

# Analysis of Boston Local Television News Story Selection Bias, 1993–2002

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## 1 Introduction

The Federal Communications Commission’s broadcaster ownership diversity regulations are under attack. This spring, in response to two challenges from groups of broadcasters, the United States Court of Appeals for the District of Columbia remanded for reconsideration as “arbitrary and capricious”<sup>1</sup> two longstanding F.C.C. regulations: the prohibition<sup>2</sup> on any one entity’s owning broadcasters able to reach more than 35% of the viewing public, and the restriction<sup>3</sup> against an entity owning more than one television station in certain television markets. With consumers able to receive their media from an increasing variety of sources, the F.C.C.’s outdated economic justifications for its broadcaster diversity regulations are looking less and less convincing to skeptical courts, and the commissioners do not appear to be inclined to fight to keep the rules in place.

Commentators in journalism have reacted with dismay. Alex S. Jones, the director of Harvard University’s Joan Shorenstein Center on the Press, Politics and Public Policy, has predicted a gloomy future as a result of the rules’ relaxation:

These possible F.C.C. rule changes will almost certainly create a concentration of media power far beyond what now exists in most places. Such a local media leviathan may have the best of intentions and have no wish to stifle disparate voices. But consolidation could well foreclose the possibility of any competition that would improve news coverage. . . .

Too much media concentration in any town is inherently unhealthy, like relying on a single dominant industry or investing heavily in only one stock. Excessive dependence on a single source of news can put at risk the free exchange of ideas essential to democracy.

The First Amendment is meant to assure robust debate, and the limitations on local cross-ownership were written with that objective in mind. On the local level, rolling back those rules will inevitably make that debate more one-sided.<sup>4</sup>

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<sup>1</sup>*Fox TV Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. Feb. 19, 2002) (remanding 35% viewership rule for consideration as “arbitrary and capricious”), *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. April 2, 2002) (remanding duopoly prohibition for consideration as “arbitrary and capricious”).

<sup>2</sup>47 C.F.R. § 73.3555(e) (2001).

<sup>3</sup>47 C.F.R. § 76.501(a) (2001).

<sup>4</sup>Alex S. Jones, *The Costs of Consolidation*, N.Y. TIMES, Feb. 28, 2002, at A27.

Unfortunately, Mr. Jones's prediction of a conglomeration of media power may have already come true, through a back door. While ownership of local television stations by national networks is not yet a majority practice, another such relationship between local stations and national conglomerates is: network affiliation. An analysis of the Nexis database of local news transcripts in Boston from 1993 to the present indicates that network affiliation may be, by one measure, at least as potent an influence on local news as network ownership. After presenting a statistical analysis of what appears to be a consistent and journalistically-improper network-related story selection bias in the Boston local news, I will discuss my attempts to discern the mechanisms producing this effect. Finally, I will explain why the existence of this bias plausibly violates the Communications Act and whether legal recourse is available to private actors.

## 2 Stations and Networks

### 2.1 The Stations

There are three major local television news stations that serve the Boston area. WCVB-TV channel 5 is owned by Hearst-Argyle Television Inc., a publicly-traded firm that owns 24 television stations reaching about 18% of the country's population. WCVB transmits its local newscast "Newscenter 5" during the early morning and at noon, 5 p.m. and 11 p.m. daily. During primetime, WCVB retransmits programming from its network affiliate, the American Broadcasting Co. (ABC), a subsidiary of the Walt Disney Co.

WHDH-TV channel 7 is owned by the Sunbeam Television Corp., which also owns one other Miami television station and is principally controlled by an individual, Edmund N. Ansin. WHDH transmits the local newscast "7 News" during the early morning and at noon, 4 p.m. and 11 p.m. daily. WHDH also retransmits network programming from the National Broadcasting Co. (NBC), a subsidiary of the General Electric Co.

WBZ-TV channel 4 is owned by Viacom Inc., a large conglomerate of publishing, movie production, music, radio, television and amusement park concerns, including 39 television broadcast stations across the country.<sup>5</sup> WBZ transmits a local newscast, "WBZ4 News," on its own channel and another local channel owned by Viacom, WSBK-TV channel 38. For network programming, WBZ retransmits television shows from a national network owned by Viacom, CBS Inc.<sup>6</sup>

Prior to 1995, the local situation was somewhat different. WBZ-TV, which had been NBC's network affiliate through 1995, became part of the same company as CBS in late 1995 when Westinghouse Inc., then WBZ's owner, purchased CBS. Before Jan. 2, 1995, the network affiliations of WBZ and WHDH

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<sup>5</sup>Viacom's stations reach 39% of the country's population, in violation of the F.C.C.'s 35% limit; a stay issued by the D.C. Circuit has allowed them to remain over the limit. 280 F.3d at 1036.

<sup>6</sup>Viacom also owns the UPN national broadcast network.

were switched: WHDH was a CBS affiliate, and WBZ was an NBC affiliate. WCVB has been an ABC affiliate since 1972.

## 2.2 Affiliation Agreements

The contract between WHDH and NBC, and between WCVB and ABC (and which existed between WBZ and CBS for the year 1995) is known as an *affiliation agreement*. Under the F.C.C.'s rules<sup>7</sup>, television stations are required to file these documents with the Commission, ostensibly for the F.C.C.'s policy oversight purposes. Accordingly, I filed a request with the F.C.C. under the Freedom of Information Act<sup>8</sup> for the WHDH-NBC agreement, the WCVB-ABC agreement, and any agreement on file between WBZ and CBS before the two companies merged in late 1995.

Unfortunately, the F.C.C. did not have agreements on file for WCVB and WHDH. (They were able to find a Nov. 21, 1994 agreement between WBZ and CBS.) According to James J. Brown<sup>9</sup> of the Mass Media Bureau, the files were lost in a sequence of office moves following the dissolution of the F.C.C.'s Policy Analysis Branch. Thus the F.C.C. does not appear to have been actively engaged in an oversight role, scrutinizing the contents of these agreements to discern their market effect. Nevertheless, in response to my FOIA request the F.C.C. made requests in turn to WCVB and WHDH. After these stations sent their affiliation agreements to the F.C.C., the Commission forwarded them back to me. Examination of WHDH's public file<sup>10</sup> in October 2001 indicates that WHDH may not have ever provided the F.C.C. with a copy of its 1994 one-page NBC "binding term sheet" affiliation agreement that remained in effect as of December 2001. Another indication that WHDH may not have submitted this document is its provision, contrary to the filing requirement, that "Each party will treat this term sheet as confidential and will not disclose any of its terms without the other party's prior consent."<sup>11</sup> Contrary to law<sup>12</sup>, this agreement was not in WHDH's public file, and WHDH's staff declined a request to produce it. However, the WHDH public file did contain the station's superseded 1982 and 1993 agreements with CBS.

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<sup>7</sup>47 C.F.R. § 73.3613 (2001).

<sup>8</sup>5 U.S.C. § 552 (2000).

<sup>9</sup>Telephone communication with James J. Brown, Nov. 29, 2001. Notes on file with author.

<sup>10</sup>47 C.F.R. § 73.3526 (2001).

<sup>11</sup>TERM SHEET WHDH/BOSTON & NBC, Aug. 10, 1994, at *Confidentiality*.

<sup>12</sup>*Id.* at (e)(5), which requires a public-file copy or copy-on-request of documents listed in 47 C.F.R. § 73.3615(a)(4)(i) (2001), which in turn incorporates by reference the documents covered under § 73.3613, the network-affiliation requirement.

In total, I was able to obtain five network affiliation agreements from the three major Boston television stations, two of which (WHDH and WCVB) have current network affiliations. These documents, and their relevant terms, are as follows<sup>13</sup>:

Station	Network	Date	Terms
WHDH	NBC	Aug. 10, 1994 (superseded in 2002)	NBC pays WHDH \$10 million in 1995, \$11 million in 1996, etc., capped at \$15 million in 2000 and afterwards.
WCVB	ABC	Oct. 21, 1994 (later renewed)	ABC pays WCVB approximately \$3 million per year.
WBZ	CBS	Oct. 21, 1994 (superseded at CBS-WBZ merger in late 1995)	CBS pays WBZ approximately \$5.2 million per year.
WHDH	CBS	1993 (superseded at WHDH switch to NBC in January 1995)	CBS pays WHDH approximately \$1.7 million per year.
WHDH	CBS	1982 (superseded by 1993 agreement)	CBS pays WHDH approximately \$2.4 million per year.

### 3 Story Selection Analysis

#### 3.1 The Survey

In order to investigate the influence of network affiliation and network ownership on local news, I performed an analysis from July 1, 1993 through Jan. 1, 2002 of the story selection on the local news of each of the three local stations. The Nexis database contains summarized transcripts of all three stations since July 1, 1993, first from “Radio TV Reports” and later from the “Video Monitoring Services of America.”

Using a computer program I wrote to search the Nexis database, I collected records of 6,549 segments on the WHDH, WBZ, and WCVB local news that were about any of 34 NBC, ABC and CBS shows that appeared in the top-ten

<sup>13</sup>When agreements specified a “base rate” per hour times a fraction of advertising used, I translated to approximate annual amounts by using the WHDH agreement’s rough figure of \$15 million per year for a \$22,750 base rate.

Nielsen ratings during 1993–2002. In each complete year surveyed, except for the year 1999, at least an average of every other day included a story on one of the three local news programs about a top-rated national network television program. (In 1999, only 162 days had at least one of the local news programs running a segment on national network programming, for an average rate of one every 2.3 days.)

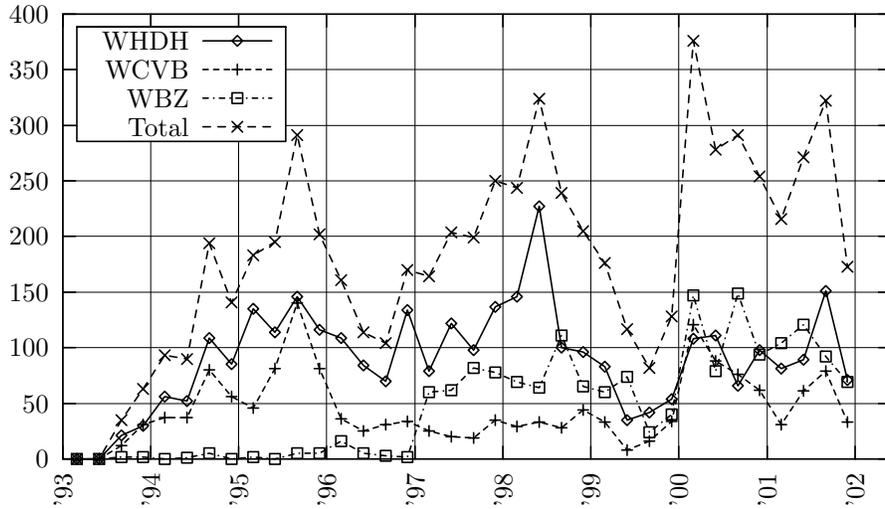
In order to assist in replication of my results, I include the programs surveyed and the Nexis search string used for each. For some programs, such as “Survivor” and “Friends,” it is extremely difficult to formulate a search string that includes almost all mentions of the program but excludes normal usage of these common words. I have chosen to draft the search strings toward narrower rather than wider coverage, leading to the possibility that some valid reports on the “Friends” television program could have been excluded from the count. The data were not hand-modified, but the search strings were tuned by spot-checking the results for accuracy. I did not include programs such as “JAG” that have switched networks during the period of the survey. “Count” is the total number of segments on all three local news programs.

Network	Program	Count	Search String
CBS	"60 Minutes"	611	(60 Minutes) OR (Sixty Minutes)
CBS	"C.S.I."	5	CSI
NBC	"Caroline in the City"	27	Caroline in the City
NBC	"Dateline NBC"	107	Dateline NBC
ABC	"Drew Carey"	44	Drew+Carey
NBC	"ER"	599	ER
CBS	"Everybody Loves Raymond"	30	Everybody Loves Raymond
NBC	"Fired Up"	24	Fired+Up
NBC	"Frasier"	227	Frasier
NBC	"Friends"	466	(Friends w/s NBC) OR (Jennifer Aniston OR Courtney Cox OR Courtney Arquette OR Lisa Kudrow OR Matt LeBlanc OR Matthew Perry OR David Schwimmer)
ABC	"Grace Under Fire"	13	Grace Under Fire
ABC	"Home Improvement"	200	Home Improvement
NBC	"Just Shoot Me"	22	Just Shoot Me
NBC	"Law and Order"	121	Law pre/1 Order
NBC	"The Tonight Show"	428	Leno
CBS	"Late Show"	866	Letterman
NBC	"Mad About You"	167	Mad About You
ABC	"Who Wants to be a Millionaire?"	183	who wants to be a millionaire OR millionaire show
ABC	"Monday Night Football"	371	Monday Night Football
CBS	"Murder She Wrote"	14	Murder She Wrote
CBS	"Murphy Brown"	109	Murphy Brown
ABC	"NYPD Blue"	246	NYPD Blue
NBC	"The Naked Truth"	10	Naked Truth
CBS	"Northern Exposure"	31	Northern Exposure
ABC	"Primetime Live"	100	Primetime Live
NBC	"Seinfeld"	1,001	Seinfeld
NBC	"Suddenly Susan"	47	Suddenly Susan
CBS	"Survivor"	293	caps(singular(survivor)) w/s (singular(island) OR CBS OR vote OR strand OR singular(show)) AND NOT Rhode Island
NBC	"The Single Guy"	24	The Single Guy
CBS	"Touched by an Angel"	17	Touched by an Angel
NBC	"Veronica's Closet"	11	Veronica Closet
NBC	"The West Wing"	224	West Wing
NBC	"Will and Grace"	92	Will pre/1 Grace

### 3.2 Results

The total amount of local coverage of national network programming appears to vary somewhat periodically, for unclear reasons.<sup>14</sup> In 2001, WHDH and WBZ ran about 390 segments each about national network programming. WCVB ran 204.

Local News Segments About All Network Programming, Quarterly



Each of the local news programs exhibits, with extremely high confidence, a story selection bias<sup>15</sup> in favor of selecting stories relating to its network affiliate's top-rated programs. Although the statistical confidence of the existence of this bias is extremely high, the strength of the bias itself varies widely among the stations.

Since the beginning of 1996, WHDH has run 87% of its network-program-related segments (those segments which discuss any the 34 programs) about NBC shows (a 13:1 bias for NBC). WBZ has run 67% about CBS shows (a 4:1 bias for CBS), and WCVB has run 43% about ABC shows (a 1.5:1 bias for ABC). The "equal coverage" level, that is, the level one would expect for each station if statistically unbiased, is 33% (1:1). The results can be summarized as follows:

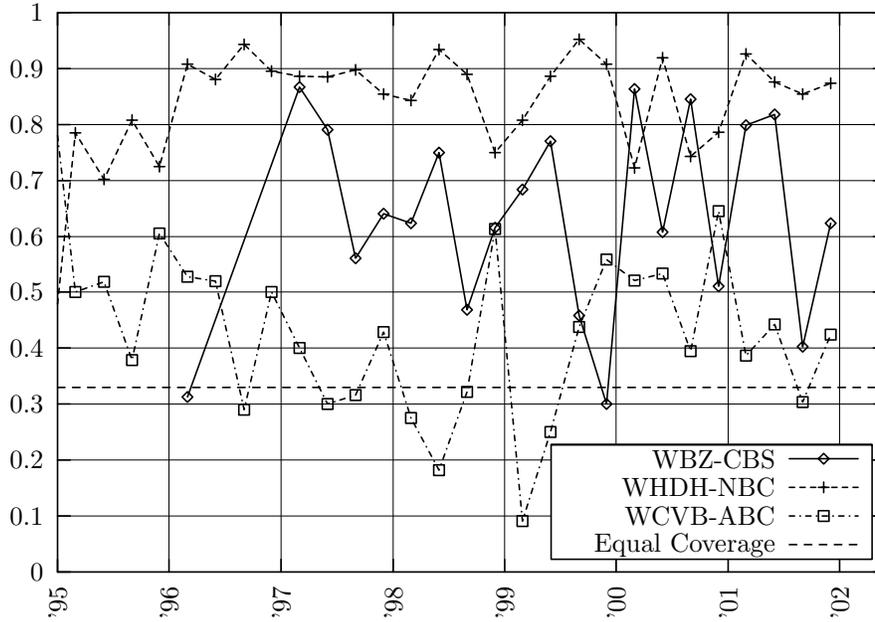
<sup>14</sup>Except for the spike in the second quarter of 1998, which is the result of WHDH running 164 segments about the May 14, 1998 conclusion of NBC's "Seinfeld."

<sup>15</sup>Note that I am using "bias" in a statistical, not journalistic sense here. If, for instance, NBC network programming is validly more newsworthy than CBS, a statistical bias in favor of covering NBC programs would not necessarily imply an improper journalistic bias.

<i>Story Count</i>	<b>WBZ 96-</b>	<b>WHDH 96-</b>	<b>WCVB 96-</b>
<b>CBS</b>	1124	172	211
<b>NBC</b>	412	2075	357
<b>ABC</b>	134	144	433

<i>Story Fraction</i>	<b>WBZ 96-</b>	<b>WHDH 96-</b>	<b>WCVB 96-</b>
<b>CBS</b>	.67	.07	.21
<b>NBC</b>	.25	.87	.36
<b>ABC</b>	.08	.07	.43

Fraction of Network-Program Segments About Affiliates' Programs, Quarterly



(Points omitted in quarters where total number of network-programming-related segments was under six.)

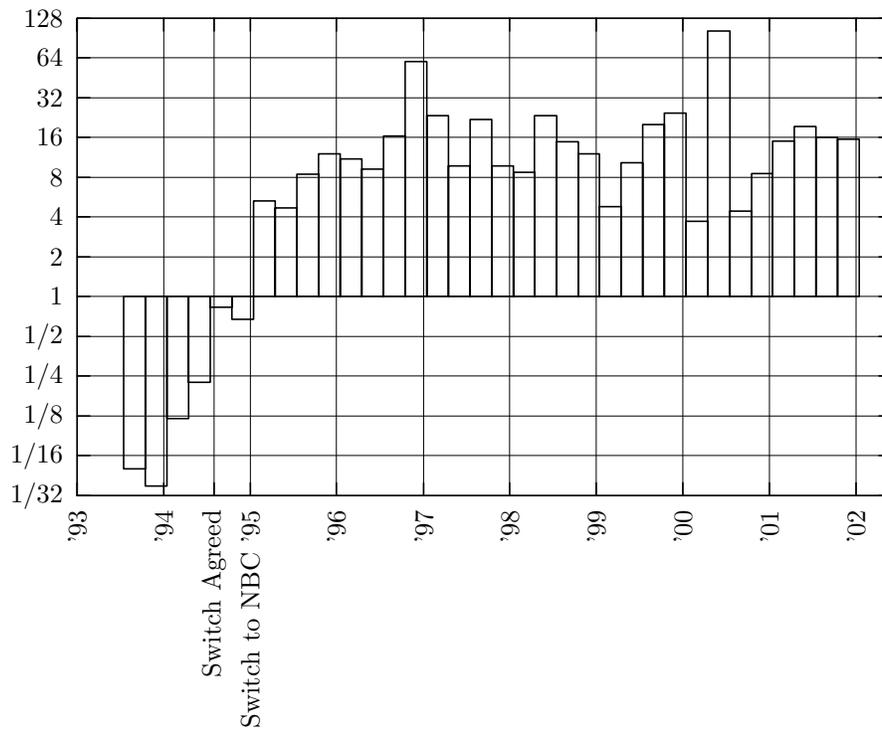
I also examined WHDH's results from before its August 1994 decision to switch from CBS affiliation to NBC affiliation, in order to examine how the change in WHDH's affiliation (and affiliation payments, from \$1.7 million from CBS in 1994 to \$10 million from NBC in 1995) affected its story selection. Unfortunately, during these quarters (July 1993 through June 1994), WBZ (which was then affiliated with NBC) ran only 5 total segments about national network programming, foiling a meaningful analysis of WBZ's NBC-affiliated story selection behavior.

<i>Story Count</i>	<b>WHDH -6/94</b>
<b>CBS</b>	137
<b>NBC</b>	17
<b>ABC</b>	5

<i>Story Fraction</i>	<b>WHDH -6/94</b>
<b>CBS</b>	.86
<b>NBC</b>	.11
<b>ABC</b>	.03

The following is a graph of WHDH's number of NBC-related segments for each CBS-related segment it ran during the same quarter, plotted logarithmically. Note the shift across the equilibrium point coinciding with the switch in WHDH's network affiliation from CBS to NBC. Before this switch, when WHDH was affiliated with CBS, the WHDH local news ran over 8 segments about CBS for every one segment it ran about NBC. Immediately after the switch to NBC affiliation, the WHDH local news ran a similar number of stories about NBC for every one segment it ran about CBS:

WHDH News, Number of NBC-Show Segments per CBS-Show Segment, Quarterly



Finally, here is the actual measured selection bias of each station toward its network during the periods examined:

Skew Toward Own Network, Summarized (33% coverage is 1:1)

	<b>WBZ 96-</b>	<b>WHDH -6/94</b>	<b>WHDH 96-</b>	<b>WCVB 96-</b>
<b>Bias Factor</b>	CBS = 4.12:1	CBS = 12.5:1	NBC = 13.1:1	ABC = 1.52:1

Certain episodes of coverage appear as particularly strong examples of disparity in local news story selection in favor of stations' networks. For instance, the long-running NBC comedy "Seinfeld" had its final episode on May 14, 1998. During the months of April and May 1998, the WHDH local news ran 164 segments about the show (an average of 2.7 segments per day). During the same period, WBZ ran 11 segments and WCVB ran 15. From July 2000 through June 2001, the WBZ local news ran 195 segments about the CBS show "Survivor." During the same period, WHDH ran 15 segments and WCVB ran 12 segments. In the year 2000, WCVB ran 121 local news segments about ABC's television show, "Who Wants to be a Millionaire?" with WHDH running 8 segments and WBZ running 3 segments about "Millionaire" during the same period.

### 3.3 Statistical Analysis

Percentage-wise, each station appears to skew toward covering its network affiliate, but might these effects be due to chance? In order to examine the fairness of each station's coverage in a statistically sound manner, I construct the "fairness null hypothesis" of a given "newsworthiness factor." I will then attempt to reject this null hypothesis at various levels of the "newsworthiness factor" in order to examine the fairness of stations' story selections.

The fairness null hypothesis assumes that the likelihood of a station choosing to run a segment about a particular network is proportional only to that network's "newsworthiness factor." For instance, if NBC has a newsworthiness factor of 1.0, and WHDH obeys the fairness null hypothesis, one would expect WHDH to run 33% of its network-related stories about each network. If NBC is 20% more newsworthy than a normal network and thus has a newsworthiness factor of 1.2, one would expect WHDH to run  $\frac{1.2}{1+1+1.2} = 37.5\%$  of its network-related stories about NBC programs.

At a newsworthiness factor of 1.0, we are able to reject the fairness null hypothesis for each station's post-1996 coverage (and for WHDH's pre-1995 coverage) at the 99.999% level. This speaks to the strength of statistical confidence in a bias, not to the strength of the bias itself.

I next calculated the maximum newsworthiness factor at which the fairness null hypothesis may be rejected at the 95% level. To put it another way, what is the minimum newsworthiness factor for each station's network affiliate to have that allows one to accept, with at least 5% likelihood, that the station's story selection is fair and proportionate to a network's newsworthiness?

For WBZ's post-1996 coverage, CBS must have been at least 277% more newsworthy (newsworthiness factor 3.77) than NBC or ABC for one to accept that WBZ's story selection was fair with 5% likelihood. For WHDH's post-1996 coverage, NBC must have been at least 1,080% more newsworthy (newsworthiness factor 11.8) than CBS or ABC for one to accept that WHDH's story selection is fair with 5% likelihood. For WCVB, ABC must have been at least 36% more newsworthy (newsworthiness factor 1.36) than CBS or NBC for one to accept that WCVB's story selection since 1996 was fair with 5% likelihood. Finally, for WHDH's coverage before August 1994, CBS must have been at least

746% more newsworthy (newsworthiness factor 8.46) than NBC or ABC for one to accept that WHDH's story selection was fair with 5% likelihood.

Minimum Newsworthiness to Accept Fairness Hypotheses with >5% Likelihood

	<b>WBZ 96–</b>	<b>WHDH –6/94</b>	<b>WHDH 96–</b>	<b>WCVB 96–</b>
<b>Factor</b>	CBS = 3.77	CBS = 8.46	NBC = 11.8	ABC = 1.36

For WCVB, the fairness null hypothesis is believable. It is not out of the question that ABC programs are 36% more newsworthy than CBS or NBC ones, and at this level or higher we cannot reject the fairness hypothesis at the 95% level.

The fairness null hypothesis does not look so good, however, for WBZ and WHDH. For WBZ's post-1996 selection to have even a 5% likelihood of having been fair, we must accept that CBS (WBZ's corporate sibling) is 3.77 times as newsworthy than the mean of ABC and NBC. This is hard to accept. News-gathering bodies with no television network affiliation, such as The New York Times, report on the three networks almost equally (about 1,100–1,300 stories per year mention each network in The Times).<sup>16</sup> If one does not accept that CBS shows are 3.77 times as newsworthy as the mean of ABC and NBC shows, one must reject the fairness null hypothesis as applied to WBZ.

Finally, the fairness null hypothesis looks even less likely when applied to WHDH. To accept the fairness null hypothesis with even just 5% likelihood, one would have to believe that CBS shows were 8.46 times as newsworthy as NBC shows before August 1994 (when WHDH agreed to switch affiliations from CBS to NBC, foregoing a \$1.7 million annual revenue stream for CBS in favor of a \$10 million–\$15 million annual revenue from NBC), but that NBC shows have been 11.8 times as newsworthy as CBS shows in the years after the switch. This is also unlikely.

Stretching the metaphor, unless one is willing to accept that CBS shows are 3.77 times as newsworthy as NBC, or that NBC shows are 11.8 times as newsworthy as CBS (assumptions that are difficult to maintain in the face of nearly-equal coverage by neutral news-gathering organizations), one must therefore conclude (with at least 95% confidence) that WBZ's and WHDH's story selection is not journalistically "fair."

## 4 Legal Issues

The preceding statistical analysis appears to raise issues of journalistic ethics with regard to the WBZ and WHDH local news, but does it also raise legal issues? I believe that it plausibly does, depending on the mechanism responsible for the disparity. (I have ruled out as an explanatory mechanism the possibility that disparities in newsworthiness are responsible for WHDH's and WBZ's story selection biases.)

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<sup>16</sup>A more rigorous analysis would examine coverage of each of the 34 programs in a neutral news-gathering body.

The situation is potentially most problematic for WHDH, which has always been a separate corporate entity from its networks, CBS and NBC. If, by accepting \$1.7 million per year from CBS and favoring CBS-related coverage on its local news by a factor of 12.5, and then switching to accepting \$10–\$15 million per year from NBC and favoring NBC-related coverage in its local news by a factor of 13.1, WHDH was receiving direct or indirect “money, service or other valuable consideration” in exchange for its coverage, WHDH would have violated the Sponsorship Identification provisions of the Communications Act:

All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person. . . .<sup>17</sup>

Historically, the F.C.C.’s interpretation of what constitutes “indirect” payment of consideration has been surprisingly broad. The F.C.C. normally disclaims jurisdiction over news programming. “Under the First Amendment and the Communications Act, the FCC cannot tell stations how to select material for news programs, and we cannot prohibit the broadcasting of an opinion on any subject.”<sup>18</sup> Yet the sponsorship identification provision, which has remained nearly unchanged since 1934, has been construed by the Commission to require disclosure of “indirect” consideration for content in news or quasi-news programming<sup>19</sup> and general-interest announcements<sup>20</sup>.

The case concerning general-interest announcements, *In re KISD, Inc.*, is particularly interesting because it may also apply to WBZ, which exchanges no money with its network, the preferred subject of its local news, because the network and station belong to the same corporation. The Commission in *KISD* nevertheless fined a broadcaster for improperly *self-promotional* announcements, in this case ad-libbed comments by announcers that disproportionately alerted the public of dances and concerts held by the station’s owner compared to dances and concerts arranged by other corporations. “It is well settled that broadcast stations are licensed to serve the public interest, rather than the private interest of the license.”<sup>21</sup>

If WHDH’s local news contains promotional advertising for WHDH’s and NBC’s benefit, might the station simply be required to disclose this benefit and

<sup>17</sup>Communications Act of 1934 § 317, 47 U.S.C. § 317 (1994).

<sup>18</sup>Mass Media Bureau, Federal Communications Commission, THE PUBLIC AND BROADCASTING, June 1999, at [http://ftp.fcc.gov/Bureaus/Mass\\_Media/Factsheets/pubbroad.pdf](http://ftp.fcc.gov/Bureaus/Mass_Media/Factsheets/pubbroad.pdf).

<sup>19</sup>*See, e.g., In re General Media Associates, Inc.*, 3 F.C.C.2d 326, 327 (1966) (requiring sponsorship identification for one-minute “Accent” programs “giving information of current interest” where firm paid distributor for inclusion of product): “It appears to the Commission that you are soliciting payment from various clients desirous of your including certain matter in the ‘Accent’ programs and that you do not intend to include in such programs the fact that your clients have paid for the inclusion of such matter.”

<sup>20</sup>*E.g., In re KISD, Inc.*, 22 F.C.C.2d 833 (1970) (on-air self-promotion for dances run by station held violative of sponsorship identification requirement).

<sup>21</sup>*Id.* at 836.

label the material as commercial? Not necessarily. As part of its application to the F.C.C. for a broadcast license, WHDH demonstrated its commitment to serve the public interest by submitting “minimum” amounts of news and public affairs programming per week: 17 hours, 24 minutes of news per week, and 7 hours, 34 minutes of public affairs<sup>22</sup> It is doubtful that WHDH is legally bound by these promises, but abrogating them by labeling its news as promotion would nonetheless appear to call into question part of the basis of WHDH’s application.

## 5 Mechanism for Bias

In any case, whether WHDH’s and WBZ’s story selection biases are violative of the sponsorship identification provision continues to rest on the mechanism producing each bias. If indeed it is because of direct or indirect “money, service or other valuable consideration” (whether improperly to themselves, as in *KISD*, or to their network in exchange for its affiliation payments) that they skew their coverage in favor of their network, they may be in violation of the law as described above. If their story selection skew is simply because of an honest disagreement about the newsworthiness of the various networks’ television programs, they are unlikely to run afoul of the sponsorship identification provision.

Because of the suspicious nature by which WHDH’s 12.5-fold CBS bias (when CBS was paying it \$1.7 million per year) became a 13.1-fold NBC bias (when NBC was paying it \$10–\$15 million per year), as well as the much greater amount of its network-affiliate biases compared to the other stations (4.12 for WBZ and 1.52 for WCVB), I decided to focus on figuring out the mechanism for WHDH’s bias.

### 5.1 Arthur B. Goodkind, WHDH’s F.C.C. Advocate

I spoke with Arthur B. Goodkind of the law firm Holland & Knight L.L.P. Mr. Goodkind represents WHDH (and several other television stations affiliated with various national networks) in its dealings before the F.C.C. When presented with some of the results of my survey, Mr. Goodkind did not defend the quality of WHDH’s journalism, but he said that WHDH’s story selection bias would present no legal difficulties for the station.

“The network affiliate fee is not a fee that results in any sponsorship identification requirement,” he said. To implicate the provision, “there would have to be a direct payment to the station to broadcast an announcement about a particular product or service, and that’s not what happens here,” he said. “Network affiliation payments are simply for being an affiliate of the network and running the programs.”

Mr. Goodkind said the reasons for the WHDH news’s story selection bias were more likely self-promotional, rather than promotional of NBC. “If NBC

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<sup>22</sup>New England Television Application for Broadcast License, Undated Exhibit 13. In WHDH public file.

paid [WHDH] to run stories about Seinfeld, then I guess they would announce those as sponsored,” he said. The reason for the WHDH news’s promotion of NBC shows, however, is not because NBC is paying them directly, but because “they want to increase the viewership of the programs they [WHDH] carry,” he said. “They want people to watch all their programming. The greater the audience that watches the [NBC programs], the greater that hangs on” to WHDH’s local programming. “There’s synergy between the two,” he added.

“I think you can make journalistic arguments” about whether these stories are “an appropriate function” of the local news, he said. “Maybe news is not what it should be on television today.” But “no one’s ever raised it as a legal issue, so I don’t get involved,” he added. “And it’s not a legal issue. It’s a journalistic issue.”

## 5.2 Kim Carrigan, Former WHDH News Anchor

I also spoke with Kim Carrigan, an anchor at the WBZ news. From April 1994 until April 2001, when she left over a contract dispute, Ms. Carrigan was instead an anchor for the WHDH news. I asked her about the WHDH news’s former bias toward CBS-related stories, and current bias toward NBC-related stories.

“We did so many stories about Seinfeld. Oh my,” she said. Ms. Carrigan was careful to stress that “popular culture is journalism” and that stories about prime-time programming can be, in her view, properly aired in the news. But with regards to the Seinfeld and much of WHDH’s promotion of NBC, “Is that journalistically sound? Absolutely not.”

On the other hand, “is the reason that NBC is forcing [WHDH]? No,” she said. “What was being done on a local level is purely for local benefit.”

“It’s because NBC programming is so popular,” she said. By tying themselves to NBC’s programming (aired on WHDH), the WHDH news is “bringing people in” to watch all of WHDH’s programming, and consequently the local advertising sold to Boston-area WHDH advertisers, she explained.

Ms. Carrigan said the decisions to cover NBC programming were made at a level above her and her producers, at the news director and managing editor level. For some NBC-related stories, Ms. Carrigan said she would sometimes complain, saying, “I don’t want to do it. I don’t think that’s a journalistic story.”

But in the end, she said, it was a compromise. “When you come out of journalism school, you have all these ideas, but when you get out here, it’s a big business,” she said. “It’s an important lesson that we journalists have to learn.”

How does Ms. Carrigan compare working at WHDH, a network-affiliated station, to working at WBZ, which is owned by its network? “I’ve only done one ‘Survivor’ story since I’ve been here,” she said.<sup>23</sup> “These TV stations are left alone.”

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<sup>23</sup>I was unable to confirm this figure because WBZ has several news teams and Nexis does not list results by anchor in a convenient format, but the WBZ local news has done 37 segments on “Survivor” since Ms. Carrigan’s arrival at the station in September 2001.

“I think there can be some [journalistic] positives to being owned by a large company,” she said. At her former station, WHO-TV in Iowa, Ms. Carrigan said local advertisers (particularly car dealerships) had an inordinate amount of control over the content of the local news simply by threatening to drop their advertising. Sometimes these advertisers would even purchase daily sponsorship of Ms. Carrigan’s news program. “I would just throw a fit,” she said. “It was infuriating to me. Immediately, there’s a bias.” On the other hand, with WBZ owned by Viacom, “there’s never going to be a local advertiser in a position to be that strong,” she said.

At Viacom, “I think journalism comes first and they recognize that,” she said. Is that why the WBZ local news only exhibits a 4.12-fold bias in favor of CBS-related stories, compared to her former anchor job dealing with WHDH’s 13.1-fold bias? Ms. Carrigan gave a different explanation: on the WBZ local news, she said, “It doesn’t behoove us to promote these [CBS] shows that nobody watches.”

### 5.3 Ed Kazowski, WHDH News Director

Finally, I spoke with Ed Kazowski, WHDH’s News Director. Like Mr. Goodkind and Ms. Carrigan, Mr. Kazowski said the reason for the disparity in local news coverage in favor of NBC was for explicitly self-promotional reasons, not as a result of any monetary influx from NBC.

When asked about the 13-fold disparity in the WHDH local news’s coverage of NBC-related matters, Mr. Kazowski replied, “We don’t look at it as a disparity. We’re an NBC affiliate... We’re a business. What runs in NBC is running on WHDH.”

Mr. Kazowski vigorously denied that the disparity is a result of the \$15 million per year of payments to WHDH from NBC or from anybody else. “There’s a line that exists between the sales and finance end of a television station,” he said.

The reason for the WHDH news’s heavy coverage of NBC-related matters is instead because “the news department stands to benefit if the programming on the television station does well,” he explained. “That is, if our prime-time programming between 8 and 11 p.m. does well, our 11 o’clock news is going to do well.”

I asked Mr. Kazowski about a comment from another WHDH employee I met, that the station’s local news program would cover “Seinfeld” but not events on “Survivor” because in the case of the latter, “we would be promoting another network.”

“That’s actually true,” Mr. Kazowski said.

I asked Mr. Kazowski whether WHDH saw the news as the same as “promotion.” “The news isn’t promotion, but you’re giving publicity to something that runs on a competing television network,” if you discuss its programming in the news, he said. “If you’re suggesting that there’s some journalistic bias here or that we’re slanting the news, that’s completely incorrect,” he added.

WHDH's preference for NBC-related stories is "very accepted and standard," and "that's just basic competition," he said. "Why would you want to give publicity to a competitor?"

## 6 Conclusion

The story selection bias in the Boston local news appears to be a journalistically problematic phenomenon, but its legal import is unclear. All of the people I interviewed agreed that WHDH's heavy preference toward NBC-related segments on the local news is for self-promotional reasons, rather than to promote NBC as a result of its \$15 million per year of affiliation payments (or previously, to promote CBS as a result of its \$1.7 million per year of payments). Even so, there appears to be a plausible case that these broadcasters are improperly labeling commercial content as news for self-promotional purposes, in contravention of the F.C.C.'s construction of the sponsorship identification provision in *KISD*. Whether the Commission would follow the logic of its 32-year-old decision in this time of increasing pressure to deregulate is unclear.

Similarly unclear is the question of whether unrestricted ownership of local stations is actually worse for journalistic quality than network affiliation. The data for Boston give little reason to believe that this is the case, but only because even merely affiliated stations seem to display a surprisingly large bias in favor of covering stories about their network affiliate on the local news.

What is clear is that policymakers should consider these empirical techniques in order to decide whether the F.C.C.'s diversity regulations are still necessary. Federal courts have faulted the Commission<sup>24</sup> for its failure to study the likely economic and market effects of its decisions in this area. If the F.C.C. wants to ensure that the broadcast media continue to serve the public interest and be able to formulate regulations that are not judged "arbitrary and capricious," it would be wise to consider empirical analyses, such as this one, of the quality of journalistic coverage in affiliated and owned television stations.

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<sup>24</sup>*Fox TV Stations*, 280 F.3d at 1041.