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MEDIA OWNERSHIP LIMITS SERVE THE PUBLIC INTEREST

MEDIA MARKETS ARE ALREADY CONCENTRATED, RELAXING CURRENT RULES IS NOT JUSTIFIED

For over two decades, the Department of Justice and the Federal Trade Commission have used Guidelines to categorize markets for purposes of merger analysis. Based on extensive theoretical and empirical evidence, the *Merger Guidelines* define a market with the equivalent of 10 or more equal-sized competitors as **unconcentrated.**[1] The Guidelines define markets with the equivalent of between 6 and 10 equal-sized competitors as **moderately concentrated**. They define a market with the equivalent of fewer than 6 equal-sized competitors as **highly concentrated**. In concentrated markets the threat of the abuse of market power is substantial.

Although the goal of promoting diversity in media markets under the Communications Act is broader than the goal of competition under the antitrust laws, these thresholds are a useful starting point for analysis of media markets. They reveal that lax implementation of First Amendment policy and weak enforcement of antitrust policy have allowed media markets to become concentrated.[2]

Using the standard market definition and the analytic approach applied by the Department of Justice and the Federal Trade Commission, we find that every television and newspaper market in the country is already concentrated. In fact, every newspaper market in the country is already highly concentrated, as are over 95 percent of the TV markets. Even adding together television and newspaper outlets, which are still the way the overwhelming majority of Americans get their news and information, we find that virtually every market is concentrated. Given the importance of civic discourse, unconcentrated markets are an absolute minimum for these two important sources of news. National markets for prime time programming and news are also concentrated.

The following charts show the concentration level of each specific media product in local media markets. We use television markets as the geographic basis for defining markets because television is the public's primary news source.

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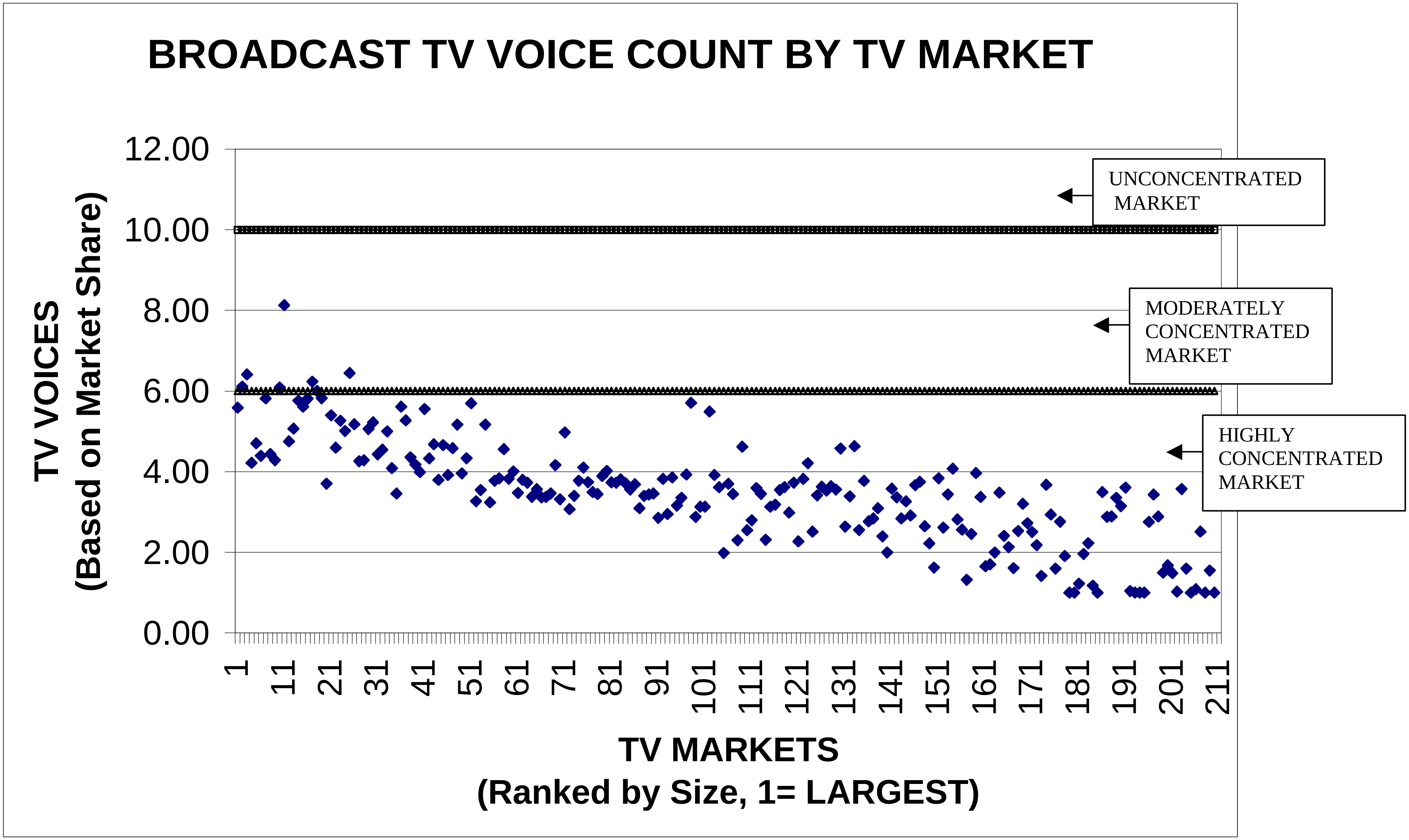
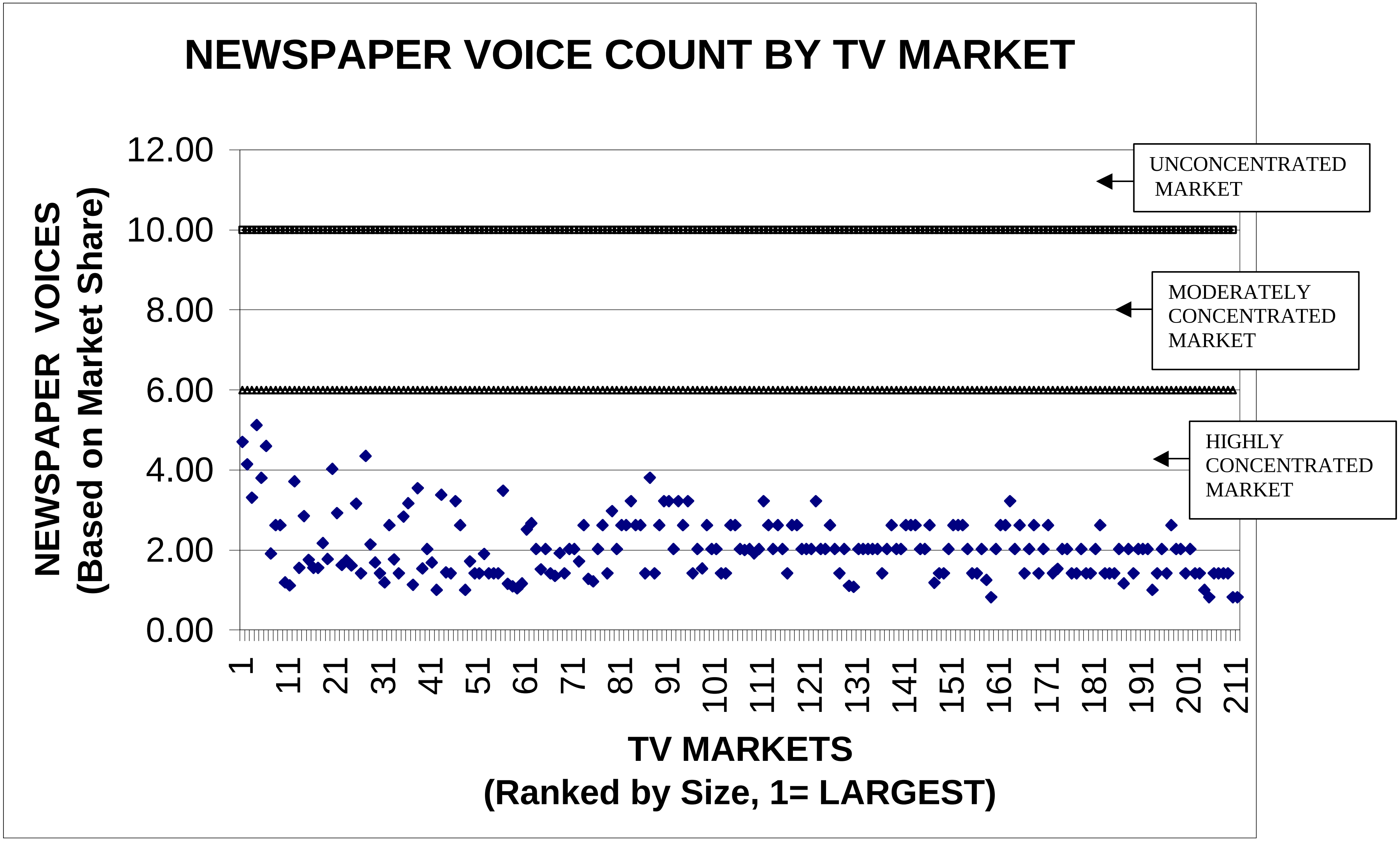
[1] The antitrust authorities use the share of the market for each firm and create an index (call the HHI), which can be converted to the equivalent of the number of equal-sized firms.

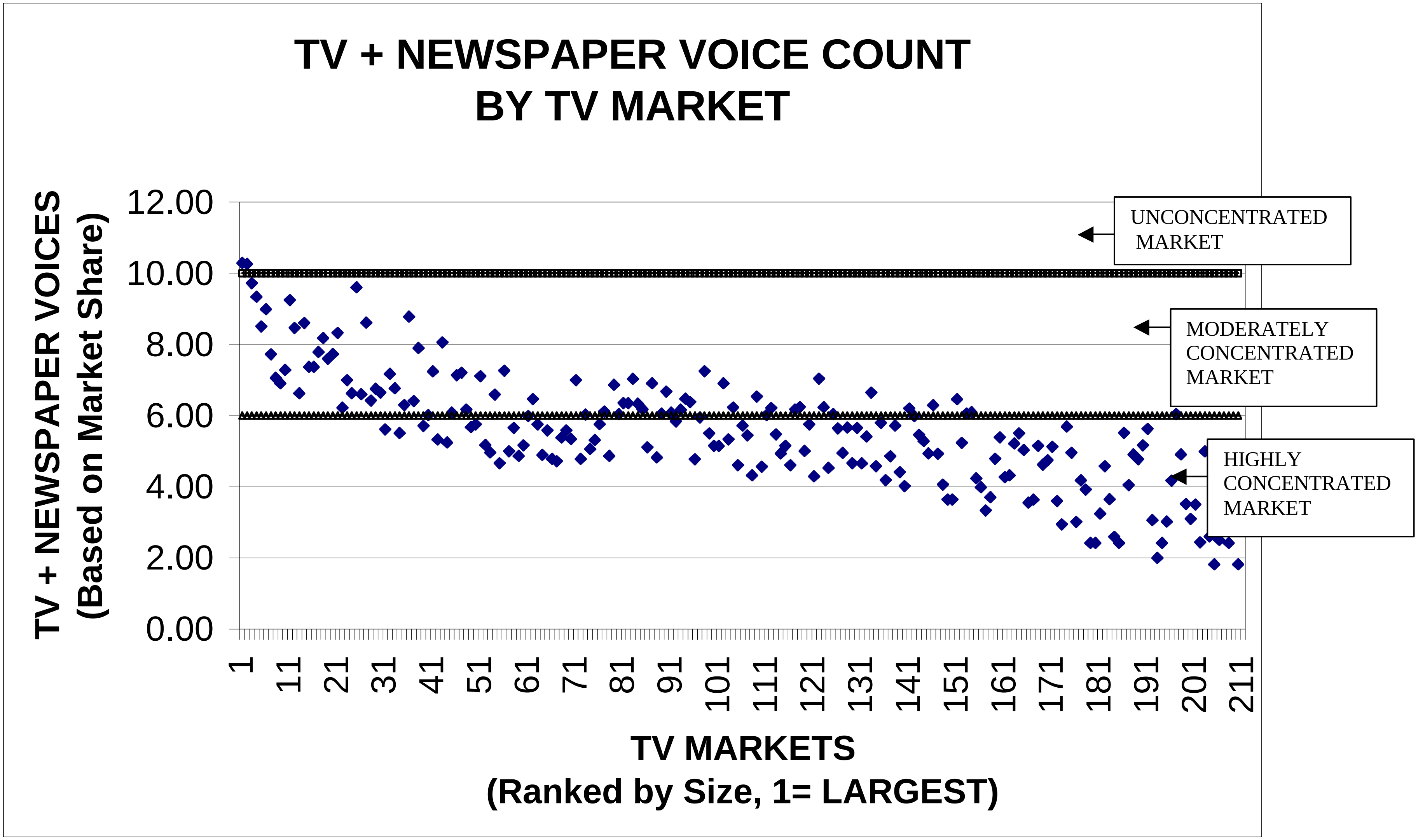
[2] Under the antitrust laws, mergers may be "prohibited if their effect may be to substantially lessen competition or tend to create a monopoly," or "if they constitute a contract, combination… or conspiracy in restraint of trade," or "constitute an unfair method of competition." Merger review under the Communications Act seeks to promote the public interest, which has been defined by the courts as the " widest possible dissemination of information from diverse and antagonistic sources." The Federal Communications Commission (FCC) is charged to transfer cable, broadcast and telecommunications licenses only upon a "finding by the Commission that the public interest, convenience and necessity will be served."



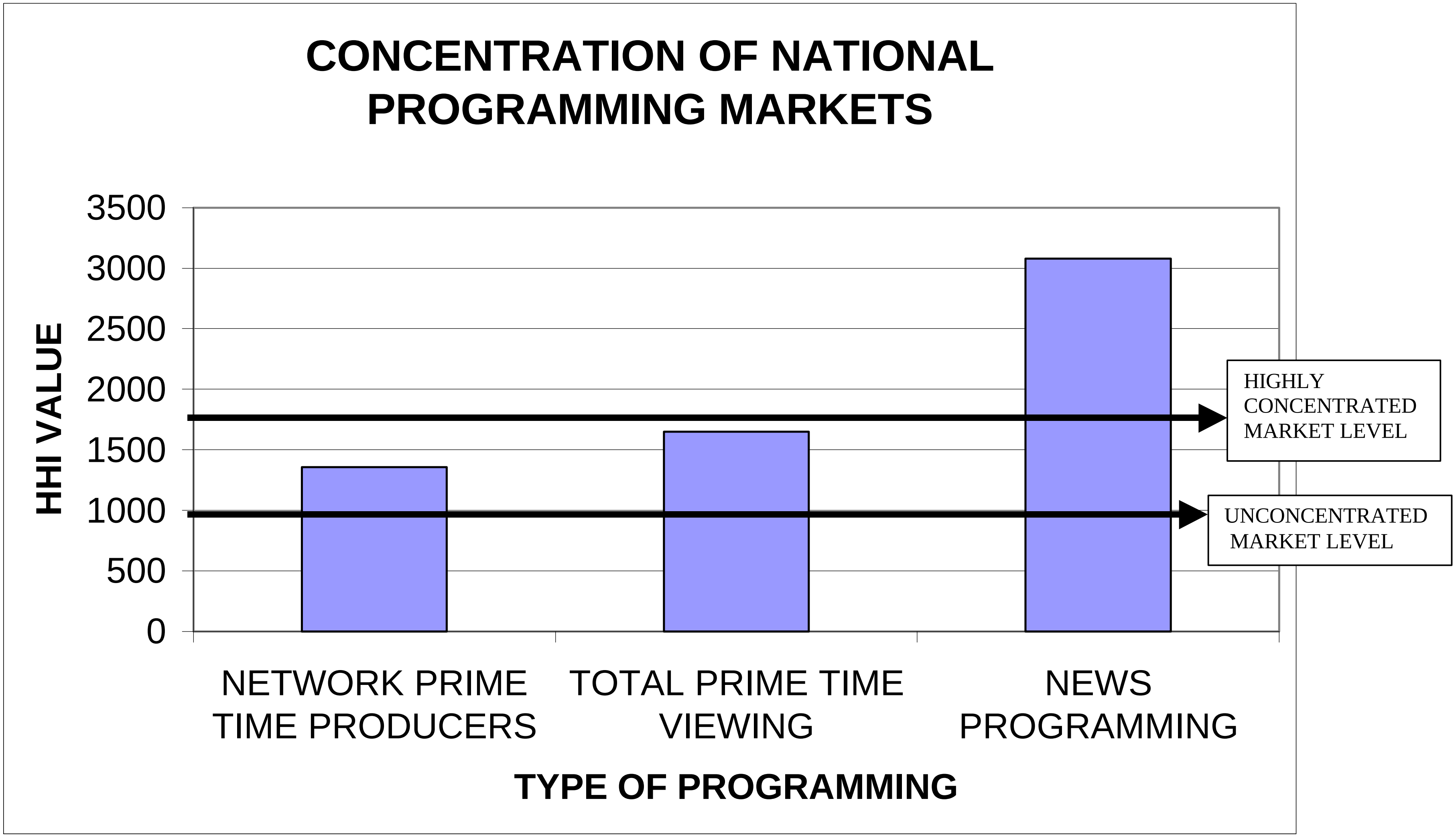
SOURCE: BIA Financial, *Television Market Report: 2000.* Year 2000 broadcast TV viewing data for all 211 Designated Market Areas (DMA).



SOURCE: Market profiles from *Editor and Publisher* and *Media Week*, various issues, and "Initial Comments of the NAA," In the Matter of Cross-Ownership of Broadcast Stations and Newspapers; Newspaper-Radio Cross-Ownership Waiver Policy: Order and Notice of Proposed Rulemaking, MM Docket No. 01-235, 96-197, Table 3. Year 2000 newspaper circulation for 68 markets. Missing data estimated by regression of DMA size.



SOURCE: Previous graphs.



Source: Mara Epstein, *Program Diversity and the Program Selection Process on Broadcast Network Television* (Federal Communications Commission, Media Ownership Working Group, September 2002); "Comments of Sinclair Broadcasting," Exhibit 15; "" *New York Times*, April xx, 2003, p. C-1.

OWNERSHIP POLICY IMPLICATIONS OF CONCENTRATED MEDIA MARKETS

As a matter of public policy, the goal of First Amendment policy under the Communications Act is broader than the goal of competition under the antitrust laws. In merger review, the antitrust laws seek to prevent the accumulation of market power. Merger review under the Communications Act seeks to promote the public interest, defined by the Supreme Court as the " widest possible dissemination of information from diverse and antagonistic sources."

The empirical evidence demonstrates that traditional mass media still dominates the dissemination of news and information. Further relaxation of the rules on media ownership will lead to much more concentrated markets and decreased diversity of news and information sources. A set of rules, based on the analysis of the current structure in contemporary media markets that restricts merger activity to a small number of markets is well justified on the basis of the empirical data.

- **Preventing the overall media market from becoming concentrated and submarkets from becoming highly concentrated is a reasonably cautious standard.**

At a practical level, the evidence presented answers each of the main questions raised in the omnibus media ownership proceeding. Why didn't the Federal Communications Commission include newspapers and radios in its voice count to identify markets where one owner could hold licenses to more than one TV station (the duopoly rule)? The answer is simple.

- **These other products do not belong in a TV voice count analysis because radio, newspapers and the Internet are not good substitutes for TV.**

- **TV is the dominant source of news and information and TV markets are already highly concentrated. The limits on TV mergers are well justified.**

Similarly, the Commission "seeks comments on whether and to what extent we should revise our cross-ownership rule that bars common ownership of a broadcast station and daily newspaper in the same market." The answer is simple.

- **Cross-ownership should not be allowed in concentrated media markets. Newspapers are the second most important source of information and also provide unique, in-depth and investigative reporting.**

- **All newspaper markets are highly concentrated and virtually all newspaper/TV markets are already concentrated. Allowing newspaper-TV combinations is not in the public interest because they would drive media concentration above already unacceptably high levels.**

The empirical evidence on radio markets not only confirms that too many merges have been permitted, but it underscores the point that antitrust authorities cannot be relied upon to prevent excessive concentration in media markets.

- **Few additional radio mergers should be allowed because virtually every radio market in the country is highly concentrated.**