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# TELECOMMUNICATIONS POLICY: PROTECTING CONSUMERS BY PROMOTING DIVERSITY

HOWARD M. METZENBAUM*

Let me start with a simple proposition: when the "product" being delivered to consumers is information and entertainment, public policy should promote diversity and restrain excessive market power. This is not a new idea. For years, much of our telecommunications policy has been designed around these fundamental goals. But, I fear that we have lost sight of their importance.

By promoting diversity, we ensure that consumers have access to a wide range of information and entertainment services. By restraining market power—either through competition or regulation—we ensure that consumers have access to electronic media services at competitive prices. If we accomplish these goals, consumers will be well-served.

In this country, information and entertainment are delivered to consumers primarily by private companies. Newspapers, publishing houses, broadcast stations, cable television systems, telephone carriers, and motion picture companies are private, and almost exclusively for profit. Their business imperative is to prosper while gaining market power. For them, concentration, vertical integration,[1] and cross-ownership[2] are akin to natural law. Unfortunately, their market power can carry great costs for the public—higher prices and less diversity in the marketplace.

That is why rules to promote diversity and competition have been imposed, pursuant to both antitrust law[3] and the Communications Act of 1934.[4] For example, the Federal Communications Commission (FCC) has limited cross-ownership of different forms of media[5]—such as newspapers

* Member, United States Senate. This article is adapted from remarks prepared by Senator Metzenbaum and Christopher Harvie for delivery at the Third Annual Telecommunications Lecture, New York Law School (April 17, 1990). Mr. Harvie is counsel for the Senate Judiciary Committee, Subcommittee on Antitrust, Monopolies, and Business Rights.

1. "Ownership or control of network of production and distribution of goods from raw materials to sale to ultimate consumer." BLACK'S LAW DICTIONARY 1562 (6th ed. 1990).

2. "The ownership of two or more kinds of communications services in the same market, e.g., newspaper and television stations, by a single entity." G. JONES, JONES DICTIONARY OF CABLE TELEVISION 25 (3d ed. 1988).

3. 15 U.S.C. §§ 1-36 (1988).

4. 47 U.S.C. §§ 151-152 (1988). Congress created the Federal Communications Commission and granted it broad power to regulate radio and television, as well as other related communications such as telephone and telegraph.

5. *See* 47 C.F.R. § 76.501 (1990) (prohibiting cable systems from carrying the signal

owning broadcast stations or television networks owning cable systems—in order to restrict concentration and promote diversity.[6]

Another example is the antitrust consent decrees which have separated control over creation and production of information, and entertainment from control over the distribution of that information and entertainment to consumers.[7] The rationale for this separation is simple. A firm which both produces and distributes information and entertainment faces an inherent conflict of interest when confronted with the decision to distribute a competitor's product. Such a firm faces a similar conflict when its information or programming product is distributed by a competitor. This is not a theoretical conflict. The separation of content from conduit is embodied in consent decrees obtained by the Justice Department in three separate antitrust suits brought against AT&T,[8] the three major television networks,[9] and the major motion picture studios.[10]

Think about it. Since World War II, the Antitrust Division of the Department of Justice has brought suit against the major players in three principal segments of the information and entertainment services industry. Companies like AT&T, CBS, NBC, ABC, Warner Brothers, and Paramount have been subjected to antitrust consent decrees in an effort to promote diversity in both production and distribution.

During the Reagan Administration, the restrictions contained in these

of any television broadcast station if that system indirectly owns, operates, controls, or has an interest in a national television network or television broadcast station, and if such cross-ownership would result in an overlap of service area); *id.* § 73.3555 (precluding licenses for radio or television broadcast stations if the applicant directly or indirectly owns, operates, or controls one or more broadcast stations in the same service).

6. *See id.* §§ 73.3555, 76.501. *See also* 47 U.S.C. § 314 (1988) (cannot own or obtain control of cable, wire telegraph, or telephone line if the purpose and/or effect "may be to substantially lessen competition or to restrain commerce").

7. *See, e.g.,* United States v. Paramount Pictures, 334 U.S. 131 (1948) (antitrust consent decree issued against Paramount Pictures, Loew's, Columbia Pictures Corp., United Artists Corp., Universal Pictures Corp., Warner Brothers Pictures, and others, enjoining them from fixing minimum admission prices and making agreements that eliminated competition in the exhibition and distribution of films). *See also* McAvoy, *Pendulum Swings Back on Capitol Hill*, BROADCASTING, Dec. 22, 1986, at 35 (networks gearing up for assault on FCC rules and consent decrees prohibiting interest and rights in programs produced by others).

8. United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983) (consent decree requiring the divestiture of the portions of AT&T's 22 operating companies which provided local telephone service).

9. United States v. ABC, 1981-1 Trade Cas. (CCH) ¶ 64,150; United States v. CBS, 1980-81 Trade Cas. (CCH) ¶ 63,594, *amended,* 1988-2 Trade Cas. (CCH) ¶ 68,284; United States v. NBC, 1978-1 Trade Cas. (CCH) ¶ 61,855.

10. United States v. Paramount Pictures, 334 U.S. 131 (1948). *See supra* note 7.

consent decrees fell into disrepute. The Reagan Justice Department stopped enforcing the Paramount decree, which limits the ability of major studios to own movie theaters. In 1983, the FCC tried—unsuccessfully—to alter the financial interest and syndication rules which limit the ability of the three broadcast networks to take ownership interests in the programming which they show during prime-time.[11] And in 1987, the Administration tried—again unsuccessfully—to undo two of the provisions in the AT&T consent decree which it had supported in 1984.[12]

Today, restrictions on cross-ownership and vertical integration in the information and entertainment business are no longer fashionable. They are viewed by many as an outmoded harness on the ability of American companies to compete internationally. Cross-ownership and vertical integration of content and conduit—regarded as a danger in the past—are now regarded as the key to success in the global communications industry of the future.[13]

The merger of Time, Inc. and Warner Communications epitomizes this new way of thinking about mergers and integration.[14] The new company has ownership interests in almost every communications medium: book and magazine publishing, music recordings, motion picture and television production, movie theaters, videocassettes, cable television systems, and cable television program networks.[15] The new company is hailed by many media moguls and industry analysts because of its ability to, in the words of the *Wall Street Journal*, "control an idea from its appearance in a book or magazine, its debut on the big screen or on

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11. *In re* Amendment of 47 C.F.R. § 73.658(j)(*l*)(i) and (ii), The Syndication and Financial Interest Rules, 94 F.C.C.2d 1019 (1983). *See also* 47 C.F.R. § 73.658(j) (1990). Under these regulations a network can purchase the rights to air a program over the network's distribution system only from a producer. In the absence of these regulations, the networks could negotiate for a financial interest and participation in syndication rights.

12. United States v. Western Elec. Co., 673 F. Supp. 525, 599 (D.D.C. 1987), *aff'd in relevant part*, 900 F.2d 283 (D.C. Cir. 1990) (district court granted the Bell operating company's motions to remove the consent decree's prohibition against their participation in nontelecommunications businesses). *See also NTIA Sides with Telcos v. Greene*, BROADCASTING, Dec. 7, 1987, at 50 (urging FCC to challenge Judge Greene's authority to deny the Bell operating company's power to provide information services, and questioning Greene's authority to implement the consent decree).

13. Landro & Kneale, *Entertainment Giants Are Now All the Rage, But Is Big Any Better?*, Wall St. J., June 9, 1989, at A1, col. 6.

14. *See* Sontag, *Law Plays Catch-Up Yet Again: Warner Merger Probably Is Safe*, Nat'l L.J., Mar. 20, 1989, at 3, col. 1 (Time-Warner merger unlikely to raise antitrust issue because Time's number two position in cable industry will not change, and questions raised by vertical integration are low priority with Bush Administration).

15. Fabrikant, *Cable Giant Hungry for Programs*, N.Y. Times, Nov. 16, 1989, at D1, col. 3.

television, [to] its exploitation in videocassettes, cable, syndication, spinoffs and sequels."[16] It is easy to see how this mega-merger benefits the two companies. The question we must ask is whether consumers are well-served when the communications market is dominated by a few vertically-integrated, global media giants.

I wrote the Justice Department and urged them to scrutinize the Time-Warner merger closely.[17] I was concerned that the merger would reduce competition and diversity in the communications and entertainment business, particularly with cable television. At the time of the merger, the Justice Department's Antitrust Division was still headed by President Reagan's appointee, Charles Rule. The merger sailed through without resistance.

But the debate over the virtues of the merger helped focus attention on the competitive problems in the cable industry. As a result, Congress is seriously considering legislation to restrain the market power of large, vertically-integrated cable companies, and to expand the government's authority to regulate cable.[18] While that might seem unfashionable to some, I think it is about time.

There are some skeptics who wonder why Congress pays any attention to the cable industry. Cable television is a luxury service, they say. It does not deserve all this scrutiny.[19] This is wrong for several reasons. In the first place, many elderly Americans depend upon cable television as their sole source of news and entertainment. Millions of other Americans need cable in order to get any kind of adequate television reception. That is the case in both rural areas and in cities like New York, where densely-packed, tall buildings make it difficult to obtain adequate over-the-air reception.

And to the skeptics, I have an additional answer: Congress is

16. Landro & Kneale, *supra* note 13, at A1, col. 6.

17. Letter from Howard M. Metzenbaum to Charles Rule, Assistant Attorney General for Antitrust (March 6, 1989) (urging Justice Department to thoroughly investigate anticompetitive ramifications of proposed Time-Warner merger on local cable market).

18. Two cable bills were introduced by Senator Metzenbaum on February 20, 1991. S. 431, S. 432, 102d Cong., 1st Sess., 137 CONG. REC. S1933 (1991) (proposing to regulate cable rates in the absence of competition from another multi-channel provider; and requiring that program channels which are controlled by the cable industry to be made available to competing technologies such as the wireless cable and satellite industries on fair terms and nondiscriminatory prices). Another bill was proposed on Jan. 14, 1991 to restore the right of local regulatory authorities to regulate cable television rates, and to ensure that cable television operators do not have undue market powers vis-a-vis video programmers and consumers. S. 12, 102d Cong., 1st Sess., 137 CONG. REC. S582 (daily ed. Jan. 14, 1991).

19. *See* H.R. REP. NO. 934, 98th Cong., 2d Sess. 20, *reprinted in* 1984 U.S. CODE CONG. & ADMIN. NEWS 4655, 4657.

concerned with the cable industry because, in the 1990s, cable television will be the predominant means of delivering information and entertainment to the public. Look at the facts. In 1980, 22% of the nation's households were wired for cable.[20] Today cable penetration stands at 61%.[21] The industry's goal is to be in 70% of the nation's homes within the next four or five years.[22] That means that unless things change, decisions about the mix and price of television programming watched by three-fourths of Americans will be made by vertically-integrated, unregulated monopolists.

The cable industry resists the unregulated monopoly label. But the fact is that 99% of consumers who want cable have no opportunity to choose among competing cable systems.[23] The cable bill passed by Congress in 1984[24] contained a provision designed to protect consumers who live in areas which lack competition for cable. The bill stated that in the absence of effective competition, local franchising authorities could regulate cable rates.[25]

Unfortunately, we let the FCC decide what constituted effective competition. The Commission developed an absurd definition of effective competition which holds that three over-the-air television channels effectively compete with the vast array of programming available via cable.[26] This definition has precluded rate regulation in 97% of the cable communities across the country. The bottom line is that virtually no cable system is subject to either competition or regulation. That means that consumers are completely unprotected. There are no constraints on the prices charged for cable service.

It is no wonder that cable rates have jumped sharply. According to the General Accounting Office (GAO), cable rates nationwide increased 43% following deregulation, more than three times the rate of inflation.[27] The

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20. Maddox, *The Wiring of America*, THE ECONOMIST, June 20, 1981, at 26 (19 million homes were wired for cable in the early 1980s).

21. S. 12, 102d Cong., 1st Sess., 137 CONG. REC. S582 (daily ed. Jan. 14, 1991).

22. *Id.*

23. *Merline, How to Get Better Cable TV at Lower Prices*, CONSUMERS' RESEARCH, May 1990, at 10 (9000 franchises in the United States; only 45 are competitive). *See also* Mason & Wilson, *NTIA's "Video Dial Tone" Proposal Cuts Telcos Out of Cable Content*, TELEPHONY, June 20, 1988, at 8.

24. Cable Communications Policy Act of 1984, 47 U.S.C. § 521 (1988).

25. *Id.* § 521-553. *But cf. The Second 50 Years of the Fifth Estate*, BROADCASTING, Dec. 31, 1984, at 101 (quoting House Telecommunications Subcommittee Chairman Timothy Wirth's statement that while the Cable Communications Policy Act limits regulatory power over cable, it reaffirms their remaining power).

26. 47 C.F.R. § 76.33 (1990) (providing that if 100% of the cable community receives service from at least three broadcast channels, that cable system is subject to effective competition, and thus cannot be rate regulated).

27. GAO REPORT TO THE CHAIRMAN, SUBCOMM. ON TELECOMMUNICATIONS & FIN.,

United States Telephone Association conducted a similar survey which found that cable rates have risen 68% since deregulation.[28] Last year, a representative of the Consumer Federation of America testified at a hearing held by my Antitrust Subcommittee that cable consumers were being overcharged by as much as $6 billion annually.[29] These alarming rate hikes discredit the FCC's conclusion that three over-the-air television signals constitute effective competition for cable. An industry faced with real competition could not hike prices at a clip which triples the rate of inflation.

I believe that in the near future the government's authority to regulate cable rates will be expanded—either by Congress or the FCC.[30] The FCC has put reexamination of its effective competition definition on the fast track.[31] Senators Hollings and Inouye are committed to moving a cable reregulation bill through the Commerce Committee.[32] So, regardless of what the Commission does, Congress seems poised to adopt a more realistic definition of effective competition for cable.

I believe this new definition will closely resemble the one contained in the rate reregulation bill which I introduced two years ago.[33] Effective competition for cable means another viable multi-channel provider offering

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COMM. ON ENERGY & COMMERCE, HOUSE OF REP., FOLLOW-UP NATIONAL SURVEY OF CABLE TELEVISION RATES AND SERVICES 23 (June 13, 1990). *See also GAO Cable Rate Survey: Hearings Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce*, 101st Cong., 1st Sess. 31 (1989). *See also GAO on Cable: Rates OK, But Industry Needs Regulation*, BROADCASTING, Aug. 7, 1989, at 30 (finding that GAO report indicates cable is a monopoly in need of reregulation).

28. *USTA Study Shows Cable Rates Up 68% Between 1986 & '89*, BROADCASTING, Jan. 29, 1990, at 44.

29. *Competitive Problems in the Cable Television Industry: Hearing Before the Subcomm. on Antitrust, Monopolies and Business Rights of the Senate Comm. on the Judiciary*, 101st Cong., 1st Sess. 59 (1989) (statement of Gene Kimmelman, Legislative Director, Consumer Federation of America).

30. The Cable Communications Policy Act of 1984, 47 U.S.C. § 521 (1988), provides that "[n]ot later than 6 years after the date of the enactment of this title, the Commission shall prepare and submit to the Congress a report regarding rate regulation of cable services, including such legislative recommendations as the Commission considers appropriate." The Commission must therefore reassess rate regulation and the effect of competition in the marketplace. FCC Radio Broadcasting Services: Fort Bragg, CA, 55 Fed. Reg. 51,325 (proposed Dec. 13, 1990); FCC Broadcast Services: Cable Television Inquiry, 55 Fed. Reg. 1484 (proposed Jan. 16, 1990).

31. *In re* Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates, 6 F.C.C. Rec. 208 (1991).

32. *Cable: Up Against the [Senate] Wall*, BROADCASTING, Mar. 12, 1990, at 27.

33. S. 833, 101st Cong., 1st Sess., 135 CONG. REC. S4186 (daily ed. Apr. 18, 1989) (statement of Sen. Metzenbaum).

a comparable menu of programming.[34] The competing multi-channel provider could be a second cable system, a wireless cable system, a direct broadcast satellite program packager, or perhaps someday the telephone companies. Absent such a competing multi-channel provider, the government ought to be able to regulate rates for basic cable systems.

The cable issue is not merely a matter of how much consumers will pay for programming; it is also a matter of who decides what programming will be available and whether consumers will reap the benefits of having a choice of programming distributors. Public policy must promote both a diversity of programming sources and a diversity of multi-channel program distributors. Currently, local cable operators enjoy unfettered power to control both the content and the conduit of the multi-channel programming available to consumers. The result is that there is considerable vertical integration in the cable industry. Ten of the top fifteen basic cable networks are owned or controlled by multi-system cable operators.[35] Cable companies also control four of the top five pay movie services.[36]

This vertical integration has fueled congressional concern for two reasons. First, vertical integration has led some operators to discriminate in favor of programming in which they have equity interests. Lawsuits have been filed against the large, vertically-integrated, multi-system cable operators alleging anti-competitive discrimination against unaffiliated programmers.[37] In fact, five years ago, the Media Law Clinic at New York Law School brought an antitrust suit against Time, Inc.[38] Time controlled both cable television systems in Manhattan and owned the most popular pay movie service in the nation, HBO. The complaint alleged that Time's Manhattan cable systems favored movie services which it owned—HBO and Cinemax—and discriminated against competing movie services owned by other companies.[39] Time settled the suit by adding an unaffiliated movie service. I should note that this single lawsuit, brought by three law students and their professor, represented more antitrust enforcement action against the vertically-integrated cable monopolies than

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34. *Id. See also FCC Plans Prompt Action on Cable Rates*, BROADCASTING, Oct. 29, 1990, at 62-63 (commenting on the FCC's proposed standard).

35. 5 F.C.C. Rec. 4962, 5008 (1990); *See also 1990 Field Guide to the Electronic Environment*, CHANNELS, Dec. 2, 1989, at 78-79.

36. *Id.* at 79.

37. *See, e.g.*, New York Citizens Comm. on Cable TV v. Manhattan Cable TV, 651 F. Supp. 802 (S.D.N.Y. 1986) (cable television subscribers' association brought action against cable television franchise, affiliated programmer for refusal to do business with unaffiliated programmers, in violation of antitrust).

38. *Id.*

39. *Id.* at 805.

we saw from either the Justice Department or the Federal Trade Commission during the entire decade of the 1980s.

Congress also is concerned with vertical integration because the cable industry's domination of programming has hurt the competitive viability of alternative distribution technologies, such as wireless cable and home satellite dishes.[40] These alternative technologies could fill the void left by the absence of head-to-head competition among local cable systems. But they cannot be effective multi-channel competitors unless they can distribute popular programming like HBO, Showtime, and Turner Network Television. These program networks, however, are controlled by the cable industry, and generally have not been available to operators of competing technologies on fair terms and at nondiscriminatory prices.[41]

The cable industry's latest tactic in its ongoing effort to preserve its monopoly power is to become a major player in the most promising alternative technology: direct broadcast satellite (DBS). DBS is the next generation of home satellite dishes. It requires much smaller reception equipment than the large backyard dishes seen today, and is therefore regarded as far more marketable—particularly in urban areas.

Recently, two separate DBS ventures were announced with great fanfare.[42] The cable industry has pointed to these two new DBS ventures as evidence that competition is on the way. But both of these ventures involve participation by large vertically-integrated cable companies,[43] and, in both instances, the participants have taken pains to announce that their DBS ventures will supplement, rather than compete with, programming offered by local cable systems.[44] DBS is supposed to be a competing technology, not a supplemental one. It is highly unlikely that a DBS business dominated by the cable industry will provide consumers with the benefits of competition.

A number of the cable bills introduced in Congress contain provisions to remedy the problems caused by vertical integration in the cable industry.[45] These proposals are designed to limit discrimination by a

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40. S. 834, 101st Cong., 1st Sess., 135 CONG. REC. S4186 (daily ed. Apr. 18, 1989) (statement of Sen. Metzenbaum).

41. *Media Ownership: Diversity and Concentration: Hearings Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 101st Cong., 1st Sess. 337 (1989) (statement of Robert Phillips, Chief Executive Officer, Nat'l Rural Telecommunications Coop., Washington, D.C.); *see also id.* at 275 (statement of Robert Schmidt, President, Wireless Cable Association).

42. *108 Channels Planned: Hughes, NBC, Murdoch and Cablevision Launch $1-Billion DBS Consortium*, COMM. DAILY, Feb. 22, 1990, at 1.

43. *Id.*

44. *Id.*

45. S. 834, 101st Cong., 1st Sess., 135 CONG. REC. S4186 (daily ed. Apr. 18, 1989)

cable operator against unaffiliated programmers. Other proposals—such as my bill, S. 834—require cable programming networks to offer their programming to competing technologies on fair terms and at nondiscriminatory prices.[46] I strongly support these efforts. In addition, I believe that cross-ownership restrictions should be imposed on the cable industry to prevent the industry from co-opting potential competitors, such as DBS.

There is, of course, one other potential multi-channel distributor looming on the horizon. The telephone companies have presented themselves as the solution to the problems caused by cable's monopoly power. The Bell operating companies are currently prohibited from entering the cable business by both federal law[47] and the AT&T consent decree.[48] They argue that their entry into the cable business will promote competition, help consumers, and accelerate the conversion to fiber-optic technology.[49]

My mind is open on this, but I am concerned that we might see one monopoly replacing another. And I am also concerned that telephone consumers would end up paying higher prices in order to subsidize the costs of the telephone companies' cable business. But I will say this: if we cannot pass a bill soon that restrains cable's monopoly power and limits vertical integration, then I am certain that many in Congress will find telephone company entry more and more attractive.

Let me say a brief word about the restrictions contained in the AT&T consent decree. These restrictions preclude the "Baby Bells" from entering certain segments of the telecommunication business: long distance, equipment manufacturing, and information services.[50]

In 1988, Judge Greene allowed the Baby Bells to serve as a gateway and transportation network for information services and data bases provided by others,[51] but the Bells themselves are prevented from being

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(statement of Sen. Metzenbaum).

46. *Id.*

47. 47 U.S.C. § 533(b) (1988 & Supp. 1990) (prohibiting any "common carrier" to provide video programming directly to subscribers in its telephone service area, either directly or indirectly through an affiliate).

48. United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

49. *See generally* Waz, *The Cable/Telco War: "Their" Fight, or Yours?*, 7 COMPUTER LAW., Jan. 1990, at 24 (telcos claim optical fiber networks are the essential link to the future of telecommunications).

50. *See AT&T*, 552 F. Supp. at 186-95.

51. United States v. Western Elec. Co., 714 F. Supp. 1, 2 (D.D.C. 1988) (since the regional companies still retain control over local exchange facilities they failed to meet the conditions required to remove the consent decree prohibition on the sale of information

electronic publishers or information content providers.[52] Judge Greene concluded that the Baby Bells' monopoly over the local exchange gives them too great an incentive to discriminate in favor of the data services they provide while disadvantaging the information services generated by others.[53]

Recently, the United States Court of Appeals for the District of Columbia Circuit instructed Judge Greene to reassess his 1988 ruling that the Bells should continue to be prohibited from becoming information content providers.[54] Meanwhile, there have been a number of proposals in the Congress that would remove Judge Greene's authority over the AT&T case and free the Baby Bells from some of the restrictions in the decree.[55] I believe Judge Greene has done this country a real service by showing great solicitude for the antitrust concerns which underlie the line of business restrictions. And you can be sure that I will show as much solicitude for those antitrust concerns should legislation affecting the line of business restrictions begin to move in Congress.

Let me sum up. The telecommunications industry is in the midst of important decisions about the degree to which the dominant firms should be allowed to control both the content and the conduit of information and entertainment services. Market domination is always a matter of concern, regardless of the industry. But there are larger social issues involved when power is concentrated in the information and entertainment industry. As Justice Frankfurter once recognized: "Truth and understanding are not wares like peanuts or potatoes."[56] He wrote those words in support of the Supreme Court's decision in *Associated Press v. United States.*[57] In that case, the Court concluded that applying the antitrust laws to anti-competitive activity in the media business actually helped promote the first amendment's objective of ensuring "the widest possible dissemination of information from diverse and antagonistic sources."[58]

I do not have some kind of vague Orwellian concern that the dominant

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content), *remanded*, 900 F.2d 283 (D.C. Cir. 1990).

52. *Id.* at 2.

53. *Id.* at 3-5.

54. United States v. Western Elec. Co., 900 F.2d 283, 307-09 (D.C. Cir. 1990) (district court erred in applying section VIII(c) of the consent decree rather than a public interest standard).

55. *See, e.g.*, 136 CONG. REC. S8957 (daily ed. June 28, 1990) (statement of Sen. Burns).

56. Associated Press v. United States, 326 U.S. 1, 28 (1945) (Frankfurter, J., concurring).

57. *Id.*

58. *Id.* at 20.

telecommunications firms will purposefully limit the kind of information and entertainment which will be made available to consumers. But the laws of economics—and the lessons of history—instruct us that vertically-integrated telecommunications firms do favor their own suppliers and their own distributors. I believe that public policy in the telecommunications business must continue to promote "the widest possible dissemination of information from diverse and antagonistic sources."[59] And I believe that both Congress and the antitrust laws will play an important role in ensuring that the structure of the telecommunications business protects consumers by promoting such diversity.

59. *Id.*