The media industry in the United States is surrounded by controversy, marked by changes proposed by the Federal Communication Commission in 2003. These changes, which are still being debated, would bring about a further relaxation of media ownership regulations. The proposed changes were partly in response to the Telecommunication Act of 1996, in which Congress required a biennial review of media ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." Historically, regulation of the media has been seen as a wise and fair practice to keep any one voice, including the government, from weakening one of the fundamentals of democracy – the First Amendment which protects free speech.

Regulation of the broadcast media comes primarily from the FCC. The principle behind broadcast regulation began in 1927 under the notion that the airwaves belong to the public, and that as trustees broadcasters should always be operating in the public interest. Today the FCC, based in Washington, D.C., has five commissioners, who are appointed by the president and are approved by the Senate. Each commissioner serves a five-year term, and the chairperson is appointed by the president. Michael K. Powell is chairman of the FCC. Currently, nominations have been presented for a new chair to begin by 2006. Of the five member commission, two are Democrats and both voted against the relaxation of the FCC regulations. The three Republicans voted for the changes proposed by Powell.

On June 2, 2003, the FCC recommended these changes that brought a maelstrom of responses from diverse constituencies:

1. Revise the local television multiple ownership rule, allowing a single company to own both a broadcast station and a newspaper in the same market;
2. Modify the local radio ownership rule by revising the local radio market definition;

3. Increase the reach of network-owned TV stations, permitting them to reach 45% of household – up from 35%.² (Congress scaled this back to 39%.)

In essence these proposed rules could allow one company, in a single market, to own three TV stations, a cable system, eight radio outlets, and one newspaper. Additionally TV-newspaper mergers would be permissible in about 200 markets. It is estimated this would have an impact on all – or at least 98% – of the U.S. population.³

These recommendations were the culmination of a 20-month review process that began in 2001 with the purpose of developing a solid, factual foundation for re-evaluating the FCC media ownership policies. A working group created by Powell entitled the “Media Ownership Working Group” were to be the first step in developing an empirical basis for media ownership policies that promote competition, diversity and localism in today’s media market. The plans from this working group haven’t made it through a conformation process.

The new rules have not been implemented because of the protests that arose with various public interest groups, organizations and average citizens over the proposed changes. Powell protested the attacks in interviews with the New York Times, Washington Post and CNBC. Those attacking the proposed changes were varied and included groups such as Common Cause, the National Rifle Association, the Parents Television Council, and Consumers Union. Groups and writers from diverse political perspectives voiced opposition to the proposed FCC changes. Writers included William Safire, Noam Chomsky, David Hatch, Tom Goldstein, Michael Curtin, Tucker Ellis, Ben Bagdikian, Barbara Ehrenreich, Gillian Doyle, David Croteau, William Hoynes, Bill Moyers, Robert McChesney and John Nichols.

Multiple parties appealed the June 2 decision in various federal appellate courts. These cases were consolidated and assigned by lottery to the U.S. Court of Appeals for the Third Circuit, which stayed the effective date of the new rules pending its decision.

Why the challenge to the proposed changes? One theory is that the mass media is owned by international conglomerates who encompass or control a myriad of significant enterprises and corporations. A possible scenario is that the owners of these enterprises and corporations could slant or alter the news. Everyday the news process goes through “gate keeping.” This is a session where editors decide which stories have news
value and will be broadcast, printed or placed online. During this critical time, stories that have true news value could be dropped in an effort to spare the reputation of one of the conglomerates including a subsidiary.

In 1983 the media was controlled by corporations headed by fifty men and women. Today five men control all of these media once run by these fifty corporations. Who are these firms and individuals that some believe are world power brokers? The largest is Time Warner, headed by Richard Parsons; followed by Disney, with CEO elect and President Robert A. Iger. The third largest is (Murdoch) News Corporation, with CEO Rupert Murdoch; it is followed by Viacom, run by Sumner Redstone. Rounding out the group is Bertelsmann, a 186-year-old German firm now run by Richard Mohn. A sixth entity, Clear Channel dominates the radio waves with ownership of more than 1200 stations.

Should media ownership be limited? Is it a moral concern to the American or global public if five individuals control or own most of the media in the world? The First Amendment is cited both professionally and legally as the only commercial profession that is protected by the U.S. Constitution. The importance of the First Amendment concept was argued by Justice Potter Stewart in a 1974 address to the Yale Law school.

. . . [T]he Free Press guarantee is, in essence, a structural provision of the Constitution. Most of the other provisions in the Bill of Rights protect specific liberties or specific rights of individuals: freedom of speech, freedom of worship, the right to counsel, and the privilege against compulsory self-incrimination – to name a few. In contrast, the Free Press clause extends protection to an institution. The publishing business is, in short, the only organized private business that is given explicit constitutional protection.4

Even though it may appear to be problematic to award freedom of expression protection to private media organizations, Stewart viewed the alternative as unacceptable. He asserted the press could be relegated to the status of a public utility that is controlled in some part by the government. However, he states, this is not the intent of the founders of the constitution: “Perhaps our liberties might survive without an independent established press. But the Founders doubted it, and, in the year 1974, I think we can all be thankful for their doubts.”5

Would the framers of the country believe today’s media to be independent? It may be independent of federal ownership, but private owner-
ship has become so compressed, could the outcomes be similar to
government-controlled presses?

Should the new regulations from the FCC commissioners be imple-
mented? Chairman Powell argues that the commission was able to “craft
a balanced package of enforceable and sustainable broadcast ownership
limits.”⁶ Citing an abundance in the media marketplace, Powell explains:

In 1960 – the “Golden Age of Television” – if you missed
the half-hour evening newscast, you were out of luck. In 1980,
it was no different. But today, news and public affairs program-
m ing – the fuel of our democratic society – is overflowing.
There used to be three broadcast networks, each with 30 min-
utes of news daily. Today, there are three 24-hour all-news net-
works, seven broadcast networks, and over 300 cable networks.
Local networks are bringing the American public more local
news than at any point in history.”⁷

Powell further explained that the commission attempted to adopt
geographic-based market definitions, which he believes promotes com-
petition. But with such limited ownership is there competition? Would
Justice Stewart question the current configuration of media owners? The
five corporations who own the majority of broadcast media in the U.S.
have been allowed to ignore or make laws which allowed them to acquire
nearly 37,000 different media outlets in the United States. If all weekly
and semi-weekly newspapers were counted as well as advertising publica-
tions and periodicals, the number rises to 54,000. It jumps to 178,000 if
all “house organs” or “information industry” periodicals are included.⁸ It
is an understatement to call the media holdings in each of these firms
immense. The FCC regulates broadcast industries. Originally the rules
stated that one company can own up to 12 TV stations, 20 AM radio sta-
tions and 20 FM radio stations, as long as the total number of stations
doesn’t reach more than 25% of the audience. Deregulation has been
occurring continually over the past twenty years.⁹

The largest owner, Time Warner, has over 292 separate companies
and subsidiaries. Some of these subsidiaries, partners or even wholly-
owned companies include: AOL, Hewlett-Packard, Sony, 3Bay, Citigroup,
Ticketmaster, 3Com, HBO (all seven channels); CNN; Little, Brown
publishers, Amazon.com, American Express, Warner Brothers Studios,
Weight Watchers, Popular Science and 52 different record labels.¹⁰ Time
 Warner is in the courts attempting to distance themselves from its merger with AOL after embarrassing auditing disclosures and court cases.\textsuperscript{11}

Disney Company grew from a theme park and movie industry to the seventy-third largest industry in the United States under Michael Eisner as CEO, and now Iger. Some of the Disney holdings include: Walt Disney Pictures, Touchstone Pictures, Miramax, Buena Vista Home Video, Buena Vista Home Entertainment, Buena Vista International, Hollywood Pictures and Caravan Pictures. They control 17 magazines; the ABC Television Network, 30 radio stations, 11 cable channels including ESPN (jointly), Disney, the History Channel and A&E.\textsuperscript{12}

Rupert Murdoch’s vast empire began in his native country Australia with a small newspaper given him by his father. From there he picked up four of Great Britain’s largest newspapers, two sensational tabloids, as well as the \textit{Sunday Times} and the (daily) \textit{Times}. His influence and properties soon turned to the United States with ownership in the \textit{New York Post}. This was followed by the creation of his own U.S. radio and television network Fox. Fox now has 23 fully owned or affiliate network stations in the United States. Murdoch also acquired DirecTV and the number of television and data channels he owns now runs into the hundreds. He has more than 30 satellite and cable properties. He has a half interest in National Geographic cable channel and has the other half with General Electric, which owns NBC. In book publishing, the parent firm, News Corporation, owns Harper Collins Publishers, with 26 imprints, William Morrow and Avon. He also owns eight U.S. magazines. Outside of the U.S. he owns over 50 broadcast channels. He is the largest broadcaster is Asia. In 53 Asian countries he owns 40 channels in eight languages.\textsuperscript{13}

The fourth largest owner, Viacom, began with the purchase of the Columbia Broadcasting System (CBS). Viacom has a financial interest in broadcast and cable television, book publishing, radio, internet, and film production and distribution. In addition to the CBS network, Viacom also owns MTV, Infinity broadcasting, Simon and Schuster, Blockbuster and Paramount Pictures, Country Music Television, Black Entertainment Television, Showtime Networks, and Nick at Night. The Viacom Television Station Group consists of 40 television stations.\textsuperscript{14}

The most obscure name in the top five media owners in the country is Bertelsmann. The firm is the largest printer of English-language books in the world with more than eighty book subsidiaries. Some include Alfred Knopf, Pantheon, Random House, Ballantine, Bantam, Crown,
Doubleday and Modern Library. Magazines include Parents and Family Circle. Record labels include RCA, and Windham Hill.\(^\text{15}\)

According to Ted Turner of Turner Broadcasting, it is an impossible task for entrepreneurs to compete against the big five.\(^\text{16}\) Those opposing the proposed regulation changes believe the competition and change brought on by the “big five” is contrary to the intent of the framers of the Constitution regarding a free press. Those following the founders attempted to set standards to hold ownership of media by any one individual or firm at a small number. Were the standards wise or did they change as media and media formats changed?

The changes may have been a concern to James Madison who in 1822 stated that, “A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both.”\(^\text{17}\)

Bernie Sanders, Congressional Representative of Vermont is a vocal critic of the media monopoly. He states,

“It is not a coincidence that everything blew up the way it did this year [2002]. The American people know they are getting less information than they had before about decisions that are being made in their name, and they know that we are passing some critical points where, if we don’t act, citizens are not going to have the information they need to function in a democracy.”\(^\text{18}\)

Writing in The Nation, Robert McChesney and John Nichols also voice strong opposition to the proposed rules:

The diversity of the opposition confirms that the FCC rules have become a lightening rod for concerns not just about the specific issue of consolidation of media but also about a host of systematic flaws that have become evident as mass media have come increasingly to be defined by commercial and corporate concerns. People who have long felt shut out of the mainstream of American media – people of color, women, trade unionists and farmers – stood with families concerned about excessive violence and sexuality on television and in the movies.\(^\text{19}\)
Chairman Powell has been under pressure to resign since the relaxed rules were announced. One reason cited by critics is that the FCC held only one official hearing on concentrated media ownership before it voted. Critics also charge that the Chairman refused to compromise with the two Democrat FCC commissioners, and held secret closed door meetings with Republican commissioners.

Members of congress and media advocate groups attacked the recommendations. Finding the pressures from these groups too strong, Powell made the following suggestion, “I think there’s a serious argument that we just belong in the administration. There ought to be a secretary of communication, it ought to be the president’s policy, it ought to be in a political branch of government and treated that way.”

Historically, other federal regulations that have also been relaxed include the Fairness Doctrine as well as the prime-time access rule. The prime-time access rule restricted local TV owners in the top 50 markets to three hours of network programming during the prime time slots, except on Sundays. The rationale behind the rule was that local public-affairs stations would have the opportunity to program important community happenings. Instead it appeared that the time was filled with sitcom reruns, and the like.

The Fairness Doctrine commenced in 1950 and gave individuals free air time to reply to criticism brought against them through broadcast – TV or radio. Journalists didn’t like the Doctrine because they believed it allowed the government to have editorial controls. The FCC didn’t like the policy because of the many media voices, making the Doctrine too difficult to enforce. The FCC ended the policy in 1987 after a District of Columbia Circuit Court ruled it was unenforceable by the FCC.

Cable has not been without its First Amendment challenges. Congress passed legislation regulating cable rates and monopolies. In 1996 the Telecommunications Act was passed rescinding most past policies. This act allowed media companies to consolidate and own more radio and TV properties in various markets. It also allowed for broader network ownership of programming and deregulated cable. The Telecommunications Act wasn’t passed overnight. Rather it was the focus of months of debate and lobbying.

Understanding of the moral responsibilities in the media often developed as the practice developed. The industry forged a product through numerous epochs leaving an indelible print on society. Sometimes newspapers, radio stations, television stations, book publishers, etc., were cheered by society, and sometimes scorned.
sage of each epoch, new rules were fashioned for the media industry, either from within the industry or externally. The press, in the founding days of this country, was more concerned about being jailed for printing events and editorials, than being taken over by business concerns. In some respects, the opinions of ownership seem to dovetail with the opinions of ownership in the early days of the country. Powell’s statements would seem heretical to journalism pioneer John Peter Zenger.

The first individual to test the press freedoms through the courts was a German immigrant, John Peter Zenger. In 1743 he was jailed, and tried the following year for the crime of seditious libel. As editor for the New York Weekly Journal, Zenger had criticized New York Colonial Governor William Cosby. The prosecution did not claim Zenger’s comments were lies; it merely stated that the truth of the comments exacerbated the crime of seditious libel. Andrew Hamilton, arguing for Zenger, focused on the right of an average citizen to complain about an incompetent government. The jury found in favor of Zenger.

A second pioneer was Alexis de Tocqueville who wrote Democracy in America, in 1848. De Tocqueville writes about a strong and independent country, placing the morality of the press as a pivotal foundation in America. “We should underrate [newspaper’s] importance if we thought they just guaranteed liberty; they maintain civilization.”

Would Zenger or de Tocqueville weigh in with Powell or with dissenters to the new rules? The notion that news would help individuals to be better citizen became the philosophy of the nineteenth and early twentieth century progressive era. In this era many publishers discovered the intrinsic wealth newspapers could provide, just as 20th century business persons found the incredible wealth in a move known as vertical integration. This move allowed the merging of major networks with the Hollywood studios.

The industrial age also helped provide the tools necessary for large increases in circulation and profits, such as “high speed linotypes and presses, typewriters, metal for type, wires to make news instantaneous, and swift transportation...” Now the media is so swift in its delivery of news and entertainment, that the big five want more consolidation of ownership through the process of vertical integration. This is an attempt to own or control several related areas of the media business at any given time. The relationship is expected to be synergistic. Acquisitions are relatively easy because most conglomerates today are publicly traded companies. The stock is traded on one of the nation’s stock exchanges. This
means that anyone with enough money can invest in the American media industries.

There is also the practice of duopolies. A duopoly exists in “certain circumstances,” and is when the FCC allows the single ownership of two television stations in one market. The current rule for duopolies is: there must be eight independent stations remaining if a top four TV station wants to combine with a non-top four station in the same market. The notion may be complicated for the lay person, but not for network executives who insist that duopolies will result in better quality of news because of expanded resources available to the stations that are combined. Some media critics believe that soon points of view will be reduced to those points of view of the major owners.”

Ted Turner claims he was forced to sell his media empire, including CNN to Time Warner because he could not compete against the big five:

Today, media companies are more concentrated than at any time over the past 40 years, thanks to a continual loosening of ownership rules by Washington. The media giants now own not only broadcast networks and local stations; they also own the cable companies that pipe in the signals of their competitors and the studios that produce most of the programming. To get a flavor of how consolidated the industry has become, consider this: in 1990, the major broadcast networks – ABC, CBS, NBC and Fox – fully or partially owned just 12.5% of the new series they aired. By 2000, it was 56.3%. Just two years later, it had surged to 77.5%.

Turner and others claim that media outlets such Fox are breaking news barriers of objectivity and fairness by presenting editorial opinion as news stories. Fox isn’t willing to back off on any of its coverage in any of its media or any of its markets. They believe the public is looking for more opinion.

Is this the case? Is the format used by major media such as the New York Times, CBS, ABC, and NBC just as opinionated in their coverage? Several journalists accuse Fox, the fourth largest network, of sensationalism and editorialism in the form of news. Should the content of Fox be regulated because it perhaps presents a more politically conservative point of view? Many would say that “60 Minutes” or “Dateline” are as opinionated as Fox broadcasts.

More pressing to Turner than the content is survival,
Today the only way for media companies to survive is to own everything up and down the media chain – from broadcast and cable networks to the sitcoms, movies and news broadcasts you see on those stations; to the production studios that make them; to the cable, satellite, and broadcast systems that bring the programs to your television set; to the Web sites you visit to read about those programs; to the way you log on to the Internet to view those pages. Big media today wants to own the faucet, pipeline, water and the reservoir. The rain clouds come next.27

Media companies are profit-centered, and today with convergence, they combine computer, communication, electronics industries and more. These alliances are designed to make money – the reason most people go into business. Can we ever have a “free press” in the sense of anything approximating the “unvarnished truth” – or even a representative sampling of diverse points of view?

What if a certain percentage of the media (maybe, 3%) were specifically assigned the responsibility to present the “unvarnished truth” plus a broad spectrum of “editorial” perspectives which were labeled as such? Could this be publicly funded somehow? Would that make it unimportant that 97% of the media is owned and operated by five or six giants? Do we need to have 20%, or 30% publicly owned and run. This begs the question of who would select the “public” operators. Additionally, Public Broadcasting Stations are still funded by the government; however, they are constantly under fire from groups believing that all media should be self-sustaining and not governmentally funded.

Perhaps by revisiting the days of Alexander Hamilton, James Madison, Thomas Jefferson and Peter Zenger we could ethically determine why they gave their careers to press freedoms, or government control of the press. The amount of money involved in the debate could be confusing for these founders, but the amount of money controlled and accumulated by the top five media owners probably isn’t understood by the average citizen. Does it come down to a matter of democracy, ethics, professionalism, big money for big business, political access or all the above?

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NOTES


5 Ibid., p. 18.

6 Powell.

7 Ibid.


9 Biagi. p. 11.

10 Columbia Journalism Review: www.cjr.org/owners/aoltimewarner.asp


12 Columbia Journalism Review: www.cjr.org

13 Ibid.

14 Ibid.

15 Ibid.


18 Hatch. p. 845.


25 McChesney and Nichols.

26 Turner.

27 Ibid.