TESTIMONY OF
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HEARING ON
"VIDEO COMPETITION IN A DIGITAL AGE"

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 22, 2009

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Before the
Subcommittee on Communications, Technology, and the Internet
Committee on Energy and Commerce
U.S. House of Representatives

October 22, 2009

Mr. Chairman and members of the Committee, thank you for inviting me here today. My name is Adam Thierer and I am the President of The Progress & Freedom Foundation (PFF). I have written extensively on this important subject, including two books: *Media Myths: Making Sense of the Debate over Media Ownership*[1] and *Media Metrics: The True State of the Modern Media Marketplace*.[2]

In my work, I've argued that, regardless of underlying business structures or ownership patterns, the critical question in debates about the state of the media marketplace is: "*Do citizens have more news, information, and entertainment choices at their disposal today than in the past*?" I'm pleased to report that all the evidence suggests the answer to that question is, unambiguously, "yes."

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[1] Adam Thierer, *Media Myths: Making Sense of the Debate over Media Ownership* (Washington, D.C.: The Progress & Freedom Foundation, 2005), www.pff.org/issues-pubs/books/050610mediamyths.pdf

[2] Adam Thierer and Grant Eskelsen, *Media Metrics: The True State of the Modern Media Marketplace* (Washington, D.C.: The Progress & Freedom Foundation, Summer 2008), www.pff.org/mediametrics/

From Scarcity to Abundance

Indeed, although humans have lived in a state of extreme information poverty for most of history, we now live in a world of unprecedented media abundance: Increasingly, we can obtain and consume whatever media we want, wherever and whenever we want. Citizens of *all* backgrounds and beliefs benefit from this modern media cornucopia.[3]

Nowhere has this abundance been more evident than in video programming. Although the provision of video services entails significant up-front investment at every step—creation, post-production, distribution—we have more video options and diversity at our disposal today than ever before, and generally at falling prices.[4] (Exhibits 1-4) In sum, there's more competition for our eyes than ever before.

Broadcasting

Consider traditional broadcasting, which was once synonymous with television itself. Today, however, instead of just 3 or 4 VHF channels (and a few fuzzy UHF channels), there are seven nationwide broadcast networks and there are twice as many local broadcast TV stations (1,785) as there was in 1970 (875). (Exhibit 5)

Competition among and against traditional broadcasters is intense and the viewing audience has become remarkably fragmented (Exhibit 6). The collective audience share for broadcast networks has fallen every year for the past decade (Exhibits 7 & 8).

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[3] Adam Thierer, *The Media Cornucopia*, City Journal, Vol. 17, No. 2, Spring 2007, at 84-89, www.city-journal.org/html/17_2_media.html

[4] *See generally* Benjamin M. Compaine, *The Media Monopoly Myth: How New Competition is Expanding Our Sources of Information and Entertainment*, New Millennium Research Council, 2005, www.newmillenniumresearch.org/archive/Final_Compaine_Paper_050205.pdf

Multichannel Video (Cable, Satellite, Telco-Provided Service)

Competition is also intensifying among cable, telco, or satellite platforms (Exhibit 9). Better yet, the number of channels available on these platforms skyrocketed from just 70 in 1990 to 565 in 2006, the last year for which the FCC has released data. (Exhibit 10) The resulting diversity on the dial has been truly breathtaking, and almost every human interest is now covered by a video network. (Exhibit 11)[5] Some of the most impressive gains have been in minority-oriented, foreign language, religious, and children's-based programming.[6]

Importantly, the largest share of the growth in the multichannel video marketplace has come from independent programmers. The percentage of pay TV channels owned by cable distributors has plummeted from 50% in 1990 to just 14.9% in 2006 (Exhibit 10) and that percentage is now in single digits after the Time Warner Cable and Time Warner Entertainment split.

Thus, while the Cable Act of 1992 was motivated by fears about excessive vertical integration and "gatekeeper" power in the delivery of video programming, today's marketplace is intensely competitive and rich in its diversity. Meanwhile, new video empowerment technologies—such as digital video recorders (DVRs), video on demand (VOD), and DVD players—have revolutionized the way the public consumes visual media by giving viewers unprecedented control over their viewing preferences and timetables. (Exhibits 12-15)

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[5] For an up-to-date list, see National Cable & Telecommunications Association, Cable Networks, www.ncta.com/Organizations.aspx?type=orgtyp2&contentId=2907 [accessed October 19, 2009] or *List of United States Cable and Satellite Television Networks*, Wikipedia, [accessed October 19, 2009] http://en.wikipedia.org/wiki/List_of_United_States_cable_and_satellite_television_networks.

[6] Adam Thierer, The Progress & Freedom Foundation, *We Are Living in the Golden Age of Children's Programming*, Progress Snapshot 5.6, July 2009, www.pff.org/issues-pubs/ps/2009/pdf/ps5.6-childrens-television-golden-age.pdf.

The Internet & Digital Media

While traditional distribution platforms like cable and satellite offer a sea of diverse programming, the Internet's digital distribution platforms offer *oceans* of new content. Even defining a "media outlet" or owner has become difficult, as new technologies empower average citizens to become producers of news and entertainment themselves. Thanks to personal computers, websites, blogs, camcorders, digital cameras, cell phones, and so on, anybody can be a one-person newspaper or broadcaster. Some might call it "amateur" media creation, but it *is* media creation and it's clearly competing for eyeballs.[7] (Exhibits 16 & 17)

The Internet has also empowered a growing number of consumers to "cut the video cord" completely by cancelling monthly multichannel video subscriptions and getting their video from a combination of other sources. If the Committee wants a glimpse into the future, I suggest you invite a few teenagers or 20-somethings to testify about how they consume video content today. They probably couldn't name most broadcast networks or multichannel video providers,[8] but they'd regale you with stories of videos they've seen or shared on platforms such as YouTube, iTunes, Vimeo, Vuze, Joost, Boxee, Veoh, Hulu, Netflix, Amazon Video on Demand, Sony's Playstation Store, and Microsoft's Xbox 360 Marketplace. (Exhibits 18-20) While some here in Washington continue to wring their hands about the supposed "gatekeeper" power of old media providers and platforms, our kids have moved on and all but ignore the old players and worries.

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[7] Clay Shirky, *Here Comes Everybody: The Power of Organizing without Organizations* (The Penguin Press, 2008).

[8] A survey conducted in 2006 found that only one in four 12- to 34-year olds can name all four major broadcast networks: ABC, NBC, CBS and Fox. *See* Abbey Klassen, *Study: Only One in Four Teens Can Name Broadcast Networks*, Advertising Age, May 15, 2006, http://web.archive.org/web/20060823080712/http://adage.com/article?article_id=109227.

Conclusion

What these statistics and trends tell us is that, if there is a media diversity problem today, it is that *citizens suffer from "information overload," not information scarcity*. The sheer volume and diversity of media options has become so overwhelming that most of us struggle to manage all the information at our disposal on a daily basis.[9]

This all begs the question: Instead of fretting that traditional media providers have *too much* power, perhaps it's time to ask if they actually have *too little*. Indeed, the viability of traditional media operators is increasingly in doubt since they lack pricing power and the ability to control when, where, and how their content is delivered and consumed. Meanwhile, advertising—the traditional lifeblood of the media sector[10]—is increasingly spread across multiple platforms and being subjected to new scrutiny and potential regulation here in Washington.[11] (Exhibit 21) And copyright infringement has also made monetization more challenging and placed strains on many operators. In sum, traditional media operators could be

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[9] Indeed, many leading media critics and social scientists (such as Cass Sunstein, Todd Gitlin, and Barry Schwartz) are now penning books wondering what effect this abundance of choices will have on us as a society if we have less time for "shared social experiences." Isn't this a wonderful dilemma for us to be facing as a society! I'll take too much choice over too little any day. *See* Thierer, *The Media Cornucopia*.

[10] "Advertising is the mother's milk of all the mass media," *Wall Street Journal* technology columnist Walt Mossberg has noted. Walter Mossberg, *Now You See 'Em...*, SmartMoney.com, June 15, 2000, available at http://web.archive.org/web/20061124235126/http://www.smartmoney.com/mossberg/index.cfm?story=20000615; And Harold L. Vogel, author of *Entertainment Industry Economics*, the definitive textbook for media market analysts, has noted, "Advertising is the key common ingredient in the tactics and strategies of all entertainment and media company business models. Indeed, it might further be said that advertising has substantively subsidized the production and delivery of news and entertainment throughout the last century." Harold L. Vogel, *Entertainment Industry Economics* (Cambridge, MA: Cambridge University Press, 7th Edition, 2007), at 46.

[11] Berin Szoka & Adam Thierer, *Targeted Online Advertising: What's the Harm & Where Are We Heading?*, Progress on Point 16.2, April 2009, www.pff.org/issues-pubs/pops/2009/pop16.2targetonlinead.pdf; Berin Szoka & Adam Thierer, *Behavioral Advertising Industry Practices Hearing: Some Issues that Need to be Discussed*, PFF Blog, June 18, 2009, http://blog.pff.org/archives/2009/06/behavioral_advertising_industry_practices_hearing.html

in trouble, and now certainly isn't the time to impose new rules and red tape that could hamstring their ability to respond to new competitive pressures.

Regardless, America's video marketplace should be viewed as a pro-consumer success story. With an abundance of choices, competition, and diverse viewing options, the only real scarcity remaining today is our personal time and attention spans—not video options.[12] We should celebrate that fact.

Thank you again for inviting me here to testify.

[12] "Today, the scarce resource is attention, not programming," notes Ellen P. Goodman of the Rutgers-Camden School of Law. "Given the proliferation of consumer filtering and choice, these kinds of interventions are of questionable efficacy. Consumers equipped with digital selection and filtering tools are likely to avoid content they do not demand no matter what the regulatory efforts to force exposure." Ellen P. Goodman, "Proactive Media Policy in an Age of Content Abundance," in Philip M. Napoli, ed., *Media Diversity and Localism: Meaning and Metrics* (Mahwah, N.J.: LEA Publishers, 2007), at 370, 374. And there is no reason to believe this situation will ever change. Writing in 1922, famed journalist Walter Lippmann noted that, "it is possible to make a rough estimate only of the amount of attention people give each day to informing themselves about public affairs," but "the time each day is small when any of us is directly exposed to information from our unseen environment." Walter Lippmann, *Public Opinion* (1922), at 53, 57.

Exhibit 1:
A "Layered Media Model" to Analyze the State of the Media Marketplace

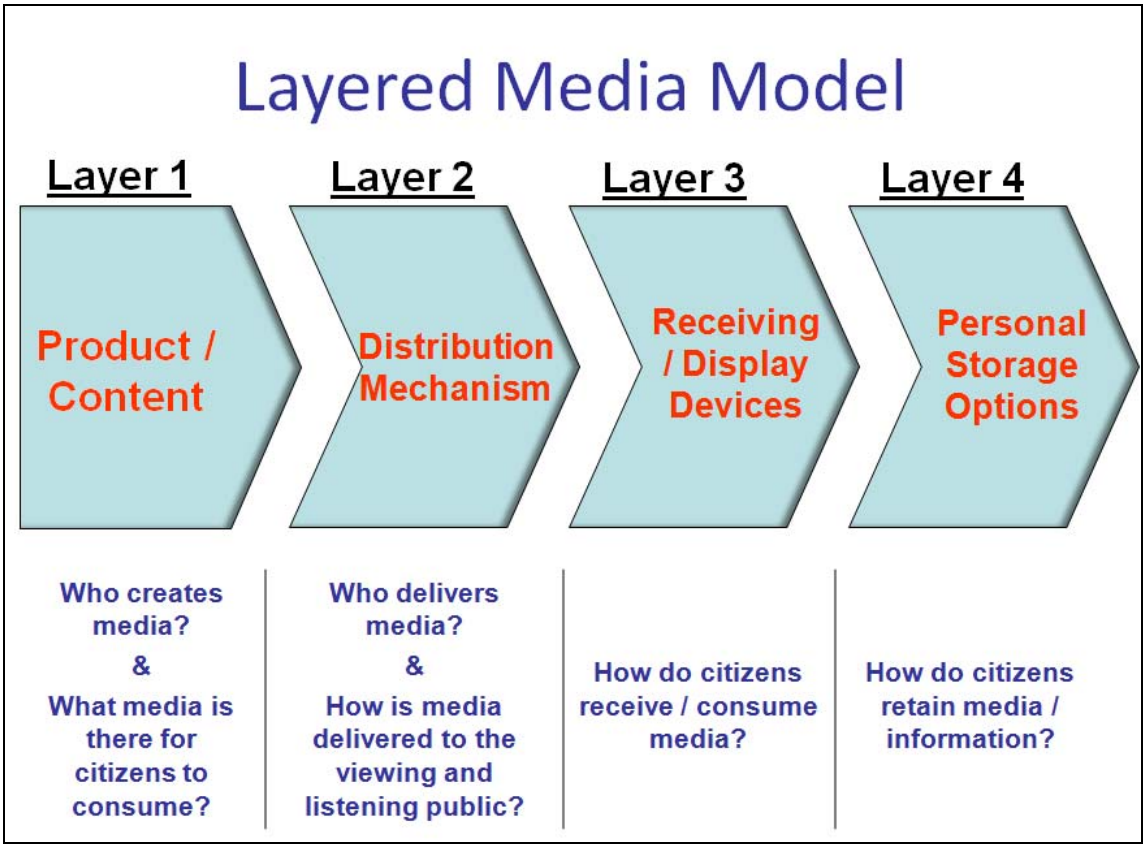


Exhibit 2: The Media Universe of Yesterday and Today

Yesterday - The Media Environment Circa 1970

Layer 1 Product or Content	Layer 2 Distribution Mechanism	Layer 3 Receiving or Display Device	Layer 4 Personal Storage Tools
Television Programming	Broadcast TV Stations	TV Sets	none
Movies	Cinemas, Broadcast TV	Movie Theater	none
Radio Programming	Broadcast Radio Stations	Radios, Stereos	none
Music	Radio, Records, Tapes	Radio, Reel-to-reel tape decks, Stereos	Records & tapes
Print News & Literature	Newspaper & Magazine Delivery	Newsprint, Books	Books, Personal Library
Advertising	TV, Radio, Mail, Magazines	All of the above	rarely stored
Telecommunications	Phone Networks	Telephones	none
Photography	Cameras	Print film	Film / Prints

Today - The Media Environment Circa 2009

Product or Content	Distribution Mechanism	Receiving or Display Device	Personal Storage Tools
Video / Television	Broadcast TV, Cable, Satellite, Internet & online stores, VHS tapes, DVD discs, VOD, PPV, P2P	TV Sets & computer monitors, Mobile devices & handheld devices (including gaming devices)	DVRs (i.e., TiVo), VCRs, DVDs, Computer discs and hard drives, Online storage
Movies	Cinemas, Broadcast networks, Cable, Satellite, Online stores, DVDs, Camcorders, PPV, VOD, mobile, P2P	Cinemas, TV Set, Computer Monitor, Personal Digital Devices	VCRs, DVDs, Computer discs and hard drives, Online storage
Audio / Music	Broadcast Radio, Satellite Radio (XM & Sirius), Internet sites & online stores, Podcasts, P2P	Home & car radios, Stereos, iPods, MP3 players & other personal digital devices , websites	CDs, Tapes, Personal digital devices, Computer discs and hard drives, Online storage
Print News & Literature	Newspaper & magazine delivery, Internet sites, Software, Mobile devices	Newsprint, Books, PCs, Internet sites, Mobile devices & PDAs	Books, Personal Library, PDAs, Computer discs and hard drives, Online storage, Printers
Advertising	TV, Radio, Mail, Magazines, Cable, Satellite, Mobile devices & PDAs, E-mail	almost anything	rarely stored
Telecommunications	Phone Networks, Mobile networks, Cable Networks, Internet Telephony (VoIP), IM	Telephones, Cell Phones, PDAs, VoIP, Online chat	Voice Mail, Online services
Online Content & Services	Phone, cable & wireless networks, IM, Portals, Blogs, Search engines, Social networking sites, RSS aggregators	Computer Monitor, PDAs, Cell Phones, TV Sets	Computer discs and hard drives, online storage, Personal digital devices
Video Games	Video game platforms, Discs, Computer software, Internet & online stores, mobile networks	TV Sets & computer monitors, Handheld gaming units, Mobile devices & PDAs	CDs / DVDs, Computer discs and hard drives
Photography	Digital cameras, Camcorders, Mobile devices & PDAs, Internet & online stores	Print film, Computers, TV set, Mobile devices & PDAs	Prints, CDs / DVDs, Memory cards, Computer discs and hard drives, Online storage, Printers

Exhibit 3: Television Value Chain circa 1975

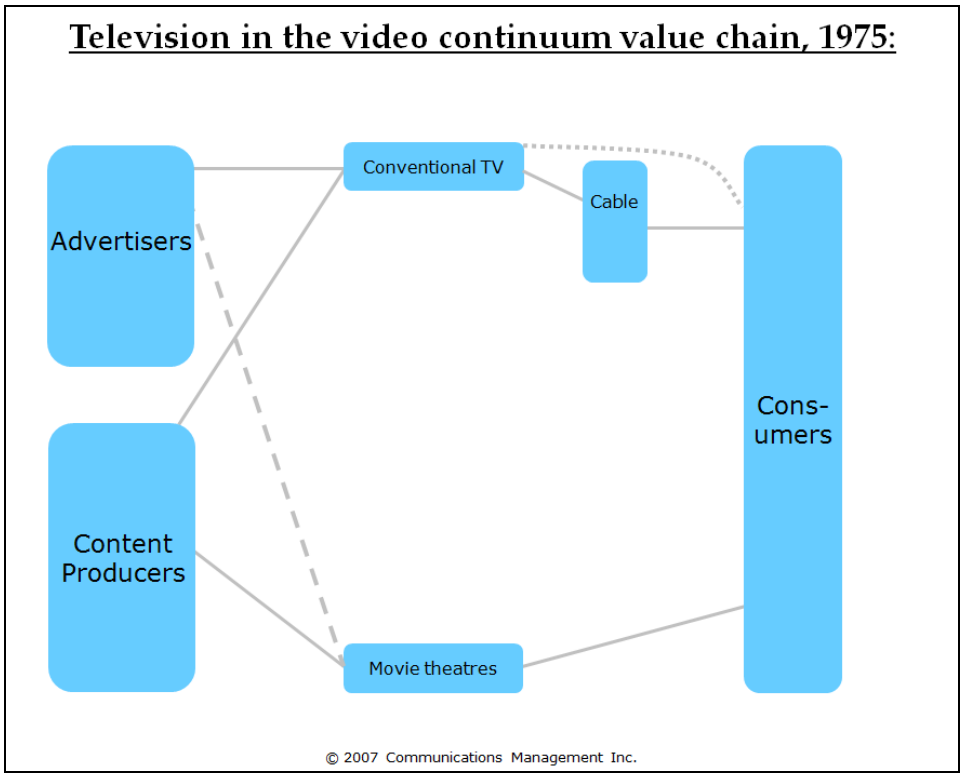
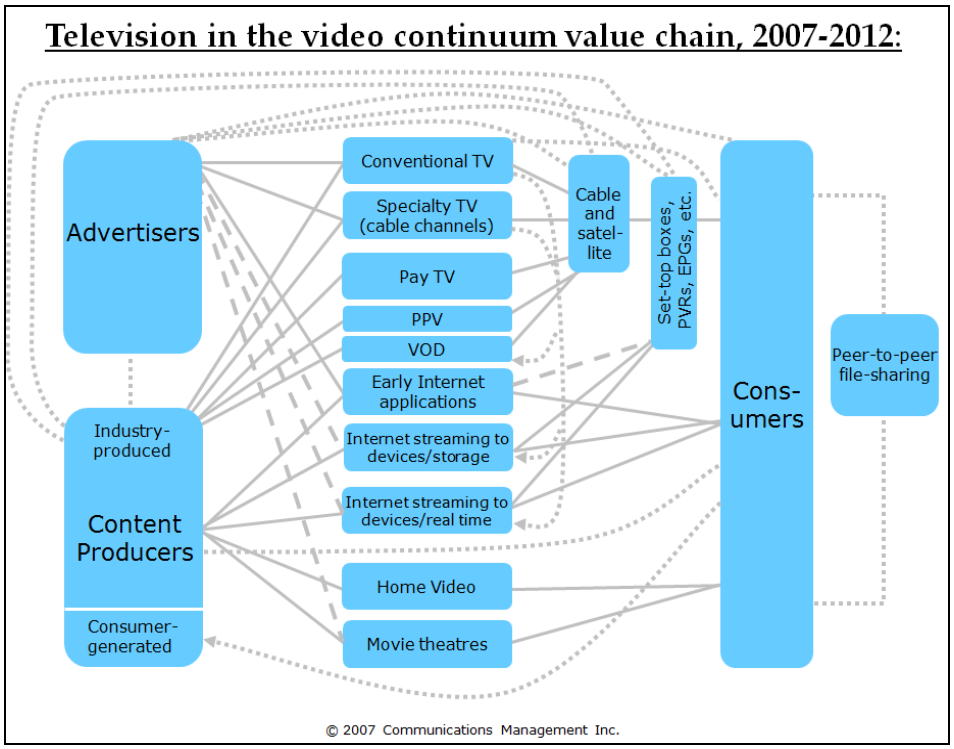


Exhibit 4: Television Value Chain circa 2009



Source: Kenneth Goldstein, Communications Management, Inc., Winnipeg, Canada

Exhibit 5: Steady Increase of Broadcast TV Stations

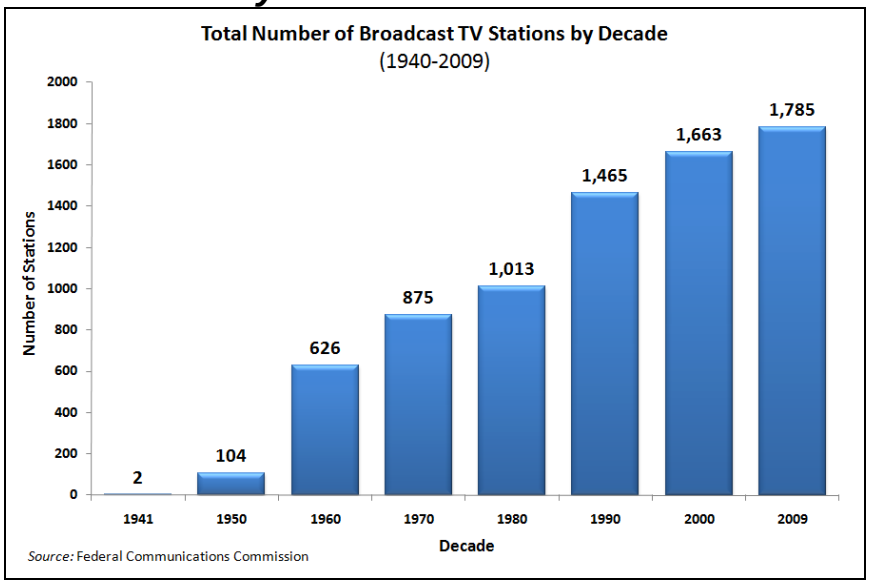


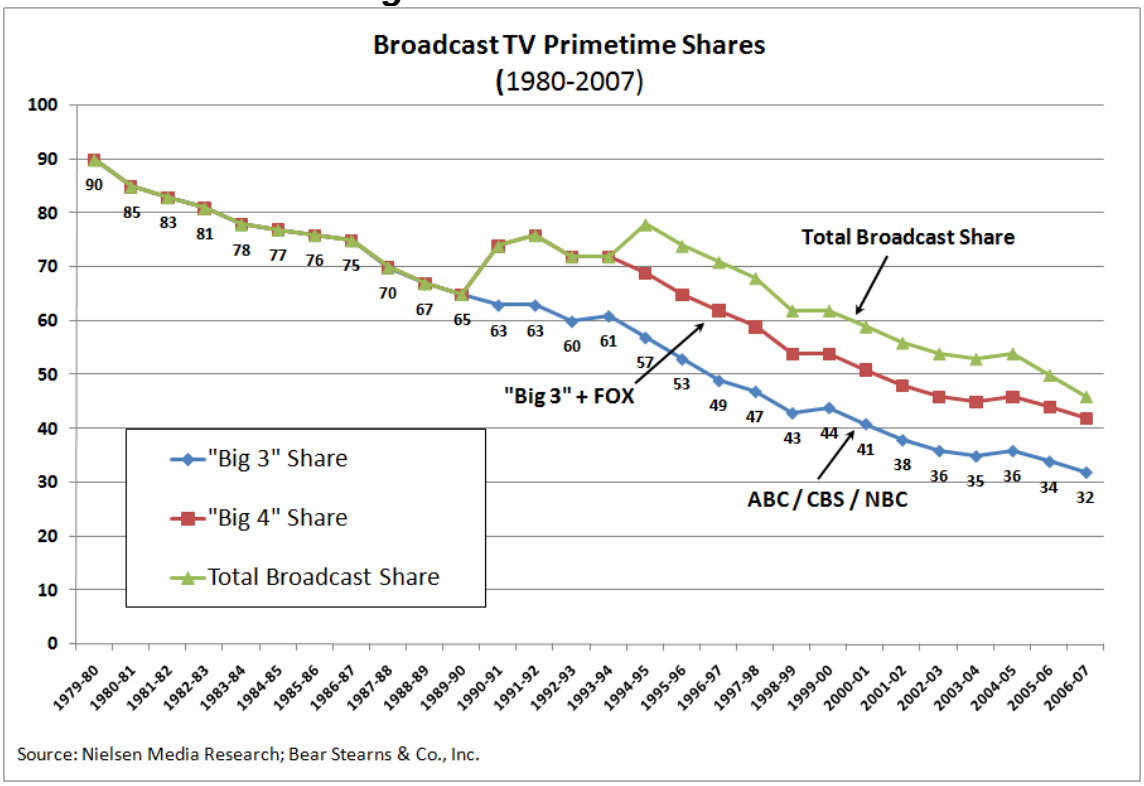
Exhibit 6: Increasing Fragmentation of TV Audience

Highest-Rated TV Shows of Each Season (1950-2005)

Season	*Program*	Rating	Season	*Program*	Rating
1950-51	*Texaco Star Theater*	**61.6**	1978-79	*Laverne & Shirley*	**30.5**
1951-52	*Godfrey's Talent Scouts*	**53.8**	1979-80	*60 Minutes*	**28.2**
1952-53	*I Love Lucy*	**67.3**	1980-81	*Dallas*	**31.2**
1953-54	*I Love Lucy*	**58.8**	1981-82	*Dallas*	**28.4**
1954-55	*I Love Lucy*	**49.3**	1982-83	*60 Minutes*	**25.5**
1955-56	*$64,000 Question*	**47.5**	1983-84	*Dallas*	**25.7**
1956-57	*I Love Lucy*	**43.7**	1984-85	*Dynasty*	**25**
1957-58	*Gunsmoke*	**43.1**	1985-86	*Cosby Show*	**33.8**
1958-59	*Gunsmoke*	**39.6**	1986-87	*Cosby Show*	**34.9**
1959-60	*Gunsmoke*	**40.3**	1987-88	*Cosby Show*	**27.8**
1960-61	*Gunsmoke*	**37.3**	1988-89	*Roseanne*	**25.5**
1961-62	*Wagon Trail*	**32.1**	1989-90	*Roseanne*	**23.4**
1962-63	*Beverly Hillbillies*	**36.0**	1990-91	*Cheers*	**21.6**
1963-64	*Beverly Hillbillies*	**39.1**	1991-92	*60 Minutes*	**21.7**
1964-65	*Bonanza*	**36.3**	1992-93	*60 Minutes*	**21.6**
1965-66	*Bonanza*	**31.8**	1993-94	*Home Improvement*	**21.9**
1966-67	*Bonanza*	**29.1**	1994-95	*Seinfeld*	**20.5**
1967-68	*Andy Griffith*	**27.6**	1995-96	*E.R.*	**22.0**
1968-69	*Rowan & Martin's Laugh-In*	**31.8**	1996-97	*E.R.*	**21.2**
1969-70	*Rowan & Martin's Laugh-In*	**26.3**	1997-98	*Seinfeld*	**22.0**
1970-71	*Marcus Welby, MD*	**29.6**	1998-99	*E.R.*	**17.8**
1971-72	*All in the Family*	**34.0**	1999-00	*Who Wants to be a Millionaire*	**18.6**
1972-73	*All in the Family*	**33.3**	2000-01	*Survivor II*	**17.4**
1973-74	*All in the Family*	**31.2**	2001-02	*Friends*	**15.3**
1974-75	*All in the Family*	**30.2**	2002-03	*CSI*	**16.1**
1975-76	*All in the Family*	**30.1**	2003-04	*CSI*	**15.9**
1976-77	*Happy Days*	**31.5**	2004-05	*CSI*	**16.3**
1977-78	*Laverne & Shirley*	**31.6**	2005-06	*American Idol*	**12.9**
			2006-07	*American Idol*	**12.3**

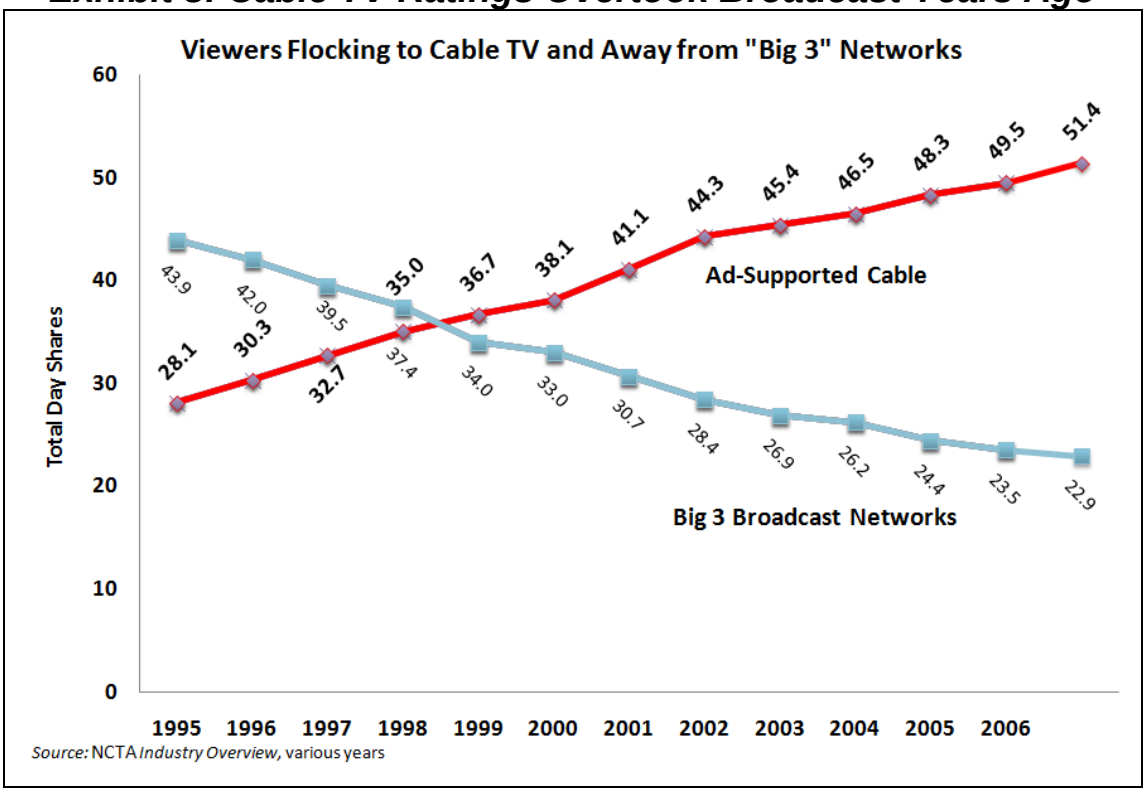
Source: Nielsen Media Research

Exhibit 7: Falling Audience Shares for Traditional TV



Source: Nielsen Media Research; Bear Stearns & Co., Inc.

Exhibit 8: Cable TV Ratings Overtook Broadcast Years Ago



Source: NCTA *Industry Overview*, various years

Exhibit 9: Pay TV Market Competition is Growing

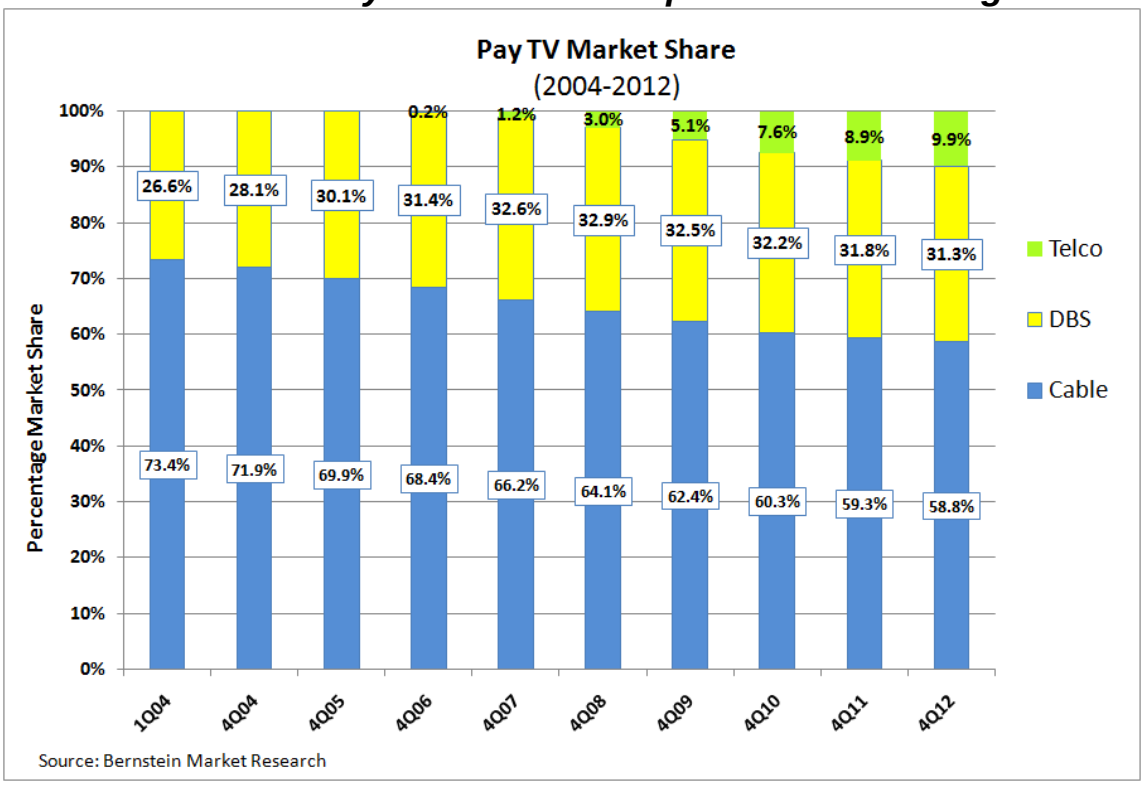


Exhibit 10:
More Choice, Less Vertical Integration in Cable Market

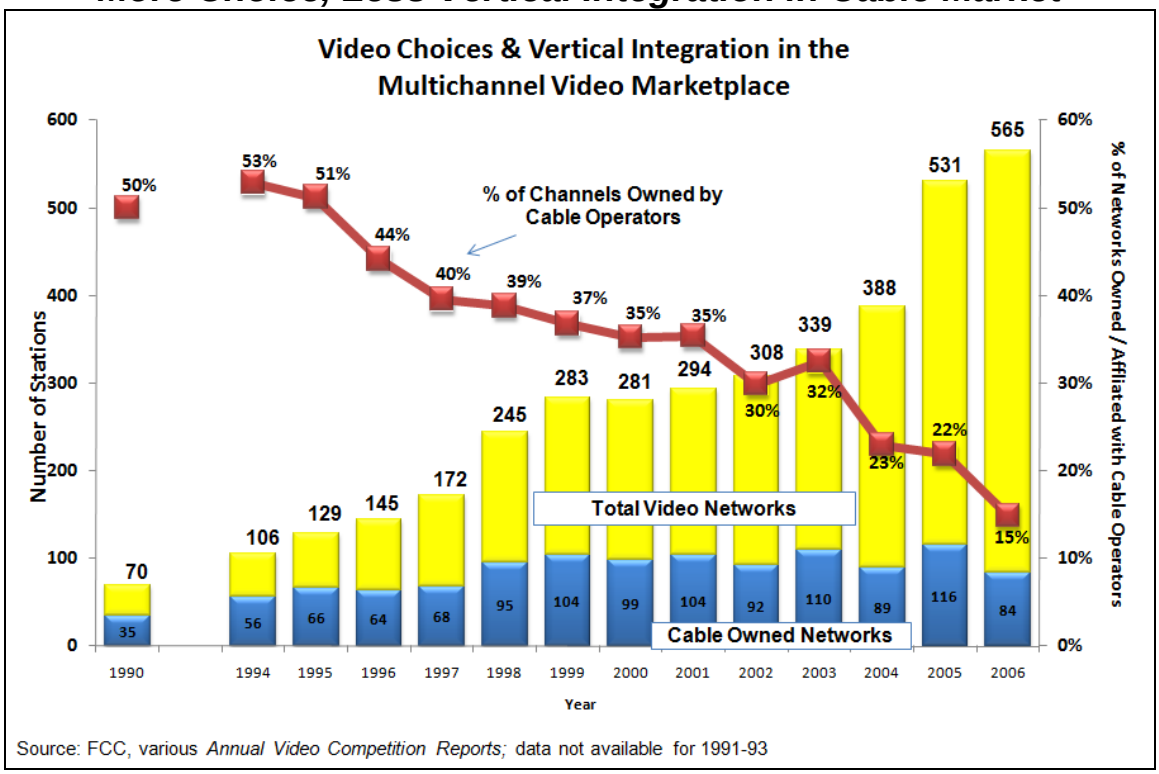


Exhibit 11: The Incredible Diversity of Programming on Pay TV

Cable and Satellite TV Networks by Genre

News: *CNN, Fox News, MSNBC, C-Span, C-Span 2, C-Span 3, BBC America, ABC News Now, CNN International*

Sports: *ESPN, ESPN 2, ESPN News, ESPN Classics, Fox Sports, TNT, NBA TV, NFL Network, Golf Channel, Tennis Channel, Speed Channel, Outdoor Life Network, Fuel*

Weather: *The Weather Channel, Weatherscan*

Home Renovation: *Home & Garden Television, The Learning Channel, DIY, Style*

Educational / Informational / Travel: *History Channel, Biography Channel (A&E), The Learning Channel (TLC), Discovery Channel, National Geographic Channel, Animal Planet, Science Channel, The Travel Channel*

Financial: *CNNfn, CNBC, Fox Business Network, Bloomberg Television*

Shopping: *The Shopping Channel, Home Shopping Network, QVC, Jewelry, Shop NBC*

Female-oriented: *WE (Women's Entertainment), Oxygen, Lifetime Television, Lifetime Real Women, Lifetime Movie Network, Showtime Women, SoapNet*

Family / Children-Oriented: *Animal Planet, Anime Network, ABC Family, Black Family Channel, Boomerang, Cartoon Network, Discovery Kids, Disney Channel, Familyland Television Network, FUNimation, Hallmark Channel, Hallmark Movie Channel, HBO Family, KTV – Kids and Teens Television, Nickelodeon, Nick 2, Nick Toons, Noggin (ages 2-5), The N Channel (ages 9-14), PBS Kids Sprout, Showtime Family Zone, Starz! Kids & Family, Toon Disney, Varsity TV, WAM (movies for ages 8-16), GAS, American Life TV, Family Net*

African-American: *BET, Black Starz! Black Family Channel, BET Gospel*

Foreign / Foreign Language: *Telemundo (Spanish), Univision (Spanish), Deutsche Welle (German), BBC America (British), AIT: African Independent Television, TV Asia, ZEE-TV Asia (South Asia) ART: Arab Radio and Television, CCTV-4: China Central Television, The Filipino Channel (Philippines), Saigon Broadcasting Network (Vietnam), Channel One Russian Worldwide Network, The International Channel, HBO Latino, History Channel en Espanol*

Religious: *Trinity Broadcasting Network, The Church Channel (TBN), World Harvest Television, Eternal Word Television Network (EWTN), National Jewish Television, Worship Network*

Music: *MTV, MTV 2, MTV Jams, MTV Hits, VH1, VH1 Classic, VH1 Megahits, VH1 Soul, VH1 Country, Fuse, Country Music Television (CMT), CMT Pure Country Great American Country, Great American Country, Gospel Music Television Network*

Movies: *HBO, Showtime, Cinemax, Starz, Encore, The Movie Channel, Turner Classic Movies, AMC, IFC, Flix, Sundance, Bravo (Action, Westerns, Mystery, Love Stories, etc.)*

Other or General-Interest Programming: *TBS, USA Network, TNT, FX, SciFi Channel, Spike TV, truTV, Slueth, Crime & Investigation Network, Wealth TV, TV One*

Source: Federal Communications Commission, various *Annual Video Competition Reports*

Exhibit 12: VCR & DVD Players Are Now Ubiquitous

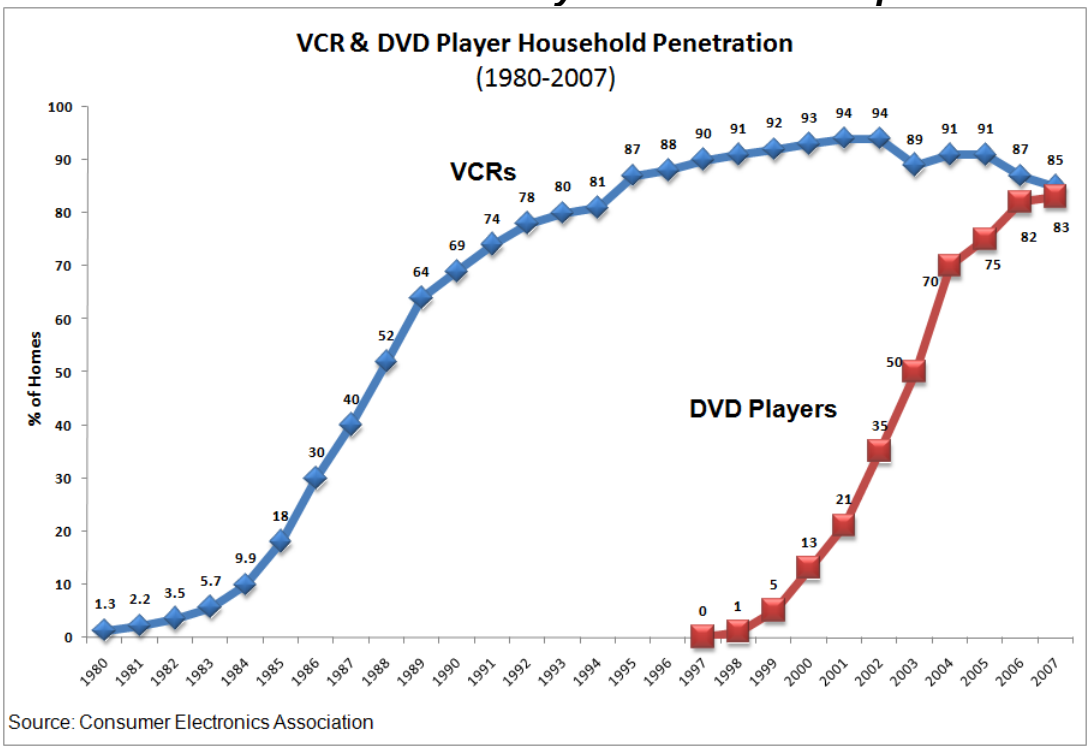
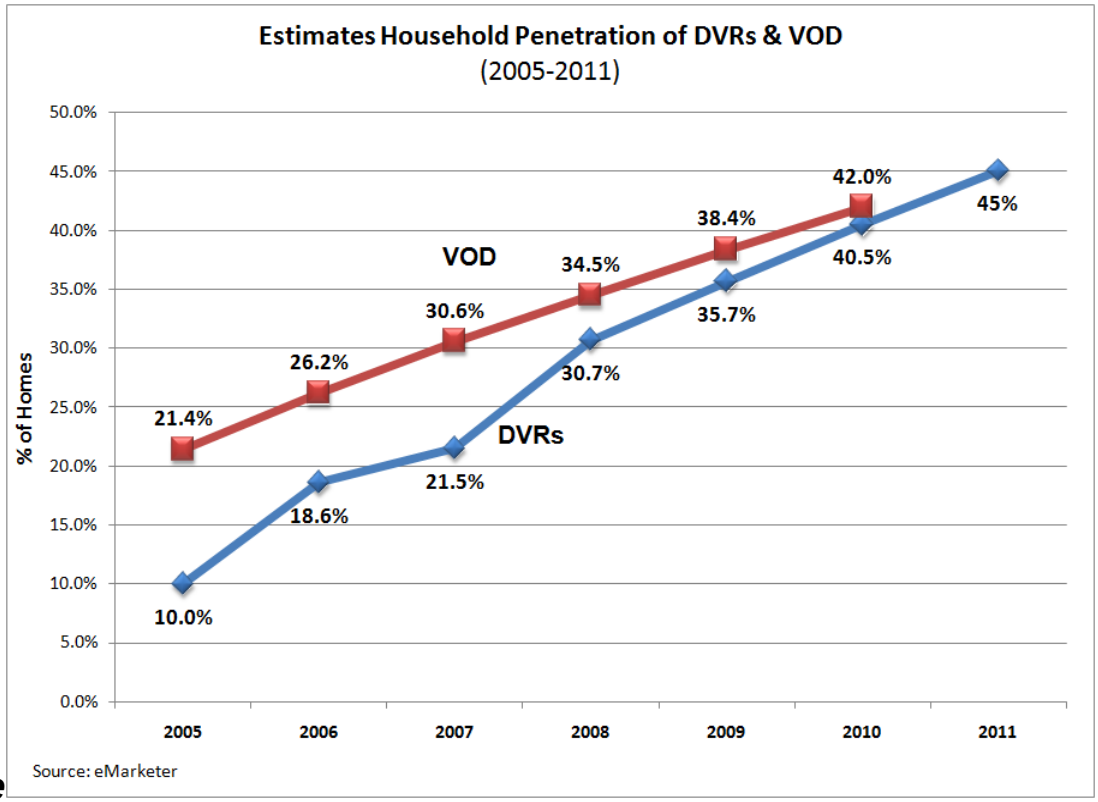


Exhibit 13: DVRs and VOD Are on the



Rise

Exhibit 14: DVR Prices Falling, Sales Exploding

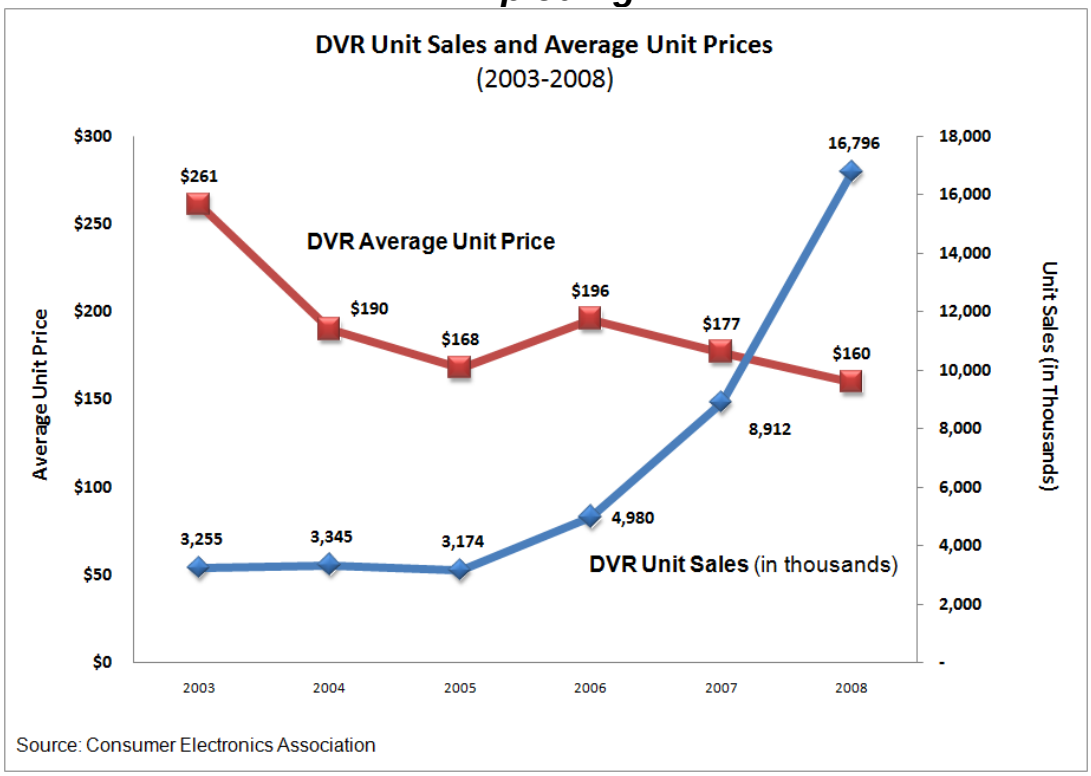


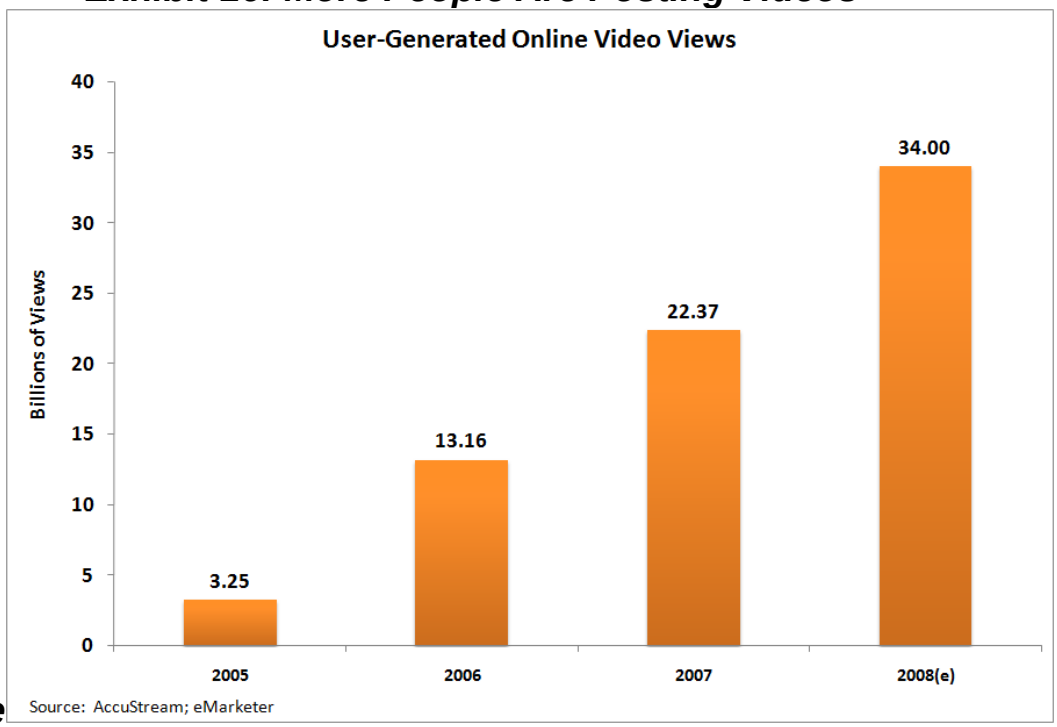
Exhibit 15: Prices for Video Hardware Are Plummeting

Average Prices for Selected Technologies (2003-2008)

	2003	2004	2005	2006	2007	2008 (est.)	% price reduction
Digital television sets	$1,571	$1,537	$1,369	$995	$954	$917	**-41.6%**
Direct Broadcast Satellite	$ 120	$ 105	$ 98	$ 92	$ 87	$ 82	**-31.7%**
VCRs	$ 63	$ 57	$ 58	$ 59	$ 48	$ 43	**-31.7%**
DVD players	$ 123	$ 109	$ 110	$ 100	$ 72	$ 69	**-43.9%**
DVD recorders		$ 271	$ 212	$ 198	$ 178	$ 159	**-41.3%**
Next-Gen DVD Players				$ 500	$ 395	$ 307	**-38.6%**
Digital Video Recorders	$ 261	$ 190	$ 168	$ 196	$ 177	$ 160	**-38.7%**
IPTV		$ 175	$ 150	$ 136	$ 127	$ 119	**-32.0%**
MP3 players	$ 140	$ 181	$ 170	$ 146	$ 118	$ 116	**-17.1%**

Source: Consumer Electronics Association, *U.S. Consumer Sales and Forecasts, 2003-2008.*

Exhibit 16: More People Are Posting Videos



Online

Exhibit 17: Video-Sharing Sites Are on the Rise

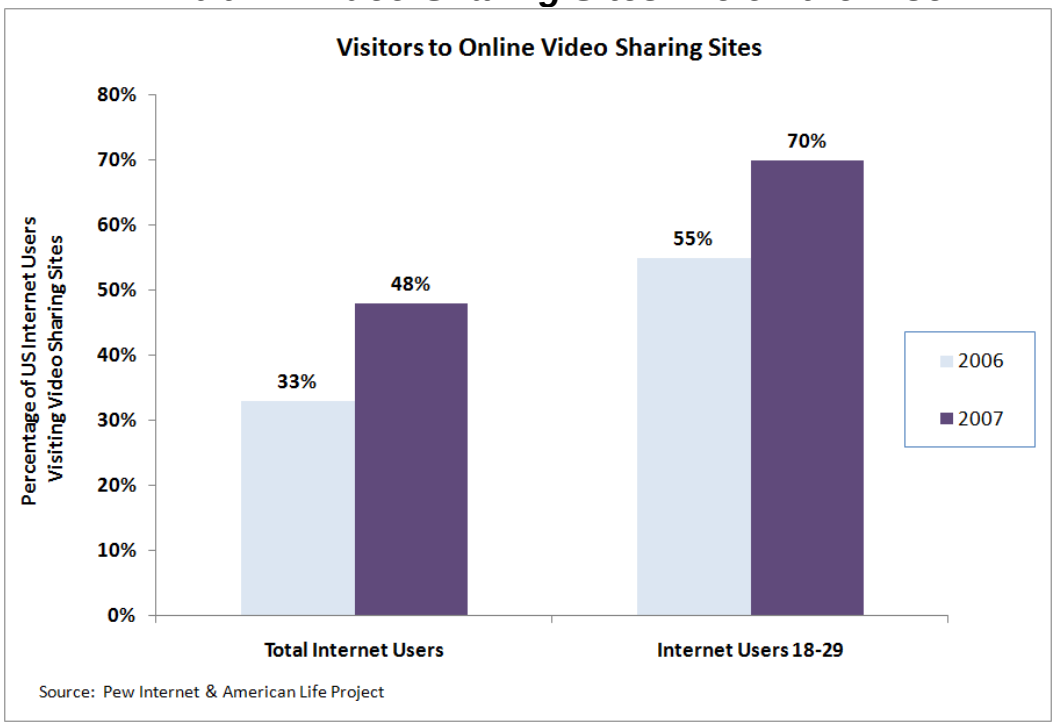


Exhibit 18: More People Are Viewing Online Video

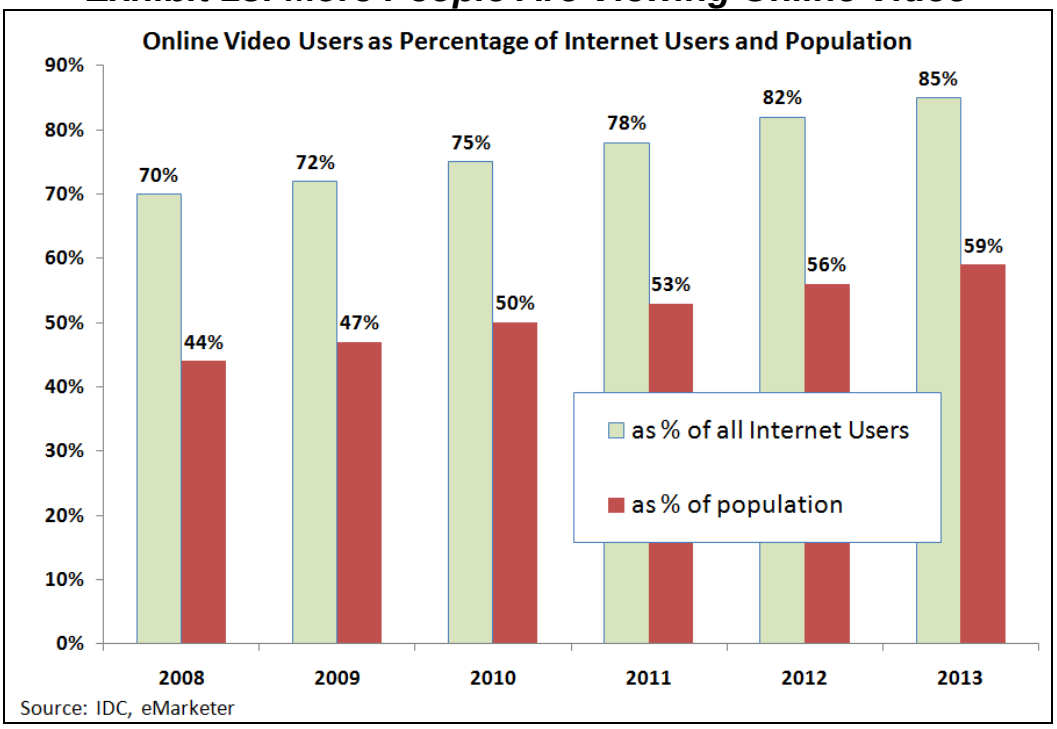


Exhibit 19: Plenty of Ways to Watch Video Content

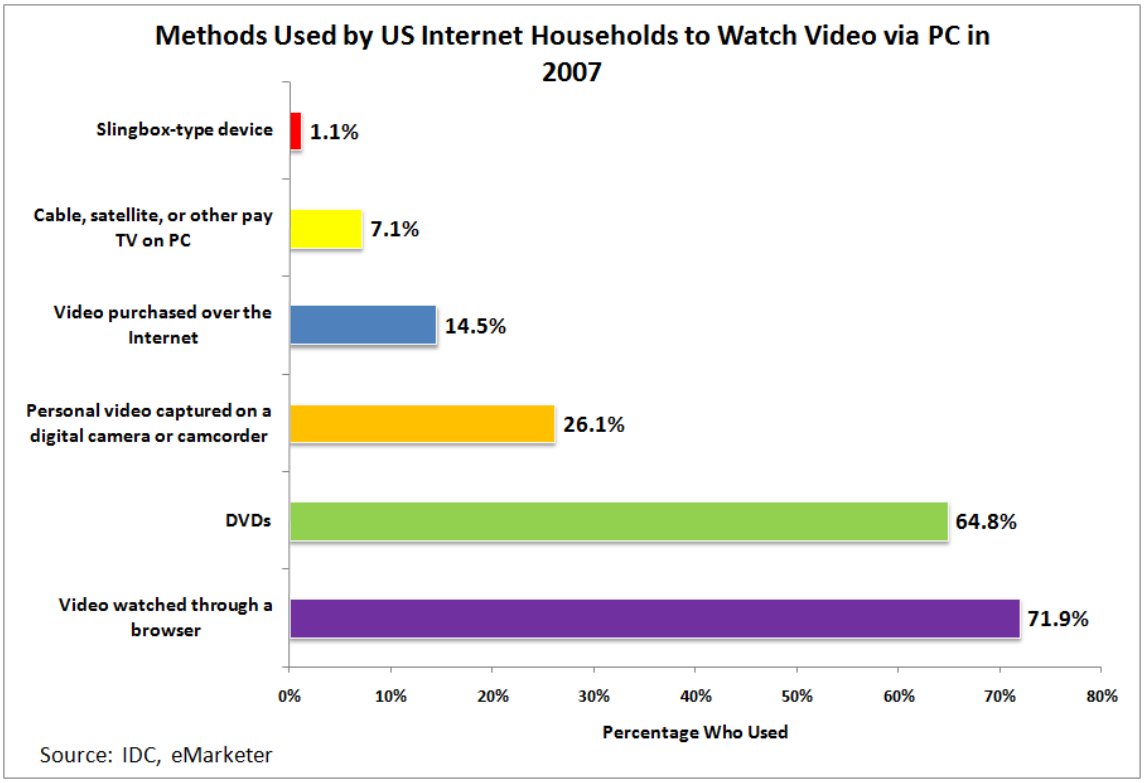


Exhibit 20: Internet Increasingly Dominating TV and Print

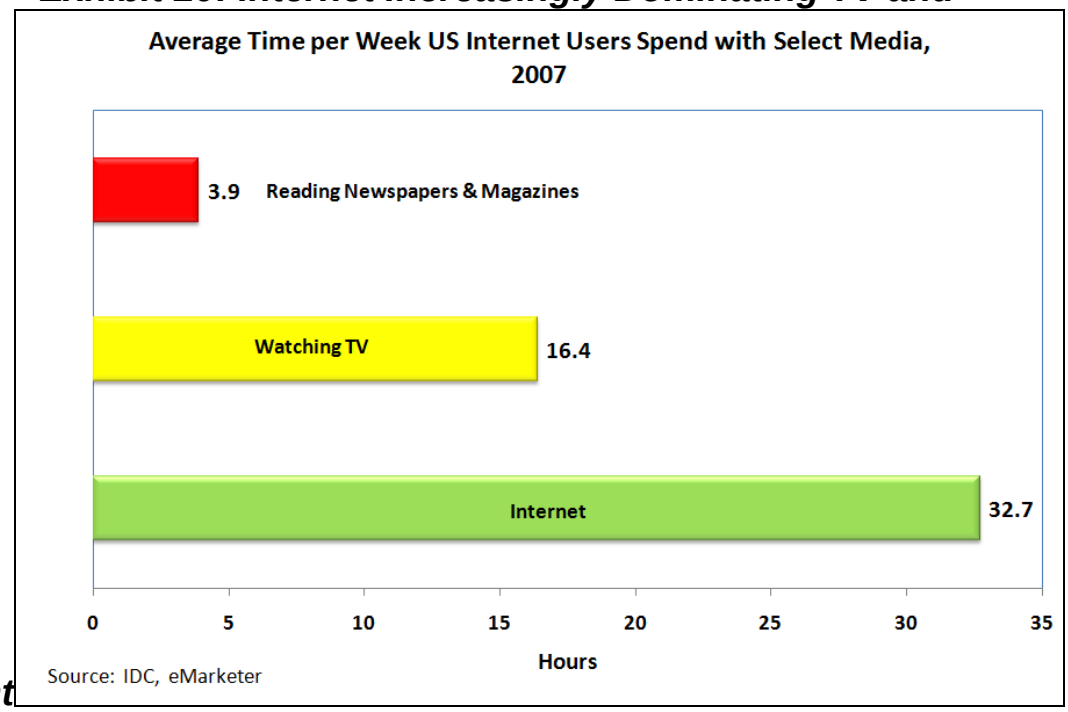
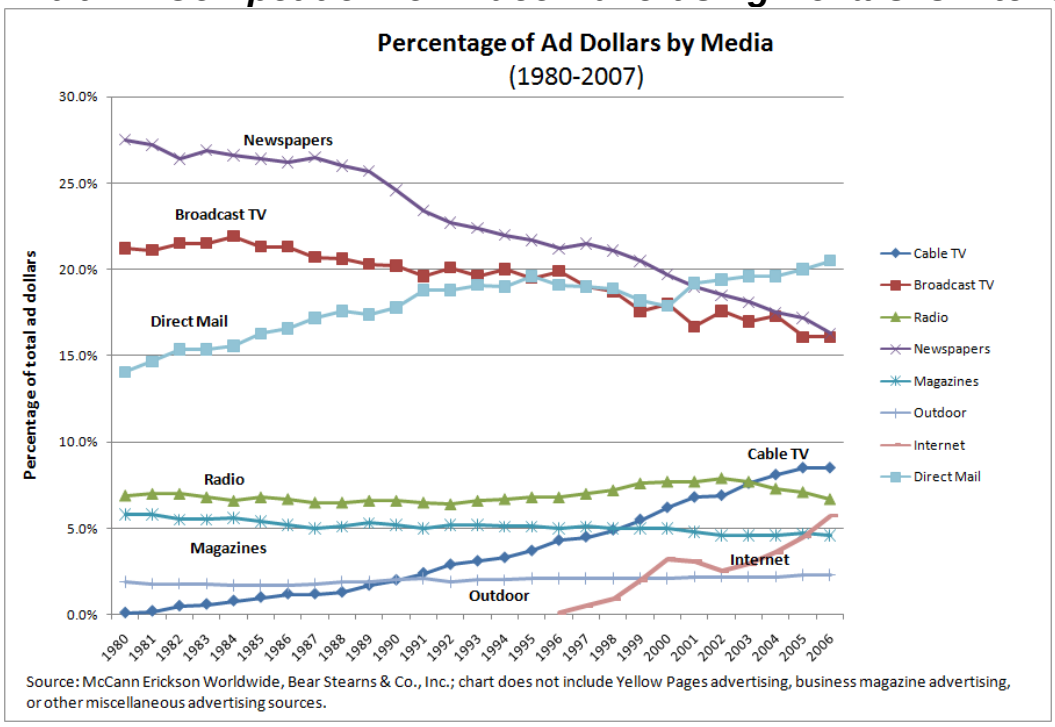



Exhibit 21: Competition for Video Advertising Dollars is Intense