

**Testimony of  
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**Hearing on  
“An Examination of the Proposed Combination of Comcast and NBC Universal”**

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

**February 4, 2010**

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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).

Although we are still early in this process, there has already been a great deal of hand-wringing and even some dire predictions about the pending merger of Comcast and NBC Universal. I hope to put this proposed marriage in some historical context and explain why the deal certainly won't have the detrimental impact some critics fear, and also explain why it might even be one potential model for how to sustain traditional media going forward.

### **Beware Media Merger Hysteria**

First, let's remember that we've been here before. Paranoid predictions of a media apocalypse have accompanied the announcements of many previous media mergers, from AOL-Time Warner to News Corp.-DirecTV to XM-Sirius.<sup>1</sup> In these cases and almost all others, however, the “sky is falling” claims proved to be greatly overstated.<sup>2</sup> The only “harm” that one could reasonably claim came from those mergers was not to consumers or content providers,

but to the merging firms themselves and their shareholders. That's because many mergers simply fail to create the sort of synergies and benefits originally hoped for and consequently die of natural causes over time.

Other firms, however, have found ways to make deals work and deliver important new services that previously were unimaginable or simply too expensive to offer alone.<sup>3</sup> Regardless, the point here is that we'll never know what works unless we permit marketplace experimentation with new and innovative business models.

### **“Gatekeeper” Myths: Why Restricting Content Options is Economic Suicide**

Second, the fear that Comcast-NBCU will act as a “gatekeeper” over video content is also largely overblown—especially in light of the preemptive concessions they have already made on program access and carriage. But it's important to realize that the merger will only marginally affect vertical integration in the cable marketplace. Currently, the percentage of cable channels owned by video distributors is in the single digits, and even after this merger it will only be in the teens.<sup>4</sup> (See Exhibit 1) Stated differently, the vast majority of cable channels will be independent of Comcast-NBCU control.

More importantly, it's hard to believe the new firm would restrict its content to just Comcast-owned distribution networks since they would be losing the eyeballs, advertisers, and revenues that would accompany the carriage of their content on other video platforms. Likewise, it would make little sense for the firm to block new or competing channels on their own platform since they would incur the wrath of the programmers and the viewing public

alike. And those channels will likely quickly find a home elsewhere, which could incentivize subscribers to switch video service providers. (See Exhibits 2-6)

Indeed, the great thing about the modern media marketplace is that there is always another place for consumers to turn to find what they want. Comcast faces increasingly robust competition in the video programming marketplace from satellite and telco providers, as well as from Internet-based video providers.<sup>5</sup> (See Exhibit 7) And NBC Universal's stable of programming, while impressive, is a mere trickle in an ocean of content that consumers can choose from.<sup>6</sup>

Meanwhile, many consumers are increasingly "cutting the cable cord" altogether and instead getting the video they want from a bewildering array of online video services.<sup>7</sup> Netflix, Hulu, Joost, Roku, Apple, the Sony PlayStation Store, the Microsoft Xbox store, and others offer traditional TV fare while sites like YouTube, Vimeo and Justin.TV offer a mix of professional and amateur content.

In sum, there has never been so much competition for our eyes and ears, and audiences and advertising dollars have become increasingly fragmented as a result.<sup>8</sup> (See Exhibits 8-10)

### **What Future for Broadcasting & Local News in Turbulent Times?**

Finally, we need to realize that the ongoing digital revolution is upending many traditional media business models—especially advertising supported over-the-air broadcasting—and that alliances like Comcast-NBCU may be one blueprint for how traditional media operators can evolve and compete going forward. With both the FCC and FTC currently investigating whether journalism is in trouble and what it might take to "save the news," many

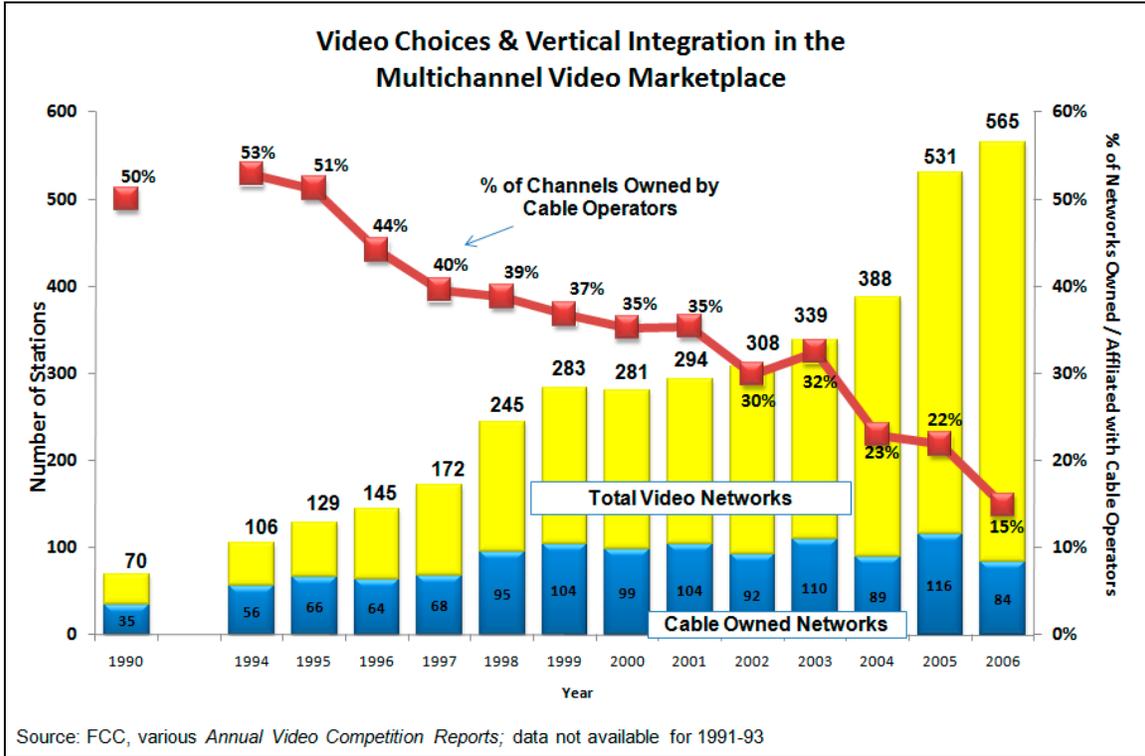
media economists and industry analysts seem to agree that at least *some* degree of consolidation or collaboration might be necessary.

Consider last week's news that NBC Universal saw quarterly profits plunge by a whopping 30% in the fourth quarter of 2009.<sup>9</sup> This is indicative of the general downturn the entire media sector has been experiencing as of late. Why not then let Comcast help NBCU try to get back on track rather than force them to make it on their own in a radically uncertain future? And it goes without saying that Comcast might be better positioned to protect NBC Universal's copyrighted content from digital piracy, at least over its own pipes.

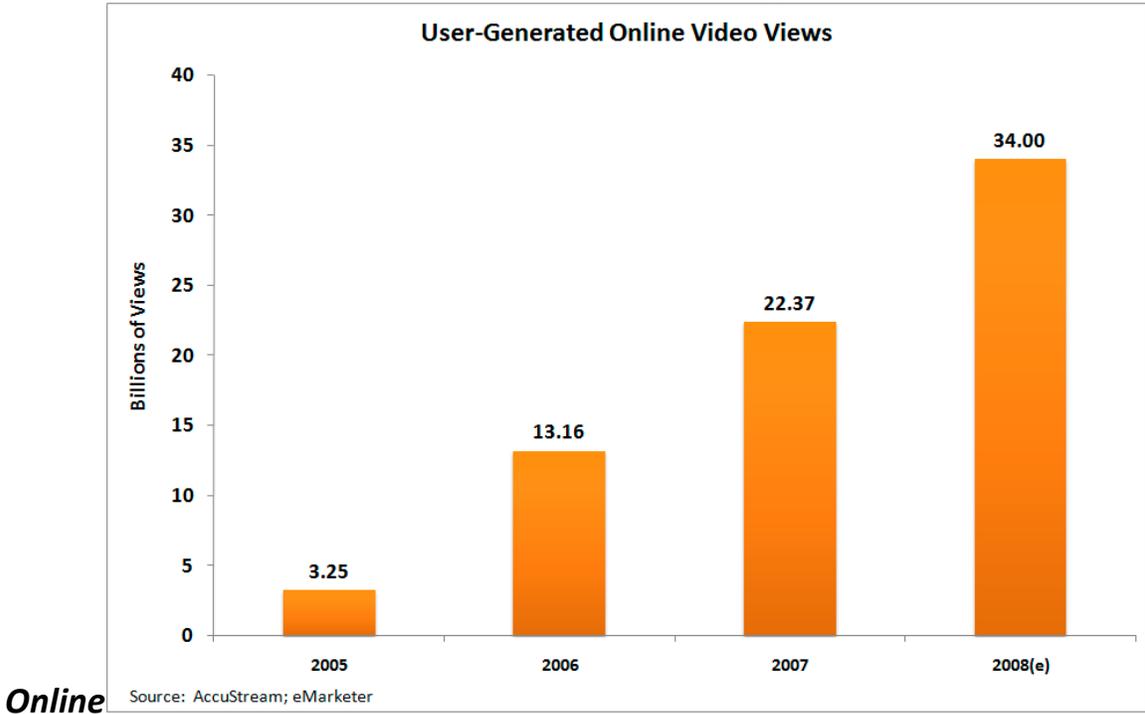
Those who are concerned about the future of broadcasting and local news should remember that news—and local broadcast news in particular—isn't cheap. Unless we want to embark on a massive government subsidization scheme to bailout traditional media providers, Congress and regulatory officials must be willing to grant private media operators the flexibility to restructure their business affairs so they can continue to provide important public needs while also turning a profit.<sup>10</sup> That can't happen unless we allow media markets to evolve and let operators experiment with new business models and ownership structures.<sup>11</sup> Although there are no guarantees, creator/distributor alliances like Comcast-NBCU may be one model that helps firms create, extend, and then also monetize their media content. But, again, regulatory flexibility is crucial so we can figure out what works and what doesn't.

Thank you again for inviting me here to testify.

**Exhibit 1: More Choice, Less Vertical Integration in Cable Market**

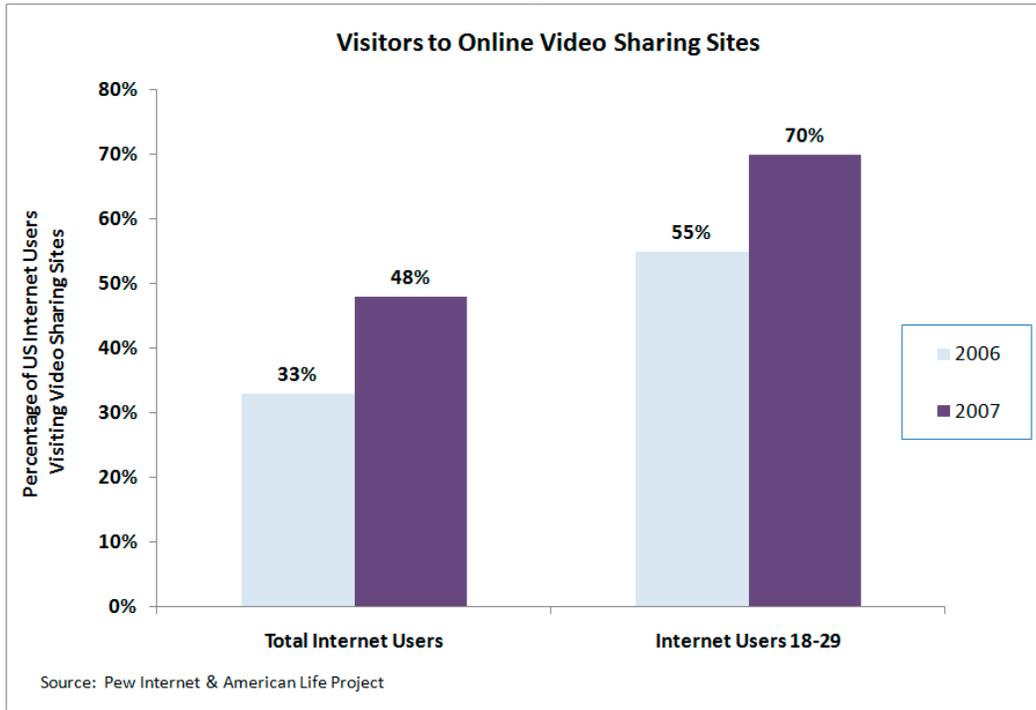


**Exhibit 2: More People Are Posting Videos**

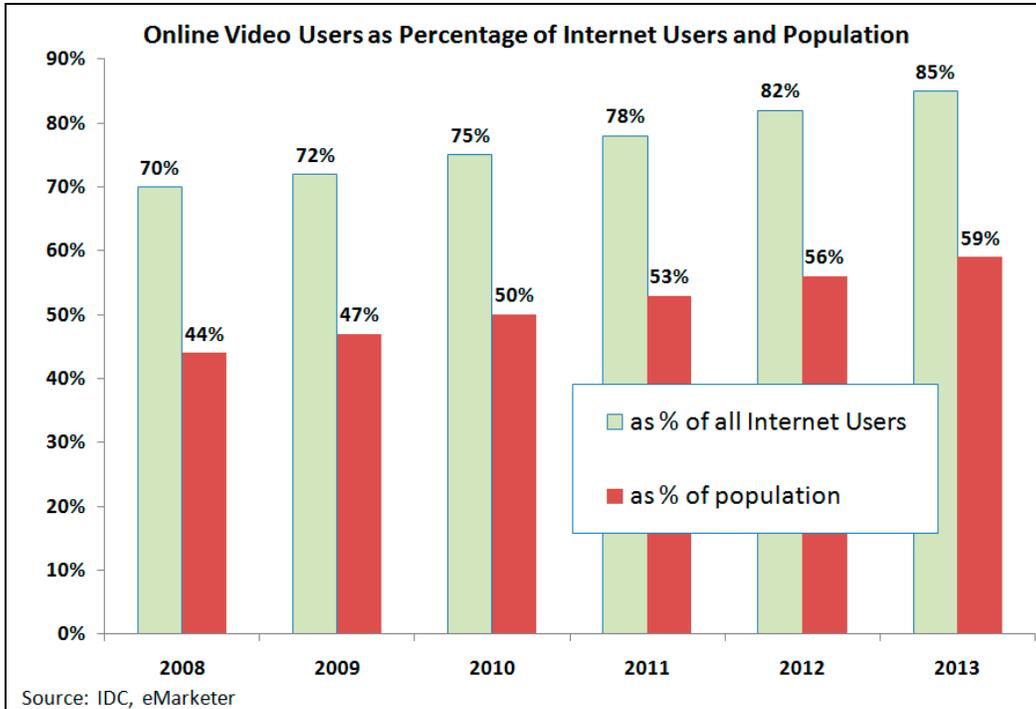


Online

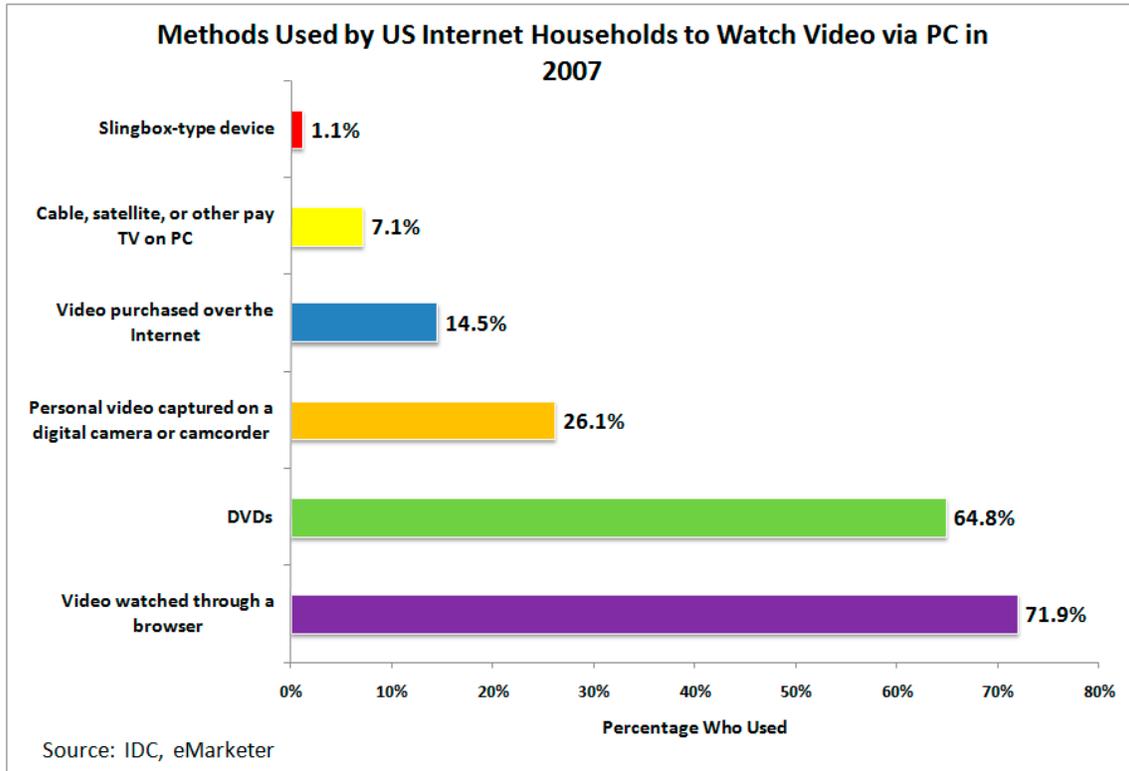
**Exhibit 3: Video-Sharing Sites Are on the Rise**



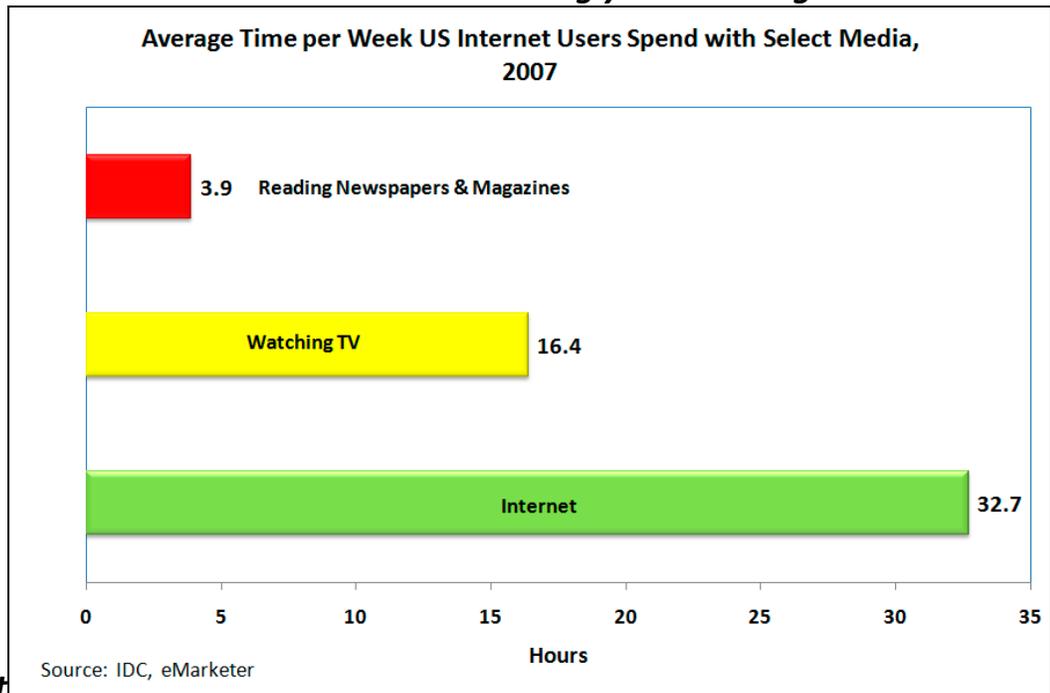
**Exhibit 4: More People Are Viewing Online Video**



**Exhibit 5: Plenty of Ways to Watch Video Content**

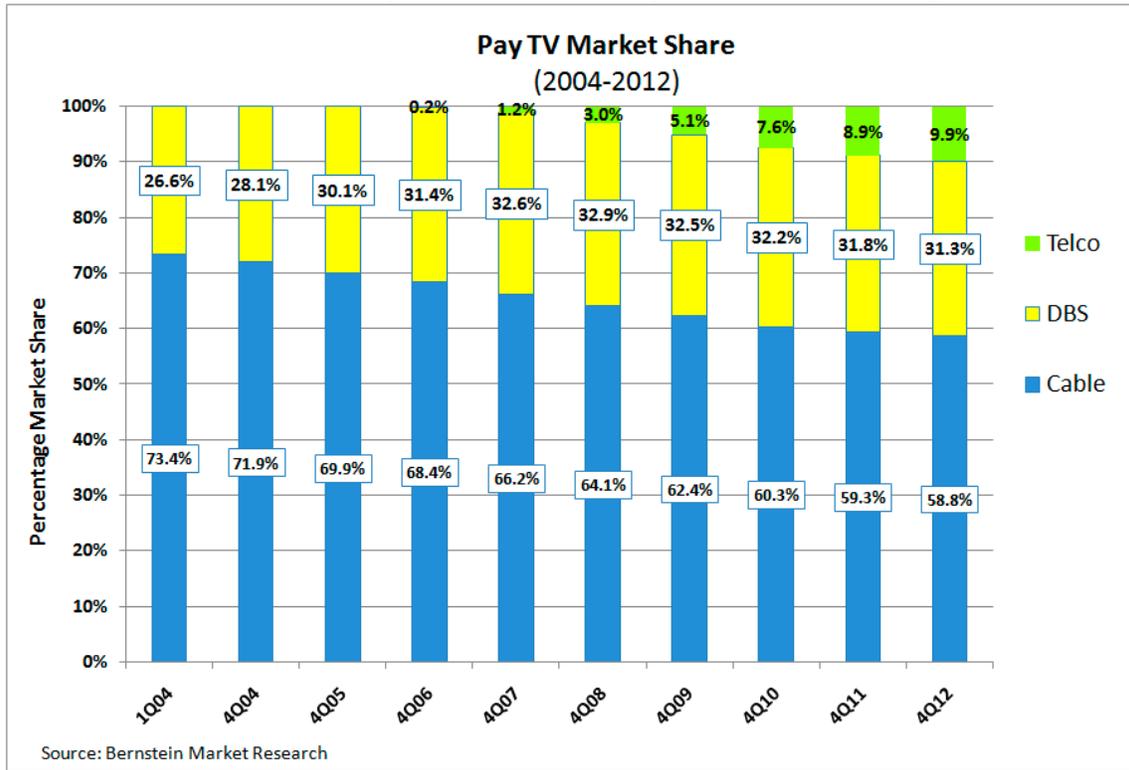


**Exhibit 6: Internet Increasingly Dominating TV and**

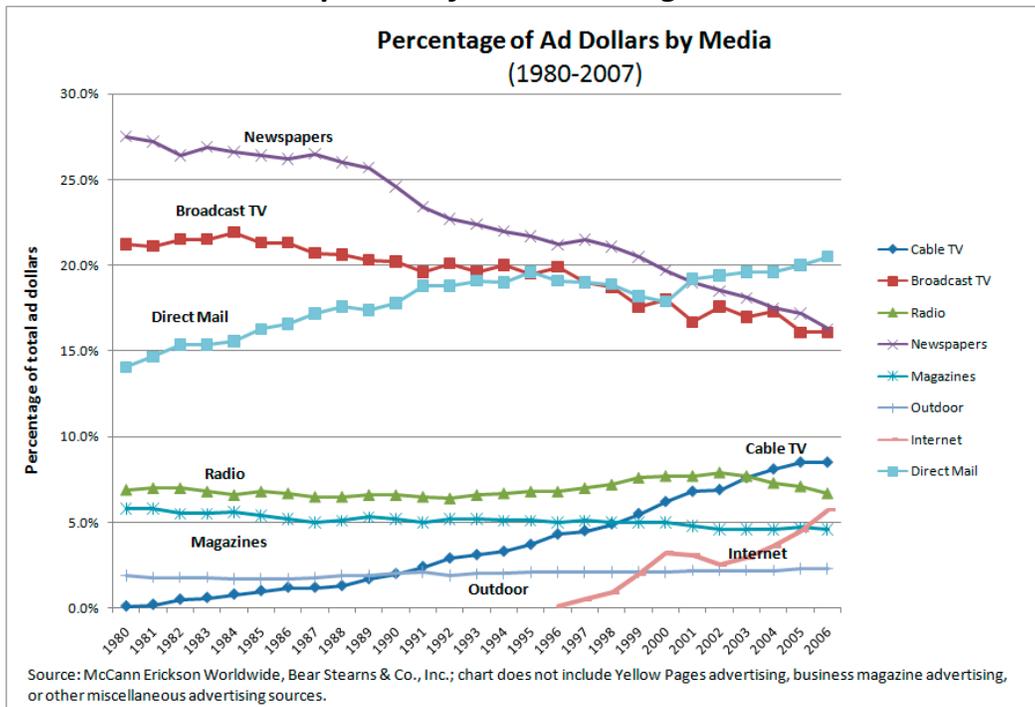


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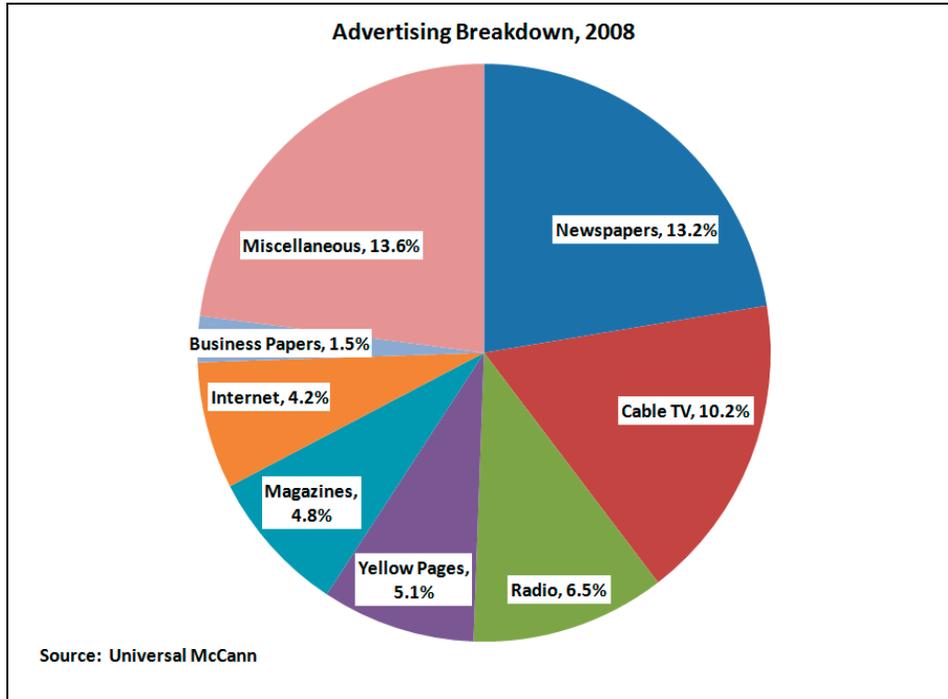
**Exhibit 7: Pay TV Market Competition is Growing**



**Exhibit 8: Competition for Advertising Dollars is Intense**



**Exhibit 9: Competition for Advertising Dollars is Intense (cont.)**



**Exhibit 10: Increasing Fragmentation of TV Audience**

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

Source: Nielsen Media Research

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- <sup>1</sup> Adam Thierer, The Progress & Freedom Foundation, *A Brief History of Media Merger Hysteria: From AOL-Time Warner to Comcast-NBC*, Progress on Point 16.25, Dec. 2009, [www.pff.org/issues-pubs/pops/2009/pop16.25-comcast-NBC-merger-madness.pdf](http://www.pff.org/issues-pubs/pops/2009/pop16.25-comcast-NBC-merger-madness.pdf)
- <sup>2</sup> Adam Thierer, *A Media Morality Play*, Forbes, Dec. 15, 2009, [www.forbes.com/2009/12/14/media-merger-antitrust-opinions-contributors-adam-thierer.html](http://www.forbes.com/2009/12/14/media-merger-antitrust-opinions-contributors-adam-thierer.html)
- <sup>3</sup> A good example: Disney's seamless and successful integration of ABC Television Group (ABC + Disney cable properties), Walt Disney Studios, the Walt Disney Internet Group, its many ESPN properties, and its parks and resorts.
- <sup>4</sup> 2006 is the last for which the FCC has made data available, but as of that time the overall number of national programming networks available in America stood at 565 channels. That is up from just 70 channels in 1990, an astonishing increase in program choices. The FCC noted that, "Of the 565 networks, 84 (14.9 percent) were vertically integrated, or affiliated, with at least one cable operator." Federal Communications Commission, *FCC Adopts 13<sup>th</sup> Annual Report to Congress on Video Competition and Notice of Inquiry for the 14<sup>th</sup> Annual Report*, Nov. 27, 2007, at 4, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-278454A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278454A1.pdf) What that summary fails to mention, however, is that vertical integration has fallen steadily since the FCC's first *Annual Video Competition Report* was issued, when over 50 percent of all channels were affiliated with a cable operator. Indeed, the video marketplace exhibits less vertical integration than ever before. As far as vertically integrated industries go, no impartial observer would conclude that this industry is being controlled by "gatekeeper," pay TV platforms, as some critics suggest. Most new pay TV channels today are independently owned and offer an unprecedented diversity of programming options. This trend is a strong sign of how healthy and vibrantly competitive this marketplace is today. Finally, these numbers do not take into account the split between Time Warner Entertainment and Time Warner Cable, which represented a significant portion of the 15% of vertically owned channels before 2006. That is the percentage of cable channels owned by video distributors is in the single digits today.
- <sup>5</sup> Adam Thierer, The Progress & Freedom Foundation, *Video Competition in a Digital Age*, Testimony before the Subcommittee on Communications, Technology and the Internet, U.S. House Committee on Energy and Commerce, Oct. 22, 2009, [www.pff.org/issues-pubs/testimony/2009/10-22-09-thierer-testimony-video-competition-digital-age.pdf](http://www.pff.org/issues-pubs/testimony/2009/10-22-09-thierer-testimony-video-competition-digital-age.pdf)
- <sup>6</sup> 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](http://www.city-journal.org/html/17_2_media.html)
- <sup>7</sup> See generally The Progress & Freedom Foundation, "Cutting the Video Cord," PFF Blog Ongoing Series, [http://blog.pff.org/archives/ongoing\\_series/cutting\\_the\\_video\\_cord/](http://blog.pff.org/archives/ongoing_series/cutting_the_video_cord/)
- <sup>8</sup> Adam Thierer and Grant Eskelsen, The Progress & Freedom Foundation, *Media Metrics: The True State of the Modern Media Marketplace*, PFF Special Report, Summer 2008), [www.pff.org/mediametrics](http://www.pff.org/mediametrics)
- <sup>9</sup> David B. Wilkerson, *NBC Quarterly Profit Plunges 30%*, MarketWatch, Jan. 22, 2010.
- <sup>10</sup> W. Kenneth Ferree, The Progress & Freedom Foundation, *Another Naïve Proposal for Government Entanglement with the Fourth Estate*, PFF Blog, Feb. 1, 2010, [http://blog.pff.org/archives/2010/02/another\\_naive\\_proposal\\_for\\_government\\_entanglement.html](http://blog.pff.org/archives/2010/02/another_naive_proposal_for_government_entanglement.html); Adam Thierer, *Socializing Media in Order to Save It*, City Journal, March 27, 2009, [www.city-journal.org/2009/eon0327at.html](http://www.city-journal.org/2009/eon0327at.html); Adam Thierer, The Progress & Freedom Foundation, *Public Option for Press Should Get the Red Pen*, Progress Snapshot 6.4, Jan. 25, 2010, [www.pff.org/issues-pubs/ps/2010/ps6.4-OP-ED-for-Daily-Caller-A-Public-Option-for-the-Press.html](http://www.pff.org/issues-pubs/ps/2010/ps6.4-OP-ED-for-Daily-Caller-A-Public-Option-for-the-Press.html)
- <sup>11</sup> W. Kenneth Ferree, The Progress & Freedom Foundation, *Media Ownership Proceedings*, Testimony before the Federal Communications Commission, Nov. 3, 2009, [www.pff.org/issues-pubs/testimony/2009/11-03-09-ferree-media-ownership-testimony.pdf](http://www.pff.org/issues-pubs/testimony/2009/11-03-09-ferree-media-ownership-testimony.pdf); Adam Thierer, *Media Myths: Making Sense of the Debate over Media Ownership* (The Progress & Freedom Foundation, 2005), [www.pff.org/issues-pubs/books/050610mediamyths.pdf](http://www.pff.org/issues-pubs/books/050610mediamyths.pdf)