

**THE VIACOM/CBS MERGER: MEDIA COMPETITION
AND CONSOLIDATION IN THE NEW MILLENNIUM**

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST,
BUSINESS RIGHTS, AND COMPETITION
OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

MEDIA COMPETITION AND CONSOLIDATION ISSUES, FOCUSING ON THE
PROPOSED ACQUISITION OF CBS BY VIACOM

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THE VIACOM/CBS MERGER: MEDIA COMPETITION AND CONSOLIDATION IN THE NEW MILLENNIUM

THURSDAY, OCTOBER 28, 1999

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS,
AND COMPETITION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 1:32 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Mike DeWine (chairman of the subcommittee) presiding.

Also present: Senator Kohl.

OPENING STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Good afternoon, and welcome to the Senate Antitrust Subcommittee hearing on the Viacom/CBS Merger: Media Competition and Consolidation in the New Millennium.

Since this merger was first announced in early September, it has been the object of a great deal of discussion. Some of this scrutiny is due to the fact that we are immersed in a merger wave that has been going on for several years. This proposed deal is another sign that the merger wave is certainly continuing.

Some people are intrigued by the idea that Viacom, which was spun off as a small unit of CBS some 30-odd years ago, has grown up and come back to buy its parent company. Of course, any time a merger is valued at \$40 billion, it will be closely examined.

But beyond any of these issues is a sense of concern generated by the ongoing consolidation that we are seeing in a variety of media markets. In radio, in newspapers, and now in television, we are beginning to see the trend towards consolidation that has swept through so many other industries over the last few years. While many of these mergers have been procompetitive and helped provide consumers with a better product at a better price. We need to be especially careful when we are dealing with companies that provide information, because the free flow of information is crucial for a democracy to function. We must—we must—have competition in the marketplace of ideas, and excessive concentration will hinder that competition.

For this reason, many people have reacted with concern to the proposed merger. The Viacom/CBS deal will create a company with very significant holdings in cable, broadcast television, movie pro-

duction, movie rental, radio, publishing, and billboard advertising, and a growing presence on the Internet, as well. The idea of another media conglomerate with holdings in so many related market segments seems somehow a little scary.

Mr. Redstone's statements about the merger have not done very much to reassure people. Let me quote from one of the joint Viacom/CBS press releases on this merger. Mr. Redstone said, "Our union will be king, not just in content, but in its distribution, marketing, and packaging. We will be global leaders in every facet of the media and entertainment industry." While this no doubt is a reassuring and comforting vision to the CBS and Viacom shareholders, it is understandable that some others have had reservations about creating such a dominant media conglomerate.

Frankly and candidly, I myself do have some concerns about the proposed merger. However, good, sensible competition policy is certainly not made on the basis of vague feelings nor general concerns, and this subcommittee will make no judgment on this deal without a close examination. This proposed merger must be carefully scrutinized in order to determine whether it is anticompetitive or whether it is procompetitive and whether or not it unduly hinders free trade in the so-called marketplace of ideas.

We need to examine closely whether it creates competitive problems in the advertising market and whether it raises entry barriers for prospective competitors. We need to examine what impact Federal Communications Commission regulations will have on the proposed merger. We need to examine whether it will hinder coverage of the news, limit editorial freedom, or decrease the range of available programming. And in each of these separate areas, we need to determine what procompetitive benefits are generated by the proposed merger and balance these against any concerns that we may have. Finally, all these judgments must be made in the context of a rapidly changing marketplace, where new programming is being developed constantly and the Internet is rapidly expanding consumer choice.

All of these factors require careful evaluation, and as I have already mentioned, the complexity of the analysis is increased because the proposed merger is taking place in a very important and very dynamic industry. We hope that our hearing today can help shed some light on all these very interesting and important issues, and I look forward to the testimony of our witnesses.

Let me now turn to the ranking member of our subcommittee, Senator Kohl.

Senator KOHL. Thank you, Mr. Chairman. We are here today to examine the Viacom/CBS merger, a deal which raises many important questions about the future of the media and the entertainment industry in America. In our subcommittee, we have always taken the position that a media merger is different from, say, a merger between telephone companies, oil companies, or cereal manufacturers. When we are examining media mergers, we need to take special care to ensure that we protect the free flow of information and ideas. My own sense is that the Viacom/CBS deal creates more synergy than suspicion, but the next major media deal may not.

Let me start by acknowledging the abilities of both Sumner Redstone and Mel Karmazin, two highly talented businessmen who

have built Viacom and CBS into two of the most important media entertainment conglomerates existing today.

But given your experience and your expertise, gentlemen, you must also recognize why some observers have serious concerns regarding your planned merger. CBS and Viacom are both media and entertainment giants, and combining your companies would create an enormous enterprise with involvement in virtually every aspect of the media and the entertainment business.

Of course, we all recognize that size alone is not the issue, that big is not necessarily bad, and in the end, this merger appears likely to pass muster under the traditional antitrust tests, given the number of other competitors, these companies' market shares, and the absence of direct competition between Viacom and CBS in many markets. But some antitrust questions do remain. For example, will the combined company have so much advertising clout in some communities that it will hurt small local businesses that cannot afford to buy ad time? Or will it, along with other media conglomerates, be able to crowd out independently owned radio stations?

These traditional antitrust tests, however, are not the last word in dealing with a media merger such as this one. In fact, no less an antitrust authority than you, Mr. Redstone, told our subcommittee in 1993 when you opposed TCI's plans to purchase Paramount, and I quote, "TCI and its partners' market power is dangerous enough, but when coupled with the publishing, television, and motion picture production and other interests of Paramount, the dangers to fundamental first amendment principles are sobering." Mr. Redstone, that was then. Perhaps today you will have something else to say.

Mr. Chairman, let me make just a couple more points. We have had so much media consolidation and cross-ownership in the last few years that we have created a sort of American media keiretsu. It is also reasonable to ask whether in today's bottom-line environment, hard-hitting, objective journalism could be sacrificed to gain ratings, audience share, and revenues.

Now, I laughed, Mr. Redstone, when you responded to a CNN reporter, "Do we own you yet?" after she asked you a question at the press conference announcing your deal, but that joke, to be sure, does illuminate an important issue.

Indeed, there may still be sufficient competitive alternatives in the media and entertainment industry so that this merger is approved, although I am not quite sure if America is ready for one company to own two major networks. Regardless, we should be careful to pay attention to its effects in the marketplace of ideas and not merely the marketplace of dollars, and we should consider during our hearing the question of, if not now, when, at what point future media consolidation might just become too dangerous. Your guidance today, gentlemen, will be helpful in shaping the media of tomorrow.

Thank you, Mr. Chairman.

Senator DEWINE. Senator Kohl, thank you very much.

We will turn to our first panel, the Honorable Paul Wellstone. Paul, thank you very much for joining us, and you may proceed.

**STATEMENT OF HON. PAUL WELLSTONE, A U.S. SENATOR
FROM THE STATE OF MINNESOTA**

Senator WELLSTONE. Thank you, Senator DeWine and Senator Kohl. First of all, I want to tell you that I very much appreciated hearing both of your remarks and I also appreciate this opportunity to testify before this subcommittee on an issue that deserves a much wider debate in the Congress and in the public.

Mr. Chairman, I think the recent wave of mergers among media companies, including the proposed acquisition of CBS by Viacom, raises some very troubling questions for our system of representative democracy. These media mergers warrant the highest level of scrutiny by our antitrust agencies and by the Federal Communications Commission. They may also require Congress to consider a new legislative framework to address the growing problem of media concentration.

Some of my colleagues may be aware of my concerns about increasing concentration in other sectors of the economy, especially in agriculture and finance. But of all the industries where concentration is now accelerating at such a rapid pace, it is really consolidation in the media and entertainment industries that should alarm us the most. We are talking about the very flow of information in a representative democracy.

The media is not just any ordinary industry. It is the lifeblood of American democracy. We depend on the media for the free flow of information that enables citizens to participate in the democratic process. As James Madison wrote in 1822, "A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both." That is why freedom of the press is enshrined in our Constitution. No other industry enjoys that kind of protection.

For our democracy to work, we depend on the media to do two things. We depend on them to provide citizens with access to a wide and diverse range of opinions, analyses, and perspectives, and we depend on the media to hold concentrated power, whether it is public or private power, accountable to the people. The greater the diversity of ownership and control, the better they will be able to perform those functions.

Some have argued, Senator DeWine and Senator Kohl, that the recent round of consolidation in the media and entertainment industries, especially the trend toward vertical integration, will offer consumers a more diverse array of choices. But it is important to distinguish between outlets and content. It is a very important distinction. A proliferation of new media outlets does not guarantee any greater diversity of viewpoint. After all, one corporate conglomerate can still exercise control over the content of the media that reaches citizens through many different outlets. The safest and best way to ensure diversity of viewpoints is through diverse ownership.

Mr. Chairman, I think most people in our country would be shocked at the degree of media concentration that has occurred in the last 15 years. When the classic, "The Media Monopoly," was written in 1983, about 50 media conglomerates controlled more than half of all the broadcast media, newspapers, magazines, video, radio, music, publishing, and film in the country. In 1986, that

number had shrunk from 50 to 29. By 1993, it had shrunk to 20. Today, fewer than ten multinational media conglomerate, dominate most of the American mass media landscape. The range and scope of their holdings is astounding.

I think this proposed merger is really part of a larger problem. Yes, this would be the largest media merger in history, and CBS/Viacom would be the second-largest media corporation in the world. But these two companies undoubtedly felt compelled to act by competitive pressures, namely the rapid vertical integration in the industry through a spate of high-profile mergers and acquisitions in recent years. By the same token, one problem with this merger is that it would increase pressure on other firms to do the same, accelerating the momentum toward further concentration in the industry.

As the chairman of Sony commented on the merger, and I quote, "After a deal like this, the urge to merge becomes feverish, and right now, temperatures are soaring all over the city." We need to concern ourselves not only with the effects of this merger, but also with the aftershocks that will be felt for years to come.

These concerns about media concentration need to be addressed by both the FCC and our antitrust agencies. Congress has directed the FCC to uphold a "public interest" standard in approving media mergers, though that standard has been severely weakened in recent years. Last month, Chairman Kennard said in a speech, and I think this is what is at issue, "Broadcast ownership rules serve principles that we still cherish, principles like competition, localism, and a diversity of voices. We can and must do more to make sure that there are a multitude of voices and opinions on the airwaves."

These are admirable principles, yet they are difficult to reconcile with the chairman's statement on the CBS/Viacom deal, in which he said, "The essential question will be, how does this merger accelerate delivery of digital age services to all consumers?" The more important question is, when and why do the principles of competition, localism, and diversity lose out to other considerations, such as delivery of digital services to consumers?

Clearly, something needs to be done. If our antitrust agencies and the FCC fail to address the problem of media concentration within their current legislative mandates, a legislative remedy may be necessary. One option would be, I would say to both my colleagues, to breathe new life into the FCC's public interest standard by giving presumptive weight to considerations of competition, localism, and diversity of viewpoint from independent sources. Another option would be to provide additional guidance for the application of our antitrust laws to media mergers, either through new legislation or through new enforcement guidelines.

Undoubtedly, and I conclude this way with a sense of irony, such an effort would meet considerable resistance, not least from media corporations themselves. Progress in the area of antitrust has almost always come in response to public pressure. Yet, this is the quandary of democratic with a small "d" I say to the chairman—media reform. Involvement of the public in this debate depends on coverage and attention by the major media. Unfortunately, the record to date has not been encouraging. There has been virtually

no public awareness or public discussion of the rapid concentration of media that has occurred over the last 15 years.

As Will Rogers used to say, "Freedom of the press is great if you own a press." As fewer and fewer presses are concentrated in the hands of fewer and fewer people, we need to start asking ourselves how we can make that freedom meaningful for more people. But that is a debate we need to engage in with a larger audience. We can start by bringing attention to it in this Congress, and for that reason, I thank this subcommittee for holding this hearing.

Senator DEWINE. Senator, thank you very much for your testimony. Senator Wellstone, I think that the questions you raised are certainly going to be questions that we will be raising with the next panel. We appreciate your testimony very much.

Let me invite our second panel to now proceed to come up, and as you are coming up, I will introduce you.

From my left to right, Sumner Redstone is the chairman of the board and chief executive officer of Viacom, Inc., where he has served as chairman since 1987.

Mel Karmazin became the president and chief executive officer of CBS Corporation in January 1999. He is also chairman, president, and CEO of Infinity Broadcasting.

Andrew Jay Schwartzman is the president and CEO of Media Access Project, MAP. He has directed that organization since June 1978.

Larry Grossman was the president of NBC News from 1984 to 1988 prior to which he was president of PBS. He is a published author and writes a regular column for the Columbia Journalism Review.

The final witness on the second panel is David Waterman, who is an associate professor of telecommunications at Indiana University and was previously a faculty member of the Annenberg School for Communication at the University of Southern California.

We welcome all of you and we appreciate you being here. Mr. Redstone, we will start with you.

PANEL CONSISTING OF SUMNER M. REDSTONE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, VIACOM, INC., NEW YORK, NY; MEL KARMAZIN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CBS CORPORATION, NEW YORK, NY; ANDREW JAY SCHWARTZMAN, EXECUTIVE DIRECTOR, MEDIA ACCESS PROJECT, WASHINGTON, DC; LAWRENCE K. GROSSMAN, FORMER PRESIDENT, NBC NEWS, FORMER PRESIDENT, PBS, NEW YORK, NY; AND DAVID WATERMAN, ASSOCIATE PROFESSOR, DEPARTMENT OF TELECOMMUNICATIONS, INDIANA UNIVERSITY, BLOOMINGTON, IN

STATEMENT OF SUMNER M. REDSTONE

Mr. REDSTONE. Good afternoon, Mr. Chairman, Senator Kohl, and members of the subcommittee. I am, as you know, Sumner Redstone. I am Chairman and CEO of Viacom.

In fact, as you heard, these are truly exciting times in the media industry and I want to thank you for the opportunity to appear before you to talk about the equally exciting merger of Viacom and CBS.

Twelve years ago, I acquired a company called, I guess it was called Viacom then, whose core assets were a couple of cable networks that were just beginning to build their youth and teen audiences. Those networks, MTV and Nickelodeon, are now household names. Today, Viacom exports MTV and Nickelodeon in some 14 languages to more than 100 countries around the world. That first strategic acquisition started Viacom down the path of creating a diverse media company, one that serves a vast array of domestic and international audiences.

The next step in fulfilling this strategic vision was the Paramount acquisition, when Viacom combined that company's movie studio and television program production and distribution with our cable networks. With the movie studio, we were able to expand Viacom's content for theater-goers. With the television programming production arm, we were able with our partner Chris-Craft to launch a new over-the-air broadcast network. UPN's ratings are but a fraction of those of the four established networks, and our experience in building a broadcast network from the ground admittedly has been very bumpy and very costly. We are proud, though, of this alternative voice in free over-the-air television, and in particular of the diversity which we have promoted.

Viacom's merger with CBS will allow us to serve the full array of today's fragmented audiences even better, from the young viewers of Nickelodeon's "Blue's Clues" to the older viewers of CBS's "Touched by an Angel." We see the combined assets of the new company as highly complimentary, and once blended, capable of achieving significant economies of scale, and all of this will, I assure you, be to the consumers' benefit.

Undeniably, we are in the midst of an unparalleled technological revolution that is occurring on a global scale and promises to forever change the way entertainment and information options are chosen, delivered, and received. The world at the close of the century is much different from when I began in the media business more than 40 years ago. Single-screen cinemas have given way to 25-screen megaplexes. The big three broadcast networks are now the big four, and in sum, where the big three used to have 90 percent of the prime time viewers, today, they have less than 50 percent. Cable television enjoys a success that few envisioned even 10 years ago. Satellite TV, which did not exist until a few years ago, provides some 300 channels directly to 12.3 million U.S. homes. And the Internet is now viewed as a viable alternative for accessing video and music.

With respect to the effect of this new company and what it will be on competition in the United States, the short answer, and we can demonstrate it, is that it will do nothing but enhance it. The vast majority of our operations are complimentary. They do not overlap.

For example, Viacom through Paramount is one of the leaders in theatrical motion picture production. CBS does not produce theatrical motion pictures. Viacom, through Blockbuster Entertainment, is in the video rental business. CBS is not. Viacom has five regional theme parks. CBS has none. Viacom's Simon and Schuster is a book publisher. CBS is not. And for its part, CBS operates a group of radio stations and owns a large outdoor advertising busi-

ness. Viacom has no such operation. CBS is known for its sports and news programming. Viacom is known for its music and entertainment programming.

Thus, Viacom and CBS clearly are not competitors intent upon cornering markets. Instead, they are two fundamentally different companies seeking to compliment their strengths. However, where limited overlap does exist, each of these markets has multiple, strong, healthy players that will ensure continued competitiveness. Moreover, as the media marketplaces keep fragmenting, the new Viacom will, in turn, have to compete more aggressively, which no doubt in the final analysis will benefit all consumers as we enter into the new millennium.

Of course, before the new Viacom can explore the opportunities the combined entity will bring, the merger must await approval from both the Justice Department and the FCC. We expect a careful review. We look forward to working with both agencies. After their separate reviews, we believe that each will quickly conclude that the new Viacom will promote competition and, indeed, serve the public interest even better in the years ahead.

By the way, I heard myself quoted before, so may I add a quote which comes from a major speech I gave on mergers at Harvard Law School, and I would like to read it, because I think it is relevant. "A core requisite relating to the protection of free speech flows from the understanding that marketplaces enhance not just our pocketbooks, but also free discourse in ideas. The principle is that ideas, like products, compete for acceptance and the best ones win in a competition." Thank you.

Senator DEWINE. Mr. Redstone, thank you very much.

Mr. Karmazin, thank you for joining us.

STATEMENT OF MEL KARMAZIN

Mr. KARMAZIN. It is good to be here. Mr. Chairman, Senator Kohl, with your permission, I would just like to submit my comments to you, but I would like to focus on a couple of points, if I may.

Senator DEWINE. That will be fine. All the witnesses, your written testimony that has been submitted is now made a part of the record and you can proceed as you wish.

Mr. KARMAZIN. Thank you. I am a broadcaster. I have been a broadcaster for a little bit over 30 years and I find it really interesting, all of this discussion about less competition. On one hand, I would relish the days of going back to where there were just AM radio stations or there were just the big three networks. I enjoyed watching Senator Wellstone last night on CNBC, a network that did not exist as a competitor to us not too long ago. So I believe that when we are looking at competition, what Washington ought to be doing is looking at competition in a way of preserving free over-the-air broadcasting, something that I have been involved in for an awful long time.

There is probably a belief by some that our competition is NBC, ABC, and possibly Fox, but that is truly, truly bizarre. Today, our competition is all of the cable channels. Our competition is Yahoo. Our competition is AOL. It is interesting to note that when Westinghouse acquired CBS, they paid \$5 billion for that acquisition.

Last year, Yahoo acquired broadcast.com for over \$5 billion in stock. Yahoo's stock is valued at 50 percent more than CBS's stock, and the reason for that is because Yahoo is competing with CBS for all kinds of opportunities with listeners, with content. Some of our radio stations offer free over-the-air broadcasting opportunity, have a sports team on the air. Broadcast.com is going to sports owners and saying to them, they could pay more money for the content than CBS is currently paying them.

So I think the focus should be on coming up with competition, and though it would be good to go back, I do not think there is a chance of that. But what the competition needs to do is to preserve free over-the-air broadcasting, and certain rules, like the rule that would limit us to owning television stations that cover 35 percent of the country, are terribly outdated and really are not helpful to creating competition because if, in fact, the free over-the-air broadcasting is not going to be financially healthy, and you make your money on your television stations, not on your network, and that is not about bookkeeping, that is just the reality of it, that a lot of content that used to be on free over-the-air broadcasting will find itself migrating to cable where only certain of the rich people are able to get that.

Obviously, there is a lot of NFL programming on Direct TV, and we paid \$4 billion for the rights to the NFL. We managed to present the football games free to the public. We are not going to be able to do that unless we are profitable and unless we are financially successful, and we are getting increased competition.

It is also a little peculiar to me to see that there is a question as to whether or not we can own the struggling UPN network, which is factually a network that loses over \$200 million, and whether we can continue to have an investment in that and CBS. At a time when cable companies can own 37 percent of the country and have multiple channels there and that we can only maybe have an eighth or a tenth of the number of stations that would be in 35 percent of the country really seems to be a little bit anti-competitive to them.

It also is important that if we were to take the UPN network and put it on cable, nobody would have a problem with that. But because we want to preserve the diversity of a UPN network and to provide it free over the air, someone says in this multichannel world that everybody acknowledges there that you cannot have two of these channels.

So we feel very strongly that when this subcommittee looks into things, that we ought to be looking at ways of increasing competition, and that is to preserve free over-the-air broadcasting. We will do whatever the Justice Department, the DOJ, the FCC, or this committee says to close the Viacom transaction, but we really do think that needs to be looked at. Thank you.

Senator DEWINE. Thank you very much.

[The prepared statement of Mr. Redstone and Mr. Karmazin follows:]

PREPARED STATEMENT OF SUMNER M. REDSTONE AND MEL KARMAZIN

INTRODUCTION

Viacom and CBS wish to thank the Members of the Senate Subcommittee on Antitrust, Business Rights and Competition for providing the opportunity to describe their proposed merger.

On September 6, 1999, Viacom Inc. and CBS Corporation agreed to combine the two companies in a merger of equals. Sumner Redstone will lead the new company, to be called Viacom, in his continued role as Chairman and Chief Executive Officer, as well as majority shareholder. Mel Karmazin, now President and Chief Executive Officer of CBS, will become President and Chief Operating Officer of the new Viacom, with all operations of the combined company reporting to him.

The assets and markets of the two companies are highly complementary, have very little overlap and, once merged, will achieve significant economies of scale, resulting in new programming, new jobs, lower costs and an increase in exports of Viacom's brands, for the benefit of Americans and all consumers around the world. Subject to governmental approvals, Viacom will meld its brands and assets in basic and premium cable networks (for example, MTV, Nickelodeon, VH1 and Showtime), movie production (Paramount Pictures), television program production and syndication (Paramount Television), broadcast television stations, theme parks, publishing (Simon & Schuster), home video and rental and retailing (Blockbuster) and websites, with CBS's television network, broadcast television stations, basic cable networks (CMT [Country Music Television] and TNN [The Nashville Network]), regional sports operations, radio stations (Infinity Broadcasting), outdoor business and online holdings, to create a U.S.-based global media company that is positioned to seize the myriad opportunities and confront the formidable challenges of the 21st century. Such opportunities include serving the explosive media and entertainment demands of the domestic and international arenas through the Internet and other distribution channels we know today, while the challenges include maintaining a voice in an increasingly fragmented and technologically evolving marketplace.

The proposed merger of Viacom and CBS is no accidental pairing. Rather, it represents another strategic and significant landmark in a far-sighted vision of constructing a competitive media and entertainment company flexible enough to adapt to changing times. The vision took seed some 40 years ago, with a handful of drive-in movie theaters. With the waning audience for such theaters, those holdings were expanded to include the much-in-demand indoor, multiplex variety of theaters. And, in turn, it was with this base set of assets in 1987 that Viacom and its cable networks, including MTV and Nickelodeon, were acquired. Seven years later, Viacom's cable network brands—by then having expanded beyond MTV, Showtime and Nickelodeon to VH1, MTV Europe and MTV Asia—combined with the Paramount movie studio. This marriage reaffirmed Viacom's commitment to content and resulted in a strengthened and enhanced programming portfolio that now extends Viacom franchises into theaters and homes around the country and the world. For example, Paramount Pictures worked with Nickelodeon to produce "The Rugrats Movie," and Paramount Parks feature Nickelodeon play centers. Globally, MTV can be viewed in over 300 million households, Nickelodeon in over 135 million households and VH1 in over 90 million households, in some 14 different languages and in more than 100 countries around the world, from the People's Republic of China to Norway to Mexico. And as the world goes digital, Viacom is ready to supply content through its suite of digital channels that are accessed via television, and through its music and child-oriented sites that are accessed via that ubiquitous digital medium, the Internet.

As Viacom has grown, it has never lost sight of the importance of funneling its profits back into the company to finance quality programming for diverse audiences and to meet the public service obligations owed to its viewers. Early this year, for example, Viacom, together with its non-profit partner Children's Television Workshop, launched Noggin, the nation's first round-the-clock, commercial-free educational children's channel. Such a risky enterprise with such a kid-centric mission would have been impossible without Viacom's wherewithal to finance the creation and production of new quality educational programming for the channel, Nickelodeon's vast library of top-notch programming, and MTV Networks' expertise in obtaining distribution for program services across all platforms. Indeed, despite the financial losses that have accompanied the start-up of Noggin, Viacom has pledged the funds necessary to nurture this educational channel to success.

As with its undertakings to children, since 1995 with the launch of broadcast television network UPN, Viacom, with partner Chris-Craft, has responded to the needs of the underserved segments of American viewers, particularly those with access

only to free, over-the-air broadcast television. With programs written and produced by minorities and featuring minorities in the casts of almost all of its dramas and sitcoms, UPN has outperformed all other broadcast networks in attracting a disproportionately large African-American audience. Yet, despite the substantial draw of the upstart network to black households, total viewership nationwide has lagged, resulting in UPN's loss of hundreds of millions of dollars in its short life of less than five years. Viacom's programming strength and size so far have allowed it to continue to underwrite UPN with its partner so that this alternative voice may still be heard.

In addition to funding diverse and high-caliber programming, Viacom has dedicated funds to serving its largest segment of viewers, the youth of America. It has done so on-air and off through pro-social campaigns that address violence, tolerance and helping others. One such campaign, MTV's "Fight for Your Rights: Take a Stand Against Violence," which was unveiled even before the tragic incident at Littleton, includes several on-air specials, a free CD containing music and comments on violence from top recording artists and an action guide produced in cooperation with the Departments of Justice and Education. Nickelodeon's "The Big Help" is a year-round campaign that encourages children ages 6-14 to volunteer in their communities. Paramount Stations Group's "The Teen Files" campaign includes local outreach programs centered around Paramount-produced quarterly specials on subjects important to teens, including the Emmy-award-winning "The Truth About Drinking." And VH1's "Save the Music" has implemented 350 school music programs in 30 cities around the country through fundraising and instrument-donation drives.

This is Viacom today, an entertainment, content-rich, largely cable-network and motion picture and television studio company, that seeks to partner with CBS, a news, sports and distribution-focused, largely broadcast television, radio and outdoor advertising company. CBS, like Viacom, grew from a small collection of assets to become a pioneer in the field of broadcasting. In 1929, William Paley purchased a failing group of 22 radio stations—known then as the United Independent Broadcasters Network—and turned it into a profitable network, while introducing such figures as Bing Crosby, Kate Smith and Frank Sinatra to the airwaves. CBS ushered in the era of television in 1939 and later introduced to the "small screen" personalities such as Lucille Ball and Ed Sullivan. In the 1970s, when television had become a truly mass medium, CBS dared to air revolutionary programs such as "All in the Family" and "M*A*S*H," both of which became critical and popular successes. In addition to entertainment, CBS saw television as a promising technology for the transmission of news, and built the CBS Television Network into a powerhouse of journalism, led by legends such as Edward R. Murrow and Walter Cronkite.

Through the six decades since its founding, CBS has stayed true to its broadcasting roots. Today, it is the number one broadcast television network in total viewers and household ratings. The CBS Evening News, now in its 37th season, continues the CBS tradition as the flagship broadcast of the CBS news division, and is rounded out by many other news and public affairs broadcasts—including, of course, the pioneering and perennially popular "60 Minutes"—that serve to inform its viewers. And radio, where it all began for CBS, continues its important role through CBS's majority interest in Infinity Broadcasting, which operates 163 stations nationwide.

Also like Viacom, CBS has had the vision to adapt to the ever-changing media landscape. It has entered into the cable arena with two country-oriented channels—one music and one lifestyle—and it has ventured into the e-world, largely by investing in websites in exchange for promotion and advertising on the older media of radio and television.

In light of the two different, but successful, business strategies forged by the two companies, which share a common concern for serving a wide range of Americans, the merger of Viacom and CBS will be a union between two natural partners. The merger will also mark a family re-union of sorts, given that Viacom was spun off from CBS in the early 1970s, to comply with the FCC's financial interest and syndication rules, which before they were repealed in 1995—prohibited integration of broadcast networks and syndicated programming. As a reunited Viacom/CBS, the new Viacom will be best positioned to offer creative, innovative and diverse voices in the ever-fragmented video and audio media world of hundreds of cable and direct broadcast satellite channels, VCRs, personal digital video recorders, digital broadcast television, digital audio radio services and the tens of thousands of websites on the Internet. There will be, under the umbrella of the new Viacom, entertainment, news and sports that will be sought out by the full spectrum of American viewers, from our nation's youth (through "Blue's Clues" and "The Rugrats") right up to our nation's older generation (through "60 Minutes" and "Touched by an Angel"). And Viacom/CBS will enjoy stronger cross-promotion for its content, accelerated international growth for Viacom's current cable brands and first-time international ex-

pansion for the CBS cable networks. Equally important, the new Viacom will remain true to the common commitment of both companies in returning to their audiences quality programming and public service.

DEPARTMENT OF JUSTICE REVIEW

Of course, before the new Viacom can begin to reap the efficiencies and explore the untapped opportunities the combined entity will bring, the merger of Viacom and CBS must await governmental approvals, both from the Department of Justice and the Federal Communications Commission. One of the issues that always arises in a significant transaction—and the reason for today's hearing—is the effects the proposed merger will have on competition in the relevant markets. Accordingly, it is expected that the Department of Justice will carefully review this transaction, as it should. Viacom and CBS look forward to working with the Justice Department in this review and believe that the more the Justice Department learns about this proposed merger, the more quickly it will conclude that the new Viacom will promote, not reduce, competition.

The U.S. antitrust laws are the bulwark of our nation's economy. When antitrust laws are strong and properly applied, the economy is at its most robust. "Strong" antitrust laws are those that protect the American people from companies and individuals intent upon cornering the market and destroying competition. They are not, however, laws that interfere where they are not needed. Nor are they rules that limit the incredible dynamism of our great economy.

Under this rubric, the combination of Viacom and CBS does not raise such antitrust concerns, because the vast majority of the business operations of the two companies simply do not compete with one another. Most of what we do is different. For example, Viacom, through Paramount, is one of the leaders in theatrical motion picture production. CBS does not produce theatrical motion pictures. Viacom, through Blockbuster Entertainment, is in the video rental business. CBS is not. Viacom has five regional theme parks. CBS has none. Viacom's Simon & Schuster is a book publisher. CBS is not. And for its part, CBS operates a group of radio stations and owns an outdoor advertising business. Viacom has no such operations. CBS is known for its news and sports programming. Viacom is known for its music and entertainment programming. Thus, Viacom and CBS clearly are not competitors intent upon cornering markets, but, instead are two fundamentally different companies seeking to complement their strengths.

Some overlaps, however, do exist between Viacom and CBS. First, Viacom and CBS each own one broadcast TV station in six of the same geographic areas. Second, both companies are involved in broadcast TV networks, albeit ones that do not really compete with one another—CBS through its CBS Television Network and Viacom through its 50 percent ownership in the fledgling UPN. Third, Viacom and CBS operate cable networks. And fourth, the two companies are each in the television syndication business.

In each of these four overlap areas, numerous large, healthy and eager competitors already compete, ensuring not only the continuing competitiveness of the affected markets, but, also, as such markets evolve, that the new Viacom itself will have to compete more aggressively in the future. This increased level of competition on the parts of all players will benefit consumers.

With respect to the overlap of TV stations, Viacom and CBS each have a station in the Philadelphia, Boston, Dallas, Detroit, Miami and Pittsburgh television markets. These six cities are each major metropolitan areas, which rank in the top 20 television markets and have licensed to them anywhere from 9 to 21 full-power, broadcast TV stations. In addition, these markets, on average, enjoy about a 71 percent cable penetration rate, higher than the national average of about 68 percent, which means that nearly three-quarters of the households in the six markets have access to cable. And all households in each market have access to direct broadcast satellite and its hundreds of channels.

The Viacom-owned UPN-affiliated stations tend to have small audience shares such that a combination would not result in a significant increase in concentration in any of these six television markets. Indeed, under the broadcast ownership rules adopted by the Federal Communications Commission just this past August, common ownership of two television stations is permitted where there remain at least eight independently owned full-power commercial and non-commercial TV stations post-combination and where the two merging stations are not both among the top four-ranked stations in the market, as measured by audience share. Given the high level of competition among TV stations in the six affected markets and the low ratings and shares of the UPN-affiliated stations, Viacom and CBS hope to obtain FCC approval of station combinations in these six cities.

In the case of broadcast television networks, CBS is an established and widely viewed network. It provides nearly 16.5 hours of programming to its affiliates each weekday and 12 hours on weekends. UPN, by contrast, remains a fledgling network, having launched not even five years ago. It distributes only ten hours per week of prime-time programming, plus small amounts of kids and other programming in other dayparts. In terms of total household ratings, UPN is not in CBS's league—garnering only about one-quarter of the viewers that CBS does. Moreover, the demographics for the audiences of UPN and CBS are also very different. UPN largely attracts younger urban male viewers, while CBS attracts a broad-based audience with a slight bias toward older females. Given the drastically varying ratings and demographics of the two networks in a universe of seven national broadcast networks and hundreds of cable networks, common ownership of UPN and CBS does not raise antitrust concerns.

As for cable television networks, a third area where Viacom's and CBS's businesses complement each other, Viacom operates several premium cable channels, including Showtime, and several basic cable channels, including MTV, Nickelodeon and VH1, while CBS runs only two basic cable networks, CMT and TNN. These Viacom and CBS cable networks exist in a universe of several hundred other cable television networks, all competing vigorously with each other and with other media, including broadcast networks and the Internet, for advertisers, access to distribution platforms and viewers. Consequently, the combination of Viacom's and CBS's cable networks would not adversely impact competition. Moreover, although genres of programming do not define separate markets in cable television, the fact remains that the Viacom and CBS networks do offer different types of programming from one another that appeal to different types of audiences, further reducing the small amount of overlap between them.

Syndicated television programming, the final area in which both companies operate, includes those shows and movies that air during times of the day when broadcast network fare does not. Such shows include "Wheel of Fortune" and "Cheers." With more than a dozen major entities—including Columbia Tri-Star, ABC/Disney, Warner Bros., Fox/Twentieth Television, Hearst-Argyle, MGM, Universal, King World, Studios USA, Pearson, in addition to CBS/Eyemark and Viacom's Paramount Television—offering hundreds of hours of television programming each and every season, and many having done so for decades, there are hundreds of thousands of hours of programming available, and more are being created each year for syndication. In short, excluding future programming production, there is already in existence plenty of content for a highly competitive market.

In light of this robust television programming marketplace, there is, for several reasons, no threat to competition from a combined Viacom/CBS. First, Viacom's and CBS's programming offerings vary markedly, reducing the degree of competition between the two companies. In fact, CBS's syndicated programming will come in large part from King World, upon CBS's pending purchase of that company, which produces only four shows that garner nearly three-quarters of its revenue: the game shows "Wheel of Fortune," "Jeopardy" and "Hollywood Squares," and the talk show "Oprah." Paramount's top syndicated shows, on the other hand, include "Judge Judy," "Entertainment Tonight," "Frasier," "Real TV" and "Star Trek: Voyager." Paramount has no syndicated game show, and while it does produce the talk shows "Montel" and "Leeza," their ratings do not reach the lofty heights achieved by "Oprah." Further, Paramount distributes feature films and a vast array of library product (such as "I Love Lucy" and "Bonanza"), which neither CBS nor King World do. By any measure, therefore, no competitive problem is presented by combining the two companies' syndication operations.

In sum, the proposed merger of Viacom with CBS logically reflects the increasing amount of competition in the entertainment industry. FCC rules such as the financial interest and syndication prohibition and the limitations on local television and radio ownership were created when most markets had three or four television stations, little or no cable penetration, no satellite distribution and, of course, no Internet access. As a result, all of the alternative distribution markets were nurtured in a regulatory environment that restricted the growth of over-the-air television. Now, most markets have at least several television stations and nearly all households can choose to receive cable television and satellite television, as well as access to the Internet. As a result, the rules on financial interest and syndication and local broadcast ownership have been relaxed, encouraging deals like the Viacom/CBS merger. Viacom and CBS believe that more needs to be done to enable free over-the-air broadcast television to compete fairly against the other forms of video programming distribution and to compete in the international marketplace. Provided that the antitrust laws are applied in the normal course, as they should be, the proposed merger of Viacom and CBS should pass the Justice Department's antitrust scrutiny.

FEDERAL COMMUNICATIONS COMMISSION REVIEW

As for review by the Federal Communications Commission, that agency's mission is to determine whether the public interest would be served by the merger. Most often, that objective is achieved by looking at the impact of a merger on the twin pillars of competition and diversity. Viacom and CBS commit to making any necessary divestitures as expeditiously as possible after the merger so that their ownership of broadcast stations complies with all of the FCC's local broadcast ownership rules, including the TV duopoly and TV-radio cross-ownership rules. Concerns have been raised, however, about whether the combined assets will conflict with two of the FCC's national television ownership rules: the 35 percent reach limit, which caps the percentage of households in the country that one owner may serve through its television stations; and the so-called "dual network" rule, which prohibits the common ownership of an established network and UPN or WB. Specifically, when aggregated, the national reach of Viacom's UPN-affiliated TV stations and CBS's TV stations equals about 41 percent, about 6 percent in excess of the cap. And retention of current assets would leave the new Viacom with ownership in CBS and the UPN "weblet."

While Viacom and CBS have stated to the Commission that following the merger the combined company will come into compliance as quickly as possible with whatever rules are in place at the time of their closing, the two companies firmly believe that the 35 percent national TV ownership limit and the dual network rules no longer serve the public interest of viewers and those rules should be relaxed. Changing the two rules would be in keeping with the directive of Congress in the Telecommunications Act of 1996—to eliminate unnecessary and counterproductive regulation hamstringing the broadcasting industry.

In the case of television station ownership, after careful consideration of the two issues central to the public interest—competition and diversity—the Commission just this past August substantially liberalized its local broadcast ownership rules. That decision was well justified and highly commendable. But if local TV ownership deregulation is justified—and it is—then there is no rationale for retention of the national TV ownership cap. Indeed, acknowledging the importance of rationality in the establishment of rules, FCC Chairman William Kennard, in his statement accompanying the adoption of the relaxed local broadcast ownership rules, noted:

[We] are adopting common sense rules that recognize the dramatic changes that the media marketplace has undergone since our broadcast ownership rules were adopted 30 years ago * * * [We] need to provide broadcasters with the flexibility to seize opportunities and compete in this increasingly dynamic media marketplace.

To that end, countless economic studies prove that the national cap does not make any economic sense. Nor does it make any public interest sense.

First, the national TV cap does not promote diversity. As the FCC itself found in the mid-1980s:

[T]he most important idea markets are local * * * [N]ational broadcast ownership limits, as opposed to local ownership limits, ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public.

Second, the national cap does not promote localism in terms of a station's involvement with the community or programming focused on local issues. Even if it made a difference in this regard to have more locally owned stations, group station ownership is now the norm, and economic reasons will ensure that the vast majority of local stations will always be owned by an entity—very often a publicly traded corporation—whose home office is elsewhere. In fact, 64 percent of all U.S. households are served by CBS affiliates run by group owners, and only 2 percent are run by individual owners. Excellent broadcasters who head television groups that are headquartered all over the country run CBS-affiliated stations. And the FCC agrees. It found in 1985 that "the economics of each local market require autonomous decisions by each station with respect to its editorial judgments." Thus, the national cap simply has no effect on localism.

Most important, though, broadcasting, like politics, is necessarily local, regardless of where the home office is. For example, Cox Communications, a large group owner based in Atlanta, does an outstanding job of serving the community of Dayton, Ohio, through its affiliate WHIO. CBS, which owns WFRV in Green Bay, Wisconsin, does the same outstanding job serving its community. Local station affiliates or network-owned stations depend on involvement with their local communities to differentiate themselves and to succeed in selling local advertising. Localism expresses itself in

the content of local newscasts, which are an extraordinarily important part of an affiliate's schedule. It expresses itself in community activities, which create goodwill for the station and build its audience. It expresses itself in special news coverage of emergencies, which every broadcaster sees as part of its public responsibility. Above all, free, over-the-air broadcast television stations, unlike nationally programmed cable and satellite systems, are uniquely situated to offer local voices to their communities. Broadcasters would never forsake this principal competitive advantage.

Maintaining the current national ownership limit is also defended by some on the grounds that raising the cap would allow network companies to exert anticompetitive power in their relationships with non-network-owned affiliates. Since each market stands alone, there is no reason why ownership of a station in a different market should affect an affiliate's clout.

Finally, the opponents of broadcast deregulation once again fall back on the old specter of network dominance. If those opponents simply want network companies to be weaker so that they can extract more favorable terms in their affiliation contracts, it is not the job of Congress or the Commission to accommodate them. Moreover, the term "network dominance" was used to justify network regulation of the 1970's, when upwards of 90 percent of the television audience watched one of the then-three existing networks. Those regulations were repealed years ago; today, the broadcast networks are doing well if they garner more than 40 percent of the primetime television audience. The catch-phrase "network dominance" was once and for all debunked by the Commission and the courts. It is perplexing that some network affiliates, including those owned by large group owners who are more than able to fend for themselves in the marketplace, resurrect this term in the cause of perpetuating government regulation of their business.

In the dramatic, evolving telecommunications marketplace of today, outdated regulations can have perverse effects. Regulatory policies simply cannot keep pace with the market forces that drive technology and innovation. If one believes that free, quality universal television is a public good, the government should be encouraging the flow of capital into this service. Instead, the 35 percent cap distorts the investment of capital and programming by penalizing broadcasters and needlessly encouraging the flow of capital to pay outlets. Viacom and CBS will, of course, do whatever is necessary to adapt to this situation. But, the question remains whether retention of a national limit is in the public interest and makes any sense—whether that limit is set at 35, 50 or even 99 percent of the country. By comparison, under the FCC's newly adopted cable television ownership rules, a cable operator is permitted to own multichannel video programming distribution systems, such as cable, satellite and other such services, serving 30 percent of subscribers to those services nationwide. This 30 percent, according to the Commission's calculations, equals approximately 37 percent of all cable subscribers nationwide. However, in that percentage of the country, cable systems are most likely to be the only cable systems. Under the 35 percent broadcast television cap, by contrast, a station faces competition from at least one to as many as 32 other stations in that percentage of the country. Accordingly, broadcasters once again, have been singled out for restrictive treatment.

As for the dual network rule, it is yet another example of an FCC ownership regulation which discriminates against broadcasters who provide free and universal programming. Rather, the rule benefits those industries which provide programming viewers must pay for, while imposing yet another handicap on free over-the-air broadcasters. The rule provides that one of the four established networks is prohibited from combining with an "emerging" network, which the FCC has interpreted to cover only UPN and WB, the two emerging networks in existence at the time the Telecommunications Act was passed in 1996. The rule, therefore, is especially discriminatory and arbitrary. For example, NBC would be allowed to purchase the "seventh" current network, PAXNET, but the new Viacom could not operate CBS and UPN. This lacks all rationality, especially since under the Commission's current rules one company can own unlimited cable networks.

It is unclear what benefit the public gains from this policy. Again, many of the same arguments that are used to support the retention of the 35 percent cap are used here: network dominance, advertising consolidation, lack of diversity of views and decreased minority ownership. These are all unfounded fears. Instead, this rule is yet another unnecessary restraint on the ability of broadcasters, who offer a free and universal product, to achieve ownership efficiencies needed to compete with those who offer a programming service for which consumers must pay.

If Viacom is required to divest its interest in the UPN network, the following paradox will likely ensue. Viacom could try to sell its 50 percent stake, which would mean transferring its losses to a third party. Yet, no party is lining up to assume responsibility for a network that is still losing hundreds of millions of dollars each

year. The only other option, therefore, might be to shut down UPN altogether. But, shuttering UPN is something Viacom and CBS want to avoid. Closing it would not serve the public interest. The UPN network is off to a very good start this year, and the efficiencies, synergies and network experience that CBS would bring to the table could be the boost that UPN needs to continue its rise and make it a successful network in terms of a business and in terms of service to the public.

UPN now serves minority viewers well. Last season, while UPN had a disappointing 2.0 overall rating, it garnered a 5.8 rating among African-American households. Among the top 50 rated television network programs among African-American households, 10 air on UPN. Indeed, as the owner of CBS and UPN, the new Viacom is more likely to retain the "niche" status of UPN than is any other owner, who might be compelled to clone the new network to look like yet another "established" network capable of reaching a larger mass audience and, with it, larger advertising revenues needed to succeed.

Whether these broadcast ownership rules are changed or retained, the Viacom/CBS merger will happen. However, it would be a great disservice to the public interest if the full potential of UPN is not allowed to blossom. Such an anomalous result should not be allowed to happen.

* * * * *

Once again, Viacom and CBS appreciate the opportunity to appear before the Senate Antitrust Subcommittee. We would be pleased to provide any additional assistance to the Subcommittee or its staff on the merger and any issues related to the merger.

Senator DEWINE. Mr. Schwartzman.

STATEMENT OF ANDREW JAY SCHWARTZMAN

Mr. SCHWARTZMAN. Thank you, Mr. Chairman. Before I start, I would like to express my appreciation to the minority and majority staff. We moved our office this week and we had all sorts of logistical problems and copiers that did not work and so forth, and they have been extremely helpful in just the physical task of getting my testimony together.

Senator DEWINE. Thank you very much.

Mr. SCHWARTZMAN. Thank you, Mr. Chairman. I start with six propositions. First, we have the best system of broadcasting in the world because of, not in spite of, the Federal Communications Commission rules which have limited the size and reach of broadcasting and cable companies.

Second, free speech is not just an end into itself. It is also a necessary means of democratic self-governance. In the 20th century, Congress and the FCC have preserved James Madison's vision of a marketplace of ideas by ensuring that broadcasting helps promote free and open political deliberation.

Third, broadcasters are, quite literally, an integral component of the electoral process. We trust them to provide equal time and equal rates to all political candidates. We count on them to share their monopoly access to publicly-owned spectrum with Federal candidates. But we permit them to refuse unreasonable requests.

Fourth, over-the-air broadcasting is, and for many years to come, will remain the single most important influence on how we vote, especially at the local level. For the time being, the Internet is not a substitute for local newspapers and local broadcast news. The Internet is not the way that citizens decide for whom to vote in the city council election, not yet.

Fifth, broadcasting, especially television, teaches us about each other. Those of us fortunate enough to ride in taxicabs and dine in fine restaurants know much less about the people who drive those

cabs and who bus the tables than vice versa. We need it more than they do.

Sixth, we are needlessly endangering this wonderful but deceptively fragile system.

The policy problem is generic. It is not about Mr. Karmazin and Mr. Redstone or CBS and Viacom. They are businessmen playing the angles and trying to do it lawfully. This hearing could just as easily feature Bob Wright and Barry Diller. Back before and after Mr. Redstone bought Viacom, we worked for that organization closely, many times to promote diversity and open entry into programming and to keep huge telephone companies, or at least one huge telephone company, from taking over a huge cable company when we cared about those things, and it was precisely because it threatened to squelch program diversity and competition. And we supported Mr. Karmazin's vigorous defense of his right to make money by distributing material which is offensive to some, but constitutionally protected for all.

The fact remains that Congress and the FCC have permitted a massive expansion of broadcasters' national and audience local reach, first in radio and now in TV. My testimony addresses many instances of problems in diversity that come off of this merger. But I am going to place particular attention on one seemingly small aspect of the CBS business, local radio news.

The combined CBS/Viacom operation will control as many as eight radio stations and two TV stations in markets, particular individual markets. To simplify here, I am going to lump all the companies together because they have one attribute in common. Mr. Karmazin now controls or manages them. CBS was the undisputed leader in quality and depth of its radio news for generations. Westinghouse, generally regarded as number two in quality, merged with CBS a few years ago. When Mr. Karmazin's Infinity and Westwood One operations were placed under common control, he brought along the old Mutual News, and the name, if nothing else, of NBC Radio News.

Here is the part that is less well understood. Westwood One owned what used to be called Shadow Traffic, but had been renamed Shadow Broadcast Services. This past spring, Westwood One acquired what used to be called Metro Traffic, but is now called Metro Networks. We know about these traffic services that do the traffic reports on all the radio stations.

But those two companies changed their names because they have branched out into what appears to be a much more expansive business, radio, and more recently, television newscasts. They do a lot more than feed actualities for clients to mix into newscasts. In most cases, Metro provides a complete turnkey newscast operation. The entire newscast is prepared by Metro or Shadow personnel in their studios. All the stations in the market use the same reports, even if delivered by different announcers, many of whom appear on several stations using different names to match the format of the station of the moment. Metro has now gone further, by using outsourcing models. The Morning Zoo co-host is in many instances now an employee of Metro, that is, Mr. Karmazin, and not the broadcaster who purportedly operates the station and supposedly provides source diversity in the marketplace of ideas.

I do not have numbers because they are not available. Perhaps Mr. Karmazin will give us numbers for an individual market, because I cannot get them. It brags nationally that it has an opportunity for advertisers to reach every one of 100 million people a day. That is their average reach. Its average is 23 stations per market that it provides news services to.

I believe that Metro has about 25 clients in Baltimore out of 40 radio stations, well over half. That is not diversity. There is now, at most, one reporter covering city hall for all those stations. They fired their news departments. That is not diversity. That is not what we are expecting different views and opinions.

I am not describing a trend. I am describing the market as it exists today. Democracy and the first amendment deserve better, but it is only going to get worse.

I am not saying we should return to the days when William Paley said, "You guys cover the news. I have got Jack Benny to make money for me." But I am saying that broadcast consolidation presses even the best broadcasters to cut costs and reduce standards. When informing the public becomes a nuisance, not a duty, we are all the worse for it.

Senator DEWINE. Thank you very much.

[The prepared statement of Mr. Schwartzman follows:]

PREPARED STATEMENT OF ANDREW JAY SCHWARTZMAN

I start with three propositions.

First, we have the best system of broadcasting in the world because of—not in spite of—Federal Communications Commission rules which have limited the size and reach of broadcasting and cable companies.

Second, as Justice Brandeis taught us, free speech is not just an end unto itself, or simply a freedom from Government meddling; it is also a necessary means of democratic self-governance.¹ In crafting the First Amendment, James Madison sought to insure political equality, especially in the face of economic inequalities. In the 20th century, Congress and the FCC have preserved Madison's vision by insuring that broadcasting helps promote free and open political deliberation. Broadcasters are, quite literally, an integral component of the electoral process. We trust them to provide equal time at equal rates to all political candidates. We count on them to share their monopoly access to publicly-owned spectrum with federal candidates, but we permit them to refuse unreasonable requests.

Third, over the air broadcasting is, and for many years to come, will remain, the single most important influence on how we vote, especially at the local level. The Internet is not very helpful in determining the outcome of a city council election.

Fourth, broadcasting, especially television, teaches us, about each other. Those of us fortunate to ride taxicabs and dine in fine restaurants know much less about the people who drive those cabs and bus the tables than *vice versa*. "We" need it more than "they" do.

Fifth, we're needlessly endangering this wonderful but deceptively fragile system.

This isn't about Mr. Karmazin and Mr. Redstone. They are businessmen playing the angles. In fact, before and after Mr. Redstone bought it, Viacom and my organization have worked closely together to promote diversity and open entry in programming markets, and to keep huge telephone companies, or at least one huge telephone company, from taking over a huge cable company, precisely because it threatened to squelch program diversity and competition. And we have supported Mr. Karmazin's vigorous defense of his right to make money by distributing material which is offensive to some, but constitutionally protected for all.

But the fact remains that Congress and the FCC have permitted a massive expansion of broadcasters' national and local audience reach first in radio, and now in TV. CBS and Viacom have moved to the front of the line, and their merger, if approved legitimates all the smaller ones already announced or which are soon to follow thereafter.

¹"Whitney"

The size and complexity of these transactions is mindnumbing. I choose to place particular attention on one seemingly small aspect of the CBS business, radio news.

It's not just that the combined CBS-Viacom operation will control as many as 8 radio stations and two TV stations. CBS has moved to bludgeon its way into the Internet by establishing a dominant presence in the Internet.² CBS' Country Music Channel and The Nashville Network provide some national news as well. Although Viacom's TV stations have disgraced themselves with having little or no locally originated programming at all, the company provides news on MTV, and some syndicated TV shows.

But there is much more.

To simplify things, I am going to lump together various related companies which have, among other things, one attribute. Mr. Karmazin now controls or manages them.

Public radio aside, CBS was, for at least six decades, the undisputed leader in quality and depth of its radio news, Westinghouse, perhaps number two in quality, merged with CBS a few years ago. When Mr. Karmazin's Infinity and Westwood One operations were merged in, he brought along the old Mutual News and the name, if nothing else, of NBC News.

Here's the part that is less well-understood. Infinity also owned what used to be called Shadow Traffic, but had been renamed Shadow Broadcasting Services. This past spring, Westwood One acquired what used to be called Metro Traffic, but is now called Metro Networks.

We all know the traffic services, which intelligently and efficiently permit radio and TV stations to share resources in reporting on rush hour traffic. But these two companies changed their names because they have branched out into what appears to be a much more expansive business radio and, more recently, television, newscasts.

This is a lot more than feeding a few taped "actualities" for clients to mix into its own newscasts. In most cases, Metro provides a complete turnkey newscast operation. The entire newscast is prepared by Metro or Shadow personnel in their studios. All the stations in the market use the same reports, even if delivered by different announcers, many of whom appear on several stations using different names.

More recently, Metro has begun to follow the outsourcing model. That "morning zoo" co-host in many cases now an employee of Metro—that is, Mr. Karmazin—and not the broadcaster who purportedly operates the station and supposedly provides source diversity to the marketplace of ideas.

I can't give you accurate figures in any particular market because Mr. Karmazin's companies do not disclose them. I'm asking him right now to tell us this morning about his newscast operations in any of the largest markets in the country.

But here's what I can tell you—Metro Networks alone is—by far—the largest producer of radio news in the country. Although its name is never mentioned on the air, Metro provides newscasts to some 155 TV stations and 1700 radio stations. Its *average* market penetration is 23 affiliates per market. Metro says that it provides news services in 67 of the top 75 markets, and that its newscasts are heard by 100 million people every day. It brags to advertisers that it offers them "the opportunity to reach a broad-based local, regional or national audience through a single purchase of commercial airtime inventory by Metro.

In a large market like Baltimore, which has about 40 radio stations and 12 TV stations, I believe Metro provides all or most of the news to about 25 radio stations—well over half and two TV stations.

So much for diversity. There is now, at most, one reporter covering City Hall for all those stations. There is no one to bring a different perspective, to provide the safety valve for a lazy, or even corrupt reporter willing to overlook a story for the wrong reason.

I'm not describing a trend. I'm describing the market as it exists today. Democracy and the FLA Amendment deserve better, but it is only going to get worse.

The CBS-Viacom combination is also profoundly anticompetitive. Small entrepreneurs are particularly threatened by the way in which broadcasters have restructured advertising markets by cross-selling, "format squeezes,"³ tie-ins and similar arrangements. As Mr. Karmazin told Barron's Magazine:

²Me relentless cross-promotion of its sports and financial news during NFL telecasts is just part of that effort.

³This is just what the name suggests. Group owners controlling eight or more stations in a market can use weaker properties as strategic assets by developing formats which attack an opponent's demographic niche, for example by targeting its younger listeners, thereby enabling their stronger partner to challenge the target station.

It used to be that [stations] competed, that media buyers would play [them] off against each other. Now we have the [CBS stations'] ad sales managers talk to each other every morning. That adds up to higher prices and better margins.

See "CBS Eye Looms Larger with ARS Deal," *Media Week*, October 6, 1997, p. 20. Even substantial TV groups can now be targeted and squeezed, as NBC is doing in San Francisco.⁴ These stations, which traditionally put mom resources into locally originated news and public affairs programming, will have to cut back to survive.

The impact is no less dangerous in national program markets. About six years ago, over the opposition of Viacom and Paramount, as well as public interest groups, the FCC permitted TV networks to produce their own prime time programming. Over the last several years, a trend has become a pattern: networks are showing creatively inferior self-produced programming reflecting mainstream, rather than more diverse casts. Even with somewhat lower audiences, this tactic is evidently more profitable to the networks.

This is no exaggeration: these changes also threaten the very structure of self-governance. Because we depend on broadcasting as the most important source of voter information, the sacrifice of program budgets and editorial independence ought to trouble us all. The networks are now managed by owners who often view serious journalism (as opposed to large blocks of soft self-promotion and celebrity gossip passed off as news) as a burden. Larry Grossman can tell you how Jack Welch told him that news was no longer "the core of the asset" at NBC.

Examples abound. Just this week, the New York Times reported that the Chair of the Consumer Product Safety Commission lost her status as a *Today Show* regular guest, and was relegated to ABC's *Good Morning America* when she wished to announce a recall of GE-manufactured dishwashers.

I am not saying that we should return to the days when William Paley said "You guys cover The news; I've got Jack Benny to make money for me."⁵ But I am saying, that broadcast consolidation presses even the best broadcasters to cut costs and reduce standards. When informing the public becomes a nuisance, not a duty, we are all the worse for it.

Senator DEWINE. Mr. Grossman.

STATEMENT OF LAWRENCE K. GROSSMAN

Mr. GROSSMAN. Thank you, Mr. Chairman. I have accepted your invitation to testify at this hearing not in order to oppose the merger of CBS and Viacom. I am certainly not a fan of these huge media mergers or of the increasing concentration of media ownership and a decrease in the diversity of news and programming sources that the recent spate of mergers is producing. New telecommunications technology is giving us many more channels, but current public policy is also giving us far fewer gatekeepers. However, in view of the past approvals of major media mergers, I am convinced that it would be hard to justify stopping CBS and Viacom from joining to produce one of the world's biggest multimedia entertainment conglomerates.

I do want to take this opportunity, however, to express to you my concern, first, that independent program producers risk becoming an endangered species when a shrinking number of major gatekeepers to national and international network distribution also own their own production facilities. Naturally and understandably, Disney and Fox and now Viacom, which owns Paramount, all prefer to choose the programs that they themselves produce, rather

⁴See "Battle by the Bay—NBC's Wright is Playing 'Hardball' to Get KRON-TV," *Broadcasting and Cable*, October 18, 1999, p. 6. ["NBC President Bob Wright sent a letter * * * executives describe as a thinly veiled threat that any buyer other than NBC will face significant, changes in KRON-TV's affiliation with NBC—possibly even termination * * * [T]he executive said, "they're going to lower the value of the television station to a point which they're willing to pay for it."]

⁵Dean Alger, *Megamedia* (1998), p. 60 (quoting Marvin Kalb).

than buy someone else's programs, and they are organizing their companies to make sure that that happens more often in the future, thereby reducing both competition and diversity.

But most important and the real reason I am here is to express my concern about the future of television news in this era of mega-mergers and consolidations. As we all know, most Americans get their news primarily from television, the single most important news medium by far in our democracy. So the commitment to responsible news gathering and news reporting by major companies like CBS/Viacom is essential to the quality of our democratic society.

In the press conference announcing the CBS/Viacom merger, I was dismayed that none of the principals uttered a single word about their goal for significantly improved news performance and about serving the public interest, about increasing quality children's programs, about the essential responsibility as public trustees of the public airwaves. The climax of their discussion was Mr. Karmazin's expressed personal goal to make Mr. Redstone even richer than Bill Gates as a result of the merger, which I regard as a laudable ambition, but we should expect far higher aspirations for a company that is so central to the quality of the information and ideas that the nation receives in the telecommunications age.

The concerns about the future of television news are real and important. The number of news channels is certainly multiplying in this telecommunications era, but the number of news sources is shrinking. The television networks are cutting the costs of their worldwide news gathering by closing bureaus left and right. We are seeing a kind of reverse funnel effect, in which more and more channels are pumping out the same news headlines gathered from a single all-purpose source, and that is happening not only internationally, but also, and of most concern, locally, as syndicated news services rather than individual radio and television station news staffs, whose numbers are also being slashed, gather what news that is reported.

On the network level, the years that have coincided with the major media mergers are marked by one singularly disturbing fact. Every top national television news organization has been embarrassed by a major news magazine scandal, suggesting a lowering of network news and corporate broadcasting standards and a growing carelessness about reporting accuracy.

In 1993, NBC was forced to apologize to General Motors and pay millions of dollars in legal fees because of a faked investigative report on "Dateline" that planted an incendiary device in a General Motors truck.

Two years later, ABC, while in the midst of its merger with Disney, apologized to Philip Morris and paid \$15 million in legal costs for a story on its news magazine "Day One," alleging that the tobacco company spiked its cigarettes with nicotine, even though many thought the piece was right on target.

Later that year came the "60 Minutes" tobacco debacle on CBS, now, by the way, the subject of a Disney feature film starring Al Pacino, just at the time that CBS was merging with Westinghouse.

And in 1998, CNN joined the malfeasance parade, repudiating its own investigative report on Operation Tailwind. It was a story also

featured in Time magazine, which was a questionable demonstration of the much-vaunted benefits of synergy achieved by joint media ownership.

Certainly, not all these major journalistic and corporate transgressions can be blamed on the mergers, but it is unlikely that they would have happened in an earlier, more responsible era of network news. Much of it has to do with the diminishing importance of news in the organizational charts and balance sheets of today's vast media entertainment conglomerates. Once the centerpiece of the nation's major broadcasting companies, led proudly by CBS News, I might add, television news has now become marginalized, a very small piece on the fringe of a giant entertainment complex.

Part of the problem also has to do with the lowering of television's journalistic standards, the tabloidization of TV news, and the blurring of the line between news and entertainment in today's no-holds-barred race for ratings and profit, caused in great part by the bottom-line emphasis of these giant mergers.

It used to be that the flagship programs of the television networks' news divisions were their nightly news reports, prime time documentaries, and live news event coverage. Today, the flagship network news programs are the programs that make the most money, the primetime magazine shows, most of which offer essentially nonfiction entertainment rather than meaningful news of the world.

In conclusion, I would urge the members of this committee to ask the principals of CBS and Viacom here in this room for their long-term commitment to preserve and enhance the quality and character of CBS News, to commit their company to responsible and thorough worldwide national and local news gathering and news reporting, to refrain from interfering with the content and quality of the news regardless of their immediate financial interest, and to recognize and acknowledge their paramount responsibility as trustees of the public airways to provide the resources needed for thorough and responsible news gathering and news reporting on CBS and its stations. After all, the station licenses that CBS holds as a public trustee constitute by far most of the company's financial value in its merger with Viacom, and you should insist that its valuable trusteeship will be honored. Thank you.

Senator DEWINE. Thank you very much.

Professor Waterman.

STATEMENT OF DAVID WATERMAN

Mr. WATERMAN. Thank you, Mr. Chairman. I also very much appreciate the opportunity to appear on this panel.

I have spent most of my career studying the economics of media industries and I share the view that you and Senator Kohl and others have expressed that media mergers should endure especially close policy scrutiny. Like other mergers adverse effects on prices, output levels, and economic welfare in general can result. But I acknowledge an overriding need to preserve a diversity of voices or a free marketplace of ideas in our society.

Generally speaking, I think that the CBS/Viacom merger is not likely to be a serious threat, either to economic welfare or to a free marketplace of ideas. Necessarily, though, my own review of the

merger is preliminary and cursory, and I will, therefore, speak as much about what I think are the appropriate criteria for evaluating these media mergers as about the CBS/Viacom deal itself.

In that regard, the main point I want to make is that I believe we need to focus on how a merger may create horizontal market concentration within particular media markets, appropriately defined, rather than size or breadth of operation, or for the most part, the extent of vertical integration.

Regarding the concerns about size, I think it is important to consider the growth of media firms relative to growth of the media industries themselves. In 1977, CBS, Incorporated, was by far the largest media conglomerate in the United States, with annual media revenues of \$2.3 billion, at that time mainly television and radio broadcasting, music, publishing, and magazines. Twenty years later, in 1997, the combined media revenues of CBS and Viacom were \$14.4 billion, about six times that of the old CBS.

But during that same 20-year period, total consumer plus advertising spending on media in the United States rose from approximately \$40 billion to \$234 billion. That is also about a six-fold increase. So the new CBS/Viacom would not only account for a fairly minor proportion of total media business, all considered, in the United States, it would be only slightly larger than the CBS of 20 years before.

Several of the media that CBS and Viacom are involved in, video cassettes and cable networking, in particular, barely existed 20 years ago, and in spite of all the new competition, most of the established industries, including broadcasting, have expanded briskly over the same time frame.

I think the evidence earlier cited that the media are falling into fewer and fewer hands is not supported by the evidence. What is most important in any case, I believe, from a policy standpoint, is not size but how a media merger changes the degree of horizontal ownership concentration within individual media industry segments.

For example, does concentration in broadcast TV networking, broadcast station ownership, cable networking, et cetera, or perhaps all of the media within a local market, reach levels that risk anticompetitive behavior or threaten the diversity of ideas?

Let us consider first the economic perspective. From casual observation, at least, it seems to me unlikely that the increases in concentration in television station ownership or television network ownership due to the proposed merger would turn out to be excessive in antitrust terms, at least at the national level. But I emphasize, Justice Department scrutiny of these combinations is very important, though, especially at the local market level. For example, it is quite possible that excessive cross-ownership of radio, television, and other media outlets would have an adverse effect on competition for advertising within particular local markets, as Senator DeWine mentioned. We need to ensure that local market shares in each of the individual media, or in the media as a whole, remain low.

Also, the merger of UPN and CBS, due to the special circumstances of the broadcast industry, does raise important competitive questions that need to be considered.

Now, from a diversity of voices perspective, I think the same general criteria should apply. That is, concentration within individual industry segments or local market areas, but I also recognize the media as a whole, is important. What the right thresholds of ownership concentration are, I think, is a different matter. They should probably be stricter than economic criteria. I think that diversity of voices is more important than competition and efficiency, and this is especially true regarding news and information. But where those thresholds fall is really a matter of political judgment on which I claim no particular expertise. But I think a historical perspective is again useful. Media chains and cross-ownership are growing, but the media outlets are themselves growing, I think, as fast, or probably faster.

Let me turn briefly to the question of vertical integration. The merging of Viacom's substantial TV production and programming resources with the CBS network has attracted a lot of attention. The concern there is that CBS network would favor the programming produced by the suppliers that it owns to the exclusion of independent or unaffiliated producers. This is an important concern, because free entry and programming supply promote both economic welfare and a diversity of voices.

I think we can, in fact, expect a TV network to lean toward exhibition of programs in which it has an ownership interest. I doubt, though, that the merger would result in very serious vertical foreclosure effects from either an antitrust perspective or diversity of voices perspective.

First, unaffiliated program suppliers retain substantial alternative channels of distribution. Also, and I think this is perhaps most important, there are very powerful constraints on self-dealing in this type of market. From the network's perspective, it is self-destructive to exhibit programs that will not attract the highest or most valuable audience possible, and vice-versa from the producers' perspective. They need the best and most appropriate outlets for their programs. More generally, I think, broadcast networks have no way of predicting where the best ideas from their programs will come from and they cannot afford to close or restrict those channels.

To summarize, in general, I just want to say that I think that the most important step in any merger analysis is to begin by asking the right questions. The main one, again, should be about the extent to which they create excessive concentration within particular markets, however appropriately defined. Their sheer size or breadth of operation are not, in my opinion, of very much significance. Also, while vertical integration can have important harmful effects under certain circumstances, the amount of attention it receives in the public forum is, in my opinion, out of proportion to its real consequences. Thank you very much.

Senator DEWINE. Thank you.

[The prepared statement of Mr. Waterman follows:]

PREPARED STATEMENT OF DAVID WATERMAN

My name is David Waterman. I am Associate Professor in the Department of Telecommunications, Indiana University, Bloomington. I have spent most of my career studying the economics of media industries.

I share the view of many others that media mergers should be subject to especially close policy scrutiny. Like mergers in other industries, they may have adverse effects on prices, output levels, and other elements of economic welfare. I believe that there is also an overriding need to preserve a diversity of voices, or a free “marketplace of ideas,” in our society.

Generally speaking, I think that the CBS-Viacom merger is unlikely to pose a serious threat either to economic welfare or to a free marketplace of ideas. Necessarily, my analysis of this merger is preliminary. Pending a more detailed analysis, which both the Justice Dept. and the FCC will no doubt conduct, I will therefore speak as much about what I regard as the appropriate criteria for evaluating media mergers, as about the CBS-Viacom combination itself.

Much concern has been expressed about the sheer size and range of media interests that media conglomerates, notably CBS-Viacom, are now attaining. It is important, however, to consider the growth of media firms relative to growth of the media industries themselves. In 1977, CBS, Inc. was by far the largest media conglomerate in the United States, having annual media revenues of \$2.3 billion, mainly from television and radio broadcasting, music publishing, and magazines. Twenty years later, in 1997, the combined media revenues of CBS and Viacom were \$14.4 billion, approximately 6.2 times that of the old CBS. During that same 20 year period, however, total consumer plus advertiser spending on media in the United States rose from approximately \$40 billion to \$234 billion, a 5.9 fold increase.¹

Thus, the new CBS-Viacom would not only account for a fairly minor proportion of total media revenues in the U.S. It would, in these terms, be only slightly larger than the CBS of 20 years before.² Several of the media industries that CBS or Viacom are now involved in, notably videocassette distribution and cable networking, barely existed two decades ago. And in spite of all the new competition, most of the established media—including broadcasting—have expanded briskly over that time period as well.

What is most important from a policy standpoint is in any case not the overall size of a media conglomerate. Rather, we should be mainly concerned with how a media merger changes the degree of ownership concentration within individual media industry segments. For example, does concentration in broadcast networking, broadcast station ownership, cable networking, magazine publishing, etc., reach levels that risk anticompetitive behavior or jeopardize a free marketplace of ideas?

Consider first the economic perspective. It seems unlikely that the concentration increases in television station or television network ownership due to the proposed CBS-Viacom merger would raise serious antitrust concerns, at least at the national level. Justice Dept. scrutiny of these combinations is important, however, especially at the local market level. It is impossible that excessive cross-ownership of radio, television, and other media outlets would have adverse effects on competition for advertising within particular local market areas. We need to ensure that local market shares in each of the individual media (and among the media as a whole) remain low. If they do, harmful economic effects on advertising prices or other economic measures are unlikely to result.

From a market-place-of-ideas perspective, the concentration of media ownership within particular industry segments (or within certain local market areas) is also the appropriate criteria for merger evaluation. Most important in my opinion is diversity of ownership of news and information outlets.

In general, I think that such diversity concerns before efficiency. The proper thresholds of market concentration may be quite different on the marketplace-of-ideas vs. economic criteria. What the appropriate limits on the number of independent voices in television, radio, or broadcasting more generally, are, is a matter of political judgement upon which I claim no special expertise. Some historical perspective, however, is again useful. While television, radio, and other media chains are becoming larger, and media cross-ownership has increased, the number of media outlets that citizens have available, including those offering news and information, appear to be growing as fast or faster.

One feature of this proposed merger that has attracted much attention is the vertical integration of substantial television production and programming resources owned by Viacom with the distribution facility of the CBS television network. A

¹Media are considered to include broadcast television and radio, cable television, other multi-channel video distributors, home video rentals and sales, movie theatres, newspapers, magazines, books, records and Internet advertising. Source: Annual 10-K reports, U.S. Dept. of Commerce, Newspaper Publishers Association, Paul Kagan Associates, Benjamin Compaine.

²Media revenues of the largest media conglomerate in the United States, Time-Warner, were approximately \$22.3 billion in 1997, half again as large as CBS + Viacom, although a relatively high proportion of its revenues are derived from foreign markets.

widely expressed apprehension is that after the merger, the CBS network would favor programming produced by the suppliers that it owns, to the exclusion of independent or unaffiliated producers. This is an important concern because free entry in programming supply promotes both economic welfare and a healthy marketplace of ideas.

We can, in fact, expect a television network to lean toward exhibition of programming in which the firm has an ownership interest. From a marketplace-of-ideas perspective, such favoritism is of inherent concern. I doubt, however, that the CBS-Viacom merger would result in very serious foreclosure effects from either an anti-trust or diversity of voices perspective. First, unaffiliated program suppliers would retain substantial alternative channels of distribution. Also, the competitive environment imposes powerful constraints on self-dealing in this market. From the network's perspective, exhibiting programs that are not expected to attract the highest or most valuable audience possible is self-destructive. From the producer's perspective, accepting distribution on any less than the best or most appropriate outlet is equally costly. More generally, broadcast networks have no way of predicting where the best ideas for their programs will come from, and they cannot afford to close or restrict those channels. The power of these incentives is demonstrated by the high degree to which prime time network programs are now bought from independent suppliers or are cross-traded between vertically integrated network and programming suppliers.

In summary, the main policy concern with media mergers, including CBS-Viacom, should be the degree to which they may create excessive horizontal market concentration within particular media industry segments (e.g., broadcast television networking) or within local market areas. Their sheer size or breadth of operation are not in my opinion of much significance. Also, while vertical integration can have important harmful effects on economic or social welfare, the amount of attention that vertical ownership receives in the public forum is out of proportion to its real consequences. The most important step in any merger analysis, therefore, is to begin by asking the right questions.

Senator DEWINE. Thank you all very much. That is very helpful.

Mr. Redstone and Mr. Karmazin, that was quite a press conference you all had. You got everybody's attention. It has been quoted here four or five times today. I wonder if you would respond to Mr. Grossman's comment and others' comments in regard to the fact that at this press conference, there was no mention about quality as far as children's programming, no mention about the quality of news.

Mr. REDSTONE. Let me comment just for a moment.

Senator DEWINE. You can take issue with the premise, even, if you want to.

Mr. REDSTONE. And then I will turn this over to my new boss.

Senator DEWINE. You need to pull that closer, sir. We need to hear you.

Mr. REDSTONE. As I said, let me comment about this and then I will turn it over to my new boss, Mr. Karmazin. We did not intend to cover every subject, and I do not see how anyone could raise questions about the quality of children's programming. Nickelodeon is hailed by teachers, by parents, and also by the children themselves as a wonderful contribution to children's programming. That is why it has more than 50 percent of all the rating points, not because of any kind of power, but because of the quality of the programming.

So when you look at Nickelodeon and you talk about the issues you have raised, you think about Nickelodeon's programs like "Big Help," where children are empowered to commit their time to their communities rather than to be on the streets.

So I just want to comment briefly on that aspect of the subject. We were not purporting to cover the world in that limited press conference, but I do not think anybody could take a contrary view

to the one I expressed, that Nickelodeon stands for quality programming.

Let me turn this over to Mel.

Mr. KARMAZIN. I did not say I love America, either, and I do. Quality programming and integrity of news is something that is so obvious when you are a trustee of a license that you do not need to say that. It goes with the territory. We have all been broadcasters for a long time and we know what that responsibility means.

Senator DEWINE. Let me follow up with that. Mr. Grossman had some, I would say, fairly critical comments about what has happened with broadcast news. This has been a drumbeat that we have heard for some time as far as shutting off foreign outlets or shutting off foreign bureaus, et cetera. I just wondered if you would want to comment on that.

Mr. KARMAZIN. Sure. Mr. Chairman—

Senator DEWINE. What I want to do is, first, give you an opportunity to answer some of these things that have been stated here.

Mr. KARMAZIN. Mr. Chairman, I will do anything that you want me to do. This merger has nothing to do with CBS News. Viacom is currently not in the news business at all, so that any changes that we wanted to make within CBS News, we could have made within CBS News. But the facts support just the contrary. If there is anything going on, we are supporting and putting more money and investing more into CBS News. We are very proud of "60 Minutes" and "60 Minutes II." Dan Rather's evening news is still being broadcast, and we spend a considerable, an incredible amount of money to do that half-hour program. On Monday, we are going to start a new morning news show, hopefully to be competitive with the other networks, that would star Bryant Gumbel.

So I would support that the facts are to the contrary, that there is more of an investment, more of a commitment on the part of CBS in news, and the fact that—I heard some reference earlier to Shadow and Metro. It seems to me that there are more people now doing news. So on one hand, it is worse if there are less, but when new entries come in to do news, that, too, many not be perceived by some people as being good.

I will give you another great example of where this merger is benefiting the public, is that there is an awful lot of Paramount stations that do not do news at all. They currently are not doing news in markets where CBS has a television station and we obviously do do news. The opportunity exists for us to serve the public by providing a 10 o'clock news on a UPN station or Viacom station and an 11 o'clock news on a CBS station. So it is just the opposite. I think there are great public service advantages to this merger.

Senator DEWINE. You mentioned Metro. I was sort of intrigued by the comments about Metro. Do you want to tell us a little bit about that, your side of that story?

Mr. KARMAZIN. I am not sure I know what there is to tell about it. Certainly, a company called Westwood One, which is a separate publicly-traded company with separate shareholders and had Shadow Traffic, acquired Metro. It went through the Department of Justice. Obviously—

Senator DEWINE. Well, no, excuse me. We are not talking about the legalities here. We are talking about the statement that was made by Mr. Schwartzman in regard to this that, basically, you are getting the same news on station after station after station in the same market. It is different stations, yes, maybe different people with different title of news director, but the allegation was—and we are not saying there is anything illegal about it. What we are here today to talk about is public policy. Is that true, and what is your comment about the public policy?

Mr. KARMAZIN. I think as a public policy, it has served the country well to have the Telecommunications Act of 1996, because the radio business was suffering and losing money. There were 5,000 stations losing money, so stations were cutting news because they could not make money. The fact is that there are more stations doing news today since the Telecommunications Act passed because they now have the services of companies that were created to provide news for stations that were not in the news business.

It was mentioned earlier that CBS and Westinghouse combined. The record is clear, because someone can go to New York City and they can see that we own WCBS Radio and WINS Radio, two all-news stations, totally separate newsrooms, not consolidated, not even at the same location. Neither one of them are at the same location as our television stations, each with individual news directors.

So the fact is that in any market in the country, I believe that there is more news being presented. It may, in fact, be done by few people because the economics are such that you cannot have 20 people doing news for radio because the radio business was a bad business in those days and stations were going dark.

Senator DEWINE. So your bottom line—I do not want to belabor this point, but your bottom line is, I can pick it up on more stations. I might have XYZ station. None of the three of them might be carrying news but for this. What you are saying is I am better off as a consumer to be getting news on a whole bunch of different stations, some of them which would not have had any news, even if the news is all the same, even if it comes basically from the same source.

Mr. KARMAZIN. I think what I am saying is that if given the alternative for radio stations to fully staff a news organization or, as an alternative, they will not present news at all, so the fact that there are outside sources that are able to provide the press conference coverage—I mean, it is a little bizarre to me to see all of these people here taking individual pictures and a lot of companies cannot afford to have photographers here. So the fact that somebody is going to take the picture and sell it to a bunch of newspapers, I think that makes a whole lot of sense. If not, they would not get the picture. It is not like—

Senator DEWINE. With all due respect, that is a little different. That is a little different than how the news is presented over the air, and this is not a major point of this hearing. I just was trying to get it clarified. But I want to go back to what I asked you, and I was trying to be fair to you. All you are saying is, I am better off as a consumer having it on 10 different stations, whereas if but for what you are doing with Metro, I might only be getting it on

five. The only counterpoint to that is, it is coming out of the same source and we just accept that.

Mr. KARMAZIN. Possibly, Mr. Chairman, but what I am also saying is that each of these radio stations have separate licensees and separate people who are there to serve their community. If the news product that they were presenting on their radio station was not what they wanted to present to their audience, it would not be on. It is not a decision on the part of Metro—

Senator DEWINE. Well, that is stating the obvious, I think.

Mr. KARMAZIN. OK; as long as we agree with that, then that is fine.

Senator DEWINE. I am just trying to get what the basic facts are and taking what Mr. Schwartzman said and whether you agree with his basic facts or not.

Mr. KARMAZIN. I do not agree because of the relevancy and the size of Metro traffic, Metro news or sports news, is so minimal. There are just not a lot of major television stations or radio stations that are doing it. They are using it as a source. They are getting some content.

Senator DEWINE. Again, I think you are protesting too much. It is, again, not that huge, central part of this hearing. But he went beyond that. He said other forms of content of news coming out. It was not just the sports or traffic. It was everything that he was talking about. I was just trying to get what the facts are.

Mr. KARMAZIN. I will not protest anymore, then.

Senator DEWINE. No, you can protest. I am just trying to get you to give me the facts and tell me where his facts are wrong.

Mr. KARMAZIN. The facts are that there is a company that is called Metro Traffic and Shadow Traffic, Shadow Services and Metro Services, and one of the services that they provide to the broadcasting industry is that they provide news, sports, and certain type of entertainment programming. I cannot tell you in every single market the number of stations. But I also should say that that is not part of CBS and it is not part of Viacom.

Senator DEWINE. One last question and then I will turn to Senator Kohl. Mr. Redstone and Mr. Karmazin, you have made clear in your written testimony and in your comments here today that you believe this deal will pass muster with the antitrust agencies and with the Federal Communications Commission, and I can certainly appreciate this point of view. There is limited overlap in the markets that you currently serve and it does seem likely that you will be able to comply with the FCC regulations one way or the other.

Still, putting aside any issues of antitrust law, as a U.S. Senator from Ohio and as a consumer, I still have some concerns about what this deal means in the long run. Mr. Redstone, you yourself have stated that the merged Viacom/CBS will be the "king of content," and that leaves a perception, at least, that Viacom in some sense will be part of a very small group of companies that has very significant control over the flow of information to American citizens. I wonder if you can address those concerns for us—

Mr. REDSTONE. I would like to—

Senator DEWINE [continuing]. And if I could finish, and what are the long-term implications for the entertainment and media industry.

My point, gentlemen, is that this committee is the Antitrust Committee. It is also the Competition Committee. I think there are some very significant issues of public policy that are at stake here that go beyond whether or not there is a technical compliance with the antitrust law or whether you can make the changes that the Justice Department may require you to make.

Mr. REDSTONE. I would be glad to answer that, but I would like to start with a small subject matter which bears on this that was raised before, and it deals with this general issue, and that is whether independent programmers, for example, will be denied access to, say, CBS because of its relationship with Paramount. That goes to the heart of the matter.

That course of action would be totally self-destructive. If CBS confined its purchase of programming to Paramount programming, it would be destructive of CBS. CBS's job is to get the best programming it can from anybody, from an independent program, from somebody with a new idea, and Paramount's job is to sell its programs to the highest bidder. So you will see none of that in this merger and that is one issue that has been raised about the merger. There are other companies that look at this differently. We do not. This is not an area for synergy.

As far as the long-range implications of this merger, I think it will only enhance competition. Why? Because when you look at each element of our business, CBS is subject to enormous competition. CBS has competition from three major networks and from two minor networks. Paramount is subject to enormous competition, and by whom? Not small companies—Time Warner, Columbia, Seagrams, Newcorps. Take every one of our single businesses we have. It is true that CBS has a prominent position in radio. They own one-and-a-half percent of the radio stations in the United States. They may do better than others, but that is because of the quality of the programming on there. We have no interest in outdoor advertising. They do. It is hard for me to see, and there are many businesses that I have said that we are in, like publishing, like parks, like video rentals—Blockbuster is very important to us—they have nothing to do with that.

So it is hard to see why there would be any long-range difficulties, long-range negatives to this kind of a merger. Unlike other mergers, we are not concentrating anything. As was pointed out, we may be a big company, but the media industry is very big. Look at who our competitors are. The major companies in the media industry all compete with us on an overall basis.

Senator DEWINE. Mr. Karmazin.

Mr. KARMAZIN. No, I think in every one of our individual businesses, I think the relevant thing is that we have an awful lot of competition, whether it be in the television business, in the outdoor business, in the radio business. But I cannot underestimate and talk about the importance of the new technology that is coming out there. There are currently 1,800 radio stations on the Internet, and there are all kinds of ideas coming out every day about broadband and streaming video and the importance of that.

So the competitive landscape is moving so rapidly—so rapidly—that it is unfair to not consider that when they are competing with us for advertising dollars, for viewers. Washington has not figured out a way to expand the day beyond the 24 hours. So if you believe that people are using the computer more, then the time that they are spending on that computer is taking it away from something, and it is taking it away from television, it is taking it away from watching radio, and it is making our business more competitive.

So I think that there are existing FCC regulations, as someone who has gone through it a long time, there are existing DOJ regulations, and all of them deal with the issues that this committee is also concerned about. I think that there is plenty of competition for this new company. We are not even the biggest company in the media business, let alone that the biggest company in the media business is not really a big company in the scope of bigness.

Mr. REDSTONE. May I also add, because I think you want to know what the advantages are. Is there not an advantage to this country where the export of information and entertainment is so important that MTV is now in 300 million households around the world? That Nickelodeon is now in 140 countries. It just went into India, for example. I see that as an advantage, not as a disadvantage, in terms of the public interest of this country, and to the extent that we become stronger as a company and enabling us to do that more.

For example, some of the CBS product, could not Paramount help in distributing that product? The infrastructure of Paramount is all over the world.

I am saying, I think that it is OK and it is appropriate to look at possible concerns about this merger, although we say they are little because we have such competition in every area of the business. I think we should also look at the advantages of the merger.

Senator DEWINE. Senator Kohl.

Senator KOHL. Thank you. Continuing on, Mr. Redstone and Mr. Karmazin, obviously, you both contend that this merger does not violate any antitrust concerns. Where do we draw the line in the sand? What kinds of mergers, what companies would you suggest whose merger would violate antitrust concerns?

Mr. REDSTONE. Well, I certainly would not identify any particular companies, but I think where you have a merger, where you have competing parties and you are going to eliminate competition, I certainly think that would be a merger that would not fly and should not fly, and I doubt that the regulatory authorities would permit it to fly.

Where you have a merger where you have one business and you are going to end up with more concentration in that business, which is unlike this because the business is different, I think that kind of a merger would warrant scrutiny. And, frankly, where you have a merger which would, in your view, impede the free flow of information, and there are some mergers that have historically run that risk. I testified here on one of them some time ago. Then I think you have to take a good look at that, but I do not think that exists here.

Senator KOHL. Your partner, who is the chairman of CBS, said when he was the chairman of CBS that he would like to buy NBC. How does that strike you?

Mr. REDSTONE. He was on the wrong track. What he should have been looking to buy—

Senator KOHL. He was on the wrong track?

Mr. KARMAZIN. He wanted me to buy UPN. What I was saying then, and I believe today, is that there is so much competition, there is so much competition, to preserve free over-the-air broadcasting, which I think should be an important agenda, needs to have some consolidation. The number of channels that we have now, CBS is allowed to have one. There used to be only 5, or 6, or 7 channels. There are now—talk about 500, but I know I have 76 channels that are available to me.

If we were to take the UPN network—it is not ours, but if we were to take the UPN network and put it on cable, the only people who would get hurt are the poor people that do not have cable, because there is no rule that says we cannot do that. If we were to create a new CBS network, CBS II, there are no rules that say we cannot create a second network. As a matter of fact, that would be looked upon as being procompetitive, to have another network.

What exists today are these rules that were done in different times and with no consideration to broadband, no consideration to what has happened in cable, no consideration to the new technology, and we think that the, what I was saying at that time, is the ability to own two networks is not an unreasonable position. But that is not what we are here proposing. We are proposing—

Senator KOHL. We are trying to get at when do you believe we step over the line.

Mr. KARMAZIN. I believe that you are in a better position and the DOJ is in a better position to determine that. But I know that on this deal, we have not, for the reasons that we have submitted.

Senator KOHL. Any comment on that, Mr. Grossman?

Mr. GROSSMAN. First of all, I am delighted to hear the commitment to maintain and, in fact, expand CBS News and its quality. I think we have to start looking underneath. There certainly is plenty of competition, but the reality is that in the news gathering, and radio is a prime example of that, there are some 15 all-news radio stations, of which CBS now owns four, two in Los Angeles and two in New York, but by and large, there are no radio stations in the country that have their own, or very few that have their own independent news staffs left.

So while there is much competition, there is a tightening of that pipeline in terms of the actual gathering of news. People are spilling out, as we see with the O.J. Simpson phenomenon and the other stories that so dominate the headlines, the same stories over and over again. The emphasis on news has been increasingly in the areas that make money, do not cost money, which is entertainment, in effect, the prime time news magazines, which largely do not cover the major issues around the world.

I think we have to look very hard at the quality of the information that American society is being given through this most important medium, and I think we have to start addressing the issues of the diversity of sources of news, because while there is much

competition, there are very few companies that are doing major jobs in the news reporting and news gathering in the broadcasting area.

Senator KOHL. Does he not make good sense?

Mr. KARMAZIN. No; his facts are wrong. I think we can argue opinion, but not facts. In talking about New York City, in New York City, there are, as was mentioned, we have two all-news stations. There is a separate news department at the Chris-Craft TV station, at the Tribune TV station, at the Disney TV station, at the Fox TV station, and at the NBC TV station. There are, in addition to the all-news stations, radio stations that operate separate news operations that do not get their news from the Metro Traffic services or from Shadow traffic services.

So I do not know if there is a number that somebody wants to say is the right number, but in the markets that we are talking about on our deal, there are plenty of news gathering companies.

We spend, and I find it is just so peculiar, the amount of money that we spend covering the world, not for the half-hour of nightly news but just in case war breaks out, or just in case, God forbid, there is a tragedy—and I am proud of the job that CBS does. And again, this merger and what we are here to talk about is not about—if we wanted to cut the news costs at CBS, we could have long done that. This has nothing to do with Viacom. There is no cost there.

The only thing that is coming in and the only thing that I think this committee should be concerned about is Viacom is bringing in a very healthy company, something that has some very profitable cable networks, a profitable studio, and that could make CBS stronger. And if CBS is stronger, then we can provide more news and operate more bureaus and operate more programming devoted to news, and that has been our track record and we can demonstrate that.

Senator KOHL. What is your participation in CBS News?

Mr. KARMAZIN. My participation in CBS News is that when I see—Andrew Hayward is the president of CBS News. Dan Rather is the managing editor. Don Hewitt and Mike Wallace and all those guys are there. I say hello to them and I thank them. But if the question is, am I involved in the process of selecting stories, deciding, no, I have not, and there has not been one example, not one example in my 30 years of involvement in broadcasting, where I would interfere with news. It just does not go in line with being a broadcaster. I think that—

Senator KOHL. Are you comfortable with that statement, Mr. Grossman?

Mr. KARMAZIN. I think if you know those people, and I know he does, that he is aware that Don Hewitt is running "60 Minutes" and Andrew Hayward is running that.

Mr. GROSSMAN. I think one of the great virtues of Mr. Karmazin's experience as a broadcaster is that he knows the limits and is aware of the sensitivity and is concerned about not interfering with news. I will not say that about all new owners of television or broadcast companies. But eventually, they learn.

I still think there is a major problem. I will give you a very good example. We are talking about radio. When NBC Radio was sold

to Westwood One, it was given the right to use NBC Radio News on the air and identify itself as such, even though NBC News had absolutely no editorial oversight or responsibility for it. And the fact is that it came out of a central pipeline, as Andrew Schwartzman very accurately described it, so that what people were getting was not NBC News at all. They were getting some syndicated service that was simply slapped on the identification of NBC News. I think we have to be very careful about looking at the authenticity and the diversity of news sources, not just news broadcasting.

Senator KOHL. Mr. Waterman.

Mr. WATERMAN. You asked originally, what are the limits. I think a good example of a bad merger would be CBS and NBC because of the concentration that creates in not only news delivery but in broadcast television networking, or how about Viacom and Time Warner. These are things that create a large concentration within particular market segments, like cable TV programming.

Just another comment, though. All the news may look the same, but there is certainly an awful lot more of it. What is really important is the number of separate owners. I do not think the stories, that you hear about the fact that one company owns two networks in one market and they tell you a story about how the news is very different and independent from one station to another. I do not think that those are really relevant comparisons.

I think that what your role has to be and the Antitrust Division of the FCC is to make sure there are enough separate owners of outlets of news and information so that that problem is not at risk.

Senator KOHL. One other question. Gentlemen, I have a friend who owns a couple of radio stations in Milwaukee. As a result of the radio consolidation that we have seen, and especially the pending Clear Channel AM-FM merger, my friend worries that he will not be able to compete and sell advertising on his stations, particularly when he is faced with the large market clout offered by large conglomerates. He gets a lot of offers to sell his stations to the "big guys," but he does not want to. He likes being part of the local community and feels a responsibility as an African-American to ensure that minority voices are represented on radio.

Mr. KARMAZIN, are my friend's concerns, and they are well-documented and long-standing—he has been in business for a long, long time—are his concerns legitimate? Are small radio station owners today doomed in the marketplace? Will small broadcasters be able to compete with your multimedia conglomerates in the battle for listeners and advertisers?

Mr. KARMAZIN. Yes; I believe that if, in fact, somebody has some good programming ideas and are operating their radio stations well, they can compete. Senator, I do not know if you are familiar with Beaver Dam, WI. It is just right outside of Madison. I have a son who owns four radio stations there and he is competing with a company called Clear Channel and my son is making an awful lot of money as an independent operator, with no help for his father, that is for sure—

Senator KOHL. Does he live there?

Mr. KARMAZIN. He lives there, yes, and votes there. [Laughter.]

Just joking. But he is a resident of Beaver Dam, WI, and he competes with Clear Channel.

It is interesting to note that you mentioned the Clear Channel merger, and it has gotten a lot of attention and has some 800 or 900 radio stations. Of that number of stations, 540 of them have revenues of under \$2 million, and that is the problem of the radio business, is that it is a very fragmented business and one that there were so many stations that were losing money that the consolidation was necessary.

If there is one newspaper, and again talking about local advertising in a market, in a given market, the Washington Post here in Washington, if you were to take the amount of advertising that somebody would have owning a bunch of radio stations and having some outdoor, and if you were to aggregate all of the advertising in Washington, which would include the Post and the Times and everything else, you would see that this company is a very, very small piece, even in the local market of total advertising, when you look at the newspapers.

So, no, I think that newspapers get 22 percent. The advertising pie in America is a little over \$200 billion. Newspapers get 22 percent of that pie, and in most markets, it is the newspaper that really has the monopoly. We are not complaining about that, but what was necessary was consolidation to be able to go after some of the advertisers that are in the newspapers, and it is very hard to talk about concentration when the radio business is today 7 percent of the advertising pie, the outdoor industry is 2 percent of the advertising pie, and the cable business is 7 percent of the advertising pie.

On competition, the FCC made it very clear on these local ownership rules that when they are allowing to operate, when they are going to allow two stations, there needs to be at least an independent television station voice in that market, and they have also said that two of the top four stations within a market cannot combine. So even where somebody is going to own two television stations in a market, they are not going to have the two top stations, because they cannot do that under the regulation.

Senator KOHL. Mr. Schwartzman.

Mr. SCHWARTZMAN. Yes; as to that last, with respect to the independent voices, the independent television stations and the National Association of Broadcasters last week asked on reconsideration for the FCC to abolish those eight-voice tests, and I guess I hear Mr. Karmazin disagreeing and wanting to support them, and I look forward to seeing CBS file at the FCC in support of retaining those eight-voice limits.

I would like to say, I thought the example of Mr. Karmazin's son is kind of interesting because it also addresses some stuff that came up earlier. I do not think that anybody needs to say much to the competitors of those radio stations that Mr. Karmazin's son owns, for them not to face especially aggressive or really strong-arm tactics. I can just see the discussion.

His father is Mel Karmazin. I am not sure we really want to fool around with him. Mr. Karmazin does not have to do anything. There is nothing wrong. His son should be in business. It is just

that his son is blessed because there is a kind of self-restraint, and that is the problem in the news area, as well.

I do not think for a minute that Mr. Karmazin is going to interfere with a news operation. He knows better. But there are lots of people in the newsroom who may not realize that. The biggest problems, and Larry Grossman has written about and cited numerous examples he could explain to you, is self-censorship.

Suppose, for example, one of these horrible nightmares, a parent's nightmare, a teenage kid involved in an accident and there is alcohol and cars and this kind of thing, and the guy sitting in the TV station newsroom says, you know, that kid is the owner's son, or even the owner's next-door neighbor. I am not sure we really need to lead the newscast with this story. What do you think? There is no need for any kind of interference.

Now, if you take Shadow Traffic, now Shadow Broadcast Services, Metro Traffic, now Metro Networks, which as best as I know it provides full turnkey services—it is the complete news department for over half the radio stations in Baltimore, and I invite Mr. Karmazin to give me real numbers so that I cannot try to have to pull them together on my own—if you have got that situation, so you do not have 23 different radio stations and 23 news directors each making their own news judgment and you are dependent on one person making that news judgment and that one news judgment is an erroneous one, the assumption that they should shade the news in favor of the boss, or the boss's best friend or the boss's business partner, that is the problem.

Senator KOHL. Thank you very much. Your son, Mr. Karmazin.

Mr. KARMAZIN. My son.

Senator KOHL. Is he a good Democrat? [Laughter.]

Mr. KARMAZIN. Listen, I do not want to get in trouble.

Senator DEWINE. Good answer.

I have a statement by Senator Leahy which we will insert in the record, without objection, at this point.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE
STATE OF VERMONT

Mr. Chariman: Thank you for holding this hearing.

My guess is that we are going to hear a lot about synergy today. This merger, indeed, may end up being a good example of vertical integration making the merged entity far more efficient. However, there should be more to this story.

When you can make a product like a computer or a TV set more cheaply through vertical integration—consumers benefit. It is clear how the new Viacom will benefit in this case, it is not as clear how consumers or buyers of billboard advertising, or radio listeners, or movie goers, or TV watchers will benefit by this merger.

I want to raise some larger concerns—which are harder to measure but potentially more serious.

Ultimately, as these types of huge media mergers continue to create ever larger media giants will there be a cost to society? Will there be a loss of different viewpoints?

Will there be less vigorous press activity or a reduction in the free flow of ideas offered by the media as fewer news sources are distributed more widely.

Indeed, some suggest that this merger could provoke “defensive” mergers of other media companies—which can lead to more defensive mergers, and more defensive mergers. Where does this end?

Will independent producers have less chance of being carried by CBS when CBS has big production studios—Paramount, Viacom and Spelling Entertainment—in

the corporation? And if the new Viacom owns “competing” radio and TV stations how aggressively will they compete for news scoops?

Will the reduction in different media outlets make it more difficult for some to negotiate deals for advertising?

I think we should look beyond the traditional antitrust analysis and get answers to larger questions which is the reason for this hearing.

Thus the major question: At what point does the FCC, or the Justice Department, draw the line and say enough is enough? In my view, it will have to be drawn at some point to protect the free flow of ideas, news and creativity.

Senator DEWINE. I also have three questions that Senator Hatch has asked that we ask on his behalf, which I will now read.

The first question is for Mr. Redstone and Mr. Karmazin. An article last month in the New York Times called the proposed CBS/Viacom a “virtual monopoly for online music,” and said that it would create a formidable and potentially anticompetitive force in the sale, distribution, and promotion of music over the Internet. Analysts have described the proposed merger as a “music sales promotion and distribution powerhouse that looks to play a leading role in mainstreaming the Internet radio format and potentially the selling of music online, both through mail order and digital downloads.”

Senator Hatch continues, I am concerned that one large company like a merged CBS/Viacom might become a virtual monopoly for online music and negatively impact the emerging online music distribution market. Will others be able to compete in this new market with a company that owns mtv.com, vh1.com, and popular music websites, as well as hundreds of radio stations?

Mr. REDSTONE. Well, I cannot help it if the quality of our music is such that people are interested in it. But I would like to point out that one of the great things about the Internet is it provides a voice for practically everybody, and right now, we have one music site. There are 100,000 music sites on the Internet. So I do not see the basis for that concern.

Mr. KARMAZIN. And it is a great recognition that the Internet is a competitor, and I think that Senator Hatch is correct. The Internet is a competitor. I think Mr. Redstone said it, there is MP-3 technology. There are just a ton of people that are able to provide content on there. We do not sell music today. It is the record companies that have the control on the content. We need their content for our programming. So I do not see the concern there.

Senator DEWINE. Senator Hatch’s second question is, it is my understanding that a merged CBS/Viacom will push into the online radio broadcasting market and soon begin offering streaming audio versions of its radio content through CBS’s infinity.com website. Will not a merged CBS/Viacom, with its MTV, VH1, and radio station assets, be able to prevent entry by competitors into the market for online radio broadcasting?

Mr. KARMAZIN. I think I covered that earlier. There are currently 1,800 radio stations online right now, and by the way, none of our radio stations are streaming audio at all.

Senator DEWINE. This question is the third question by Senator Hatch, and this is for the entire panel, anyone who would like to respond. It has also been reported that MTV, which is owned by Viacom, has a “huge influence over record companies,” which could intensify if it obtains access to CBS’s TV network affiliate stations

and national radio and outdoor advertising exposure. Will this huge influence over record companies that a merged CBS and Viacom will have be good for musicians and good for consumers, and how?

Mr. REDSTONE. May I?

Senator DEWINE. Mr. Redstone.

Mr. REDSTONE. I have a lot of respect for the Senator, Senator Hatch, but, in fact, we live at the mercy of the record companies. They do not live at the mercy of MTV. We get our videos from the record companies. Without the record companies, there is no MTV. So I do not see that concern, if I may suggest it.

Senator DEWINE. Mr. Karmazin.

Mr. KARMAZIN. No, I think Mr. Redstone said it. There are these digital channels. There are all of these number of cable channels. We certainly think that there is plenty of competition in that area.

Mr. GROSSMAN. I certainly am no expert in the music business, and there is not a reason, it seems to me, to oppose the merger on that grounds. But I do think we have to be careful in citing the Internet and all the new technology as making available thousands of channels. We always cite new technology, whether it was FM or UHF in radio or television as the source of increasing diversity. The problem is that you are getting these major players that have tremendous marketing and promotional clout through radio stations, through their music sources, through their ownership of cable channels, that so completely can dominate a field that it makes it very hard for others to break in, even though they have access, but they really do not have any mainstream way of reaching their potential consumers, and I think that is a matter that has to be analyzed and carefully considered.

Senator DEWINE. Professor.

Mr. WATERMAN. Well, very briefly, I agree with Mr. Grossman on this. I think it is a very natural process, though, as new media develop, for existing conglomerates to quickly move into those areas to diversify risk and for other purposes. I agree it is very important to watch the way that market structure develops in those areas and the relationship that they have with established firms in other media.

Mr. REDSTONE. I do not want to disagree, but it has not stopped America Online, a relatively new company, from dominating maybe the Internet. It has not stopped companies like Yahoo. These companies have bigger capitalizations than Viacom has. So it does not seem to me that there is any inhibition from people establishing new businesses on the Internet, and competitive businesses, indeed.

Senator DEWINE. Mr. Schwartzman.

Mr. SCHWARTZMAN. I would like to echo the observations about the role of the Internet. I would like to make two short additional points in that regard.

First, CBS in particular, is, as with the other major media companies, is aggressively using its clout to acquire circulation in the Internet. If you are a sports fan, I think you have an idea that there is something called CBS Market Watch and there is something called Sports Zone. As a matter of fact, if you watch television sports, they are ramming it down your throat relentlessly in

huge multimillion-dollar tradeout arrangements. That is good business, but it is acquiring dominance in a new medium by using the dominance of the old medium to get there.

Second, the Television Bureau of Advertising, in particular, but the broadcasting industry, in general, aggressively argues that as the media fragment, as there are more and more sources of information, broadcasting, particularly over-the-air television, becomes more important and more powerful. It is the only way to reach a mass audience. It is a smaller piece of a much bigger pie. The cost per thousands are doubling and tripling.

If you look at the TVB, the Television Bureau of Advertising's own promotional information, they brag that everybody else is fragmented. If you want to get into every home of America, 100 percent of the nation's TV homes, there is one way to do it and it is network television, not cable, not the Internet, not direct broadcast satellite. It is network television, and that is frequently overlooked.

Senator DEWINE. Senator Kohl.

Senator KOHL. Thank you, Mr. Chairman.

I just have one question and I hope we will agree. Can we all agree that media mergers need to be held to a different and perhaps a higher standard?

Mr. REDSTONE. Absolutely.

Mr. GROSSMAN. Yes.

Mr. WATERMAN. Yes.

Senator KOHL. Thank you. Thank you, Mr. Chairman.

Senator DEWINE. Let the record reflect that all of the witnesses have said yes, I believe. Thank you very much.

Mr. Schwartzman, what impact does this deal have, in your opinion, on advertisers? There appears to be competition in almost every local advertising market, so why can advertisers not just buy their ads from somebody else? Why does it matter if Viacom has a broad national presence?

Mr. SCHWARTZMAN. First, I find it interesting that the advertising community quietly complains, but advertisers are scared to pursue their concerns aggressively because of the clout that broadcasters have and the fact that they need them. It magnifies their power.

Mr. Karmazin told Barron's magazine, it used to be that stations competed, that media buyers would play them off against each other. Now, we have the CBS ad sales managers talk to each other every morning. That is higher prices and better margins.

They use the multiple stations in the market to do format squeezes. You get on one side or the other side of a station with a similar format. You drive their numbers down. You put them out of business. You buy them out, and you raise the prices. That is what is going on in market after market.

This economy has grown on small entrepreneurs. This economy is built on low barriers of entry. Local radio is one of the most important advertising media for people with a few bucks trying to reach a targeted audience. It is becoming harder and harder to do that. Even if you are on the Internet and you are in the dot-com business, the way you get to the general public is broadcast advertising. Listen to the radio. Watch TV. All the dot-coms have to ad-

vertise to make themselves known, and those rates are going up on a cost per thousand basis.

So this consolidation, particularly at the local level, which is what I have tried to stress today—I can speak to the national issues, but I have tried to stress the local issues today—within markets, the increase in cost, the bulk deals, the cross-promotions, being able to sell national advertisers to localities by aggregating them with the large chains—when you have a couple hundred radio stations, you can do that—all those things are making it much harder for small advertisers to get their share.

Senator DEWINE. Does anybody else want to comment on that?

Mr. KARMAZIN. Mr. Chairman, on this Viacom/CBS deal, the only local advertising that is affected, because Viacom, as Mr. Redstone pointed out, is not in the local radio business, so that is not changing it. They are not in the local outdoor business. The only effect on the local advertising aspect is on the television station side, and in all of the markets, in every single one of the markets, there are rigorous rules, both from the FCC and DOJ, on concentration in television, which we talked about. So somebody may not like it, but this merger has nothing to do with what he is talking about.

Senator DEWINE. Mr. Grossman.

Mr. GROSSMAN. Senator DeWine, I just wanted to make one comment. It is, I think, appropriate, oddly enough, that we are ending up talking so much about radio, because I think radio, in many ways, is a precursor of what is happening in the other more modern fields. Is it not interesting that the most significant, important, useful, serious news is being offered in radio by public radio, and it is the one major national news network left in radio. I think that that suggests the direction that is going to happen in television, and I am afraid also on the Internet. And as I say, it is not—

Senator DEWINE. Excuse me. That the direction—

Mr. GROSSMAN. Will be that, somehow or other, we need an alternative public service to focus on the things that are important to our democracy, like civic information, free political time, service to arts and culture, particularly education, because increasingly, we are becoming the old fashioned public trusteeship notion in this new merger media environment. It is really broken and I do not think it is going to be fixed.

Senator DEWINE. Mr. Schwartzman.

Mr. SCHWARTZMAN. I might add, Senator DeWine, that I think Mr. Karmazin today has made a terrific case for Chairman Kennard's initiative to start microradio stations, to create new intensely local neighborhood radio stations to serve the communities that the big chains are abandoning.

Senator DEWINE. Anybody else? Mr. Waterman?

Mr. WATERMAN. Thank you. Just briefly, I agree this is very important. It is basically an antitrust question and the local market level is particularly important here, and each one of the markets has to be examined. But I think it is fair to say that, and I agree with Mr. Schwartzman on this, that the individual media probably are distinct markets, like television and radio advertising are a previous strength. But the important thing is just to make sure that the market share of those individual media are sufficiently low, and then I think that the problem will tend to disappear.

So it may be more difficult in the future for independently owned radio stations or television stations, for example, to compete in the market, but to some extent, that is going to be an inevitable problem because of the greater efficiencies of combining resources at the local level under common ownership. So those forces have to be balanced. But the key thing is to keep the shares low within the individual media at the local market level.

Senator DEWINE. Mr. Karmazin, I would like to get back to something I believe you stated in your opening statement. I wrote it down. You talked about this merger creating more free over-the-air competition. Could you tell us about what goes over the air, not on cable, but what poor people can see, people who cannot afford cable? How does this merger help that?

Mr. KARMAZIN. Because I believe that it makes the CBS company a stronger company and CBS is very committed to free over-the-air broadcasting, and that you need to be a very viable company to be able to operate expensive news bureaus across the world and to be able to provide the kind of programming that we want to provide.

Everyone who owns content right now have alternatives as to where they put that content. Because we want to preserve our business, we need to compete with other technology that is out there offering money, like cable, as an example. If, in fact, there is an alternative sometimes for a sporting event to be on cable or to be on free over-the-air broadcasting, the more successful a company is, the more they can afford to pay for content. The more successful we are as a broadcaster, the more we can have the news departments that everyone is talking about being so important to maintain. When the time comes that free over-the-air broadcasting gets hurt, that is when we start running reruns of shows instead of doing news.

So right now, a lot of our television stations, in addition to the network news, are doing hour or 2-hour, even, local news in the market, gathering the news with reporters independently. That is expensive and we need to be a viable business up against the competition.

We do not have 90 percent—in spite of what Mr. Schwartzman says about the Television Bureau of Advertising, there was a time, and it seems logical, that we had 90 percent of the audience. Now, that audience is down to 40 to 50 percent with an awful lot of choices. There was a time when there was just CNN as a competitor. Now there is CNBC, there is MSNBC, there is just a lot of competition out there that broadcasters are competing with and we need to be viable.

Senator DEWINE. Following up on that, Mr. Grossman and Mr. Schwartzman have both stated, talked about the decrease in the international news bureaus. Do you agree that this is a trend, and will this trend continue, and does it matter?

Mr. KARMAZIN. I think technology has contributed toward that, not our ability to have bureaus. We need to gather the news, but obviously, when satellites are there to be able to make it easier to cover the news, so, in fact, we may—not we may, we do have fewer news bureaus, but we are still—I mean, if you watch Dan Rather's evening news tonight, you will see us covering the world. So I do

not believe that the number of different news bureaus is as critical as making sure we are gathering the news, and I will give you an example. If, in fact, we do not have a San Francisco news bureau but we put somebody on an airplane because there are planes going between Los Angeles and San Francisco, and in the old days there were not as many planes, we can get to these places.

Senator DEWINE. Sure, and you can cover it. This is your business and certainly not my business and you are the expert here today, but it seems to me that while you can get there and cover it, is there not some advantage in the news industry to have someone there who is digging up news every day, who is not just reacting to a coup or an earthquake or something, where you drop people in and you do the news.

It seems to me that there is something as far as the quality to be said for having a bureau there, a person who becomes the person who reports from Rome and who knows Italy and who knows the region. I do not want to argue with you about it, but it just seems to me that there is something to be said for that and I just wonder if you agree.

Mr. KARMAZIN. Mr. Chairman, I agree with you, and CBS News has over 1,500 employees, and it is not 1,500 employees necessary to do a half-hour program each day. So we agree, particularly in areas of where we are a licensed broadcast station, because that is all about the local news and being able to cover what is going on in that local community.

But once again, and I am happy to answer any questions about any subject, but that has nothing to do with the Viacom merger. I mean, as I said, I am happy to deal with it, but by the combination with Viacom—

Senator DEWINE. We do not get you up here very often. We appreciate your coming and there are some questions that, frankly, I think, are public interest, and they were raised by other panelists, in all fairness.

Mr. KARMAZIN. And, Mr. Chairman, if I were invited more often, I would be here more often. So thank you for the opportunity—

Senator DEWINE. We will take care of that, I guarantee it.

Mr. KARMAZIN. Thank you. But, no, I do think it is fair to talk about it. I love talking about it. It is something that I am proud of.

Senator DEWINE. It is important. It is the quality of news which is a vibrant part of our democracy, and so this is what—

Mr. KARMAZIN. And please watch CBS News this week and report to me on what you feel we are not doing, because we do spend an unbelievable amount of money. Next year, because there is very little advertising revenue, and I do not know if this will surprise you, but very little advertising revenue that is chasing the conventions and that is chasing all of the speeches that we cover. But you will find somebody from CBS News out there. By the way, I respectfully say the same thing about my competitors, NBC and ABC and CNN.

So, once again, I know there are philosophical issues that some people have, but CBS News is committed to the kind of quality network news that we have always done, and our local news—I mean, it is just strange that when we are the company that is really pro-

viding local news in these markets, and there is no example of where Mr. Grossman is able to report—I do not know where he lives, but he could certainly listen to our two all-news radio stations and see how different those two all-news stations are, with separate general managers editorializing and totally controlling those news operations and gathering news themselves.

So maybe somebody feels it is better to have 10, but this merger has nothing to do with that.

Senator DEWINE. Anybody else on that question? Professor Waterman.

Mr. WATERMAN. Well, there has been a lot of discussion about news content and its quality and I share all those concerns. But I think the changes we are observing in news and information are overwhelmingly driven by technology and competition and not ownership, in particular, conglomerate ownership.

I am saddened, as Mr. Grossman is, about the fact that news producers no longer seem to have the same sense of public responsibility, but I do not think there is anything that you can do about that except try to keep the ownership separate.

Finally, I would reiterate again that I do not think the relevant issue is, as Mr. Karmazin said, whether or not their commonly owned news stations have different news programs or they are independently operated or that the radio stations they have currently are not in the local market or whatever. By allowing common ownership, you have raised a potential for all sorts of things to proceed in the future that you cannot predict, and I think there is really nothing you can do but just try to keep the ownership diverse enough without worrying too much about who it is that owns these media.

Senator DEWINE. Mr. Schwartzman.

Mr. SCHWARTZMAN. Senator, let me see if I can get you on the same side as Mr. Karmazin. I brought a lot of papers today with me, but I did not bring this week's Broadcasting and Cable, which has a story featuring how the coming season looks to be just a huge revenue bonanza, fueled in no considerable small part, the article says, by the bonanza of political advertising revenue that is expected. This is a major component in the prospects for a very favorable year ahead.

Mr. Karmazin says that we need to make broadcasting viable and get these stations viable. Mr. Karmazin, you have had some dialog about whether there is going to be some independence in the news and there are going to be some different voices.

Some of us this weekend are going to challenge the networks to take some of this viability and some of this revenue and provide 5 minutes of free time to the major candidates for public office before the election. I think that is a terrific dividend, and I certainly advocate, and I believe that the FCC has the power to require it. I think the FCC should require it.

But what we are saying is, you are looking for a lot, you are doing pretty well, why do you not just do it, and that is what we are going to be asking this weekend. I think that this is really part of the solution. If we are not getting these voices out, if we are not getting some opportunity to hear some different things, let the can-

didates speak directly to voters. Let them use the time. I think Mr. Karmazin could do that very easily.

Senator DEWINE. Mr. Karmazin, do you want to make news today?

Mr. KARMAZIN. No, thank you. I just want to go home. [Laughter.]

The fact that we get a lot of political advertising, I wish we did not. We can sell our advertising to people at higher prices than we can sell to political candidates, so it would not really trouble us at all if, in fact, there was no advertising dollars that were from political candidates. We think we do a great job at CBS, and again, we can only speak for ourselves on our radio stations and our television network, in having candidates there.

We are always open to hear any new ideas and we certainly are openminded on the subject, but I totally disagree with the subject that says we are asking a lot. We are not asking for anything. We are going to conform to the laws as the laws are existing. So I am not sure what we are asking for.

Senator DEWINE. It has been alleged in this panel that this deal is going to push other companies to merge. I wonder, Mr. Redstone and Mr. Karmazin, if you can respond to that. The allegation has been made, not just on this panel but it was in the print media and other people have written that what this will do is it is going to set off a wave of mergers. You are just going to have to be bigger to compete.

Mr. REDSTONE. I do not really think that I agree with that, unless there are people who irrationally believe that bigger is better. In this case, neither CBS nor Viacom were driven at all by a desire to be bigger. Each company was doing wonderfully and each company will continually to do wonderfully if kept separate. We just thought that the combination was a very good combination.

I do not see that kind of irrational point of view driving mergers which do not on their merits make sense. Maybe there are some people who are looking for bigness. We were not.

Senator DEWINE. Mr. Grossman, I understand your concerns about news programming, but it appears that the economic efficiencies are moving media companies towards the streamlining of their news budgets and relying on a single all-purpose source for news. First, do you agree with that, and if you do, is that a bad trend, and if it is, can that trend be altered?

Mr. GROSSMAN. Yes; I think it is not a healthy trend in a democracy. I agree with Professor Waterman that the more diverse sources, not only diverse ownerships, which are important, but diverse sources of news, the stronger we will be, and it is no accident that we are having what seems to be an excessive sameness on single stories that so dominate our news, partly because they are all coming out of the same pipe.

I think one of the things that can be done is to take—or not the same pipe, but a very narrowly constricted pipe. One of the things that can be done, and I go back to my own concerns, is there are many major elements of free political time, public service time, outlets, that these companies which are basically in the entertainment business, as has constantly been said, we have got to look hard, in the digital world, as well, at our public broadcasting system, to pro-

vide the kinds of things that our democracy needs that the marketplace is not providing.

It is the stuff that costs money rather than makes money, and part of that has to do with news gathering. Some of it has to do with education. A lot of it has to do with free political time and public discussions of major issues that do not attract large audiences. It is a matter of our public policy, I think, being reexamined in this digital age to conform to what is obviously inevitable, namely, these enormous multimedia global companies, highly competitive, to be sure, but we are seeing some of the major elements that we require that used to be done under the Public Interest Doctrine, with news being a centerpiece of a broadcast company, beginning to be shunted aside. I think we have to look hard at some new public policy to deal with it, and I think that one of the ways to deal with it is to look hard at a strong public broadcasting system.

Senator DEWINE. Mr. Karmazin and Mr. Redstone, a lot of mergers look good on paper, but in practice, it is difficult to many times meld corporate cultures, maybe different ways of doing business. I know you obviously looked at that before you made this decision. Both of you have certainly had a lot of success being in charge of your own independent operations. How are you going to make this work?

Mr. REDSTONE. Do you mind, Mel? OK; see, I always refer to him. That is one way to make it work. [Laughter.]

You know, we really come from the same cloth, if I may say so. I started with a couple of drive-ins, and I kind of like where I am today. Mel is the same kind of entrepreneur that I am. Both of us are committed to driving our revenues and to driving our bottom line and, hopefully, to see our stock go up, and only in an appropriate way because we expect to perform well. I think we have a lot in common. We are both pretty good guys, as a matter of fact.

At Viacom, we have a very, very unique atmosphere. I cannot even refer to the people who work there as employees. We are all associates. We like each other. We are driven by the same. We are really a family company. And I expect that Mel will join the family.

Mr. KARMAZIN. I think that we have distinct businesses with distinct management teams that are going to work well together because there really is not a lot of overlap. I think the biggest change that I can see is that Mr. Redstone is going to have to get used to riding the shuttle instead of his private plane. [Laughter.]

But other than that, I do not think there will be much of a change.

Senator DEWINE. Well, on that happy note, we will end the hearing. I appreciate the testimony from all five of our witnesses. I think it has been very instructive and very helpful. This obviously is a merger that has significance well beyond the affected shareholders, and that is why we held this hearing. We appreciate it. Thank you very much.

The subcommittee is adjourned.

[Whereupon, at 3:30 p.m., the subcommittee was adjourned.]

