Media Ownership Policy in the United States: An Update

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Media ownership policy in the United States is in a state of flux in mid-2007, as are the media themselves. The Federal Communications Commission is split along partisan lines as it considers media ownership rules, a federal appeals court has rejected the FCC's most recent attempt to relax restrictions on media ownership, and the topic has become a significant one in political campaigns.

This paper provides a concise overview of the situation. The first section will discuss general principles that provide the foundation for regulation of media ownership in the United States. The second section will explain the current status of the principal media ownership rules. The third will touch upon trends in the media industries that may influence – or be influenced by – policy decisions made in Washington.

General principles

Concern about concentration of media ownership dates back to the 1920s in the United States, when the issues had to do with newspaper chains and with ownership of radio stations by newspaper companies. The concerns were both economic (e.g., potential or actual anti-competitive practices) and political (e.g., potential or actual dominance of public discourse by media monopolists).

The First Amendment to the U.S. Constitution prevents units of government from regulating the content of print media, so concerns about concentration of newspaper ownership have focused on its economic aspects. This area of media law and policy has been fairly dormant in the United States in recent years because of the general weakening of the newspaper industry. The number of daily newspapers is dropping slowly, daily circulation is declining rapidly, and ad revenue is increasingly moving elsewhere. In 2005, the most recent year for which data are available, the 10 biggest newspaper groups accounted for 52% of the daily newspaper circulation throughout the United States, a figure that had been stable for several years. There is no evidence that the general public sees print-media ownership as an issue that demands attention from policymakers.

Electronic-media ownership, in contrast, ranks fairly high on the domestic political agenda. Activists – mostly on the left, but also some on the right – have been quite successful organizing against what they call "Big Media" or "Corporate Media." In 2002 and 2003, for example, almost two million people communicated with the FCC via letters, postcards, e-mails, and petitions to oppose additional deregulation of media-ownership rules.

In the Communications Act of 1934, Congress required (and continues to require) the Federal Communications Commission to regulate broadcasting in "the public interest, convenience, or necessity." Unfortunately, Congress never defined the phrase. Left to its own devices, the Commission has identified three policy goals that it believes will foster the public interest. They are diversity, competition, and localism.

Diversity

The FCC has identified several types of diversity that it believes are relevant to media ownership policy. They include (a) viewpoint diversity, (b) program diversity, (c) outlet diversity, and (d) minority/female ownership diversity.

Viewpoint diversity refers to the availability of media content that reflects a diversity of perspectives on political and social issues. In the past, the FCC mandated viewpoint diversity through its Fairness Doctrine (abolished in 1987) and its Personal Attack and Political Editorial Rules (abolished in 2000). Even when these rules were in force, however, a sensitivity to First Amendment concerns made the Commission reluctant to evaluate broadcast content directly (with the exception of sexual and excretory content that rises to the level of illegal "indecency").

Rather than mandating viewpoint diversity directly, the FCC assumes that a single media owner is a single voice, and attempts to maximize the number of "voices" available to the public by maximizing diversity of ownership. Studies of news and public affairs content of commercial media have failed to provide significant empirical support for the assumption that greater diversity of ownership leads to greater diversity of viewpoints.[1]

Program diversity refers to a variety of program formats such as dramas, situation comedies, reality shows and newsmagazines (in traditional television), targeted specialty channels focusing on topics such as popular music and sports (on cable television), and radio formats such as country music, jazz, rock, and news/talk. The FCC believes that economic competition is the best guarantee of program diversity.

Outlet diversity is nothing more than diversity of ownership within a given media market. The FCC considers outlet diversity to be important mostly because of its

[1] The studies generally have excluded public broadcasting. Public television in the United States is a niche service, providing the kinds of shows the commercial system generally spurns such as classical culture, documentaries, and public affairs programs. Public radio is an important source of local and national news in the United States, but news and public affairs broadcast on radio has generally been overlooked by researchers (including those employed by the FCC). One study that compared two commercial stations with news/talk formats in a major American city with a public station in the same city that also featured a news/talk format found a much greater diversity of viewpoints on the public station than on the privately owned stations. The programming on both privately owned stations was highly partisan.

presumed link to viewpoint diversity, but also because it believes that outlet diversity fosters innovation and because outlet diversity promotes public safety in emergencies.

Minority/female ownership diversity is believed to promote viewpoint diversity and program diversity, though evidence to support that proposition is scarce.

Competition

It is an article of faith in the United States that economic competition is good for consumers. In addition to its role in fostering program diversity, competition among electronic media is presumed to lead to lower prices for advertisers, cable and satellite subscribers, and others who buy products and services from media companies.

For decades the FCC used assessments of competition in advertising as indicators of consumer welfare in media markets. Given that an increasing portion of television revenue comes directly from consumers – 85% of U.S. households with television obtain programming via subscriptions to cable or satellite systems – the FCC has recently decided to evaluate levels of competition by looking at audience share as well as using the more traditional methods.

Localism

Local broadcast programming has been a regulatory objective in the United States since the 1920s. In recent years the FCC has measured localism in individual media markets by considering two factors: the amount of programming "responsive to local needs and interests" that a station or cable system broadcasts, and the quantity and quality of local news broadcast by a station or cable system. In practice, the FCC does not attempt to evaluate program quality directly. Rather, it simply counts the number of hours of a given type of local programming.

The FCC implements its public interest mandate in large part through its media ownership policies. Although all transfers of broadcast licenses must be approved by the Commission, its principal means of policymaking does not come through consideration of individual transactions, but rather through rulemaking processes that comply with the notice-and-comment procedures outlined in the Administrative Procedure Act.[2] Congress or the federal courts can require the FCC to engage in rulemaking in a given area. The Commission is also attentive to informal suggestions from Congress, which created the FCC, controls its budget, and has considerable oversight authority over it. In addition, rulemaking may be triggered by a petition from any "interested person." The broadcast industry is a powerful lobby in Washington, and often the "interested persons" who seek rulemaking are openly employed by broadcast interests.

Media ownership rules

There are six principal media ownership rules in the United States, one adopted by Congress (and thus not subject to revision by the FCC) and five adopted by the Commission itself. Some (but not all) of these rules set quantitative upper limits on the number of media outlets a single entity may own.

Two rules limit ownership of television stations and networks nationwide. The ***National Television Ownership Limit*****,** enacted by Congress in 2004, places no limit on the number of television stations a single person or corporation may own but does prevent a single owner's stations from reaching more than 39% of the national television audience. The FCC's ***Dual Network Ban*** allows a single person or company to own more than one broadcast network, but prohibits any mergers among the so-called Top Four networks (ABC, NBC, CBS, Fox).

[2] 5 U.S.C. sec. 551 et seq.

Two other FCC rules limit the number of broadcast stations an entity may own in a single media market. The ***Local Television Ownership Limit*** allows a single person or company to own two television stations in the same local market in either of two conditions. First, common ownership of two television stations in a market is permitted if the signals (Grade B contours) of the stations in a market do not overlap. Second, common ownership of two television stations in a market is permitted if at least one of the stations is not among the four highest-rated stations in the market AND if the market has at least eight independently owned and operated full-power television stations in addition to the two commonly owned stations.

The second rule that limits the number of broadcast stations a company can own in a single media market is the *Local Radio Ownership Limit*. This set of limits, which has its roots in numerical caps adopted by Congress as part of the Telecommunications Act of 1996, allows single entities to own greater numbers of radio stations in larger markets. Specifically, in a radio market with 14 or fewer radio stations an individual person or company may own up to five commercial radio stations, not more than three of which are in the same service (*i.e.*, AM or FM). In a market with between 15 and 29 radio stations, inclusive, a single person or company may own up to six commercial radio stations, not more than four of which are in the same service. In a market with between 30 and 44 radio stations, inclusive, a single owner may possess up to seven commercial radio stations, not more than four of which are in the same service. Finally, in a market with 45 or more radio stations a single owner may own up to eight commercial stations, not more than five of which can be in the same service.

The last two media ownership rules of importance in the United States are intended to limit local media cross-ownership. One of them, the ***Radio/Television Cross-Ownership Limit***, allows a single person or company to one television station (or two, if the market is large enough to trigger the duopoly provisions of the local television ownership rule) and a varying number of radio stations in a local market, depending on the number of independently owned media "voices" in the market.

The most controversial media-ownership rule is the FCC's *Newspaper/Broadcast Cross-Ownership Ban*, which prohibits common ownership of a daily newspaper and a broadcast station (television or radio) in the same media market. Most local newspaper/broadcast combinations that existed when the rule was adopted in 1975 were permitted to continue, and the FCC has granted a handful of waivers to the rule in the past three decades.

The election of Republican George W. Bush as president in 2000, and his reelection in 2004, were seen as good news for the advocates of deregulation of media ownership. In both elections, Bush's Democratic opponents favored tighter limits on media ownership while Bush favored looser limits. The president appoints the members of the five-person Federal Communications Commission, three of whom can be from the president's party. As soon as a Republican majority was in place during Bush's first term, the FCC voted to relax its broadcast ownership rules. Widespread opposition from the public focused on the Commission's decision to do away with most restrictions on newspaper ownership of broadcast stations. The Commission voted to replace this rule and the ***Radio/Television Cross-Ownership Limit*** with a set of "cross-media limits" that would have allowed greater cross-ownership in larger markets.

A coalition of public interest and consumer advocacy groups challenged the liberalized ownership rules in the U.S. Court of Appeals, which in September 2003 blocked the new, less-restrictive rules from going into effect. In June 2004 the court sent the cross-ownership issue (as well as certain other issues relating to media ownership) back to the Commission for further consideration and justification. In July 2006 the Commission launched a new rulemaking proceeding designed to update the media ownership rules. The proceeding is not expected to be complete until late 2007 at the earliest. Many observers expect that it will drag on into 2008.

What the future holds

It is difficult to predict the outcome of the current inquiry (and of likely court challenges to any new rules the Federal Communications Commission may adopt), except to say that the contour of any new rules will be affected by the results of the off-year elections in November 2006, which put the Democrats in control of both the House of Representatives and the Senate. Any deregulation that the Democrats deem to be too radical could be blocked by Congress.

The opponents of further deregulation are hopeful that a Democrat will be elected president in the November 2008 election. That would lead to a Democratic majority on the Federal Communications Commission, a majority that presumably would be less enthusiastic than the current Republican majority about relaxing the rules governing media ownership.

Whatever the outcome of the November 2008 election, it will be difficult for policymakers to keep up with the pace of change in the American media industries. Traditional business models are eroding, some blockbuster mergers have turned sour with stunning speed (e.g., the failure of the merger between the Tribune Company and Times-Mirror), audiences are fragmenting across a constantly increasing number of platforms, heretofore unthinkable partnerships are being formed (e.g., between newspapers and classified-job-listing Internet sites), major news organizations are downsizing at a dizzying pace, and so-called “citizen journalism” is on the rise.

Today’s media frontier is interactivity. Media owners are working hard to figure out how to partner successfully with search engines and social-networking sites, issues that are beyond the scope of the FCC’s mandate.