Chapter 6:
Media Conglomeration and the News
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This chapter focuses on the impact of media ownership on the news. Media conglomeration has been an increasing concern for media watchdogs. As recently as August of 2007, alerts were sounded when NewsCorp, the conglomerate of Rupert Murdoch purchased the Dow Jones Company, which publishes the *Wall Street Journal*.

These concentrations have been going on for quite some time. For example, the cross-ownership rules imposed on the media in 1975 were aimed at preventing media concentrated ownership in single cities. Nonetheless by 2002, most broadcast media were owned by the "Big Ten"[1] which included AOL/Time Warner, General Electric, Viacom, Walt Disney Company, Liberty Media Corporation, AT&T Corporation, News Corporation, Bertelsman, Vivendi Universal, and Sony. Fast forward to 2006 where the "Big Ten" had downsized to a mere "Big Six."[2]

To assess this issue, this chapter has three objectives. First, it explores the current regulatory situation by examining FCC regulations, particularly the cross-ownership rules. Second, it identifies the effects of media conglomeration. Third, it concludes by offering possible reforms where necessary.

The Current Situation

As we saw in the previous chapter, the Radio Act evolved into the 1934 Communications Act, which granted licenses for private parties in the telecommunication industries. With regard to radio and television broadcasters, it required that they operate in the "public interest," by which Congress meant that they should send a clear signal that did not interfere with the signals of other licensees. Claiming that there was a limited amount of spectrum space over the airwaves, the new Federal Communications Commission (FCC) declared, "In setting its licensing policies, the Commission has long acted on the theory that diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints as well as by preventing undue concentration of economic power."[3] Initially, the Commission prohibited common ownership of stations within the same broadcast service in the same community; that is, licensed broadcasters could not own multiple radio or television stations. However, newspapers were allowed to own stations and vice versa.

In 1975, the Commission adopted its first set of cross-ownership bans, which prohibited licensed broadcasters and/or newspaper companies to own a combination

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[1] *The Nation*. January 7, 2002 issue.
[2] News Corporation, General Electric, Disney, Time Warner, Viacom, and CBS Corporation. *The Nation*. July 3, 2006, 21-22
[3] *FCC v. Nat'l Citizens Comm. For Broad*., 436 U.S. 775, 780 (1978).

of television stations, radio stations, and/or newspapers in the same community.[4] In *FCC v. National Citizens Communication for Broadcast*, 436 U.S. 775, 780 (1978),[5] the Supreme Court upheld the newspaper/broadcast cross-ownership ban as a "reasonable means of promoting the public interest in diversified mass communications." However, it said that the rules could not be applied retroactively and thereby grandfathered certain companies that owned newspapers and broadcast stations in the same cities, notably the Los Angeles Times Company and the Chicago Tribune Company. In 1985, Rupert Murdoch purchased a broadcast outlet in Boston, which violated the rules since he owned a newspaper there. However, when, at the behest of Senator Kennedy, Congress passed legislation prohibiting his purchase, the law was struck down on the grounds that it constituted a bill of attainder. Murdoch eventually prevailed.

In 1985, the FCC amended its rules to increase common ownership to 12 stations in each broadcast service of AM and FM radio stations and television stations while prohibiting any station combinations that would reach 25% of the national audience.[6] In 1989, the Commission allowed waiver requests for radio/television cross-ownership in the 25 largest television markets as long as there were 30 independently owned broadcast "voices" remaining in the market after consolidation.[7] Furthermore, in 1992 the Commission deregulated local and national radio ownership restrictions by adopting a tiered approach to radio ownership that allowed a single entity to own up to three AM and three FM radio stations in local markets and up to 30 AM and 30 FM stations on national markets as long as they did not reach more than 25% of each respective audience.[8]

In the Telecommunications Act of 1996, Congress set in motion a process to deregulate the media further, specifically broadcast and cable industries in an attempt to break up monopolies and create a level playing field so that small companies could compete with larger companies. The 1996 Act eliminated all limitations on national radio and increased the national television audience from 25% to 35%.[9] The 1996 Act ordered the Commission to review its ownership rules every two years to evaluate whether any of the rules were necessary; the Act allowed the Commission to "repeal or modify any regulation it determines to be no longer in the public interest."[10]

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[4] Amendment of sections 73.35, 73.240, and 73.636 of the Commission Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, 22 F.C.C. 2d 306, para. 5 (1970); Amendment of sections 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, 50 F.C.C. 2d 1046 (1975).

[5] Hereafter referred to as NCCB

[6] Amendment of section 73.3555 (formerly 73.35, 73.240, and 73.636) of the *Commission Rules Relation to Multiple Ownership of AM, FM, and Television Broadcast Stations*, 100 F.C.C. 2d 74 para. 38, 39 (1985).

[7] Amendment of section 73.3555 of the *Commission's Rules, the Broadcast Multiple Ownership Rules*, 4 F.C.C.R. 1741 para. 1 (1989).

[8] *Revision of Radio Rules and Policies*, 7 F.C.C. R. 6387 para. 27 (1992).

[9] *Prometheus Radio Project v. FCC* (2004)

[10] *1996 Telecommunications Act Section 202* (h), 110 Stat. at 111-112.

In 1999, after hearings on economies of scale and the disadvantage broadcasters faced from cable, Congress directed the Commission to review the local television rule and it decided to allow television "duopolies" where an entity could own two common television stations in the same market as long as (1) neither station was ranked in the "top four" stations and (2) at least eight independent stations also were in the same market post the merger of the stations.[11] After its first biennial review of broadcast ownership regulations, the Commission decided that it would not change its national television ownership rule that limited entities to 35% of the population because the rule remained with the public's interest.

This decision by the Commission was appealed in the *Fox Television Stations v. FCC* (D.C. Cir. 2002) case. The D.C. Circuit Court argued that the Commission needed to give more sufficient reasons for retaining the rules and remanded the rule for further justification to the Commission.[12] The local television multiple ownership rule was remanded back to the Commission by the same court a few months later in the *Sinclair* case.[13] In 2002 the Commission announced that it would review four of its broadcast ownership rules as per the biennial review rule: the 35% national audience reach limit remanded in *Fox*; the local television rule remanded in *Sinclair*; the radio/television cross-ownership rule; and the dual network rule.[14]

In preparation for this review, FCC Chairman Michael Powell announced that the creation of a Media Ownership Working Group whose findings "will provide an empirical and analytical basis for the FCC to achieve its long-standing goals of promoting diversity, localism, and competition in the media."[15] After receiving public commentary via petitions, reports, and public hearings, the Commission adopted a "2002 Order" to modify ownership rules that was published in June 2003.[16]

The Order reaffirmed the Commission's objectives of promoting the public interest via competition, diversity and localism and the Commission again considered if the existing rules remained in the public interest. With regard to newspaper/broadcast and radio/television cross-ownership, the Commission repealed both cross-ownership rules to replace them with one set of Cross-Media Limits, determining that neither rule remained necessary to retain competition, diversity or localism.[17] The changes made in the Cross-Media Limits greatly affected national markets by stating that common ownership among newspapers and broadcast stations is unrestricted.[18] In regards to

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[11] *Review of the Commission's Regulations Governing Television Broadcasting*, 14 F.C.C.R. 12, 903, para. 8 (1999)
[12] *Fox Television Stations v. FCC*, 280 F. 3d 1027, 1043-44, 1051-52 (D.C. Cir. 2002)
[13] *Sinclair Broad. Group, Inc. v. FCC*, 284 F. 3d 148 (D.C. Cir. 2002)
[14] *2002 Biennial Regulatory Review Notice of Proposed Rulemaking*, 17 F.C.C.R. 18, 503, para. 6 (2002).
[15] FCC Press Release, 29 Oct. 2001 "FCC Chairman Michael Powell Announces Creation of Media Ownership Working Group" www.fcc.gov/ Bureaus/Miscellaneous/News_Releases/2001/nrmc0124.html.
[16] *Prometheus Radio Project v. FCC* (2004) p. 23-24.
[17] *Order* para. 330, 371.
[18] *Id.* Para. 473.

national television ownership, the Order increased the audience limit cap from 35% to 45%.[19] Additionally, the Commission determined that the Dual Network rule would remain in effect which would allow a television station to affiliate with more than one network except that it may not affiliate with more than one of the top four (ABC, CBS, Fox, and NBC).[20] The cross-media limits were challenged in *Prometheus* case in which the Third Circuit Court remanded the numerical caps back to the Commission for further consideration. To date these new cross-media rules have not taken effect.[21]

In January 2004, Congress amended the 1996 Act by making the Commission's biennial review obligation every four years instead of two and by insulating the Commission from reviewing the new amendment to the act that increased the national television audience from 35% to 39%.[22]

On July 24, 2006, the Commission released an official "Further Notice of Proposed Rulemaking," in which it would once again take up the Newspaper/Broadcast Cross-Ownership ban. The Commission seeks comment on how to approach the current restrictions and asks for input on "whether the differences between television and radio broadcast operations are significant in the context of common ownership with a newspaper."[23] The Commission is also reviewing current cross-ownership laws about radio and television combinations to determine how the agency should deal with these current combinations. Finally of interest is the review of the Dual Network Ban. The current rule permits common ownership of multiple-broadcast networks but does not allow the "top four" networks to merge. The commission will re-evaluate this rule to determine whether this restriction on the top four possibly merging should remain in place.[24]

Conglomeration Effects on Journalism

FCC rulings on media ownership are intended to do at least two things: promote diverse perspectives and prevent monopolistic practices. The FCC argued in the 2002 *Order* that its goal was to refrain from too much government intervention so as not to violate any First Amendment rights of owners of media outlets. The FCC trusts that despite a handful of companies who control the media that these outlets will provide diverse viewpoints based on a variety of programming that will remain available for the public through cable, Internet, and other outlets.[25] Additionally in the *Order,* the Commission recognized that outlet ownerships affect viewpoints that are disseminated and that "owners of media outlets clearly have the ability to affect public discourse, including political and governmental affairs, through their coverage of news and public

[19] *Id*. Para. 499.
[20] *Prometheus Radio Project v. FCC* (2004) p. 28.
[21] Further Notice www.fcc.gov/ownership/rules.htm.
[22] *Prometheus Radio Project v. FCC* (2004) p. 29.
[23] Further Notice www.fcc.gov/ownership/rules.html.
[24] http://www.fcc.gov/ownership/rules.html.
[25] *Federal Communications Commission 2002 Biennial Regulatory Review* (FCC 03-127) p. 10-12.

affairs."[26] A more disturbing note followed this assessment when the Commission stated that because the average household has 102 channels available to them, "we cannot conclude that source diversity should be a policy goal of our broadcast ownership rules."[27]

On the one hand, such a policy certainly comports with the original intent of the Communication Act: It was not about CONTENT; it was about quality of signal. The Supreme Court in the *Miami Herald* case of 1974 ruled that governments or their agencies could not require newspapers to allow responses to their news or editorial opinions. It took many years, but by refusing to grant *certiorari* in several cases, the Supreme Court affirmed the FCC's abolition of the "fairness doctrine" and its corollaries which included the personal attack rule and the broadcast editorial rule. Specifically the "scarcity rationale" was rejected in the *TRAC* case, written by Robert Bork, from the D.C. Court of Appeals, which sustained his ruling *en banc*.

On the other hand, we have seen that more and more channels/outlets are owned by fewer and fewer companies. The problem with this explosion of channels and media mergers is the difficulty in knowing which conglomerate owns what outlet. Thus, the question becomes, Is there really any diverse representation if six companies own a majority of media content? Furthermore, do these conglomerates engage in predatory practices such as precluding advertisers who buy time on large networks from also buying time on smaller networks or single stations?

A report by the Project for Excellence in Journalism in 2004 states that "we are moving in conflicting directions where we have more outlets for news but fewer owners."[28] Mark Crispin Miller discusses this trend in a 2002 article of *The Nation*:

> Of all the cartel's dangerous consequences for American society and culture, the worst is its corrosive influence on journalism...the new divisions of the media cartel appear to work *against* the public interest—and *for* their parent companies..."[29]

The public has grown increasingly concerned about the credibility of the media since a few large corporations[30] own most of what we hear, see, and read every day. The Project for Excellence reported in 2004 that the public's concern about the news media's morality, professionalism, accuracy, honesty about errors disconnects the

[26] *Ibid.* p. 11 para. 28.
[27] *Ibid.* p. 15 para 45.
[28] *The State of the News Media 2004: An Annual report on American Journalism*. http://www.stateofthenewsmedia.com/2004/narrative_overview_ownership.asp?media=1.
[29] "What's Wrong with This Picture?" Mark Crispin Miller, 7 January 2002, *The Nation* http://www.thenation.com/doc/20020107/miller/2.
[30] News Corporation, General Electric, Disney, Time Warner, Viacom, and CBS Corporation are the top six companies that own and operate newspapers, periodicals, books, television, production, film, radio, and internet. "10th Anniversary: The National Entertainment State." *The Nation*. (3 July 2006).

public and the news media, whose primary motivation may have become profit.[31] The public tends to believe that journalists are distorting their coverage or sensationalizing specific issues in addition to the increasing distrust of giant corporations that own most of the news media. However, journalists believe that they are working in the public's interest.[32]

One important issue to consider is the economic factor. The Project's 2004 report stated that newsgathering in journalism is declining due to significant budget cuts or staff cuts in the news media by replacing workers with more efficient technology. Technology can "be used to replace the newsgathering skills, homogenize the content, rely more on feed material and wires, which is cheaper than original reporting...there is tendency for branding to be more focused around the style than the substance of reporting."[33] In addition to transferring more and more newsgathering to technology for mass production, those who work in newsrooms are expected to work more hours, providing news content to more than one station since most television newsrooms are affiliated with multiple stations.[34] The Project's 2006 report stated that print news suffered additional staff and budget cuts citing that the newspaper industry has lost 7% of newsroom professionals since the year 2000.[35] Radio, news magazines, cable and network news also experienced cutbacks and the only media sector that experienced growth was the Internet due to companies investing more money "as a platform for original content rather than an extension for their old operations."[36] These efficiencies have worked to the media's disadvantage when it comes to public perceptions. According to the Pew Research Center for the People and the Press in 2005, 75% of Americans believed that news organizations were more concerned with getting the "big audience," as opposed to 19% who believed organizations cared about informing the public.[37] In 2007, the Project reported that public perceptions of bias and partisan divide of the media appear to be on the rise.[38] A concomitant problem is that the public is also becoming more isolated when it comes to ideological perceptions because with so many opinion and news outlets available, the public is able to select those programs which reinforce their views while avoiding those programs which conflict with their views.

[31] *The State of the News Media 2004: An Annual report on American Journalism*.
http://www.stateofthenewsmedia.com/2004/narrative_overview_publicattitudes.asp?media=1
[32] *Ibid.*
[33] *Ibid.*
[34] *The State of the News Media 2005: An Annual report on American Journalism*.
http://www.stateofthenewsmedia.com/2005/narrative_overview_newsinvestment.asp?cat=6&media=1
[35] *The State of the News Media 2006: An Annual Report on American Journalism*.
http://www.stateofthenewsmedia.com/2006/narrative_overview_newsinvestment.asp?cat=7&media=1
[36] *Ibid*.
[37] Pew Research Center for the People and the Press, conducted in association with the Project for Excellence in Journalism, "Public More Critical of Press, but Goodwill Persists," June 26, 2005.
[38] The *State of the News Media 2007: An Annual Report on American Journalism*.
http://www.stateofthenewsmedia.com/2007/narrative_overview_publicattitudes.asp?cat=8&media=1

The public's concern with media ownership acting like other big businesses is taking its toll on the credibility of news operations, which were already under attack for evidence of ideological bias of both the left and the right. The 2007 Project reports:

> In contrast with a decade ago, there are no significant distinctions anymore in the basic believability of major national news organizations. About a quarter of Americans believe most television outlets. Less than one in five believe what they read in print. CNN is not really more trusted than FOX, or ABC than NBC. The local paper is not viewed much differently than the *New York Times*. And there are signs, despite the appreciation for an independent press, that the perception of bias, even agenda-setting, is a growing part of the concern."[39]

The 2007 report concludes that while the public has always been skeptical of the press, historically, ever increasing doubts about the credibility of the news may be at an all time high.

Possible Solutions

Thomas Jefferson argued that democracy could not succeed unless the public was educated and properly informed. Part of the education process was to permit all opinions as long as "reason and truth" were permitted to combat falsehood. If the purpose of journalism is to educate the demos, it must provide a variety of responsible viewpoints. Over the past two decades, the government has moved toward a free marketplace model to accomplish this goal. But a free marketplace of ideas is different than a free marketplace of purchases. The question the FCC and the Congress must confront, is whether the free economic marketplace of competing media has led to concentrations that have restricted the free marketplace of ideas?

Currently, the majority of our media are owned by six conglomerates who continue to incorporate smaller entities. The FCC is reviewing the rule that prevents any of these from becoming one large company; it states that the four major stations (ABC, CBS, FOX, and NBC) cannot merge. If the Commission's track record is any indication, there is the possibility that the FCC will rule that limiting ownership on this level might not serve the "public interest" and thus by default turn the issue over to the Federal Trade Commission, which would then have to rule on monopoly status. We recommend that the FCC retain its rule and add CNN to the mix, since it is one of the credible sources of news for the public.

In the July 3, 2006 issue of *The Nation,* Jeffrey Chester warns that the FCC is eliminating media ownership restrictions that significantly affect newspapers, TV, Cable, and radio stations. With fewer owners, we can expect measures of productivity to be imposed. This may result in more reliance on newswires and less on investigative

[39] *Ibid.*

reporters. Ironically, repeal of the cross-ownership rules might relieve this problem. Right now, the *Chicago Tribune* can own a television station in Chicago, along with a radio station; but the *Chicago Sun* cannot because it owned no broadcast stations when the rule went into effect. Thus the *Tribune* can rely on reporters from three media, while the *Sun* can only rely on those from one. The *Tribune* can use revenues from one medium to help finance losses of another, and the *Sun* cannot. To its credit, the Tribune Company opposes the cross-ownership rules, and so do we.

We also recommend that the FCC and the Congress examine whether predatory practices are in play when it comes to advertising sales, particularly regarding smaller radio stations. If CBS radio accepts advertising only from those who refuse to advertise on small networks or independent stations, it puts those stations at an unfair competitive advantage.

As a matter of policy, we recommend that the government stay away from the free marketplace of ideas. Interference there raises important First Amendment issues. However, under the Constitution's commerce clause, the government certainly has the right to keep the economic marketplace robust and diverse.