

Media Mergers and the Public Interest

In addition to antitrust regulation, many media mergers and acquisitions are subject to regulations from the Federal Communications Commission. Are FCC rules on media ownership still necessary in today's world?

In 2003, the Federal Communications Commission relaxed its rules on ownership of media outlets. A storm of protest followed. That year Congress received more mail and phone calls on this issue than on any other—except the war in Iraq. Most of the response came from those who opposed the FCC rule changes.

The opposition brought together groups—liberal and conservative—who normally opposed one another. They argued that the rule changes would result in fewer companies owning more media outlets. They viewed increased concentration of media ownership as a threat to democracy. They argued that for democracy to flourish a great diversity of voices needs to be heard.

Congress responded by moving to overturn the new rules. In a compromise with the White House, Congress agreed to just slight changes in the rules. The opposition had stopped the new rules.

Those supporting the new rules included big media companies and groups opposed to government regulation. They viewed the FCC rules as modest changes and, in fact, favor eliminating all FCC media ownership rules. They argue that today's media—radio, television, cable and satellite TV, satellite radio, newspapers, magazines, and the Internet—provide the consumer with the greatest diversity of voices in history. They believe that government regulations interfere with their right to free speech and also with the development of new technologies.

Should the FCC continue to issue rules on media ownership? Or should the FCC stop regulating the ownership of media?

The First Amendment

Any discussion of the media must consider the First Amendment to the U.S. Constitution. The First Amendment protects, among other things, freedom of speech and the press.

Freedom of speech and the press are important for many reasons. A free press plays a watchdog role on government, exposing misdeeds, mistakes, and mishaps that officials would like to keep quiet. It also ensures that citizens have access to all points of view and can make informed political decisions. “An enlightened citizenry,” Thomas Jefferson once said, “is indispensable for the proper functioning of a republic.”

By letting every idea be examined and questioned, freedom of expression doesn't just help the democratic process; it helps scientists, inventors, and ordinary people find the truth. Further, freedom of speech and the press serves as a “safety valve,” allowing people to vent their anger and frustration with government and lessening the likelihood that they will foment revolution or commit terrorist acts. Finally, freedom of expression helps people develop as individuals by allowing them to examine and express different thoughts and opinions. For all these reasons,

freedom of speech and the press is one of the most basic rights of a free people.

The Federal Communications Commission (FCC)

The First Amendment bans most government limitations on freedom of speech and the press. The emergence of radio in the 20th century, however, presented problems that Congress needed to deal with. The public owned the airwaves that radio broadcasters used, and thousands of broadcasters—stations, individuals, and the military—were clogging them. To bring order to chaotic broadcasting, Congress began licensing radio frequency airwaves in 1927.

Licensed radio networks, led by the National Broadcasting System (NBC), used them at no charge in exchange for providing free broadcasting. NBC, soon followed by CBS and ABC, discovered that radio advertising made broadcasting over the public airwaves extremely profitable.

In 1934, Congress passed the Telecommunications Act. It set the course for government regulation of future commercial communication technologies like television.

The Telecommunications Act created the Federal Communications Commission (FCC). The president appoints and the Senate confirms five FCC commissioners, only three of whom may be from the same political party.

The FCC has the authority to grant and renew licenses for broadcasting over the public airwaves (still at no charge). Today, the primary responsibility of the FCC is to regulate over-the-air radio and TV broadcasting. It also regulates communications by telephone, cable, and satellite.

The 1934 law included a requirement that to renew their FCC licenses, broadcasters had to serve “the public interest, convenience, and necessity.” Even today, however, there is little agreement over what this phrase means.

Radio and TV broadcasters typically argue that the “public interest” simply means programming that the public wants. In other words, what is popular to consumers (and profitable to advertisers). Others, however, insist that the “public interest” requires numerous independent broadcasting companies, diverse programming, attention to local issues, and lots of information and viewpoints for democratic debate.

Big Media

In the 1980s, President Ronald Reagan appointed new policymakers to the Justice Department, Federal Trade Commission, and FCC. They de-emphasized government regulation of media companies in favor of letting free market competition do the regulating. This approach, largely continued under subsequent presidents, unleashed a wave of media mergers.

The media mergers over the last 25 years have been both “horizontal,” combining similar competing firms, and “vertical,” combining content production and distribution companies. This has resulted in a small number of huge conglomerates, now often called “big media.” In 2000, the largest-ever media merger took place. America Online (AOL) announced its intention to purchase Time Warner. AOL was the nation’s dominant Internet service provider.

Time Warner was a media powerhouse, owning magazines, video and high-speed Internet cable, cable TV channels, music labels, and TV and movie production companies.

AOL and Time Warner were not horizontal (direct) competitors, and the Department of Justice did not challenge the merger as an illegal monopoly. The Federal Trade Commission (FTC), responsible for guarding against anti-competitive practices, approved the AOL-Time Warner merger with conditions.

The FCC also had to approve the merger. Consumer groups and other critics noted that media companies distribute most of the ideas, news, and other information American citizens receive. They argued that the merged companies would have too much control over the nation’s media content. They also argued that the media giant could stifle new technology. Nevertheless, a unanimous FCC approved the merger with conditions in January 2001.

AOL/Time Warner is now the largest of a handful of “big media” conglomerates. These are huge corporations, owning combinations of:

- Broadcast, cable, and satellite radio and TV.
- Production studios for movies and TV.
- Music labels.
- Internet services.
- Newspapers, magazines, and book publishing companies.

Today, big media companies own most TV networks, cable TV companies, radio networks, music labels, movie studios, magazines, and book publishers. (See box.) The big media conglomerates compete against one another. But they have many common economic and political interests, and often cooperate in “joint ventures” by sharing ownership in some businesses.

The Top Five Big Media Companies and Their Holdings		
Company	Broadcast* & Cable TV	Other Media (sample holdings)
AOL/TIME WARNER (now called just TIME WARNER)	Cable News Network (CNN) other cable channels	Warner Bros. Studios AOL (Internet service provider) Little, Brown (books) magazines
VIACOM/CBS	CBS* CBS News cable channels	Paramount Pictures Blockbuster Infinity Broadcasting (radio network) music labels

DISNEY	ABC* ABC News cable channels	Walt Disney Pictures Walt Disney Records Walt Disney Publishing Internet sites
NBC UNIVERSAL (owned by General Electric)	NBC* NBC News cable channels	Universal Pictures Universal Production Studios Universal Studios DVD on-demand TV
NEWS CORPORATION	FOX FOX News other cable channels	Twentieth Century Fox DirecTV (satellite TV provider) Fox Sports Radio newspapers, books, & magazines

Network Broadcasting

The country today is divided into 210 television broadcast markets. No company owns broadcast stations in all 210 television markets. That would violate FCC ownership rules. The major networks own and operate some broadcast stations, mainly in major cities. They contract with other independent local stations across the nation to carry the network's programming. A network will give an affiliate station the exclusive right in its market area to air the network's programming for free. (In some cases, the network will even pay the affiliate station to air its programs.) In turn, the networks go to advertisers and sell commercial time based on their ability to air programs that will be viewed nationally. The more viewers a network has, the greater advertising revenue it will receive.

The affiliates usually broadcast the network's prime-time schedule, morning and late-night programs, weekday soap operas, and weekend sports events. Local stations also air their own programs—news and entertainment (most of the entertainment consists of reruns of network programming). Their revenue comes from commercial advertising. Although they are losing viewers, the stations are still highly profitable.

The FCC's Broadcast Ownership Rules

After Congress passed the 1934 Telecommunications Act, the Federal Communications Commission imposed conditions on those receiving licenses to broadcast (over-the-air) radio and TV stations. Early FCC regulators had decided if a company owned too many broadcast outlets along with newspapers, it would have too much control over information and entertainment. This, the regulators concluded, would be against the public interest.

Big media have always wanted to get rid of these rules, arguing that the rules hobble innovation and unjustly interfere with private free enterprise. In 1996, the major broadcasters successfully lobbied Congress to change some of the ownership rules.

Signed by President Bill Clinton, the 1996 Telecommunications Act amended the 1934 law. The new policy directs the FCC to “reduce regulation in order to secure lower prices and higher quality services . . . and encourage the rapid deployment of new telecommunications technologies.”

The 1996 Telecommunications Act relaxed the limits, or cap, on the number of broadcast TV stations that companies could own. It stated that a single company could not own stations that broadcast to more than 35 percent of U.S. TV households. (This was up from a cap of 25 percent in the old FCC rule). It also lifted all caps on ownership of the number of radio stations one company could own. (It did, however, place limits on the number a company could own in the same geographical area.)

The law also lengthened the term of broadcasting licenses from three to eight years. In addition, it directed the FCC to review and revise the ownership rules every two years as market conditions warranted.

The 1996 law fueled a number of media mergers. Viacom merged with CBS. Clear Channel began buying many radio stations and now owns more than 1,200 radio stations nationwide.

Big media companies pressed for further easing of the FCC ownership rules. In 2001, President George W. Bush appointed Michael Powell chairman of the FCC. (He is the son of former Secretary of State Colin Powell.) The following year, a federal appeals court decided that unless the FCC could prove media ownership rules served the public interest, the intent of Congress was to abolish them. This decision along with persistent lobbying by big media prompted Powell to announce in 2003 new broadcast ownership rules.

Three of Powell’s proposed rule changes drew the most attention:

1. The FCC would end the rule that limited single companies to owning only one TV station in a local market area. Companies could own two TV stations in mid-sized markets and three in large ones. But only one of the stations in a market could be in the top four of audience viewing.
2. The broadcast reach of the total number of TV stations a single company owned would increase from 35 percent to 45 percent of U.S. TV households.
3. Certain combinations of radio, TV, and newspaper “cross-ownership” would be allowed in mid-sized markets. All limits to cross-ownership of broadcast media and newspapers would be eliminated in large markets.

Powell said the rule changes took into account the “explosion of new media outlets” and would promote diverse programming, local broadcasting, and a “vigorous competitive environment.”

Firestorm at the FCC

As mentioned at the beginning of the article, FCC Chairman Powell’s proposed changes in ownership rules ignited a firestorm of opposition from critics. They argued that any further weakening of media ownership rules would violate the public interest.

After a bitter conflict over Powell’s refusal to hold nationwide public hearings on the proposed

rules, the FCC finally approved them in June 2003. By this time, however, Congress had heard from the public and intervened.

In November, Congress and the White House reached a compromise on the most controversial new Powell rule by cutting back the broadcast cap on TV stations owned by any single company from 45 percent to 39 percent of U.S. TV households. At this time, Viacom/CBS and News Corporation already owned stations that exceeded the 35 percent cap under the old rule.

In 2004, a federal appeals court blocked all the proposed rules because the FCC had acted arbitrarily and failed to allow adequate public comment. The court then sent the rules back to the FCC for further review. Soon afterward, Michael Powell resigned from the FCC. In early 2006, the FCC was still reconsidering the broadcast ownership rules.

Arguments in Favor of the New FCC Rules

The big media companies and others opposed to government regulation contend that Congress never authorized the FCC to impose any ownership rules in the first place. They argue that the FCC could best serve the public interest by eliminating all ownership restrictions and letting the free market regulate the broadcast industry. They believe that existing antitrust rules, enforced by the Justice Department and Federal Trade Commission, would prevent anti-competitive practices. There is no need, they argue, for an additional layer of regulations on ownership from the FCC. As an interim measure, they favor the new FCC rule changes.

They point out that the ownership rules were imposed when only three networks (NBC, CBS, ABC) made up nearly 100 percent of all broadcasting in the United States. Now, most Americans have access to a wide diversity of broadcast, cable, satellite, and online outlets for news, information, and entertainment. Thus, they argue, the ownership rules are unnecessary in this new age of media abundance.

They contend that by owning more TV and radio stations, broadcast networks would be able to take advantage of economic efficiencies and stabilize the finances of the entire broadcasting industry, leading to better and diverse programming. They note that local broadcast TV stations are profitable today. But they claim that the stations are in danger of failing due to competition from cable and satellite TV, the high cost of news operations, and the expense of changing from analog to digital transmission by 2009. Merging with national media companies, they say, will provide these local outlets with the resources to better compete and serve their local communities. They conclude that rules restricting the “cross-ownership” of newspapers, broadcast TV, and radio intrude on the efficiency of the free market system.

Arguments Against the New FCC Rules

Those against changing the broadcast ownership rules point out that the rules are questions of public policy. The public owns the airwaves, and they believe it is important to place conditions on those receiving free licenses to broadcast over the airwaves. They believe that loosening the ownership rules would unleash a new big media merger frenzy, resulting in further concentration of broadcast media ownership and control over what Americans see, hear, and read.

They point out what has happened to radio since Congress loosened the radio ownership rules in the 1996 Telecommunications Act. They say that there are now one-third fewer independent

radio stations, with a handful of national radio networks like Clear Channel and Infinity Broadcasting controlling most of the music DJs play in local markets. The same thing, they argue, would happen to broadcast television, with big media control over local TV broadcasting.

They believe that eliminating FCC rules would decrease competition, squeezing out independent and innovative programming in favor of only what is profitable to advertisers. They argue that “cross-ownership” of radio, TV, and newspapers would reduce local competition and increase control by a few media owners over what news will be printed and broadcast in many cities. This, they contend, would be a dangerous trend in American democracy.

For Discussion and Writing

1. Why does the First Amendment protect freedom of speech and the press?
2. What is the purpose of the Federal Communications Commission?
3. What conditions do you think TV and radio broadcast stations should have to meet in order to renew their licenses? Why?

For Further Reading

Croteau, David and Hoynes, William. *The Business of Media, Corporate Media and the Public Interest*. 2nd ed. Thousand Oaks, Calif.: Pine Forge Press, 2006.

McChesney, Robert. *The Problem of the Media, U.S. Communication Politics in the Twenty-First Century*. New York: Monthly Review Press, 2004.

A C T I V I T Y

Senate Hearing: Do FCC Ownership Rules Serve the Public Interest?

1. Divide the class into four role groups:

Federal Communications Commission agrees broadcast ownership rules serve the public interest, but need to be changed to reflect the modern media marketplace (the “Powell Rules”).

Consumers United agrees ownership rules serve a very important public interest and should not be changed.

Broadcasters Association disagrees that ownership rules serve the public interest, so they should be entirely eliminated.

Senate Commerce Committee will hold a hearing and then answer this question: *Do FCC Ownership Rules Serve the Public Interest?*

2. The first three role groups should research the article and prepare arguments to defend their position at a hearing on the question before the Senate Commerce Committee.

3. The Senate Commerce Committee members should research the article and prepare questions to ask each of the groups as they testify during the hearing. The committee may permit group members to respond to or challenge testimony during the hearing.
4. After the hearing, the Senate Commerce Committee members should publicly discuss the hearing question, try to persuade each other on an answer, and finally take a vote on it.