Statement on Media Ownership Rules

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On the occasion of the October 29, 2001 FCC Roundtable on Media Ownership Policies, I was invited by the FCC Staff to offer my views on the Commission's existing ownership policies.[2] I have now been asked by Fox, NBC/Telemundo, and Viacom to summarize my recommended approach to ownership policy issues specifically with respect to broadcasting.

I believe that media ownership concentration is best approached using the standard tools of economic analysis intended for such purposes. Analyzing the effects and measuring the extent of ownership concentration is a well-developed field of economic policy analysis, especially in the context of antitrust enforcement. Whether ownership concentration poses harm to competition or to consumers is precisely the question upon which the Commission should focus, and it is exactly the question upon which the antitrust laws and their enforcers do focus.

The modern approach to analysis of ownership concentration is illustrated by the framework set out in the *DOJ/FTC Merger Guidelines*. These *Guidelines*, while certainly not infallible, are widely respected by courts and commentators alike. The *Guidelines* describe methods by which an enforcement agency can assess the impact of a proposed transaction. Also, the *Guidelines* offer the private sector a rational basis to predict the likely reaction of an agency to a proposed merger or acquisition, thus reducing uncertainty and unnecessary transactions costs. In close cases, the *Guidelines* help to focus debate on the key factors affecting consumer welfare rather than on extraneous issues.

Mass media compete in many different product and geographic markets. Some of these markets are ordinary commercial markets for the sale of advertising, the purchase of programming, and (in the cases of multichannel video program distributors, certain internet service providers, and print media) the compilation of content packages and the provision of transmission services for sale to consumers. For ease of reference I will refer to the foregoing as "economic" markets. These markets are addressed in Section I below. The mass media also play an important role in the metaphoric "marketplace of ideas," which I discuss in Section II. I will bring the two types of markets together in Section III.

A very brief summary of my proposed approach to FCC media ownership policy is as follows: The most sensible way to consider the effects of ownership concentration in media economic markets is to use the *Merger Guidelines* approach. But if the Commission adopts this rational policy it will duplicate the work of the Antitrust Division, which would be a waste of public resources. The Commission also has monitored the effects of concentration in the marketplace of ideas. However, as a practical matter, enforcement of the Clayton Act in media economic markets will serve to prevent undue concentration in markets for ideas and information. As a result, there is no longer a rational basis for the Commission to regulate media ownership.

I.
Ownership issues in economic markets

The analytical tools of competition analysis, as used in antitrust enforcement, apply directly to the Commission's concentration concerns in media economic markets such as advertising and programming. The three key questions facing the Commission with respect to each of these markets are: Which sellers offer choices that customers find attractive? Are there enough such sellers to provide effective competition? Are there significant barriers to entry? These are the same issues addressed in the *Merger Guidelines*. Indeed, the antitrust agencies already routinely apply *Guidelines* analysis to proposed media transactions involving radio, television, newspapers, magazine and book publishers, online and other media. A very recent example is the challenge mounted by the Department of Justice to the proposed acquisition by EchoStar of DirecTV.[3]

The analytical approach of the *Guidelines* begins with a focus on consumers. Whether a proposed merger or acquisition is anticompetitive is determined in part by asking what alternatives are, or would be, available to customers in the event that prices increase or service deteriorates. These are fact questions. They must be addressed from the perspective of particular, defined customers who are users of the services of the firms that propose to merge and competing firms. This determination of relevant market(s) cannot be prejudged in today's complex and changing media industries by establishing arbitrary *a priori* boundaries such as the titles of subsections of the Code of Federal Regulations. Similarly, it makes no sense to define either markets or ownership standards *a priori* in terms of particular technologies, such as radio broadcasting, television broadcasting, cable transmission or newspaper publishing, unless such distinctions happen to coincide with accurate depictions of consumer demand characteristics. Neither technology nor CFR categories are based on or bear any useful relationship to customer behavior in media markets, as the Commission's own evidence amply demonstrates.[4]

The Commission's current ownership rules are based entirely on technology and other such *a priori* distinctions. These distinctions today lack any conceptual or empirical link to consumer harm from ownership concentration. In a business with such rapidly changing strategies and technologies, in which consumers have demonstrated their willingness to adopt new media, it makes no more sense to legislate market definitions in quasi-permanent rules than for King Canute to order away the ocean's waves. The Commission should abandon its present rules.

What should replace these rules? If the Commission adopted sound media ownership policies it would necessarily duplicate the work of the antitrust authorities. As the recent EchoStar matter demonstrates, when the Commission applies sound economic principles to the analysis of proposed acquisitions, it ends up with essentially the same result as the Department of Justice both in terms of analysis and in terms of standards (compare the DOJ complaint with the Commission's Hearing Order in the EchoStar matter.)[5] Clearly, such duplicative regulation is inefficient, a waste of the Commission's resources.

II.

The marketplace of ideas and information

> *And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously…to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?* —John Milton, Areopagitica[6] (1664)

The preceding section demonstrated that a rational policy approach to media ownership in economic markets requires the Commission to leave these enforcement issues to the antitrust agencies. I now turn to whether the Commission's traditional concern with competition in the marketplace of ideas and information, sometimes expressed as pursuit of "diversity," provides a sounder basis for the Commission to regulate media ownership.

The Commission does have a stronger basis for attending to the marketplace of ideas than to mass media economic markets. After all, while DOJ has vigorously enforced merger law with respect to media economic markets, it has not, in practice, addressed competition in the marketplace of ideas. Further, it is possible in principle (though as I argue below, unlikely) that a given transaction might raise marketplace of ideas issues despite the absence of threats to competition in the relevant economic markets. Therefore it is useful to develop a rigorous framework that the Commission could use to prevent ownership concentration from restricting competition in the marketplace of ideas.

The place to start is with the slippery concept of "diversity," which has many interpretations, as discussed in the Commission's NPRM at ¶33ff. I will focus on two of these interpretations: content diversity and outlet diversity.

Content diversity is not a reasonable goal for the Commission. If the Commission were to target media content that would be an *unnecessary* infringement on the First Amendment rights of broadcasters. It would also be *impractical*.

Mass media content is an impermissible target of government regulation, according to the Supreme Court's current interpretation of the First Amendment, except in certain narrow categories such as obscenity. Broadcasting is the only medium to which this interpretation does not apply. The inferior First Amendment status of broadcasting derives from a legal analysis in a 1943 Supreme Court opinion by Justice Frankfurter (and later confirmed in *Red Lion*).[7] The factual basis of the legal argument is spectrum scarcity.

The "scarcity doctrine" is and always has been a factual and economic absurdity. Economics is the science of scarcity. It teaches that spectrum is no scarcer than anything else used as an input by broadcasters. Spectrum is no scarcer than the land used to grow the trees that are made into newsprint. Anything that has a non-zero free market price is, by definition, scarce—there isn't enough to satisfy everyone's wants. The point simply is that spectrum is not scarce in any peculiar or special way—it is no more or less fixed in supply than land, iron ore or antenna sites. All these things are scarce, but all can be economized upon by using more of complementary inputs to produce any given output. Antenna height is a substitute for site altitude. Font size and leading is a substitute for newsprint, hence for trees and forests. Transmitter/receiver power and sophistication is a substitute for bandwidth. It was bad economics for Justice Frankfurter to have focused on spectrum scarcity as a special or unique aspect of broadcasting that justifies denying broadcasters equal protection under the First Amendment in 1943 and worse economics today.

Broadcast spectrum in particular is exactly as scarce as the Commission, through its own policies, has made it. Over the years the Commission has repeatedly restricted the frequencies available for broadcasting in order to serve other policy interests, thus limiting the diversity of programming available to viewers and listeners.[8] It is circular logic to hold that the Commission can regulate broadcast content because the Commission has chosen to restrict the spectrum available for broadcasting. Spectrum scarcity has never made sense as a *factual* basis for broadcast regulation. (These arguments are laid out in more detail in my book *The Internet Challenge to Television* (Harvard Univ. Press, 1999) at 57-62 and 79-83.)

Even if there had been spectrum scarcity at the time of *Red Lion*, technological developments have long since eliminated that scarcity. Almost twenty years ago the Supreme Court itself recognized the possibility "that technological developments have advanced so far that some revision of the system of broadcast regulation may be required." *FCC v. League of Women Voters*, 468 U.S. 364 (1984)) at n. 11. The Commission's own Spectrum Task Force Report recently acknowledged that "[a]dvances in technology create the potential for systems to use spectrum more intensively and to be much more tolerant of interference than in the past," and even more significantly that " [i]n many bands, spectrum access is a more significant problem than physical scarcity of spectrum, in large part due to legacy command-and-control regulation that limits the ability of potential spectrum users to obtain such access."[9] The factual underpinning of the scarcity doctrine is no longer able to bear its weight. *Stare decisis* cannot make nonsense into fact. Therefore, for all these reasons, the inferior First Amendment status of broadcasters is an *unnecessary* burden on freedom of the press.

Further, content diversity is an *impractical* policy target because it cannot be defined or measured, and because there is no analytical linkage between ownership concentration and even abstract concepts of content diversity. In one theoretical model, for example, a monopolist of three channels is predicted to produce more content diversity than three competing broadcasters (See Bruce M. Owen and Steven S. Wildman, *Video Economics,* (Harvard Univ. Press 1993) at 64-100.) In contrast, even "complete" freedom of expression (defined as the availability of universal communication services at zero cost to all speakers and consumers), need not necessarily result in any particular degree of content diversity. Complete freedom in practice might produce no diversity of content. It is the tastes and demands of audiences, not the wishes of broadcasters, that determine the extent of content diversity in a competitive marketplace. I conclude that content diversity is not a sound policy objective for the Commission.

The Commission's traditional concerns with diversity make sense only if diversity is understood as synonymous with what it terms outlet diversity. The difficulty with establishing sound ownership policies and non-arbitrary rules with respect to outlet diversity has been the absence of a rational analytic framework for doing so. Although the "marketplace of ideas" is but a metaphor, I believe that outlet diversity issues can usefully be approached by taking the competition metaphor quite literally.

The goals of freedom of expression and an informed public are best served by ensuring that the media have incentives to respond to consumers' demand for ideas and by eliminating artificial or unnecessary barriers to the transmission of new ideas. Equivalently, the Commission should seek to minimize the price (and thereby maximize the output) of the communication and compilation services provided by media outlets. This can be achieved by pursuing economic competition and minimizing barriers to entry among communication media.

Just as competition, backstopped by antitrust policy, works to ensure that the interests of consumers are served in economic markets, competition is the best protection for consumer access to ideas and information. Media, competing against each other for audience "eyeballs" and consumer and advertiser dollars, will be led "as if by an invisible hand" to serve the public interest in promoting First Amendment values. None of the economic models of broadcast competition supports the notion that the government can reliably improve on competitive market outcomes.

If the Commission does undertake to promote the free flow of ideas through competition, it cannot do better at present than to utilize the rigorous analytical framework reflected in the *Merger Guidelines*. That framework is aimed at preserving competition by preventing even incipient threats to consumer welfare from ownership concentration. The Commission itself can apply *Guidelines* principles to the analysis of competition in the marketplace of ideas. As with economic markets, the keys are to identify the outlets for ideas to which a particular group of consumers can readily turn in the event its current supplier(s) raise price, lower quality or otherwise prove unsatisfactory, and to assess ease of entry by new outlets. Building on these facts, the Commission could determine whether a proposed merger or acquisition would unduly reduce competition. Of course, as with any analysis of competition, it is necessary to take account of the particular facts and circumstances in the market.

Market definition is the first step in the competitive analysis. What alternatives do consumers have if they are faced with increased prices or reduced quality in the media used to convey ideas? As with economic markets, which alternative outlets should "count" is largely a fact question derived from analysis of consumer demand and entry conditions. It cannot be prejudged based on the technology or format of a given medium, especially in light of the dynamism of today's media markets and technologies, for the reasons given in the preceding section.

A key distinction between most economic markets and the marketplace of ideas, however, lies in the measurement of market shares. The Commission would commit a serious error if it attributed shares in the marketplace of ideas according to the current revenue or audience shares of individual outlets. The measurement of market shares must always reflect the underlying theory according to which increased concentration may bring harm to consumers. Thus, in economic markets, competing firms' shares of revenues in the relevant market often have great significance in understanding the likely effect of a proposed merger on customers. This is so because revenue market shares influence pricing incentives.

In the marketplace of ideas, however, what matters is the number of alternative information outlets available to consumers, not the current popularity, much less the technology of transmission, of the ideas communicated by each outlet. Each source of ideas available to a given consumer is equally significant from a First Amendment perspective. The rational way to measure the "share" of each source of ideas available to a given set of consumers, therefore, is to give each source equal weight. It is availability and not usage of alternatives that should count, because it makes no sense to view the Commission's role as regulating the popularity, as opposed to the availability to consumers, of ideas and information. It is unpopular new ideas that may be of the greatest importance to the future. Such unpopular ideas are the essence of diversity in the marketplace of ideas. To discount media that are available to all but that garner small audiences because consumers prefer other content would understate the level of diversity from the perspective of any coherent public policy theory of the *purpose* of promoting diversity. It would be remarkable indeed for the Commission to adopt an ownership concentration metric that implies, as a social ideal, that all ideas should be equally popular.

Moreover, unlike economic markets, the usage of particular media, technologies or channels has no incentive effect on media owners when it comes to possible suppression of ideas. The *Guidelines* (at §1.41 and n. 15) specifically contemplate the possibility that, in circumstances where current revenue market shares are misleading indicators of competitive significance, equal shares should be imputed to each competitor.

There are few politically or socially significant ideas that can be expressed only through a particular medium. While the effectiveness of each medium may vary from one idea to another, the key is that ideas, once released to the public, can no longer be suppressed or controlled by government or commercial interests. The truth of this assertion is reinforced by the great importance of interpersonal communication with friends, family and co-workers, and the role of opinion leaders in the diffusion and acceptance of ideas. It makes no sense to say that a particular media outlet that has a large audience controls access to that audience, unless members of that audience are inaccessible to other media. As the evidence in this proceeding shows, audiences are accessible to many media and many media are accessible to audiences. In short, the audience of a media outlet is unrelated to that outlet's significance in the marketplace of ideas. Every outlet available to the community has equal potential as a source of ideas.

The preceding important point can be made in a somewhat different way. Imagine that there are fifty independent media outlets serving a given community. Each outlet chooses the ideas and information that it will convey, based on a desire to maximize profit given advertiser and subscriber demands. Some outlets will have larger audiences and revenues than others, based on competitive interactions. The outlets with the largest audiences will not necessarily be the most profitable, because some niche outlets serving up relatively unpopular ideas to minority tastes may face less intense competition than those outlets seeking mass audiences. (By "unpopular" I mean simply that the idea or outlet attracts small audiences.) However the competitive process works itself out, the accessibility of the community to new and therefore by definition initially unpopular ideas clearly is a function of how many outlets there are, not on how many outlets currently have large audiences. Indeed, new ideas are far more likely to be aired at first by the media with *smaller* audiences. Once a new idea is available to the community, either directly through each consumer's access to an unpopular outlet or indirectly through interpersonal communication, its diffusion cannot be prevented whether or not the idea is adopted by more popular media.

It is reasonable to ask whether "ideas" may not be too broad a definition of the relevant market. Ideas or information about what? It is clear upon reflection that any taxonomy of ideas and information would be arbitrary from a competition perspective.

By *arbitrary* I mean that there is no principled basis for a taxonomy of ideas in this context. Even if there were, there is nothing to prevent a new idea from arising in one category and yet having important or even revolutionary implications for other categories. The Commission wisely does not attempt to define its policies with respect to particular categories of ideas—with one exception. The exception is the Commission's longstanding preoccupation with local content.

In its most basic historical decisions regarding the allocation of broadcast spectrum, the Commission expressly sacrificed consumer breadth of choice in order to promote local ownership and "therefore" local content. It turns out, of course, that local ownership, while it *permits* local content, does not often *result* in local content.

The Commission's preoccupation with localism is difficult to explain or to justify. Why should the government seek to promote local content as opposed to, and especially at the expense of, any other category of ideas? One can readily imagine categories of ideas more central to the political, social, educational, aesthetic or spiritual lives of Americans. Further, to fasten on any category of ideas readily runs afoul of First Amendment values. In short, a focus on local content or local outlets appears to lack a coherent policy basis.

The same is true, of course, of the Commission's sometime preoccupation with news and public affairs, as distinct from entertainment programming. This makes even less sense than localism. First, broadcast news *is* entertainment—it has to be, at least in part, in order to attract audiences that can be sold to advertisers. One need look no further than this to understand what “stories” are “newsworthy.” Second, surely some of the most effective of media vehicles for the communication of ideas are classified as entertainment. One could reasonably argue that a given consumer is more likely to be exposed to a controversial new idea by a talk radio show or an Internet newsgroup than by either network or local television news.

I conclude that independently-owned outlets for, or sources of, ideas and information generally should each be counted equally as separate sellers in the marketplace of ideas, with respect to the consumers whom they can reach (or the consumers who can reach them), without regard to the classification or popularity of their current content. If the Commission wishes to continue to emphasize local content (notwithstanding the apparent lack of a rational basis for doing so), then the sellers in the relevant market include all independently-owned outlets for or sources of local ideas and information, again without regard to the classification or popularity of their current content.

III.
Competition in economic markets will protect competition in the marketplace of ideas

As a practical matter competition in “economic” media markets, backed by effective DOJ enforcement of the Clayton Act, likely will be sufficient to ensure competition in the marketplace of ideas. There are three reasons for this. First, markets for ideas are much broader than corresponding economic markets. DOJ, for example, has traditionally focused on extremely narrow advertising markets, stopping threats to economic competition long before consolidation poses a threat to competition in the marketplace of ideas. Second, relevant markets for ideas are less concentrated than narrowly-defined economic markets served by given outlets because of the way that shares are measured. Third, entry in the marketplace of ideas is far easier than in economic markets because ideas (especially unpopular ones!) can be introduced at much smaller scales of operation.

For these reasons it is not correct to view the Commission’s responsibility to protect First Amendment values as requiring a lower tolerance for concentration than that required by antitrust principles. Indeed, the analysis suggests that the Commission could safely (from a marketplace of ideas perspective) adopt a more tolerant standard, especially if it was concerned about impeding technological progress or handicapping licensees in their competition with non-licensees, and thereby harming consumers.

Merger enforcement in the media has tended to focus on rather narrow advertising markets. DOJ in recent years has chosen to exclude television and newspaper advertising as alternatives to radio when considering advertising market definition in radio station mergers. It has similarly rejected television and radio advertising as alternatives for newspaper advertisers when considering newspaper mergers. In the EchoStar matter, both DOJ and the Commission identified relevant markets for MVPD services, excluding broadcast television and other media as substitutes for the services provided to consumers by DirecTV and EchoStar. My point is not to endorse these market definitions as being factually accurate, but simply to observe that relevant antitrust markets in the media have traditionally been defined narrowly by the antitrust enforcement agencies, excluding from consideration outlets that surely are important competing sources of ideas and information.

The significance of the preceding point lies in the fact that relevant markets for ideas are likely much broader than corresponding economic markets as defined by the antitrust agencies. The hypothetical monopolist paradigm used to define relevant economic markets based on consumer response to a "small" price increase cannot be applied easily to the marketplace of ideas because it is difficult to identify the relevant prices. Even if the paradigm could be applied, the hypothetical monopolist test is too demanding in the context of ideas. What really matters with ideas from a political perspective is whether they can be suppressed. But given the importance of interpersonal communication, it is extremely difficult to suppress ideas—they can "leak out" even through small or economically minor media outlets. That most consumers form opinions based on information derived from mass media through the intermediation of others, rather than directly, has been a central tenet of mass media research for more than half a century.[10]

A relevant question, therefore, is whether alternative sources are or would be available if the media identified as being "in the market" were to suppress an idea or class of ideas. This test would inevitably produce a broader market than the traditional economic market. While DOJ might exclude, say, newspaper advertising from the relevant economic market in its analysis of a local radio station merger, it would make no sense to say a hypothetical monopolist of all radio stations could succeed in depriving consumers of some idea or information.[11] All outlets, regardless of their technology, would have to be included in the hypothetical monopoly in order to suppress an idea. As noted above, each outlet that can reach a given audience has the capacity to make any given idea available to that audience, regardless of the outlet's popularity.

Even if the foregoing argument is rejected, markets for ideas are much less concentrated than corresponding relevant economic markets because of the way that their respective concentration should be measured. Firms with large revenue shares count heavily toward concentration in economic markets. In markets for ideas, each firm is just one more source, and should count equally. The smallest level of concentration that could exist among a given number of firms is, by definition, the level associated with an equal market share for each firm.

Finally, entry often is easier into the marketplace of ideas than into the associated economic markets. In many advertising and other economic media markets the minimum scale at which an outlet is viable is not trivially small. Even the weakest low power TV or AM radio station needs a transmitter and an antenna. But politically, socially or otherwise significant information can enter the marketplace of ideas through a single web site, newsgroup or chat room and be disseminated extremely widely among the community.

It follows from the preceding argument that antitrust merger enforcement in economic markets for advertising and other media services will tend to stop ownership concentration long before it becomes a threat to competition in the broader marketplace of ideas. Moreover, even if the Commission believed, erroneously, that the popularity of a given medium should be given weight in assessing competition in the marketplace of ideas, antitrust enforcement already accomplishes this. Outlets with large advertising or revenue market shares are very likely to be the most popular media. If the Commission sought to weight media by their popularity, it would once again end up duplicating the work of antitrust enforcers.

IV.
Conclusion

If the Commission sought to adopt ownership rules in order to protect advertisers or program vendors from the market power consequences of excessive media ownership concentration, it could not do better than to adopt the conceptual framework of modern industrial organization economics. This framework is imbedded in the *DOJ/FTC Merger Guidelines*, and it is already employed by the antitrust agencies in their scrutiny of media mergers. Thus, if the Commission adopted the most rational available basis for its media ownership rules, it would simply duplicate the work already performed by DOJ. This obviously would be wasteful of public and private resources.

The Commission has a better claim to adopt ownership rules in order to protect consumers from the threat of ideas being suppressed through the exercise of power in the marketplace of ideas. The *Guidelines* framework also can be applied effectively to this problem. It becomes apparent when that is done that concentration among the sources of or outlets for ideas and information available to a given audience will necessarily be less than concentration in the corresponding markets for advertising or programming. Therefore, merger review of relevant economic markets conducted by the antitrust agencies will ensure even greater competition in the marketplace of ideas. Given this relationship, the Commission lacks a basis to adopt ownership rules on either economic or diversity grounds.

Bruce M. Owen

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Endnotes

1 My curriculum vitae is appended.

2 http://www.fcc.gov/ownership/roundtable.html; http://www.fcc.gov/realaudio/tr102901.pdf (Transcript of FCC Roundtable on Media Ownership Policies - 10/29/01).

3 *United States, et al. v. EchoStar Communications*, et al., Case Number 1:02CV02138 DDC *Complaint* filed October 31, 2002. http://www.usdoj.gov/atr/cases/f200400/200409.htm

4 http://www.fcc.gov/ownership/studies.html (FCC studies in this proceeding)

5 *In the Matter of Application of EchoStar Communications Corporation*, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee) HEARING DESIGNATION ORDER, CS Docket No. 01-348 FCC 02-284 Released: October 18, 2002. http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-284A1.pdf

6 John Milton, *Areopagitica: A Speech For The Liberty Of Unlicensed Printing To The Parliament Of England* (1664)) http://www.uoregon.edu/~rbear/areopagitica.html

7 *National Broadcasting Co. v. United States,* 319 U.S. 190, 219 (1943) http://caselaw.lp.findlaw.com/cgi-bin/219. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969) http://laws.findlaw.com/us/395/367.html.

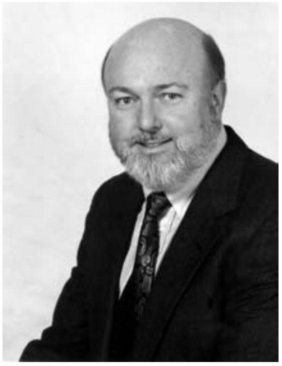
8 The Commission restricted diversity, ostensibly to serve the cause of localism, in *Amendment of Section 3.606 of the Commission's Rules and Regulations; Amendment of the Commission's Rules, Regulations and Engineering Standards Concerning the Television Broadcast Service; Utilization of Frequencies in the Band 470 to 890 MCS for Television Broadcasting, Sixth Report and Order,*

Docket No. 8736, 41 F.C.C. 148, 1 RR 91:559 (1952). The Commission later declined to "deintermix" VHF and UHF frequency assignments in local TV markets, perpetuating artificial scarcity at the local and national level. Similarly, the Commission delayed the use of digital broadcasting methods, thus denying viewers the benefits of increased competition and diversity through digital compression technology. Through its distant signal importation and anti-siphoning rules, the Commission delayed for years the increased competition and diversity now provided by cable networks.

9 FCC Spectrum Task Force Report, ET Docket No. 02- 135, November 2002 at 7. http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-228542A1.pdf

10 A summary of Katz and Lazarsfeld's famous two-step mass media diffusion process may be found at http://www.cultsock.ndirect.co.uk/MUHome/cshtml/media/kl.html

11 I do not mean to suggest that the DOJ staff is correct, as a technical matter, in excluding newspaper advertising from the relevant market for radio mergers, for there is much evidence to the contrary.



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EDUCATION

B.A.Williams College 1965.
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PREVIOUS EXPERIENCE

President and co-founder, Economists Incorporated 1981-2002 • Visiting professor of economics, Stanford in Washington, 1989-2002 • Chief economist, Antitrust Division, United States Department of Justice 1979-1981 • Associate professor of business and law, Duke University 1978-1980, adjunct professor of public policy, Duke University 1981-88 • Assistant professor of economics Stanford University 1973-1978 • Chief economist, White House Office of Telecommunications Policy 1971-1972.

CURRENT MEMBERSHIPS AND AFFILIATIONS

American Economic Association • Econometric Society • American Law and Economics Association • National Economists Club • American Bar Association (Associate).

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Merit Scholar 1961-65; Woodrow Wilson Fellow 1966; National Defense Education Act Title IV Fellow 1966-69 Brookings Institution Economic Policy Fellow 1970-1971; Hoover Institution National Fellow 1974-1975; Aspen Institute for Humanistic Studies Fellow and chairman, Task Force on the Future of the Postal Service 1978-79

RECENT PROFESSIONAL ACTIVITIES

Editorial Board, referee, Journal of Media Economics, 1990-present • Invited lecture, Pontificia Universidad Católica de Chile, Santiago, 1999 • Invited lecture, American Enterprise Institute, Washington, 1999 • Referee, National Academy of Sciences-National Research Council, 1999 • Invited lectures, Fordham Univ.Business School, Yale Univ.School of Management, 2000 • Referee, Journal of Industrial Economics, 2001-02 • Referee, Review of Economics and Statistics, 2001 • Invited paper, AEI-Brookings Jt.Center Conference on Broadband, October 2001 • Panelist, Conference on Digital TV, American Enterprise Institute, October 2001 • Panelist, FCC Roundtable on Media Ownership Policies, October 2001 • Invited panelist, antitrust in the sports industry, Antitrust Division, USDOJ 2002 • Seminar on economic analysis of law, Stanford in Washington, 1989-2002.

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