but also
11 on the elasticities of supply and demand, which in turn are
12 determined by the availability of competition.

13 I'll start talking really very fast.

14 I think the commission should take seriously -- I
15 do take seriously -- the admonitions of the Court of Appeals
16 in Turner II. It's an admonition for the commission to do
17 better. I think the suggestions for dealing with process
18 that I described earlier would be helpful in that regard as
19 well.

20 I yield the balance of my time.

21 MR. SAPPINGTON: Thank you very much, Stan.

22 Proceeding in alphabetical order, our next speaker
23 is Mark Cooper. Dr. Cooper is the director of research at
24 the Consumer Federation of America and he's also the
25 president of Citizens Research, an independent consulting

1 firm.

2 At the Consumer Federation of America, Mark is
3 responsible for energy, telecommunications and economic
4 policy analysis and, like Stan, Mark holds a Ph.D. from Yale
5 University. Mark's Ph.D. is in sociology in 1979.

6 Mark has also published numerous articles in both
7 trade journals and academic journals.

8 Mark has vast experience as an expert witness in
9 more than 250 cases in a variety of different areas and we
10 are very grateful to Mark for taking time from his busy
11 schedule to share some of his considerable expertise with us
12 today and we are very interested in his perspective as a
13 leading representative of consumers' rights and interests.

14 MR. COOPER: It's interesting that Stan focuses on
15 Turner II. CFA is appealing that to the Supreme Court, we
16 would have liked the FCC to join us, and so we have a
17 somewhat different interpretation of the governing Supreme
18 Court case law. In fact, that's where I want to start
19 because the economic discussion must be imbedded within the
20 legal and public policy framework that we think governs this
21 area.

22 And time and time again the Congress and the
23 courts have concluded that the central principle of media
24 policy in this country is to promote "the widest possible
25 dissemination of information from diverse and antagonistic

1 sources" and I am going stress the words information
2 diverse and antagonistic.

3 They have applied this principle to both print and
4 electronic media under both the antitrust laws and the
5 communications act. And so when we look at the governing
6 Supreme Court case law, we conclude that diversity has full
7 legal stature as an independent policy consideration in
8 defining media industry structure. And it's clear to the
9 people in this room that Turner II does not take that view
10 of the law.

11 Civic discourse in the marketplace of ideas is not
12 the same as entertainment variety in commercial media
13 markets. Antagonism of ideas is not the same as competition
14 between products.

15 Now, when we look at the empirical evidence, we
16 conclude that ownership matters. One of the fundamental
17 questions in the notices. Not only because owners influence
18 what gets aired and how it is played, but also because there
19 are ways in which the success of commercial media can be
20 antithetical to a vibrant marketplace of ideas.

21 When we look out at the media landscape, we see
22 different types of media representing distinct product and
23 geographic markets. And, again, Stan talked about all these
24 new products converging in markets. We see distinct product
25 in geographic markets.

1 While the advocates of convergence would like to
2 equate all media, the reality is that different media serve
3 different needs. They have different content and differ
4 widely in their impact and effect. People use different
5 media in different ways, spend vastly different amounts of
6 time consuming different media and in different environments
7 and they consume those media under different circumstances
8 and pay for them in different ways. And so these are
9 distinct markets across which we see less competition than
10 some others.

11 We believe that if you look at the evidence,
12 horizontal concentration, vertical integration and
13 conglomeration in media markets threatens to impoverish the
14 marketplace of ideas. Profit maximization in increasingly
15 centralized dominant firms has a tendency to drive out
16 professionalism in journalism and to squeeze out public
17 interest programming.

18 It emphasizes lowest common denominator products
19 that systematically exclude minority audiences, avoid
20 unpopular points of view, and eschew controversy.

21 Increasingly, commercialized national media
22 homogenize local news out of existence and undermine the
23 ability of investigative reporting to check waste, fraud and
24 abuse of power in both governments and corporations.

25 Not only does our marketplace of ideas require, to

1 paraphrase an important jurist, a variety of lights focused
2 on issues from different angles, but as the world becomes
3 more and more complex, we also need to bring lights of
4 differing intensity to bear on issues. Some media are
5 narrow and shallow, other media are broad and deep, and we
6 need to preserve the specialization of the different media
7 types.

8 Now, our concern does not stop with the impact of
9 concentration, integration and conglomeration of ownership
10 on diversity in the marketplace of ideas, however. As the
11 commission well knows, we have offered frequent opinions
12 about the impact of these factors in commercial markets.
13 And when we look at these commercial markets, we are not
14 overly impressed with the competitive intensity we see out
15 there.

16 Consider the much maligned 30 percent cap on the
17 ownership of cable systems. As defined by the FCC, the cap
18 is absolutely not a limitation or barrier to competition.
19 Any cable operator who wants to compete and serve a market
20 share larger than 30 percent is welcome to do so by building
21 new systems.

22 Most people don't recall that there is a clause
23 which says if you over build somebody, we won't count that
24 against your cap. So that by entering existing territories,
25 by over building existing operators, by truly competing for

1 customers, a cable operator could own systems that serve 100
2 percent of the markets in this nation. If they did so, they
3 would actually be doing something that we hear a great deal
4 about these days, creating facilities-based competition.

5 The only reason that the cable operators complain
6 about the 30 percent cap is that they do not actually want
7 to compete with each other. They never have. They just
8 want to buy each other out. We conclude that the 30 percent
9 cap is not a barrier to competition, it is a barrier to the
10 accumulation of market power through acquisition.

11 Lifting the cap is a bad idea in our view because
12 it would increase the large vertically integrated company's
13 ability to influence the program market. Monopsony power
14 under the antitrust laws actually becomes a problem at
15 fairly low levels of concentration. You can easily win
16 antitrust cases at 30 to 40 percent, which is in the
17 neighborhood of where the cap has been set.

18 Lifting the cap would also reinforce the market
19 power at the point of sale by expanding the scope for
20 regional monopolies which increase the economies of scale
21 and scope necessary for entry into the cable market.

22 In the old days, I used to also say that raising
23 the cap would remove potential competitors, but given the
24 sad history of this industry and its complete failure to
25 ever compete head to head, I will forego the claim to that

1 harm.

2 Now, this is our opening statement in what we
3 believe should be a long and careful, thorough investigation
4 into the question of media ownership. These are rules which
5 need to be considered very carefully before they are
6 changed. They are critical to the nature and quality of our
7 democracy.

8 The commission should not assume that because we
9 have failed to achieve a perfectly wonderfully diverse
10 marketplace we would be better off without these rules. It
11 certainly should not assume or hope that some revolution
12 which hasn't taken place will somehow or another discipline
13 the forces that exist in the marketplace after some
14 remarkable transformation. And here you will hear a great
15 deal about new media, changes in the marketplace.

16 In fact, when we look out there, there has been a
17 lot less change than meets the eye. Broadcast networks
18 today are predominantly national, accounting for
19 approximately 60 percent of all national advertising
20 revenues. Newspapers are local, accounting for
21 approximately 60 percent of all local advertising revenues.

22 There has been very little shift in market shares.

23 In 1985, just after the cable act was passed,
24 broadcast accounted for a tad less than one-third of all
25 advertising revenues spent in these media markets. Today,

1 they account for a tad more than one-third.

2 In 1985, newspapers accounted for just over half
3 of all advertising dollars. In 2000, they accounted for
4 just under a half.

5 In 1985, radio accounted for one-seventh of
6 advertising dollars. In 2000, it accounted for one-seventh
7 of all advertising dollars.

8 In 1985, of course, the much touted Internet was
9 just beginning its commercial phase. It accounted for
10 almost no viewing time and no advertising dollars. Fifteen
11 years later, it accounts for approximately 4 percent of all
12 viewing time and 2 percent of all advertising dollars.

13 There is no doubt that the Internet has provided a
14 wonderful revolution. It's a productivity device for the
15 conduct of daily activities. It's just not the mass media
16 revolution that we hear about. Some day in the future, it
17 may be, but it is not today and it should not be assumed
18 that it will be.

19 I also appreciate the notion that there is an
20 immense amount of additional diversity available out there.

21 That is probably true, but let me make a point. I want to
22 make a point about what I call a PDA, a personal diversity
23 appliance. When I was a kid growing up, I had a wonderful
24 PDA available to me in the 1950s, I have now dated myself,
25 in which I could literally listen to broadcast stations from

1 all over the country and, in fact, all over the world.

2 I brought one with me. It's a short wave radio.

3 And this gave me access to an infinite supply of

4 information. But its existence no more changes the problem

5 of promoting a vibrant marketplace of ideas than Internet

6 radio does today, when the booming voices of broadcast media

7 still can drown out the faint whispers of Internet radio.

8 We all do hope that that will change, but we cannot depend

9 and rely upon it.

10 And let me make it clear I understand that this

11 commission cannot make people listen. They cannot tell

12 people what to listen to, but they can through structural

13 rules actually improve the chance that people will hear and

14 that is the commission's job. So let me suggest four ways

15 in which the mere existence of diversity out there in cyber

16 space -- and, of course, when I was a kid listening to that

17 shortwave radio, I had no idea how those signals managed to

18 get there, but they did.

19 Structural policy can make it easier to hear civic

20 discourse because it is spoken by a louder voice and ensure

21 that people who want to speak with different voices have

22 access to the more influential types of media. And remember

23 I started from a typology of different types of media.

24 It can ensure a level playing field or a more

25 level playing field so that the unpopular voices are not

1 denied the resources necessary to make civic discourse
2 attractive.

3 It can prevent the narrowing of focus so that
4 important issues that might attract attention are not
5 excluded from the more influential forms of media.

6 And, finally, it can force the mingling of ideas
7 so that accidental exposure is more likely.

8 Now, under the First Amendment, we understand we
9 can never tell people what to say and we certainly cannot
10 tell them what to listen to. But under the Communications
11 Act, we can organize the structure of the industry to
12 increase the probability that more people will engage in and
13 be engaged by civic discourse.

14 And I realize that I have gone well beyond the
15 simple economic questions that this roundtable begins with
16 and these are important questions, but in fact economics
17 will determine who gets to speak and what is heard and so
18 therefore we must remember that economics works towards the
19 broader goal, which is absolutely less concrete, less easy
20 to measure, but no less important.

21 Thank you.

22 MR. SAPPINGTON: Thank you very much, Mark.

23 Our third speaker today is Robert Majure, who is
24 the assistant chief of the Economic Regulatory Section in
25 the Antitrust Division of the United States Department of

1 Justice.

2 Bob has served the Department of Justice for seven
3 years now, where he has supervised the economic analysis of
4 potential antitrust concerns in the media and
5 telecommunications industries, among others.

6 Bob received his Ph.D. in economics from MIT in
7 1994 and is the author of many important works on antitrust
8 analysis.

9 I have had the privilege of working with Bob in
10 the past and so can testify to his exceptional skills in the
11 antitrust field and we are delighted that Bob is able to
12 serve on this panel today as a representative of the U.S.
13 Department of Justice, although I suspect that the views he
14 will share with us today are his own and not necessarily
15 those of the department.

16 Welcome, Bob.

17 MR. MAJURE: Thanks. And I can confirm that.
18 These are just my own views. Thanks. That saves about five
19 minutes of my talk.

20 Actually, with all due respect to Jim, I looked
21 through the material that was sent over and there were far
22 more than two questions in there. Maybe this shows that
23 there is more need for cooperation between DOJ and FCC, but
24 I looked through and found three that I thought were the key
25 questions. And on those, there's only one of those that I

1 really feel like I am in a position to say anything useful
2 here, but I will go through the other ones and kind of
3 explain why I don't think I know anything.

4 The first question this panel, I think, starts
5 with is whether there are harms to the public interest from
6 a potential acquisition or potential harms that could not be
7 dealt with in an antitrust challenge.

8 Well, I'm not really sure what the public interest
9 means. I have heard any number of things put forward as if
10 they were the public interest. I heard one regulator say in
11 deciding a merger that he didn't know what the public
12 interest was, but he could identify the public as the
13 shareholders of the companies involved and the interest is
14 their rate of return, so he knew how to vote. I don't think
15 I agree with that, but I'm not sure I could prove that
16 that's not the public interest.

17 But in the interests of trying to contain this to
18 the role of competition, I'm going to put forward the
19 assumption that the public interest is limited to something
20 like the efficiency of markets and if that's the way we're
21 going to think about the public interest, I don't think it's
22 meaningful to ask the question whether there would be a
23 difference in the way the public interest is protected under
24 either the regulatory powers of the FCC or under the
25 antitrust analysis of the Department of Justice or the FTC.

1 As a working hypothesis, I would say that the
2 analysis is going to be the same, whether it's the FCC
3 judging exactly where to set an ownership limit or the DOJ
4 trying to decide which case to prosecute if there wasn't
5 such a limit or whether it's a combination of those. The
6 economic analysis is really going to be the same.

7 So having established that as my own definition of
8 the public interest here, the next question becomes easy to
9 answer because the next question put to this panel was
10 assuming the issues and the analysis are the same, is there
11 a reason to prefer establishing a blanket rule versus
12 examining each case?

13 So if we think that the analysis is going to be
14 the same whichever agency is doing it, then this political
15 economy question becomes one of whether there is a -- how
16 you trade off the costs and benefits of a one-size-fits-all
17 approach, which would mostly be the -- the costs would
18 mostly be that occasionally that one-size-fits-all isn't
19 going to fit and the benefits are that you don't have to do
20 each intensive investigation to review every single
21 transaction that comes along.

22 I don't have a whole lot to say about that
23 tradeoff, it's a political economy question and I'm not a
24 political economist, but I'm comfortable saying that there
25 are plenty of cases where it might make sense to go either

1 way. In fact, if you look at what the Justice Department
2 has done in a couple of things that don't look too
3 dissimilar from the situations this panel is considering in
4 radio mergers, when the '96 act lifted the radio version of
5 the ownership limits, after reviewing several of these
6 things and figuring out that one radio market looked a lot
7 like another radio market, somebody from the Department of
8 Justice stood up and said, you know, we've looked at some of
9 these and we think we're going to challenge ones that are
10 above this threshold. I forget what we picked, 35, 40
11 percent? It tended to slide over time, but they stood up
12 and said that's going to be in essence a rebuttable
13 presumption.

14 And so we kind of had a compromise hybrid version
15 of an ownership cap of our own. People were free to go in
16 and challenge that because everybody is free to make us go
17 to court and, you know, that's not a bad way to proceed on
18 setting an ownership limit, either. Maybe it's not the kind
19 of free and open process that Stan is advocating, but
20 rebuttable presumptions are another thing to be thought of
21 in this weighing the costs and benefits of one-size-fits-all
22 or not.

23 But, as I said, I don't really know much about how
24 you allocate resources on a global political basis, so I'm
25 going to turn to the third question and the third question I

1 saw this panel being asked is how would changing the
2 ownership rules affect the broader package of regulations,
3 which I would include antitrust in that, governing the
4 industry in its vertical relationships?

5 This to me is the most interesting part of these
6 questions and I want to focus on this question because I
7 think it's easy to overlook the role that ownership rules
8 play in making other regulations a success or failure. Put
9 another way, one of the places where potentially the
10 analysis or the ability of the different agencies to proceed
11 would be at a peak is where the public interest benefit or
12 the inefficiency of the market that a potential deal raises
13 might be caused by constraining the efficiency of the
14 regulation available.

15 We've seen numerous cases where a proposed deal
16 made it more difficult for the agency involved, the
17 regulatory agency, to pursue other goals that they had and I
18 believe it's feasible to include that in an antitrust
19 challenge, but perhaps a lot easier for the agency itself to
20 look out for its interests there.

21 So to put some meat on this, let me talk about how
22 I think one instance of this works and that is the ownership
23 caps and non-discrimination. So consider a hypothetical.
24 I'm an economist, I can do that.

25 The hypothetical would be that a firm controls all

1 programming and it has distribution outlets that reach, say,
2 20 percent of the market, so the potential audience for that
3 programming, all right? There's an unrelated firm that
4 serves the rest of the audience, one firm, 10 firms, 20
5 firms, whatever, but there's an unaffiliated group of
6 distributors serving those other customers. And entrant
7 wants to break in and serve this distribution market that
8 this monopolist programming serves.

9 Now, most people's initial reaction would be that
10 the program access rules have prevented this from being a
11 problem and I'll exempt Stan from that most people, but put
12 simply I think that regulation requires -- to put that
13 regulation simply, it requires that a uniform price be set
14 for the programming in the affiliated and the unaffiliated
15 markets.

16 Now, holding aside the questions of how this could
17 possibly work when there are volume discounts and complex
18 contracts and non-pecuniary exchanges and all the other
19 things that people would like to argue about whenever they
20 consider the program access rules, the observed fact is that
21 we see DBS providers, for example, have amassed a large
22 share of viewers and so in some sense the program access
23 rules must have worked, right? Despite all these
24 shortcomings.

25 But let's change the hypothetical around a little

1 bit. Instead of 20 percent of the market, the distribution
2 market, let's say that this firm controlled 80 percent of
3 the market.

4 Now, the same program access rules would tend to
5 generate a much higher price in the face of this potential
6 entry now in the larger -- when the monopolist owns a larger
7 share of the distribution outlet. And to see that, you kind
8 of have to look at exactly how the regulation has its power.

9 Where does that regulation get any constraining power from?

10 And the regulation creates a disincentive to raise
11 prices to the competitor by linking that price to the price
12 in the unaffiliated market and in some sense saying that a
13 higher price to that competitor in your own service
14 territory comes at a cost of having to raise the price in
15 these other unaffiliated distribution channels.

16 And we can see that that's clearly a cost to the
17 firm because otherwise if the prices weren't linked they
18 would have set the price in the unaffiliated markets at an
19 optimal level. It's an unaffiliated market. There's no
20 reason to be tinkering with things over there.

21 That's optimal for the firm, it might be the
22 monopoly level or I think we assume that in the
23 hypothetical, but they wouldn't want to raise that price in
24 that market.

25 Now, as the market share and distribution grows,

1 the relative importance of the affiliated market grows, it
2 becomes cheaper to discriminate against an entrant. When
3 the share that a single firm owns of distribution has gone
4 from 20 to 80 percent, we've basically cut the price of
5 discriminating into a quarter of what it was before. It's
6 starting to get pretty affordable.

7 The result is that you would see higher prices to
8 the entrant and to consumers in the unaffiliated market. In
9 the extreme, the programmer would not be constrained at all
10 and could set an arbitrarily high price.

11 I don't think this is just a hypothetical kind of
12 concern. I would draw similarities to this kind of
13 situation in several of the merger cases that the DOJ and
14 the FTC and the FCC have been involved in recently on the
15 side of Internet content. The AOL-Time Warner case and the
16 AT&T-Media One cases, the consent decrees there may be
17 written in terms of monopsony power, but that's just the
18 flip side of this kind of concern with whether or not the
19 relationship between content and distribution channel is
20 being influenced by one side or the other that transaction.

21 I would also say that there are strong
22 similarities, that this kind of concern has come up in
23 situations of the ownership of local sports programming by
24 cable systems that are geographically concentrated in a
25 local market and there you get to see the same kind of

1 effect writ small, if you will, because the ownership cap at
2 the national level isn't going to bind somebody, they could
3 have 90 percent of a market that was the relevant market for
4 something that's inherently local content like local sports
5 programming. And there you see -- I guess the Philadelphia
6 decision is up on appeal now, you see the concern being that
7 the monopoly or the near monopoly of the distribution
8 channel makes it cheap to raise prices to the unaffiliated
9 content providers, that you can have a concern with a
10 company's interest in distributing its programming to the
11 entire world, notwithstanding the impossibility of what Stan
12 mentioned.

13 Anyway, this is not to say that any merger that
14 otherwise would have violated the ownership caps ought to be
15 challenged. I'm just trying to say that one of the pieces
16 to that analysis, one of the pieces to either the FCC's
17 analysis or to the antitrust authority's analysis ought to
18 be whether or not a particular change in ownership levels is
19 going to have an effect on the efficacy or the efficiency of
20 regulatory options that are available to the regulator. And
21 I think that is a piece that the commission should take into
22 account as they set whatever kind of rule they are going to
23 set.

24 I'll yield my time, too.

25 MR. SAPPINGTON: Thank you very much, Bob. And I

1 appreciate you and all our panelists staying on time. I
2 think Joel is looking for something to do and he's out of a
3 job at the moment because you all are being so timely. We
4 appreciate it.

5 Our final speaker on this first panel today is
6 Bruce Owen.

7 Dr. Owen is the president of Economists, Inc.,
8 which is a consulting firm specializing in antitrust and
9 regulatory issues.

10 Bruce earned his Ph.D. from Stanford University in
11 1970. He has taught at Stanford University and continues to
12 teach law and economics in the Stanford in Washington
13 internship program.

14 Bruce, like Bob, brings considerable antitrust
15 expertise to this panel because Bruce has served as a chief
16 economist of the antitrust division of the U.S. Department
17 of Justice during the Carter administration and Bruce also
18 served as the chief economist of the Office of
19 Telecommunications Policy during the Nixon administration.

20 Bruce is widely published in leading journals and
21 has written many books, including his classic work entitled
22 Video Economics.

23 It is a great pleasure to welcome Bruce to this
24 distinguished panel of experts.

25 MR. OWEN: Thank you, Dave. I, too, got this list

1 of questions, but with respect to the session on competition
2 policy there was a first question, which I'll quote, "What
3 harms to competition and industry performance would likely
4 arise in the media industry if no government intervention
5 other than standard antitrust enforcement were imposed?"

6 And, of course, my answer to that is none and all
7 the rest of the questions assume a different answer, so I'm
8 done.

9 Now, what do I do with the remaining 19 minutes?

10 Well, actually, I did think of something else to
11 say. I agree with the general proposition that antitrust
12 policy and particularly the methodology that's embodied in
13 the FTC-DOJ merger guidelines is the soundest and most
14 reliable basis in existence for dealing with the issues to
15 which the FCC media ownership limits have been addressed in
16 the past.

17 The methods of the merger guidelines, of course,
18 are not limited to mergers. Portions of the guidelines are
19 used and useful in analyzing monopoly issues and vertical
20 restraints issues. Not all of the guidelines are relevant
21 to that. There is a difference between Section 7 of the
22 Clayton Act and Section 2 of the Sherman Act and the merger
23 guideline standards are based on the goal of ensuring that
24 mergers don't make the state of competition worse, which is
25 not the same as the goal of Section 2 of the Sherman Act.

1 For those of you who are antitrust junkies, that
2 means that you can make the cellophane fallacy in Section 2,
3 but you can't make it in Section 7. No junkies?

4 If one takes a guidelines approach to media
5 ownership, it's clear that over the last 30 years nearly
6 every relevant advertising and programming market has become
7 less concentrated. This suggests obviously that ownership
8 limits that might previously have been beneficial may no
9 longer be useful or may even be harmful to consumer
10 interests.

11 Rather than repeat what some of my fellow
12 panelists have already said -- I wrote that before I heard
13 them, but I predicted what they would say -- I would like to
14 take the rest of this time to step back and discuss the
15 purposes of competition policy in this context.

16 I tried to do this in a way that makes competition
17 policy a useful context for the issues facing the commission
18 today, including the issues that Mark raised, which I think
19 are very important. Diversity is not any less a market
20 outcome than prices and quantities and profits.

21 We need to understand that competition is not an
22 end in itself. I don't know of any religion that embraces
23 competition and, indeed, some could be said to reject it.
24 There is nothing in the Constitution about competition.
25 Competition is simply a socially useful process for

1 allocating resources. Experience has shown that
2 competition, even if imperfect, generally produces greater
3 and more reliable benefits for consumers than the
4 alternatives. The alternatives I mean are, for example,
5 monopoly, regulated monopoly, regulated competition, central
6 planning and collectivization.

7 Based on this pragmatic approach, we generally
8 proceed on the rebuttable presumption that free markets are
9 a desirable policy objective when they are burdened neither
10 by monopoly nor by regulation.

11 Every free market produces not just a set of
12 outcomes measured in terms of prices, outputs, productivity,
13 technological progress and so on, but also a natural
14 structural, a natural market structure. In some cases, the
15 natural market structure is rather concentrated. In the
16 extreme, there can even be a so-called natural monopoly.
17 Traditional antitrust and especially merger policy seeks to
18 prevent concentration when it is not normal.

19 Economically sound antitrust enforcement seeks to
20 stop mergers that will tend to reduce consumer welfare by
21 raising prices and to prevent monopolies from arising for
22 reasons other than a superior ability to benefit consumers.

23 And, of course, I am describing an ideal that may
24 not always be achieved in practice.

25 FCC ownership policies such as the ownership caps

1 and the cross-ownership rules appear to accept the idea that
2 competition is a good thing. However, such rules implicitly
3 reject the sufficiency of the antitrust approach. More
4 specifically, the ownership rules reject certain natural
5 market outcomes, even those that are not the results of
6 mergers. I think we have to ask what lies behind this
7 policy choice.

8 Speaking hypothetically, there might be pragmatic
9 reasons to reject the use of traditional antitrust
10 enforcement standards in media industries. I want to make a
11 distinction here and for the next few minutes between the
12 merger guidelines standards and the merger guidelines
13 methodologies.

14 Imagine, for example, that empirical studies by
15 the commission demonstrated significant adverse effects on
16 the price of advertising in local media markets when HHI
17 levels exceeded 800. That might justify the commission's
18 use of 800 rather than 1000 or 1800 as a safe harbor or it
19 might justify an ownership cap of 800 rather than 1000 or
20 1800, depending on the nature of the empirical findings.

21 The problem is, of course, that the merger
22 guideline standards are of general applicability. Their
23 numerical values, frankly, are arbitrary. That's the dirty
24 secret of the merger guidelines. Certainly, they are not
25 necessarily applicable to any given industry.

1 The commission's traditional ownership policies
2 might alternatively, hypothetically, be justified on the
3 basis of what is sometimes called judicial economy. For
4 example, the nature and definition of local advertising
5 markets might be so well established through prior
6 experience that the appropriate standards necessary to
7 prevent mergers would be obvious.

8 As Rob described in the case of radio mergers,
9 everyone would save time if we just adopt the rule of thumb.

10 I don't, however, think that any of these reasons
11 has been the basis for the commission's historical ownership
12 policies. Certainly the commission has never explicitly
13 based its ownership policies on principles of competition
14 policy modified to reflect more relevant standards or
15 enforcement economies. The commission has simply used its
16 preexisting regulatory categories based on such factors as
17 frequency range, modulation technique, type of wire used and
18 so on, rather than relevant market definitions in the merger
19 guideline sense.

20 The problem is that this approach has been
21 discredited. It's the approach of the Brown Shoe case, an
22 old merger case at the Supreme Court, which for all I know
23 is still good law, but it's very bad economics. None of the
24 commission's historical ownership policies can possibly be
25 regarded as growing out of the economic analytical approach

1 embodied in today's merger guidelines methodologies. And it
2 is the merger guidelines methodologies rather than their
3 particular standards that defines rational state of the art
4 policy in this area. I think that may be one of the things
5 that lies behind the D.C. Circuit opinion that people are
6 quoting in this area.

7 So what does lie behind the commission's
8 historical ownership policies?

9 I think it would be most accurate to say that a
10 principal basis for the commission's historical media
11 ownership policies has been the assumption that natural
12 market outcomes would produce insufficient diversity of
13 content or sources or ease of access, terms that are not
14 usually well defined when used by the commission, I must
15 say.

16 Hiding just beneath the surface of that diversity
17 principle has been the more ancient notion that the radio
18 spectrum as a nationalized resource should be shared fairly
19 among its various claimants. If I were more cynical --
20 fortunately, I'm not -- I might have said that the idea was
21 to share fairly the rents created by the commission's
22 spectrum allocation policies.

23 Now, recently, fairness has achieved a new
24 legitimacy in economics. We used to pretty much ignore it
25 because we couldn't say anything about it and therefore it

1 wasn't important. There is a new sub-discipline in
2 economics called behavioral economics in which people take
3 issues such as fairness quite seriously and they've
4 discovered the consumers do as well and even business people
5 bargaining about things seem to take notions of fairness
6 seriously. That is to say they have placed value on the
7 fairness of an outcome in addition to the substance of the
8 outcome in dollar terms.

9 So lest we be in the position of those defunct
10 economists that Kane said were the dictators of policy in
11 any age, let's keep up to date on the economics that include
12 the newer subdisciplines as well.

13 Having said that, I think that lurking deeper
14 still in the commission's historical ownership policies is
15 elected and even appointed officials' genuine fear of their
16 own vulnerability to the popular media.

17 The content diversity issues can be and have been
18 subjected to economic analysis. There are indeed economic
19 characteristics of media content that make it difficult to
20 presume that a competitive market outcome is necessarily
21 optimal. Half a century ago, Peter Steiner made the point
22 that some listener demand structures would be better served
23 by a radio monopolist than by radio competitors. Later,
24 work by Michael Spence and others has generalized this
25 finding.

1 I think it is fair to say today that the public
2 good character of programming is one of many imperfections
3 that impair the functioning of competitive markets.
4 Nevertheless, no one has identified any practical
5 intervention by which government could reliably improve this
6 situation, certainly not by ownership rules.

7 A different but nevertheless still economic
8 analysis is called for when it comes to issues of source
9 diversity and ease of access by minority or dissident or
10 simply new voices. And here where is I think we should take
11 the issues raised by Mark quite seriously, but I think the
12 task is not whether they should be taken seriously -- the
13 question is not whether to take them seriously, but how to
14 address them rigorously.

15 I think it is useful to think quite literally of a
16 marketplace of ideas. Is there evidence that freedom from
17 government regulation in this marketplace would or could
18 lead to concentration accompanied by barriers to entry so
19 that the messages of speakers who would otherwise have an
20 audience are kept out with adverse political or economic
21 effects?

22 Once again, rigorous analysis proceeds first by
23 defining the relevant market. We have to ask with respect
24 to each member of the potential audience for a given message
25 what alternatives are available at what cost, both in terms

1 of other messages with like content and in terms of maybe a
2 link with audiences.

3 What is obvious is it is extremely unlikely that
4 any such market would be limited to a single medium or
5 technology or frequency range or a modulation type or a type
6 of wire or section of the USC. Source diversity and access
7 issues require further comment.

8 There may indeed principle be legitimate concerns
9 associated with barriers to entry in any market. But no
10 sensible remedy for such barriers can guarantee a right of
11 access to an audience attracted by somebody else's message,
12 at least not without mowing down whole fields of consumer
13 welfare nurtured by alignments of producer incentives with
14 audience demands.

15 It's a different thing, of course, to have cheap
16 access to the opportunity to attract one's own audience
17 based on the value of one's own message. Promotion of this
18 goal requires the government to avoid policies that restrict
19 the supply of resources used in producing and transmitting
20 messages. This is perfectly consistent with the antitrust
21 approach to markets, including advertising markets.

22 Once again, I am not aware of any commission
23 ownership policies none of which expand media capacity that
24 can play a useful role in this important area with the
25 possible exception of the vertical rules, which I will

1 discuss in a minute.

2 A question remains as to whether the effective
3 operation of media markets from a political point of view
4 requires a different stricter competition standard than
5 would be applied in advertising markets. For example, while
6 an HHI as high as 1800 might be regarded as tolerable in a
7 relevant market for advertising, should we regard it as
8 tolerable in a relevant market for the expression of ideas?

9 Well, an immediate problem with asking the
10 question that way is that HHIs measure outcomes, not ease of
11 access. Even a commodious common carrier media with trivial
12 transmission prices might display a very high HHI simply
13 because society's tastes produce that result. Popular
14 culture is by definition popular.

15 Ex post equilibrium HHIs say nothing useful about
16 ex ante freedom of expression. It's hard to make economic
17 sense of a policy objective based on ensuring the economic
18 success of unpopular and hence unprofitable messages.

19 Finding an appropriate measure of the opportunity
20 for source diversity is an empirical challenge for
21 competition policy and for the commission in its ownership
22 policy debates. But once again, I don't know of any reason
23 to suppose that the commission's previous ownership policies
24 have or could have any useful effect in this area or even to
25 assume that there is a problem that calls for a solution.

1 The last area I will touch on has to do with
2 vertical markets.

3 The theory that monopsony problems might arise if
4 a sufficiently large concentration of MSOs were permitted is
5 a respectable starting point for an argument leading to an
6 ownership cap. After all, this was the basis of the
7 decision at the time of the MFJ to have more than one RBOC
8 arise from the ashes of AT&T. That was the first fire.

9 But a necessary first step, as always, is market
10 definition. In this case, we need to ask whether program
11 suppliers or the inputs they employ have other ways to reach
12 the audience besides MSOs. If the answer is yes, an MSO
13 ownership cap makes no sense.

14 As Stan pointed out, unlike telephone switch gear,
15 programs are public goods and a buyer with market power has
16 no incentive to restrict purchases of a given program in
17 order to reduce the price it pays if the program is a public
18 good.

19 The so-called program access rules or
20 discrimination rules are based on a very similar theory of
21 vertical restraints. Bob has already discussed this.

22 I suppose that someone might construct an infant
23 industry story justifying such a rule, although it would
24 have to be premised on evidence that integrated MSOs would
25 engage in discrimination or exclusive dealing, that new

1 MVPDs lacked access to attractive programming from other
2 sources, and that consumers would not be better off with
3 differentiated programming, but no one has put forth such a
4 theory or gathered such evidence.

5 And, anyway, direct-to-home satellite broadcasting
6 has clearly passed beyond the infant industry stage.

7 So long as the program access rules stay in place,
8 the reduce the incentives of MSOs to invest in marginal new
9 programming sources, exactly the enterprises most likely to
10 widen content diversity. By offering them the opportunity
11 to free ride on the investments of others, the rules also
12 discourage the newer MVPDs from offering differentiated
13 products to their subscribers, potentially reducing consumer
14 welfare.

15 Because we can compare the behavior of
16 on-integrated programmers with those subject to the rule,
17 once again it ought to be possible to test some aspects of
18 these theories.

19 Finally, I would like to say a word about
20 efficiencies. I haven't emphasized the issue of weighing
21 efficiencies against anti-competitive effects because that
22 is part of the merger guidelines methodology in a
23 case-by-case analysis. In practice, of course, the
24 antitrust agencies regard efficiency claims with
25 considerable suspicion, but the commission need not do that.

1 The problem is that any natural market
2 concentration reflects a triumph of efficiencies over market
3 power. In the extreme, a so-called natural monopoly is able
4 to deliver goods to consumers at a low price because its
5 economies of sale more than offset its monopoly pricing.
6 Antitrust policy attacks such a firm only if its market
7 power is abused.

8 The consumer benefits of the natural level of
9 concentration are worth sacrificing to whatever other policy
10 goals the commission is pursuing. It might be sensible to
11 insist that any such judgment be based in part on a
12 quantitative assessment of the lost consumer benefits. Even
13 if the other goals cannot be quantified, at least we would
14 know how much we are paying to achieve them.

15 Thank you.

16 MR. BIRD: Thank you. Well, we've heard four very
17 interesting presentations and we're now moving into the
18 period for questions.

19 I think before -- as we open that, I think I'd
20 first like to ask any members of the panel if any of them
21 has a burning question for one of the other members.

22 MR. BESEN: Well, since I have ten minutes of my
23 time reserved because I yielded it --

24 A PARTICIPANT: What?

25 MR. BESEN: I yielded it, but I think --

1 A PARTICIPANT: You yielded it, you didn't reserve
2 it.

3 MR. BESEN: I can reclaim it. I'm going to try to
4 reclaim it.

5 Let me go back to the sort of the two -- well, I
6 think I'm going to respond primarily to Bob and Mr. Cooper.
7 The sort of two points I want to emphasize that I think --
8 or I thought when I came here were really quite
9 uncontroversial and I will reiterate them, I still think
10 they're uncontroversial are the following.

11 First, that any rule that is impervious to very,
12 very large changes in market conditions can't be right.
13 Somehow or other the commission cannot have adopted rules or
14 pick rules at a point in time based on whatever the then
15 existing market conditions were -- it would be remarkable
16 for those conditions, for those rules in fact to be the
17 right ones decades later with enormous changes underlying
18 circumstances.

19 Second, whatever rules the commission adopts it
20 seems to me uncontroversial that the commission ought to
21 have some decent level of support, hopefully quantitative
22 support for those rules. I thought when I started and I
23 still think that those propositions are uncontroversial.

24 Now, Bob seems to ascribe some views to me, maybe
25 he didn't mean to, but I thought he said he described my

1 position as free and open and as characterizing certain
2 outcomes as impossible. I didn't mean to. I didn't think I
3 think I said that in my remarks, but just to be clear, maybe
4 there is an agreement, so let me just say what I think.

5 Again, the point I think is that if one believes
6 that certain structures lead to bad outcomes, one ought to
7 do the analysis to show that. That's a task I think it's
8 appropriate for the commission to bear. If it's going to
9 adopt a rule, it needs more, as the Court of Appeals said,
10 more than some sort of conceptual idea that a particular
11 change directionally produces a bad outcome because it's
12 going to effect -- if it does that, it's only going to argue
13 that nobody can own more than one radio station in the
14 smallest market and couldn't own a second anywhere else, for
15 example.

16 So you've got to do the analysis, you've got to
17 actually sort of connect the structure relief that you're
18 proposing to the harm that you're going to identify.

19 Now, there are a number -- I think Bob's quite
20 right to sort of focus on this question of what's the right
21 political economy here, what's the right -- how should one
22 approach this?

23 When Lee Johnson and I wrote our paper originally,
24 we actually were very ambitious and talked about a
25 case-by-case approach the commission might adopt and

1 obviously there are substantial costs in doing that.

2 Another alternative which I think is presumably
3 relatively attractive is the kind of self-adjusting rule
4 that I described earlier. Another possibility will be a
5 fairly tight rule with waivers freely granted or a sort of
6 rebuttable presumption. Somebody could come along and say,
7 you know, you've got this rule, but I think you've got it
8 wrong, it's wrongly applied here.

9 What I think is not an appropriate rule is one
10 that in fact is impervious to changes in market conditions.

11 Whatever choice one wants to make, that can't be the right
12 one. And, in fact, even going back to a point that Bruce
13 made, not only is it one of the dirty secrets of the merger
14 guidelines that in fact the numbers did not come down on a
15 tablet from Mount Sinai, but moreover that they're not
16 actually rigorously employed by the agency. You can
17 actually go to the agency and try to argue that in fact in
18 this particular case higher concentration doesn't lead to
19 bad outcomes.

20 I recently had an experience with the department
21 in which we did just that. They in fact are open to
22 evidence suggesting that the guideline standards may be in
23 applicable in particular circumstances.

24 Now, Mark Cooper's arguments sound to me a lot
25 like -- I can't imagine him saying much different if this

1 was 1975, but a lot has changed since then. In fact, when I
2 came the commission in 1978, we inherited a notice of
3 proposed of rule making -- actually, a notice of inquiry --
4 which had us focusing on a number of fairly narrow rules,
5 the rules regulating the relationship between the networks
6 and program suppliers, the networks and their affiliates.
7 And we said wait a minute, this world is about to change a
8 lot.

9 Viewing the market as narrowly construed as you
10 have construed it and now sort of worrying about sort of
11 tinkering with rules designed to make this reasonably
12 concentrated market work better is just wrongheaded. What
13 you ought to be focusing on, this is a word that Bruce
14 raised and I think it's worth emphasizing, what you should
15 be focusing on is entry.

16 Entry is important. If you want to deal with
17 these problems, getting more players into the market is
18 really ultimately the answer. Whatever else our analysis
19 did during this period of time, the one thing that we surely
20 got right was that. And the world is not the same 20 years
21 later, while you might have a hard time appreciating that
22 here, there are more broadcast stations, there are more
23 broadcast networks, there are a lot more cable subscribers.
24 There's DBS, one or two operators as the case may be.
25 There are a lot of cable programming services.

1 There are a lot of minority programming. I'm an
2 inveterate channel flipper. There's such minorities as
3 Spanish speakers, people interested in black entertainment.
4 News junkies, sports fanatics. People who like watching
5 the Rockville City Council on sort of a regular basis. You
6 can get a lot of stuff that you couldn't get then.

7 And part of this, this is perhaps the last point,
8 part of that is in fact related to a point that Bruce made,
9 it's the point about Steiner. Steiner said some of the time
10 you really get more diversity, more variety, if somebody
11 controls more than one channel.

12 Now, we didn't actually -- Bruce said we didn't
13 actually adopt a rule to -- there was no really good way for
14 us to sort of take advantage of that insight, but in fact we
15 sort have. We let cable operators control the programming
16 on lots of channels. We let broadcasters own more than one
17 broadcast station in the same market.

18 I wouldn't say we did it because they all read and
19 believe Steiner, but in fact one of the justifications for
20 that or one of the potential benefits from that change in
21 policy is precisely the additional diversity in programming
22 that's made possible.

23 Again, you've got to take into account changed
24 conditions and you've got to do the analysis.

25 MR. SAPPINGTON: Thank you very much, Stan. I

1 think you've brought up issues directed both at Bob and at
2 Mark, so why don't we let the two of them if they have
3 anything to say just go on.

4 MR. COOPER: Let me address some of it directly
5 and some of it indirectly.

6 The question of the political economy is
7 interesting because in fact this idea of trying to find
8 what's behind the rules -- it actually varies from rule to
9 rule. For instance, in the cable horizontal cap, there's a
10 clear political economy there that Congress acted and they
11 are the chief political economists in our society, at least
12 that's the way our democracy works, and they expressed a
13 series of ideas, one of which was that we ought to have more
14 rigorous standards at the FCC than the antitrust division,
15 and I think each of the rules you will find a different
16 political economy in terms of the process. And on that
17 particular rule, the Congress is quite clear in the basis of
18 its reasoning, the decision to charge the FCC with that cap
19 and then whether or not the FCC did a good job is the second
20 question.

21 As I said, we are appealing the question of
22 whether the Court can read diversity out of the act the way
23 they did in that proceeding or ignore the fact that any
24 cable operator who wants to serve 100 percent of the country
25 can do so under this rule, a fact which the Court never even

1 noticed.

2 Second of all, the interesting thing is that we
3 hear about this tremendous amount of change and Stan
4 actually did it, but if you go back and read his sentence,
5 he said diversity and variety, two words that he put
6 together. And, in fact, when you look at this, what you
7 frequently find is we get an ounce of variety and we lose a
8 pound of diversity so that these two merging stations may
9 actually add a new entertainment program, but we lose an
10 entirely independent voice and everyone in that marketplace
11 loses that voice, even though a very small number of people
12 get a little bit more entertainment, perhaps not
13 information.

14 Two other points. The amount of change and 1975
15 is an interesting date. Change for change's sake needs to
16 be assessed. In 1975, when these rules were written, if you
17 look at the previous 25 years in media markets and ask
18 yourself how much change has taken place between 1950 and
19 1975, you will have discovered an immense amount of change.

20 TV was a fairly small player in 1950 and it was, of course,
21 the dominant medium in 1975.

22 And so the fact that an immense amount of change
23 took place was not a basis in and of itself for saying we
24 don't need some rules to govern this and there's been a
25 certain amount of change since 1975 to 2000, so change for

1 change's sake needs to be considered very carefully.

2 What we will do in our comments is we will look at
3 things per capita. We will look at the structure of the
4 population and ask, yes, there are more outlets, but there
5 are more people and more markets and the question is how do
6 they get served?

7 Finally, with respect to antitrust, and I guess
8 the dirty little secrets of antitrust are sneaking out, the
9 HHI is not only an arbitrary number, but its direct
10 relationship to anything else is also somewhat fuzzy. As
11 has been suggested that you can walk into the Justice
12 Department and argue that a higher level of concentration
13 will not lead to any negative impacts because HHI does not
14 look at the elasticities of demand, and you can come in and
15 argue for higher elasticities, of course, we wish we could
16 come in and argue that lower levels of concentration have
17 bigger impacts as perhaps in the electric utility industry
18 we have learned that the elasticities of supply and demand
19 are so low that even unconcentrated markets result in market
20 power.

21 And actually if you look at the FCC's analysis of
22 the cable industry, you find a very low relative to many
23 other consumer markets elasticity of demand. You do not
24 find a cross price elasticity with DBS which we heard about.
25 So that there is a good deal of empirical evidence and

1 that's the final point.

2 These rules were not adopted without examples
3 being offered of these kinds of outcomes. The commission
4 has complaints before it about anti-competitive behaviors.
5 The mergers that have gone forward have had conditions
6 placed upon them about anti-competitive deals between
7 vertically integrated programming entities.

8 The question then becomes whether or not the rules
9 have to be based upon statistical tendencies and modal
10 outcomes in the industry or a significant probability or
11 possibility that anti-competitive events will take place.
12 In this political economy, certainly under the horizontal
13 caps, the Congress asserted its conclusion that that
14 probability was sufficient that it wanted a rule.

15 Now, the Court has tried to replace that judgment
16 and we are litigating that, but in certain natural market
17 outcomes that are too concentrated, we simply are unwilling
18 to allow the agency to spend a lot of time chasing
19 anti-competitive behavior after the fact than take
20 prophylactic steps to prevent them before the fact.

21 Now, this is a philosophical difference about
22 which evidence the commission needs to look at. We believe
23 you can sustain these rules on the basis of that level of
24 evidence that identifies market outcomes that will be more
25 concentrated than we can tolerate because they result in

1 repeated examples of anti-competitive outcomes or outcomes
2 that diminish diversity, which is, of course, a very high
3 value in the statute.

4 MR. MAJURE: If I could just say a couple of
5 things?

6 I guess I have to defend or explain the dirty
7 little secret of the HHI. I didn't know it was a secret.

8 No, I mean, the big thing to bear in mind and the
9 thing that often gets lost but what I think everybody up
10 here is saying is that those HHI guidelines, that whole
11 merger guideline, the whole guidelines analysis is put forth
12 as a screening device. It is in essence a fairly easily
13 rebuttable presumption, the safe harbor -- at least in one
14 direction.

15 And I think, Mark, I think you have been in to
16 talk about electricity markets.

17 I mean, you know, I actually would personally say
18 that's an example of a situation where somebody in a fairly
19 unconcentrated market changes in ownership could make big
20 differences in what the regulatory feasibility is just
21 because of the way a lot of those electricity auction
22 markets work. But that's not for here.

23 The main thing is that nobody should take those
24 1800 or delta numbers which I can't even quote as meaning
25 anything in an absolute sense. We put those forward in

1 essence as an easily rebutted presumption and the right
2 analysis that we do, the analysis that we do is to look at
3 the real factors of the particular market.

4 And I'm glad to hear Stan saying that we seem to
5 be a doing a decent job of that, at least. I think, you
6 know, Stan's saying that we -- he sees a possibility of harm
7 from some of these vertical things. I think that's the
8 right way to take it, is that there is an analysis to be
9 done here. And the rules, whatever rules are put in place,
10 whether they're case by case or a modifying rule or
11 whatever, yes, it ought to take into account the fact that
12 you might learn something over time. But at the same time,
13 it might ought to take into account the fact that at any
14 given point in time you might not know something.

15 So I've heard several references to Steiner and
16 the various people who have come after looking at this
17 question of whether a monopolist or a concentrated industry
18 would produce more or less diversity than an unconcentrated
19 industry, whether they would be more willing to be unpopular
20 on at least one channel, I think that is an important
21 question to exactly what rule you have, but it's worth
22 noting that that's a question that depending on which way
23 the answer is going to go you might be in favor of some of
24 these ownership limits and against some of the other ones.
25 And there's a degree to which you have to kind of make a

1 stab at this and just take -- even if I don't know exactly
2 which one on of these outcomes is right, I can't just say
3 that because I don't know I'm neither going to try and
4 preserve things like the program access rules and I'm not
5 going to try and preserve multiple channels in the same
6 market. I have to make a guess of which one of those is
7 right and base it on as much information as I can, but
8 that's going to lead me to cut one way on one set of rules
9 and maybe a different way on a different set of rules.

10 MR. SAPPINGTON: Thank you, Bob.

11 Well, we're certainly having some healthy
12 disagreement on these important issues. I think there's
13 also one point of agreement, which is that the what the
14 commission needs to do is have a careful study of the
15 industry in order to make sound policy.

16 What I'd like to ask each of the panelists to do
17 is say if you were in charge of this study, what is the
18 first question you would ask and what is the set of data you
19 would go out to try to collect to answer this question?

20 Anyone who would like to take the first shot at
21 that is welcome.

22 MR. COOPER: I'll offer one thing and it is -- you
23 have described here the process of how the agency gathers
24 information and the way the agency gathers information is it
25 tells the industry to throw information at it and tries to

1 digest it and then people tend to throw criticism of that
2 back. It may be time -- and the agency has begun to do
3 that, certainly in the cable in looking at price and
4 elasticities demand in cable, it may time for the agency to
5 gather its own data, to commission its own acquisition of
6 data rather than relying on industry data.

7 And, frankly, I would at a much more granular
8 level than, boy, there's a lot more outlets out there, the
9 question is are there voices out there, how do they reach
10 people, remembering that the weight of each voice is not
11 equal and we have filed comments in a variety of proceedings
12 where sometimes you count voices and sometimes you look at
13 market shares.

14 The issue here is, as I have tried to lay out in
15 the beginning, the question of how we promote, ensure not
16 only the availability, but the ability to be heard and to
17 encourage discourse. If we end up with an industry
18 structure where certain voices are very loud and booming and
19 certain voices are very faint, we will have lost a
20 significant amount. So the question becomes who listens?
21 Why are some voices so loud and some voices so faint?

22 And in the end, rather than regulate the approach
23 to that, we think structure matters and asking those
24 questions of how many independent voices there are, on which
25 media, what does the impact of each media have, rather than

1 simply assuming they're all equal combining them, leads, as
2 we have said -- we have filed today the initial analysis we
3 did of those markets to suggest that they are very, very
4 distinct, and from the point of view of civic discourse,
5 they have a dramatically different impact. And so the fact
6 that you have Internet radio does not offset the fact that
7 you do not have a lot of diversity in a different medium.

8 MR. BESEN: I think you have a different answer
9 depending on sort of whether you're talking about the
10 horizontal local market rules or the national market rules.

11 One thing that is very fortunate about this industry is
12 that the world has essentially generated a very nice set of
13 natural experiments. We have several hundred markets with
14 widely diverse market structures. Potentially, at least,
15 lots of outcomes to observe.

16 Some involve data that are routinely collected and
17 published by market research firms or other kinds of groups.

18 Some would require evidence to be gathered by the
19 commission. That's what we did at the network inquiry. But
20 it's in fact quite feasible for the commission to try to
21 relate local market structures to outcomes. There is a lot
22 of data. This is in fact a particularly good industry for
23 one to undertake that kind of analysis.

24 I think it's done much, much -- it's not done
25 nearly often enough and for many of the commission's rules

1 that kind of analysis, I think, would yield big dividends.
2 In particular, it might well permit the commission to
3 identify with some rigor where the appropriate boundaries
4 are between permissible and impermissible transactions.

5 The monopsony and vertical stuff is sort of
6 inherently more complicated. It doesn't quite have the
7 nice -- sort of the kind of data structure properties that
8 local market competition analysis does, but you can still do
9 various things.

10 Bruce already alluded to one example, which is
11 there are contentions about various kinds of behavior
12 involving favoritism. In fact, there have been various
13 attempts to study those, although I think probably not by
14 the commission actually. Again, it's a case of the
15 commission sort of digesting what other people have done.
16 But if in fact foreclosures of this sort really is a
17 significant problem, one ought to be able to identify that
18 in the data.

19 The other thing I think this sort of relates to
20 something that Bob said before, it goes back to some
21 question of the incentives. It ought to be possible, and
22 with I think some difficulty, but with some degree of rigor,
23 to try to identify whether in fact parties do given
24 underlying elasticities, given market shares, margins and
25 the like, to in fact determine whether or not various types

1 of foreclosure which are theoretically possible in fact are
2 consistent with the underlying incentives of those firms.

3 The department actually does this, I know other
4 people do it, there's no reason why the commission couldn't.

5 It's a harder piece of analysis, but I think that's in fact
6 what the Court really asked the commission to do in Turner
7 II.

8 MR. SAPPINGTON: Thank you, Stan.

9 Bob or Bruce, did you want to try to address that
10 unfair question?

11 MR. OWEN: I will. Yes. I agree with what Stan
12 just said, but in terms of progress to be made, it seems
13 absolutely clear to me that the most progress to be made by
14 the application of empirical techniques and some rigorous
15 thinking is in the area of the concerns raised by Mark
16 Cooper. Certainly non-economists take these issues serious.

17 I mean, I think Mark is completely wrong, for
18 example, when he talks about outcomes as indicative of
19 freedom of expression as opposed to the notion of
20 opportunities to speak. I think the line that you will end
21 up walking along if you take that seriously and try and make
22 it rigorous is entry barriers and finding a metric of entry
23 barriers that makes an operational rule or an operational
24 test of a rule. We don't really have that in economics. We
25 are way far away from the same level of sophistication with

1 respect to entry barriers that we are in the area of
2 concentration and its effects.

3 I think that's really the biggest challenge and
4 it's the last remaining subjective area. It's the last area
5 where at least in principle nobody has come up with an
6 accepted schedule of accepted rigorous approaches to the
7 underlying policy problem. If the commission could do that,
8 it really would be a major achievement.

9 MR. MAJURE: And I would just say that I would
10 agree with Stan, that the data that I would want to collect
11 is definitely the data about the local markets and the
12 diversity, using the diversity you have there for a source
13 of information.

14 I can't really tell you what the first question
15 I'd want to answer is because there's really -- you know,
16 there's at least three different types of markets involved
17 here. You have the advertising competition and you have the
18 content markets and you also have this very difficult to pin
19 down issue of competition and its relationship to kind of
20 this quality variable of diversity and even there, even just
21 at the level of diversity not in a political sense, it's
22 difficult to get a firm prediction out of the theory to even
23 test.

24 So I would say that I would look through that
25 local market experience and I think you can even get

1 something on the vertical relationships, vertical incentive
2 there because there is local content and you can look at
3 what has happened in the local -- the relationship between
4 local structure and local content.

5 MR. SAPPINGTON: Thank you very much.

6 Were there other questions that people wanted to
7 pose from our afternoon panel or from our other FCC people
8 or should I continue firing these unfair questions at
9 people?

10 MR. GOMERY: Could I say one thing?

11 I'd just like to -- I think if there is a
12 commonality here, which I would like to support, and that is
13 not just what Stan suggested in terms of local experiments,
14 but a consistent, predictable, long-term set of data
15 collection as a task by the commission I think would be
16 very, very important.

17 MR. BESEN: One of the really curious things that
18 a while back in the new deregulation the commission stopped
19 collecting.

20 MR. GOMERY: Thank you. I appreciate the point.
21 He's making it for me. And there's many other examples as
22 well. And so what you get is a discontinuous set of data
23 about variables that you would like to see and how they
24 operate and I'm not sure I agree with Mark's point of
25 comparing 1950 and 1975 and 1975 and today and kind of

1 looking back and trying to figure out the past, but you
2 can't do that because the data that existed, if you look --
3 I mean, one difference, just study the size of an annual
4 report of the FCC every year as it's changed over time and
5 you get exactly what Stan's predicted, as deregulation comes
6 in, the industry is generated by people who are making
7 arguments towards the commission in their point of view.

8 So I would make a recommendation that if something
9 comes out of all of this it would be a continuous set of
10 data that -- as a kind of defract economist, we have macro
11 economics from 1929 on, that is we know GDP and GNP, but
12 before that we don't have it and so all analysis starts
13 then. Gee, surprise. And I think we really need it in this
14 industry and I don't think we can rely because of industry
15 changes on the industry generating itself in a continuous
16 manner.

17 MR. SAPPINGTON: Thank you, Doug.

18 Changing gears a little bit, and I think this is
19 an issue that Bruce touched on in his talk, what we've
20 identified here is some of the potential problems that the
21 commission rules might help to address and we've so far,
22 though, focused on ownership rules and cross-ownership
23 restrictions as the possible solution to these problems.

24 I was just wondering if people had thoughts on
25 other potential remedies to these problems that might do

1 better than or work in conjunction with ownership rules or
2 cross-ownership restrictions.

3 MR. COOPER: Our central concern in this
4 particular industry is that when you -- well, as a matter of
5 general principle, certainly antitrust prefers structure to
6 conduct remedies. They're more difficult to administer.
7 You get constant complaints about micro managing the
8 industry and so as a general proposition, structure is
9 generally preferred to conduct.

10 And when you get into areas that deal with the
11 First Amendment, structure is immeasurably preferable to
12 content. You need to stay as far away from content
13 regulation as you can. We frequently hear now as under the
14 30 percent cap that that is somehow infringing the content
15 and, in fact, it does not.

16 So from our point of view, the difficulty here is
17 that anything but structure gets you into very, very
18 dangerous waters and so we outlined in our statement the
19 idea that structure should promote the opportunity and the
20 diversity we want preferable to content and conduct types of
21 regulation.

22 MR. SAPPINGTON: Anyone else have any thoughts on
23 rules other than ownership restrictions?

24 MR. OWEN: Well, I think implicit in what Stan and
25 I have been saying is that an approach like the antitrust

1 division's approach to mergers might very well be useful, if
2 that's what you mean by alternatives to ownership rules when
3 it comes to reviewing transactions.

4 Unfortunately, that really doesn't address the
5 issue of natural market outcomes that are achieved naturally
6 as opposed to through mergers. And I suppose that if there
7 is a problem there, that is what you need to address with
8 ownership rules and caps and so on. I just don't know that
9 there is a problem these days that needs to be solved.
10 That's what you need evidence about before you can do it.

11 MR. BESEN: And actually Bruce alluded to a
12 problem about sort of efficiencies related to one of the
13 rules we're talking about, we're talking about the program
14 access rule, I presume that's an alternative that you're
15 describing. And I think we've talked a lot here about sort
16 of potentially anti-competitive effects. I think Bruce did
17 say a few words about efficiency. I think it's worth
18 emphasizing.

19 You have this question of somehow maintaining
20 incentives for the creation of the underlying product.
21 Everybody wants the product when the risks have been
22 incurred and the costs have taken place and you're free to
23 have 100 percent of the losses for all the unsuccessful
24 ventures that you back, but any ones that are successful
25 you're expected to share them. Well, that produces a kind

1 of skewed outcome.

2 To the degree that you in fact limit ownership and
3 then sort of compound that by requiring in fact your
4 programming to be offered to other people, you do in fact
5 have this incentive effect.

6 So if the commission is going to do an appropriate
7 balancing when it considers alternatives like the access
8 rules, it has to take into account both the potential
9 competitive concerns that Bob addressed, but also the fact
10 that these rules may well have the effect of limiting the
11 creation of the product that you're in fact trying to
12 support in the first place.

13 MR. MAJURE: I would echo Mark and I think pretty
14 much everybody here in saying that while you may have to
15 have some conduct regulation as it were you want to do as
16 little of that as possible or make it as simple as possible
17 because that's the place where it's very easy to get into
18 the really kind of difficult to unwind effects that Stan's
19 talking about.

20 I would agree that antitrust has a strong
21 preference for structure over conduct and I think it's well
22 justified, even here.

23 MR. BIRD: I'd like to ask whether there are
24 particular characteristics of the industries, and I know
25 that the media are not one industry, they are many, which

1 might lend themselves to a rule structure as opposed to a
2 case-by-case structure or vice versa more than others.

3 Some that have been raised in various proceedings
4 here, for instance, are where there has been an industry
5 that for whatever reason has been highly concentrated and
6 then Congress has given us a mandate to deconcentrate it.
7 Is that the kind of a structure where rules might be more
8 appropriate than they would be in other types of industries?

9 Another possibility would be where one of the
10 inputs is restricted, such as when spectrum is allocated to
11 radio and television stations.

12 (Pause.)

13 MR. BIRD: Do you want me to rephrase the
14 question?

15 MR. MAJURE: Yes, please. Well, I mean, what
16 I think the question is is whether there's anything that
17 just in a general sense you would say is the characteristic
18 of an industry that's kind of prone to having rules of
19 thumb or whatever versus having a case-by-case analysis.
20 And the one thing that jumps out at me is it ought to be an
21 industry where you have -- it ought to be an industry where
22 you have seen a lot of either concentration or deals or
23 whatever that are in the range you're talking about and you
24 have some basis for saying I kind of know what's going to
25 happen here.

1 I find the information problem that Stan
2 identified to be probably the most important aspect of
3 whether you're going to set the rule in the right place or
4 not. And unless you can find something that looks very
5 similar or has a very close parallel, the chance is you are
6 going to make a mistake in setting a blanket per se type of
7 rule seem greatest when you have the least experience. When
8 you're only going to see one merger that ever crosses this
9 cap, it's very hard to know exactly what's going to happen.

10 But if it's the forty-second merger you've seen in this
11 industry, you might have much better ex ante, a better prior
12 of what is going to happen.

13 MR. COOPER: It's absolutely clear that there is
14 one case where we prefer rules to structural limits and
15 that's where we have a natural monopoly. Certainly as a
16 society when we see something that is going to end up in a
17 natural monopoly and we are concerned about the abuse of
18 market power in the national monopoly, we do tend to
19 regulate it.

20 Obviously we have been moving in the opposite
21 direction for some time, but if you identify situations in
22 which you do not expect what I like to atomistic
23 competition, although almost no one supports atomistic
24 competition any more, where you do not believe that the
25 market will support a sufficient number of rivals to produce

1 vigorous competition. And I always remind people in my
2 view, two is not enough.

3 The merger guidelines suggest that we need six, at
4 least six is where we can start to be comfortable and ten is
5 where we can really feel comfortable. But in areas where we
6 see a likelihood of very small numbers, monopolies and
7 duopolies, then clearly our society has been much more
8 willing to intervene with rules rather than to break out
9 those natural monopolies or duopolies.

10 MR. BESEN: I think the danger in some sense is
11 less in having a rule than the kind of rule one has. It
12 might be the case, I wouldn't argue this for a fact, that
13 the rules were about right given the market structure in
14 this industry in 1975. Maybe that's right.

15 What is sort of unforgivable is to the extent that
16 a rules stays in place for a long time despite the fact that
17 not a lot happens and you can end up with really quite
18 inefficient outcomes because you've created artificial
19 constraints in terms of the kinds of firms that could be
20 organized. And a lot of these rules have just been around
21 for a long time and I would hate to have them replaced by
22 another set of sort of equally fixed rules that don't adapt
23 to changing circumstances in the future as well.

24 MR. OWEN: Let me just expand on that a little
25 bit. There are rules and there are rules. There are rules

1 that say you can only own one station of a given modulation
2 type in a market and there are rules that say when it comes
3 to deciding about transactions, mergers, for example, the
4 rule is that you can't exceed a given HHI in a properly
5 defined relevant market. That's a rule that contains within
6 it quite a lot of flexibility as conditions change. It
7 isn't subject to the same difficulties that Stan just
8 described.

9 The other thing that troubles me a little bit
10 about the question or the issues raised by the question is
11 we keep talking implicitly as if everything was about merger
12 analysis. There's transaction, there's case-by-case
13 analysis, absolute limits versus mergers. You know, a lot
14 of things can lead to concentration above whatever the
15 appropriate policy standard is other than mergers like
16 natural growth or anti-competitive practices.

17 What does it mean to have equitable adjustment
18 rule versus case-by-case analysis, for example, in the
19 vertical area that we have discussed? What is case-by-case
20 analysis in the vertical area? Acting on complaints of
21 discrimination? Is it the kind of case-by-case analysis
22 that actually takes place in Section 2 cases?

23 That's a good deal less clear cut than the kind of
24 transaction-related rule that we have been discussing.

25 MR. COOPER: We participated in a variety of ways

1 in the Microsoft case and I have an article in which I
2 declare that we believe in a rule of reason as long as we
3 have reasonable rules. And I would suggest that I have
4 given you an interesting example and I have two more now.

5 When a rule is based on a presumption about the
6 nature of behavior, I would look at the kinds of activities
7 that are allowed and see whether or not they take place, so
8 I made the point that any of these cable operators who
9 complain about being constrained by the 30 percent cap could
10 have gone out and over built people and got to 100. That
11 suggests to me that they are seeking to leverage their
12 market power in the core area.

13 I believe it's the case that you can avoid the
14 program access rules if you're not vertically integrated. I
15 believe and the other example I would like to give is all
16 the Baby Bells were allowed to enter the long distance
17 business outside their service territories and, boy, they
18 did not put a lot of effort into competing fairly for long
19 distance on the other side of the country; rather, they
20 complained and moaned and pushed to do it where they had
21 market power to leverage.

22 And so one of the interesting things as a simple
23 proposition is give people the flexibility that they don't
24 ask for, but that's the best test of whether or not they're
25 really willing to go out and compete.

1 So I would suggest that the absence of all this
2 competitive behavior where it is allowed is a good indicator
3 that the rule was getting at the problem it had in mind, the
4 leveraging of those core sources of market power.

5 MR. SAPPINGTON: One other added benefit of your
6 proposal is that there will not be too many petitions to the
7 commission.

8 Were there other questions that our afternoon
9 panelists wanted to raise or bring up?

10 MR. WALDFOGEL: I wanted to ask a question about
11 what might be the difference or perhaps what should be the
12 difference between FCC scrutiny of things like mergers and
13 DOJ scrutiny and this is maybe for Bob, I think, because he
14 said -- I believe he said either that there was no
15 difference or should be no difference.

16 You can correct me if I'm wrong, but, for example,
17 things like the non-paying consumers, that is to say the
18 listeners to radio, are they explicitly taken into account
19 by the DOJ? And, if not, should they be by the FCC?

20 And, for that matter, if there are other kinds of
21 outcomes that might be affected by the media, are they being
22 taken into account by DOJ? And, if not, might they be taken
23 into account by other agencies?

24 MR. MAJURE: I might need to get Stan to restate
25 the question for me, but --

1 MR. COOPER: What do you take into account when
2 you consider radio mergers? What criterion do you apply?

3 MR. WALDFOGEL: I mean, after all, the efficiency
4 of broadcasting requires that a service with benefit in
5 excess of cost be provided and the beneficiaries are the
6 listeners or viewers as well as the advertisers. And the
7 market, of course, directly the sellers take into account
8 revenue from advertisers.

9 My understanding was the DOJ had explicit criteria
10 for worrying about what happens to the paid prices, but
11 there are other users whose benefits full efficiency
12 requires taking into account and I wonder does DOJ think
13 about those and maybe you shouldn't, maybe you should just
14 worry about advertisers there, but fully efficiency requires
15 worrying about both. Should some other agency worry about
16 those other beneficiaries?

17 MR. MAJURE: Well, actually, put that way, I think
18 the answer is that we do consider the viewers or the
19 listeners, the audience competition because I don't think
20 you can really do just an advertising competition and
21 pretend that that's all that a station is going to be
22 worried about, but one of the differences that we haven't
23 talked about here at all that does become relevant in this
24 kind of analysis is the burden of proof.

25 You know, we have the burden of proof when we go

1 to challenge a transaction or code of conduct or whatever
2 and the FCC, I guess, as it modifies its rules can either
3 choose to give itself the burden of proof or not.

4 But, you know, quality competition or the
5 competition for viewers in this particular case is a
6 difficult thing to -- it's a more difficult thing to wrap a
7 case around, to make clearly understandable to a judge who
8 has no experience in this industry and so it's definitely in
9 the cases we've filed not the first count. But if I
10 remember correctly, the Long Island radio case we did have a
11 count in about competition for listeners.

12 MR. COOPER: Bruce reduced the public interest to
13 efficiency. The Communications Act does not. And so the
14 public interest is fuzzy, sometimes it's very specific as
15 under the '92 amendment, so it would be my view that merger
16 review under the public interest standard is broader than
17 antitrust, although it is quite clear that the Department of
18 Justice is perfectly capable of bringing cases on issues
19 other than price.

20 In theory, one of the biggest cases of the 21st
21 century is the Microsoft case and it was not essentially
22 concerned about price, it was concerned about qualitative
23 things. But in our view, the Communications Act has a
24 broader charge to the commission in its merger review.

25 MR. OWEN: If I can just add a note about the

1 Justice Department approach to media mergers, one of the
2 first cases I ever worked on at the Justice Department was a
3 magazine merger and actually magazines charge people, or at
4 least some of them do, and the attorneys who were doing the
5 investigation were concentrating on advertising markets and
6 I said, well, why don't we look at readers as well and they
7 said, oh, that's too hard. We've learned through experience
8 that it's just easier to focus on advertisers.

9 And then the same issue came up with a newspaper
10 merger. I asked about subscription prices and newsstand
11 prices and so on. The response was the only reason that
12 newspapers charge subscribers for newspapers is to prove to
13 the advertisers that the readers really want it and they
14 would charge nothing if they could. So I sort of gave up on
15 pursuing that. But the real reason I gave up was not
16 because these seemed to be arguments that were so compelling
17 that they couldn't be overcome by some sort of logical
18 response, but rather because of the point that Bob made
19 earlier, namely, there are theories about content. The
20 effects of different competitive structures on the
21 efficiency of content aren't terribly useful to us in the
22 same way that predictions about the effects of concentration
23 on price are useful.

24 MR. GOMERY: But doesn't that exactly demonstrate
25 the case in the sense that the Congress if they've ever

1 expressed anything -- and the newspaper industry exactly has
2 given a presumed set of exceptions to encourage what they
3 think will be a potentially better outcome in the newspaper
4 industry and rather than having quote natural selection to a
5 single newspaper in every community has said that they will
6 do all these things, et cetera, about newspapers.

7 MR. OWEN: You're talking about the Newspaper
8 Preservation Act?

9 MR. GOMERY: Yes.

10 MR. OWEN: Well --

11 MR. GOMERY: I'm not saying I agree with it, but
12 I'm saying that Congress has expressed it quite clearly and
13 has not made an economic decision about it, has made a
14 decision based on other criteria. I don't think an
15 economist using a neoclassical model would say that makes
16 any sense, but I think that Congress has said repeatedly for
17 30 years that to them it does make sense.

18 MR. BESEN: I'm really interested in what the
19 second panel is going to say on this subject because I've
20 sort of been around people who have talked about diversity
21 for a really long time --

22 I've been around for a long time listening to
23 people to talk about this. It's really, really, really hard
24 to be rigorous about it. Maybe we're just guilty of looking
25 where the light is and that's possible, but I've been around

1 some really pretty smart people who've tried hard to think
2 about this. One of the smartest people I know is Tom
3 Krattenmaker. He was on the network inquiry with me, we let
4 him think about diversity all he liked. He made a little --
5 he made very little progress, I think, no knock on Tom. And
6 we all ended doing the stuff that we could do because that's
7 what people do.

8 If one is going to talk about diversity, it seems
9 to me one has some burden to try to introduce an element of
10 rigor into this.

11 MR. GOMERY: Why is rigor the only criteria?

12 MR. BESEN: Because we don't know how to judge any
13 other way. Then it's just your vague opinion against my
14 vague opinion and how's the commission or anybody else going
15 to judge?

16 MR. GOMERY: Rigor is based on a certain set of
17 analysis of the world about how economists break down the
18 world and the fact is if you -- can you give me a second
19 rather than squint your face?

20 If you look at universities, there in fact are a
21 diversity -- a wide range of views of how to understand the
22 world. You can argue that neoclassical economics is
23 superior to anthropology or superior to sociology or
24 superior to something else by certain criteria, but that
25 doesn't make it the only appropriate and by its criterion

1 rigor the only way to analyze the world.

2 MR. BESEN: I didn't say that, to be clear.

3 Economics is rigorous. I would be delighted with any other
4 rigorous system that would shed light on this question.

5 MR. GOMERY: But you didn't answer the question of
6 why rigor is the primary criteria and, as best I gather, the
7 only criteria.

8 MR. BESEN: I'm sorry, the only criterion?

9 MR. GOMERY: You could say it's not rigorous,
10 okay, I agree with you, but why is rigor the only criteria?

11 MR. BESEN: Well, I guess I just don't know how to
12 deal with sort of fuzzy stuff.

13 MR. SAPPINGTON: Well, Doug, did you have any
14 follow-up to that?

15 MR. GOMERY: Is there a way --

16 (Audience comments.)

17 MR. GOMERY: Maybe we should just do that, then.
18 We'll leave that issue for the next panel.

19 MR. SAPPINGTON: Jonathan?

20 MR. LEVY: I wonder if I could just try re-asking
21 David's last question with a little bit less finesse than he
22 employed.

23 He asked whether there were some other policy
24 tools besides ownership regulation that might be usefully
25 considered to accomplish some of the same goals that we've

1 been talking about and he elicited some comments on the
2 subject of program access regulations, but there's another
3 alternative that I'd like to toss out briefly for comment,
4 particularly in light of what Bruce Owen was saying about
5 diversity and the necessity for some kind of a
6 consideration, a principled or organized consideration of
7 barriers to entry.

8 And what I have in mind are cable leased access
9 regulations. There are actually other regulations that
10 mandate access to distribution capacity, of DBS, for
11 example, but just to keep it sort of, you know, short if not
12 sweet, I wonder if people would be willing to say something
13 about the cable leased access rates.

14 And I know this is one that Stan has -- there's
15 another old Rand report on this subject that Stan could dust
16 off at a minimum and also it's clear that he has an interest
17 in the Rockville City Council which is not commercial leased
18 access.

19 MR. BESEN: Actually, there are more things I've
20 done subsequently in filings to the commission. I think
21 it's sort of basically back to the question that Bruce
22 raised earlier, which is there are costs that are incurred
23 by the cable operator that in a sense others would like to
24 free ride on. Now, you may not like that term, but to some
25 degree that's what's going on.

1 In any event, you face a remarkably difficult sort
2 of -- kind of balancing test because it's not enough simply
3 to mandate access, as you will, you want to mandate the
4 terms of access and so that turns out to be something that's
5 sort of far from straightforward. And you sort of again are
6 kind of trying to balance these whatever benefits you're
7 trying to achieve by promoting access without at the same
8 time adversely affecting the incentives of cable operators
9 to build systems and upgrade them and the like.

10 The commission, as you probably know better than
11 I, sort of muddled through on this score, but I think it
12 would be fair to say, not to use a dirty word here, that the
13 commission has never sort of rigorously supported the set of
14 rules that it ended up adopting.

15 MR. OWEN: This raises the standard essential
16 facilities doctrine issues. In an antitrust context, that's
17 the equivalent of the regulatory question that you're
18 asking: when is it appropriate to take the investment of a
19 firm and open it up to use by its rivals in a related
20 market?

21 And, as Stan pointed out, there are some serious
22 incentive problems associated with doing that opening up, ex
23 ante incentive problems, if the rule is in place. And
24 historically in antitrust, we have employed the essential
25 facilities doctrine very sparingly. It's really at least

1 supposedly the most extreme cases like skiing in Aspen where
2 we go to these extremes. Sometimes the Supreme Court goes
3 off the rails.

4 I guess what this suggests is that the courts at
5 least have been without exception reluctant to take the
6 risks associated with distorting investment incentives more
7 or less across the board in order to achieve the benefits of
8 an open access rule or an access rule and the regulation
9 that necessarily goes with it if the access is going to be
10 meaningful.

11 I think that one lesson the commission might take
12 from this is that they ought to be very careful before
13 imposing a rule like that, at least a serious rule, as
14 opposed to the rules that you have in this area.

15 MR. COOPER: Well, certainly the notion of leased
16 access is one that make sense to us. We always hear about
17 the serious disincentives and so forth but in the end we
18 frequently see the facilities be deployed. The important
19 thing for us, and we have stressed this, is not to think
20 that one bit of access in one medium solves the problem and
21 that's sort of the thing we've been stressing here, is that
22 the need for additional rules in additional media markets is
23 important.

24 So whether it's a structural rule in one market
25 and a regulation in another market where we do observe a

1 monopoly or a duopoly, there are a variety of a set of rules
2 out there or instruments out there and they ought to be
3 applied across the media markets, not assuming that, well,
4 you've got access here, you don't need it any place else.
5 The impact of that medium is different than the other media.

6 This question of the incentives, I don't think the
7 commission has come close in those rules to undermining
8 incentives if you look at the behaviors across this
9 industry. The '92 act has allowed both the satellite
10 industry to come into existence and the cable industry to
11 expand and so the lack of incentives, the assault on the
12 incentives of the cable operators, whether it's from program
13 access or leased access or public interest access, clearly
14 has not provided the sort of disincentive that you hear the
15 industry moaning and groaning about.

16 MR. FERREE: Dave and Jim, I'm afraid that's going
17 to have to be the last word for the first panel.

18 I want to remind the audience we are going to
19 reconvene at 2:30 for the second panel. And by the way, the
20 materials from this roundtable will be on the FCC website at
21 www.fcc.gov/ownership.

22 We'll see you at 2:30.

23 (A brief recess was taken.)

24 MR. FERREE: Thank you. We are prepared to begin
25 the second panel. I was reminded once again just to give

1 you the website address where these materials will be
2 posted. That is at www.fcc.gov/ownership.

3 Before we begin the second panel, Commissioners
4 Abernathy and Copps have kindly agreed to come down and say
5 a few words about the roundtable, so I will turn it over to
6 Commissioner Abernathy.

7 Thank you.

8 MS. ABERNATHY: Hi, guys. Thanks, Ken.

9 I am very, very pleased that you are spending so
10 much time on this issue. It is very, very timely as we are
11 struggling with the role of media ownership policies and
12 promoting diversity and localism and competition and what we
13 really need is we need a lot more and better information
14 just about where the market is going, how it's developing,
15 what are the competitive drivers, how are consumers
16 accepting and taking these technologies.

17 So the roundtable format from my perspective is
18 perfect to really explore all of these questions and address
19 these issues and ensure that we develop the kind of record
20 that leads to a rational decision and appropriate decision
21 that best serves the consumers. And I am confident based on
22 what I have heard that you guys are getting into the depth,
23 the nitty gritty details of these issues and that's perfect.

24 So thanks so much for coming today. Your thoughts
25 and your perspectives are critical to the ultimate decisions

1 that we'll be making and I know as busy as everyone is that
2 this takes a good chunk out of your day, but we do
3 appreciate your time and your effort as well as the folks
4 from the FCC who are also incredibly busy and are taking
5 their time to work on this.

6 So thank you very much and I look forward to
7 reading the results and reading a summary of what happens
8 today.

9 Thank you.

10 (Applause.)

11 MR. FERREE: Thank you, Commissioner Abernathy.

12 I have to raise this microphone after you speak, but
13 Commissioner Copps is going to follow me and I know he needs
14 the microphone raised as well.

15 Commissioner Copps has also agreed to come down
16 and say a few words before this panel.

17 Commissioner Copps?

18 MR. COPPS: Thank you, sir. I don't know if I
19 need it quite that tall.

20 Good afternoon. I am delighted to welcome you
21 here and to witness some of the Roundtable on Ownership,
22 Diversity and Localism. Diversity -- I don't know how we're
23 doing on that.

24 These are important questions that you all are
25 dealing with. They go to the fundamentals of what the

1 Federal Communications Commission does. They take me, for
2 one, to my primary obligation as a member of this
3 commission, which is the public interest. We need to get a
4 better fix on these questions, the realities of competition,
5 the realities of voices and choices and diversity and we
6 need to spend some time on that and we need to spend some
7 money on that.

8 I was delighted to learn this morning about the
9 announcement of the media ownership working group. I think
10 that's a good idea. I do not know a lot yet about the exact
11 plans or parameters that that group is going to be following
12 as it goes forward, but I do think it needs two things to be
13 a success. One of those is resources.

14 It's not going to be a success unless the
15 commission puts adequate resources into finding out the
16 answers to some of these questions that you're discussing
17 here today and that doesn't mean that I expect that at the
18 end of the day all of a sudden we're going to have this
19 wonderful database that everybody's vote is automatically
20 taken to a certain conclusion.

21 We may still have divergences in how we vote but
22 everybody on this commission will have to hinge their
23 arguments or rest their arguments on a little more solid
24 foundation than is currently the situation with the data we
25 have. It's not that the data is poor, it's just that we

1 need more of it.

2 The second thing this working group needs is
3 stakeholder input and that's why I'm delighted to see so
4 many folks here today. I hope it will really reach out to
5 our traditional stakeholders and to non-traditional
6 stakeholders. Every American is a stakeholder in the great
7 communications revolution of our time and we need to be
8 soliciting input and eliciting input from as many folks, as
9 many stakeholders, as many viewpoints as possible, so I
10 applaud you for getting us started down that road today. I
11 am very much looking forward to your discussion.

12 I join Kathleen in thanking each of you for taking
13 time from your very busy schedules to be with us, to share
14 your perspective and your insights and your judgment and we
15 are very much in your debt for doing so.

16 Thank you.

17 (Applause.)

18 MR. FERREE: Thank you, Commissioner Cops. I
19 know you've been a strong advocate and a strong proponent of
20 gathering the best information possible in this area and
21 this roundtable is intended to be a step in that direction.

22 If we could just get that first panel to tell us
23 what data exactly it is we're supposed to be looking for out
24 there, that would be terrifically helpful.

25 The second panel today will address the question

1 of ownership limits, diversity and localism and the
2 moderators for this panel are Jonathan Levy from the FCC's
3 Office of Plans and Policy and Joel Rabinovitz in the
4 General Counsel's office.

5 MR. LEVY: Thanks very much, Ken.

6 Welcome to the session that's dealing with the
7 really hard questions. We have three distinguished
8 panelists.

9 On my left here, Douglas Gomery is a professor of
10 media economics and history at the University of Maryland,
11 author of 11 books, one of which is particularly relevant to
12 today's discussion, Who Owns the Media?, jointly produced
13 with Ben Compaine.

14 On my immediate right, Philip Napoli is an
15 assistant professor of communications and media management
16 in the Graduate School of Business Administration at Fordham
17 University and his research focuses primarily on media
18 institutions and media policy and he is also the author of a
19 few books, including Foundations of Communications Policy:
20 Principles and Process in the Regulation of Electronic
21 Media.

22 Next to him is Joel Waldfogel, a professor of
23 business and public policy at the Wharton School of the
24 University of Pennsylvania, and Joel is also a faculty
25 research fellow at the National Bureau of Economic Research.

1 He is the author of several important journal articles
2 relating to media and diversity.

3 I would like to mention at the outset here that at
4 the back of the room there are packets containing somewhat
5 more detailed biographies of our speakers as well as copies
6 of their short prepared statements, so in addition to the
7 web address that Ken Ferree gave you, there's also some hard
8 copies back there.

9 As with the first panel, we sent our panelists in
10 this session two multi-part questions that we asked them to
11 think about and try to address in today's discussion and let
12 me just briefly summarize those before we begin the
13 panelists' presentations.

14 The commission has long been committed to
15 promoting diversity. Historically, the commission has
16 distinguished among source outlet and viewpoint diversity.
17 That's sort of the set up proposition and then there are a
18 series of related questions, including what precisely should
19 be the commission's goals with regard to diversity; in what
20 ways, if any, does outlet, that is to ownership diversity,
21 ensure the type of diversity that the commission should be
22 promoting; and then we have a few other questions, including
23 the now standard plea for being pointed to empirical to
24 support the conclusions in this area.

25 The second question has to do with promoting

1 localism. Is localism properly interpreted as local
2 production of content, local selection of content, the
3 production of information about local affairs or something
4 else? And then what does the empirical evidence indicate
5 about the relationship between local ownership of media and
6 the extent to which content is local, content diversity and
7 quality and also viewpoint diversity?

8 As with the first panel, we will be limiting
9 presentations to 20 minutes and I think we have a timekeeper
10 over here somewhere who will be monitoring that.

11 So without further ado, I will turn it over to
12 Douglas.

13 MR. GOMERY: Thank you, Jonathan. I appreciate
14 being invited to this. I think I take it as an honor to be
15 amongst colleagues whose work I have read and admired and
16 respected for years. Since I'm a tenured professor at a
17 university, I have no disclosures to deny or anything like
18 that, it's just basically me.

19 It was funny, I think, when we started that as
20 people were kind of trying to figure out what this panel
21 was, it was labeled -- and I wrote this down -- economists
22 and academics. So I think this is the academics side of
23 what's going on. So in the nature of full disclosure, I
24 have to confess that I am a partial economist. I have a
25 B.A. in economics, an M.A. in economics, and I would say

1 given the earlier discussion, a pedigree that puts me in
2 good company.

3 I took micro economics from Peter Steiner. I just
4 didn't read it, I heard Dr. Steiner at that point, Peter,
5 give the lecture on it. But all that did was convince me to
6 get out of economics. And so I didn't go to a business
7 school and I'm not in an economics department, I'm in a
8 communications program.

9 So I actually, I think, understood pretty much as
10 opposed to the person who had to retype all the words, what
11 the terms were this morning, but I fundamentally have to
12 argue that that's probably not the best way to go about it.

13 So let me make four points to try to help with the
14 discussion. They are in the paper that Jonathan referred
15 to, so if you want to see the version with a few extra words
16 and commas put in, I suggest you read that.

17 My first point is I think the reason we are here,
18 at least as I've heard the introductions and all the various
19 discussions is not because the market is working so well,
20 because it's not working so well. It's what I learned as
21 Peter Steiner Lecture No. 7 called market failures, that
22 sometimes the market doesn't work in terms of coming to the
23 best conclusion that we would like. It's expressed by
24 complaints in terms of people, it's expressed in filings.
25 It's expressed in a whole variety of ways.

1 I remember when I read Henderson and Quant there's
2 a whole lot of assumptions embedded in neoclassical
3 economics and one of them, just for example, is that you're
4 talking about homogeneous goods and services.

5 Well, I think if there's anything that's true
6 about communication that I've learned as a historian over
7 the years is that this is not a homogeneous set of services.

8 The term "country radio" I can assure you as a country
9 music fan means a lot of things in a lot of different ways
10 to a lot of different people. It's not just a simple
11 category that we can do.

12 So I would say that what we're here for is what
13 economists, I think, would call negative externalities, that
14 the market is not working, people are upset about it, people
15 are complaining and they're complaining because of effects
16 that they think are out there, whether the effects are put
17 down correctly or not, but they believe that these effects
18 are real and important in their lives.

19 I recommend as a study for this James Hamilton's
20 Channeling Violence, which really tries to look at negative
21 externalities of TV violence, because I think he really does
22 zero in, to agree with Stan, rigorously on how this presumed
23 market failure and he tries to deal with it in the way it
24 affects people and how people have tried to deal with it and
25 I don't think I would recommend to the commission that the

1 goal be that there be no violence on television -- I love
2 "Buffy the Vampire Slayer" -- but that it be dealt with in
3 some context and the context does not have to be
4 neoclassical economics. The context can be a variety of
5 ways: anthropology, sociology, et cetera. I'm not going to
6 defend all of those or go into them or even pretend I even
7 know them.

8 What I try to do is look at them, at these players
9 as they were called this morning, as a large significant,
10 lasting powerful -- Mark Cooper's words were louder --
11 institutions. So I confess that coming out of the
12 University of Wisconsin many, many years ago, John R.
13 Cummings et al. were still there in spirit and institutional
14 economics can help us try to understand them. And that's
15 where social economic and political factors intertwine.
16 It's not just a political economy, it's a lot of other
17 things as well.

18 If Who Owns the Media? has any value at all, it's
19 that it really -- it showed me in trying to put that
20 together that there were these institutions and they didn't
21 just operate as traditional economic units.

22 A second point is what we're talking about then is
23 if people -- I'm agreeing with myself -- that we're talking
24 about performance, we're talking about how well these
25 institutions do. And let me suggest several criteria

1 besides the one that was the obvious single criteria this
2 morning and that was efficiency. The efficiency criteria
3 has kind of taken over Washington discourse. I give Milton
4 Friedman and the long list of Chicago Nobel Prize winners,
5 they have convinced the world that efficiency is what will
6 solve our problems.

7 Let me just suggest Denis McQuail and his book,
8 Media Performance, which Philip will talk about later,
9 suggests at least several others, so I will list six.

10 First is efficiency. I won't talk about it, you
11 heard about it.

12 Number two I would talk about multiple voices. I
13 think that that's important in the kind of politics of all
14 this. We've heard some discussion of it, but I think it's
15 central. It's not just an add-on, it's right there along
16 with efficiency as among the criteria we should consider.

17 We should consider public order. I don't have to
18 explain this example in the last few days, the last few
19 months. The media have been the source of how we knew about
20 9-11. That's how we got the information. None of us, I
21 assume or one, maybe two people were in this room, but it
22 affected all our lives and how we came to deal with it.

23 Number four, we're interested in something about
24 cultural quality. We like to think that we have progressed
25 as a society, we are more educated and that what comes

1 through our culture, the word popular culture was used
2 earlier, is something of quality, not some vast wasteland or
3 whatever, but something that the commission can do to
4 encourage that we have good programming, not just
5 undifferentiable programming.

6 Fifth, I was surprised earlier it wasn't talked
7 about, technical change. The commission has had a long
8 history of trying to do something about incentives about
9 technical change, here I think economists are right, with
10 some success and some lack of success.

11 And, sixth, the one that is squishy, I do agree, I
12 don't know how you get your hands about it, I studied it in
13 graduate school and if you think this is hard, you should be
14 my spouse who has to do the economics of Medicare and talk
15 about public health, then you're really talking about --
16 that's equity.

17 We like to think that we live in a world in which
18 equals are treated equally, but how do we do that? How do
19 we come to that conclusion? Who are we talking about? It
20 was mentioned about stakeholders. It's all of us. But
21 we're not all of us nicely invited here.

22 So I think there are criteria that go beyond
23 efficiency. I've suggested multiple voices, political,
24 cultural quality, technical change, inequity, there could be
25 others, but I think that they ought to be at least put on

1 the table and then debated about how they intertwine.

2 My third point is that if there is market failure
3 and we are dealing with performance, then what we're
4 obviously dealing with is improving performance. We're not
5 trying to go backwards, we're trying to go somewhere ahead,
6 that we're better.

7 I thought it was explained quite well, but I'll
8 have to say that improving performance for Business Week,
9 for publicly held companies is "a total return for the year,
10 a total return for the past three years, sales growth for
11 the year, sales growth for three years, profit growth for
12 the year, profit growth for the past three years, net margin
13 and return on equity."

14 Well, that's a very precise, specific definition
15 of what performance is and how you can judge that and
16 quantify it, et cetera.

17 But I think this is more than simply just a return
18 on equity or return on profit, but trying to struggle
19 with -- and it's not easy -- this public interest obligation
20 that the Congress has kept in from -- I notice John had the
21 1934 act -- and kept in throughout -- and I was stunned as
22 an observer to read that as the debate went on that it
23 remained in the '96 act. I mean, there's a constancy there,
24 there's a constancy that this public interest obligation
25 ought to be there and that's finally, I get to the question

1 that Jonathan raised, and that is that's where both
2 diversity and localism come in, it seems to me, at that
3 point of trying to specify the public interest.

4 I applaud diversity. I think it's very, very
5 important, but I struggle with it a little bit
6 differentially than was displayed earlier. Yes, we have
7 BET, we have Lifetime, we have Univision, we have the
8 Discovery Channel. I'll vote for the Tacoma Park board
9 meetings as more interesting than Rockville and have watched
10 both.

11 A PARTICIPANT: You're one of the few.

12 MR. GOMERY: No, no. You want a study -- if I get
13 an extra minute -- children now -- it's been shown by
14 psychologists, now learn much more quickly how to use a
15 remote control, it's about age six months, than they do
16 language or any other skill in life. So don't think that
17 just because there's a hundred channels that children who
18 haven't mastered language, don't know what a percentage is
19 and will complain about filling out their income tax for the
20 rest of their lives don't know how to flip and get what they
21 want to see.

22 But the problem with that kind of recognition of
23 diversity is that in the end someone has to choose which
24 among those that I am able to select. You know, it's not an
25 accident that Rockville and Tacoma Park are on. I live in

1 Montgomery County. Guess what? Montgomery County board,
2 when they negotiated the contract, selected those of the
3 ones that I should see and some others that I shouldn't see.

4 I'm a big fan of movies. I wanted Turner Classic
5 Movies for a very long time. The previous owner of the
6 cable company kept putting out questionnaires, every time it
7 came back that Turner Classic Movies was the one that
8 everybody wanted to see, but they couldn't cut a deal
9 acceptable to their profit margins and we didn't get it
10 until we got a new cable company, another cable company
11 bought it out.

12 I'll bring up the bugaboo that's been kind of
13 lurking around the building all day and that is, of course,
14 Direct TV and Echostar. We were promised in 1996 lots of
15 choice in terms of who owned and who would give us this
16 diversity through direct satellite and, of course, we're
17 down now, as best I gather, according to CBS News this
18 morning as I woke up with my radio, to one. So it's not
19 just that we have a lot of choices, it's who selects those
20 choices for us.

21 Secondly, in terms of localism, that's been
22 another commission trait for a very, very long time and it
23 seems to me if it's possible even harder than diversity.
24 And it's harder because network economics, radio or
25 television or whatever, just make it one that is very, very

1 difficult to fight.

2 Point four. Meeting the public interest. Let me
3 say that I do believe the commission has its own peculiar
4 Washington way -- you have to live in this tribal town for a
5 while to understand that goes on in these things -- has
6 tried to struggle with it. And let me just make three
7 recommendations at the end, just to give you my take on the
8 deal and things that I would suggest people look into or try
9 to -- plug problem --

10 I think although radio was free -- I think, for
11 example, Pat Aufderheide's wonderful study, Communications
12 Policy and the Public Interest, and others have really
13 demonstrated that it hasn't worked. What we've gotten are
14 fewer companies owning radio stations and despite the
15 labeling of various formats I think much less diversity.

16 I can only do country music, of course, I haven't
17 done a study, but there's now a huge dispute in the country
18 music world about how radio has really hurt the development
19 of the art form because all stations have this bias towards
20 a star system that doesn't help the traditions that have
21 been developed in the past, focuses only on certain artists,
22 et cetera, et cetera. You get a homogeneity, so I guess in
23 a sense I'm arguing against myself.

24 So I would number one suggest that that be
25 revisited. I think the -- I don't think that's worked and I

1 think I long for the older radio days when there were lots
2 of crazy non-rigorous rules, but we did get much more
3 diversity in radio.

4 Number two, on the 13th of September the
5 commission asked for comments on relaxing the newspaper-TV
6 station cross-ownership rule. I'm about to be piled on here
7 now, and I can feel it, but I actually think that's not a
8 bad rule. I know it was developed historically for a lot of
9 other reasons, but what we have today are more newspapers
10 monopolies than ever. And so I'm not sure why we should
11 give the right to these newspaper monopolies to own
12 television stations. Where is that in the public interest
13 of the United States of America?

14 I think we get some more diversity and the
15 possibility of some localism if we kept the rule. Maybe
16 that's not why it was started, but I still think it works.

17 A final point, the cable rules, on the 13th of
18 September, the commission called for comments on relaxing
19 the cable ownership rule. That's been discussed. Mark
20 provided some interesting examples. And I agree with Mark
21 there as well.

22 Even the politicians who have now begun a little
23 bit to react to the Direct TV dish merger realize, you know,
24 Jim Bunning not my favorite pitcher, but a Senator from
25 Kentucky, put it, you know, my constituents now have two

1 choices. I don't think that's a real good idea and I think
2 that if we can have at least some differences in
3 institutions in the cable industry, then that's good. I
4 don't see anything wrong with that.

5 So my final points, to sum up, externalities need
6 to be considered. I think we need to look at other models
7 than neoclassical economics and try to connect with
8 different disciplines and specifically I think that I would
9 recommend to the commission as a humble stakeholder, one
10 person with one remote control, that they rethink the radio
11 ownership policy, they keep the newspaper rule and they keep
12 the cable rule.

13 Thank you very much.

14 MR. LEVY: Thanks, Douglas. I've got a slightly
15 different take on Jim Bunning than you do. He actually is
16 one of my favorite pitchers, possible because I was
17 fortunate enough to see him pitch a no-hitter in person
18 against the Boston Red Sox.

19 MR. GOMERY: I unfortunately lived in Philadelphia
20 when they lost the pennant after being ahead -- with 20 days
21 to go, they blew the 1964 pennant, so I do confess my Jim
22 Bunning bias.

23 MR. LEVY: I liked him when he played for the
24 Detroit Tigers. Anyway, that's neither here nor there.
25 Neither here nor there.

1 Our next speaker is Phil Napoli.

2 MR. NAPOLI: Thanks, Jonathan.

3 I'm going to try to discuss both diversity and
4 localism from, as the title suggests, a policy analysis
5 perspective. I have sort of two goals here. One is to try
6 to build on what we actually talked about in the previous
7 session with this idea of bringing some sort of empirical
8 rigor to these -- again, to use a term used last session --
9 more fuzzy policy principles.

10 I do believe that there is plenty of room for
11 empirical analysis, but the first thing we need to do is
12 develop very clear and precise definitions and effective
13 empirical analysis will grow from that.

14 So that's what I'm going to try to do first and
15 then, second, also, I took the request for data perhaps a
16 little too literally and I spent the past couple of weeks
17 doing a lot of numbers crunching, so I'm going to try to
18 present some analyses that bear on both the diversity and
19 localism issues.

20 Starting with diversity, this is my take and it's
21 a bit different from the traditional FCC source outlet
22 viewpoint diversity, but all those components are actually
23 embedded in this. This is my take on diversity, its
24 components, its subcomponents, and its assumed
25 relationships, source diversity, which I shall define as

1 leading to content diversity, which in turn leading to
2 exposure diversity. And I'll define these as quickly as I
3 can.

4 Source diversity includes within it both diversity
5 of ownership and that can be defined both in terms of
6 ownership of the programming or ownership of the outlet.
7 Also included within my definition of source diversity is
8 this notion of workforce diversity and that's reflected
9 in -- what's their current status these days -- the EEO
10 rules which I understand are heading back to the Supreme
11 Court, right? The notion of employing different ethnicities
12 and genders in the workforce. That also falls within this
13 concept of source diversity.

14 Content diversity which is really to me where the
15 greatest struggles have lied and the greatest sort of
16 desperation as far as how we go about measuring these
17 issues, really, I think all the source diversity components
18 are fairly easily measurable. The FCC traditionally uses a
19 notion of viewpoint diversity which gets into the notion of
20 different perspectives, different takes on different issues,
21 et cetera, also and more commonly used, though certainly a
22 lot less precise is the notion of format or program type
23 diversity, different types of cable channels, different
24 radio formats, different program genres, et cetera.

25 And then third also relevant at this stage I think

1 is the notion of demographic diversity, best reflected, I
2 think, in some of the statements of former Chairman Kinnard
3 as well as in recent complaints from groups such as the
4 NAACP reflecting the notion that media content does not
5 reflect sufficient diversity of genders and ethnic groups,
6 et cetera.

7 What I'm hoping is clear that I'm mapping out is
8 the basic steps to the necessary types of empirical
9 assessments that need to be done in that and these all in
10 fact represent fairly -- I wouldn't say easy, but measurable
11 concepts that could be applied to the assessment of any type
12 of structural base regulations.

13 And, lastly, this is where I think I go a bit
14 beyond traditional policy thinking is the notion of exposure
15 diversity, which reflects this notion that in fact when we
16 look back to the marketplace of ideas metaphor that sort of
17 guides diversity policy, the notion that the diversity of
18 available information leads to better informed voters, say,
19 or, for that matter, from an economic theory standpoint,
20 more satisfied consumers by providing people with the
21 ability to expose themselves and to consume a diversity of
22 ideas or consume information from a diversity of sources,
23 et cetera.

24 I define that two ways. Horizontal exposure to
25 diversity refers to the notion of how diverse is media

1 consumption across audiences, that is, how are audiences
2 distributed across available content options; vertical
3 diversity referring more to the notion of how is one
4 individual's exposure to diversity, how does that appear.
5 That is how many different types of content does an
6 individual expose themselves to or sources, et cetera.

7 And the reason I want to propose this as a
8 dimension of our policy thinking in this area really adds
9 some relationship to the traditional economic policy issues,
10 which is that we don't make policy very often without some
11 sense of how it's going to affect behavior. We don't
12 necessarily directly regulate in the context of where
13 consumers can spend their money or how they can spend their
14 money, but we change interest rates and make other policies
15 under assumptions about how consumer behavior will change in
16 response to that.

17 I think the same should hold true for media
18 policy, that media policy should be guided with a greater
19 understanding of how changes in the structural or content
20 dimensions of the media system actually affect individuals
21 or audiences in the aggregate in terms of their media
22 consumption patterns. Not to say that we should be
23 regulating in the name of trying to manipulate audience
24 exposure patterns, but at least make policy with an
25 understanding of how exposure patterns will change if the

1 media system or market is changed structurally in one way or
2 another.

3 That being said, when we look to diversity policy,
4 one thing that I think sometimes gets neglected is barriers
5 to diversity. A study that the FCC actually commissioned
6 back in '99 addressed the issue of minority formatted versus
7 non-minority targeted format radio stations and to what
8 extent did minority formatted radio stations earn less on a
9 per audience member basis than non-minority formatted radio
10 stations. And the measure that's used here is a power ratio
11 which real briefly is a measure of a station's share of
12 advertising dollars in a market divided by its audience
13 share in a market. So the higher your power ratio the
14 better job you're doing of monetizing your audience.

15 And we looked to minority-targeted versus
16 non-minority-targeted stations and here I actually went
17 beyond what was done in '99 and have audience data, so
18 minority-targeted stations are those stations with an
19 audience composition of greater than 50 percent minority.

20 Minority-targeted stations power ratio of .82,
21 non-minority-targeted stations power ratio of 1.06,
22 suggesting a significant difference between stations that do
23 target minorities and stations that don't.

24 And what I'm sort of building towards here is this
25 notion that media policy should not just look at policies

1 designed to establish media outlets that provide diverse
2 content or support under served audiences, but that the
3 maintenance of these outlets might need some attention
4 because there are some economic handicaps that they might
5 suffer.

6 I won't go through this one in a ton of detail,
7 just to let you know that I also conducted a fairly
8 obviously detailed analysis that looked at a variety of
9 market level and station level factors primarily concerned
10 with whether -- and this is in the handout, too, so better
11 there than me running through all these -- with whether
12 market and station level factors affect a station's power
13 ratio.

14 And what we found, again, to focus on the most
15 relevant information, is that the greater the extent to
16 which a station's audience is comprised of either
17 African-American or Hispanic listeners, the lower are those
18 stations' power ratios. So this was again trying to provide
19 a more substantive, multi-variant analysis that looked at a
20 range of factors.

21 I also have some interaction terms in here which
22 looked at the question of whether or not that relationship
23 between minority composition and power ratios was a function
24 of the nature of the individual markets in which these
25 stations served and no real significant effects there, but

1 the key thing was a significant relationship between
2 minority composition and station power ratios suggesting
3 that minority audiences tend to be undervalued relative to
4 majority audiences by advertisers.

5 That might be a factor think about as we consider
6 the preservation of minority-targeted media outlets because
7 we do know, and I think Joel's research has shown this, that
8 minority-owned media outlets do tend to have a much greater
9 likelihood of presenting content that appeals to niche
10 audiences.

11 Okay. A quick switch of gears to diversity
12 issues. I'll get to that actually in a minute.

13 When we look at diversity policy, I just want to
14 start with thinking about what have been the traditional
15 rationales and when we think about the traditional
16 rationales for -- I'm sorry, did I say diversity? Localism
17 policies now. They've been both political and cultural.

18 Politically, we think about localism -- and you
19 have to remember that localism policies don't just exist
20 within a media context, they are the logic that underlies
21 localized control of schools and local governments,
22 et cetera. And there is value in the nation of
23 decentralized decision making, political value, cultural
24 value. Decisions made locally so that content will reflect
25 local cultural preferences, viewpoints, et cetera.

1 So we have both these political and these cultural
2 rationales for localism policies in the United States and
3 we'll keep those as a backdrop for assessing the logic of
4 localism policies as they currently exist.

5 In practice, when we talk about how localism has
6 been put into practice from a policy standpoint, there's
7 been first a focus on the notion of local ownership. That
8 is, trying to preserve media outlets in which the ownership
9 is based in the market that's being served. That's been a
10 fairly common concern and someone hopefully will have some
11 data that's relevant to that today

12 In addition to that, there's been the notion of
13 local programming and that dimension of localism has been
14 defined two ways, first within the context of locally
15 produced content and second within the context of content
16 that addresses local interests and concerns.

17 The general presumption that has existed is that
18 content produced locally is more likely to be content that
19 addresses local interests and concerns. Obviously, one is a
20 fairly content neutral component. Where is it produced? Is
21 it filmed locally, is it produced by the local station?

22 In some cases, that's been the defining standard
23 for assessing localism policies. In other cases, we've used
24 a more rigorous standard. That is, how about that content?
25 Is it actually directed at local interests and concerns?

1 And one of the key issues that I think requires a
2 lot more empirical attention is whether or not there is any
3 kind of relationship between the point of origin of content
4 and whether that content indeed addresses local interests
5 and concerns. And so again that's taking us, as in the
6 diversity case, into a level of analysis that I don't think
7 has been particularly common in policy making, requiring
8 methods that I don't think are too commonplace in
9 traditional economics based policy analysis.

10 So in an effort to try to get at some of this,
11 whether or not, for instance, local ownership has any
12 relationship to local content, we did a study that looked at
13 in particular in this case public affairs programming,
14 public affairs programming as a limited measure of the
15 extent to which a television outlet is providing content
16 that addresses local interests and concerns.

17 Certainly I think you can broaden the definition
18 beyond this, but in this particular case we were able to get
19 data on local public affairs programming and the question we
20 looked at first was do stations that are owned locally
21 present more or less local public affairs programming than
22 stations that are not owned locally?

23 And we looked to that, we had a sample of 111
24 stations, a random sample drawn nationwide, and we looked at
25 their program schedules and we contacted them in those cases

1 where we needed some help in determining whether or not a
2 program was a local public affairs program. That is a
3 program produced locally and fitting the commission's
4 definition of a public affairs program.

5 And what we found in this case was that if a
6 station was locally-owned it devoted about 1.5 hours for
7 this two-week period that we studied to local public affairs
8 programming. In contrast, if a station was not owed
9 locally, that station devoted about .85 hours during that
10 two-week time period to local public affairs programming.

11 I should emphasize, though, that that difference
12 on the surface seems fairly significant, but did not quite
13 reach the levels of statistical significance that we
14 generally like to see. So real strong evidence there of a
15 relationship between local ownership and local public
16 affairs programming.

17 That being said, we went a bit further and looked
18 at a variety of, again, marketplace factors, station level
19 variables, things that might help us understand what leads a
20 station to present localized content, at least in this case
21 in the form of local public affairs programming.

22 What we found, we looked at market demos,
23 television households, average household income, minority
24 population. We looked at competitive conditions, how many
25 public television stations were in the market, what level of

1 cable penetration was there, how many commercial television
2 stations were in the market. And then our primary concern
3 there was station characteristics. Station revenues,
4 whether it was VHF or UHF, whether it was a network
5 affiliate.

6 And then most important, the two at the bottom,
7 was the station owned locally, that was number one I was
8 interested in, and, number two, what was the national
9 audience reach of the owner of that station, trying to get a
10 sense of whether or not, for example, the 35 percent
11 ownership cap would have any bearing on the issue of local
12 public affairs programming. That is so the larger the total
13 audience reach for the group that owned this station that we
14 were studying, we wanted to see if there was any
15 relationship between group size as far as audience,
16 household audience reach and local public affairs
17 programming.

18 And in this case, what we found was no meaningful
19 significant relationship. That is, there doesn't appear to
20 be a relationship between local ownership or station group
21 size and levels of locally produced public affairs
22 programming. So if local public affairs programming is
23 something that the commission would like to see more of, it
24 doesn't appear, at least based on this sample, that
25 structural regulation in the form of local ownership or

1 audience based ownership caps is an effective means of
2 addressing that.

3 However, when we expanded a little to widen the
4 definition of public affairs programming to include not only
5 programming produced locally, but all public affairs
6 programming, including syndicated programming or network
7 feed public affairs programming like Meet the Press,
8 et cetera, we get some slightly different results.

9 We find, for example, whether a station is a big
10 four network affiliate is positively related to the
11 provision of public affairs programming, which is not
12 surprising given that the big four networks, I think all of
13 them at this point, provide some form of Sunday morning
14 public affairs programming.

15 However, I think the other important result here
16 is the fact that local ownership does emerge as significant
17 in this context. That is, local owners were significantly
18 more likely to provide more public affairs programming under
19 this broader definition of public affairs programming. So
20 perhaps if we think about local public service a bit more
21 broadly and accept the notion that perhaps localized
22 interests can in fact be served by choosing content not
23 produced locally, the best example I saw in this sample that
24 we generated was stations in Florida that were carrying
25 syndicated public affairs programming dealing with senior

1 citizen issues.

2 Now, it wasn't produced locally, but that to me
3 reflects some effort to program to local interests and
4 concerns. So it really would depend on what sort of
5 definition of public affairs programming we would consider
6 most important.

7 But in this case, we ended up with significant
8 explanatory power. And, again, I know I'm sort of flying
9 through the methods and all the statistics that are
10 presented here, I don't have a lot of time, but I just
11 wanted to present this as an example of the type of research
12 that I think could be done on a much larger scale. This is
13 an issue that came up in the last session. I have some
14 ideas about the type of databases that we could really
15 exploit to get at some of these fuzzier issues about
16 localism and diversity.

17 What it requires, though, is a willingness to
18 engage in and I think to accept, which is the aspect of this
19 I'm a little concerned about, data and analyses that don't
20 fit conventional economics based approaches to a policy
21 analysis. And I think once we accept diversity and localism
22 as policy objectives on par with competition, we have to be
23 equally willing to accept methods and data that might not
24 fit traditional models.

25 So to wrap upon the localism issue, I think we

1 might need to question whether local ownership has the
2 effects that we would expect, but also do a lot more
3 research into whether or not local production of content
4 does mean content that addresses local interests and
5 concerns.

6 Thanks.

7 MR. LEVY: Thanks very much, Phil.

8 Now we'll move to Joel Waldfogel.

9 MR. WALDFOGEL: If I could just get this computer
10 working properly -- let's see.

11 Can we project this again?

12 Oh, there we go. Great. Okay.

13 I should say I'm an academic and an economist, an
14 unrepentant economist, in fact, and a fan of rigor on top of
15 all of that, so I just wanted to get that out in the open.

16 A PARTICIPANT: And how do you feel about Jim
17 Bunning?

18 MR. WALDFOGEL: I have no views, although I do
19 live in Philadelphia, so maybe that qualifies me for
20 something.

21 I guess my talk is of the following nature. I've
22 been doing empirical work on topics, I guess, related to
23 things we're talking about for the last few years and I
24 wanted to review some of the findings I have that I think
25 are relevant both to consolidation and to localism and so

1 that's the hope anyway.

2 I guess what I want to do is talk a little bit as
3 we go about the following things. First, media markets and
4 minorities in context, then a bit of the recent history of
5 what's been happening to ownership, some review of studies
6 I've done on the effects of consolidation on both
7 programming content and on behavior and then a missing
8 bullet in this slide is the next step and the last step of
9 the talk is to discuss localism and some preliminary results
10 and some new research I've been doing that's, I think,
11 relevant to that. And as we go, maybe we'll talk about new
12 media and maybe we'll talk about other types of research
13 needed.

14 So setting the stage for thinking about media
15 markets and particularly local media markets and minorities,
16 an important fact that many people know but maybe not
17 everyone knows is that content preferences differ very
18 sharply between blacks and whites, between Hispanics and
19 non-Hispanics and this is obviously evident in radio where a
20 handful of formats attract two-thirds of black listening and
21 collectively attract something like 5 percent of non-black
22 listening; where a single type of radio station, that is one
23 that is Spanish language -- and, of course, that really
24 reflects many types of stations, but all those that have
25 Spanish language collectively attract about half of Hispanic

1 listening and less than a percent of non-Hispanic listening.

2 One could go on and on. In television top rated
3 shows among whites tend to be bottom rated among blacks and
4 vice versa. In newspapers, in markets that have multiple
5 papers, typically the preferences are quite different for
6 the product. But just a fundamental fact about media
7 products again is that preferences differ strongly across
8 groups.

9 Now, another fundamental fact is that these
10 products tend to have fairly high fixed costs relative to
11 the size of the market and as a consequence there are
12 comparatively few products per market. Now, I'm thinking
13 especially here about local products and as we go we should
14 talk about the extent to which the multiplicity of national
15 products is or is not relevant to local markets, but in
16 newspaper markets, for example, there is typically a handful
17 of daily newspapers, or fewer, depending on how you count.
18 In radio stations, there are on average about 25 stations
19 available on the dial across the top 200 or so markets,
20 et cetera. So these are fairly small numbers of products
21 relative to the size of the market.

22 And this raises the question of what I would term
23 who benefits whom. If there are big fixed costs to
24 providing some product, we only get that product if enough
25 people actually want it. So if I want a certain kind of

1 programming, it only arrives and is available for me if a
2 lot of other folks also want that kind of programming.

3 So it turns out in some studies that I have looked
4 at that, for example, the number of radio stations targeted
5 to blacks is sensitive to the number of blacks in the
6 market, not sensitive to the number of whites. If anything,
7 it decreases in the number of whites. The extent to which
8 the newspaper appeals to blacks is sensitive have the
9 fraction of blacks in the market, et cetera.

10 Generically, I guess, in local media markets,
11 one's satisfaction as a consumer depends on the number or
12 fraction of persons who share one's product preferences.

13 Now, as a consequence of all this, markets tend to
14 deliver less satisfaction to small groups with atypical
15 preferences and there is evidence, I think, in some papers I
16 provided that you can get your hands on if you're
17 interested.

18 Now, I should say, since I'm an unrepentant
19 economist, that this is not necessarily inefficient. It may
20 or may not be inefficient, but I want to be clear that this
21 is not necessarily saying that that is an inefficient
22 outcome.

23 Okay. That's just the backdrop against which I
24 think about some of these things.

25 A little bit of recent history that probably many

1 of you know better than I, there's been a lot of
2 consolidation, especially in radio but in other media as
3 well, increased ownership concentration and a reduction in
4 the number typically of minority-owned outlets. And there's
5 a question about whether this is a problem. And I don't
6 take it on faith that this is a problem.

7 There is an interesting and deep question about
8 how would we know whether this is a problem and so I've
9 proposed that we would like to look at the following things
10 at least to help us think about this. It's still not an
11 easy question, but at a minimum we want to know what are the
12 effects of these changes in ownership on programming, what
13 are the effects on the tendencies for different types of
14 persons to consume, that is to read, to watch, to listen.
15 And beyond that, and here I guess I -- maybe I step away
16 from traditional economic outcomes, but I propose we might
17 want to look at other kinds of outcomes like political
18 participation.

19 There's a question of whether media are special,
20 are media unlike widgets, whatever are widgets are, because
21 the consumption of media products affects the way in which
22 we participate in political contests or, to put it in a
23 drier way, that economists like to think that, you know,
24 media affects our costs of political participation because
25 it provides us with information, both through the content

1 and the advertising.

2 In any event, these are outcomes that may be
3 especially important for media more so than other kinds of
4 products whose antitrust scrutiny, et cetera, that DOJ
5 usually is charged with.

6 And, by the way, these kinds of outcomes or these
7 kinds of effects are, I think, also the kinds of effects one
8 wants to look at in thinking about localism and I'll try to
9 get to that, too.

10 All right. The effects of consolidation on
11 content. It goes back to Steiner and it's been discussed
12 many times today that ownership concentration or increased
13 ownership concentration may promote variety and that's sort
14 of been true in principle for a long time. I've actually
15 recently done some work with Steve Berry looking at radio
16 markets and since 1996, the telecoms act, there has been an
17 enormous amount of consolidation, huge increases in
18 ownership concentration and if you look at that, you do see
19 that markets with greater increases in ownership
20 concentration have greater increases in the number of
21 programming formats on the air, so two cheers for monopoly.

22 Similarly, if one looks at newspaper markets, my
23 doctoral student, now a professor at Michigan State, Lisa
24 George, did a nice paper, part of her dissertation, looking
25 at a similar question in newspaper markets and increased

1 concentration in newspaper markets tends to lead to more
2 variety in the sense that the products sort of have more
3 topics covered or if there are multiple products they are
4 spaced farther apart.

5 So part of the story here is that Steiner's
6 conjecture seems to have some evidence to support it. There
7 are questions about whether this is real variety as opposed
8 to Sunoco variety -- you know, at Sunoco where they have two
9 types of gas and many types of pumps -- but nonetheless, the
10 evidence here -- am I am firmly believer that we should have
11 evidence -- says something nice about consolidation.

12 It's not clear here, however, in the data I've
13 looked at whether this is particularly good for minorities,
14 so that's an open question, but anyway let me move on from
15 that.

16 There's a separate question beyond simply
17 ownership concentration which is about kind of racial
18 identity of the owner, if you'd like. Now, it's not obvious
19 particularly to an unrepentant economist why the race of an
20 owner would make any difference whatsoever to the sort of
21 content offered on a station.

22 Now, it's a fact that most black-targeted radio
23 stations are white-owned, okay? So that even makes it less
24 obvious in some sense what one should expect. But if you
25 look at the data, and I've done this in a paper or two with

1 Peter Siegalman, if you look at cross markets or over time,
2 markets with more black-owned stations have more
3 black-targeted programming after accounting for the stuff
4 that should have determined it. Markets with changes on a
5 black-owned stations have changes in the number of
6 black-targeted stations. So ownership does seem in
7 equilibrium to have an effect on the amount of content
8 targeted at a group, okay?

9 So one view about worrying about the race of
10 owners is that it's just a concern over who gets rents, that
11 there's no effect of such policies. But the evidence that
12 we've mustered suggests or indicates to us that these
13 policies are not inconsequential. That is, policies that I
14 guess used to exist promoting minority ownership of
15 stations. It still doesn't indicate whether it's a good
16 time or a bad thing, but it's not inconsequential, so it
17 can't be dismissed on the ground that it's merely rent
18 transfer.

19 Okay. Let me talk a little bit about
20 consolidation and its affects on behavior. Media are
21 arguably important to political behavior because media allow
22 the communication of content and also allow advertisers
23 access to audiences, so presumably if you want to get a
24 black-targeted political message to the audience you intend
25 and not sort of pay for a lot of listeners you didn't want

1 to target, you'd like to have outlets that have
2 predominantly black audiences, so one question, again, is
3 whether kind of the configuration of targeting has an effect
4 on behavior and in a study I've done with a colleague at
5 Penn, Felix Oberholster Ghee, we asked the following
6 question: How does the tendency for blacks to turn out to
7 vote relate to the presence or absence of black-targeted
8 media outlets here?

9 And in this context, the outlets we're thinking of
10 are local weekly newspapers and radio stations because
11 really those are the only media outlets that sort of can be
12 classified as black-targeted or not. One could think in TV
13 looking at program by program, and I'll be doing that soon,
14 I hope, in my life. In any event, when one looks at this
15 question, one finds the following:

16 The tendency for blacks to vote is higher in
17 places that have black-targeted media outlets. Furthermore,
18 one cannot just look across cities, but also over time since
19 there have been changes in the number of black-targeted
20 media outlets and look to see whether this relationship
21 appears over time as well and it does.

22 One might furthermore wonder whether it's about
23 ownership or about targeting. I wish I had an equivocal
24 answer here, I don't. Both seem to matter. When both are
25 allowed into the empirical analysis, both seem to matter. I

1 don't think this is the last word on the question, but this
2 is an example of an outcome that we might care about and it
3 seems to be affected by the configuration of media products
4 available.

5 All right. Let me talk a little bit about
6 localism and here I'm getting -- I guess I'm getting into
7 newer research and with all this research I'm really
8 interested in how I can make it useful to the policy
9 discussion and what we might think is true and not true
10 about it. Anyway, let me keep going, though.

11 So localism is a hard problem. It's not clear
12 what is meant by localism. I mean, it's not clear do we
13 mean locally chosen programming, locally produced
14 programming? And I don't know the answer to that.

15 Does local programming matter? In a multi-channel
16 environment with many, many channels, does it matter what's
17 offered locally if people can sort of choose any of 500
18 channels on the satellite?

19 Having said that, let me tell you a bit about what
20 I've been looking at lately in television. I've been asking
21 the following question in large TV markets. I've been
22 asking, well, how does the number of apparently
23 black-targeted half hours vary with the fraction black in
24 the market?

25 So the notion here is to look at sort of viewer

1 level data and aggregate audiences for each half hour on
2 each channel and ask which of these half-hour shows has an
3 audience 90 percent or more black? And I've done it with 75
4 percent, 50 percent, whatever you like.

5 And maybe not surprisingly, markets that have a
6 higher fraction black in their population have a lot more
7 black-targeted local half hours. And furthermore, the
8 tendency for blacks to watch television, that is, watch
9 local television in that market, is higher in markets that
10 have a larger fraction black.

11 Now, my first reaction to that, and I'm very
12 interested in hearing what we all might think about this is
13 that that suggests that the presence of 500 channels -- I
14 mean, a made up number, but the presence of many, many
15 non-local, nationally-originating channels isn't enough to
16 make the local choices irrelevant because they're relevant
17 in the sense that they induce some behavior. They are
18 picked up in viewing behavior.

19 I can show you some pictures that illustrate what
20 I'm talking about. This is a picture relating on the
21 horizontal axis the percent of local population that's
22 black. On the vertical axis is the number of these half
23 hours that I deem black-targeted because their viewerships
24 are 90 percent or more black-targeted.

25 And, by the way, this is all in non-evening prime

1 time hours, so it's not -- where, of course, this couldn't
2 operate because there the programming decisions aren't made
3 on the basis of who lives in the locale. In any event, it's
4 a clear and obvious positive relationship.

5 The second part of this, as I mentioned before, is
6 that this shows a tendency for blacks to watch television.
7 So the positive relationship here, which is a best fit line
8 through the triangles, shows the relationship between now
9 the percent black on the horizontal axis and on the vertical
10 axis this is the number of half hours of non-evening prime
11 time, basically local programming watched per week.

12 And so it rises across markets with the fraction
13 black and this is for blacks. The flat line is for
14 non-blacks or primarily whites, but everybody else who is
15 not black.

16 So this suggests to me that local programming
17 decisions are not inconsequential. I don't know if that's a
18 bold pronouncement or not, but that's what it suggests.

19 Let me finally talk a little bit about some work
20 I've been doing on the effects of localism on behavior where
21 here the meaning of localism has to do with the introduction
22 of national newspapers into local markets and the question
23 here is how is it that national newspapers affect both the
24 positioning of the incumbent local papers, the local
25 dailies, as well as the behavior of the targeted audiences

1 for these national papers?

2 And the preliminary results are as follows. As
3 you have increases in the circulation of these national
4 dailies, you have reductions in the circulation of the local
5 papers among the audiences targeted by these national
6 papers. You have some repositioning, the local papers seem
7 to become more local, they move some of the reporters out of
8 national and foreign opinion stuff and toward local things.
9 But local political participation by audiences targeted by
10 these national products seems to decline in local elections,
11 although not in presidential elections that are, of course,
12 covered by both national and local papers.

13 Now, all of this suggests that content origin
14 matters. I can't tell you that it's a good thing or a bad
15 thing, there is a mix of things going on. Because on the
16 one hand some set of consumers is being distracted from
17 local affairs while on the other hand the local products
18 maybe are becoming more informative about local affairs,
19 although they may or may not be more read than they were,
20 but it's not inconsequential. The competition between
21 national and local media products have some consequences for
22 outcomes that we may care about.

23 It's in some sense a decision above my pay grade
24 to decide whether it's a good thing or a bad thing, but I
25 think those who need to make these decisions might want to

1 have this information at their disposal. This, too, is
2 research I've been doing with Lisa George at Michigan State.

3 Let me just conclude by -- well, thanking those
4 who organized this for involving me, but also applauding the
5 commission's plan to really put together data in a
6 systematic way. It's a very feasible project to do so.
7 It's work, it's a fair amount of work, but it's very
8 feasible and I think putting data together in a way and
9 making them accessible to interested parties would really
10 promote some research and would also make the process of
11 evaluating things as they come up within the commission much
12 easier.

13 I think at various times I've visited the
14 commission over the years I hear overworked economists
15 saying, you know, we don't have time to undertake certain
16 kinds of things and I think having a standing database or
17 series of databases could make it very easy or comparatively
18 easy to quickly answer certain kinds of questions.

19 Thank you very much.

20 MR. RABINOVITZ: Thank you very much. I want to
21 thank all of the panelists for your comments. We seem to
22 have gotten much more concrete examples in the non-economic
23 part of the discussion than we have in the economic part.

24 MR. WALDFOGEL: Them's fighting words.

25 MR. RABINOVITZ: Actually, leading off of your

1 last comment, what kind of data should we be looking for? I
2 mean, specific --

3 MR. WALDFOGEL: For each media, there are good
4 audience data. So, for example, for radio, Arbitron has
5 very detailed data by gender, by day part, by -- and they
6 also have it by race for large markets. For TV, there is
7 Nielson data. For newspapers, there's Audit Bureau of
8 Circulations data that has circulation of every newspaper by
9 zip code, except the New York Times, they don't participate,
10 but I think -- and then in conjunction with that you want to
11 have information on the prices paid by advertisers.

12 Now, of course, it's hard to get real data on
13 prices because rate cards are not really prices although
14 they're sort of prices, but nonetheless one could try.
15 There are data on prices in all these media. There are also
16 data on the prices of subscriptions, that is, prices paid by
17 the consumers, the direct consumers of the information as
18 opposed to the advertisers for, I think, all these media
19 it's possible to get some information.

20 But on top of a medium by medium data set, I think
21 one wants to have some data that allows you to look at cross
22 consumption patters, so that means household data that asks
23 people what newspaper do you read, what radio station or
24 stations do you listen to or what TV stations do you watch
25 and do you use the Internet, et cetera. And such data sets

1 do exist. I don't know how good they all are, but I think
2 it would be important to have those in addition to the
3 medium by medium data.

4 MR. RABINOVITZ: Suggestions by others?

5 MR. NAPOLI: I'll just build on that, really, what
6 Joel is saying, but then in addition to that, I would
7 suggest also on top of it some systematic efforts to gather
8 and analyze media content across a variety of dimensions.

9 We haven't done a decent job of using real basic
10 metrics of content differences, whether it's radio station
11 program format or television program types, and I think we
12 could do better than that and in addition to that go beyond
13 that and start to use some of the methods that have been
14 used even to sort of quantitatively assess presence or
15 absence of bias, that's a term that's often used in
16 assessing media content, and use those more as a way of
17 assessing the level of diversity of viewpoints and
18 perspectives we see on issues.

19 And so I think we could delve deeper into the
20 nature of media content. And, again, not necessarily within
21 the context of trying to manipulate the nature of media
22 content one way or the other, but just in terms of getting a
23 sense, again, maybe at the market by market level of how
24 structural conditions seem to be related to content
25 conditions.

1 MR. COOPER: Another point that Joel didn't
2 emphasize, he described the media data. Underlying his data
3 is a link to demographic and voting behavior patterns which
4 really gives it a great deal of power. So when you gather
5 that data, you need to keep the hook out there. You may not
6 want to gather the census data, but you need to keep that
7 zip code or the census block data available so other people
8 can come along and link it to that voting pattern behavior
9 because in a certain sense that's the payoff in the
10 marketplace of ideas.

11 MR. GOMERY: I'm a little skeptical, I guess I
12 don't feel comfortable here, but the data that's generated
13 for the media is generated by profit-seeking companies.
14 They ask certain questions and the questions are the ones
15 that the people that they sell their data to want answered,
16 not necessarily the questions you would want to make policy
17 about. So I think -- I'm going to be killed now, but, you
18 know, spend more money, generate your own data.

19 MR. RABINOVITZ: But we may have to follow up, so
20 what should be asking for? If we're going to be asking for
21 data and not relying on stuff that's already out there, what
22 should we be asking for?

23 MR. GOMERY: I think data generally -- I mean, I'd
24 like to hear what my colleagues have to say about this, data
25 generally is sold because advertisers desire it. And the

1 question then is what other kinds of data that might be
2 interesting or information or potentially generated would be
3 the kind of data that advertisers would not want. That's
4 the -- Mark was talking about that in terms of zip codes and
5 voting behavior and Al of the kind of -- the thing that
6 doesn't have any real market value.

7 MR. NAPOLI: I think it would be very valuable if
8 the commission performed its own annual or semi-annual media
9 usage surveys along the types that larger market research
10 firms do perform that address the nature of -- and it could
11 go beyond issues of diversity and localism, but direct data
12 on how people are using new technologies in the home and
13 things like that.

14 I think we hardly make sufficient use of consumer
15 behavior data in media policy. I mean, we assume that the
16 audience makes their own decisions, but I think if we knew
17 more about how audiences were responding to changes in their
18 media environment we could make policies that took that into
19 account.

20 So I think if we just -- large scale surveys of
21 media usage patterns, what we're watching, what we're not
22 watching, how many stations on average do we listen to, all
23 sorts of methods that, again, same techniques that are
24 employed by the commercial firms, but I don't see why there
25 couldn't be an internally generated annual or semi-annual

1 study of that type.

2 MR. OWEN: It strikes me that the data that the
3 commission should gather are the data relevant to testing
4 the hypotheses that are useful to the commission in making
5 policy, as opposed to all the data in sight and that one can
6 think of, which, of course, is what an academic wants
7 because it presents unlimited opportunities to do papers.

8 But you can't decide what data to collect until
9 you know what questions you're asking and that means
10 formulating the framework of the policy analysis and
11 deciding what the goals are and so on. So the data question
12 comes second, not first.

13 MR. NAPOLI: The data would, I think, address
14 exactly the type of questions that Joel and I were kicking
15 around. I mean, I think Joel is doing a good job already of
16 showing very creative uses of under used data for addressing
17 clear communications policy issues. So we're thinking
18 outside the box a little bit.

19 MR. OWEN: The results are fascinating. The issue
20 is whether they are in fact -- and Joel has very carefully
21 said he's agnostic about their policy relevance and that's
22 up to the commission and its staff.

23 MR. NAPOLI: Right.

24 MR. COOPER: But at the same time, the commission
25 asks the question does ownership matter and his data

1 suggests it does, I mean, which is a fundamental threshold
2 question and so who owns it looks like it matters, who is in
3 the market looks like it matters. Whether there's local or
4 national control looks like it matters in this data. And so
5 you may not have a precise notion of exactly what the
6 Congress meant when it gave you that prescription in the
7 statute but these are questions, I think, that the
8 commission has actually identified and both of these suggest
9 that under, you know, a certain set of circumstances -- and
10 I think there's a lot more evidence out there, that both of
11 these fellows are building on literature reviews, but these
12 are very precisely honed to answer those kinds of questions.

13 So these are answerable questions in a reasonably rigorous
14 fashion. Now we can slip in sociological rigor, you see?

15 There's plenty of sociological rigor in the world,
16 you know, the economists think they know what costs are and
17 I've been in enough regulatory proceedings to know that they
18 may not, as this commission may know in the rate
19 proceedings. There's a lot of sociological rigor that
20 exists as well in this kind of data, who votes -- voting is
21 a sociological act. And Joel didn't ask who they voted for.

22 MR. WALDFOGEL: No, the CPS didn't ask.

23 Just on Bruce's -- I mean, Bruce is right that we
24 need to know what the question is before we go collecting
25 data, but in some sense we need to know what the public

1 interest standard means and I know we're supposed to tell
2 you, but in some sense you need to tell us so we know what
3 to --

4 I mean, let me toss it out as a question. Is
5 voting something that the FCC wants to care about? That is,
6 whether people vote, if indeed media affect it?

7 You don't have to answer that if you don't want
8 to, but that strikes me as the kind of question we need to
9 begin to ask to answer Bruce's question because it's true,
10 we could collect data on a lot of things that would turn out
11 not to be relevant.

12 MR. RABINOVITZ: I'd like to invite the first
13 panel, do you have any questions of the second panel?

14 MR. BESEN: This is a question for Joel. I think
15 I agree with Bruce, it's all sort of really interesting.
16 I'm interested in sort of the question of causation because
17 I think it's always complicated in these things.

18 I'm interested in sort of how you would interpret
19 or really worry about issues of causation. I mean, it's
20 sort of -- you could almost think of, well, who ought to own
21 the station? Well, it's the guy who knows about the format
22 that makes the most money on it, and so you may in fact
23 observe a kind of correlation that is in fact not being
24 driven in the first instance by what appears to be exogenous
25 choice of who the owner is. And I just wonder how you sort

1 of worry about that.

2 MR. WALDFOGEL: That's a standard and very good
3 question. So I say that markets with more black owners have
4 more black content. I think you're talking about -- if I
5 were saying stations that are black-owned are more likely
6 than station that aren't to be broadcasting black content,
7 then I'd be very vulnerable to this concern because under
8 one view of all this, if you were to, say, by helicopter
9 drop add a black-owned radio station into a market,
10 black-owned and black-targeted, would it simply reduce by
11 one the number of white-owned, black-targeted stations,
12 okay? But the experiment -- and what I'm finding is that
13 that's not true.

14 MR. BESEN: I'm sorry, what's not true?

15 MR. WALDFOGEL: It's not true that it reduces --
16 that it's purely -- that it displaces a white-owned,
17 black-targeted station. That, rather, an additional
18 black-owned station in the market raises the number of
19 black-targeted stations in the market.

20 So I'm not making this statement at the level of
21 the station, as has been done in some previous research. I
22 mean, I agree that's not very informative. It's true that
23 virtually every black-owned station is black targeted, but
24 that doesn't answer anything interesting about the effect of
25 ownership on targeting.

1 The interesting question in my view is if you have
2 more black-owned stations, does it actually increase in
3 equilibrium the number of black-targeted stations or does it
4 simply displace a white-owned black-targeted station?

5 MR. BESEN: But why is not the number of
6 black-owned stations themselves potentially an endogenous
7 variable?

8 MR. WALDFOGEL: Oh, it is potentially an
9 endogenous variable, but I have two nice instruments for it.
10 In the cross-section, we're way inside baseball here, but
11 we can do this if we have to, in the cross-section, the
12 natural instrument is the size of the black population, but
13 a much nicer instrument in the over time comparison is that
14 after the telecoms act, a lot of consolidation occurred
15 which meant that there was a lot of exogenous selling by
16 singleton owners to groups.

17 And the singletons were disproportionately -- or I
18 should say the black owners were disproportionately
19 singleton, so there was a lot of change in the number of
20 black-owned stations in markets that was arguably exogenous.

21 So I do worry about that and I do this a variety of ways
22 and it's true of the change and it's true in the instrument
23 that changed, it's true in the cross-section and the
24 instrument of the cross-section.

25 So I agree with you that that's -- although it's

1 inside baseball, it's a very important inside baseball
2 question, but I think we tried to be careful about that and
3 it seems to not evaporate under this sort of scrutiny.

4 MR. COOPER: Let me ask a question about some of
5 the findings I'm troubled by. Obviously, the last
6 exposition is something you think is very important.

7 In finding the effects of increasing variety, and
8 you're careful to use the word variety, in markets where
9 there's been an increase in concentration, I would have two
10 questions, and I've obviously looked at these studies
11 carefully. One, is that true at all levels of concentration
12 or does it tend to adhere in markets that had lots of
13 stations, that lose a station end up with more variety,
14 whereas markets that had a small number of stations that
15 loses a station doesn't? And that would be an important
16 question for this commission in picking a threshold as they
17 have done in the policy of where they'll allow mergers to
18 take place.

19 And so I'm concerned that if we say, well,
20 allowing mergers in any market increases variety, if it only
21 works in large markets where I'm losing the seventh or
22 eighth station, that is an important public policy question.

23 Second of all, how big are the variety effects?

24 MR. WALDFOGEL: The answer to the first question
25 is I don't know and I think the answer to the second

1 question is I don't have it at my fingertips, so I also
2 don't know, but I should say a little bit more about that.

3 The variety effects are stronger in the sense of
4 statistical significance when one also controls for number
5 of stations, so conditional on the number of stations the
6 number of varieties goes up. Or to say it a different way,
7 increased concentration is clearly good for the number of
8 formats available per station. So you might think of it as
9 reducing duplication.

10 When you just do it on the absolute number of
11 varieties in the market, the results are a little less
12 strong. They tend to emerge, but they sometimes don't. But
13 the other one, that is, you might think of it as -- well,
14 the duplication result is pretty clear.

15 MR. OWEN: I have just a very narrow question for
16 Philip, actually. In one of your regressions, you used the
17 power ratio and I understand that, I've seen lots of radio
18 consultants and radio stations use that criterion to measure
19 performance in a business sense and I've always been curious
20 about it because it seems to me that since we know that
21 different demographic groups are worth different amounts to
22 advertisers, that you would expect to see some variation in
23 that ratio across stations, but I don't know what it has to
24 do with, for example, profitability because the cost of
25 attracting audiences in different demographic groups may

1 very well be different.

2 For example, the fact that a black-owned station
3 on average has a lower power ratio than a non-black-owned
4 station is consistent with the hypothesis that black-owned
5 stations are more profitable because their costs might be
6 lower.

7 So the question is how do you control for that
8 effect when you're using power ratios as an indication of
9 the performance of the station?

10 MR. NAPOLI: In other words, it's sort of account
11 for the grocery costs, essentially. Yes. This certainly
12 doesn't do it, but within the radio context, I would think
13 if we're operating under that assumption that black-owned
14 radio stations operate under lower production costs, which I
15 guess is what you're possibly suggesting, right?

16 MR. OWEN: I don't know.

17 MR. NAPOLI: In that direction at least we would
18 still suffer, I think, the possibility of audience diversion
19 just from the basic notion of higher production costs
20 leading to larger potential audiences and audiences, again,
21 which we do see when we study audience behavior within
22 minority communities, which is that a greater likelihood of
23 them diverting to majority content, and that may very well
24 be a function of -- your stuff shows, I think, that a little
25 bit, too -- of the higher production costs that are there.

1 So profitability, it may be the case that a
2 station can operate at a very low level and maintain
3 reasonable levels of profitability, but I don't know that
4 that also equates with equivalent levels of quality content
5 of serving all diverse audience bases, which, again, do we
6 care about that? That's the value-based decision.

7 MR. WALDFOGEL: I just want to make an efficiency
8 comment about this line. I think the reason why Phil's
9 result is potentially very interesting is that again we
10 ought to have a station if its value to listeners plus its
11 value to advertisers exceeds its costs.

12 Part of that valuation doesn't get incorporated,
13 that is, the valuation that listeners place on it cannot be
14 incorporated, it cannot be appropriated as revenue by the
15 station owner, which means we're left relying on the extent
16 to which advertisers value listeners to drive whether we
17 offer stations.

18 If stations with predominantly black audiences are
19 for whatever reason, if it's entirely discriminatory, if for
20 whatever reason such stations are less valuable to
21 advertisers, then we will as a natural market consequence
22 get less black-targeted programming. And remember, whether
23 the programming had ought to exist depends partly on this
24 unpriced component, the value that black listeners place on
25 the programming.

1 Now, to the question of whether lower prices
2 simply reflect more competition, we have to remember that
3 most markets have very few black-targeted radio stations.
4 And I shouldn't just state it as an assertion, but rather
5 maybe as a suggested exercise. You could look and see in
6 your data how this varies with the number of black-targeted
7 radio stations in the market. You might also put city fixed
8 effects in there to see if it's a robust result.

9 But if it's true, then it's just another reason
10 why markets would be delivering smaller amounts of
11 programming to that community and there are reasons to
12 suspect the allocation might have been inefficient to begin
13 with and this could make it worse. Could. Could. I'm an
14 unrepentant economist.

15 MR. RABINOVITZ: Let me switch topics a little bit
16 to ask a question about diversity. The first panel was
17 fairly clearly that they wanted to shy away from both format
18 and viewpoint diversity and that we should be looking at
19 structural solutions or structural questions anyway.

20 My question is to this panel do you agree and, if
21 so, at least in the radio field, given that Congress has set
22 limits on the number of owners per market, is there anything
23 left for the FCC to do?

24 Maybe start over here. That end of the table has
25 been busy.

1 MR. GOMERY: I'm willing to throw in my two cents
2 for no pay. I think that I have to agree with what Mark
3 said earlier this morning, which I think -- I keep thinking
4 morning/afternoon, earlier in the panel and that is that the
5 politics of making particular rules of behavior is just a
6 politics that's not going to work. I don't think that's
7 real politics today. So unless there's some kind of change
8 in the world, I think you're going to have to deal with
9 ownership.

10 MR. WALDFOGEL: This is a really hard question and
11 I'm about to say I don't know the answer and then go on to
12 speak. That really proves I'm an economist. But perhaps as
13 with merger questions, maybe there's an incremental issue.
14 If one had evidence that would lead one to believe that some
15 outcome that one had decided to care about, like whether
16 people vote -- and, again, I don't know whether we should
17 care about that, although we certainly shouldn't dismiss it
18 out of hand, if we had reason to believe that a certain
19 proposed change in rules was going to have an effect on
20 that, a negative effect, then maybe we would want to use
21 that possibility of scrutiny at the point of a proposed
22 merger as a way to regulate. I don't know, but it's a
23 thought.

24 Again, as with antitrust where we don't go out and
25 break up monopolies that are fairly gained, but we don't

1 allow people to merge to them, maybe similarly we shouldn't
2 allow people to merge to situations that raise the costs of
3 informing parts of the electorate. I don't know. Just a
4 thought.

5 MR. NAPOLI: When I think about it, I mean,
6 really, one of the underlying reasons we're all here is
7 because of the persistence of the courts in demanding
8 evidence that a particular policy as an intended outcome --
9 I can't remember the court case now where the court asked
10 the question whether or not source diversity in and of
11 itself was an outcome worth pursuing absent evidence that it
12 did produce content diversity. So perhaps to a certain
13 degree -- and I think a lot of our analysis and the FCC's
14 analysis is going to be guided in this direction which is
15 what is it the courts want.

16 And if they need -- you know, it seems to me that
17 at this point policies that ultimately do impact viewpoint
18 diversity, the court seemed to presume that sort of
19 intention, that it needs to be demonstrated. I think there
20 are plenty of potentially reasons why we might try to
21 justify ownership type diversity policies in and of
22 themselves, but I think we're way past that ever flying with
23 the courts.

24 MR. LEVY: I wonder if I could just push a little
25 further on the question of viewpoint diversity and how you

1 might measure it. I think from your discussion as well as
2 others we have at least a decent shot of defining what we
3 mean by localism and then one could measure it and analyze
4 it, et cetera, but in terms of diversity, I don't think that
5 we've really gotten quite as far down that road yet.

6 I mean, we have one sort of proposed almost
7 indirect measure of the impact in terms of the effect on
8 voting patterns, but if we for the moment confine ourselves
9 to the political arena and the sort of analysis that Mark
10 opened up his discussion with this morning, is there
11 anything -- other than the indirect effect that Joel -- the
12 indirect measure perhaps that Joel has proposed, are there
13 any other ideas that any of you could offer that would allow
14 us to come to a relevant definition of diversity really in
15 this sort of political and promoting citizenship context?

16 MR. NAPOLI: So in other words, basically moving
17 beyond the presumption that each individual source
18 represents a different viewpoint, I mean, that's the most
19 basic level, but I think we could go beyond that and some
20 examples -- again, this involves the examination of media
21 content which, again, may or may not be something that
22 people are sort of willing to incorporate into policy
23 decision making.

24 But let's say for example looking at the diversity
25 of the number of different news stories covered, that is,

1 how much overlap do we see versus lack of overlap between
2 electronic or print media outlets in a market? Or we go and
3 employ the methods that have been used for primarily
4 political reasons to try to assess whether there is a
5 liberal or conservative bias in our news media outlets.

6 The studies that use those methods are often --
7 the sources of them are such that we often just dismiss the
8 studies, but in fact there is a fairly developing -- you
9 know, fairly sophisticated methods of trying to assess media
10 content in a reasonably objective way, so you might look at
11 individual issues and just look at the basics of, you know,
12 is the coverage positively or negatively predisposed on
13 particular positions or issues.

14 I mean, this really got into the nature of what
15 the fairness doctrine was trying to get at, but, of course,
16 no one ever went and assessed the nature of viewpoints that
17 were there. I'm not suggesting a need return to the
18 fairness doctrine at all, but I'm just saying that some of
19 the methods that we could have used to assess the nature of
20 these regulations on content could be used.

21 Assess media content -- you know, again, you
22 employ two or three individuals analyzing the content, make
23 a determination as to what level of agreement there is
24 between all these different analysts and then if there's a
25 sufficient level of agreement, then you say, okay, we have a

1 measure of trying to assess what level of conservative or
2 liberal perspective we see here or how many different
3 stories are receiving coverage, how many different issues
4 are receiving coverage in the news media and then you can
5 construct potentially diversity indices, I think, in that
6 direction.

7 MR. LEVY: Anybody else rash enough to take a
8 crack at this?

9 MR. COOPER: I will assure you that that sort of
10 content analysis will drive the proponents of rigor nuts.

11 MR. NAPOLI: Actually, let me just -- that was my
12 concern from the last session, is that's exactly it. You
13 could show these as quantitative and statistically rigorous
14 within the parameters of this particular methodology, but we
15 are talking about a methodology that has never had any
16 significant place in policy making.

17 And, yes, if this just bumps up against the wall
18 of this is a foreign methodology then, yes, this is dead in
19 the water. But at the same time, we were asked to come up
20 here and talk about policy objectives that are inherently
21 non-economic in their orientation and I can't imagine how
22 that could be pursued absent research methods that are
23 non-economic in orientation.

24 MR. OWEN: The problem with the content diversity
25 measures is that the definitions of content categories don't

1 have any deeper basis than either industry categories or the
2 researcher's intuition.

3 MR. NAPOLI: We sort of have that problem when we
4 define media markets, though, for economic analysis, don't
5 we?

6 MR. OWEN: No. We have a test for media markets.

7 MR. NAPOLI: I'm just remembering Harold
8 Furchtgott-Roth's dissents every time. He disagree with the
9 annual reports just on the basis of he didn't agree that
10 these markets were defined properly. I mean, there seems to
11 be an incredible amount of subjectivity there. Movie
12 theaters, should they be incorporated into the definition of
13 assessment of competition in multi-channel programming?

14 MR. OWEN: One of the points we were trying to
15 make this morning, or some of us were trying to make, is
16 that there are widely accepted methods of answering that
17 very question in a -- and I hate to say it -- rigorous way
18 using empirical methods that are embodied in the merger
19 guidelines. You have the hypothetical monopolist test and
20 the 5 percent and so on.

21 So it's not a matter of intuition as to whether to
22 include movie theaters. There's a widely accepted answer to
23 how to do that.

24 MR. NAPOLI: Well, I don't think we're at any kind
25 of consensus, though, on that, are we?

1 MR. OWEN: In antitrust, we are. I agree we're
2 not in some regulatory agencies or some regulatory areas at
3 that consensus.

4 MR. NAPOLI: Like media.

5 MR. OWEN: Well, that remains to be seen. That's
6 why we're here, right?

7 I wanted to come back to Jonathan's question about
8 source diversity. I don't see how we can measure source
9 diversity without knowing what the purpose is of wanting to
10 measure source diversity. And it's only in answering that
11 question that you might possibly see some way to measure it.
12 Unless, of course, it's an end in itself, but that can't be
13 true unless you have a definition of what it is and now
14 we're running in a circle.

15 MR. LEVY: Let me try and break the circle a
16 little bit. I don't think that it's an end in itself. I
17 think that the ends have to do, at least one of the ends,
18 has to do with an informed public that can better exercise
19 its responsibilities as citizens and voters and there are
20 some external effects of that, of course, the more
21 responsible you are as a citizen and voter it helps me as
22 well.

23 So I think that's sort of a rough description of
24 what one of the ends might be. I think what we have and,
25 again, from the -- just going to back to the quotation that

1 Mark cited this morning, I think we have a suggestion that
2 one way that you get to that, you know, is having the
3 multitude of tongues, information or points of view from a
4 multitude of tongues and the question is -- a question,
5 then, is, well, how do you ensure that that multitude of
6 tongues is able to -- is, are able to express itself?

7 And I think that the commission at least
8 traditionally has gone down that path and come to some
9 conclusions regarding -- or come to the conclusion that one
10 way of approaching this is to guarantee or to ensure that
11 there is a certain minimum number of independent outlets,
12 media outlets available within certain relevant local
13 markets. And maybe this is a path or a technique that long
14 ago reached a dead end, perhaps rigor mortis has set in and
15 some of us didn't notice it.

16 If that's the case, I'll ask the board of coroners
17 here to repeat the verdict and if it's not the case, then
18 maybe someone could give us some suggestion as to who should
19 resuscitate the patient here.

20 MR. OWEN: I don't want to monopolize the
21 nihilistic point of view here, but you made a jump. You
22 said the way to achieve these good citizenship benefits,
23 political benefits, is by increasing the number of sources
24 of information and so on and that's certainly plausible, but
25 it's equally plausible, it seems to me, that one could have

1 much better citizens if we simply had a benign monopolist
2 informing them of their duties and giving them the
3 information they need to exercise them.

4 I don't know why it follows that an increase in
5 the number of sources makes better citizens as opposed to a
6 decrease in the number of sources. It's the same issue as
7 with program content diversity. We don't have a theory that
8 tell subpoenas that. We have a hope or a belief or
9 something -- intuition, but until you can actually
10 demonstrate that relationship, it seems kind of extreme to
11 go off and base ownership policies that may have significant
12 costs for the public on those intuitions.

13 MR. COOPER: Well, again, I'll be the opposite
14 side of nihilism, whatever that is, touchy-feely, perhaps.
15 Quite the contrary, I mean, clearly we have a judgment by
16 the Congress that competing sources is better than a benign
17 dictatorship and that's clearly a strong message.

18 We also have -- the interesting thing is that each
19 of the individual propositions in my view of the literature
20 out there, and it may not be econometric literature although
21 some of it is, is that each of the propositions -- who owns
22 it matters, what people hear matters; the separate
23 propositions actually are well supported as we will endeavor
24 to demonstrate in the filing of our comments. So that not
25 only has Congress made a clear judgment, and if you look at

1 their legislative history, they cite facts and behaviors
2 that led them to that judgment, but we also think and we
3 have filed these as comments at the commission that the
4 ongoing body of research supports the fundamental
5 assumptions that the senators and representatives stood up
6 and said we think ownership matters, we think there are
7 under served minorities who will be neglected by the market
8 unless we have policies, so that each of the individual
9 propositions is well supported and the political statement
10 is quite strong.

11 Obviously, the courts are now moving to raise
12 other issues about whether Congress had the right to make
13 that judgment. We may have a constitutional challenge, or
14 whether the FCC marshalled enough evidence to support a
15 specific rule, but where we are today, I think, is clear
16 congressional judgment, good fuzzy evidence, and courts
17 which may be moving around on us.

18 MR. BESEN: I think I understand what Bruce is
19 asking for and if it is, I think what he's suggesting is the
20 following. You have a structural sort of idea, which is the
21 more different owners the better.

22 MR. COOPER: I didn't quite say that, but --

23 MR. BESEN: But without any attempt to link that
24 to something else, okay? Then sort of the next step is sort
25 of along the lines, I think, of what these guys are doing is

1 saying, well, we can in fact link these to some outcomes,
2 observable outcomes, okay? And that's actually progress.

3 The question that's sort of next and the sort of
4 harder question is, well, are those outcomes -- if we get
5 more of one of those outcomes is that good or bad? Joel was
6 actually very cautious about what he would say.

7 As economists, we think we know that if the
8 outcome is higher prices, we say higher prices, bad, we
9 think -- we have sort of a long history of doing that. This
10 is maybe a sort of enterprise in its infancy in which one
11 goes to the sort of -- again, it's progress to identify
12 measurable relationships between structures and outcome.
13 Also hard, these are not easy things to do, and the next
14 sort of issue would be, I think probably even harder, is to
15 try to determine whether these observable outcomes in fact
16 are linked to something that we really want to accomplish or
17 have the commission accomplish.

18 And that's what -- I think none of us wants to
19 stop -- I shouldn't say that. I think neither Bruce nor I
20 wants to stop at the first point, okay?

21 Joel, who has moved us to the second point and
22 Philip has as well, I think we all want to get that far and
23 the question is can we get further than that, can we
24 determine whether in fact these outcomes are worth having.

25 MR. COOPER: I will reiterate, you get to -- if

1 you want to debate that issue, you go down to Capitol Hill
2 and that's where you tell them this value is not worth it.
3 They have already spoken. They have affixed a value on this
4 stuff. My concern is that the economists now are trying to
5 hijack the agenda, the political economy and the answer is
6 that you don't get to say only efficiency matters.

7 If you want to convince Congress that only
8 efficiency matters, you have to go down on the other side of
9 Pennsylvania Avenue and do it. That's my point, is that you
10 can't hijack by agenda.

11 MR. LEVY: I think Jane should have a chance.

12 MS. MAGO: I just want to inject a question that
13 was related to the last set of questions.

14 The outcomes, my role would be eventually to have
15 to go to court and defend all these things, and I wanted to
16 know how we can control to know that the observable outcomes
17 that we are identifying are in fact related to the media or
18 the specific changes that we're talking about.

19 Like for example, your example on voting patterns
20 that you raised a few minutes ago. Is it because there was
21 a change in something that happened in the media, in the
22 mass media, or is it something that happened in the
23 newspapers, is it something that happened in the local
24 community that caused people to suddenly decide that they
25 wanted to go out and vote? How do we control for all those

1 factors?

2 MR. BESEN: Rigorously.

3 MR. WALDFOGEL: Well, I agree. That's the task of
4 an empirical study is to try to answer that question, I
5 mean, especially when one is trying to say A is causing B,
6 then one has to do a lot of things. It goes way inside
7 baseball talk about all of it now, but in the case of a
8 newspaper study, I have data on the circulation of a
9 particular national paper at various points in time in every
10 local market across the country, I have data on the
11 circulation of the local papers in every zip code at various
12 points in time, and methodologically -- the spirit of the
13 exercise is to say, well, how does the change in the
14 circulation of the major paper, national paper, how does
15 that relate to the circulation of the local papers in zip
16 codes that are heavily populated by the folks targeted by
17 the national paper?

18 So I don't know if having said that that that
19 answers your question. I control for all the stuff in the
20 CPS that I think is plausibly related to voting, et cetera.

21 There is a deeper question maybe as to what extent can
22 empirical evidence be useful for courts, to what extent can
23 empirical evidence either be poked holes in or countered by
24 other empirical evidence that sort of balance there is no
25 evidence. I don't know. I'll show you the studies when

1 they're ready and you can decide if they'd be convincing to
2 a judge.

3 MS. MAGO: Not me, the commissioners.

4 MR. WALDFOGEL: Okay.

5 MR. FERREE: Okay. That will be the last word for
6 this panel.

7 The final segment of today's program is a brief
8 wrap up that will be led by Jane Mago, the General Counsel
9 of the FCC, and Robert Pepper, the chief of the FCC's Office
10 of Plans and Policy.

11 So I'll turn it over to Bob and Jane.

12 MR. PEPPER: To some extent, what we thought about
13 for this last section is really a continuation of the
14 discussion that has already begun, which is the integration
15 of the two panels in terms of the kinds of questions that we
16 need to answer and make recommendations to the commissioners
17 so that they actually get to answer and the kinds of data
18 that we need to muster in order to do that because I think
19 as one of the themes that we've heard all afternoon is that
20 in fact the courts are requiring us to be more rigorous and
21 I think that there is an important point to be made that
22 empirical does not necessarily just mean economic analysis
23 or research.

24 There are a variety of different empirical
25 measures including sort of traditional economic measures and

1 just an observation is that in fact for people who are
2 familiar with traditional content analysis, it actually is a
3 very systematic, verifiable -- I'll say art form, because
4 it's not a science, but in fact it can be done in ways that
5 would meet the same kind of rigor that you would apply to
6 traditional economic measures.

7 Now, we typically have not done that or used that
8 for the kinds of questions that the commission addresses,
9 but it's not out of the question that that kind of analysis
10 could inform the process here.

11 For example, in listening to some of the stuff
12 that Joel talked about, going back to this question of
13 localism, it strikes me that potentially there could be
14 based upon your findings a tension with one particular rule
15 that was raised earlier, which is the newspaper-broadcast
16 cross-ownership rule, a tension between notions of diversity
17 in terms of we can actually figure out sort of
18 definitionally what that means, is it source, is it content,
19 or some of the other measures.

20 I forgot your third one, Phil.

21 Exposure. Thank you. Tension between diversity
22 and localism, given some of the findings that Joel found in
23 terms of newspaper, you know, national newspapers, I'm kind
24 of curious what you mean by national newspaper, versus local
25 newspaper and then in terms of the local content, but you

1 could identify a situation where you might have a reduction
2 in diversity, but an increase in local content. And then,
3 of course, there's a tradeoff.

4 I'm not sure how you would measure what the
5 tradeoff is and what the value judgment would be that you
6 would use to say, well, in those benefits costs, you know,
7 we're going to value one over the other -- I'm not quite
8 sure.

9 So one of the questions for the entire panel that
10 I would have is we've talked around some of these
11 definitions and how would one go about thinking about how do
12 you value these competing values, if you will?

13 Anybody?

14 MR. NAPOLI: You guys are supposed to decide that.

15 MS. MAGO: We're asking for your help.

16 MR. NAPOLI: Ultimately, that's something we're
17 going to end up facing, a situation where we find a policy
18 that is very beneficial potentially from a diversity
19 standpoint or a localism standpoint and not necessarily
20 beneficial from a competition standpoint, creating some sort
21 of hierarchy of values is something that I'm not sure -- I
22 mean, I think at best it could go back to grounding in that
23 third step, I think, that we were talking about before in
24 terms of behaviors, but I think that's the hardest question
25 you could ask because we're in the realm of value judgments

1 again. And I don't know that anybody, whether it's Congress
2 or anyone here at the commission or any academics, have ever
3 done a good job of saying this is what should be priority
4 one and this is what should be priority two. So I guess I
5 just failed to answer that question completely.

6 MR. PEPPER: Well, maybe --

7 MR. OWEN: You're not going to use consumer
8 welfare, which is what economists try and use, as the
9 measure of what's good policy and what's bad policy. And if
10 you're going to have more than one variable, some of which
11 may not matter to consumers, the political goals may not
12 matter to any given consumer or they may place much lower
13 value on it than they ought to from a citizenship point of
14 view, then you're simply going to have to have a
15 multi-variant decision process in which whoever is
16 responsible for making the decision has to make the
17 tradeoff.

18 Now, all you can do is provide them with the
19 relevant information, but if you're going to increase
20 diversity, however you're going to measure it, by X, then
21 it's going to cost you Y in terms of consumer welfare as
22 it's traditionally measured. And that's it. You just give
23 that information to the decision maker. And their
24 preference function determines the outcome.

25 MR. GOMERY: It's like I gave six, there's

1 hundreds and I think the point is that he's exactly right,
2 someone is going to have to ultimately create a hierarchy.

3 MR. NAPOLI: Or it could be possible conceivably
4 that diversity is a component of consumer welfare as well,
5 right?

6 MR. OWEN: If it's entirely included in consumer
7 welfare measures, then we don't need to worry about it
8 separately, right?

9 MR. COOPER: Well, but at the same time --

10 MR. OWEN: It should be incorporated.

11 MR. COOPER: Underlying consumer welfare is that,
12 for instance, and we heard a little about fairness, all
13 dollars are always equal and at least there's an awful lot
14 of public policy that recognizes that dollars aren't equal
15 and we're willing to transfer them in a sense of fairness
16 from one class of customers who have lots -- or consumers or
17 citizens have lots of dollars to other sets of consumers who
18 have a lot fewer dollars because we sort of understand that
19 they attach more value to the individual dollar and we have
20 a lifeline program which is based on some premise about
21 consumer welfare and so forth.

22 So even with the pure economics, most economists
23 and Bruce was quite clear, he said traditional economics
24 starts from the simple assumption we don't do equity and now
25 there are new forms of economics that say, well, fairness

1 clearly influences behavior.

2 So in the end, it's all a lot fuzzier than we make
3 it out.

4 MR. OWEN: Well, I agreed with you up until the
5 last statement. The commission has always been in the
6 business of transferring income from one group to the other
7 from the beginning. I mean, there's no point in -- talk
8 about dirty little secrets, I mean, that's been one of the
9 main motivations for the existence of the commission and
10 it's silly to ignore that. But that's quantifiable.

11 I mean, if you think a purpose of the commission,
12 a legitimate objective, is transferring money from rich
13 people to poor people or white people to black people or
14 whatever, or the reverse in the case of the commission's
15 historical policies with respect to spectrum allocation
16 issues at least, measure it. Make it explicit.

17 MR. BESEN: There's actually something quite odd
18 about Bob's question. It sort of suggests that after these
19 guys do really rigorous analysis and can provide you the
20 relationship between market structure and a variety of
21 outcomes, you're now stuck having to sort of figure out what
22 it all means. And it somehow suggests that you were better
23 off back in the days when you didn't know anything about
24 this and you could just simply say, well, diversity trumps
25 economics or the reverse.

1 I've got to believe that somehow having more
2 information is better, right? I mean, we've all suggested
3 all along that there's something hard about this side of the
4 problem and I don't think anybody here would deny it, but
5 you can't be saying, I hope, we shouldn't be doing any of
6 this because if we ever actually learned about these effects
7 we'd have this terrible problem of deciding which ones we
8 cared about.

9 You ought to be forced to decide which ones you
10 care about and so it can't be -- you should be starting to
11 do some of the thinking that Bruce has suggested that you
12 do.

13 MS. MAGO: Let me interject here. I want to try
14 something and see if this works and I don't know whether it
15 will or not.

16 Assuming that economists like to assume things,
17 let me put out a proposition and I want to ask each of you
18 to just give a short answer on it.

19 If I assume that the concern that the commission
20 has is to encourage consumers or to enable consumers to have
21 the information that they need at any given point in time,
22 what should I measure? What would I be looking for? What
23 should I measure?

24 It doesn't make sense, right? You're looking at
25 me --

1 MR. WALDFOGEL: Information about what?

2 MS. MAGO: Information that they need to be able
3 to run their lives, do what they want to do. Basic
4 information, not about anything particular with government,
5 not about anything particular, but the information that they
6 want to have about whatever is of interest to them. I'll
7 start there.

8 MR. WALDFOGEL: I think it's just too broad a
9 question for me. Information about what products are
10 available in the marketplace, political issues, I mean,
11 there's so many things. It's not clear to me how I could
12 answer that given the potentially very large range of types
13 of information that one conceivably could be interested in.

14 MS. MAGO: Does anybody else want to --

15 MR. COOPER: If it's civic discourse, if it's
16 information as opposed to entertainment, the series of
17 questions I would ask is it available, in which media, how
18 many eyeballs are in that media and who is the source, what
19 sources are putting it out. I mean, those were the list of
20 things we saw as the -- I'm worried about the influence of
21 the information and that's sort of who says it in what
22 media, how is it presented, those are the critical factors
23 which determine how much influence that information has on
24 the listener.

25 MR. OWEN: I don't know that I can help, at least

1 in the measurement level. I mean, ultimately -- and this is
2 a very personal view -- I think there's a problem if there's
3 some information out there for which there is a consumer
4 demand that can't get through because of an imperfection in
5 the market or because of a regulation, for that matter. And
6 that's what you should be looking for or looking for
7 examples of and that's what you should be seeking to remedy.

8 And I don't know how else to think about that problem.

9 MR. WALDFOGEL: I'd just like to pick up on
10 something Bruce just said. There seems to be floating
11 around here the idea that there is efficiency and then there
12 is this other stuff and that somehow all the promotion of
13 whatever you call it, whether you want to call it variety,
14 diversity, is not efficiency, it's some other stuff.

15 And I think we have to think about the kind of
16 good this is and remember that there are users whose value
17 is important, whose valuation of the good, the information,
18 is important, but not priced and you can enhance efficiency
19 in principle in some instances by providing things,
20 jiggering with market outcomes, okay?

21 This is a context that in principle ought to be
22 fraught with market failure, although of course once you say
23 that you raise all kinds of problems because, you know, my
24 market failure may not be yours.

25 But still we have to remember just by the nature

1 of this good that talking about promoting different kinds of
2 programming is not necessarily walking away from efficiency.

3 Suppose notwithstanding the variety among country
4 stations you have a market with four country stations and no
5 black-targeted stations, you can imagine a social planner
6 adding either a fifth country station or a first
7 black-targeted station.

8 Now, again, if black-targeted stations are quite
9 differentiated and in the absence of that station being
10 there black listeners would not be listeners, whereas the
11 fifth country station would just allow some of the existing
12 country listeners to chose a slightly more preferred option,
13 it's easy to imagine, given that the users don't get to pay
14 their evaluation that adding the black station would be more
15 efficient, okay? But it may well not be what the market
16 would do.

17 So in principle, there can be promotion of
18 diversity that is efficiency enhancing. It's a separate
19 issue, though, than how do you identify those circumstances?

20 Empirically, what do you need? And that's, of course, much
21 harder. But there is no lack of theoretical rigor in that
22 argument. There is a lack of data, but I just want to say
23 that it's not just efficiency and some other stuff. There
24 are efficiency reasons to want to promote diversity of some
25 sorts.

1 MR. NAPOLI: I agree with Joel, first of all, on
2 that one. Actually, this is tough because I guess
3 fundamentally there's the issue of the challenge of trying
4 to measure that which is not available, products that have
5 not found their way to market. To me, the best standard of
6 assessment that we have is to first look at what is the
7 theoretical maximum potential which is constrained basically
8 by media technology and then perhaps crafting that into some
9 means of assessing the extent to which a particular media
10 market or a media industry is reaching its full potential.

11 We don't necessarily have to expect it to reach
12 its full potential as far as maximum diversity or variety of
13 products, but perhaps somewhere in there could be a
14 threshold by which we say within this context we're seeing
15 sort of this level -- operating at this level of diversity
16 capacity, so to speak. I haven't worked out any more detail
17 on it than that, but perhaps that could be sort of a
18 framework for addressing a question like that.

19 MR. GOMERY: My problem is again with the question
20 and all I can think of is lots and lots of -- what's not
21 been discussed here today and that is "entertainment" or is
22 the most difficult to get a handle on, but it seems to me
23 that there is a very strong argument to be made that many,
24 many categorized entertainment shows are also highly
25 informational and so to kind of dismiss them and say, you

1 know, when the person watches "West Wing" he or she doesn't
2 learn anything about the presidential process and is just
3 being entertained by a drama seems to be kind of not the way
4 to ask the question.

5 So then I'm back to agreeing with Stan, which is
6 how do you maximize as much possible that can be there, if
7 everything counts?

8 MS. MAGO: I think what you've just identified is
9 the problem with trying to figure out --

10 MR. GOMERY: Well, thank you. I'll take credit
11 for that.

12 MS. MAGO: It's the problem with trying to figure
13 out what you would do with the content analysis. I mean, we
14 kicked around a little while ago the thoughts of how we
15 would go about measuring some sort of a content valuation
16 and do you look just at public affairs programming, do you
17 look just at commercials or whatever else?

18 MR. GOMERY: I vowed that I wouldn't pick on my
19 other panelists, but I guess I'll now break it. I don't
20 think it's as simple as they do. I think that the concept
21 genre, which is what the concept they're using is, or in
22 radio terms format, is created on an industry level, it's
23 created on a consumer level, it's created by T.V. Guide,
24 it's created by listings, it's created by a lot of things.
25 And, first of all, it changes. It's not a kind of set thing

1 in stone. There's histories. We had lots of certain kinds
2 of television programs in the 1950s we don't have today and
3 vice versa.

4 And I think I would ask them, I mean, a format
5 that I'm familiar with in radio is called urban contemporary
6 and urban contemporary is defined as, at least as I think I
7 understand it, by the radio industry as one that appeals to
8 both blacks and whites. Well, that makes sense, it's more
9 of the population to appeal to and potentially higher
10 advertising dollars. But then that really complicates the
11 issue if you can't draw the categories.

12 So I think categories, making categories like that
13 is really tough.

14 MS. MAGO: So let me reveal what I was up to.
15 Would it be easier to answer my question if I had asked you
16 to assume that the concern was ensuring that there were
17 multiple sources of programming, not necessarily multiple
18 owners of media, but multiple sources of the programming
19 that's on the media? Would it be easier to answer what to
20 measure under those circumstances?

21 MR. BESEN: Yes, but it might be the wrong
22 question.

23 MS. MAGO: Elaborate.

24 MR. BESEN: Well, you can count them and you can
25 sort of count how many different owners. The answer to that

1 question, I suppose, is if you were to maximize that kind of
2 diversity, nobody could own more than one of anything.

3 That's presumably not what you had in mind.

4 MS. MAGO: No, I was talking about programming on
5 the media, not necessarily --

6 MR. BESEN: You said source diversity.

7 MS. MAGO: Source diversity for programming. If I
8 get my programming from multiple sources for my one
9 television station or my one radio station, if my goal is to
10 maximize that source programming.

11 MR. NAPOLI: As in actual program producers, then.

12 MS. MAGO: Right. Right.

13 MR. NAPOLI: Okay.

14 MS. MAGO: Would it be easier to measure that?

15 MR. NAPOLI: Well, I think you guys have done a
16 fairly good job of that already. I mean, the copyright
17 holder criteria in terms of measuring how many different
18 program owners are out there. I mean, as far as assessing
19 that particular level of analysis, I don't think that's hard
20 at all. Translating that to the rest of the question from
21 before about the extent to which it helps enable consumers
22 to have the info they need, I don't know if that makes it
23 any easier.

24 MR. BESEN: See, the problem is you could only use
25 that rule, I think, if you -- sort of it's one to a customer

1 for whatever it is you're counting because once you go to
2 two you're already starting to do tradeoffs. You're already
3 starting to ask whether there are other benefits from having
4 somebody own more than one of whatever it is we're talking
5 about owning. So at some level it's pristine, it's easy to
6 implement, but it may not get you to the right answer.

7 And once you get past that point, which we are
8 past that point, the question is, well, where do you stop?
9 And it's hard to know when to stop at five or six or seven
10 without linking the incremental property being owned by
11 somebody to some external outcome. At least I have
12 difficulty knowing how to stop once I'm past that no more
13 than one to a customer.

14 MR. OWEN: Maybe for a change I could tell you
15 what Stan is trying to say.

16 Think of the choices. Suppose you were concerned
17 about program sources, okay? And think of just these two of
18 many alternative ways of measuring that. You could use HHIs
19 based on their revenues or you could count noses. Which is
20 the right measure?

21 Well, we can't answer that question until you tell
22 us why you think the concentration of sources is important
23 because one or the other would be appropriate, or some
24 third, to your purpose.

25 MR. LEVY: I'm probably going to regret this, but

1 that won't stop me.

2 When we came up with these questions initially,
3 one of them was actually designed to sort of elicit a
4 discussion of this particular methodological issue and the
5 question, perhaps it wasn't as artfully framed as it could
6 have been, but it tried to ask about the counting noses
7 approach. You know, could that in some way be justified by
8 a goal of reducing the probability that an important message
9 would not be made accessible to the public?

10 I mean, you could consider a series of different
11 possible channels of communication to the public and you
12 could make -- I'm just making this up a little bit as I go
13 along -- you could make some assumption about the
14 preferences of the owner of each one and you could perhaps
15 try and calculate the probability that they would each
16 independently make a decision to censor or not to grant
17 access or not to choose to sell access to a particular
18 viewpoint and this is a -- I mean, at least in principle, I
19 think, this gets away from once you've gone from one to a
20 customer you're sort of off into terra incognita here. I
21 mean, you could think about -- you could possibly look at it
22 from the point of view of sort of reducing the blocking
23 probability for any particular message that was trying to be
24 transmitted to the public.

25 MR. BESEN: But it certainly could not be

1 monotonic.

2 MR. LEVY: No, I didn't say it wouldn't be
3 monotonic. I would say that it would at least -- that it's
4 not sort of an all or nothing proposition. It's not that
5 once you get beyond one to a customer -- it's not just a
6 situation where you have one to a customer or everything
7 else. I mean, you could consider an increase in the number
8 of independent channels as reducing the probability that a
9 particular message would be blocked by everybody.

10 MR. COOPER: To go back to the much maligned
11 antitrust merger guidelines, clearly there are judgments
12 being made. The quote I always use is that with fewer than
13 six, we know we have oligopoly, with more than 50 we think
14 we have competition and everything else in between is
15 unclear. And then we've now added the ten as the moderately
16 concentrated guidelines.

17 And there's no reason to believe that -- I mean,
18 that judgment is just as vague as this question of is six
19 enough or seven enough. Those are hard judgments.

20 My concern is to remember that radio noses and
21 video noses are very different and big video noses and
22 little video noses are also different. And so I'm not sure
23 I want to count just noses. I worry about the other
24 measure, which is the market share defined in a variety of
25 ways.

1 MR. OWEN: Your question is would it be useful to
2 look at the effect of different ownership rules or industry
3 structures on the probability that an important idea or
4 concept would be blocked by the owners?

5 MR. LEVY: Yes.

6 MR. OWEN: What's important mean? If it's
7 important in the sense that it's associated with high
8 consumer values, then that's just an efficiency question,
9 right? Which we have tools -- I don't know what the answer
10 is offhand, but presumably we have tools for dealing with
11 it. If it's the commission's idea or the Congress' idea or
12 the Constitution's idea of what's important, then I don't
13 think we have any systematic way of addressing it.

14 MR. LEVY: I certainly agree that important is an
15 undefined term and I guess it may be the case that, you
16 know, you don't necessarily know in advance what's important
17 or what isn't, so you might want some sort of an insurance
18 built into the mechanism.

19 MR. NAPOLI: That's even the unimportant stuff,
20 too.

21 MR. LEVY: Well, it's stuff that you don't know in
22 advance.

23 MR. OWEN: The question is how much unimportant
24 stuff, that is, stuff that consumers would rather not have
25 or takes up channel space and replaces stuff that they would

1 prefer to have, you're willing to impose upon the public in
2 order to get whatever the commission thinks is important
3 through?

4 MR. LEVY: That's exactly the tradeoff.

5 MR. PEPPER: Maybe we could come back for just a
6 second to something that Doug said which you said it as an
7 assertion and I don't think that actually it was discussed
8 and that is you're saying we're here because the market is
9 not working, that we have market failures. That's your
10 judgment. And I guess I'd like to test that judgment with
11 the other panelists on a variety of these dimensions that
12 you laid out.

13 I mean, is Doug correct? And then how would we
14 actually know it in terms of measure that and the question
15 then is we've had all these rules in place so if in fact
16 Doug is correct are the rules part of the problem or are
17 they potentially part of the solution?

18 MR. GOMERY: I'm the only one ineligible to answer
19 that question, so I'll shut up.

20 MR. COOPER: Obviously I've made the point for the
21 specific rules that have congressional intent specifically
22 stated. Then Congress has made a judgment about market
23 failure and obviously the '92 act has a lot of talk about
24 market failure. So that's one sort of decided by the
25 political process.

1 Whether or not we agree that we want to debate
2 whether Congress was right or wrong, that's a different
3 question.

4 I guess for some of the other rules, I would
5 emphasize the opposite side which is the assumption that
6 because the rules haven't quieted all the complaining we
7 can't assume that they're a problem rather than part of the
8 solution. We still have complaining about ownership, we
9 still have concerns raised about media diversity, certainly
10 ownership diversity. The commission published some papers
11 about that.

12 So it's a bold assumption to go on and say that if
13 we got rid of these rules things would be better. And so I
14 go the opposite way and say that I don't see the rules as
15 part of the problem, they're not the perfect solution, but
16 it needs to be demonstrated to me that removing the rules
17 would make things better, as opposed to simply saying they
18 haven't done good enough and therefore we can get rid of
19 them.

20 MR. PEPPER: Stan?

21 MR. BESEN: I guess the first thing is I don't
22 think the existence of complaints about the outcome in a
23 market is sort of the best evidence about whether that
24 market is working very well. I think probably French
25 peasants complain about the low prices for agricultural

1 products they sell even in markets that probably work quite
2 well. So I think that's not the sort of best evidence to
3 employ.

4 We all know these markets don't work perfectly.
5 Everybody has said this. In various ways, people have said
6 this: public goods, unpriced products. In one way or
7 another, everybody who has ever studied this set of markets
8 knows that they don't satisfy the textbook standards for
9 efficient outcomes. We sort of all know that.

10 We are all muddling through in terms of trying to
11 figure out whether the outcomes are sort of better or worse
12 as a result of the policies that are being adopted. No one
13 here, I'm sure, is under the illusion that the commission
14 policy will bring us to nirvana any time soon.

15 It seems to me the kinds of things that at least
16 to me demonstrably improve things, and we may have a
17 difference of opinion about this, is the commission's sort
18 of kind of willingness which basically started in the 1970s
19 to in fact allow more competitive outlets. I mean, that was
20 a really good thing.

21 I think somebody might, I suppose, argue that
22 there is something sort of bad about that, but I think for
23 the most part we began having unsatisfied minority
24 preferences satisfied in ways that weren't before. When we
25 all started out doing this, people complained that the three

1 broadcast networks all produced just all of the same stuff.

2 Remember? Everybody quoted Steiner. But it was
3 just more of the same, it was just -- and we began to get --
4 I hate to use the word -- more diverse programmed here as a
5 result. That was a good thing. I mean, that was sort of,
6 it seems to me, demonstrably a good thing.

7 The things we're talking about here are in some
8 sense inherently harder to connect to those kinds of
9 outcomes and you could sort of say would allowing two
10 stations to combine, does that improve the extent to which
11 viewers are happy? I think in some circumstances it will.
12 I think you can sort of look at programming and other
13 things, but can you sort of prove that rigorously? I
14 suspect not.

15 MR. PEPPER: So Doug's statement goes
16 unchallenged?

17 MR. GOMERY: No, no, no. I'm glad to listen to
18 this. I also partly made it in the sense to raise the value
19 issue, I mean, that someone said and it's getting too late,
20 but someone said -- I think it was Joel, that my market
21 failure is not his market failure per se in terms of that
22 and that's all I tried to do.

23 I mean, I agree absolutely with Stan. I think
24 that's why we're here. But then it instantly raises the
25 values issue and that's why -- oh, God, I'm going to say

1 this -- that's why I thought it was the most efficient
2 way to actually bring up the problem because I thought
3 let's start from the beginning and not spin around these
4 other things. And then you get to performance which
5 is value laden and always at the end of an economics
6 textbook, if this not that, can I throw in a little bit
7 of Kenneth Arrow and all of that business and welfare
8 economics that I learned, but in the end there's not going
9 to be a magic bullet answer to say if I knew these ten
10 things I would know how to conquer them. It's not what you
11 want to hear, but --

12 MS. MAGO: Joel has a comment.

13 MR. WALDFOGEL: Let me make a statement that will
14 make me seem even more naive than I actually am. If I were
15 thinking about broadcast issues, especially radio, but maybe
16 other markets as well, from scratch, I would begin by
17 worrying about the fact that there are zero marginal costs
18 adding additional consumers and then realize that maybe
19 sometimes I'm not pricing at all, sometimes I'm not price
20 discriminating right and so I would think, okay, so maybe
21 there would be some things that had ought to get provided
22 that won't and so the next thing I'd think about was
23 subsidies.

24 And, of course, they do that over at CPB but not
25 at FCC and they're not a government agency, but in fact when

1 you think about broadcasting, especially radio, you can
2 think about stuff that they do and ask, for example, does it
3 seem to cannibalize what commercial stations do or does it
4 instead possibly correct market failure.

5 I guess I'm tossing out a research agenda that
6 would probably lead you nowhere, but in some sense is the
7 natural thing to ask when you're thinking about this kind of
8 good and the policy agenda that will surely lead you nowhere
9 is to think about, you know, well, do you guys ever talk to
10 the CPB?

11 I mean, I know you can't worry about content
12 for First Amendment kinds of reasons, but CPB is the only
13 game in town for trying to -- well, one might hope that
14 they are trying to correct market failure, but they're
15 probably doing something else entirely. I shouldn't have
16 said that.

17 So I guess this is probably to Doug's question
18 about, you know, is the market failing, I agree that
19 complaints from the peasants don't indicate that the
20 prices are wrong, but at the same time, by its very nature,
21 this is a market we wouldn't expect to work very well and we
22 might start from first principles for a few minutes -- not
23 today, maybe -- and think about where would we best or most
24 expect things that had ought to get provided to not get
25 provided?

1 I mean, we could take the nihilist -- Bruce's good
2 definition and easily acceptable definition about stuff that
3 markets ought to do. I mean, when there are transactions
4 that ought to be consummated in the sense that the buyer
5 valuation exceeds the seller cost of doing so, they had
6 ought to get consummated. And yet it's easy to imagine lots
7 of circumstances in particular where there are small groups
8 who intensely want something where that won't happen, where
9 market failure inhibits that from happening.

10 And you might for a few minutes some day start
11 from that presumption and then ask where would we expect the
12 market to get it wrong and think about whether there are any
13 mechanisms in place to help that.

14 But I realize that that might lead you down lots
15 of roads that are hopeless, but I still think I ought to say
16 it.

17 MR. OWEN: Speaking of hopeless roads --

18 MS. MAGO: Our job was to be provocative. I'm
19 hoping this is working.

20 MR. OWEN: You know, a lot of the problems in the
21 diversity area arise from the point that Joel has made
22 repeatedly and that is that there's no way for consumers,
23 viewers, listeners, to express the intensity of their
24 preferences with money, which is the way we allocate most
25 other goods, like including First Amendment goods like

1 magazines and newspapers and motion pictures.

2 There's also this other thread, of course, which
3 is outside the scope of our discussion which is what are we
4 doing anyway with all the spectrum devoted to broadcasting?

5 You know, a solution to this problem could kill several
6 birds with one stone, would be to solve the problem that
7 these poor cell phone folks have, let them have the spectrum
8 and then television would be entirely subscription based.
9 And I suppose satellite radio is a movement in that
10 direction with respect to radio.

11 And I wonder if we would be here debating the
12 policy problems of diversity in the magazine industry which
13 it would then be like. I believe we would, assuming they
14 were jurisdiction.

15 MR. GOMERY: But that was one of my points, and
16 that is we would be because the institutions that were
17 created under previous rules will be there to lobby and
18 promote and defend the structure that created their
19 profitability and so once you started down the road,
20 somebody else said this --

21 MR. OWEN: I think Mr. Jefferson missed that.

22 MR. GOMERY: Yes.

23 MR. FERREE: Okay. On that note, I'm going to
24 bring this roundtable to a close.

25 Do you want to drag this on a little longer now?

1 MR. GOMERY: No, no, I certainly believe that that
2 was closure.

3 MR. FERREE: I want to thank the panelists and
4 those few brave souls who have hung in with us all
5 afternoon. Thank you very much.

6 (Whereupon, at 4:50 p.m, the roundtable discussion
7 was concluded.)

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