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The End of the Networks

*Rick G. Morris*¹

I. THE TRADITIONAL NETWORK MODEL

At one time, traditional television networks controlled 95% of American viewing. The power and strength of the networks as shapers of American thought and agendas was unparalleled.² They influenced the discussion of America and the morals of the country through their prime time programming. They shaped the news that was important through editorial decisions made by a few people located within blocks of each other in New York City.³ The concentration of power was readily apparent and it was publicly noted. The power of the networks over political thinking and Presidential policymaking was directly criticized by Vice President Spiro Agnew.⁴ Years later another Vice President, this time Dan Quayle, would criticize the networks for their pervasive influence over the morals of the

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² See generally *Schurz Commc'ns, Inc. v. FCC*, 982 F.2d 1043, 1045 (7th Cir. 1992); *NBC v. United States*, 319 U.S. 190, 206 (1943); DAVID HALBERSTAM, *THE POWERS THAT BE* (University of Illinois Press 2000) (1979); DENNIS W. MAZZOCCO, *NETWORKS OF POWER: CORPORATE TV'S THREAT TO DEMOCRACY*, 2 (1994), BEN H. BAGDIKAN, *THE MEDIA MONOPOLY*, (4th ed. 1992). Each of these documents reports the real and perceived domination by the networks from various viewpoints along a spectrum of interests. The networks were deemed by many to be the single most powerful non-governmental force in the country. See also J. FRED MACDONALD, *ONE NATION UNDER TELEVISION: THE RISE AND DECLINE OF NETWORK TV* (1994) for a comprehensive cultural history of network television that ends about where this legal article picks up.

³ All three of the major networks were headquartered in Manhattan, and this led to charges of myopicism in programming. For example, while the networks had various headquarter and operating locations, some of the largest ones were NBC's location at 30 Rockefeller Plaza on 48th Street, CBS's legendary headquarters known as "Blackrock" at 51 West 52nd Street, completed in 1965, and ABC networks' headquarters at 77 West 66th Street. Addresses in the early 1990's from 1991 BROADCASTING Y.B. A-40, A-41, A-50.

⁴ Vice President Spiro Agnew probably had the most famous criticism of television news power of commenting as disruptive of the political process and then President Nixon's policies. "[P]erhaps no more than a dozen" decide what Americans will hear; they become the "presiding judge" of a national jury. Spiro Agnew, U.S. Vice President, *Television News Coverage* (Nov. 13, 1969) (transcript available at <http://www.americanrhetoric.com/speeches/spiroagnewtvnewscoverage.htm> (last visited Jan. 1, 2007)).

country in the famous *Murphy Brown* incident.⁵ All presidential candidates must find proper access to the networks to get elected, whether it is by purchasing commercial time,⁶ getting into debates,⁷ or through a method that transcends both the political power and the cultural power by appearing on the *Arsenio Hall Show* and playing saxophone as did President-to-be Bill Clinton.⁸ The power of the networks has even been parodied in motion pictures such as *Network* and *Wag the Dog*.⁹ To keep this power in check, Congress adopted numerous rules to curb the networks' exercise of power, and Congress's delegated watchdog, the Federal Communications Commission (FCC), focused regulatory attention on the broadcasters in a way that directly impacted content and free speech.¹⁰

American viewing of the networks peaked at over 90% in 1977,¹¹ but the ongoing concentration of power and influence of ideas was not just probable and potential, but measurable and palpable. The single most dominant form of video media by a factor of 9 to 100 was network television.¹² In reaction to this power, the laws enacted by Congress were pervasive; they included not just ownership restrictions,¹³ but restrictions on the

⁵ Dan Quayle, U.S. Vice President, Address to the Commonwealth Club of California (May 19, 1992) (transcript available at http://www.vicepresidentdanquayle.com/speeches_Standing Firm_CCC_3.html (last visited Jan. 1, 2007)).

It doesn't help matters when prime time TV has Murphy Brown - a character who supposedly epitomizes today's intelligent, highly paid, professional woman - mocking the importance of fathers, by bearing a child alone, and calling it just another "lifestyle choice." I know it is not fashionable to talk about moral values, but we need to do it. Even though our cultural leaders in Hollywood; network TV, the national newspapers routinely jeer at them

Id.

⁶ *DNC v. FCC*, 717 F.2d 1471, 1474 n.1 (D.C. Cir. 1983) (view of DNC); *CBS v. FCC*, 454 F.2d 1018, 1020-21 (D.C. Cir. 1971).

⁷ See STEPHEN BATES, THE ANNENBERG WASHINGTON PROGRAM, THE FUTURE OF PRESIDENTIAL DEBATES 12-14 (1993), available at <http://www.annenberg.northwestern.edu/pubs/debate/debate04.htm> (last visited Jan. 1, 2007).

⁸ See Sam Allis, *The Clinton Show*, BOSTON GLOBE, June 20, 2004, at N1, available at http://www.boston.com/ae/books/articles/2004/06/20/the_clinton_show (last visited Jan. 1, 2007).

⁹ NETWORK (MGM 1976); WAG THE DOG (New Line Cinema 1997).

¹⁰ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 400 (1969), *CBS v. DNC*, 412 U.S. 94, 132 (1973), *CBS v. FCC*, 453 U.S. 367, 397 (1981), and *FCC v. Pacifica Foundation*, 438 U.S. 726, 751 (1978), are all examples where the government entered into the free speech of broadcasters and such action was upheld.

¹¹ James G. Webster, *Beneath the Veneer of Fragmentation: Television Audience Polarization in a Multichannel World*, 55 J. COMM. 366, 366 (2005).

¹² In 1985, network television was consumed at the rate of 985 hours per person per year, basic cable was consumed at the rate of 120 hours per person per year, and home video and movies were each 15 hours per year or less. VERONIS, SUHLER & ASSOCIATES INC., THE VERONIS, SUHLER & ASSOCIATES COMMUNICATIONS INDUSTRY FORECAST 13 (5th ann. ed. 1991).

¹³ See generally 47 C.F.R. § 73.3555 (2005); 47 C.F.R. § 73.3615 (2005); *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004).

ability of the networks to reach customers,¹⁴ how much and what kind of political speech they could have,¹⁵ and what kinds of business they could be in.¹⁶ Further, their entire “product line” was heavily regulated.¹⁷

How did these businesses come to be? They took advantage of one of the great government—created oligopolies—that of radio frequency spectrum for broadcasters.¹⁸ They had already built powerful radio networks and quickly sought to extend their reach into television. That was a good move, since the adoption of television by consumers was remarkably fast with half the country owning television sets in only eight years.¹⁹ The pre-eminence of the networks was at a high:

In the 1960s and 1970s the leaders of the three television networks stood confidently in positions of unparalleled importance. Did the President of the United States wield greater influence over public opinion than the men who would decide whether *Gunsmoke* or *60 Minutes* would return for another season? Even their office towers in mid-Manhattan were landmarks: Rockefeller Center, Broadcast House. And the top-floor executive suites were regally appointed homes for Broadcast Barons, the royalty of America’s new, electronic age.²⁰

It has long been thought that the spectrum that composed these “channels” was scarce and limited, and that only a finite number of channels could exist in any city.²¹ Congress set up the basic allocations of spectrum

¹⁴ 47 C.F.R. § 73.3555(a)(1) (2005) (national TV ownership rule, caps reach of U.S. TV Households to 35%, later modified to 39%, but not yet posted to the Code of Federal Regulations); Stuart Minor Benjamin, *Evaluating the Federal Communications Commission’s National Television Ownership Cap: What’s Bad for Broadcasting is Good for the Country*, 46 WM. & MARY L. REV. 439, 441 (2004). See also Frank Ahrens, *Compromise Puts TV Ownership Cap at 39%*, WASH. POST, Nov. 25, 2003, at A19, available at <http://www.washingtonpost.com/ac2/wp-dyn/A12074-2003Nov24>.

The FCC is currently undertaking a review of many of the ownership rules, but it is not reviewing the national television ownership cap of 39% as approved by the court in the *Prometheus* case, 373 F.3d 372. 2006 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 21 F.C.C.R. 8834, at n.11 (proposed July 24, 2006).

¹⁵ 47 U.S.C. § 315 (2000).

¹⁶ 47 C.F.R. § 73.3555(a)(1) (2005) (radio ownership rules); 47 C.F.R. § 73.3555(c) (2005) (newspaper/broadcast cross-ownership rules).

¹⁷ See generally 47 C.F.R. §§ 73.670, 73.671, 73.673 (2005) (children’s television rules); 47 C.F.R. § 73.3999 (indecentcy rules); 47 C.F.R. § 73.4000 (listing of major FCC policies).

¹⁸ The term “radio frequency spectrum” is used in this article in accordance with the usual term of art and includes all spectrum use including for television, radio, digital, and other uses.

¹⁹ John Carey, *The First 100 Feet for Households: Consumer Adoption Patterns*, in THE FIRST 100 FEET 42 (Deborah Hurley & James H. Keller eds., 1999).

²⁰ JOEL BRINKLEY, *DEFINING VISION: THE BATTLE FOR THE FUTURE OF TELEVISION* 6 (1997).

²¹ R.H. Coase is the originator of economic criticism of the functioning of the FCC and its spectrum policies. R.H. Coase, *The Federal Communications Commission*, 2 J.L. & ECON. 1 (1959). A

and let the FCC assign channels to each locality. The FCC did so with extensive analysis and consideration. Allocations varied from one per market to as many as twenty-one per market.²² These allocations varied in quality. A UHF channel, for example, was highly undesirable; so even in a city with many channels, perhaps half or more were of limited commercial viability because they were in the UHF band.²³ The desirable channels, the ones that a network could make money on, were in the VHF band. And the networks, to the greatest extent possible, sought out the prime VHF channels in the largest cities.²⁴ The networks were early movers on the best frequencies.

leading analyst of spectrum scarcity, Thomas W. Hazlett presents a First Amendment-based critique in Thomas W. Hazlett, *Physical Scarcity, Rent Seeking, and the First Amendment*, 97 COLUM. L. REV. 905 (1997). His latest work on the subject is Thomas W. Hazlett, *Spectrum Tragedies*, 22 YALE J. ON REG. 242 (2005). For a technical criticism of the doctrine of spectrum scarcity, see Gregory Staple & Kevin Werbach, *The End of Spectrum Scarcity*, IEEE SPECTRUM, March 2004, at 48.

²² For example, as of 1990 the New York market (which consists of parts of New York, New Jersey and Connecticut) was attributed twenty-one stations by Arbitron, and Zanesville, Ohio, the 199th market, was attributed one station. 1990 BROADCASTING Y.B. C204.

A "market" in broadcasting is one or more cities located geographically close and determined to be a market by one of the commercial rating services (e.g., Arbitron, <http://www.arbitron.com>, and Nielsen, <http://www.nielsen.com>) or the FCC by its own calculations. The FCC and the commercial ratings services can give different results on which stations are included in a market, and this phenomenon has been noted by the FCC as being somewhat problematic. Definition of Radio Markets, MM Docket No. 00-244, FCC 00-427, at 3 (proposed December 13, 2000), available at <http://www.fcc.gov/mb/policy/docs/fcc00427.pdf> (last visited Jan. 2, 2007).

For the purposes of this paper, the author will be referring to the markets as determined by Arbitron and listed in 1990 BROADCASTING Y.B. § C. These are industry-accepted definitions of the markets and are one definition recognized by the FCC and incorporated by reference into the FCC regulations. See, e.g., 47 C.F.R. § 76.55(e) (2005).

²³ The television channels are each 6 MHz wide and extend from Channel 2, which begins at 54 MHz, to the top channel, channel 69, at 608 MHz. The channels are not continuous; there are many services located between some channels including FM radio (88-108MHz) and many land mobile services. OFFICE OF SPECTRUM MGMT., U.S. DEP'T OF COMMERCE, STOCK. NO. 003-000-00691-3, UNITED STATES FREQUENCY ALLOCATIONS: THE RADIO SPECTRUM (2003), available at <http://www.ntia.doc.gov/osmhome/allochrt.pdf> (last visited Jan. 1, 2007).

During the early years, not all televisions could even receive the UHF channels (14-83) until Congress passed the All Channel Receiver Act, Pub. L. No. 87-529, 76 Stat. 150 (1962). Further, the lower the channel, the better the reception tended to be in early televisions.

²⁴ To some extent, the networks even tried to stay on the same channel from city to city. For example, CBS is on channel 2 in New York, Los Angeles, and Chicago; NBC is on channel 4 or 5 in those largest markets, and ABC is on channel 7 in all of the largest markets. Channel allocations from 1998 BROADCASTING Y.B. B-9, B-25.

The U.S. Supreme Court had told us that spectrum was scarce.²⁵ And the concept of spectrum scarcity was a useful one for the government. The Supreme Court told us that because of this spectrum scarcity, the First Amendment protections that provide significant protections to the print media could be brushed aside by Congress and the electronic media could be more strictly regulated.²⁶ The FCC followed closely and used “spectrum scarcity” as an excuse to set aside the First Amendment during regulatory proceedings.²⁷ While many have criticized the concept of spectrum scarcity,²⁸ it is still the primary justification for regulating the networks and broadcasters.²⁹ The importance of spectrum scarcity cannot be overestimated. While it provided a mechanism to the government for strict regulation, it also limited the entry of competition. This structural oligop-

²⁵ See *NBC v. United States*, 319 U.S. 190, 213 (1943).

The plight into which radio fell prior to 1927 was attributable to certain basic facts about radio as a means of communication—its facilities are limited; they are not available to all who may wish to use them; the radio spectrum simply is not large enough to accommodate everybody. There is a fixed natural limitation upon the number of stations that can operate without interfering with one another. Regulation of radio was therefore as vital to its development as traffic control was to the development of the automobile. In enacting the Radio Act of 1927, the first comprehensive scheme of control over radio communication, Congress acted upon the knowledge that if the potentialities of radio were not to be wasted, regulation was essential.

Id.

²⁶ *United States v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948) (each media receives its own rules and there are lesser standards because of spectrum scarcity).

²⁷ For the different treatment among First Amendment speakers by the Supreme Court, compare *Miami Herald v. Tornillo*, 418 U.S. 241 (1974), which gave strong protections to print media, with *Lion Broadcasting v. FCC*, 395 U.S. 367 (1969), which overrode First Amendment protections for broadcasters based on the theory of spectrum scarcity. This differential treatment has been analyzed and critiqued by numerous scholars. See, e.g., THOMAS G. KRATTEMAKER & LUCAS A. POWE JR., *REGULATING BROADCAST PROGRAMMING* (1994), chapters 7 and 8. For some of the regulations on broadcast speech, see generally 47 C.F.R. § 73.3999 (2005) (regulations on indecency); 47 C.F.R. § 73.4095 (2005) (drug lyrics); 47 C.F.R. § 73.4050 (2005) (children’s TV programs); 47 C.F.R. § 73.4165 (2005) (obscene language); 47 C.F.R. § 73.4170 (2005) (obscene broadcasts).

²⁸ Stuart Minor Benjamin, *The Logic of Scarcity: Idle Spectrum as a First Amendment Violation*, 52 DUKE L.J. 1, 110 (2002).

²⁹ *FCC v. Pacifica Found.*, 438 U.S. 726, 731 n.2 (1978); *FCC v. League of Women Voters of California*, 468 U.S. 364, 377 (1984); *Metro Broad., Inc. v. FCC*, 497 U.S. 547, 566 (1990) *overruled by Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995); *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 637 (1994). *Metro Broadcasting* was overruled on other grounds (race) by *Pena*, but it is still a good explanation of spectrum scarcity. The concept of spectrum scarcity as a regulatory tool was restated after *Pena* by the Supreme Court in *Reno v. ACLU*, 521 U.S. 844, 868 (1997). The Third Circuit recently used spectrum scarcity as a substantive basis for its decision in *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 2005 U.S. LEXIS 4811 (June 13, 2005). However, see contra Christopher Yoo, *The Rise and Demise of the Technology Specific Approach to the First Amendment*, 91 GEO. L.J. 245 (2003) for an extensive argument that the doctrine of spectrum scarcity is dying by implication of its non-use by the U.S. Supreme Court in some pre-2003 cases. This author believes that the later-decided *Prometheus* case (and the denial of *certiorari*) is an indication of the continuing viability of spectrum scarcity for use by the courts unless and until it is specifically overruled by the Supreme Court.

oly, created by the government, meant that the competition had to scramble for the few remaining good channels, or settle for sub-standard UHF channels. Because of the limitations on the quality of channels, until cable television became dominant in the 1990's, no new networks were able to survive.³⁰

The original networks were also well-funded in an industry that was understood by few sources of lending. They had their existing radio networks that threw off enough cash to start the television networks. Once they owned enough stations on their own, they signed contracts with additional independently—owned stations, called “affiliates,” to create wide area networks of interconnected stations. The networks started as CBS and NBC, who were eventually joined by ABC.³¹ These three powerful entities controlled culture, news, and, some believed, much of the American agenda.³²

The networks consisted of the “owned and operated” stations plus affiliates. The owned and operated stations (O & Os) were the pick stations of each network, anchored by stations in each of the three largest markets (New York, Los Angeles, and Chicago) plus other selected markets. Each network bought stations in markets it considered strategic to bring it close to the national cap of 25% to 39%³³ of viewers. The networks then extended their coverage to essentially 100% of the country through affiliation agreements with locally owned or group owned stations. These agreements gave the networks de facto control of all of the important programming time periods of their affiliates.

Over time, cable systems arose to expand broadcast signals and found a business by providing some of their own programming. Although cable was the ultimate leader of the decline of the networks, at first it was the

³⁰ Some tried, for example, the DuMont network. <http://www.museum.tv/archives/etv/D/htmlD/DuMont/DuMont.htm> (last visited Jan. 1, 2007). But the first additional network to compete in a complete and long-term way was the Fox network, which started broadcasting in 1986 and rose to be viable after it had added several nights of programming and more affiliates. The Fox network's affiliates were mostly on the UHF band, 1998 BROADCASTING AND CABLE Y.B. B141-B143, and cable television was the great equalizer that permitted Fox to thrive. When a viewer watches on cable, there is no difference between VHF stations and UHF stations. Therefore, cable might have been the factor that permitted a new network to finally compete and succeed. Other networks have formed and consolidated; for example, the WB and UPN network are combining into the CW network during the Fall of 2006. See Paul R. Lamonica, *The CW: One Plus One Doesn't Equal Three*, CNN MONEY, Nov. 10, 2006, <http://money.cnn.com/2006/11/10/news/companies/cw/?postversion=2006111012> (last visited Jan. 1, 2007).

³¹ The ABC radio network was created by the breakup of the NBC networks and eventually added television. See The Museum of Broadcast Communications, American Broadcasting Company, <http://www.museum.tv/archives/etv/A/htmlA/americanbroa/americanbroa.htm> (last visited Jan. 1, 2007).

³² See *supra* notes 3-6.

³³ Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(c)(1)(B), 110 Stat. 111 (1996), amended by Pub. L. No. 108-199, § 629, 118 Stat. 99 (2004) (current version at 47 U.S.C. § 303 (2005)). Originally capped at 35%, Congress has intervened to set the cap at 39%.

great enabler for them. The most important function of cable systems in the early days was to extend the signal of the broadcast networks. HBO, CNN, and other original cable programming had not yet become popular.³⁴

Reaching essentially 100% of the country and providing the main access to news through their own content filters,³⁵ the networks held the ultimate power in communications media. No one would have predicted the rapid and permanent decline, yet the networks all knew it was coming and they each prepared in their own way.

Although network evening news programs maintain a loyal viewer base, the availability of news via cable television twenty-four hours a day allows people to have a continuous portal to the news world and guaranteed coverage in times of crisis. The world of media now has people turning to cable, not network news, for continuous coverage in times of crisis.³⁶ The television shows winning the most Emmys are from cable, not networks, and the opening musical number of the 2006 Emmys tells the audience that the networks have trouble with their ratings.³⁷ The most instantaneous news is now coming from the Internet, not the networks. The most active media websites are owned by anyone except the networks.³⁸ And people who want great commentary and editorials look first to the blogs. The end of the

³⁴ Extension of local broadcast signals was one goal of cable television as late as 1968. *United States v. Sw. Cable Co.*, 392 U.S. 157, 161 (1968). CNN started its satellite service in 1980. http://turner.com/about/corporate_history.html; <http://www.museum.tv/archives/etv/H/htmlH/homeboxoff/homeboxoffi.htm>.

³⁵ Webster, *supra* note 11, at 374.

³⁶ Tom Bierbaum et al., *Attack Coverage Brings Ratings Surge for Cable Nets*, CABLE WORLD, Sept. 17, 2001, at 10. See also *Cable News vs. Network News Viewership 1997-2005*, <http://www.journalism.org/node/1363>. While absolute ratings of network news still beats cable news, in times of crisis, viewers tend to choose cable's continuous coverage.

³⁷ HBO, a cable network, won the most Emmys in 2006 with 26. http://www.emmys.com/media/releases/2006/rel_pte58_winners.pdf.

As an example of the depth of concern about the change in the marketplace by the declining networks, host Conan O'Brien's opening number was a parody of "T for Trouble" from the musical *The Music Man*, and the lyrics lamented the falling network ratings. *58th Primetime Emmy Awards* (NBC television broadcast Aug. 27, 2006).

See also <http://www.youtube.com/watch?v=KHv8IACWSpM&mode=related&search=>; WALL ST. J., Oct. 20, 2006, at W1, W8. NBC may have the most problems with ratings as noted in *TV and Ad Industries Warily Weigh In On NBC's Plans to Revamp Prime Time*, WALL ST. J., Oct. 20, 2006, at B1. "NBC's signal that it will abandon high cost dramas and comedies in the first hour of prime time – once unthinkable – is both a risky decision and a sign that yet another of network TV's seemingly immutable laws may be crumbling." Yet the same article goes on to say that rival CBS "is less visionary in sight than a desperate measure" and that it "shouldn't suggest an industry trend." At about the same time, NBC announced that it was trimming 700 jobs and cutting annual operating expenses by \$750 million. Reuters, CNET News.com, October 19, 2006, http://news.com.com/NBC+Unive+sal+to+launch+iVillage+TV+show/2100-1026_3-6140789.html.

³⁸ According to website traffic analysis company Alexa, Yahoo! has an average reach (where reach is defined as the percentage of 1,000,000 Internet users that would visit the site) of 282,350 over three months. Google has a three-month reach of 270,950, and MSN has a reach of 245,650 (as of November 22, 2006), <http://www.alexa.com/#traffic> (follow "Traffic Rankings" hyperlink; then enter Yahoo, Google, or MSN as search terms).

networks is here and the remainder of this article traces how that has happened.

II. THE LAW OF THE TRADITIONAL NETWORKS

The television (and radio) networks were, and still are, regulated by the Communications Act of 1934, as amended. The rules used to be strict, based upon notions that the networks, although not a monopoly, still possessed sufficient market power that close government regulation was required. Further, the networks were national in scope, and the reach and impact of their speech was recognized. For both reasons, the government tightly regulated the networks. The most important government rules shaped the structure of the network marketplace.

In addition to the ownership limitations mentioned previously, there was a number of “conduct” rules that governed the network-affiliate relationship. Some of these rules included the limitations on affiliation agreements,³⁹ the exclusive affiliation of the station,⁴⁰ and option time.⁴¹ These rules were intended to protect the affiliate stations from network overreaching, to provide some independence of the affiliates from the networks, and to provide some choice to listeners. Another structural limitation on national network programming was the Prime Time Access Rule.⁴² The purpose of the Prime Time Access Rule was to encourage local production of programming and independent syndication. Prime Time Access has resulted in the success of such programs as *Jeopardy* and *Wheel of Fortune*. The intent of the rule was to create a mandatory “hole” void of network programming that would then have to be filled with local programming, or at least programming from independent producers.

The most significant rules that limited network reach and speech were known as the Financial Interest and Syndication rules or “Fin-Syn” for short. Codified in 47 C.F.R. § 73.658, the Fin-Syn rules prohibited networks from owning more than three hours per week of prime-time programming (7-11 P.M. EDT) other than feature films, children’s programming, news programs, or certain other categories⁴³ of programming.

The effect of the Fin-Syn rules was to create a marketplace for independent television producers. Production companies such as Spelling Productions, MTM Enterprises, and Stephen J. Cannell productions arose or prospered due to this rule.

³⁹ 47 C.F.R. § 73.658 (1990).

⁴⁰ 47 C.F.R. § 73.658(a) (1990).

⁴¹ 47 C.F.R. § 73.658(d) (1990).

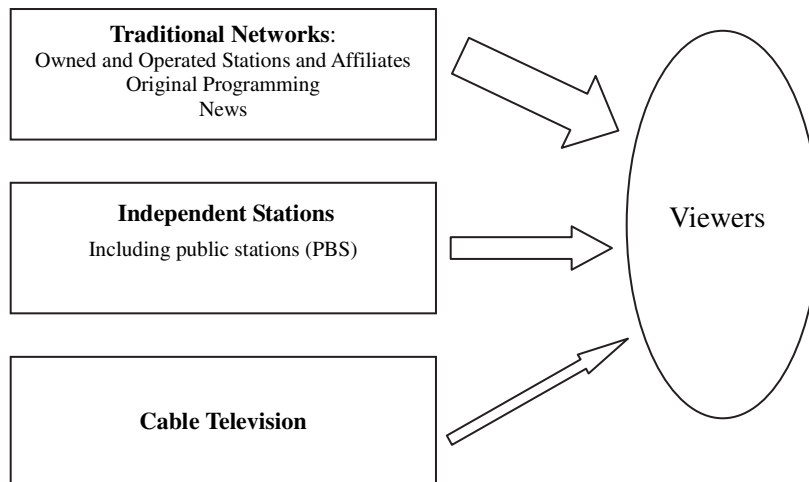
⁴² Competition and Responsibility in Network Television Broadcasts, 23 F.C.C. 2d 382, 384 (1970) (amendment of part 73 of rules and regulations).

⁴³ See 47 C.F.R. § 73.658(j) (1990).

Finally, the networks were limited in their lines of business through the cross-ownership rules. These rules were intended to diversify the number of voices in the “marketplace of ideas.” The cross-ownership restrictions prohibited broadcast stations from being owned by or owning a local daily newspaper⁴⁴ and from owning the local cable system.⁴⁵ Broadcast stations were supposed to be independent media.

The viewer experience for the traditional network model is shown in illustration number one.⁴⁶

Chart 1: Traditional Network Model



III. EROSION OF THE NETWORKS: PUBLIC POLICY MEETS THE MARKETPLACE

A. The Cable Communications Act of 1984

The Cable Communications Act of 1984 was a “tipping point” for broadcasters including the networks. The 1984 Act formalized the regulation of cable television, gave Congress’s approval of a regulatory structure

⁴⁴ See generally *FCC v. Nat’l Citizens Comm. for Broad.*, 436 U.S. 775 (1978). The cross ownership rules are once again under review in the present proceedings on ownership. See *supra* notes 14-16.

⁴⁵ See *supra* note 16.

⁴⁶ This view of network relationships owes its inspiration to all of those who have come before it including: BRUCE M. OWEN & STEVEN S. WILDMAN, *VIDEO ECONOMICS* 6 (1992); Mark S. Nadel, *U.S. Communications Policymaking: Who & Where*, 13 *HASTINGS COMM. & ENT. L.J.* 273, 290 (1991).

for cable, and placed on a firm footing the first real competitor to the networks. Prior to the Act, cable was regulated by the FCC without statutory authority and pursuant to a patchwork of guidance by the appeals courts.⁴⁷ After the Act, cable systems had a reasonable expectation of franchise renewal and a reasonably favorable regulatory structure providing a sufficiently friendly environment that cable began to thrive.

B. The Cable Television Consumer Protection and Competition Act of 1992

Shortly after the 1984 Act, which was thought to be favorable to the cable operators, cable began to thrive a bit too much. Consumers were outraged by high rate increases which encouraged Congress to re-examine cable regulation and to proceed to an enactment in 1992. The 1992 Act provided an esoteric provision called “Must Carry – Retransmission Consent.”⁴⁸ While the intention of the provision was to protect broadcast stations and networks’ viability by requiring cable systems to carry them, the net effect was to put the cable operators and the networks at odds with each other. The cable systems, rather than being an enabler of the networks, turned into an adversary of the networks. The incentives in the 1992 Act ended up in cable systems (the distribution medium) favoring the programming of their co-owned cable networks over that of the traditional broadcast networks.

C. The *Schurz Communications v. FCC* case makes major changes

The *Schurz*⁴⁹ case overturned the Fin-Syn rules and forever changed the landscape of network television. The Fin-Syn rules created an artificial environment for television production by forbidding networks from owning most of the television shows⁵⁰ that they ran during their best hours, prime-

⁴⁷ *United States v. Sw. Cable Co.*, 392 U.S. 157 (1968) (basic jurisdiction); *U.S. v. Midwest Video Corp.*, 406 U.S. 649, 659 (1972) (reasonable regulation); *FCC v. Midwest Video Corp.*, 440 U.S. 689 (1979) (Commission went too far in some regulations); *Teleprompter Corp. v. CBS*, 415 U.S. 394 (1974) (cable is a service to the viewers and does not violate copyright since the viewer could do the same thing).

⁴⁸ 47 U.S.C. § 534 (1992) (amended 1996) (must carry); 47 U.S.C. § 325(b) (1992) (amended 1999, 2004) (retransmission consent).

⁴⁹ *Schurz Commc’ns, Inc. v. FCC*, 982 F.2d 1043 (7th Cir. 1992).

⁵⁰ Fin-Syn prohibited participation from the three broadcast networks in the following areas: networks were not allowed to take financial interest from any programs they aired (beyond the first airing) and the networks were banned from the creation of in-house syndication arms. The goal was to eliminate the incentives for the networks to produce programs and to effectively separate production from distribution. The rules also served to prevent networks from storing the programs they owned to force syndication on owned and operated affiliates. *See generally* Fin-Syn Rules, 47 C.F.R. § 73.658(j) (1990).

time.⁵¹ The goal was to provide a marketplace for independent production by forcing the networks to purchase their programming from others. The network programming marketplace was dominated by the three networks which had control of the only three nationwide commercial distribution networks.⁵² With few outlets to supply programs to, the supply chain for network programming was concentrated at both ends. The court in *Schurz* overturned this provision of the regulatory structure of the networks and set them free to own the programming that they were showing. This permitted networks to concentrate on the content as the valuable, reusable, and exploitable asset. Once they were able to do this, the distribution network became less important. The money a network made shifted from having powerful distribution networks to having powerful programs. In fact, the traditional “distribution network” of reliance on local affiliates became a liability that the networks began to look at reshaping or even abandoning.⁵³

D. The rise of the Internet 1996-2006

The Internet was invented as ARPANET in 1969.⁵⁴ It was a creation of the defense department and remained that way until 1992 when Congress authorized the use of the network for commercial purposes.⁵⁵ Even after commercial use was authorized, the Internet did not really take off until two technological advances converged. The first was the invention of “HTML” or hyper text markup language that permitted embedding the familiar “links” that take us to new sites. The second technology needed was the graphical web browser invented at the NCSA at the University of Illinois and popularized as the *Mosaic* and *Netscape* web browsers. Once the web browsers were graphical and easy-to-use and HTML added the special utility of linking, the Internet was ready to take off. Those two technological developments converged in about 1995, making 1996 to 2006 one of the most exciting decades of technological and intellectual development. The Internet permits the instantaneous exchange of information and data in any form. While the slow speed of the networks accessible by the average person created a bottleneck for full media development of the Internet, the rising use of broadband from 2000 forward has made interchange of pro-

⁵¹ 47 C.F.R. § 73.658(k) (1990) (prime time access rule). This rule specified that “prime time” is from 7:00PM to 11:00PM in the Eastern and Pacific time zones, and from 6:00PM to 10:00PM in the Central and Mountain time zones.

⁵² 47 C.F.R. § 73.658(j) (1990).

⁵³ See Steve McClellan, *Small Towns, Big Problems*, BROADCASTING & CABLE, Aug. 6, 2001, at 20.

⁵⁴ LILLIAN GOLENIIEWSKI, TELECOMMUNICATIONS ESSENTIALS 242 (2001).

⁵⁵ Information Infrastructure and Technology Act of 1992, S. Res. 2937, 102d Cong. (1992) (enacted).

gram material easy for the average person.⁵⁶ It is now an everyday occurrence for many people to view some sort of media, either audio or video, on a daily basis.⁵⁷

IV. ANALYSIS OF THE END

Two excellent means of measuring the impact and success of the networks has been the network *share* and the total *time spent viewing*. Both of these metrics have been tracked for decades by the AC Nielsen Company.⁵⁸

The *share* of a network is the percentage of televisions that are on and watching a network. Because it does not count televisions that are off it is a good measure that self-adjusts for daily and seasonal viewing habits. Cumulatively, the three network shares in 1985 were over 69%.⁵⁹ Over the years the three network shares have consistently fallen, reaching 29% in 2002.⁶⁰ Important points along the way included when cable television passed the broadcast television network share in 1990.⁶¹

A second measure is the time spent viewing.⁶² While the average number of hours spent viewing television as a whole continues to increase, the growth is not due to the traditional broadcast networks. The time spent viewing network-affiliated stations peaked in 1993, declining from 920 hours (per person, per year) in 1993 to 726 in 2006, with a record low of

⁵⁶ In their annual study on video competition, the FCC noted that broadband video is growing:

The amount of web-based video provided over the Internet continues to increase significantly each year. The overall number of homes with access to the Internet continues to grow, as does the number of Americans who access the Internet via a high-speed broadband connection. As of June 2005, there were approximately 33.7 million high-speed residential Internet access subscribers, representing approximately 48 percent of the 70.3 million residential Internet subscription households.

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Twelfth Annual Report, MB Docket No. 05-255, FCC 06-11, at 7 (March 3, 2006), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-11A1.pdf (last visited Jan. 2, 2007).

Further, Arbitron, which runs regular studies on Internet media usage, finds in its latest study that the weekly Internet radio and video users have increased 50% over the last year. ARBITRON, INTERNET AND MULTIMEDIA 2006: ON DEMAND MEDIA EXPLODES 5 (2006). They also found that given a choice between eliminating either Internet or television from their lives, the majority of 12-to-34 year olds would eliminate television, *id.* at 6, and that approximately 30% of Americans say they are spending less time with traditional media due to time spent online, *id.* at 12. Nearly 47 million Americans, or 20%, watched Internet video last month. *Id.* at 18.

⁵⁷ ARBITRON, ELECTRONIC AUDIENCE MEASUREMENT FOR THE 21ST CENTURY (2003), available at <http://www.arbitron.com/downloads/IntIPPMOverview.pdf>.

⁵⁸ <http://www.nielsenmedia.com> (last visited Jan. 16, 2007).

⁵⁹ Webster, *supra* note 11, at 368.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² VERONIS SUHLER STEVENSON, COMMUNICATIONS INDUSTRY FORECAST & REPORT 51 (18th ed. & 22d ed. 2004).

704 hours in 2003.⁶³ In contrast, the number of hours spent using consumer Internet continues to increase—from 1 hour (per person, per year) in 1990 to 213 hours in 2006.⁶⁴ The fall in network share and the time spent viewing television has been traceable and accompanied by increases elsewhere. The share of cable television viewing has continuously gone up, and the time spent using computers has gone up. This change is known as a substitution effect.⁶⁵ It shows how the use of media has shifted.

This shift in the use of media is caused by the fragmentation of the audience caused by an increased number of media sources competing for a slowly growing number of audience members. The audience is making choices on the relative value of each source with its taste shifting towards cable and Internet and away from television.⁶⁶

The concept of declining market share was not a new one to the leadership of television networks. Their share had been declining since their peak in 1977.⁶⁷ Also, network executives could watch a similar decline in the case of the telephone industry and the breakup of AT&T. AT&T's market share at the time of the breakup in 1984 was 98.5%. MCI, Sprint, and the other competitors to AT&T helped propel AT&T's (continuous) market share decline. The public policy exacted in the breakup of AT&T—that consumers have a choice of competing telephone providers—directly led to the decline in market share by AT&T. No perceived excellence of service could overcome the consumer-friendly attributes of choice and price created by the new public policies. The decline of AT&T was clearly visible and a lesson to the networks.

After the Cable Communications Policy Act of 1984, it was clear that Congress was positioning cable as a competitor to broadcast television. Further, the courts entered the marketplace of competition by directing the repeal of the must carry rules⁶⁸ and the Fin-Syn rules.⁶⁹ The must carry rules provided at best a reasonably level playing field. Finally, cable television received the signals of the broadcast stations for free, giving them a competitive advantage.⁷⁰

⁶³ VERONIS, SUHLER & ASSOCIATES, INC., THE VERONIS, SUHLER & ASSOCIATES COMMUNICATIONS INDUSTRY REPORT 40 (14th ann. ed. 1996); VERONIS SUHLER STEVENSON, COMMUNICATIONS INDUSTRY FORECAST & REPORT 54 (18th ed. & 22d ed. 2004).

⁶⁴ VERONIS, SUHLER & ASSOCIATES, INC., THE VERONIS, SUHLER & ASSOCIATES COMMUNICATIONS INDUSTRY REPORT 41 (14th ann. ed. 1996); VERONIS SUHLER STEVENSON, COMMUNICATIONS INDUSTRY FORECAST & REPORT 55 (18th ed. & 22d ed. 2004).

⁶⁵ OWEN & WILDMAN, *supra* note 46.

⁶⁶ See VERONIS SUHLER STEVENSON, COMMUNICATIONS INDUSTRY FORECAST & REPORT 55 (18th ed. & 22d ed. 2004).

⁶⁷ Webster, *supra* note 11, at 366.

⁶⁸ See sources cited *supra* note 48.

⁶⁹ See generally *Schurz Commc'ns v. FCC*, 982 F.2d 1043 (7th Cir. 1992).

⁷⁰ Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (codified as amended in scattered sections of 47 U.S.C.).

The prior changes in the marketplace were visible to the networks. In response, or perhaps in observation of the changing marketplace, all of them tried to launch cable ventures.⁷¹ Some were more successful than others.⁷² NBC recognized that it needed to protect its core business (television network) as much as possible, yet it also faced the imperatives of the growing competition and needed to either play or die. Either by success in launching channels, or by merger and acquisition,⁷³ or a combination of both, all three of the networks eventually found their place among the cable networks and became multimedia giants. CBS and Viacom merged (and separated again), ABC and Disney merged, and NBC and Universal merged. Each retained its identity, yet all three knew they needed to be in all of the media marketplaces.

Therefore by 1990, the networks understood their path. Market share was in a permanent decline. The tradition of the networks, able to spend any amount of money on anything from news bureaus around the world to spectacular prime time programming to unlimited sports-rights, were feeling the rug pulled out from under them. Networks began to talk about being “distribution agnostic.” This was a major change. It meant that the networks would distribute their programming by means other than exclusive contracts with their over-the-air affiliates.⁷⁴ It meant they were shifting from a virtually independent production-distribution oligopoly to a content provider who would compete in various forms of distribution. The spectrum their stations operated on was still immensely valuable, but it would no longer be their only lifeline or their only stream of revenue.

Throughout the 1990s and the early 2000s, the market share has continued to decline. Cable networks have grown from a few dozen in number to 531 in 2005.⁷⁵ Furthermore, over 77% of cable subscribers receive 36 or more channels.⁷⁶ And the networks have all completed major mergers.

⁷¹ CBS launched “CBS Eye on People,” NBC launched “MSNBC” and “CNBC,” and ABC launched “ABC Entertainment” and “ABC Family.” ABC and NBC also own several sports channels.

⁷² CBS’s “Eye” failed, yet “ABC Family” and “CNBC” continue to thrive.

⁷³ Most notably, the merger between AOL/Time Warner and ABC created a telecommunications conglomerate of Internet service, print media, CNN, ABC, Disney, ESPN, and more. See Stephen Labaton, *F.T.C. Review of AOL Deal in Final Stage*, N.Y. TIMES, Nov. 6, 2000, at C1.

⁷⁴ One of the first major moves to bring in other distribution forums was the NBC TripleCast. The TripleCast had the traditional broadcast network coverage supplemented by a cable network and a pay-per-view offering. The TripleCast was not a financial success, but it set the stage for networks to change their exclusive distribution through affiliates. Richard Zoglin, *How Much Is Too Much?*, TIME, Aug. 10, 1992. Eventually, the networks figured out they could charge their affiliates “reverse compensation” for carrying their programming. McClellan, *supra* note 53.

⁷⁵ Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Twelfth Annual Report, MB Docket No. 05-255, FCC 06-11, at 73 (March 3, 2006), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-11A1.pdf (last visited Jan. 2, 2007).

⁷⁶ 2005 FCC ANN. REP. 11. FCC Report No. CS 97-30 states that (according to one commenter) the average number of cable channels increased in 1997 to 49.4.

Along the way, the business formulas of the media organizations have changed. Instead of focusing all of their own resources on one single network, production budgets are more spread across broadcast, high definition, multiple cable and Internet production. Prime time has shifted from expensive dramas (*Dallas*, *ER*) and comedies (*Cosby*, *Seinfeld*) to cheaper news (*Dateline*) and reality (*Fear Factor*, *Wife Swap*, *Survivor*), programs that do not have expensive talent and production costs.

The changes are permanent; there is no turning back. The marketplace is restructuring further with cable on-demand and near-on-demand video offerings. The rise of the computer as a complementary media source and perhaps a primary media source is irreversible. Not only are networks driving their over-the-air viewers to their website, an act that was unthinkable a few short years ago, but they are providing both extended and original programming via the web.⁷⁷

There are other signs of the permanence of the new marketplace. For example, *Monday Night Football* has come to an end on the networks.⁷⁸ A show that was invented by broadcast television and one that practically saved the ABC network from oblivion has now moved to cable television where it will yield higher revenue with smaller audiences for the Disney/ABC/ESPN conglomerate and signal the final death of broadcast networks permanently.

V. NEO NETWORKING

“Networks” continue, although in a different form. The public’s thirst for entertainment, news, and sports continues, and it grows. But the networking of 2006 would not have been recognized in 1990.

Networking has shifted from distribution-centric, where the mere ability to deliver to millions of people constituted a network, to a more amorphous, but perhaps more powerful form. This new form, satisfying the interest of the media consumer, I call neo-networking. Attributes of neo-networking include multiple platforms for delivery, content-centric interest generation, interactivity, and mobility.

http://www.fcc.gov/Bureaus/Cable/News_Releases/1997/nrcb7023.html (Dec. 15, 1997) (last visited Jan. 1, 2007).

⁷⁷ Associated Press, *YouTube Signs Content Deals With Big Players*, MSNBC, Oct. 9, 2006, <http://msnbc.msn.com/id/15196228> (last visited Jan. 1, 2007). YouTube signed deals with CBS, Sony BMG Music, and Vivendi’s Universal Music group for content distribution. The convergence of traditional and developing media can be seen by CBS’s move to add YouTube as a distribution medium. CBS Corp. said it will provide short form video content for a CBS “brand channel” on YouTube’s site starting “this month” (referring to October 2006).

⁷⁸ Leonard Shapiro & Mark Maske, *‘Monday Night Football’ Changes the Channel*, WASH. POST, Apr. 19, 2005, at A1, available at <http://www.washingtonpost.com/wp-dyn/articles/A63538-2005Apr18.html>.

Neo-networking does not care about distribution media. In fact, programming might be delivered or deliverable in several ways. A program might be available for watching at a time certain just like traditional television—or it might be downloaded to an iPod and watched on your train ride to work. It might arrive via an over-the-air broadcasting, or it might come by cable, satellite, Internet, WAP, WiFi, or any other delivery means. Even within a delivery system, the lines might still be blurred—a program is just as usable if delivered as regular video, over cable, or as a very different digital download creating a file using the Internet broadband technology of many cable providers. The viewer/interactor is growing. Almost fifty million Americans have watched Internet television.⁷⁹

The new business models require aggregation of product value across platforms. Some of the platforms might be advertising-supported, like websites and traditional broadcast. Some may be supported by user fees such as cable. And break-even can be elusive in source media, therefore the need for aggregation of revenues across platforms. If content is the new generator of networks, then the producers needed to find a way to “charge” the audience for access to the content. The main problem of the neo-networks will be how to make a sufficient profit.⁸⁰

Rather than having “appointment TV,” the neo-network viewer has a choice. He or she can watch on-time traditional network fare or find the same video downloadable to their iPod, playable on-demand on either cable or by using a Digital Video Recorder (DVR) such as Tivo, or by viewing it in a portable version over either a cellular or WiFi network. This wide range of choices demonstrates that the business is no longer predicated on having exclusive distribution networks for which you can charge, to having exclusive content for which the viewer is willing to pay either through direct payments or by watching advertising.

Even the old one-way network of cable has moved toward neo-networking with their “triple play” offerings of cable television, Internet access, and voice over IP telephone; they seek to provide all of the platforms home consumers could want and they offer content on each of those platforms. Some companies now also offer a “quad play” that adds cellular telephone to their united offering to make sure the customer is constantly able to download or view.⁸¹

⁷⁹ ARBITRON/EDISON MEDIA RESEARCH, INTERNET AND MULTIMEDIA 2006: ON-DEMAND MEDIA EXPLODES 18 (2006), <http://www.arbitron.com/downloads/im2006study.pdf>.

⁸⁰ Profit from advertising on websites and other forms of non-traditional forms of media delivery is elusive. A few companies such as AOL, Google, and Yahoo have found ways to generate significant revenue from Internet advertising. For the most part, however, Internet advertising is often thrown in as a bonus to other advertising, or else charged at very modest rates.

⁸¹ One leader in the area of cell phone programming is Verizon with its “V-cast” offering. <http://getitnow.vzwshop.com/index.aspx?id=video> (last visited Jan. 7, 2007).

Neo-networks are more than just multiple platforms of downloading; they also make true interactivity with individual contribution to the network possible. This contributed networking can be as simple as being driven to a show's website by promised extra content. This content can be a repeat of the broadcast material or it can be extensions of the broadcast including additional factual or fictional material, deleted scenes, or extra scenes. It can also include two-dimensional interactivity such as weblogs where the viewer can leave comments and read the comments of others.

The next step up in interactive neo-networks is the fully contributory content sites where you can post your own material. These sites, such as *YouTube*⁸² or *Google Video*,⁸³ permit the user to upload 3-D interactivity, a real video. This video can be related to a topic of discussion, it can be a television show,⁸⁴ or it can be an original work of any sort. The circle is now closing as the broadcast and cable media are becoming referent to the online contributory media. For example, *VH1*, a traditional cable network, has a weekly show that highlights clip programming from the Internet sites.⁸⁵ Participation as a contribution can be either complex or very simple and the webcam and software to become the best intensive contributor is available for less than 100 dollars.

A network that accepts contributions breaks down the barriers to entry that the traditional networks forced for seventy years. It also further fractionalizes the audience and makes revenue generation more difficult.

MySpace and other such websites⁸⁶ add yet one more dimension—the dimension of exposure and exhibitionism. On networks like *MySpace* you can disclose private facts about yourself, or an imaginary self, and use that to create a network on yourself, or leave photos or a video about yourself. Other new content networks are obviously more serious—such as *LinkedIn*⁸⁷ which purports to help users develop their professional contacts and

⁸² <http://www.youtube.com> (last visited Jan. 7, 2007). YouTube has recently been purchased by Google. http://www.google.com/press/pressrel/google_youtube.html (last visited Jan. 7, 2007). The convergence of old and new networks into neo-networks is shown by the acquisition of MySpace.com by News Corp., owner of the Fox network. http://www.businessweek.com/technology/content/jul2005/tc20050719_5427_tc119.htm (last visited Jan. 7, 2007).

⁸³ <http://www.video.google.com> (last visited Jan. 7, 2007).

⁸⁴ The user can post virtually anything. Many postings are simple interactions such as a monologue, a song, or other personal communication. Other popular posts include events that the interactor has been to, a parade or stage show, for example. Certainly questions of copyright on some of these programs might be raised in the future, but for now the posts are popular. Additionally, many commercial media companies are posting material ranging from movie trailers and promotions to full-length shows. Because the computer images tend to be of a smaller size and lesser quality than the original television show, there is little chance of the commercial company adversely impacting the marketplace for their shows.

⁸⁵ *Web Junk 20* (VH1 television broadcast).

⁸⁶ <http://www.myspace.com> (last visited Jan. 1, 2007). See also <http://www.facebook.com> (Jan. 1, 2007).

⁸⁷ <http://www.linkedin.com> (last visited Jan. 1, 2007).

careers. Yet each online service is really a content publisher, and when a user supplies his or her own content, he or she joins the network.⁸⁸

Corporate clients are posting almost as often as individuals. In addition to finding television shows such as *CSI*, *Survivor*, and *MacGyver* posted,⁸⁹ one can also find educational videos, movie trailers, and music videos all purposely posted by their corporate sponsors. At *iTunes*, “podcast” lectures in chemistry and financial education are common.⁹⁰ Also, the neo-networks are having an influence on politics, including candid videos that may change the behavior of candidates.⁹¹

The final attribute of neo-networks is that distribution can be achieved through “layered networks.” A layered network is the use of an intermediate distribution technology to reach the usual distribution technology of the content. A simple example is using a cellular telephone network to download video content usually available on the Internet.⁹² These layered networks extend and enhance access.⁹³ A new network diagram of the relationship of the viewer to the content has arisen and is demonstrated in illustration #2.

⁸⁸ Nielsen//Netratings reports that five of the top ten fastest growing web brands in July 2006 are “user generated content sites.” Press Release, Nielsen//NetRatings, User-Generated Content Drives Half of U.S. Top 10 Fastest Growing Web Brands, According to Nielsen//Netratings (Aug. 10, 2006), http://www.nielsen-netratings.com/pr/PR_060810.pdf (last visited Jan. 1, 2007).

⁸⁹ These shows are posted at Google Video. <http://video.google.com/> (last visited Jan. 1, 2007).

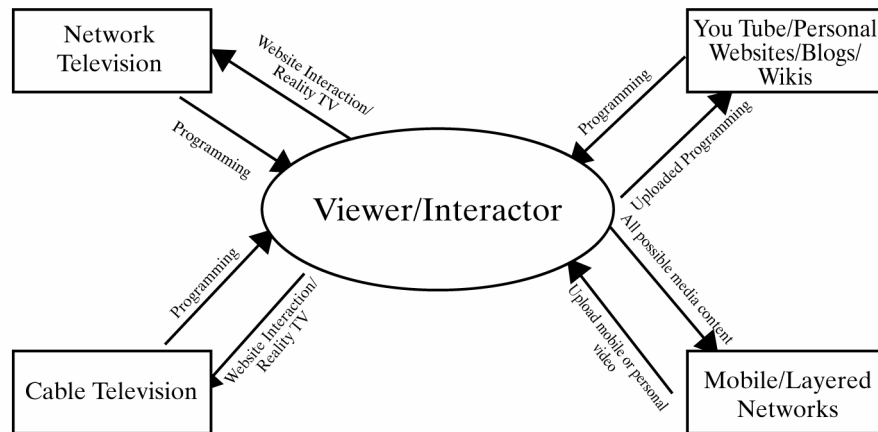
⁹⁰ <http://www.apple.com/itunes/> (last visited Jan. 1, 2007).

⁹¹ David Mendell, *Smile, Gov: You're on Candid Video*, CHI. TRIB., Oct. 1, 2006, § 2, at 3. “Campaign operatives toting handheld video cameras are dispatched to an opponent’s every public event.” The video is then posted to a site like YouTube.com. The videos can further change the dialog of public policy. For example, videos showing attacks against American Troops in Iraq are now showing up on popular video sharing websites. Edward Wyatt, *Anti-U.S. Attack Videos Spread on Web*, N.Y. TIMES, Oct. 6, 2006. See also, Mike Dorning, *Web's Role Widens in Campaigns*, CHI. TRIB., Oct. 9, 2006, at 1.

⁹² Reuters, *Sprint to Offer Full-Length Movie Downloads*, ZDNET NEWS, Dec. 11, 2005, <http://news.zdnet.com/2100-1035-5990711.html> (last visited Jan. 1, 2007).

⁹³ A layered network gives access to the original content through at least two “layers.” The first might be the Internet, for example, and the second might be a cellular telephone network. Video to a cellphone or a WiFi device is delivered on a layered network.

Chart 2: Neo Networking



VI. CONCLUSION

The traditional networks have met their demise. But the viewer has increased their media usage and the time engaged with content. The content might have come from the same traditional networks as content providers, but it might also have come from many new sources including fellow interactive neo-networks. The networks have lost their near monopoly on distribution and they are on an equal footing with other producers that range from high end media producers, such as cable networks, to mid-level independent artists and producers, to people in their yard with a video camera and the ability to post to *YouTube.com*. The world has changed to one where distribution is a commodity and the only important thing is how creative your content is and whether people are watching it. It is now a content-driven world.