Consumer Federation of America

DEMOCRATIC DISCOURSE IN THE DIGITAL INFORMATION AGE:
LEGAL PRINCIPLES AND ECONOMIC CHALLENGES AT THE MILLENNIUM

EXECUTIVE SUMMARY

THE FCC TURNS ITS BACK ON A BOLD ASPIRATION FOR DEMOCRATIC DISCOURSE

As the Federal Communications Commission (FCC) embarks on a review of media ownership rules, its Chairman Michael Powell is taking a position that is antithetical to the views held by the public and to the values articulated by Congress and embraced by the Supreme Court. Chairman Powell affords no special protection against cross-ownership of media types within markets, expresses little concern about increased concentration of ownership at the national or local levels and has belittled the public interest standard of the Communications Act.

As this paper demonstrates, the Supreme Court has long held that information is not just another product. While protection of consumer interests requires vigorous antitrust enforcement for any commodity, media markets require more. Because of media's role in promoting civic discourse, the public interest standard for ownership of media has always been much higher.

Above all, public policy has endeavored to promote diversity of ownership within media based on a compelling public interest standard for preservation of multiple, competing and independent media sources. The bold aspiration set out by the Supreme Court for the First Amendment is to achieve "**the widest possible dissemination of information from diverse and antagonistic sources**." This modern interpretation captures the strong belief of the framers of the Constitution that active and involved citizens are critical to the preservation of democracy.

This bold aspiration for the First Amendment has supported a broad range of policies to promote civic discourse.

- Because the needs of citizens cannot be reduced to needs of consumers, policies to promote vibrant civic discourse take precedence over the pursuit of economic profits and efficiency in the commercial marketplace of mass media.
- Because vibrant democratic discourse demands that citizens be more than passive listeners or viewers, public policy must strive to ensure they have the opportunity to be active speakers as well.
- Because information from one type of media cannot easily substitute for another, numerous independent and diverse institutional media voices are necessary. Institutional diversity that ensures unique perspectives – different types of media, with different cultural and journalistic traditions and different business models – plays a special role in promoting rich civic discourse.
- Because the media have become more powerful and our society has become more diverse and more deeply interconnected with a complex global economy, there is a greater need for media diversity and citizen access to media.

The stakes for citizens, consumers and the nation are huge. The mass media are the primary means through which citizens gather news and information. TV in particular is the primary vehicle for political advertising. At the same time, digital media are at the center of the information economy and the emerging multimedia environment in which consumers and citizens will not only listen and watch, but must also be able to express their opinions and views.

Structural policy that is content neutral, is ideally suited to promote the complex, qualitative goals the Supreme Court set for the First Amendment. Public policy should strive to create an environment for civic discourse where numerous, independently-owned, institutionally-distinct media outlets are accessible to the public, responsive to local needs and reflective of diverse socio-economic and cultural points of view. Structural limits on ownership still serve the public interest. Repeal or significant modification of these rules would open the floodgates of mergers that would reduce competition and diversity in the media.

- Major mass media – TV and newspapers – in every local market would become highly concentrated, with fewer than four owners per market.
- The national total would shrink to as few as 300 owners of TV stations and newspapers.
- Most newspapers would be bought up by TV stations and lose their ability to independently criticize the electronic media.

This paper presents a comprehensive conceptual, analytic and empirical basis to justify the preservation of ownership limits. It provides a benchmark against which the future development of the mass media industry can be measured and presents the case against allowing a wave of mergers to take place.

MASS MEDIA ECONOMICS AND THE TYRANNY OF THE MAJORITY

A competitive market would generally be considered supportive of democratic discourse. Atomistic competition promotes individualistic, impersonal decisions with freedom of opportunity and relatively low resource requirements for entry. Unfortunately, the economic characteristics of the mass media drive it away from competition and toward monopoly. The pursuit of economic efficiency through economies of scale has pushed the media toward oligopoly or monopoly. Catering to majority and popular points of view serves the economic interests of media owners; the prevalence of advertising as a source of revenue drives commercial mass media toward happy “news,” diminishing the watchdog function . The result is a tyranny of the majority, in which minority, unpopular, and noncommercial points of view are squeezed out.

The impact of market failure is felt in three areas – owner influence, loss of local perspective, and erosion of checks and balances and other positive externalities of vigorous civic discourse. Decades of empirical analysis document the negative effects of concentration in the media.

- Media owners have a tendency to impose their preferences and biases on the media they control, so antagonism in viewpoints is lost as the number of independent owners shrinks.
- Concentration – fewer independent owners -- has a negative effect on diversity of advertising, programming choices, and presentation of political information. The existence of multiple outlets providing more examples of similar shows does not accomplish the goal of providing greater diversity of points of view.

- Greater concentration reduces public interest and culturally diverse programming, as well as locally oriented programming. As market forces grow, news and public affairs programming is reduced, the quality of programming is compromised, and minority market segments are less well served.

Diversity of ownership is critical to ensuring diversity of sources and viewpoints. Promoting local points of view helps to keep the media accessible, while ensuring that numerous issues that are critical to quality of life – school boards, police, fire, public health – are dealt with in the media. Diversity of institutional forms is critical to promoting healthy antagonism between media outlets.

TV AND NEWSPAPERS STILL DOMINATE THE TERRAIN OF MASS MEDIA NEWS AND INFORMATION MARKETS

Television, radio, newspapers, and the Internet serve different purposes for the public. There is little substitutability between the media for viewers or for advertisers. There is not just one news and information market but multiple markets for local and national news, breaking news and in-depth follow-up. For newspapers, the additional role as a fourth estate is critical to checking waste, fraud, and abuse of power by governments and corporations.

In economic terms, media have separate markets with weak substitution effects. They have different content offered by different means and they differ widely in their impact and effect. As a result, there is no effective competition between media types. To date, neither cable TV nor the Internet has changed the role of the major mass media in the gathering and dissemination of news and information.

- Prime time TV still dominates the media landscape and TV networks still dominate the news market. Cable TV largely delivers network TV news.
- Citizens still overwhelmingly rely on TV for their news and information.
- Newspapers play a unique role of providing in-depth coverage and as the only major mass media devoted primarily to gathering and disseminating news and information rather than entertainment.

There is very little local news and information content on the Internet, and what there is tends to be existing sources (e.g. the local paper) made available in a different way. Recent surveys show that the public spends about fifteen times as much time gathering news and information from TV and newspapers as they do on the Internet.

MEDIA MARKET STRUCTURE IS ALREADY CONCENTRATED

Measures of market concentration are presented that consider both the number of firms competing within a given market and the market share of the largest firms. We examine the period from 1975 to 2000, since many of the structural limits on ownership were adopted in the early 1970s. To put changes in the media in context, it is important to keep in mind that the number of U.S. households served by the media increased by almost 50 percent over this period. The population also became much more diverse. While the number of households that were headed by married white males has increased by 25 percent in the past three decades years, households headed by single males have almost tripled, as have households headed by blacks, Hispanics and Asians. In contrast to this expanding, diverse population, we find increasing concentration of media ownership and market concentration.

While there has been an increase in the number of full power TV stations, there has also been a sharp decline in the number of owners.

- In the past 25 years, the number of TV station owners has declined from 540 to 360.
- The number of TV newsrooms has been reduced by almost 15 percent.
- The overwhelming majority of local TV markets are tight oligopolies (fewer than six equal sized firms) or duopolies (two, relatively equal-sized, firms that dominate the market).

There has been an increase in the number of cable channels, but almost three-quarters are now owned by only six corporate entities, four of which are major TV networks. While there is more variety in programming, there is not necessarily more diversity. Cable operators produce national programming and a few have moved into regional programming, but there is little local programming or news. Cable operators continue to have a virtual monopoly at the point-of-sale in the multichannel video market (a market share of over 80 percent). Mergers have created regional monopolies as well.

Unlike TV, where there has been an increase in outlets, for daily newspapers we observe a 20 percent decrease in the number and circulation of newspapers.

- The decrease in the number of owners of daily newspapers is even more dramatic, from over 860 in 1975 to fewer than 300 today.
- The majority of local newspaper markets are monopolies; all markets are at least tight oligopolies.
- Combining newspaper and television ownership, the number of independent voices has been cut by more than half since the mid-1970s, from about 1500 to just over 600.

While the first generation of the commercial Internet (dial-up or narrowband Internet) was an open and dynamically competitive market, the hope that the Internet would disperse ownership is being dashed by public policies that allow cable operators to control the offering of Internet services in the high-speed Internet market.

GROWTH OF VERTICALLY INTEGRATED MEDIA CONGLOMERATES HAS UNDERMINED DIVERSITY; CROSS-OWNERSHIP OF NEWSPAPERS UNDERMINES JOURNALISTIC PRINCIPLES

The ability of owners of distribution networks to discriminate against program and content producers has long been recognized in public policy. The Financial Interest and Syndication rules promoted diversity of ownership of prime time programming. Until the end of the 1990s, they kept the ownership quite diverse, with the networks owning fewer that one-fifth of the programs. A decade after the repeal of the rules, networks own three-quarters.

Cable systems, which are now the dominant means of distributing video programming, have a long history of discriminatory behavior. A long list anticompetitive practices, including exclusive contract, refusals to deal, tying arrangements, denial of access to facilities, and others have been used to disadvantage competing programming (content discrimination) and undermine competing delivery systems (conduit discrimination).

The video market has devolved into a small, interconnected cabal of a handful of producers. Four entities -- AOL Time Warner, Liberty, ABC/Disney, CBS/Viacom – dominate the most popular programming cable programming as well as prime time network shows. Six entities control approximately two-thirds of all viewers.

Systematic studies of the position taken by cross-owned newspapers on issues that directly affect their economic interests show that they do not report the issues in a balanced fashion. This includes national policy issues, like the Telecommunications Act of 1996, and local issues, such as stadium bond proposals. Cross-owned papers also engage in biased coverage of television or forego analysis of television altogether.

- The dictates of video delivery would alter the nature of the reporting and commitments to investigative journalism.
- The conglomeration in larger enterprises would reduce the journalistic activity to a profit center that is driven by the larger economic goals of the parent.
- Combining the two activities within one entity diminishes the antagonism between print and video media.

RELAXATION OF STRUCTURAL LIMITS WILL SPARK A MERGER WAVE THAT WILL DRAMATICALLY CONCENTRATE LOCAL MEDIA MARKETS

Over the past decade, structural limits on media ownership were relaxed on three different occasions. In each case, a merger wave ensued and the number of owners declined sharply. There has been a dramatic concentration of television ownership in local markets after the introduction of the duopoly rule in September 1999. Within two years, mergers took place in almost three-quarters of all markets in which they were allowed.

After the passage of the Telecommunications Act of 1996, which relaxed several rules restricting the ownership of radio stations, a frantic period of consolidation took place. In an industry with a total of 10,000 stations, over 9,000 were bought and sold in the five years after the 1996 Act. Of course, some stations were sold more than once.

- The national market went from being atomistically competitive (the equivalent of almost 100 equal-sized firms) to moderately concentrated (the equivalent of 9 equal-sized firms).
- On average, local markets went from the equivalent of five equal-sized firms to three, with the impact greatest in the largest markets that had been the most competitive.

The repeal of the Financial Interest and Syndication rules, which restricted the ownership of prime time programming by the broadcast networks, had an equally devastating impact on diversity of ownership.

- When the rules were in place, prime time programming was produced by the equivalent of 19 equal-sized firms; after they were repealed that number plunged to seven.
- Broadcast networks now completely dominate the ownership of prime time programming, accounting for three-quarters of all shows.

These real world experiences with relaxing or eliminating structural limits on ownership indicate that lifting the newspaper/TV cross-ownership ban or raising the limits on TV ownership would have a devastating impact on media concentration.

- Several hundred mergers would quickly take place, dramatically reducing the number of major independent voices. If the newspaper/broadcast cross-ownership ban were lifted, about 200 newspapers would quickly merge with TV stations. Ultimately, most dailies likely would be combined with TV stations.
- Relaxation of the national cap on broadcast TV station ownership would lead to additional concentration of ownership. The number of independent owners on a nationwide basis would be cut in half.

Public Opinion Perceives The Threat of Media Concentration

Recent public opinion surveys make it clear that the public does not support the FCC's push toward concentrated media markets and closed communications networks with diminished public interest obligations. The public is troubled by the growing concentration of the media and expresses strong support for public interest obligation for both television and Internet and for open communications networks.

- Respondents indicated that they believe that media companies are becoming too large; that mergers between media companies do not lead to better content and services and result in higher, not lower, prices.
- They think it should be harder, not easier, for media mergers to be approved and are strongly opposed to very large mergers, like the AT&T/Comcast merger.
- The public opposes mergers across media types, such as between broadcast stations and newspapers.
- The public worries about a resulting decrease in diversity of editorials and local news.

The public does not feel that television accurately represents the average consumer and does not trust the information they find in the news. Survey respondents think that shows should reflect the cultural and ethnic make-up of the community.

- Respondents think there should be public affairs programs that discuss local issues. They find it very important that local news and events are reported.
- The public supports a range of public interest obligations and believes that broadcasters will simply maximize profits if not directed to air public interest programming.
- The public also expresses support for public interest obligations extending to the Internet.
- They strongly support open communications networks. Open networks not only ensure the free flow of information, but they keep citizens in the decision-making role.

Conclusion

Legal principles, economic analysis and public opinion do not support the relaxation of structural limits on media ownership and the dramatic increase in concentration that would inevitably follow. The Federal Communications Commission has the ammunition to defend the current rules. Unfortunately, the public statements of the Chairman and senior staff at the Commission, as well the studies prepared at its direction, suggest a lack of will to resist the demands of the media giants to expand their control over the primary means of civic discourse.