2.2 Les récents débats

2.2.1 Managing the Marketplace of Ideas: The Media Ownership Debate in the United States

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For more than half a century, a fundamental principle of communications policy in the United States has been that the "widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[24] The Federal Communications Commission (FCC) routinely relies on this principle as a basis for its actions,[25] and the Supreme Court of the United States has used it to support rulings in a variety of contexts related to media and communication.

Few scholars or policy makers would question the assertion that the marketplace of ideas, a notion at the very core of modern conceptions of democracy, benefits from the "widest possible dissemination of information from diverse and antagonistic sources." It is difficult, however, to determine what communication policies will result in the broadest diversity of information and opinion. In the United States, the FCC's decision in 2003 to relax restrictions on media ownership generated intense criticism from those who feared that ever-bigger media conglomerates would provide less, rather than more, diversity of content. The U.S. Court of Appeals in Philadelphia immediately blocked implementation of the new rules at the request of a broad coalition of organizations that feared increased media consolidation. In late June 2004 the

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24. See Philip M. Napoli, "Deconstructing the Diversity Principle," *Journal of Communication* 49, no. 4 (1999): 7-34. The "diverse and antagonistic sources" phrase comes from the decision of the Supreme Court of the United States in *Associated Press v. United States*, 326 U.S. 1, 20 (1945).
25. See, e.g., *1998 Biennial Regulatory Review: Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Biennial Review Report*, 15 F.C.C.R. 11058, para. 80, 20 *Comm. Reg*. (P & F) 882 (2000) [hereinafter *Biennial Review Report*].

court directed the FCC to offer a more coherent justification for the new rules or to rewrite the rules altogether.[26]

This paper provides an overview of the media policy debate in the United States, with specific focus on the effect of different policies on diversity of news and opinion. The first section of the paper discusses now-abandoned FCC policies that were intended to foster diversity by requiring broadcasters who transmitted certain kinds of issue-oriented programming to air responses and alternate viewpoints. The second section of the paper discusses the background to the FCC's decision in 2003 to relax most of its rules about media ownership, and relates the Court of Appeals's criticism of the rules. The third section provides an overview of some of the empirical research on media ownership and media diversity. The final section of the paper looks at issues of media ownership and diversity that loom on the horizon.

2.2.1.1 Fifty years of "fairness"

Relatively early in its history, the Federal Communications Commission thought it could ensure diversity by mandating "fairness." In 1949 the Commission, reversing an earlier decision, decided that American broadcasters could editorialize and present programming about controversial issues of public importance so long as they provided a reasonable opportunity for opposing views to be heard.[27] This so-called Fairness Doctrine was widely resented by broadcasters, who saw it as government interference in journalistic decision-making.

In 1969, the U.S. Supreme Court upheld the constitutionality of the Fairness Doctrine,[28] but in 1987 the FCC abandoned the rule on the grounds that it was ineffective and resulted in broadcasters airing less programming about controversial issues than they otherwise would have.[29] The repeal of the Fairness Doctrine led directly to the rise of stridently conservative talk radio throughout the United States, most prominently in the personnage of Rush Limbaugh, the bombastic host whose daily show, syndicated on hundreds of stations, is the most-listened-to

26.*Prometheus v. FCC*, 2004 U.S. App. LEXIS 12720 (3d Cir.).
27. *In the Matter of Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949).
28. *Red Lion Broadcasting v. FCC*, 395 U.S. 367 (1969).
29. *Syracuse Peace Council*, 2 FCC Record 5043 (1987).

regularly scheduled radio program in the nation. Limbaugh's success has spawned local right-wing talk radio in mid-sized and large cities throughout the United States.

When it repealed the Fairness Doctrine, the FCC left intact two narrower rules it had adopted in 1967. One of the rules, the Personal Attack Rule, required broadcasters to notify and provide free reply time to anyone whose honesty, character, or integrity had been attacked during non-news programming.[30] The other rule, the Political Editorial Rule, required broadcasters to notify and provide free reply time to opponents of any political candidate the station endorsed as well as to any candidate the station opposed in an editorial.[31] Broadcasters challenged the rules in court, claiming they inhibited robust journalism. In October 2000, the U.S. Court of Appeals for the District of Columbia agreed, ruling that both the Personal Attack Rule and the Political Editorial Rule violated broadcasters' First Amendment rights.[32]

The Fairness Doctrine, the Personal Attack Rule, and the Political Editorial Rule were attempts by the FCC to ensure diversity of news and opinion by mandating broadcasters to air opposing viewpoints. The October 2000 Court of Appeals decision effectively barred any future attempts by the Commission to try to ensure diversity via programming requirements.

2.2.1.2 Ownership and diversity

Proponents of continued restrictions on media ownership fear that deregulation would permit a few powerful conglomerates to control the flow of electronic media ranging from news and entertainment programming on television and radio to the portals that enable people to gain access to the Internet. Proponents of eliminating restrictions on media ownership argue that the current rules do not take into account the vast storehouse of diverse information and entertainment that emerging technologies will be able to provide.

The *Communications Act of 1934* grants the FCC broad authority to allocate broadcast licenses. The Commission has used that authority to adopt rules restricting the number and kind of media

30. 47 C.F.R. 73.123 (1967).
31. 47 C.F.R. 73.123(c) (1967).
32. *Radio-TV News Dirs. Assoc. v. FCC*, 229 F.3d 269 (D.C. Cir. 2000).

outlets a single entity may own so as to advance competition and promote viewpoint diversity. In the Telecommunications Act of 1996, Congress narrowed the FCC's authority. Specifically, the 1996 legislation directed the FCC to review its ownership rules every two years, to "determine whether any of such rules are necessary in the public interest as the result of competition," and to "repeal or modify any regulation that it determines to be no longer in the public interest."[33] Legislation passed in early 2004 allows the FCC four years, rather than two years, between reviews of ownership rules.

In its first required review, in 1998, the Commission opted to retain most of its media ownership rules.[34] The Commission decided, however, that its newspaper/broadcast cross-ownership rule, which prohibited a single entity from owning both a daily newspaper and a television or radio broadcast station in the same community, should be reexamined.[35] The Commission also decided to re-examine its local radio ownership rule, which limited how many radio stations a party could own in a local market based on the number of commercial radio stations that were in the market.[36] The Commission eventually initiated two rulemaking proceedings to examine its method for defining radio markets and other issues related to the radio broadcasting market.

Several parties challenged two of the rules that the Commission decided to retain in the 1998 Biennial Report: (a) the cable/broadcast cross-ownership rule, which prohibited a party from owning both a cable television system and a television broadcast station in a local market and (b) the national television ownership rule, which prohibited a party from owning television stations that reach more than 35% of U.S. households. In Fox TV Stations Inc. v. FCC, the U.S. Court of Appeals for the District of Columbia held that the Commission had not provided a sufficient explanation of its reasons for retaining those rules.[37] Accordingly, the court directed the Commission to vacate the cable/broadcast cross-ownership rule, but remanded the national

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33. *1996 Act*, sec. 202(h), 110 Stat. 111-12.
34. *1998 Biennial Regulatory Review. Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report*, 15 FCC Record 11058 (2000) (*1998 Biennial Report*), *pet. for rev. pending sub nom.*, *Newspaper Ass'n of Am. v. FCC*, No. 00-1375 (D.C. Cir.).
35. *Cross-Ownership of Broadcast Stations and Newspapers*, Order and Notice of Proposed Rulemaking, 16 FCC Record 17283 (2001).
36. *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 16 FCC Record 19861 (2001); *Definition of Radio Markets*, Notice of Proposed Rulemaking, 15 FCC Record 25077 (2000).
37. *Fox TV Stations Inc. v. FCC*, 280 F.3d 1027, *opinion amended*, 293 F.3d 537 (2002).

television ownership rule to the Commission without vacating it because the court believed the Commission could justify a future decision to retain the rule.

A few months later, in Sinclair Broadcast Group Inc. v. FCC, the same court reviewed the local television multiple ownership rule, which the Commission had revised in a separate proceeding.[38] This rule restricted the number of television stations a party could own in a local market based in part on the number of "voices," i.e. the number of independent television station owners that would remain in the market after a transaction. The court generally upheld the Commission's revised rule, but remanded for further justification of the rule's counting of only television station owners as voices.

In the wake of Fox and Sinclair, the Commission initiated a comprehensive review of six media ownership rules.[39] In this review, the Commission sought comment on the local television multiple-ownership rule and the national television ownership rule, as well as the radio/television cross-ownership rule (which limited radio-television combinations in local markets) and the dual network rule (which prohibits mergers among the top four television networks – ABC, NBC, CBS, and Fox). The Commission incorporated the pending proceeding on the newspaper/broadcast cross-ownership rule and the two pending proceedings on the local radio ownership rule into the broader review.

To help guide its analysis, the Commission established a Media Ownership Working Group, which Commissioned twelve studies ranging from consumer surveys to economic analyses of media markets. The Commission also invited interested parties to submit their own studies and analyses. Interested parties filed thousands of pages of comments, consisting of legal, social, and economic analyses, empirical and anecdotal evidence, and industry and consumer data to support their various positions. In addition, more than a half a million individuals took advantage of Internet filing and other means to voice their opinion on media ownership.

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38. *Sinclair Broadcast Group Inc. v. FCC*, 284 F.3d 148 (2002).
39. *2002 Biennial Regulatory Review. Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 17 FCC Record 18503 (2002) (*2002 Biennial NPRM*).

The result of this mammoth proceeding was a 256-page order[40] (accompanied by a number of appendices) in which the Commission analyzed the record and determined, with its three Republican Commissioners voting in favor and its two Democratic Commissioners voting against, to modify the media-ownership ownership rules. The changes the Commission proposed, and the Court of Appeals' reaction to each of them, follow:

Local television multiple ownership rule

The Commission modified its local television multiple ownership rule to permit a single party to own up to two television stations in markets with 17 or fewer television stations and up to three television stations in markets with 18 or more stations. However, the new rules would not have permitted an entity to acquire a television station if the acquisition would have caused it to own two of the top-four rated television stations in the market.

The Court of Appeals upheld the top-four restriction but sent the numerical limits back to the FCC so that it could "harmonize certain inconsistencies and better support its assumptions and rationale."

Local radio ownership rule

The Telecommunications Act of 1996 not only eliminated all limits on national radio ownership, but also eased local radio ownership limits, establishing a four-tier sliding scale limit that allowed for as many as eight co-owned radio stations in the largest communities. Specifically, Congress provided that (a) in a radio market with 45 or more commercial radio stations, an entity could own up to eight commercial radio stations, not more than five of which are in the same service (AM or FM); (b) in a radio market with between 30 and 44 commercial radio stations, an entity could own up to seven commercial radio stations, not more than four of which are in the same service; (c) in a radio market with between 15 and 29 commercial radio stations, an entity could own up to six commercial stations, not more than four of which are in the same service; and (d) in a market with 14 or fewer commercial radio stations, an entity could own up to five

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40. *2002 Biennial Regulatory Review. Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order, 18 FCC Record 13620 (2003) (Order).

commercial radio stations, not more than three of which are in the same service, except that a single entity could not own more than 50 percent of the stations in that market.[41]

The FCC's 2003 order retained these limits on radio ownership, but changed two important aspects of the ownership rule. First, it changed the method for determining what constituted a radio market by replacing the "contour-overlap" method it had been using with geographical definitions of radio markets established by Arbitron. This change decreases the number of radio stations in a market, thus often lowering the maximum number of radio stations a single entity may own. Second, the FCC decided to include non-commercial stations when it calculated the number of radio stations in a market. Because the number of radio stations an entity may own is based largely upon the number of radio stations in the market, this change would potentially increase the maximum number of stations a single entity could own in a single market. In most markets the combination of these two changes would have reduced the maximum number of radio stations an entity could own.[42]

The Court of Appeals upheld the Commission's decisions (a) to continue to use numerical limits rather than a case-by-case approach, (b) to use Arbitron definitions of what constitutes a local radio market, and (c) to include non-commercial stations in the count of the total number of radio stations in a local market. That said, the Court of Appeals said that the FCC's decision to retain the specific numerical limits contained in the *1996 Telecommunications Act* was "arbitrary and capricious." Accordingly, the court told the FCC to reconsider the question of which numerical limits to impose.

Newspaper-broadcast cross-ownership rule and radio-television cross-ownership rule

The FCC replaced its rules that banned local newspaper/broadcast and radio/television cross-ownership. The Commission determined that neither cross-ownership prohibition remained necessary in the public interest to ensure competition, diversity, or localism. In the place of the

41. *1996 Act*, § 202(b)(1), 110 Stat. at 110.

42. In 33 markets of various sizes, investment banking firm Bear Stearns found that there would be an average 47.5 fewer stations under the Commission's adopted approach (that includes noncommercial stations and uses Arbitron Metro markets) than under the existing approach (that excludes noncommercial stations and employs the contour-overlap methodology). In only 6 of the 33 markets studied by Bear Stearns was there an increase in market size under the adopted approach. See Bear, Stearns and Co., *A Defining Moment in Radio?*, MB Docket No. 02-277 (May 12, 2003).

former limits, the FCC established cross-media limits governing radio, television, and daily newspaper combinations.

The new cross-media limits would have prohibited newspaper/broadcast combinations and radio/television combinations in the smallest markets (those with three or fewer full-power commercial or noncommercial television stations). In contrast, in the largest markets (those with more than eight television stations) common ownership among newspapers and broadcast stations would have been unrestricted. In medium-sized markets (those with between four and eight television stations), one entity would have been able to own a newspaper and either (a) one television station and up to 50% of the radio stations that may be commonly owned in that market under the local radio ownership rule or (b) up to 100% of the radio stations allowed under the local radio ownership rule. The result of the FCC's order would have been a massive expansion of local cross-media ownership throughout the United States.

In structuring its cross-media limits, the FCC adapted a methodological tool – the "Diversity Index" – adapted from the field of antitrust analysis. The Commission used the Diversity Index a measure of viewpoint diversity in local markets. Local markets with a DI score higher than a certain threshold would be those where concentration of media ownership would pose a serious threat to diversity. The Diversity Index is based on the formula (the Herfindahl-Hirschman Index) that the U.S. Department of Justice and Federal Trade Commission use for measuring market concentration caused by mergers in non-media sectors of the economy.

The Court of Appeals upheld the Commission's determination that the prohibitions on newspaper/broadcast and radio/televison cross-ownership were no longer in the public interest, but said that it could not uphold the cross-media limits that replaced them because "the Commission does not provide a reasoned analysis to support the limits that it chose." The court noted that the FCC's methodology for determining the level of diversity in a community was deeply flawed.[43]

43. The Diversity Index generates a score for each market based on the sum of market shares squared. A highly competitive market will have a lower DI score than a concentrated one.

To construct the Diversity Index, the FCC first selected which kinds of media to include in the analysis of local viewpoint diversity. Using consumers' reported preferences for sources of local news and information, the Commission determined that broadcast television, daily and weekly newspapers, radio, and the Internet were the relevant contributors to viewpoint diversity in local markets. Based on the popularity of each kind of media, the Commission assigned each a relative weight: broadcast TV 33.8%, daily newspapers 20.2%, weekly newspapers 8.6%, radio 24.9%, Internet (cable) 2.3% and Internet (DSL, dial-up, or other connection) 10.2%.[44] Next, the Commission computed a Diversity Index score for numerous sample markets. In each of those markets, it counted the number of outlets within each media type and assigned each outlet an equal market share. For example, the New York City market has 23 television stations, so each one was attributed an equal 4.3% market share. The Commission calculated the ownership share by multiplying the number of outlets owned by an entity by the market share. Univision, for example, owned three television stations in New York, so its ownership share was 13% (3 x 4.3% = 13.0%). Each ownership share was then given its relative weight by media type. (Univision's 13.0% share was thus subject to the 33.8% multiplier for television stations). The Commission then squared all of the weighted ownership shares; their sum was the market's total Diversity Index score. But in markets with cross-owned shares (outlets of different media types owned by the same entity), the entity's weighted ownership shares were summed together before they were squared. For example, ABC owned one television station and four radio stations in New York, so the Commission added its weighted ownership share for the television station (4.3% x 33.8% = 1.45%) to its weighted ownership share for the radio stations (6.7% x 24.9% = 1.67%) for a combined ABC ownership share of 3.12%. The square of 3.12 was included in the summation.

After the Commission calculated Diversity Index scores for markets of different sizes, it determined how those scores would change in several different consolidation scenarios. To illustrate, the Commission determined that markets with five television stations had an average Diversity Index score of 911. If a newspaper and television station combined in a market of that

44. There is reason to believe that the relative weights upon which the FCC relied are inaccurate. See Consumer Federation of America, *New Survey Finds Americans Rely on Newspapers Much More Than Other Media for Local News and Information: FCC Media Ownership Rules Based on Flawed Data*, January 2004. Available at : <www.consumersunion.org/pdf/0129%20local%20media%20survey%20report.PDF>.

size, that score would increase by 223, to 1134. The other combination scenarios were: (1) one television station and all of the radio stations allowed to be commonly owned under the local radio rule; (2) one newspaper and all of the radio stations allowed to be commonly owned under the local radio rule; (3) one newspaper, one television station, and half of the number of radio stations allowed to be commonly owned under the local radio rule; (4) two television stations; (5) one newspaper and two television stations; and (6) one newspaper, two television stations, and all of the radio stations allowed under the local radio rule.

Finding that all of the consolidation scenarios resulted in relatively high increases to the average Diversity Index scores for the smallest markets (those with three or fewer television stations), the Commission decided to prohibit newspaper/television, newspaper/radio, and radio/television combinations in those markets. In the large markets (nine or more stations), all of the consolidation scenarios resulted in acceptable increases to the average Diversity Index scores, so the Commission removed all limits on cross-media ownership in those markets. In the mid-sized markets (between four and eight television stations), the Commission found that all of the scenarios, except the two involving a newspaper and television duopoly, should be allowed, based on their modest increases to the average Diversity Index scores for those markets.

The Court of Appeals was harshly critical of the FCC's use of the Diversity Index. The methodology "generates absurd results," the court said, pointing out that the Diversity Index gave greater weight to the Dutchess Community College television station than to the New York Times Company's co-owned daily newspaper and radio station. The Court of Appeals stated: "A Diversity Index that requires us to accept that a community college television station makes a greater contribution to viewpoint diversity than a conglomerate that includes the third-largest newspaper in America also requires us to abandon both logic and reality."

While upholding the Commission's authority to take the kind of action it did with respect to local cross-ownership, the Court of Appeals sent the new cross-media limits back to the FCC for more persuasive justification.

National television ownership rule

The Commission revised the national television ownership rule to permit a single party to own television stations reaching 45% (rather than 35%) of the national audience. In 2004, Congress has fixed the percentage at 39%, thus preempting further FCC action and making any challenge to the new rule moot.

Dual network rule

Finally, the Commission decided to retain its dual network rule, which prohibits a merger between any two of the top four broadcast television networks. No one challenged the FCC's decision to retain this rule.

The decision of the Court of Appeals left the FCC with two options: redraw the media-ownership rules in light of the court's decision, or appeal the decision to the Supreme Court of the United States. Observers considered the former action to be much more likely than the latter, given that the Court of Appeals decision did not present the kinds of issues (e.g., major constitutional questions, disagreements among federal Court of Appealss) that normally interest the Supreme Court. If the FCC engages in a new round of rule-making, the process could take more than a year.

2.2.1.3 Empirical research on ownership and diversity

In some ways, the current debate over media ownership is a debate about facts. The central question is whether increased concentration of ownership leads to reduced diversity of content. For decades communications policymakers in the United States have presumed that increased concentration reduces the amount and diversity of content available to citizens. However, a growing body of scholarly evidence – virtually ignored by people on both sides of the current policy debate – suggests that media concentration has no systematic negative effect on media content. None of the individual studies related to this issue is beyond criticism, but in the aggregate they undermine the long-held presumption about the effect of concentration on content diversity.

In 1995 media scholar Benjamin Compaine reviewed the available empirical evidence about ownership and diversity with respect to broadcasting in the United States. His conclusion: "Within the commercial sectors of the United States broadcasting industry, it is very difficult to point to how ownership has been the cause of specific programming. We cannot say that group-owned stations are programmed differently than independently owned stations. We cannot say that stations owned by racial minorities, by specific ethnic groups, or by a specific gender behave, in aggregate, differently from one another."[45]

David Pritchard examined coverage of the 2000 presidential campaign in the daily newspapers and broadcast stations owned by media corporations in Chicago, Dallas, and Milwaukee. He found a broad range of information and opinion about the presidential campaign in the newspapers. Pritchard also found differing slants on the campaign by newspapers and radio stations (and, to a lesser extent, television stations) owned by the same company.[46]

Meanwhile, Michigan State University economics professor Lisa George looked at 207 newspaper markets in the United States between 1993 and 1999 to determine the effect of the decreasing number of owners. She found that the number of topical beats journalists covered in a market increased as the number of owners decreased. George concluded: "Although (media ownership) policy may be concerned with aspects of diversity beyond the number of topics covered by newspapers, these results suggest that from the standpoint of variety, increased concentration does not harm readers."[47] In general, argues Duke University public policy scholar James T. Hamilton, competition can "decrease diversity in situations where separate ownership of outlets leads to the duplication of news offerings."[48]

Canadian evidence about media ownership's effect on content is less extensive than the American evidence, but comes to similar conclusions. For example, two Canadian studies looked for, and

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45. Benjamin M. Compaine, "The Impact of Ownership on Content: Does It Matter?" *Cardozo Arts & Entertainment Law Journal* 13:755-80 (1995), p. 779.
46. David Pritchard, "A Tale of Three Cities: 'Diverse and Antagonistic' Information in Situations of Local Newspaper/Broadcast Cross_ownership," *Federal Communications Law Journal* 54:31-51 (2001).
47. Lisa George, "What's Fit to Print: The Effect of Ownership Concentration on Product Variety in Daily Newspaper Markets," working paper, Michigan State University, 2001, p. 3.
48. James T. Hamilton, *All the News That's Fit to Sell: How the Market Transforms Information into News*. Princeton, N.J.: Princeton University Press, 2004, p. 23.

failed to find, significant editorial changes that could be attributed to changes in ownership of the Southam chain of dailies as they were transferred first to Conrad Black's Hollinger Corporation in 1996[49] and then from Hollinger to CanWest Global in 2000.[50] McGill political scientist Stuart Soroka looked for, and failed to find, similarities in patterns of coverage among commonly owned newspapers.[51] All of these results are consistent with prior research in the United States, leading Soroka to write, "There may still be a relationship between media ownership and content, but it remains unproven in quantitative analyses."[52]

Although analyses of news content consistently fail to find a relationship between ownership and news content, surveys of journalists show that the people who write the news are concerned about concentration of ownership. A survey of a representative sample of 554 Canadian journalists in 1996, for example, found journalists in general to agree fairly strongly that "concentration of media ownership threatens to diminish the free flow of ideas in Canada."[53]

In 2003 Soroka and Fournier surveyed 361 journalists at metropolitan newspapers in Canada, finding that 86% of their respondents agreed that "greater newspaper ownership concentration" reduces the quality of newspaper content.[54]

2.2.1.4 Policy alternatives

To date U.S. policymakers have considered two means of fostering diversity of news and information in the media: enforced "fairness," and limits on the number of outlets one entity may own. Neither means has been successful.

49. Walter C. Soderlund and Kai Hildebrandt, "Does Press Ownership Affect Content? A Pre- and Post- Study of the 1996 Hollinger Corporation Acuisition of Thomson Newspapers," paper presented to the annual meeting of the Canadian Political Science Association, Quebec City, 2001.
50. Lydia Miljan and Cristina Howorun, "Does Ownership Matter? The Effects of Ownership on the Coverage of Political Scandals in Hollinger and CanWest Owned Newspapers," paper presented to the annual meeting of the Canadian Political Science Association, Halifax, 2003.
51. Stuart Soroka, *Agenda-Setting Dynamics in Canada*. Vancouver: UBC Press, 2002.
52. Soroka, 40-41.
53. David Pritchard and Florian Sauvageau, *Les journalistes canadiens: Un portrait de fin de siécle*. Sainte-Foy, QC: Les Presses de l'Université Laval, 1999.
54. Stuart Soroka and Patrick Fournier,"Newspapers in Canada Pilot Study: Survey Results," paper presented at the conference "Who Controls Canada's Media?" sponsored by the McGill Institute for the Study of Canada, Montreal, 2003.

The fairness model failed for two reasons. First, government mandates that certain material be broadcast raise First Amendment concerns in the American scheme of constitutional law. Second, the available evidence suggests that the fairness model had the unintended result of chilling programming on controversial issues of public importance.

The limited ownership model may also be nearing the end of its persuasive life. Despite considerable public concern over ever more concentrated media ownership, several studies have looked for and failed to find that concentration reduces diversity of content. Of course, an important effect of concentration may be to suppress discussion of certain issues rather than to change the slant of the discussion, and content analyses would be unlikely to find evidence of such an effect. In addition, the case against diversity is difficult to make when citizens in every city of any size have access to local and national daily newspapers and magazines, to at least a half-dozen local television channels and many more on cable, to numerous local radio stations and hundreds more via satellite, and to the endless diversity of information on the Internet. The counter-argument to this seeming over-abundance of information is that very few of these media outlets emphasize news and opinion on local public affairs. A recent study, for example, showed that most Americans (61%) consider newspapers to be their most important source of local news. Television was a distant second with 29%. Radio was rated most important by 8% of the survey respondents, the Internet by 2%.[55]

The enforced-fairness and limited-ownership models do not exhaust the possibilities of state action to foster diverse media content, though no other models are under serious consideration in the United States at the moment. Canadian policymakers have been a bit more creative, and may have ideas that their American counterparts could usefully borrow.

One of the Canadian ideas is to foster diversity by regulating the journalistic practices of commonly owned media. The Canadian Radio-television and Telecommunications Commission approved Quebecor's purchase of television network TVA on the condition that the company keep its newspaper and broadcasting newsrooms separate and that it ensure "a diversity of voices" within TVA's French-language network and six TV stations. The transaction left

55. Consumer Federation of America, "New Survey Finds Americans Rely on Newspapers," *op cit.*

Quebecor as the owner of Montreal's largest-circulation daily (*Le Journal de Montréal*) as well as of Quebec's dominant television network.[56]

It is difficult to know whether the FCC would be open to mandatory separation of newsrooms in return for allowing broadcast licenses to be held by companies that also had daily newspapers in the same community; the issue has never been addressed in the United States. The current Local Broadcast-Newspaper Ownership Rule in the U.S. prohibits common ownership of a broadcast station and a daily newspaper in the same community unless the combination was in existence in 1975, when the rule was adopted. The FCC has proposed eliminating the restriction in all but the smallest communities. It is too early to know whether the restrictions on collaboration between TVA and *Le Journal de Montréal* have been effective, and it is worth remembering that Canadian regulators have not imposed the same constraints on other situations of cross-ownership.

Another Canadian innovation comes from Québec, where two important reports in recent years have proposed state-administered subsidies for so-called "independent" media – those not owned by conglomerates. In late 2001, after hearings about media concentration in Québec, the *Commission de la culture* of the provincial legislature (*l'Assemblée nationale*) made several recommendations related to the perceived problem of concentration of media ownership. One of the recommendations was extending job-creation tax credits to independent media.[57] In 2003, an advisory committee appointed by the provincial minister of culture and communications went farther, recommending the creation of an "information assistance fund" (*fonds d'aide à l'information*) that would contribute to diverse information.[58]

2.2.1.5 The future

The outcome of the Commission's policy-making process may be based more on the rapidly changing realities about how Americans gain access to news and information than on the studies, however. A key question the Commission must answer is whether the vast number of sources of

56. *Quebecor Média Inc, on behalf of Groupe TVA, Inc.*, CRTC 2001-384; *Groupe TVA, Inc.*, CRTC 2001-385.
57. Assemblée nationale (Quebec). Commission de la culture. 2001. *Mandat d'initiative portant sur la concentration de la presse*.
58. Ministère de la Culture et des Communications (Québec). Comité conseil sur la qualité et la diversité de l'information. 2003. *Rapport final, Tome 1 – Les effets de la concentration des médias au Québec: Analyse et recommandations*.

news and information in the media marketplace will protect and advance diversity on their own. If so, then the diversity rationale for maintaining restrictions on media ownership will be weakened.

Americans typically have access to news, opinion, public affairs information, and entertainment programming from a variety of media outlets – radio, television, cable, satellite, newspapers, magazines, and the Internet. Most Americans have access to the Internet, which enables them to get news and opinion about national and international affairs from a seemingly endless variety of sources, including the most prestigious news organizations in the United States and other countries.

In addition to the increase in sources of information about national and international affairs, Americans also have access to increased sources of local information. A study focusing solely on local media available in typical neighborhoods in five U.S. communities from 1942 to 2002 showed dramatic increases in the range of available media content.[59] In each of the five cities under study, the average annual increase in the number of local media outlets rose modestly from one period to the next through 1995 (i.e., 1942-1962, 1962-1982, and 1982-1995). After the passage of the Telecommunications Act of 1996, which resulted in massive consolidation in the media industries in the United States, the rate of increase in local media sources rose sharply in all five communities studied, from a tiny town in rural North Dakota to the teeming metropolis of New York City. The availability of local news and information via the Internet accounted for some, but far from all, of the increase in local media outlets from 1995 to 2002. The rest of the increase represented magazines and niche newspapers, radio and television stations (some of them low-power), and local programming on cable.

An even more important increase in the diversity of news and opinion available to citizens may come via digital television, which will enable all of the stations in the United States to reach

59. David Pritchard, *The Expansion of Diversity: A Longitudinal Study of Local Media Outlets in Five American Communities*. Report of research Commissioned by Viacom, Inc., and submitted to the FCC (*Comments of Viacom, Inc.*, Appendix A, MM Docket Nos. 01-317 and 00-244), March 2002. The five cities studied were New York City; Syracuse, New York; Rockford, Illinois; Florence, South Carolina; and Lisbon, North Dakota.

viewers on as many as six channels simultaneously. A recent overview in the authoritative *Columbia Journalism Review* sounded an optimistic tone about digital television:

> A new and potentially promising day has dawned. This tectonic shift will profoundly transform the TV news service we've known, and sometimes loved, since the 1940s. Besides local twenty-four-hour all-news and all-weather channels, stations will be able to devise local versions of C-SPAN covering state legislatures and city councils, public hearings, community board meetings, court trials, school board sessions, school lunch menus, school closings, public event schedules, updates on terror alert levels, and disaster warnings, along with documentaries on issues of local concern, free air time for office-seekers, children's news and educational shows, and almost anything else station owners can dream up — with simultaneous translation into other languages for the benefit of local non-English-speaking minorities.[60]

Although there may be purely economic arguments for maintaining restrictions on media ownership,[61] the proliferation of sources of news and opinion about local, national, and international topics in the wake of the post-Telecommunications Act consolidation in the American media industries – and possibly an even greater variety of information in the coming world of digital television – seriously undermines any content-diversity rationale for restricting media ownership. Some observers go so far as to claim that content diversity would be maximized if the only restrictions on media ownership were antitrust restrictions.[62]

It is fairly clear that attempts to foster diversity of news content by regulating media ownership miss the mark. Future policy should be informed by research about other means of creating a healthy and vibrant public sphere.

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60. Neil Hickey, "TV on Steroids," *Columbia Journalism Review*, March/April 2004.
61. The Federal Trade Commission administers antitrust law in the United States. It is illegal for a company to restrain trade unreasonably, to maintain or acquire a monopoly position through unreasonable methods, and to engage in unfair competition. In addition, mergers and acquisitions whose effect "may be substantially to lessen competition, or to tend to create a monopoly" are prohibited by the Clayton Act.
62. See, e.g., Lili Levi, "Viacom-CBS Merger: Reflections on the FCC's Recent Approach to Structural Regulation of the Electronic Mass Media," *Federal Communications Law Journal*, 52:581-617 (2000), pp. 593-600.