THE MEDIA MONOPOLY MYTH

HOW NEW COMPETITION IS EXPANDING OUR SOURCES OF INFORMATION AND ENTERTAINMENT

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Executive Summary

By many useful metrics, some offered here, the empirical reality does not support any notion that in the United States, in 2004, consumers of content via the media have fewer choices of sources or fewer choices in diversity for any type of content that has been available in the past. Other than an anecdotal story here or there, there is no suggestion that the managers of major media companies are individually or in concert fostering a political ideology or suppressing an ideology through the media properties they program. To the contrary, this paper examines and debunks numerous consolidation myths.

- Is there a crisis impending due to the perception of increased consolidation of the media industry? Are the proposed rules of the Federal Communications Commission for lessening broadcast station ownership limits a reasonable response to court rulings and the changing media landscape or a threat to diversity of viewpoints and to democracy in the United States? Do individuals have access to more sources of news, information, and entertainment from their homes, cars, or workplaces now than 50 years ago? 20 years ago? This paper addresses these issues.

- The empirical reality does not support the notion that in the United States, in 2004, consumers of content via the media have fewer choices of sources or fewer choices than has been available to them in the past. Just the opposite is true for television: viewers have more choice from more sources than at any time in the history of the medium.

- The metrics typically used to address media competition have included traditional antitrust measures such as revenue of the largest four or eight firms in a sector. They have been used not only to address economic power or lack thereof but by extension the range of potential editorial and cultural diversity that many competing owners are presumed to encourage. However, traditional economic metrics are not the only way to measure competition for content or diverse sources for content.

- Who owns the media does matter for content, but not always with the outcomes in the direction proclaimed in the common wisdom. Among other findings, this paper reports on studies that make a strong case that:

    - Having more sources of programming creates more diversity in television programming;
    - There is no support for the contention that media ownership by chains or conglomerates leads to any consistent pattern of lowered standards, content, or performance when compared with media owned by families or small companies;
    - Publicly owned newspaper chains are less likely to have an ideological agenda they want to promote than those that are family controlled;
    - Television stations with cross-ownership—in which the parent company also owns a newspaper in the same market—tend to produce higher quality newscasts.

- Contrary to the widespread perception that television is more concentrated than 30 or 20 or 10 years ago, by a number of critical measures, there is more competition. The market share of the three traditional television networks – CBS, ABC, and NBC – has declined substantially since 1980. Even adding in the audiences they have gained through control of cable networks, the combined audiences are *lower than* in some idealized past.

- In the 1970s, on a typical weekday evening, the three networks were watched by about 56% of all households with televisions. By 2003, on a typical evening those networks had on aggregate a 20% rating.
- They also face competition from newer networks, including Time Warner's WB and News Corp.'s Fox. Those five networks together aggregated to a 26% rating.
- Adding together the rating of these five broadcast networks with the cable networks owned by the same corporate family (e.g., CNN, HBO, etc. with WB) and the five major providers of television programming accounted for an average 51% rating in December 2003. This was less than the three networks had into the 1970s.

- Consolidation in the radio industry has been pronounced. The context, however, is that of an industry that has more than tripled in the number of stations over three decades with no change in the limits of stations ownership. By 1980, a single owner could hold no more than 0.16% of stations nationally.

- Noncommercial radio stations often are not counted in compilations of concentration of ownership of local radio stations. However, National Public Radio, a loose network of more than 700 not-for-profit radio stations that broadcast common programming, is the equivalent of the second largest radio chain.

- After accounting for multiple station ownership in local radio markets, the majority of the population live in markets that have 15 or more separate owners—in addition to noncommercial stations—and most of even the smallest markets have more separately owned radio stations than newspapers and television stations combined.

- Thousands of radio and radio-like stations are available via the Internet. Stations are available from around the world. About 40% of listeners of Internet radio accessed stations from outside their local market.

- New devices are becoming available to make Internet radio accessible apart from a personal computer, including access via various current and potential wireless technologies.

Video and film via the Internet are on the verge of becoming more mainstream. As some of the local telephone carriers upgrade their systems with fiber optic cable to the curb or the home, the transmission speed of downloads will be competitive with cable and satellite services. Devices are on the market that allow even today's broadband users to download movies and video programming for storage on personal video recorders for viewing at their convenience.

The Media Monopoly Myth: How New Competition Is Expanding Our Sources of Information and Entertainment

"Schoolboys or students who took to novel reading to any great extent never made much progress in after life." – English librarian, 1879[1]

Introduction

Do individuals have access to more sources of news, information, and entertainment from their homes, cars, or workplaces now than 50 years ago? 20 years ago? Is there a crisis impending due to the perception of increased consolidation of the media industry? Are the proposed rules of the Federal Communications Commission for lessening broadcast station ownership limits a reasonable response to court rulings and the changing media landscape or a threat to diversity of viewpoints and to democracy in the United States?

The logic of the responses to any question or issue depends on how the issue is framed. In the context of this paper, it may be that policymakers have been concentrating on the wrong issues – the financial size of media companies or the number of eyeballs tuned in to local programming – rather than whether consumers have a range of programming options to choose from as is true today.

This paper addresses these issues. It does so based on data and trends, not anecdotal stories and possible scenarios. It takes the perspective of media consumers and seeks to assess whether we are better able to find the variety of news, entertainment, and information that we want and need, from more sources, with reasonable cost, than a generation or more ago, when presumably the media were less concentrated and, by inference, "better."[2]

The subject of media ownership trends is as timely in 2004 as it was in 1978, when the Federal Trade Commission held a two-day public symposium as part of its inquiry into the consequences of the mergers in the print media – growing newspaper chains, book publisher combinations, and magazine acquisitions.[3] Throughout the 1980s and 1990s, various federal agencies have been called on to pass judgment on dozens of proposed mergers and acquisitions.[4] Congress weighed in with specific orders to the FCC to eliminate many ownership restrictions on radio and television broadcasters.[5] And in 2003, the FCC issued new rules on radio and broadcast television ownership limits. Implementation of those rules was stayed by various appellate courts.[6] Thus, the subjects remain current, contentious, and dynamic.

Whether the media in 2004 are less competitive or suffer from increased consolidation is a bit like trying to interpret ink blots. There is, in an industry as large and with as many components as the media industry, something for everyone. From the media headlines (the same media that are ostensibly controlled by a handful of media barons who presumably would not want anyone to notice) is generated the perception that the media have become dangerously consolidated.

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[1] Richard D. Altick, The English Common Reader: A Social History of the Mass Reading Public (Chicago: University of Chicago Press, 1974) p. 233. The reason for having this quote is explained on page 44 later in this paper.

[2] 25 years is a convenient period. Though admittedly somewhat arbitrary, it does takes us back to the time just before cable reached most large cities, the effects of satellites were widespread other than for telecommunications, and just on the cusp of the personal computer. Certainly if we looked back 100 years one would not need much research to state flatly that there was less access to information.

[3] Federal Trade Commission, Bureau of Competition, *Proceedings of the Symposium on Media Concentration*, 2 vols. (Washington, DC: Government Printing Office, 1978).

[4] Benjamin M. Compaine and Douglas Gomery, Who Owns the Media? Competition and Concentration in the Mass Media Industry, 3rd ed. (Mahwah, NJ: Lawrence Erlbaum Associates, Publishers, 2000), p. 571.

[5] U.S. Congress, Telecommunications Act of 1996, Sec 202. Available at http://www.fcc.gov/Reports/tcom1996.pdf.

[6] "Media Ownership Policy Reexamination," Federal Communications Commission, accessed Sept. 9, 2004 at http://www.fcc.gov/ownership/Welcome.html.

Politicians seem to accept this notion at face value and the popular press itself seems to promote the assertion at face value. It sometimes seems that only industry spokespersons for the corporate chieftains themselves defend the robustness of the media landscape—but what else would we expect them to say? The current leadership of the Federal Communications Commission seems to have marshaled data and analysis to support their policies of less regulation and restraint. But opponents would claim that the regulators then must be captured by the industry they are set to regulate.

In the debate over the extent of media ownership competition and the policies that should be employed by government over the media industry, precious little has been heard about the other side of the issue besides from the industry or the FCC. This paper marshals some of the data and shapes some of the arguments to understand another relevant perspective as presented by a non-stakeholder. It should not be construed as an argument favoring consolidation, but rather as a presentation that advances the notion that the situation is not nearly as critical as some of the most vocal advocates have promoted. On the contrary, by some important measures, there is actually substantially more competition than 20 years ago.

In 2004, more Internet households had broadband than dial-up Internet access and the expectation is that broadband Internet access for information, commerce, and communications will continue to grow at a steady pace. All this offers consumers of media products and information more choices. For example, thousands of radio and radio-like stations are available via the Internet from around the globe. The number of hours spent listening to Internet radio grew by triple digits between 2003 and the same period in 2004. New devices are becoming available to make Internet radio accessible apart from a personal computer, including access via various current and potential wireless technologies.

Video and film via the Internet also are becoming more mainstream as local telephone carriers and cable companies upgrade their systems with fiber optic cable to the curb or the home. Devices are on the market that allow even today's broadband users to download movies and video programming for storage on personal video recorders for viewing at their convenience. The latest FCC report on broadband growth in the U.S. shows that subscriptions to broadband services with download and upload speeds greater than 200 kilobits per second (kbps) grew from 5.9 million lines in June 2001 to 20.3 million lines as of December 2003.[7]

In order to better understand the media consolidation debate, it is necessary to more closely examine the then and now and see whether consumers of media (TV, radio, newspapers, the Internet, movies, cable TV, billboards, magazines, etc.) have more access to more information from more sources. It is regularly contended that "five large corporations" control 80 percent of the prime time television audience"[8] and thus control how and what information people have access to. But increasingly, the rise of new communications technology, coupled with new producers of information, has continually fragmented the overall mass audience once captured by the old mass media.

The rapid growth of new technologies as distribution channels for both old and new information forces us to review what we know about media competition, what we think we know, and whether ownership really matters given the expansive reach of the new channels. An examination of media economics, media metrics, and media competition for traditional television and radio programming compared with the new distribution channels of the Internet (via satellite, cable modem service, digital subscriber lines, fiber optics, etc.) shows that the distinctions between "old" and "new" media are already blurring and are providing increasing opportunities for choices by consumers.

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[7] "Availability of Advanced Telecommunications Capability in the United States," FCC 04-208, GN Docket No. 04-54, Fourth Report to Congress. Released September 9, 2004.

[8] I have seen the 5 companies = 80% content figure bandied about. In this case the source is David Hatch, "Media Ownership*," CQ Research*, Oct 10, 2003, p. 845. However, Hatch cites back to Marc Fisher, "Sounds Familiar For a Reason," The Washington Post, May 18, 2003, Outlook Section. Accessed July 16, 2004 at http://www.highbeam.com/library/doc3.asp?DOCID=1P1:73985312&num=1&ctrlInfo=Round6%3AProd%3ASR%3AResult&ao=. This article, however, says that five companies "boast 75 percent of primetime TV viewers" which is at odds with the 80% figure of Hatch. Either way, this figure represents the share of the TV audience at that moment. It ignores the 40% of households that may be using other media (reading books, listening to CDs, etc.) or using no media. And it measures households, not people.

This paper, then, explores whether the old rules, the classic *verities* about the media and its control have changed. Specifically, does a resident of any place in the United States have access to more or fewer sources of entertainment, news, information, and communication in 2004 than a similar resident, in the same place, would have had 25 years earlier?

To telegraph what this means in practical terms: Until the 1980s there were only three commercial television networks. Few cities had more than three or four VHF stations (due primarily to the early regulatory scheme for allocating spectrum). Therefore, most people had only three choices for television, though some had a few hard-to-tune-in UHF stations playing largely re-runs (see Media Economics, below).

In 2004, most TV households have access to dozens of television networks – those they had before plus scores from a dozen or more owners that could not have had a national presence on television before the dispersion of multichannel distributors, such as through cable or satellite. Similarly, until the 1980s, the only source of information about routine local government and school board meetings may have been the local daily or weekly newspaper. In 2004, citizens still have those papers and in addition often have the option to watch school board and even city council or similar proceedings as part of their basic cable service. They can also access local government Web sites for information, forms, and even pay parking tickets and taxes.

The relevant issue then becomes how does one reconcile the notion of less competition with the reality of great consumer choice and options?

What Do We Know About Media Competition?

We know that in 1982 it was already clear that the blurring of the boundaries among the traditional media would create unsettled boundaries among previously well-defined technology-defined media products and services:

> Computers and connected terminals in homes and offices increasingly allow users to *select* the information they wish to receive, at precisely the time they wish to use it. Computers have made it economically feasible to mail identical, "personalized" messages to millions of recipients using the postal system that at one time was reserved for point-to-point communication. The telephone can give countless users almost simultaneous access to the same computer data base. The telephone and computer are also being combined to provide "electronic mail," perhaps doing for mail what the Xerox machine did for memos. Video and audio cassette recording devices allow individuals to record broadcast programs for replay at a time of their own choosing.[9]

We know that less than 20 years later, the online "Drudge Report" received a greater viewership than the weekly circulation of *Time* magazine.[10] In 2003, the three dominant commercial broadcast television networks – ABC, CBS, and NBC – claimed only two-thirds the prime time rating they held in their heyday of the 1960s and 1970s.[11] Meanwhile, by June 2003, nearly 85% of households got their television signal from a cable or satellite service instead of from terrestrial broadcast signals.[12] Radio stations, limited by licenses allocated by the Federal Communications Commission, are sharing their audiences with unregulated Internet-only "radio" stations as well as national satellite-distributed radio services. And the Internet itself, originally accessed via pokey conventional telephone lines, is increasingly accessed by much faster connections not only from the telephone companies but by cable and satellite providers as well.

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[9] Benjamin M. Compaine, et al, Who Owns the Media? Concentration of Ownership in the Mass Communications Industry, 2nd ed. (White Plains, NY: Knowledge Industry Publications, Inc., 1982), p. 3.

[10] Matt Drudge, "Anyone with a Modem Can Report to the World," transcript of speech to The National Press Club, Washington, DC, June 2, 1998. Accessed May 5, 1999 at http://www.frontpagemag.com/archives/drudge/drudge.htm.

[11] Tom Wolzien and Mark Mackenzie, "TV Ratings Study: Viacom, Disney Up Across Ad-Based Networks; Surprising Warning Signs for TWX's HBO," Bernstein Research Call, January 28, 2004, p. 2.

[12] "In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming," MB Docket No. 03-172, Tenth Annual Report, FCC 04-5, Released January 28, 2004 at pp. 4-5.

We also know that between the mid-1980s and the end of the following decade the overall U.S. economy, as measured by Gross Domestic Product, had been growing, but that the media industry in aggregate grew faster, from under 10% in 1987 of GDP to nearly 13% in 1996.[13]

The landscape of the media has certainly changed dramatically.

Media Economics 101

We should also know that the economics of distributing information lend themselves to substantial economies of scale. As every student of Economics 101 learns, this means that in a private enterprise economy forces such as demand and supply equilibrium, the profit motive, marginal costs and revenue, as well as governmentally imposed restrictions, regulations, and barriers interact in the overall economy. (The same forces exist under other economic models, such as socialism, though with different outcomes. But having tried many other models, none has been found to create greater economic and social welfare as market economies).

What is most germane for the media industry is that the media have the qualities of what is known as a "public good." In practical terms this means that the marginal cost of additional units of an information product is very low or even close to zero. For example, the cost of printing one copy of a newspaper includes all the news gathering, advertising sales, editing, pre-press activities, the investment in having or paying for presses, delivery trucks, and so on. But once the cost of that first copy has been covered, the cost of printing and distributing a second, third, or 20,000th copy is little more than the cost of paper, ink, and some energy. This same reality is largely behind the "monopoly" position of cable operators in most communities.[14] There is a substantial capital cost in creating the local infrastructure. But once a cable runs down a street or into an apartment building, the marginal cost of getting the signal to each subscriber is very little.

The same is true for direct broadcast satellite (DBS) providers such as DirecTV or EchoStar. Since its introduction in 1993, the DBS growth rate has exceeded the cable TV growth rate by double digits every year except 2002, according to an FCC report on multichannel video programming competition.[15] Once DBS systems were deployed, the marginal cost of adding new subscribers dropped dramatically.

Electronically distributed content, such as a television or radio program, has an even lower cost—about zero. It costs not a penny more for 10,000 listeners to tune in to a local broadcast than if one or 9,999 tune in. This highlights another quality of electronically distributed information: two or more people can have the same information at the same time. This is not true with tangible goods: if I'm holding a copy of a Harry Potter book, someone else cannot have the same book. They cannot be reading it at the same time unless they obtain a second copy. This is not true for watching a TV program or accessing a page on the World Wide Web.

These economic realities have been substantial (though not the only) factors affecting the development of broadcast networks, the struggle to get cable carriage for non-broadcast programmers, the tendency of cable companies to expand in areas adjacent to their existing systems, the trend to one newspaper cities, and the many mergers of publishers. Expecting the economic forces to work in any other direction is as unlikely as expecting water to run uphill.

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[13] Derrick Huang, "Size and Growth Trends in the Information Industries, 1987-1996," Chapter 11 in B. Compaine and W. Read, eds., The Information Resources Policy Handbook (Cambridge, MA: The MIT Press, 1999), pp. 347-361.

[14] "Largely" but not completely. There is a political component as well. As cables had to run across or under public streets, cities and towns had the jurisdiction to provide franchises to those who wished to operate cable systems. As cities learned in the early 1980s, by limiting the award to a single operator, they could create a bidding competition through which they could seek free connections and services for school and city facilities, as well as ongoing franchise fees that could help keep local taxes down (though some local governments allowed cable operators to recoup the franchise fees through line items on subscribers' bills).

[15] "FCC Releases Tenth Annual Report on Competition in Video Markets," News Release, January 28, 2004.

What We Think We Know About Media Competition

In this context, however, a debate rages whether the media industry has become more concentrated.[16] Actually, there is less a debate than an explicit assumption that ownership in the media industry has become more concentrated despite the new technologies and industries that have joined the older print, and broadcast and motion picture sectors.[17] Media critic Robert McChesney sums up a widely held perception: "Over the past two decades, as a result of neoliberal deregulation and new communication technologies, the media systems across the world have undergone a startling transformation. There are now fewer and larger companies controlling more and more, and the largest of them are media conglomerates, with vast empires that cover numerous media industries."[18]

A similar viewpoint is voiced by Stanford law professor and FCC critic Lawrence Lessig who decries an era "when fewer and fewer control access to media."[19] Sen. Byron L. Dorgan (D-N.D.) said rules proposed by the FCC would lead to "galloping concentration" in the media industry.[20] Five conglomerates, we are told, "control most prime time TV programming and one company…dominates radio."[21] Those in the "creative community" of packagers, directors, writers for television, etc. complain that "these conglomerates strongly favor their own in-house production when ordering new shows, whether their shows are better or not."[22]

"Yet, in the paradox of today's media landscape," observes a Congressional Quarterly research report, is that "consumers have more choices than ever."[23]

How then does one reconcile, if at all, the apparent paradox of "few and fewer" resulting in "more choices?" On the one hand, the number of owners of television stations has declined from 540 to 360 since the 1970s, while the number of companies owning daily newspapers declined to 300 from 860.[24] Yet even these reduced numbers would seem not to support the assertion of being "close to a monopoly or oligopoly situation" proclaimed by a FCC Commissioner.[25] And what is the disconnect between the concern of Pat Mitchell, chief executive of the Public Broadcasting Service that "The American public seems less informed than ever"[26] with the reality of the change from 1980 with 30 minutes per night of prime time news from each of three national networks to 24 x 7 news shows from three additional national networks in 2004?

As suggested just above, the critics of current trends in media structure have two related agendas, with one being more explicit than the other. Some, typified by Dorgan and Lessig, focus on consolidation as purportedly leading to a reduction in diversity of content. Bagdikian seems to have best articulated this concern in writing that "our view of the

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[16] See, for example, www.opendemocracy.net, [compaine-mcchesney].

[17] For example: "Today, a remarkable number of leading Americans of all political and ideological stripes are joining that call, expressing grave concerns about the harmful effects of media concentration on our nation's democracy and culture." Jonathan Rintels, Reply Comments of the Center for the Creative Community Regarding Competition and Media Concentration in the Television Industry, In the matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277, Feb 3, 2003, p.1; or "The news industry in America is already far down the road to media concentration—too far, in our view." "The troubling arc of media concentration," *The Seattle Times*, March 31, 2004, Accessed and filed April 1, 2004.

[18] "Policing the thinkable," www.OpenDemocracy.net, Accessed July 21, 2004 at http://www.opendemocracy.net/debates/article-8-24-56.jsp.

[19] Larry Lessig, "Lessig Blog," October 20, 2003. Accessed July 13, 2004 at http://www.lessig.org/blog/archives/cat_mediacon.shtml.

[20] Frank Ahrens, "Senate Votes to Block FCC Media Rules," *The Washington Post*, Sept. 17, 2003, p. A1.

[21] David Hatch, "Media Ownership," *CQ Research*, Oct. 10, 2003, p. 845.

[22] Jonathan Rintels, "Comments Of The Center For the Creative Community Regarding Competition and Media Concentration In the Television Industry," In the matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277, January 2, 2003, p. 4

[23] Hatch, "Media Ownership," p. 845.

[24] Hatch, "Media Ownership," p. 847.

[25] Ibid.

[26] Ibid., p. 852.

social-political world is deficient" if there is a regular omission or insufficient inclusion of certain elements of reality. And that is happening, he believes, when "the most important institutions in the production of our view of the real social world," the mass media, are becoming "the property of the most persistent beneficiaries" of the mass media's biases.[27] Another stream of concern, typified by McChesney and Mitchell, among many others, is that it is the quality and/or ideology of the content of the media companies that is most disturbing. Less often cited is the argument presented in antitrust terms; that is, that media mergers in general could be driving up the cost for advertisers and/or consumers.

New Metrics for New Times

The debate on media competition constantly keeps returning to television, and to a lesser extent, radio. Newspapers, motions pictures, book and magazine publishing, the multi-dimensional Internet—all also are part of the media competition landscape. But whenever policymakers or critics start a media ownership discussion, the focus always seems to end up back on television and radio broadcasting. There is some rationale to this obsession. The largest circulation newspaper, *USA Today*, sells 2.3 million copies on a typical weekday, with readership of perhaps 5.6 million.[28] The broadcast network with the lowest evening news show rating, CBS, has 6.8 million viewers.[29] A single episode of a moderately successful prime time TV series is seen that night by more people than the cumulative sales of a book on the fiction best seller list.[30] Paradoxically, most people live in places that have only one or two local daily newspapers, but three or more locally based and separately owned television stations and a dozen or more separate owners of local radio stations.

Old Metrics and New

The metrics typically used to address media competition have included traditional antitrust measures such as revenue of the largest four or eight firms in a sector and the Herfindahl-Hirschmann Index, a somewhat more fine-tuned measure also based on revenue. The percentage of circulation of newspapers, the number of publications owned, the advertising share of radio stations, or the number of journals in a discipline, are other common measures. They have been used not only to address economic power—or lack thereof–but by extension, the range of potential editorial and cultural diversity that many competing owners are presumed to encourage.

The notion of diversity of political opinion lay behind the press freedom clause of the First Amendment. The fear at the time of the Founding Fathers was that only government might have the power to limit that diversity.[31] But today, there is concern in some quarters that the range of opinions to which the public has access is being limited by large media conglomerates.

"Diversity" has been the overall goal of much broadcast regulation. "In setting its licensing policies, the [Federal Communications] Commission has acted on the theory that diversification of mass media ownership serves the public

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[27] Ben H. Bagdikian, The Media Monopoly, 4th ed. (Boston: Beacon Press, 1992), p. xxiv.

[28] Craig Moon, "Mid-Year Review Presentation," June 22, 2004. Accessed July 16, 2004 at http://www.gannett.com/go/press/mymr04/mymrcm04.htm.

[29] "Evening news ratings race heating up," CNN.com, June 3, 2004, Accessed July 16, 2004 at http://www.cnn.com/2004/SHOWBIZ/TV/06/03/nielsens.ap/.

[30] Ibid. For the Week of May 24-30, 2004, the 10th rated show, "Still Standing," on CBS had 12.1 million viewers. The biggest selling fiction book of 2003 was Harry Potter and the Order of the Phoenix. It sold 11 million copies in the U.S. from its publication in June through November. "Harry Potter Sales Reach 250 Million," *Book Publishing Report*, Dec. 3, 2003. Accessed (by subscription) July 16, 2004 at http://www.highbeam.com/library/doc3.asp?docid=1P1:89464398.

[31] "The way to prevent these irregular interpositions of the people is to give them full information of their affairs thro' the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter." Thomas Jefferson in a letter to Edward Carrington, January 16, 1787. "The Founders' Constitution" Volume 5, Amendment I (Speech and Press), Document 8 Accessed August 2, 2004 at http://press-pubs.uchicago.edu/founders/documents/amendI_speechs8.html . The University of Chicago Press.

interest by promoting diversity of programming and service viewpoints."[32] Preventing undue concentration of economic power has also been served by the FCC's ownership policies. But over the years the contentious policy issues have been most concerned with "diversity."

Diversity and how it can be objectively measured has never been well established. Competition and localism have been thought to foster diversity. But neither policy has been proven to guarantee diversity of content. Often, diversity has inferred a "higher quality" than the prevailing standard, particularly in television. Take this slightly edited comment by a media critic:

> You will see a procession of game shows, violence, audience participation shows, formula comedies…blood and thunder, mayhem, violence, sadism, murder, western bad men, western good men, private eyes, gangsters…and cartoons…And most of all, boredom. True, you will see a few things you will enjoy. But they will be very, very few.[33]

This critic's list of program genres suggests that television programming was quite varied: game shows, comedies, westerns, audience involvement shows, detective stories, cartoons. This despite the time frame, 1961. The critic, Newton Minow, then Chairman of the FCC, however, let on that most of it bored him. The mass audience at the time may have disagreed.

The time period of the diversity reference is important. In 2003, an FCC commissioner held that the FCC's media ownership rules are "about the ability of a very small number of companies to control [the content of] our media. To dictate what the entertainment is going to be, to dictate what the civic dialog is going to be, to dictate that we'll no longer have as much…diversity as we had *before*."[34] [emphasis added]. The reference point of "before" could refer to the period of Commissioner Minow's era of quite varied if boring programming, or some other "before" which needs to be identified in order to compare with "after."

Perhaps the FCC's more ambitious regulations to foster diversity and localism ended with at best mixed results in the mid-1990s, having had a 25-year run without achieving their goal. These were the frequently paired policies codified as the Prime Time Access Rule (PTAR) and the Financial Interest and Syndication Rule (Fin-Syn). Combined, these regulations were intended to lessen the role of the three networks by limiting the hours of programming they could supply individual stations during the prime time viewing period and prohibiting them from having an ownership stake in most prime time entertainment programming.[35] The expectation–or hope–was that local stations would fill their non-network time slots with local programming and that independent producers would be providing higher quality programs than the networks had been broadcasting.

These regulations are credited with helping to foster the growth of powerful financially strong production companies and syndicators (King World Productions, Viacom, and Lorimar among them).[36] They may have helped along independent television stations in the 1970s by making a steady supply of old network re-runs available. They also aided the major Hollywood movie studios to become prominent players in television production.[37] But none of these outcomes substantially improved the quality or diversity of content on television.

By the 1980s it was already evident to many that such enforced attempts at diversity were ineffective or even counter productive. Based on a staff study issued in 1980, the FCC in 1983 had signaled its intention to repeal the rules.[38]

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[32] Morton Hamburg and Stuart Brotman, Communications Law and Practice (New York: Law Journals Seminars—Press, 1996), p. 3-11. See also *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 780, 98 S.Ct. 2096, 56 L.Ed.2d 697 (1978).
[33] Newton N. Minow, "Television and the Public Interest," Speech, Washington, DC May 9, 1961. Accessed Aug. 2, 2004 at http://www.americanrhetoric.com/speeches/newtonminow.htm.
[34] Hatch, "Media Ownership," p. 847.
[35] Hamburg and Brotman, Communications Law, pp. 3-27--3-30.
[36] James Walker and Douglas Ferguson, The Broadcast Television Industry, (Boston: Allyn and Bacon, 1998), p 80.
[37] Ibid, pp. 79-80.
[38] *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043 (7th Cir. 1992), in Thomas G. Krattenmaker, Telecommunications Law and Policy, 2nd ed. (Durham, NC: Carolina Academic Press, 1998), p. 300.

Congressional pressure squashed such a policy change. Eventually, the U.S. Court of Appeals, in *Schurz Communications, Inc., v. FCC* (1992) told the FCC that the Financial Interest and Syndication rules could no longer be justified and they soon were repealed, along with PTAR.[39]

There are empirical studies that make a strong case that simply having more sources of programming does not create diversity in programming. There is strong empirical evidence that it was the waiver, and ultimate elimination, of these rules that permitted vertical integration in production and distribution, which created the economic model that brought about the fourth and subsequent broadcast networks that television's harshest critics had long sought.

An academic study by Einstein[40] measured diversity as the number of different genres of content (situation comedies, musicals, variety shows, news, documentaries, reality, and so on). Figure 1 shows that diversity (higher values) decreased in the years after the initiation of the Fin-Syn and PTAR rules and increased substantially within several years of the end of the rules. Figure 2 further shows that the three networks tended to have the same programming types–less diversity–at any given time slot during the years that the policies were in effect than before or since.

Finally, "Although many media critics have decried the consolidation of the media industry because of its negative effects on diversity, this research just does not support that theory."[41] The study did find that the sources of programming for all the current broadcast networks have greatly consolidated since the Fin-Syn rules ended. However, this consolidation has been taking place in the context of the trends seen in Figures 1 and 2–an increase in diversity from the levels when there were far more players supplying programming. On the other hand, diversity, as seen in Figure 1, has not reached the level of the 1960s. The new equilibrium—for traditional broadcast networks–has been less diversity. Einstein's study confirmed what others had found: despite more outlets, diversity of genres has actually declined.[42] However, it notes that diversity does not increase if the sources creating programming increase[43] nor when the number of outlets increases.[44] It is the economic model of selling TV advertising that pushes programmers to genres that attract large audiences that matters.

There also remains an inherent vagueness about measuring diversity. Einstein admits that measuring diversity as it has often been done–by the variety of genres–does not capture much of what is often imputed by the term. Einstein concludes that the predominant measures do little to inform us of whether there is truly a multiplicity of viewpoints:

> For example, although "All in the Family" and "Suddenly Susan" are both situation comedies, they do not present the same political point of view. The other issue with the methodology is that no one has defined diversity. This particularly becomes an issue when examining the full palette of programming available for the majority of viewers, that is, viewers who get cable or DBS, which represents more than 80% of the country. For instance, if you have a Spanish language channel on cable, is that in and of itself diverse? Much of the programming is similar to formats on English-language channels, so that may not be so. What about something like the Golf Channel? It is simply 24 hours of sports, a format that has existed since the Wednesday Night Fights in the 1950s.[45]

Indeed, by this measure of diversity, the two leading all-news networks, CNN and Fox News Channel, are both in the news and information genre and would not be seen as creating any diversity. Yet for those truly seeking diversity on television CNN and Fox News are widely perceived as having distinct voices.

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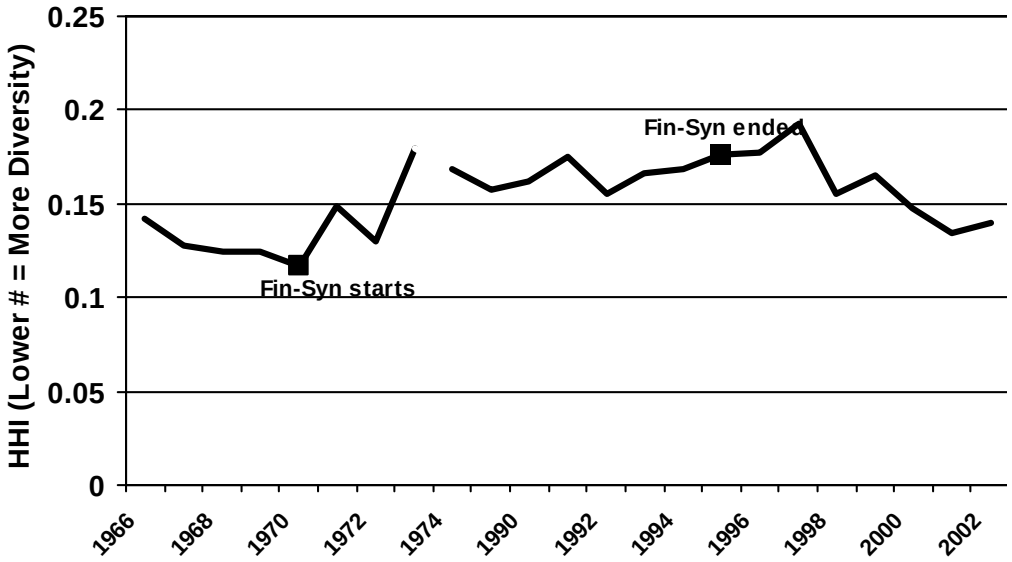
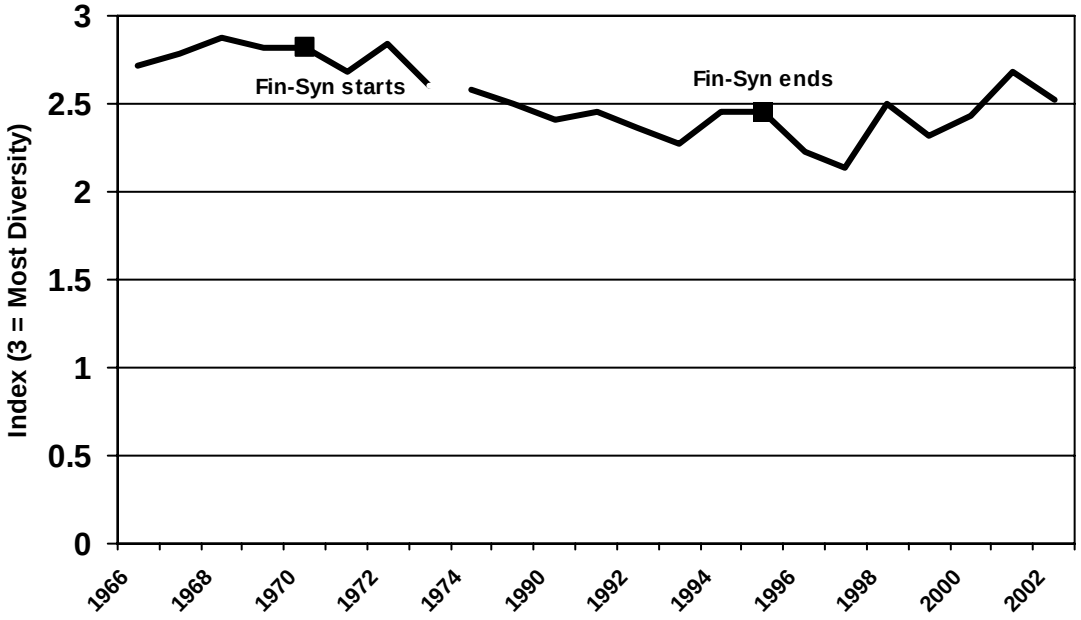
[39] Ibid, pp. 298-306.
[40] Mara Einstein, "The Financial Interest and Syndication Rules and Changes in Program Diversity," Journal of Media Economics, 17(1), pp. 1–18.
[41] Ibid.
[42] Mara Einstein, "Broadcast Network Television, 1955–2003: The Pursuit of Advertising and the Decline of Diversity," The Journal of Media Economics, 17(2) pp. 145–155.
[43] P. M. Napoli, "Deconstructing the Diversity Principle," Journal of Communication, 1999, 49(4) pp. 7–34.
[44] A. S. De Jong, & B. J. Bates, "Channel Diversity in Cable Television." Journal of Broadcasting & Electronic Media, 35, (1991) pp. 159–166.
[45] Einstein, "Broadcast Network Television," pp. 153-154.

Figure 1
Network Program Diversity Pre/Post Fin-Syn



Source: Einstein, n. 31, Table 1.

Figure 2
Network Program Diversity Across Time Slots Pre/Post Fin-Syn



Source: Einstein, n. 31, Table 2

Does Ownership Matter?

The academic research that has been reported does not support the contention that media ownership by chains or conglomerates leads to any consistent pattern of lowered standards, content, or performance when compared with media owned by families or small companies. For example, a review of 17 studies concluded that there were few differences in the editorial page slant of newspapers owned by groups and those that were independent.[46] On the other hand, editors of chain-owned newspapers were found to have greater editorial latitude in determining editorial policy than those at family-owned newspapers. Put another way, publishers of family-owned newspapers exert greater editorial control over the editorial process than at group-owned publishers.[47] While publicly owned newspaper chains may be more focused on profitability than those that are family controlled, they are less likely to have an ideological agenda they want to promote. The overall consistency of studies show that large group, corporate, and public ownership have had a neutral to positive effect on the editorial side of newspapers.[48]

The findings in video programming are along the same lines. To what extent do commonly owned newspapers and television stations in a community speak with a single voice about important political matters? One study looks at coverage of the 2000 Presidential campaign in 10 communities where a local television station owned a local newspaper. The finding was, for the markets studied, "common ownership of a newspaper and a television station in a community does not result in a predictable pattern of news coverage and commentary about important political events in the commonly owned outlets."[49]

One of the most thorough studies of the role of ownership was a five-year study by the Project for Excellence in Journalism. It looked specifically at television news at the local station level. As most broadcast television programming at local stations comes from the networks–ABC, CBS, NBC, Fox, WB, UPN, and Pax—the one area for decisions about original programming at the local station level comes in the form of the local news shows.

Ownership Does *Matter, But Not in Expected Ways*

The Project for Excellence in Journalism study confirms that ownership does matter, but not always in ways that support the conventional wisdom. The study attempted to create objective measures of "quality" and then used a content analysis to apply these to 23,000 stories in 172 news programs over five years. "Taken together, the findings suggest the question of media ownership [as it affects local television news] is more complex than some advocates of both sides of the deregulatory debate imagine."[50] Among the study's findings:

- Stations with cross-ownership—in which the parent company also owns a newspaper in the same market—tended to produce higher quality newscasts.
- Ownership type made no measurable difference in terms of the diversity of people depicted in the news and little difference in the range of topics a station covered. In general, there is striking uniformity across the country in what local television stations define as news.[51]

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[46] Benjamin M. Compaine and Douglas Gomery, Who Owns the Media: Competition and Concentration in the Mass Media Industry, 3rd ed., (Mahwah, NJ: Lawrence Erlbaun Associates, Publishers, 2000), p. 18.
[47] Ibid., p.19.
[48] Ibid., p.20.
[49] David Pritchard, "Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign," (Washington, DC: Federal Communications Commission, Sept. 2002). Accessed October 15, 2002 at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A7.pdf.
[50] "Does Ownership Matter in Local Television News: A Five-Year Study of Ownership and Quality," (Washington, DC: Project for Excellence in Journalism, April 29, 2003), p. 1.
[51] This is consistent—and likely for the same reasons—with the findings in Herbert Gans' classic study, Deciding What's News (New York: Vintage Books, 1980). His empirical study of reporters and editors at national television news networks and news magazine concluded that their story selection and editorial judgment were remarkably similar because they all were similarly acculturated to the news process and faced similar demands—such as content limitations of air time or column inches.

- Stations owned by the largest groups produced higher quality early evening newscasts than those owned by the smaller groups. Smaller station groups tended to produce higher quality late evening newscasts than stations owned by larger companies.[52]
- Network affiliated stations tended to produce higher quality newscasts than network owned and operated stations.
- Local ownership offered little protection against newscasts being very poor and did not produce superior quality.
- Stations of privately-owned companies and publicly-owned companies did not perform significantly differently from each other.[53]

Even within these overall conclusions there is something for everyone. For example, the notion of "quality" is highly dependent on the criteria used and how they are weighed. Although small company stations were found overall to have higher quality than those owned by the largest companies, those owned by this latter group rated highest on the criteria of "offering communities a variety of viewpoints in their newscasts." And medium-sized owners were better than smaller owners when it came to enterprise reporting and the greatest localism.[54]

Local newscasts are the most prominent programming that can distinguish one local television station from another. For the most part, "television" is defined and described by the programming provided by networks. In any market, most programming most of the time is the same, whether the station is owned by a large multi-media conglomerate or an independent local owner, whether the station is owned and operated by a network or is simply an affiliate of a network. It is in this context that media consolidation opponents claim that "five media powerhouses" control "80 percent of America's prime time programming."[55]

The Changed Video Landscape

In the 1960s – the time frame of Minow's "vast wasteland," – there were three "powerhouses" in the mass medium of television: the ABC, CBS, and NBC networks. These three controlled 90% of the prime time viewership.[56] By 2004, those three networks accounted, on average, for a share of under 40% of the prime time audience.[57]

Over the extended period 1960 to 1980, these commercial broadcast networks dominated the television landscape. As illustrated in Figure 3, on average during that period they had a combined prime time rating of 56%.[58] That is, 56% of all households with television sets (whether in use or not) were tuned to one of those networks on an average weekday night. (The 90% share of the 1960s and 40% share today was of households actually watching television).

Today, Ratings for Networks are Way Down

But with the development of cable, competition from new networks, video rentals, and other distractions (e.g., gaming, Internet use), the audience share of those big three networks has declined steadily. Today the most widely viewed series shows during the evening prime time hours garner half the percentage of households as they did in the 1970s, as the television audience has been fragmented by dozens of choices instead of three or four. For the 1970-71 ratings period, the top rated TV series was ABC's Marcus Welby, M.D., which had a Nielsen rating of 29.6.[59] The average

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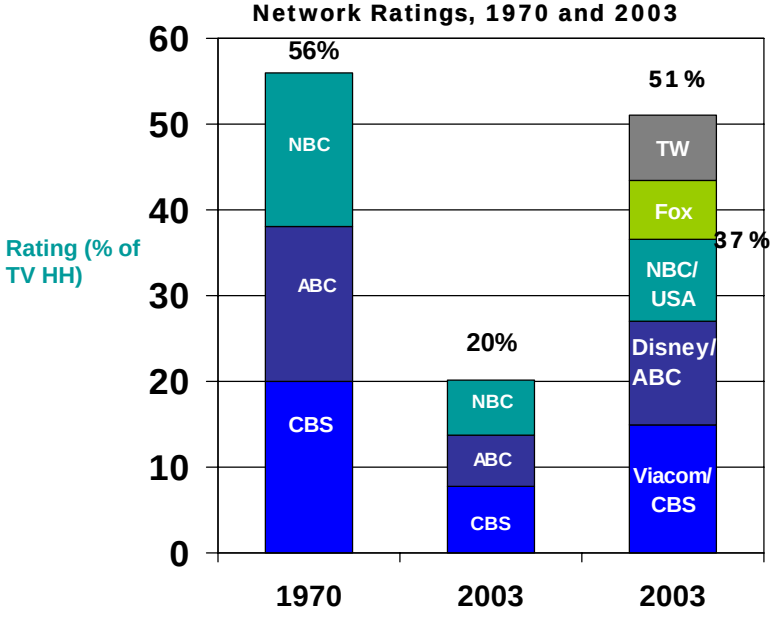
[52] "Does Ownership Matter," p. 15.
[53] Ibid., p. 5.
[54] Ibid., p. 7.
[55] Hatch, "Media Ownership," p. 847.
[56] David Cotreth, "Impact of Technology on Media, Panel at Deutsche Bank Securities 12th Annual Media Conference 2004 – Final," June 7, 2004. Accessed July 30, 2004 at http://www.highbeam.com/library/doc3.asp?DOCID=1P1:95731319&num=12&ctrlInfo=Round5a%3AProd%3ASR%3AResult&ao=. That is, 90% of those watching television were tuned in to one of the three networks.
[57] Ibid.
[58] Tom Wolzien, "TV Ratings Study," Bernstein Research Call (New York: Sanford C. Bernstein & Co. January 28, 2004) p. 2.
[59] "TV Ratings, 1970-1971," Classictvhits.com, Accessed March 20, 2004 at http://www.classictvhits.com/tvratings/1970.htm.

rating for the top 20 shows was 19.0, spread over three networks.[60] For the 2003-04 season, the average rating for the top 20 shows was 11.6, spread over five networks,[61] a 39% decrease.

Figure 3 further shows that by 2003, the three old broadcast networks were averaging only a cumulative 20% rating.[62]

Figure 3
Network Ratings, 1970 and 2003



Source: See endnote 5

Starting in the 1980s and continuing to the present, those three networks either invested in the start-up of programming services distributed by cable operators, acquired such services, or were themselves merged into other entities that were in the video content business. CBS, which had divested itself of Viacom after a 1970 FCC ruling prohibiting television networks from owning a financial interest in the shows they broadcast,[63] was acquired by its spin-off in 1999.[64] By that time Viacom had become a major provider of cable programming, as well as motion pictures and books. Ironically, CBS had over the years divested itself of its books and magazine publishing holdings, so it was very much a stripped down version of the conglomerate it had become in the 1980s. ABC, which had previously merged with Capital Cities to become Capital Cities/ABC, was acquired by the Walt Disney Company in 1996.[65] NBC, acquired by General Electric in 1986, had remained largely to itself until its acquisition of the cable networks and movie studio holdings of Vivendi Universal in 2004.[66]

Table 1 identifies the networks owned by the entities that now include the three traditional broadcast networks. Viacom includes CBS, Nickelodeon, MTV, TNN, BET, and TV Land, among others. Besides ABC, Disney owns ESPN and the Disney Channel, plus minority interests in others. The table also incorporates the networks NBC acquired in May 2004.

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[60] Ibid. My calculation.
[61] Paszaz Entertainment Network, compiled by Nielsen Media Research. Accessed August 5, 2004 at http://www.pazsaz.com/tvseasn.html.
[62] Ibid., Exhibit 1, p. 3.
[63] Christopher H. Sterling, "Cable and Pay TV," in B. Compaine, et al, Who Owns the Media? Concentration of Ownership in the Mass Media Industry, rev. ed. (White Plains, NY: Knowledge Industry Publications, Inc., 1981), p. 388.
[64] Compaine and Gomery, "Who Owns the Media?" p. 584.
[65] Ibid., p. 240.
[66] Frank Aherns, "GE, Vivendi Give Rise To a Giant; New NBC Universal A $43 Billion Concern," The Washington Post, May 13, 2004. Accessed July 5, 2004 at http://www.highbeam.com/library/doc3.asp?DOCID=1P1:94510773&num=7&ctrlInfo=Round5a%3AProd%3ASR%3AResult&ao=.

The inventory encompasses both advertiser supported networks and those that are subscriber supported, such as Viacom's Showtime and The Movie Channel.

Table 1, therefore, shows that adding in the audience share of all the new cable/satellite-distributed networks under the same ownership as the older broadcast networks—and subtracting the loss of viewership affecting the same networks—the surviving entities had an audience share in 2003 of about 37%, one-third lower in household viewership than in the pre-cable era.

Table 1
Share of All TV Households of Owners of
The Three Traditional Broadcast Networks, 1970 and 2003
(% of Prime Time Audience, TV HH= 108.4 million)

	2003 Rating	**1970 Rating**
Viacom Total	**15.0%**	
CBS	7.8	20%
MTV	0.7	
Nickelodeon/Nick at Nite	1.5	
TV Land	0.6	
BET	0.6	
VH1	0.4	
UPN	1.7	
Spike TV	0.7	
Comedy Central	0.1	
Country Music TV	0.3	
Noggin	>0.05	
Showtime	0.3	
Movie Channel	0.1	
Disney Total	**12.4%**	
ABC	6.0	19%
ESPN, ESPN2	2.3	
Lifetime*	1.6	
Soapnet*	0.2	
Toon Disney	0.2	
ABC Family	1.0	
Disney Channel	1.3	
NBC/Universal Total	**9.5%**	
NBC	6.4	17%
MSNBC	0.2	
CNBC	0.1	
Bravo	0.4	
USA Network	1.5	
SciFi	0.9	
Total, 3 Traditional Nets		**36.9%**

Source: Nielsen Media, "Television Activity Report" for December 2003. See Note 42. Totals may not add due to rounding.

Ratings of New "Big Five" Networks Smaller than Old "Big Three

Table 2 provides a similar itemization for the networks of News Corp. and Time Warner. The Fox Network, which did not exist until 1986, is a traditional broadcast entity, while Fox News and FX are cable/satellite distributed networks. Time Warner started the over-the-air WB network in 1995 to add to its cable networks, CNN, TNT, HBO, and the like. Time Warner is unlike the other four network operators in that it is the only one that owns no local television stations. The WB network was created exclusively from affiliates. News Corp. and Time Warner together add 14.3% of households to the share of the now five major television program distributors.

These five entities combined had a prime time audience rating in December 2003 of 51.2%, or nearly 5% less than the combined rating of the three networks of the "vast wasteland" era. *In 2003, Viacom, with CBS plus all its cable networks, Disney, with ABC and its cable networks, and NBC, with its newly acquired cable networks, accounted for 15% fewer households during prime time than in the pre-merger days*.

Table 2
Share of All TV Households of Owners of the New Broadcast Networks Dec. 2003
(% of Prime Time Audience, TV HH= 108.4 million)

Time Warner Total		8.7%
WB	1.8%	
CNN	0.6%	
CNN-Headline News	0.2%	
TBS	1.5%	
TNT	1.5%	
Cartoon Network	1.1%	
HBO	1.4%	
Multimax	0.5%	
News Corp. Total		5.6%
FOX	4.2%	
Fox News	0.9%	
FX	0.5%	

Source: Nielsen Media, "Television Activity Report" for December 2003. See Note 42.

That the make-up and competitiveness of television has changed dramatically since the 1980s can be further seen in the list in Table 3, which shows the ten programs with the highest ratings since Nielsen began measuring audiences. Only one of the ten post-dated the start of the fourth network in 1986 and that was from early 1994. Four of the 10 were from the 1970s.[67]

[67] "Top 10 Network Telecasts of All Time (Ranked By Household Rating)," Nielsen Media Research, Inc. Accessed August 5, 2004 at http://www.nielsenmedia.com/ratings/topnetworktelecasts.htm.

Table 3 **Top 10 Network Telecasts of All Time** (By Household Rating)				
	Program	**Date**	**Network**	**Rating %**
1	M*A*S*H Special	Feb. 28, 1983	CBS	60.2
2	Dallas	Nov. 21, 1980	CBS	53.3
3	Roots Pt. VIII	Jan. 30, 1977	ABC	51.1
4	Super Bowl XVI Game	Jan. 24, 1982	CBS	49.1
5	Super Bowl XVII Game	Jan 30, 1983	NBC	48.6
6	XVII Winter Olympics	Feb. 23, 1994	CBS	48.5
7	Super Bowl XX Game	Jan. 26, 1986	NBC	48.3
8	Gone With The Wind-Pt.1	Nov. 7, 1976	NBC	47.7
9	Gone With The Wind-Pt.2	Nov. 8, 1976	NBC	47.4
10	Super Bowl XII Game	Jan. 15, 1978	CBS	47.2
Source: © Nielsen Media Research, Inc.				

Reborn Radio

The largest operator of radio stations in 2004 was Clear Channel Communications, owner of more than 1,200 stations, as well as outdoor billboards and concert promotion. Detractors complain of the homogenized play lists used on many Clear Channel stations around the country and their lack of local content.[68] In 2003, Clear Channel owned 8.8% of the almost 14,000 radio stations nationwide (12% excluding non-commercial stations).

Industry Background

For most of the second half of the 20th Century, radio was a rather sleepy industry. In the early 1950s it had been eclipsed by television as the medium with the greatest national interest to audiences and to advertisers. From its peak in 1945, when 15% of all advertising revenue was devoted to radio, to its trough just 10 years later at just 6% of advertising expenditures, radio seemed like a moribund medium.[69] Slowly, over the next five decades, the radio industry first stabilized and modestly increased its competitive position, so that in 2003 almost 8% of advertising revenue went to radio broadcasters.[70]

Over the same time period, the number of radio stations proliferated. In 1945 there were 973 stations in the U.S., 94% of them operating on the AM band while less than 1% were non-commercial.[71] By 2003, there were just under 14,000 stations, 20% of them non-commercial. Slightly over 36% of the stations were AM and the remainder used FM spectrum.[72]

It was the radio industry that created the network model later adopted by the television industry. Today, radio is largely a local medium serving primarily local advertisers and local audiences. But at its pre-television peak, radio was dominated by four national networks: NBC, CBS, and a second tier of ABC and Mutual.[73] Although no entity owned

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[68] Hatch, "Media Ownership," p. 850.
[69] Christopher Sterling and Timothy Haight, The Mass Media: Aspen Institute Guide to Communication Industry Trends (New York: Praeger Publishers, 1978), Table 303-C, pp. 130-131.
[70] "Facts About Newspapers 2004," Newspaper Association of America (2004). Accessed July 30, 2004 at http://www.naa.org/info/facts04/expenditures-allmedia.html.
[71] Sterling and Haight, Table 170-A, p. 43.
[72] Arbitron, Inc., "Station Trends," Radio Today 2004, Accessed July 30, 2004 at http://www.arbitron.com/downloads/radiotoday04.pdf.
[73] Sterling, "Television and Radio Broadcasting," in Compaine, ed., p. 303.

more than seven AM stations, by 1947 94% of all stations—and all of the largest—were part of one or more networks. As early as 1937 the networks, and their handful of 10 owned and operated clear-channel stations, accounted for fully 50% of industry revenues.[74] Even in 1947, when the number of stations had increased by two-thirds, these networks still accounted for 25% of industry revenue. Stations owned by newspapers accounted for another 25% of industry revenue and stations owned by radio equipment manufacturers had another 13%. Even more germane for understanding policy today, the nature of the long-term contracts that the networks had with their affiliates gave these four networks "final say on [most of] what local stations programmed."[75]

As with local television station ownership, FCC regulations kept a tight cap on the number of radio stations a single owner could control until the 1990s. Up to 1985 a single owner was limited to seven AM and seven FM stations, and not more than one of each service could be in the same market. In cases where the AM and FM were in the same market, they could not be used to simulcast the same programming.[76] Over the next decade, the FCC expanded the limits, in stages, to 20 of each service. In the Telecommunications Act of 1996 Congress directed the FCC to lift the number of stations that could be owned by any entity nationally, though limits were imposed on ownership within local markets.[77]

Table 4 tracks the growth in the number of radio stations with the ownership limits provided by FCC regulation and by Congress. In the early days of radio, when newspaper publishers were encouraged to start radio stations as a way to promote growth of the fledgling medium, there were no limits on the number of stations that could be owned. It was not until 1940 that the FCC created the first such regulation and that was to limit the authorized, but nonexistent, FM band owners to five stations. In 1944, the FCC refused to allow CBS to purchase an eighth AM station, although a seven-station limit was not codified and made final until 1954, along with a similar limit on FM and TV stations (five of which could be VHF).[78]

Table 4
Radio Stations and National Ownership Limits, 1937-2003

	Total Stations	Station Ownership Limit	Max National Ownership %
1937	646	No Limit (NL)	N/A
1947	1,212	AM=NL/FM=6	N/A
1960	4,306	AM=7/FM=7	.33
1970	6,889	AM=7/FM=7	.20
1980	8,748	AM=7/FM=7	.16
1990	10,631	AM=12/FM=12	.23
2003	13,898	No limit	8.8*

*Maximum national ownership limit for 2003 is actual % of stations owned by largest station group.

Sources: Stations 1937-1970, Sterling & Haight, fn 60, Table 170-A; 1970-2003, Arbitron, Inc.

For decades the limits on radio ownership remained constant even as the number of stations expanded. In 1944, when the *de facto* limit was seven AM and six FM stations, there were 910 stations.[79] By the time the limit was raised to 12 and 12 in 1985, there were 8,600 commercial stations alone.[80] Until the further loosening and final elimination of the national ownership caps, radio station groups were held by regulation to levels of fractions of one percent of stations as shown in Table 4. Of course, their audience reach and share of advertising revenue could be much higher, as

[74] Ibid.
[75] Ibid.
[76] Marc Sophos, "The Public Interest, Convenience, or Necessity: A Dead Standard in the Era of Broadcast Deregulation?" Pace Law Review, 10 Pace L. Rev. 661 (1990) Section III, Accessed August 19, 2004 at http://www.wdfh.org/art_3.htm.
[77] Hamburg and Brotman, pp 2-37--2-38.
[78] Sterling, in Compaine, ed., pp. 328-330.
[79] Sterling and Haight, Table 170-A.
[80] U.S. Census Bureau, Statistical Abstract of the United States: 1995-1996, Table 897.

enterprises with such strict limits would tend to own stations in larger markets and program them to reach the maximum audience.

Table 5 Non-Commercial Radio Stations, 1937-2003			
	Total Stations	**Non-Commercial Stations**	**As % of Total Stations**
1937	646	0	0
1947	1,212	10	0.8
1960	4,306	162	3.7
1970	6,889	413	6.0
1980	8,748	877	10.0
1990	10,631	1,252	11.8
2000	13,307	2,730	20.5
Sources: Stations 1937-1970, Sterling & Haight, fn 60, Table 170-A; 1980-2000, calculated from U.S. Census Bureau, Statistical Abstract of the United States: 2003, Table 1126: Utilization of Selected Media: 1970 to 2001.			

Non-commercial radio has become a major media force. Primarily on the FM band, they have grown faster than the number of radio stations overall, accounting for 10% of all stations in 1980 and tripling in number and doubling in proportion to over 20% of stations by 2000. Non-commercial radio stations are often affiliated with higher education, municipalities, or public television stations.

Out from the Shadows: Noncommercial Radio Gets Stronger

Non-commercial station growth has been accompanied by the emergence of National Public Radio as a programming network that rivals the reach of the largest commercial owners. NPR's most well known programming includes "Morning Edition" and "All Things Considered." The role of NPR is important in the context of radio competition.

- NPR provides content for much of the programming day on a national basis for the 750 public radio stations it serves.[81]
- NPR's reach is so pervasive it claims "Just about anywhere you find yourself, you'll find NPR."[82]
- NPR reaches 22 million listeners on a typical week, double the number of 10 years previously. In the 1980s, NPR claimed an audience of about 2 million weekly.[83]
- Public radio listeners outnumber the combined circulation of the top 35 U.S. daily newspapers.[84]

For comparison, Infinity Broadcasting, the second largest owner of radio as measured by the number of stations owned, has one-fourth the number of stations as those that carry NPR and attracts a weekly audience of 76 million listeners.[85] On the other hand, the nationally syndicated talk show of political commentator Rush Limbaugh has a weekly audience between 15.5 and 20 million listeners on about 600 stations.[86]

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[81] "About NPR," Web site accessed August 20, 2004 at http://www.npr.org/about/.
[82] Annual Report 2002, National Public Radio. Inc., p. 2.
[83] "NPR's Growth During the Last 30 Years," Web site accessed August 20, 2004 at http://www.npr.org/about/growth.html.
[84] "Public Radio Listening Grows Amidst Downward Trend on the Commercial Dial," The WBEZ Alliance. Accessed Aug. 16, 2004 at http://www.thirdcoastfestival.org/pages/extras/press/03/radiofacts.html.
[85] Viacom, Inc. "Letter of Stockholders," April 15, 2004, p. 3. Accessed August 6, 2004 at http://www.viacom.com/pdf/stockholderLetterApr2004.pdf.
[86] William Mayer, "Why talk radio is conservative," Public Interest, June 22, 2004. Accessed August 20, 2004 at http://www.highbeam.com/library/doc0.asp?docid=1G1:119025431&refid=hbr_flinks1; Steve Carney, "In Rush Limbaugh's World, He's Always Right," Talk Radio / Radio Talk, August 6, 2003. Accessed August 19, 2004 at http://www.radiotalk.org/news/alwaysright.html.

Table 6 confirms that NPR programming is available to roughly the same audiences as Infinity Broadcasting in the top markets. The comparison is approximate, in that many public radio stations are lower power than the stations that Infinity would have in the same markets. For example, while an Infinity station shown to be in Los Angeles would generally be accessible northeast in Pasadena as well as south in Long Beach, it is not as certain without further investigation of power and direction that KPCC, the NPR-affiliated station in Pasadena, would reach as far as Long Beach. There also is a substantial difference in control between wholly-owned stations and the association of the NPR network. That said, in practical terms the NPR stations are providing a national blanket that offers uniform programming accessible, as NPR promotes, virtually anywhere in the United States.

Table 6
Infinity Broadcasting Owned Stations and NPR Affiliated Stations in 25 Largest Markets 2003

Market	Infinity-owned radio stations	NPR-affiliated radio stations
New York	6	4
Los Angeles	7	7
Chicago	3	1
San Francisco	4	3
Dallas-Ft. Worth	4	1
Philadelphia	5	3
Houston	4	1
Washington, D.C.	4	4*
Boston	6	3
Detroit	6	1
Atlanta	3	2
Miami-Ft. Lauderdale	0	1
Puerto Rico	0	2
Seattle-Tacoma	5	3
Phoenix	3	2
Minneapolis	4	1
San Diego	2	2
Baltimore	7	4*
St. Louis	3	1
Tampa-St. Petersburg	6	2
Denver	3	3
Pittsburgh	4	3
Portland	6	1
Cleveland	4	1

*Includes both Washington and Baltimore located station (2 in each city). NPR total for each city includes stations located in metro area of named city, when known. The signal may not cover the entire named city.

Sources: Infinity: Viacom Form 10-K for Year Ending Dec. 31, 2003, pp. I-19 -- I-22, accessed at http://www.viacom.com/pdf/form10KMar2004.pdf; NPR: "NPR Stations," accessed at http://www.npr.org/stations/pdf/nprstations.pdf.

Table 7 considers the financial fortunes of the radio industry by looking at advertising revenue of the industry in the framework of the growing number of stations that divide up the total. The impact of new competition from television for the mass audience eroded radio as the primary electronic medium for national network advertising. At the same time, radio's share of the total pool of advertising expenditure fell from 15% in 1945 to 6% in 1955. The number of new local stations that were starting up meant that the total revenue was split into more slices, leaving less, on average, for each.

"The very growth of radio was one of its worst problems, since more stations meant more operators scrambling for available advertising dollars."[87]

Table 7 shows that advertising revenue for the industry appeared to increase slightly from $605 million in 1950 to $692 million in 1960, or about 1.4% annually. However, when adjusted for inflation to current dollars, industry revenue actually decreased 11% over that period. At the same time, the growth in stations meant that average revenue per station was declining through the 1950s and into the 1970s. Not until the 1990s–the period when ownership restrictions started to ease—did average per-station ad revenue reach the real dollar level of 1950. For most of this period, radio did not have the characteristics of a thriving industry.

Table 7
Commercial Radio Stations and Advertising Revenue, 1950-2000

	# Commercial Stations	Advertising Revenue (million)	2000 Constant $ (million)	Avg. Revenue per Station, Current $ (million)
1950	2,819	$605	$3,700	$1.3
1960	4,144	692	3,295	0.795
1970	6,476	1,308	4,839	0.747
1980	7,871	3,702	6,972	0.886
1990	9,379	8,839	10,879	1.16
2000	10,577	19,295	19,295	1.82

Sources: Stations, see Table 5; Advertising revenue: Universal McCann (formerly McCann-Erickson); Conversion to constant dollars from GDP Price Deflator: http://www.jsc.nasa.gov/bu2/inflateGDP.html Budget of the United States Government, Fiscal Year 2005, Table 10.1—Gross Domestic Product and Deflators Used in the Historical Tables- 1940–2009.

The Local Stations: More Competitive than Other Local Media

From the standpoint of individual users of radio, the context becomes what choices and from whom when they turn on their radio in the car, the kitchen, or wherever they want to have access. In the Telecommunications Act of 1996, Congress was very specific in its instructions to the FCC for creating new caps on local ownership:

(A) in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

(B) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(D) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.[88]

[87] Christopher H. Sterling and John M. Kittross, Stay Tuned: A Concise History of American Broadcasting (Belmont, CA: Wadsowth Publishing Co., 1978), p.270.
[88] Telecommunications Act of 1996, Sec. 202 (b)(1). P.L. 104-104.

Since implementation of this mandate, radio station operators have indeed acquired additional licenses in many markets. The practical impact on content and diversity of content has been inconclusive. Sen. Russell Feingold asserts, "The homogenization of radio is a prime predictor of the ravages of deregulation."[89]

Yet the very notion that radio was less homogeneous in the past belies the history of radio. With four networks providing the bulk of radio programming, radio looked much like television did prior to the 1980s: hundreds of local stations that relied on national networks for their content. In 1937, for example, during typical weekday evening prime time hours, the Milwaukee AM radio station WTMJ (owned by the *Milwaukee Journal* newspaper) broadcast all NBC-Red network programming. The bulk of its afternoon schedule was network as well.[90]

After television gained audience share in the 1950s, radio localism began to take the form of "Top 40" formats. Packagers such as Todd Storz and Gordon McLendon helped stations across the U.S. implement their formula. From 20 such stations in 1955 there were hundreds by 1960.[91] Although the names of the disc jockeys may have been different–Hy Lit in Philadelphia, Alan Freed in New York—the sound was the same. They subscribed to national "tip sheets" to identify the emerging hits and Top 40 play list services. "Time and time again an MOR-format [middle-of–the-road] station would take the plunge and achieve dramatic increases in listeners and income."[92]

Moreover, the actual research data does not clearly support the widely held assumption that changes in local ownership regulation has *prima facie* resulted in less diversity in radio. Results have shown mixed effects, and often with small likely impact. Several studies using data from the first round of local consolidation of radio stations found that consolidation had a positive effect on the diversity of formats available to listeners at the local level.[93] These studies confirm the classic hypothesis proposed by Peter Steiner in 1952: that a monopoly radio operator in a community would be more likely to provide a variety of formats than would several competitors all looking to adopt the format that would gain the largest audience.[94] That is, in markets where often 20 or 30 owners were competing, a smaller portion of the audience would be served because more of the owners would be trying to program to the handful of formats that attract the largest audiences. Some amount of consolidation should–and apparently has–allowed owners to increase their aggregate audience by programming for smaller and unserved audiences as they acquired more stations in a market. A major academic study of radio format diversity in local markets between 1995 and 2000 found that slightly over half the population had the same or more choice in radio formats available at the end of the period–and less than half had less choice.[95] Yet another study concluded that in comparing the actual music play lists of similar-format stations in low and moderately concentrated local radio markets to those considered highly concentrated, in only one of the three measured criteria did the more highly concentrated markets appear to be slightly less diverse than the lesser concentrated markets.[96]

The consolidation of radio station ownership at the local level looks substantial when compared to the pre-1996 baseline of an industry artificially fragmented as a result of past regulatory limits. On the other hand, for an observer untainted by the way it "used to be," even at the local level there would appear to be meaningful numbers of owners in communities serving the vast bulk of the population. Table 8 looks at station ownership in eight large, medium and very

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[89] Hatch, "Media Ownership," p. 852.
[90] Sterling and Kittross, Stay Tuned, p. 163.
[91] Ibid, p. 339.
[92] Ibid.
[93] Joel Waldfogel and Steven Berry, "Do Mergers Increase Product Variety? Evidence from Radio Broadcasting," The Quarterly Journal of Economics (116:3, pp. 1009-1024; Bruce E. Drushel, "The Telecommunications Act of 1996 Radio Market Structure" The Journal of Media Economics 11(3) June 2003, pp. 3-20.
[94] Paul Steiner, "Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting," The Quarterly Journal of Economics 66(2), pp. 194-223.
[95] Todd Wirth, "Direct Format Competition on the Radio Dial and the Telecommunications Act of 1996: A Five-Year Trend Study," Journal of Radio Studies, 9:1 (2002), p. 44.
[96] Todd Chambers, "Radio Diversity in the Era of Consolidation," Journal of Radio Studies, 10 (1) June 2003, pp. 33-45.

small markets.[97] (See the footnote for a description of the selection process). Excluded are educational and not-for-profit stations and some commercial stations, mostly small ones, which Arbitron does not cover in its measurements.

There are a total of 213 commercial radio stations in these eight markets, ranging from 46 in the 75th ranked Monterey-Salinas-Santa Cruz, California metropolitan area to 11 in 250th ranked State College, PA (home to Penn State University) and 275th ranked Cookeville, TN. The stations are owned by 62 different organizations. Clear Channel Communications owns 37 of the stations, or about 17%. The next largest total is Viacom subsidiary, Infinity, with 9% of the stations. None of these enterprises owns stations in all eight markets. Clear Channel has no presence in Kansas City, the 29th largest market with 25 measured commercial stations, or in State College.

On the other hand, the largest presence in Yakima, WA, the 198th market, is New Northwest Broadcasting, with seven of the 18 stations. New Northwest does not have any properties in the other seven markets in the table, but does own 29 other stations in 11 other Washington, Oregon, and Alaska cities.[98] Clear Channel owns six stations in Yakima. Four other companies own the other five commercial stations in Yakima.

Boston, the largest market by population of this group, had 34 measured stations. Three groups, Clear Channel, Infinity, and Greater Media each owned five. The latter owned no other stations in these eight markets and owned a total of 19 stations spread over six markets. Overall, Boston had a total of 16 separate "voices" besides the public and university-owned stations available to listeners.

A similar analysis of each of these markets–and by implication any other market—finds that there are a substantial number of voices and even more variety in program formats. In a small market such as Yakima listeners can choose among 12 different formats, from Adult Contemporary to Regional Mexican. It has three news/talk format stations provided by three different owners. Even tinier Cookeville, TN with a population of 83,000 (12+ years old), had 11 commercial stations, run by seven different owners, with 10 formats serving a spectrum of interests.

While critics complain that radio has become more homogenized or less likely to provide local news,[99] there is little recognition of what radio was in the decades between the ascendancy of television and the Telecommunications Act of 1996. Regardless of who owns the stations, radio is used primarily as a source of music, often as background to another activity. Only 10% of Americans consider radio as their primary source for news, compared to 57% who say the same for television and 23% for newspapers.[100] A country format station run by the Cumulus Group will play music that will sound much like that from the same country format if run by an owner of only two other stations. And an owner that believes it can enhance its morning and evening listenership by offering weather and traffic reports has to provide local conditions, whether the corporate headquarters is in the same city or across the country.

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[97] The eight were selected from the Arbitron database of measured stations available at their Radio and Records.com Web site (www.radioandrecords.com). The selection process was random, as the term is popularly used, though not a statistical random sample of the universe, which in August 2004 included 287 geographic markets down to size of 57,000 population of 12 years and older. My intention was to look at a selection of stations in large, medium and small markets. The Web site allows users to enter a market size (e.g., 31, which turned out to be Salt Lake City). The resulting table is intended to be a snapshot of these markets. There were no markets that I initially selected that were subsequently not included in the table for any reason. I entered eight sets of numbers and used those eight markets. Thus, this is not a statistically valid sample of any sort, but nor is it created to select markets with any preconceived structure, other than population size. The stations listed in each market are those rated by Arbitron. Excluded are educational and not-for-profit stations and some commercial stations, mostly small ones, that Arbitron does not include in its measurements.

[98] "R&R Directory," RadioandRecords.Com, accessed August 3, 2004 at http://www.radioandrecords.com/RRDirectory/Directory_Main.aspx.

[99] Hatch, "Media Ownership," p. 850.

[100] Nielsen Media Research, "Consumer Survey on Media Usage," Federal Communications Commission, Sept. 2002, p. 22. Accessed January 18, 2004 at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A17.pdf.

New Competition and Alternatives to Broadcast Radio

Other factors that mitigate some feared -- if largely unrealized–effects of lessened radio competition (e.g., program diversity) include satellite radio (the two national services, Sirius and XM Radio, had about 2.5 million subscribers in mid-2004[101]). The reality of the potential of satellite radio as a competitor to terrestrial broadcast radio was highlighted by the announcement in October 2004 that the controversial syndicated radio show of Howard Stern was leaving Infinity Broadcasting for a slot at Sirius.[102] Besides an attractive financial package, at Sirius Stern will not be subject to the FCC's limits imposed on his content.

Various portable devices, successors to the older portable cassette and CD players, that are used for downloading and storing personal archives of music and spoken-word content. An estimated 17 million portable digital devices were sold in 2003 and 31 million is projected for 2004.[103] This is formidable competition for the non-talk radio segment of the radio industry. Finally, there is the increasingly robust phenomenon of Internet-transmitted radio, which has already gone beyond the restriction of having to sit by a computer to hear it. More on that in the next section.

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[101] Kathleen Kingsbury, "Satellite Radio Captures Ears of Millions," CNN.com, August 4, 2004. Accessed Aug. 8, 2004 at http://www.cnn.com/2004/TECH/science/07/30/satellite.radio.

[102] Andrew Bary, "Shock Stock: Just like Howard Stern, Shares of Sirius Satellite Radio are Mighty Pricey, *Barron's Online,* October 11, 2004. Accssed Oct 20, 2004 at http://online.barrons.com/article/SB109728355122340948-search.html?collection=barrons%2F30day&vql_string=stern+sirius%3Cin%3E%28article%2Dbody%29.

[103] Alex Salkever, "iPod: Leader, but Not Ruler," *Business Week Online*, May 27, 2004. Accessed August 25, 2004 at http://www.businessweek.com/technology/content/may2004/tc20040527_8900_tc056.htm.

Table 8: Radio Station Owners in Eight Markets, 2004

	Boston		Tampa		Kansas City		Salt Lake City		Monterey, CA		Yakima, WA		State College, PA		Cookeville, TN		Group Total
Total Measured Stations	34	100%	31	100%	25	100%	37	100%	46	100%	18	100%	11	100%	11	100%	213
Clear Channel	5	14.7	8	25.8	0	0.0	4	10.8	10	21.7	6	33.3	0	0.0	4	36.4	37
Infinity (Viacom)	5	14.7	6	19.4	4	16.0	0	0.0	5	10.9	0	0.0	0	0.0	0	0.0	20
Entercom	4	11.8	0	0.0	9	36.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	13
Citadel	1	2.9	0	0.0	0	0.0	6	16.2	0	0.0	0	0.0	0	0.0	0	0.0	7
New Northwest	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	7	38.9	0	0.0	0	0.0	7
Susquehana	0	0.0	0	0.0	3	12.0	0	0.0	4	8.7	0	0.0	0	0.0	0	0.0	7
Cox	0	0.0	6	19.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	6
Millcreek	0	0.0	0	0.0	0	0.0	6	16.2	0	0.0	0	0.0	0	0.0	0	0.0	6
Simmons	0	0.0	0	0.0	0	0.0	6	16.2	0	0.0	0	0.0	0	0.0	0	0.0	6
Greater Media	5	14.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	5
Bonneville	0	0.0	0	0.0	0	0.0	4	10.8	0	0.0	0	0.0	0	0.0	0	0.0	4
Cumulus	0	0.0	0	0.0	2	8.0	0	0.0	0	0.0	0	0.0	0	0.0	2	18.2	4
Dame	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	36.4	0	0.0	4
Entravision	0	0.0	0	0.0	0	0.0	0	0.0	4	8.7	0	0.0	0	0.0	0	0.0	4
Forever	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	36.4	0	0.0	4
Mapleton	0	0.0	0	0.0	0	0.0	0	0.0	4	8.7	0	0.0	0	0.0	0	0.0	4
Mega	2	5.9	2	6.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4
Wolfhouse	0	0.0	0	0.0	0	0.0	0	0.0	4	8.7	0	0.0	0	0.0	0	0.0	4
ABC Radio	0	0.0	0	0.0	0	0.0	1	2.7	2	4.3	0	0.0	0	0.0	0	0.0	3
Univision	0	0.0	0	0.0	0	0.0	0	0.0	3	6.5	0	0.0	0	0.0	0	0.0	3
Buckley	0	0.0	0	0.0	0	0.0	0	0.0	2	4.3	0	0.0	0	0.0	0	0.0	2
Butterfield	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	11.1	0	0.0	0	0.0	2
Carter	0	0.0	0	0.0	2	8.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Genesis	0	0.0	2	6.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
KSOP	0	0.0	0	0.0	0	0.0	2	5.4	0	0.0	0	0.0	0	0.0	0	0.0	2
Mercury	0	0.0	0	0.0	0	0.0	2	5.4	0	0.0	0	0.0	0	0.0	0	0.0	2
Peoples	0	0.0	0	0.0	0	0.0	0	0.0	2	4.3	0	0.0	0	0.0	0	0.0	2
Phoenix Media	2	5.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Radio One	2	5.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Union	0	0.0	0	0.0	2	8.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Webb	0	0.0	0	0.0	0	0.0	2	5.4	0	0.0	0	0.0	0	0.0	0	0.0	2
WGUL	0	0.0	2	6.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
ZGS Broadcast	0	0.0	2	6.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Zwerling	0	0.0	0	0.0	0	0.0	0	0.0	2	4.3	0	0.0	0	0.0	0	0.0	2

3 Points Media	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0	0	0.0	0	0.0	0	0.0	1
Allegheny Mt. Network	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0	1
Bob Bittner	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Bott Radio Network	0	0.0	0	0.0	1	4.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Carlson Communications	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0	0	0.0	0	0.0	0	0.0	1
Chalres River	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Commonwealth Communications	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	5.6	0	0.0	0	0.0	1
Costa-Eagle	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Cromwell	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	1
First Media Radio	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0	1
Gaylord Entertainment	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	1
J&M	0	0.0	0	0.0	0	0.0	0	0.0	1	2.2	0	0.0	0	0.0	0	0.0	1
Jesscom	0	0.0	0	0.0	1	4.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
JWC Broadcasting	0	0.0	0	0.0	0	0.0		0.0	0	0.0		0.0	0	0.0	1	9.1	1
KANZA	0	0.0	0	0.0	1	4.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
KMPG Radio	0	0.0	0	0.0	0	0.0	0	0.0	1	2.2	0	0.0	0	0.0	0	0.0	1
Lobo	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0	0	0.0	0	0.0	0	0.0	1
Marlin	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Metropolitan Radio	0	0.0	1	3.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Monterey County	0	0.0	0	0.0	0	0.0	0	0.0	1	2.2	0	0.0	0	0.0	0	0.0	1
Moon	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	5.6	0	0.0	0	0.0	1
Moshannon Valley	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0	1
Northeast Broadcasting	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Northwest Communities	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	5.6	0	0.0	0	0.0	1
Plymouth Rock Broadcasting	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Radio Campesina	0	0.0	0	0.0	0	0.0	0	0.0	1	2.2	0	0.0	0	0.0	0	0.0	1
Radio Tropical	0	0.0	1	3.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Saga	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Salem	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
South Central	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	1
TAMA Group	0	0.0	1	3.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
United Broadcasting	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0	0	0.0	0	0.0	0	0.0	1
Way-FM Media Group	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	1
	34	100.0	31	100.0	25	100.0	37	100.0	46	100.0	18	100.0	11	100.0	11	100.0	213

The Internet and World Wide Web

The Internet is the popular shorthand term for not a single medium but a collection of services and service providers. These include but are not limited to backbone providers, Internet Service Providers (ISPs), utilities (e.g., search engines), merchants (e.g., Amazon.com), portals (e.g., Yahoo! or MSN), traditional information providers offering advertising supported content (e.g., *The New York Times* online) or subscription supported content (e.g., *The Wall Street Journal* online), customer service and convenience applications (e.g., view bank transactions online); and information providers who did and could not exist without the Internet (e.g., Internet radio stations). The Internet itself is the sum of the processes through which bits of data are sent from computer to computer via sundry networks using the common TCP/IP format. The World Wide Web is one component of the Internet that enables the use of hyperlinks to locate documents and data files on remote servers connected to the Internet.

In the United States, about 75% of adults had access to the Internet in 2004.[104] An estimated 140 million were active Internet users.[105] At the same time, more than 50% of households that subscribe to an Internet service do so with a broadband connection. This represented a 47% increase from the same period in 2003.[106] This has several ramifications: households using broadband have an always-on connection and thus spend more time online. They also can use the Internet for what is termed "rich media," including higher quality audio and video streams and downloads.

Non-Media Firms Own Most Web Sites with Highest Traffic

Tables 9a and 9b give some sense of the most popular destination sites of Internet users. They use it to access sites that are provided by traditional media companies, by other large though not traditional media companies, and a host of new players, from travel agencies to U.S. government agencies. From both work and home, Microsoft affiliated sites receive visits from 11 million more users than second ranked Time Warner (from home) or Yahoo! (at work). Microsoft's sites would include their MSN service as well as visits to the corporate site for updates and downloads on Microsoft products. Time Warner's audience of 78 million monthly from home, 36 million from work (there could be considerable overlap) would include visits to the AOL and CNN Web sites, as well as to the sites of the Time, Inc. publications. InterActiveCorp is the parent of many ecommerce services, such as travel agencies Expedia and Hotwired, financial service provider LendingTree, and event planning service Evite. The substantial use of sites run by various U.S. government agencies is a positive indicator of the use of online access for making it easier to obtain information and services from government.

Table 9a
Home Audience Reach of Top 10 Web Sites for July 2004, Aggregated by Parent Companies

Parent Name	Unique Audience (000)	Reach %	Time Per Person (hours)
Microsoft	89,750	65.70	01:26:20
Time Warner	78,464	57.44	03:46:50
Yahoo!	77,369	56.64	02:00:36
Google	46,957	34.37	00:18:31
eBay	35,344	25.87	01:25:08
United States Government	27,055	19.80	00:15:53
InterActiveCorp	24,584	18.00	00:17:56
Ask Jeeves	23,363	17.10	00:22:52
RealNetworks	22,132	16.20	00:42:14

[104] "Three Out of Four Americans Have Access To The Internet, According To Nielsen//Netratings," NetRatings, Inc. March 18, 2004. Accessed at http://www.nielsen-netratings.com/pr/pr_040318.pdf.
[105] Robyn Greenspan, "Active Internet Users by Country, June 2004," Nielsen//NetRatings, June 2004. Accessed August 19, 2004 at http://www.clickz.com/stats/big_picture/geographics/article.php/3386051#table.
[106] "U.S. Broadband Connections Reach Critical Mass, Crossing 50 Percent Mark For Web Surfers, According To Nielsen//Netratings," NetRatings, Inc., August 18, 2003. Accessed at http://www.nielsen-netratings.com/pr/pr_040818.pdf.

Amazon	22,029	16.13	00:15:13
Source: Nielsen NetRatings at http://www.nielsen-netratings.com/reports.jsp?section=pub_reports&report=parent&period=monthly&panel_type=2			

Table 9b At Work Audience Reach of Top 10 Web Sites for July 2004, Aggregated by Parent Companies			
Parent Name	**Unique Audience (000)**	**Reach %**	**Time Per Person (hours)**
Microsoft	45,268	89.02	01:51:38
Yahoo!	37,051	72.86	02:50:08
Time Warner	35,902	70.60	05:15:45
Google	30,523	60.03	00:35:17
United States Government	23,855	46.91	00:27:59
eBay	20,892	41.08	01:27:41
InterActiveCorp	17,908	35.22	00:19:15
Amazon	17,260	33.94	00:17:30
Walt Disney Internet Group	14,256	28.04	00:48:55
RealNetworks	13,380	26.31	00:46:43
Source: Nielsen NetRatings at http://www.nielsen-netratings.com/reports.jsp?section=pub_reports&report=parent&period=monthly&panel_type=3			

Print Media Attract Users from Beyond their Geographic Base

Print media have used their Web presence as both an opportunity for attracting new customers as well as a hedge against erosion of their print product. The online audience for the Web sites of traditional print media may come not only from current subscribers to the print product but, thanks to the distance insensitive nature of the Internet, from just about anywhere. In Table 10, the Web site of the publication that gets the fifth highest number of visits from U.S.-based users is *The Times of India*. This newspaper, with a daily circulation of 21 million, is published in 10 cities across India.[107] Its Web site, however, is available to the large expatriate and Indian heritage residents of the U.S.

That the Web can expand the reach of news media was shown in an analysis of the print and Web readership of the *Houston Chronicle* newspaper in the local market. The print version of the *Chronicle* reaches 45.0 percent of the adult population during an average week. Adding the unique audience for their HoustonChronicle.com site to the reach of the printed edition, and eliminating the duplication between the two, the net reach of the paper is 52.1%, or a net gain of 7.1% of all adults in the Houston Consolidated Standard Metropolitan Statistical Area (SMSA).[108]

[107] "A Brief History," Bennett, Coleman & Co. Ltd., Accessed July 30, 2004 at http://economictimes.indiatimes.com/dmd/htmls/aboutus.htm.

[108] Robyn Greenspan, "Net No Threat To Newspapers," ClickZ Network, January 16, 2004. Accessed July 30, 2004 at http://www.clickz.com/stats/big_picture/traffic_patterns/article.php/5931_3300281.

Table 10 Most Visited Print News Media Sites, U.S. December 2003	
Site	**Market Share**
1. New York Times on the Web	6.50%
2. The Washington Post	3.45%
3. USA Today	3.32%
4. CNN Sports Illustrated	2.39%
5. Times of India	1.72%
6. Boston.com	1.58%
7. Minneapolis Star Tribune	1.07%
8. NYPost.com	1.06%
9. SF Gate	0.98%
10. Atlanta Journal-Constitution	0.95%
Source: Hitwise, http://www.clickz.com/stats/big_picture/traffic_patterns/article.php/5931_3300281.	

Internet Radio and Video are for Real

Both early research and continuing trends in the data support the contention that "by delivering diverse programming to a significant portion of the market, Internet radio broadcasters complement traditional radio and provide more overall diversity to audiences."[109] Aggregate tuning hours for Internet radio were up by 118 percent in 2004, with the top ten sites averaging 137.5 million hours during the first two months of the year, compared to 63 million hours in 2003.[110] Delivery of video has followed closely the adoption of broadband to the home. Internet users with broadband accessed an average of 15.4 video clips per month in 2004, up 43% from a year earlier. Nearly 80% of the video streams provided during the first half of 2004 were to broadband users.[111] Video streams served during January and February 2004 by the top ten sites averaged 523 million, compared to 292 million in 2003, which itself was up 104% from 2002. Music video captured the largest share of the streaming audience in 2003, followed closely by news.[112]

Internet users with broadband connections have been found to spend almost as much time per day online (two hours) as they spend with television (2:45) and radio (2:23). On average, they spend 11 minutes with newspapers.[113]

Both the absolute numbers and the steep positive trends on adoption, penetration and broadband validates the use of the Internet as a serious avenue for distributing and accessing what have collectively been called the mass media: news, entertainment, information and commerce – as text, audio and video – bypassing many of the geographic, regulatory and capital barriers associated with older processes of distributing the same type of content.

Internet radio is particularly relevant, given the high profile radio mergers have had in the policy debates since 1996. Internet radio encompasses traditional, licensed radio stations in the U.S. and elsewhere that provide real-time access via the Internet, as well as radio-like stations that operate only via the Internet, popularly called "Webcasting." These

[109] Benjamin Compaine and Emma Smith, "Internet Radio: A New Engine for Content Diversity?" International Telecommunications Society Conference, Dublin, September 2001 at http://itc.mit.edu/itel/docs/2001/compaine_smith_radio.pdf.
[110] Robyn Greenspan, "Streaming More Mainstream," ClickZ Network, April 15, 2004 Accessed at http://www.clickz.com/stats/big_picture/applications/article.php/3341031#table. As measured by AccuStream iMedia Research.
[111] "AccuStream Report: User Consumption of Broadband Video Streams up 42% in First Half of 2004." Accessed August 24, 2004 at http://www.accustreamresearch.com/news/aug17-04.html.
[112] Ibid.
[113] "Internet and Multimedia 11: New Media Enters the Mainstream," Arbitron/Edison Media Research, Sept. 23, 2003, p.9. Accessed at http://www.arbitron.com/downloads/Internet_Multimedia_11.pdf.

include professional ventures that aim for substantial audiences and revenue as well as "garage" ventures that are operated as hobbies, small businesses, or to promote other agendas.

In 2000, Real Audio's RadioGuide identified about 2,500 Web access radio providers worldwide. This included both traditional broadcasters and Webcasters. There were 24 companies that owned one or more of the top 75 radio stations ranked by Arbitron according to the Aggregate Tuning Hours (ATHs) measurement. Of these, 14 had only a single property among the top 75. As seen in Table 11, the two largest at the time, NetRadio and ABC Radio, accounted for 56% of the total number of stations. NetRadio had almost twice as many properties as ABC Radio, with 27 stations.

The gap between NetRadio and ABC Radio was even greater when measured according to Aggregate Tuning Hours. As seen in Table 11, NetRadio captured 43% of the listening hours, although it owned only 36% of the stations. The ABC stations, on the other hand, captured only 16.9% of the ATH, while they owned 20% of the stations. The top four Internet radio owners in Table 11 together owned 64% of the top 75 Internet stations which combined to account for 67.1% of the total ATH.

Table 11
Ownership Diversity Among Arbitron's Top 75 Internet Radio Stations, 2000

Owner	Internet Only or Broadcaster	# of Stations owned	% of top 75 stations owned	% ATH owned
NetRadio	**I**	**27**	**36.0**	**43.3**
ABC Radio	B	15	20.0	16.9
New Wave Broadcasting LP	B	3	4.0	3.7
Fisher Broadcasting	B	3	4.0	3.2
Bonneville International	B	3	4.0	2.7
CHUM Group	B	2	2.7	1.2
Citadel Communications	B	2	2.7	2.0
Corus Entertainment	B	2	2.7	1.8
Enigma Digital	**I**	**2**	**2.7**	**5.7**
Inner City Broadcasting Corp.	B	2	2.7	1.7
EXCL Communications	B	1	1.3	0.7
eYada	**I**	**1**	**1.3**	**1.2**
Global Media	**I**	**1**	**1.3**	**0.5**
Ingleside Radio, Inc.	B	1	1.3	0.6
One-On-One Sports	B	1	1.3	1.3
Pacific Lutheran University	B	1	1.3	1.8
Radio Margaritaville, LLC	**I**	**1**	**1.3**	**1.4**
Salem Comm. Corp.	**I**	**1**	**1.3**	**1.3**
Santa Monica College	B	1	1.3	1.2
Scottish Media Group	B	1	1.3	2.8
Shaw Communications	B	1	1.3	2.1
Sunburst Media L.P.	B	1	1.3	1.5
The Broadcastweb Network	**I**	**1**	**1.3**	**0.8**
Texas Country Connection	B	1	1.3	0.6

Source: Arbitron Webcast Ratings, September 2000. Top 75 Aggregate Tuning Hours (ATH) www.arbitron.com. Internet-only owners shown in boldface.

Studies of licensed radio broadcasters, however, have found a higher ownership concentration in local markets. In 1997, the FCC reported that "the top four radio owners generally account for about 90% of their Metro market's total revenues."[114]

Table 11 further shows that 25% of the companies represented owned Internet-only stations. Primarily because of NetRadio's large share of the top ranked stations and the total ATH, Internet-only broadcast owners represented only a quarter of the owners of Internet radio stations, yet they accounted for 54% of the Internet radio listening online. Thus, Internet-only radio station owners, according to this early data, were able to successfully compete with traditional broadcasters for a substantial share of the online audience.

Local vs. National Market for Internet Radio

Traditional AM and FM broadcasters are geographically limited in where their radio audiences can be located. Online, however, it is possible for any Internet radio listener to access a radio station from anywhere in the world. While data are not available to measure the location of the listeners to the top 75 radio stations measured by Arbitron, a more useful tool for analyzing the content diversity is the location of the station's target market. If, for instance, a third of the top 75 stations were gearing their broadcasts for a New York audience by delivering news, weather, and traffic reports specific to New York, this would suggest that diversity in programming is being limited by the location of the top broadcasters, even though their content is available internationally.

As seen in Table 12, 47% of the top 75 Internet radio stations measured by Arbitron were created for a national market, while the balance were targeted to listeners in specific locations. By comparison, when the target market locations are compared according to listening hours, 56% of the actual tuning hours were being spent listening to the national stations. Thus the national, Internet-only stations were attracting a proportionately greater share of listening time than the local, licensed stations that were also broadcasting online. This is consistent given that the AM and FM stations have their traditional over-the-air signal by which listeners can access their programming. All listening to the Webcast-only stations must take place online.

Of those who chose to listen to the local AM and FM radio stations online, early research from Edison Media found that 56% chose stations that were from their local market, compared to 34% who chose stations in other markets, and 6% who choose stations from other countries.[115] This finding was substantially replicated in a study from Arbitron/Coleman Research that measured use of Internet radio stations by users with dial-up connections.[116] This study noted an apparent red flag for local broadcasters, however. It found early indications that the popularity of local Internet radio stations might wane as Internet connection speeds increase.

Table 12
Internet Radio Stations by Location of Target Market

Location	# of stations with target market in this location	% of top 75 stations with target market in this location	% ATH delivered to target market in this location
National	35	46.7%	55.7%
San Francisco/California	8	10.7	8.4
Washington, DC	6	8.0	5.4
Dallas/Texas	3	4.0	3.0
Seattle	3	4.0	3.2
New York	3	4.0	5.6

[114] "Review of the Radio Industry, 1997." Federal Communications Commission. MM Docket No. 98-35. March 13, 1998.
[115] "Internet Study V: Startling New Insights About the Internet and Streaming," Edison Media, New York, September 2000.
[116] "The Broadband Revolution: How Superfast Internet Access Changes Media Habits in American Households," Arbitron/Coleman, New York, October 2000.

Calgary	2	2.7	1.8
Chicago	2	2.7	1.6
Detroit/Windsor, ON	2	2.7	1.2
Los Angeles	2	2.7	1.7
Minnesota	2	2.7	1.9
London	1	1.3	2.8
Toronto	1	1.3	2.1
Western Washington	1	1.3	1.8
New England	1	1.3	1.4
Boston, Chicago, LA, New York *	1	1.3	1.3
Columbus, OH	1	1.3	0.6
Portland, ME	1	1.3	0.6

** One on One Sports (www.1on1sports.com) is a single Web site that provides access to four separate radio station sites. Each station can be accessed from the One on One Sports portal but each has an affiliate in a different city.*
Source: Arbitron Webcast Ratings, September 2000. Top 75 Aggregate Tuning Hours (ATH) www.arbitron.com

Specifically, the Arbitron/Coleman study found that broadband users are more likely than dialup users to listen to out-of-market stations: 41% of broadband users, compared to 35% of dialup users, chose U.S. radio stations from outside their own market. Furthermore, 17% of broadband users, compared to 10% of dialup users, listened to radio stations streaming from other countries.[117] There are a number of possible reasons for this phenomenon. First, it may simply be that people with higher speed connections tend to be more adventurous online. Their faster connections mean that they can use a wider range of all Internet services than users with slower connections. In the absence of further research, it is also possible to speculate that as broadband Internet access is initially more readily available to urban dwellers, they may be more likely to listen to Internet radio from other markets regardless of their connection speed. They may be of a demographic group that also has a higher-than-average income or education level, or who have traveled more than their counterparts with slower connection times, or maybe more heavily weighted to mobile professionals or to recent immigrants, each of which might suggest an increased likelihood to listen to radio from outside their own market, regardless of connection speeds.

New Magnitudes of Language Diversity in Internet Radio

Only one of the Internet radio stations rated in the top 75 by Arbitron delivered programming in a language other than English. This is perhaps not surprising. It would be very difficult for non-English language broadcasters to garner the broad listenership required to compete with the English language country music and classic hits stations that secure Arbitron's top spots.

A far different picture emerges upon examination of the approximately 2,500 Internet radio stations listed by Realguide.com in 2000. As seen in Table 13, there were a significant number of radio stations available via the Internet delivering programming in languages other than English. Internet radio stations listed by Realguide.com were delivering programming in languages ranging from Thai to Lithuanian and Mandarin. While these stations may not attract the large American audiences of the Arbitron-ranked sites, the fact that they are available over the Internet does support the notion that the Internet is making available diverse programming in a way that traditional radio is not. Thus, Internet users anywhere in the world can access radio programs from almost any country and in many languages.

While it is difficult to gauge whether the delivery of one non-English language station over the Internet reflects demand, it is possible to compare this availability to the number of non-English language stations available from traditional

[117] Ibid.

broadcasters. Out of the 12,467 radio stations broadcasting in the United States at the time, only 642 delivered programming in languages other than English. This included 528 Spanish stations; five Portuguese, four each French, Greek, and Polish; three in a Chinese dialect; two Arabic; and one each in Russian, Eskimo, Vietnamese, and Filipino.[118]

Internet radio stations offer significantly more language diversity than traditional over-the-air broadcasters. For example, the five Portuguese language AM and FM stations in the U.S. are available only to the audiences within range of their signals. On the other hand, each of the 55 Portuguese stations identified at Realguide.com is available to listeners anywhere in the world. In other words, one Portuguese station online potentially provides language diversity to a greater number of listeners than all five of the offline stations. Furthermore, whereas the 12,467 traditional radio broadcasters in the U.S. represented only 11 languages, there were Internet radio stations delivering programming in 44 different languages. Most of these broadcasts originated outside the United States; however, for the listener who is searching for diversity, the origin may be of little consequence, or even an attraction.

In 2004, Real provided a catalog of 3,200 worldwide stations that were available at no cost. A premium service, for $50 annually, added 70 commercial-free Webcast stations.[119] Another service, RadioTower, has a database with links to 6,900 Internet radio and TV stations, including talk radio ranging from The Basement Internet Radio Show to Radio Guaíba - 720 AM in Porto Alegre, Brazil.[120] NetRadio has reconfigured itself as a provider of seven ad-free jazz and classical music stations, for about $3 per month.[121]

But perhaps one of the most intriguing developments from the point of view of "voices" is Live365. Besides a service that offers both free and premium connections to thousands of radio stations, Live365 provides services to allow personal Webcasters to offer their own "station." Starting at $9.95 per month, Live365 will provide 100 megabytes of server storage, handle royalty payments, and offer the user up to 100 PCs signed on at a time for programming that is non real-time streaming. For $550 annually, a serious personal broadcaster can offer a live Webcast with as many as 100 simultaneous PCs signed on.[122] Thus, radio begins to approach blogs and basic Web sites as a medium where everyone can be a speaker as well as a listener. Live365 claimed 5,000 such personal Webcasters in 2004.

Cutting the PC Cord for Streaming Media

So long as streaming media, whether radio or video, is restricted to reception on a PC, its role as a potential competitor with broadcast or cable is limited. The widespread implementation of the 802.11 wireless protocol (best known as Wi-Fi), as well as other wireless technologies for wider range broadband, such as Wi-Max (Worldwide Interoperability for Microwave Access),[123] have begun the process of cutting the cord and making truly portable Internet radio—to be used around the house, at the beach, or in the car. The first such devices are on the market.[124] Equipment manufacturers have introduced portable "boom boxes" for the satellite-distributed XM and Sirius radio services as well.[125]

Internet as New Video Competition for Cable and DBS

Even as the old line television networks adjust to the impact of multichannel distribution alternatives such as cable and satellite, these new players are looking over their shoulder at the Internet and the telephone companies as potential competitors. As cable companies encroach on the old regional exchange carrier's turf by offering consumers local and

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[118] *Broadcasting and Cable Yearbook, 2000* (New Providence, NJ: R.R. Bowker Co., 1999). U.S. Radio Formats by State and Possession. 1999.
[119] Access at http://www.real.com/radiopass/?src=R1Guide,081604realhome_1_3_2_1_1_1
[120] Access at http://www.radiotower.com
[121] Access at http://www.netradio.com/index.php
[122] Access at https://store.live365.com/orders/orderform.live
[123] Bob O'Hara, "Will Wi-Max Make Wi-Fi Obsolete?" Network World Fusion, January 12, 2004. Accessed August 20, 2004 at http://www.nwfusion.com/columnists/2004/0112wizards.html.
[124] Bill Howard, "Time for the Internet Boom Box," PC Magazine, August 3, 2004. Accessed Aug. 25, 2004 at http://www.pcmag.com/article2/0,1759,1619716,00.asp.
[125] At http://www.live365.com/info/index.html

long distance telephone service using their wires to the home, the telephone companies are looking at their own wires for a response. The 500 Kbps to 1.5 megabits-per-second (Mbps) downstream speed of today's cable and DSL broadband is fast enough to offer decent quality video in a five inch square window on a computer screen. But the players know that it will take capabilities of 5 Mbps to stream over the Internet a DVD quality signal that would compete with cable—and even faster for a high definition picture.[126] "The fiber platform for broadband will pervade our world and how we live," is the flat-out assessment of the president of retail markets for Verizon.[127] To that end, Verizon has initiated a build out of fiber optic cable to pass more than three million homes by the end of 2005 at a cost of $2.5 billion.[128] Verizon says it intends to offer video services by the beginning of 2005 over its new fiber lines. Avoiding the pitfall of a previous video delivery plan from the early 1990s, Verizon recognizes that its expertise is in networks, not content. It says it won't develop its own programming, providing an opportunity for current and potential new program producers.[129]

Table 13

Languages Available At Internet Radio Stations Listed By Realguide.Com, 2000

Language	# of stations	% of stations
English	1,596	78.85
Spanish	82	4.05
German	63	3.11
Portuguese	55	2.72
French	41	2.03
Italian	19	0.94
Dutch	17	0.84
Polish	11	0.54
Arabic	11	0.54
Greek	10	0.49
Icelandic	9	0.44
Russian	9	0.44
Croatian	8	0.40
Hindi	8	0.40
Swedish	8	0.40
Czech	7	0.35
Turkish	7	0.35
Cantonese	6	0.30
Slovenian	6	0.30
Thai	5	0.25
Estonian	4	0.20
Farsi	4	0.20
Hebrew	4	0.20
Galician	3	0.15
Latvian	3	0.15
Norwegian	3	0.15

[126] "New Service by TiVo Will Build Bridges From Internet to the TV," *The New York Times*, June 9, 2004. Accessed June 9, 2004 at http://www.nytimes.com/2004/06/09/technology/09net.html?ei=5007&en=7bd25f7836498ba2&ex=1402113600&partner=USERLAND&pagewanted=all&position=.

[127] "Video Services Are Big Lure," *The Wall Street Journal*, August 19, 2004, p. B1. Accessed Aug. 19, 2004 at http://online.wsj.com/article/0,,SB109286816672195246,00.html?mod=article-outset-box.

[128] Ibid.

[129] Ibid.

Romanian	3	0.15
Hungarian	2	0.10
Japanese	2	0.10
Mandarin	2	0.10
Finnish	2	0.10
Punjabi	2	0.10
Serbo-Croat	1	0.05
Slovak	1	0.05
Bulgarian	1	0.05
Catalan	1	0.05
Danish	1	0.05
Korean	1	0.05
Lithuanian	1	0.05
Luxemborgeois	1	0.05
Swiss	1	0.05
Tunisian	1	0.05
Urdu	1	0.05
Vietnamese	1	0.05
Source: RealGuide, 2000. http://realguide.real.com/tuner		

In addition to this fourth very high-speed channel to the home (beyond terrestrial broadcasting, cable TV and two major national DBS providers), there are several ventures looking at ways to provide consumers with high quality video using the existing Internet infrastructure. TiVo, the maker of a popular digital video recorder, has initiated a service that further blurs the line between programming delivered over traditional cable and satellite channels and content from the Internet. The service connects the current DSL, cable modem, or DBS Internet input to a personal digital recorder, storing downloaded movies, music, or other programming that users can then watch or listen to at their convenience. Thus, the download speed does not have to provide real-time streaming, only a speed fast enough to be measured in minutes or a few hours, perhaps during the night.[130]

A similar service was planned by start-up company, Akimbo, in 2004. The package includes a $230 box that, like the TiVo system, plugs into a TV set and, through a home network, to a high-speed cable or DSL Internet connection. Akimbo expected to charge a $10 monthly charge, for which users would be able to select movies, sports clips, and other programs to download to their set-top boxes. From the viewpoint of consumer options, it is significant that the Akimbo business plan expects that content creators will view this as a new form of distribution, as much of the programming will be content that does not make it to cable networks.[131]

The clear implication of these trends around the Internet is that current characterizations about the nature of markets for audio, video, and even text content are likely to continue shifting. Though there may be "pinch points" of control within the Internet, it is not "owned" by any entity or small group of entities. Its basic design and implementation is to allow any user to reach any other user anywhere there is a connection. Systematic limits on accessing specific servers and content have only been partially successful even when national governments that have monopoly control over the domestic Internet structure order it. Everywhere else, it has been in the interest of almost all players to add value to their customers by keeping access as open as possible. Indeed, America Online's growth was coincident with allowing its users to exchange email via the Internet with any other Internet user—a change that was paradox for what had been a proprietary and "walled garden" online service.

[130] "New Service by TiVo," *The New York Times*, June 9, 2004.
[131] "Start-Up Akimbo Systems Gets Funding For Internet-TV System," *The Wall Street Journal*, July 12, 2004, p. B5. Accessed July 12, 2004 at http://online.wsj.com/article/0,,SB108958511185860813,00.html.

The Blurring of Digital Boundaries

The notion that the boundaries differentiating the media are blurring is not new,[132] though it is sometimes misunderstood. As all content becomes processed, stored and transmitted in digital form -- as zeros and ones – the distinctions and regulatory regimes that had been so clear have come apart. Telephone calls travel as bits over the Internet at small fractions of the cost of using the expensive and heavily taxed switched telephone network. Audio that was distributed by licensed radio stations can now be downloaded and streamed online with no need for a government grant. Multichannel video programming that for decades was the purview of cable operators whose "monopoly" was preserved by virtue of their franchise granted by local communities can now be provided by operators whose satellites bypass geographic boundaries and households who can move their video dishes along with their kitchen dishes when they shift abodes.

Media Segments Have Been Historically Substitutable for One Another

That there is some degree of substitutability among the media is seen in the shifting use by both advertisers and consumers. Figure 4 shows some general trends since 1935. Newspapers, which were largely local media, took a huge hit as radio gained in penetration and use in the 1930s and 1940s. (Although the trend was established by the late 1930s, rationing of newsprint during WW II also likely accelerated the substitution of radio for newspapers). Newspaper share continued to slide as television further contested for advertiser budgets. But broadcast television (both local and network) lost share for the first time in the late 1980s, as advertisers shifted some of their expenditures to cable networks. From an advertiser point of view, this was still television advertising. But it was a different set of players who were winning at the expense of broadcasters. Even worse from the standpoint of the three networks, the advertising pie was being split with the newcomers, particularly Fox.

Perhaps the most overlooked and least glamorous piece of the advertising landscape is direct mail. It was a formidable player in 1935 and even more formidable in 2003, accounting for nearly one in every five dollars spent. It has a greater share than newspapers as well as broadcast TV. Although the industry has long been sensitive to postage rates, it has also proven to be a robust competitor for newspapers. Information technology that allows mailers to finely segment consumers by ZIP code has enhanced the efficiency of direct mail (which includes hand delivered plastic bags draped over door handles). Direct mail does not provide news or entertainment. But to the extent that advertisers spend a dollar on direct mail, that is often a dollar that does not go to the local newspapers, which in turn cuts down on the "news hole" available to the editor and the financial well-being of journalists and production personnel. The consequences of the increased market share of direct mailers cannot be overlooked in understanding the health and competition of the media business. The shift in winners and losers affirms that as far as advertisers are concerned, there is fungibility and competition across the media.

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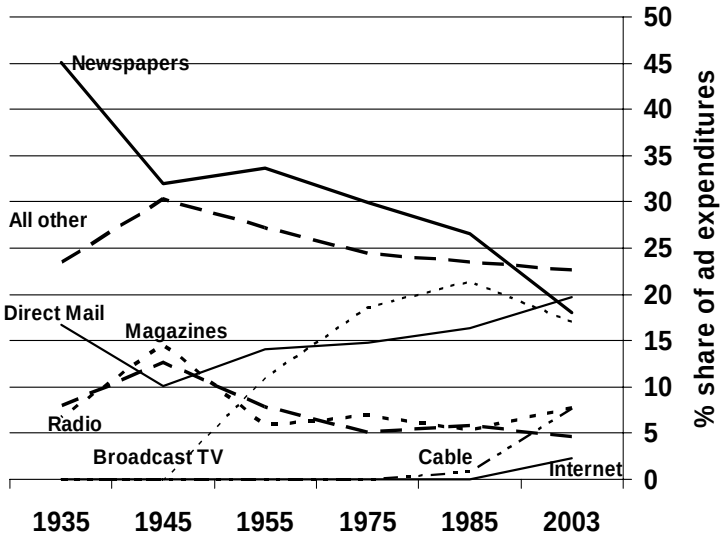
[148] Benjamin M. Compaine, "Shifting Boundaries in the Information Marketplace," in B. Compaine, ed., Understanding New Media (Cambridge, Mass: Ballinger Publishing Co., 1984), p. 101.

Figure 4
Share of Advertising Expenditures in All Media
1935-2003



Sources: 1935-1985 McCann-Erickson; 2003: Newspaper Association of America, Facts About Newspapers, 2004 at http://www.naa.org/info/facts04/expenditures-allmedia.html

Table 14 looks at changing usage patterns by consumers, albeit over a far shorter time frame than for advertising. The intent of the research was to see what impact, if any, the Internet and online services had on older media.[133] (In the time frame of the two surveys, there was still a potential distinction in the perception of many users between "the Internet" and online services, such as America Online or CompuServe. Hence they were asked about both in the surveys.). All the changes are statistically significant between the two years with the exception of political magazines. These percentages are not additive, as respondents could use more than one medium on a regular basis.

Table 14
Regular Use of Various Media Types, 1995 and 1999

	1995	**1999**
Local TV News	70.8%	59.4%
Network TV News	67.3	60.4
Newspaper	59.3	54.2
Radio News	48.6	57.3
Radio Talk Shows	20.0	28.4
News Magazine	31.4	26.6
Grocery Store Tabloid	10.6	6.4
Political Magazines	8.3	8.1
Internet	5.3	34.5
Online Services	3.4	19.3
Source: Stempl, et al. See note 123.		

The most pronounced changes between the two measurement periods are the increase in Internet/Online use and the decrease in television news use. Both are consistent with trends that have been seen elsewhere. The observation might lead to a conclusion that the Internet is being substituted for other media, particularly television news. However, the researchers went further, separating the responses of those who used the Internet at least weekly from those who

[133] Guido H. Stempel III, Thomas Hargrove and Joseph Brent, "Relation of Growth of Use of the Internet to Changes in Media Use from 1995 to 1999," Journalism & Mass Communication Quarterly (77:1) Spring 2000, pp. 71-79.

did not. In this case, they found users of the Internet watched television news about the same as the non-users and used daily newspapers more than non-users. The implication is that using the Internet (for whatever purpose) had been *added* to the media mix for consumers. Presumably consumers were using it to get information from, among other sources, the sites such as those identified in Table 9.

The Case for *"On the Other Hand*"

"Give me a one-handed economist," demanded President Truman. "All my economists say, 'on the one hand...on the other'."[134] Much of the criticism to the current media structure looks at only one hand, sometimes for self-serving reasons, perhaps in other cases out of naiveté or simply the failure to think through "the other hand."

Local Owner Can be Safeguard or Censor

- Senator Tom Daschle (D-SD), in a Senate speech critical of proposed FCC ownership regulations in 2003, was criticizing the old television broadcast networks by telling the story of the experience of the owner of the CBS and Fox television stations in Raleigh, NC. In apparently a positive reference to this owner's decision making, Daschle noted:

> Out of respect for his local audience's sensibilities he has refused to carry either network's "reality TV" shows, including "Temptation Island"…. His actions have met with intense resistance from the networks, and he has expressed his grave concern that if the network's ability to own more and more of the broadcast outlets goes unchecked, local stations and communities won't have any ability to choose their own programming. They will be forced to air network fare, even when offensive to local viewers…."[135]

*On the other hand…*If this owner had exercised his prerogative to refuse to air "60 Minutes" or a TV movie about how a mixed raced couple was tormented in a southern town, it is likely that Senator Daschle might be referring to him as a closed minded monopolist censoring what the fine people of Raleigh should be able to see and saluting the network for exerting its influence to get their programs into the Raleigh market. (Historical note: There is also a certain amount of revisionism in this notion that the networks have more power in the local market today. In the "old days," local affiliates had long term contracts with their network and had very little choice for alternate programming. The networks have considerably less hold over their affiliates today, who can turn to dozens of syndicators or other networks for network-quality programming, the "Star Trek" series being one of the first, and perhaps most well known, syndicated franchise programs).

Radio Conglomerate Can Be a Barrier or Facilitator

- Eric Boehlert, a writer for the online Web magazine Salon, was critical of the Clear Channel radio group: "You can't have a hit without being on Clear Channel stations."[136]

*On the other hand…*Assume Clear Channel stations and its concert venues do coordinate their talent lists (they claim they don't). Suppose a concert booker sees one of the thousands of bands trying to make it through the clutter and thinks, "They're great--the next Van Halen." And they get booked into a small Clear Channel venue. Their demo tape gets circulated to Clear Channel program directors across the country with a note "Listen to these guys." So for the artists that *do* get the air time, who *do* have what gets some program directors and concert bookers excited, a large and integrated company could cut years of playing small clubs, and getting scattered air time, and probable failure. Instead it may be a faster track to some measure of success. Whether one is a proponent or an opponent of Clear Channel may in this case be a function of winners and losers. (Historical note: The newly fragmented radio industry of the 1950s spawned the "payola" scandals. "A few plays of a new tune on an important market's top rock station then

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[134] "The One-Handed Economist," The Economist, Nov. 13, 2003. Accessed August 18, 2003 at http://www.economist.com/people/displayStory.cfm?story_id=2208841.
[135] Hatch, "Media Ownership," p. 861.
[136] Ibid, p. 850.

would spell the difference between wild success and failure."[137] Back in the days when there were four dominant national radio networks, getting a band or act onto one of the network radio shows played an even bigger role on a performer's career than the perceived power of any radio group today).

One Viewer's Rerun is Another Viewer's Near Video-on-Demand

- In the *Schurz Communications* case, Judge Posner effectively ended the Financial Interest and Syndication rules of the FCC. In a parenthetical-like remark at the end of the ruling he noted that "reruns are the antithesis of diversity."[138] This has been jumped on by the Center for the Creative Voices in Media, an advocacy group for writers, directors, producers and those in similar professions who try to earn their living by selling their services to television program producers. To the extent that the television broadcasters produce and own their programming–where the biggest financial rewards lay—the programming purchased from unaffiliated production companies is reduced. And reruns—though often profitable for the original artists in the form of residuals—decrease the amount of new programming that is purchased and hence more employment opportunities for directors, writers and the like.

*On the other hand…*Overall, Judge Posner's ruling in *Schurz* was not favorable to the "Creative Community." Off network reruns of hit shows like "Friends" and "Cheers" have found substantial audiences – viewers seem to seek them out. Moreover, there is another type of rerun today that could easily be called a useful service to video consumers. The drawback of television (and radio) compared to print is that a broadcast is in real time: the viewer (or listener) must be watching at the precise time it is shown or miss it. Turn on the television set five minutes after "Law & Order" has started and the viewer has missed the crime that set the plot in motion. The broadcast networks, however, are adopting a procedure long used by subscriber cable network HBO: showing the same program multiple times at different time periods shortly after the initial showing. Having affiliated cable networks, this has now become possible for the broadcasters. NBC, for one, has used its affiliated cable network, USA, to rerun the current week's episode of its "Special Victims Unit." If a person misses the first NBC showing, there is a "make-up date" the same week on Friday night on USA. "NBC, CBS, and UPN have all built near-instant reruns into their prime time lineups, announcing plans to repeat 'The Apprentice' and 'America's Next Top Model' a few days after their initial telecast." Fox aired several series twice a week through the summer of 2004.[139]

This may be economically efficient for the networks, but it also may be viewed as attractive by the vast majority of households that do not yet have personal digital recorders. It is not exactly video-on-demand (VOD), but it starts to approximate the flexibility that VOD provides, giving viewers a bit more control and access to programming they seek.

At the same time, competition from the Fox Network and the choices cable TV has provided is eroding the summer siesta that the broadcasters took in the uncompetitive old days, when little besides reruns were available from June to September. Among the broadcast networks themselves, intense competition has left them less tolerant of the smaller audiences repeats increasingly deliver. Thus, the summer of 2003 saw the largest concentration of original programming ever provided by the major networks. NBC and Fox offered 47% and 58% of their prime-time lineups, respectively, with original programming.[140]

Can There Be a Monopoly with Little Pricing Power?

- Newspapers have been referred to as "local monopolies" for decades. As already noted, competitive media have eroded newspaper circulation and advertising and advertising share. It was inevitable that fewer publications could survive to fill the smaller market. As a "monopoly" the newspaper should have the leverage to raise prices as well

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[137] Sterling and Kittross, "Stay Tuned," p. 363.
[138] *Schurz Communications, Inc. v. Federal Communications Commission*, 982 F.2d 1043, 1055 (7th Cir. 1992).
[139] "Baby, We Were Born to Rerun," *Broadcasting & Cable*, May 31, 2004. Accessed August 22, 2004 at http://www.highbeam.com/library/doc3.asp?DOCID=1G1:117773941&num=1&ctrlInfo=Round6%3AProd%3ASR%3AResult&ao=
[140] "Reruns Get Bad Reception," *USA TODAY,* May 30, 2003. Accessed Aug. 3, 2004 at http://www.usatoday.com/life/television/news/2003-05-29-reruns_x.htm

as to slant their coverage as they see fit. Indeed, the median price of a daily newspaper copy was $.50 in 2003,[141] compared to about $.20 in 1978.[142]

On the other hand… Adjusted by changes in the Consumer Price Index, today's $.50 newspaper is the same price as the newspaper in 1978, despite the "monopoly." Newspaper publishers have been fighting competition from direct mail, weekly and free neighborhood papers, radio and more recently the capability of local cable companies to insert ads targeted to subsectors of their total coverage area. Online help-wanted services such as Monster.com have cut noticeably into that highly profitable segment of the newspaper business. Ask a publisher and you will hear "What monopoly?" And perhaps most significantly from the perspective of content, research has consistently found few if any differences in the quality or editorial slant between newspapers that face direct competition and those that don't. Indeed, one prominent academic study found that newspapers in competitive markets were less fair in their coverage than single newspaper cities. The authors speculated that there is "less pressure to be fair and balanced because alternative voices are available."[143]

The Big Picture at Ground Level

This paper has focused largely on outlets and access to multiple information sources, not the financial size of the players. Yet even looking at revenue of the largest media companies, the common wisdom is suspect. Keeping the viewpoint of the media consumer in a geographic location, the concentration of media within local communities based on revenue, though high, has actually decreased since 1996. While local radio has seen considerable consolidation, this has been balanced with lower concentration of broadcast TV. Based on the percentage of revenue accounted for by the four largest broadcasters, concentration has declined as viewership share migrated away from the affiliates of three networks to a wider range of broadcast stations, both independent and those affiliated with newer networks. Significantly, most of that decline took place since 2000.[144] Multichannel television concentration also declined and continues to decline, from nearly 100% to 78% as DBS, some cable "overbuilds" and a few fixed wireless systems provide alternative to the local cable company.[145] Aggregating all local media (radio, television, multichannel TV, newspapers and the occasional city periodical) finds that the concentration ratio was about 6000 in 1984. Until 1996 it did not substantially vary from that level. But between 1996 and 2002 it declined about 16% to 5000. While in absolute terms this shows high concentration, *the critical point is that concentration had not been increasing over the decades and, as the result of increased competition in conduits, has declined. Washington Post* columnist Robert Samuelson observed, "The idea that 'big media' has dangerously increased its control over our choices is absurd. Yet much of the public, including journalists and politicians, believe religiously in this myth."[146]

The Critical Role of Private Enterprise on Free Expression

A.J. Liebling was the outspoken press critic of his day. Yet he had a pragmatic insight into why the ownership structure of the media—primarily newspapers then —was a positive influence on content. In 1947, in *The Wayward Pressman* he wrote:

> The profit system, while it insures the predominant conservative coloration of our press, also guarantees that there will always be a certain amount of dissidence. The American press has never

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[141] "Facts About Newspapers 2004," Accessed July 30, 2004 at http://www.naa.org/info/facts04/single-prices.html.

[142] Benjamin M. Compaine, The Newspaper Industry in the 1980s: An Assessment of Economics and Technology (White Plains, NY: Knowledge Industry Publications, 1980), p. 31. The 1978 number was a weighted average of $.164, reflecting the transition at that time from typical prices from $.15 to $.20.

[143] Steven Lacy, Frederick Fico, and Todd Simon, "Relationships Among Economic, Newsroom, and Content Variables: A Path Model," Journalism Quarterly 66:2 (1989) pp. 51-66.

[144] Eli Noam, "The Media Concentration Debate," The Economist, July 31 2003. Accessed March 31, 2004 at http://news.ft.com/s01/servlet/ContentServer?pagename=FT.com/StoryFT/FullStory&c=StoryFT&cid=1059478616354&p=1020498309075

[145] Ibid.

[146] "The Myth of 'Big Media'," *The Washington Post*, August 6, 2003, p. A17. Accessed Sept. 10, 2003 at http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A21980-2003Aug5&notFound=true

> been monolithic, like that of an authoritarian state. One reason is that there is always money to be made in journalism by standing up for the underdog…. His wife buys girdles and baking powder and Literary Guild selections, and the advertiser has to reach her."

At the time he wrote this the Hearst newspaper chain controlled more local circulation than any newspaper company does today.

Liebling's insights are actually more relevant today than in 1947. Profit, not ideology, means that whether one wants to focus on the ten largest conglomerates or the 50 largest players or whatever number, the content of the media is not determined by what the chief executive officer wants but what the various editors, producers, publishers and local operating managers determine is best for the audience they are trying to reach. It is why Big Business and business executives, even the media industry, are regularly made the villains in major film and TV productions that are produced by the big business media companies (see "The China Syndrome," "Erin Brockovich," "Broadcast News" or the 2004 version of "Manchurian Candidate" among many).

The example of director Michael Moore's propaganda film, "Fahrenheit 9/11" released in summer 2004, is a recent case on point.[147] It was financed by Miramax, a studio owned by Walt Disney Co. Disney management told the Miramax executives before the film was made that they did not want to distribute the film – the kind of decision film studios make daily for artistic, financial, or image reasons. Disney did agree to sell its rights (Miramax had gone ahead and invested Disney money in the project) to the top executives at Miramax.[148] They in turned made distribution arrangements with Lions Gate Entertainment, a media conglomerate with interests in the production and distribution of motion pictures, home entertainment, television programming, animation and video-on-demand content. The film received extensive distribution and became the highest grossing film of its type in history.[149]

Why is this case a good example of the vibrancy of the media? First, the film obtained financing and was produced, despite-or because of–its controversial viewpoint. Second, it got national distribution even though one of the largest studios decided not to be the distributor. Third, the ultimate distributor was a large, publicly-owned, New York Stock Exchange listed company for whom potential profit was more important than any ideological viewpoints held by management or the stockholders.

Although Disney was criticized in some quarters for trying to "censor" Moore and one U.S. senator demanded a hearing on the matter, there was little or no public comment on the passion of Bob and Harvey Weinstein, the former owners and still top managers of Miramax, for using their own funds to repay the Disney money they had allotted to fund the project. In announcing that they would donate any profits they made on the film to charity, there is the implication that the film expressed a viewpoint they felt comfortable with. That is, they were interested at least as much in the politics of the film as the profits. A recent article in the New York Times Magazine, notes that Miramax "has enjoyed a name recognition, and a notoriety, nearly unique in today's streamlined and standardized movie industry."[150] The article also notes that the Weinsteins' maverick approach was not solely for profit or to cultivate the public's taste for exotic or adventurous films, "but rather to revive the tradition of prestige filmmaking that the studios had allowed to languish in their pursuit of franchisable blockbusters, overseas receipts and cross-media synergy."[151] Although only speculation, it lends credence to the notion that smaller, personally run and non-publicly accountable media firms (as seen in the

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[147] This characterization may rile some, but the filmmaker's avowed aim is propaganda in the classic definition: "Control of information, ideas, facts, or allegations spread deliberately to further one's cause or to damage an opposing cause." Glossary, Office of Resources for International and Area Studies, University of California, Berkeley at http://ias.berkeley.edu/orias/2003/peace/glossary.htm.

[148] "Miramax, Disney Mired in High-Stakes Battle," StarTribune.com, June 9, 2004. Accessed July 18, 2004 at http://24hour.startribune.com/24hour/entertainment/story/1424167p-8745056c.html.

[149] "'Fahrenheit 9/11' breaks documentary box office record at $100 mil.+," *Kyodo World News Service*, July 27, 2004, accessed Aug. 23, 2004 at http://www.highbeam.com/library/doc3.asp?DOCID=1P1:96830744&num=9&ctrlInfo=Round6%3AProd%3ASR%3AResult&ao=

[150] "The Way We Live Now: 10-03-04 Essay- Life Without Miramax?" *The New York Times Magazine*, October 3, 2004, p. 38.

[151] Ibid.

research on newspaper owners) are more likely to be driven by ideology than large, public media conglomerates run by professional managers.

In fact, the many quaint notions that local owners of newspapers or TV or radio stations are inherently "better" than a large corporation have no standing in the real world. Some of the most biased newspapers in recent history—McCormick's *Chicago Tribune,* Annenberg's *Philadelphia Inquirer*, Loeb's *Manchester Union-Leader*—were the creation of local ownership. Local owners are more likely than remote corporate owners to have ties into the local political and business establishment. Local owners may not have the economic resources to withstand a local boycott of real estate or banking or similar interests should they risk some criticism of the local industry. Large chains, on the other hand, are far less affected economically by a short-term downturn in any one community. And it is less likely that the publisher is a prep school buddy of the mayor.

It is not likely to matter much (and indeed experience shows it does not) whether or not a local TV station is owned by a company headquartered in another city. The editorial qualities and decisions for news and information need to be made locally if they want to attract their share of the audience—all driven by the profit motive.

Publicly owned companies are frequently criticized for being too driven by quarterly earnings needs. It is a fair criticism. So it is again ironic that the poster child for the evils of media conglomerates, News Corp., is probably the least driven by short term profits and quarterly earnings. Though publicly owned, working control and ownership has been retained by its chairman, Rupert Murdoch, and his family. The company has invested hundreds of millions of dollars in its groundbreaking efforts in creating the Fox Network and then a viable second all-news cable network. It also has created direct broadcast satellite service covering parts of the Third World as well as developed countries that did not have the advantage of a multichannel cable infrastructure. Once again, the "other hand."

There is a very positive side to profit-driven public ownership. The stocks of these companies are widely held, by teacher's pension funds, by mutual funds, by individuals and 401k plans. The chief executives of these companies have a fiduciary responsibility to their stockholders that hey take seriously. Restricting their coverage, their range of films or magazine titles or news shows is not what the big companies are about. They seek to reach the mass market when they can and niche markets when they spot them. Given the vast diversity of interests in a nation the size of the United States there is potential profit in reaching the right wing as well as the left wing, in programming for Spanish speakers a well as English, in publishing books for escapism and for self help, in investigative reporting that is critical of government as well as editorials that may be supportive. And if the big guys don't provide it, some small publisher or producer will.

Comment: Why So Many Critics Cry of Crisis

There are two critical messages here that make up a largely untold – or at least unheard—side of competition in the media. First, several meaningful measures show that Americans have more choices of media content than before, certainly in the highly popular television medium. Second, they show that there is no pattern that even suggests that cultural diversity or political discourse are more poorly served by large, publicly owned firms than by small mom and pop firms.

The case for dangerous levels of media concentration typically revolves around stories or anecdotes. One that has been cited regularly as a lesson of the evils of Clear Channel Communications is about tiny Minot, ND (pop. 37,000). As recorded in *The Washington Post*:

> …Clear Channel owns all six commercial stations. [Author's note: This needs some investigation on its face: by law only half of the stations in a market this size could be under single ownership]. When a train derailment in the middle of the night released a frightening cloud of anhydrous ammonia, Minot police sought to notify the citizenry of the crisis. They called KCJB, the station designated as

> the local emergency broadcaster, but no one was home; the station was being run by computer, automatically passing along Clear Channel programming from another city.[152]

The article adds that Clear Channel's response was that a technical glitch prevented word from getting through. But to make any case against Clear Channel one would have to go back before its acquisition of KCJB and find out if this station–or any station in Minot—had 24 hour live announcers. Would an economically stagnant area such as Minot and surrounding Ward County, where the population was the same in 2000 as in 1970, be able to support six separately owned radio stations? Maybe. But, as related, the episode of the Minot train derailment does not substantiate a case of the societal dangers of current radio ownership.

So why so much fear and loathing of the direction of media ownership?

Here one leaves the world of data and heads into the mists of observation, experience, some psychology and a bit of speculation. Certainly there are numerous motivations at work, ranging from self interest to noblese oblige.

For one thing the media landscape has indeed changed. Some things may be better today, others (by each individual's values) worse. There have been winners and losers. The latter tend to grouse, the former plough ahead. Technology and regulation have been a potent force, and they can cut more than one way.

For decades the broadcasters tried their best to restrict the growth of the new cable industry, fearing it could impact their very lucrative oligopoly. They were successful for a time and they were right about the outcome once cable was unharnessed.

For years the production unions at newspapers tried to keep computerized typesetting and pre-press automation out of the back shop, fearing for their well-paying jobs. For awhile they succeeded, but eventually there was no holding back progress. And they were right about those jobs.

But those who live by the sword of technological progress may also be hoisted on their own petards. The cable operators saw that if the multichannel satellite providers were allowed to offer transmission of local broadcasters to the dishes of customers in those markets, one of their major strategic advantages over satellite would be lost. For some years the cable industry succeeded at delaying satellite providers' attempts to provide local broadcasts at least until the satellite operators were required to comply with the same "must-carry" rules as cable operators. A few years ago improved technology and an end to the regulations freed the satellite providers to offer local stations. And the market share of cable operators in the cities took its first downturn in the history of the industry.

On the other hand…Those who resisted the technology and regulation might eventually find they could turn their loss into an opportunity, as the broadcasters joined the ranks of cable networks.

So players who have a stake in the outcome of the ownership battles could certainly be expected to promote what's in their own best interest. The example of the newspaper unions was one. The writers and directors and associates who support the advocacy of the Center for Creative Voices in Media are another example. They are dedicated to "preserving in America's media the original, independent, and diverse creative voices that enrich our nation's culture and safeguard its democracy."[153] This is a reasonable mission. But it is put forth from a group that would benefit by more employment if the networks bought programming from their members instead of from writers, directors and the like who are in the employ of the networks. There is no evidence that network programming would be much different than it is today or even than it was from 1970 to 1995, the period when the financial interest and syndication regulations required the networks to buy programming from outside producers. The record of programming during that period is a mixed bag—much as today.

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[152] "Sounds Familiar For a Reason," Washington Post, May 18, 2003; Page B01.
[153] Website at http://www.creativevoices.us. First accessed April 23, 2004.

However, the loudest—or at least most quoted – advocates of rolling back the media ownership structure are those who either are fundamentally against the private enterprise foundations of the media—and indeed the American economy – or simply are displeased that the content that the media companies distribute are not what they think is best for society. They want television to be more like the old BBC or like public television.

Perhaps the foremost proponent of the first category is University of Illinois professor Robert McChesney. In a series of books and articles, the best known perhaps being *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (1999), McChesney tries to make the case that you cannot have a democratic society so long as the media—no matter how many firms—are privately owned, profit-seeking and supported by American commercialism. Although he goes through the motions of counting how many firms dominate the scene (he even enumerates a top tier of seven or eight conglomerates, a second tier of 20 firms, such as The New York Times Co. and Gannett, and a third tier of "thousands" of small firms that fill niches). But despite a patina of economic analysis his gripe is essentially that a market based system cannot serve democracy, no matter how many players. Media reform, he contends, is prevented because the people *think* there is diversity and that the media "give people what they want."[154] McChesney's proposal for change favors small, locally owned or family based media organizations, perhaps some owned by nonprofits, by labor unions or other noble institutions. Whether a good idea or not (there have already been examples in this paper of how biased and ideological family owned media can be while groups such as unions could be expected to have their own ideological agendas) it is unlikely that, the occasional Enron scandal notwithstanding, any major upheaval of the private enterprise system is probable in the foreseeable future in the United States.

For example, Pacifica Broadcasting was founded by Lewis Hill, a pacifist Quaker, in 1949 as a vehicle to promote peace and allow "individual hosts and commentators [to] be free to speak their mind."[155] Hill envisioned that radio could be a forum for diverse social discourse and he created a listener supported business model to ensure that corporate messaging wouldn't interfere with free speech. But critics of Pacifica contend that its "leanings are hard left" and it does not provide "fairness" even though it promotes itself as pursuing a noble purpose. "They call it free-speech radio," said Tim Graham, associate editor of Media Watch, a conservative newsletter that monitors public broadcasting. "They are more harmful to the public discourse than helpful."[156] Ideally there is room for Pacifica-type of media. But as suggested here, this model should not suggest that media will be "better," only perhaps, different.

Those who follow the reasoning of McChesney, however, will not be satisfied with a showing that there is plenty of choice. So long as the choice is from privately run media companies no number of providers is acceptable.

McChesney's position also segues nicely into the second larger group of critics, those who may be called Minowites. McChesney says in his most recent book that the market-based system "give[s] people what they want." Of course what the public wants is lots of different things because the public is not monolithic. Some want the violence of the film "Kill Bill." Others (or the same people at a different time), want "Barney." They want porn, *People*, "All Things Considered," Harry Potter, and Howard Stern. They want chemistry text books, Rush or Al, Bill O'Reilly, Jimmy Eat World, Paul Krugman, *The Philadelphia Inquirer*…and Robert McChesney, whose books have all found for-profit publishers and prominent display at chain bookstores and online booksellers.

But the Minowites believe that television in particular should be "better" than it is. For many years the plea was for greater diversity. The three television networks were too much alike, they said. As in Minow's 1961 speech, it was too many "game shows…audience participation shows…formula comedies…western bad men, western good men, private eyes, gangsters…and cartoons….And most of all, boredom."

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[154] Robert W. McChesney, The Problem of the Media: U.S. Communication Politics in the Twenty-First Century (New York: Monthly Review Press, 2004), p. 175.
[155] "The WHOLE Story: Pacifica, KPFA, and the burning of 50 years of history," July 15, 1999, http://www.brasscheck.com/pacifica/overview.html.
[156] "Pacifica, Setting the Dial for Battle; The Wagons Are Circled At Radio's Liberal Bastion," *The Washington Post*, February 21, 1995.

So finally, in 1986, News Corp. made the long awaited step of creating a fourth network. But the critics were not pleased. “Married with Children” was not what they had in mind. What they got was indeed noticeably different from any other network so far, but even more “downmarket.” When they said more diversity what they meant was “upscale” diversity: opera, theater, concert music. In short, public television, which was getting a 2% share at the time. So the Fox Network didn’t help them. Then, more than a decade later, the same News Corp. invested heavily to put up a competitor to the well established Cable News Network as a second 24-hour news and information service. That should have been cause for celebration for those who promote diversity. But critics contend that Fox is conservative, as if by being more… well, CNN-like … they would somehow be more diverse. "In most news," claims Roger Ailes, who heads up Fox News Channel, "if you hear a conservative point of view, that's called bias. We believe if you eliminate such a viewpoint, *that's* [emphasis added] bias. If we look conservative, it's because the other guys are so far to the left.”[157] A good discussion point. But few viewers consider Fox News Channel just more of the same.

The Irrational Fear of Media Mind Control? My Own Tale

There is some hint that the real agenda behind some of the opposition to current media ownership structure and policy is a sense that the media don’t tell “it” the way “it” should be told (whatever “it” is). Here’s an example. It’s from just one person, but it leaves an intuitive sense of what is behind many other non-stakeholder positions.

Not long after I published an article about media ownership[158] I received an email from a stranger from Illinois. She was polite, but said she had to respond.[159] She wrote that she was reading the book *Fast Food Nation* and “[I] am appalled at how an industry that started with independent proprietors has, over the past century, turned into a monolith that has destroyed the independent farmer, trounced on its workers and became, basically, part of the political machine.” She concluded “The similarities between the fast-food and media industries may seem to be far-reaching, but I think a serious consideration of the two shows their frightening parallels.”

I responded in the context of who owns the media:

> That book was published by Houghton-Mifflin--at the time owned by one of the biggest media companies, Vivendi (since divested and now controlled by a non-media group of investors). The paperback was published by Harper Collins, owned by none other than News Corp. So, here is a book that is highly critical of a major industry and for some confirms that Capitalism is bad. And it is published by the biggest of the big media companies. Why? Because that is the business they are in. They are not there to restrict the flow of ideas, but to promote as many as they can, the better for their bottom line. Win-Win.

But that was not the end. Several days later this email arrived from her:

> Something happened late last night/early this morning that underscores my point--I feel as though I don't need to respond to anything you say below because THIS IS WHY CONSOLIDATION IS TERRIFYING.
>
> Clear Channel pulled Howard Stern from the air. I am outraged. I am disgusted. I am affected because Clear Channel owns--thousands?--of radio stations throughout the country. And Clear Channel is conservative, and Clear Channel is TAKING AWAY MY RIGHT TO CHOOSE. Consolidation is not an issue we should be concerned about? How can you defend it now?

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[157] “The Red-State Network” *The New York Times Sunday Magazine*, June 24, 2001, Accessible by search at http://query.nytimes.com/search/advanced.

[158] Ben Compaine, “Domination Fantasies: Does Rupert Murdoch control the media? Does anyone?” Reason, January 2004. Accessed January 4, 2004 at http://www.reason.com/0401/fe.bc.domination.shtml

[159] This series of email exchanges took place between February 24 and February 26, 2004.

I pointed out that only about six of Clear Channel's 1,200 stations carried Stern and that Clear Channel stations (and others) have been fined by the FCC for infractions of obscenity/indecency involving Stern's programs.

But then this candid reply came back:

> I must explain. Clear Channel is a sticking point in my side because of its political affiliations (read: Bush administration) and clear dominance in the industry. They use their stations to support their own agenda (I'm talking specifically of the many pro-war rallies Clear Channel sponsored via radio stations--I believe Clear Channel helped create the cultural climate of "If you are against the war, you are against America").

So behind the concern about domination by Clear Channel, my now regular correspondent admitted that it was politics. I wrote back: "Would you feel any differently about Clear Channel if their stations happened to have what appeared to be an anti--Bush political viewpoint? Would that make the situation better?" To which she wrote back (in part): "I respect liberal media (I admit, more so than their conservative brethren), but that should not be part of a company's agenda--in a perfect world, I guess…. I have a mistrust of corporate America…. I understand that the market drives everything--but there's a chicken or the egg scenario here, do you see that? Is the market created by the consumers' ideals and desires, or is it prodded and persuaded by those who own the market? It's a question I don't know the answer to."

This then making a closed loop between the Minowite and McChesney viewpoints.

And it also closes the loop with the quotation at the top of this paper: "Schoolboys or students who took to novel reading to any great extent never made much progress in after life." There was a common prejudice among the educated elite in England at the time that the steam driven rotary press was making books inexpensive enough to be affordable to the lower classes. The Industrial Revolution had created the need for a more educated workforce than had existed in an agrarian economy. But the elites were not pleased that the masses were reading the new pulp fiction rather than the classics they stocked in the library.

Conclusion: More Owners and Choices than Ever

The data assembled for this paper is far from exhaustive of all the research and data that address the topic of media competition and ownership. Nor is it intended to specifically address research or data that support the assertion that current trends in media ownership may have some negative impacts on the economy or political discourse. The stated purpose was to flip the pancake. This is not a black and white issue. The weight of the evidence is not overwhelmingly – or necessarily even strongly-- on the side of the most vocal critics of current policy. There are many shades of gray here. Shadings do not make for the impassioned editorials or headlines that scream "The Media Monopoly." But it does make for better policy analysis and decisions.

Among the findings that balance the "crisis" rhetoric are:

Television/Programming

- The three traditional broadcast networks, ABC, CBS and NBC, have seen their prime time ratings slide from 55%-60% in the 1970s to about 20% in 2003.
- Even after accounting for their startups and acquisition of cable networks, the new parent companies of those three networks now aggregate under 40% of the typical prime time evening.
- Adding in broadcast television networks that have been started by new players in the TV network business as deregulation was phased in, the five largest media owners account for a household rating of slightly over 50% of prime time, still below the level of three networks in the 1960s and 70s.
- TV program diversity does not increase merely when the sources creating programming increases nor when the number of outlets increases. It is rather a function of the economic model of advertising-supported broadcast TV.

- Diversity of programming genres declined during the period of the Prime Time Access Rule and Financial Interest and Syndication rule. Program diversity increased somewhat with the end of those regulations.
- Local ownership of television stations offers little protection against newscasts being very poor and does not produce superior quality compared to large group or network owned stations.
- The growth of cable TV and satellite delivered programming networks has increased diversity of programming choices for viewers. The FCC reports that as of June 2003, "there were more than 339 national non-broadcast programming networks" compared with about 106 non-broadcast programming networks at the end of 1994.[160]

Radio

- Consolidation in the radio industry has been pronounced. The context, however, was that of an industry that had more than tripled in the number of stations over three decades with no change in the limits of stations ownership. By 1980, a single owner could hold no more than 0.16% of stations nationally.
- National Public Radio, a loose network of more than 700 not-for-profit radio stations that broadcast common programming for varying amounts of their air time, would be the second largest radio chain. It claims to be available everywhere in the U.S.
- The number of separate owners of radio stations in local markets is lower than prior to the lessening of regulatory limits in the 1990s. Still, larger markets have 15 or more separate owners—in addition to noncommercial stations—and in most of even the smallest markets there is more competition in radio than television and newspapers combined.
- Thousands of radio and radio-like stations are available via the Internet. Stations are available from around the globe. In 2000, those with the highest listenership were owned by non-broadcasters. About 40% of listeners accessed stations from outside their local market.

The Internet

- The Internet has profound implications for access to information. Barely 10 years after its "coming out" as a consumer medium, about two-thirds of Americans are using it[161] for everything from e-mail to news to weather to government forms to shopping, porn, sharing family photos, listening to radio and watching "television."
- Of the five largest media companies, the Web sites of only one (Time Warner) are among the top ten organizations whose Web sites get the most unique visitors per month. The sites run by federal government agencies are among the most frequented.
- The market share of the Web sites of several newspapers, including *The Minneapolis Star and Tribune,* were the most visited news media sites in December 2003, suggesting that they are being accessed by users outside cities in which they each published. That the access afforded by the Web is global is confirmed by the volume of access of *The Times of India* from the U.S., making it one of the top five most visited print news Internet sites.
- In 2004, for the first time, more Internet households had broadband than dial-up Internet connections. With research showing that households with always-on broadband used the Internet more than narrowband users, the expectation is that Internet access for information, commerce, and communications will continue to grow.
- The number of hours spent listening to Internet radio grew by triple digits between 2003 and the same period in 2004. Users with broadband spend far more time using Internet radio than dial-up users.
- New devices are becoming available to make Internet radio accessible apart from a personal computer, including access via various current and potential wireless technologies.
- Video and film via the Internet are on the verge of becoming more mainstream. As some of the local telephone carriers upgrade their systems with fiber optic cable to the curb or the home, the transmission speed of downloads will be competitive with cable and satellite services. Devices are on the market that allows even today's broadband

[160] "FCC Releases Tenth Annual Report on Competition in Video Markets," FCC News Release, January 28, 2004, p. 8.
[161] Internet usage has been measured so many ways that it is difficult to know what the "real" number is. It can be measured simply as those who "use" it regardless of from where. It may mean those who have access from home; or from home or work. It may be measuring just adults or include school-age children. The two-thirds figure is extrapolated from September 2002 estimates at http://www.nua.ie/surveys/how_many_online/.

users to download movies and video programming for storage on personal video recorders for viewing at their convenience.

Finally, despite powerful myths about the virtues of mom and pop ownership of local media, researchers as well as observers unaffiliated with stakeholders have consistently found that media outlets controlled by local owners exert greater direction of editorial content than do chain owners, who tend to leave editorial decisions to local editors.

In brief, by many useful metrics, some offered here, the empirical reality does not support any notion that in the United States, in 2004, consumers of content via the media have fewer choices of sources or fewer choices for any type of content that has been available in the past. Even in the radio industry, which of the old media has seen the greatest change in ownership structure in the past decade, the contrast is largely a function of the extremely fragmented state the industry had been kept in by federal ownership caps that had not changed in decades despite the prodigious expansion of outlets. With the cap loosened, the industry has, like a bottle of seltzer that had been jostled before opened, spurted to find the equilibrium it could have been moving to more gradually—and less visibly—if the cap had been loosed slowly over time. By standards of American industry – and even much of the other media – radio in most places is still highly competitive and diverse.

Other than an anecdotal story here or there, there is no suggestion that the managers of major media companies are individually or in concert fostering a political ideology or suppressing an ideology through the media properties they program.

Moreover, some of the numbers used by those who seem to raise the alarm of dangerous media concentration can be wrong yet widely repeated. In a relatively dispassionate overview of media ownership by *Congressional Quarterly,* the author asserts that "Five media powerhouses now control up to 80 percent of America's prime time programming."[162] However, the source he cites for this number is a *Washington Post* article in which the writer says that these same companies "boast 75 percent of primetime TV viewers."[163] (Terms like "powerhouses" and "boast" are themselves not very neutral terms). The reality, as seen in Figure 1, was that on a typical weekday evening, about 51% of adults in the U.S. are watching television programs from these "powerhouses." The rest are watching PBS, The Weather Channel, or any of the hundreds of other viewing choices on cable or DBS, or reading the newspaper (only one of which, the *New York Post*, is published by any of these five "powerhouses"). There may indeed be occasions (the "up to 80%," no doubt) when programs from these firms attract unusually high audiences (e.g., a new "Sopranos" episode at the same time as the Super Bowl). Where does the 75% (or 80%) figure come from? The sources don't say. But it could be the "share" number—the percentage of households actually watching television at the moment. While share may be important for networks and advertisers, it has little relevance in the discussion of the implications of media ownership. At 4:00 a.m. a 100% share has little meaning if only 6% of households are watching TV.

Despite the egalitarian nature of what the basis of the American experience is (certainly in principal if not always in practice), there seems to remain a strand of paternalism that survives through the generations. The 1879 English librarian quoted earlier is today's media critic who complains that the mass audience is not reading the right literature or watching the right television. They fear that 80% of the people go to the programs or Web sites of a handful of providers (even if that number is wrong). That would, of course, be worrisome, if there were *only* five providers or if cost or regulatory barriers prevented access to other providers' content. That is far from the situation in 2004. Very far. Individuals have ready and inexpensive access to so much information that we need search engines and on-screen directories to help find and manage it.

The term "mass media" implies that there must be a mass somewhere. That would be the "mass audience." There are a handful of forms of entertainment that cut across income, education, race and other cultural differences among Americans: The Super Bowl, the Olympics, a handful of comedies, dramas and news events that can strike a common chord. Those are logically tapped by a relatively small number of content providers who have the skills and the

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[162] Hatch, "Media Ownership," p. 847.

[163] "Sounds Familiar For a Reason," *The Washington Post*, May 18, 2003, Outlook Section. Accessed July 16, 2004 at http://www.highbeam.com/library/doc3.asp?DOCID=1P1:73985312&num=1&ctrlInfo=Round6%3AProd%3ASR%3AResult&ao=

distribution mechanism to serve a mass audience. If 60 firms all tried to serve the mass audience there would not be enough of a mass to sustain them. They would all be providing similar, common denominator books or magazines or video productions or music. Diversity is the antithesis of mass. So it would seem that in fact society is always going to have a relatively small number of firms that will serve large markets, while there are and should continue to be thousands (even McChesney agrees) of entities serving niches.

Those niches, meanwhile, can aggregate into significant numbers. For example, the old television networks and their local affiliates continue to be profitable even though their audience is way down from 20 years ago. At any given moment, more than half the audience for television is watching something other than broadcast network programming. But that half is cut into 40 slices: a percent for CNN, half a percent for Bravo, 0.1% for the Sundance Channel. The mass audience is smaller these days, as the traditional broadcast networks retain more of an audience than other individual networks can provide at one time for an advertiser.

We would be well advised to revisit an insight provided by *Washington Post* columnist Robert Samuelson. Those who keep trying to throw roadblocks into regulatory change "confuse size with power. It's true that some gigantic media companies are getting even bigger at the expense of other media companies. But it's not true that their power is increasing at the public's expense."

The big getting bigger is not the policy objective. Nor is the small getting bigger. Nor is it about a free for all—antitrust law is and will continue to be applicable. But much political capital and human energy that could be better applied to far more immediate and substantial problems are being expended on what is essentially a media system that is robust, competitive, affordable, and provides access to a vast range of entertainment, culture, news and viewpoints. It requires monitoring, and a constraining effect to permit and promote new outlets, not invectives.