

Comments to the Federal Communications Commission Regarding
Proposed Rule Changes on Ownership Restrictions in the Broadcast
Media

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Respectfully submitted by Thomas N. Gardner, assistant professor of communication law, Westfield State College, Westfield, MA (college listed for identification purposes only; the views represented here are my own and do not necessarily reflect those of Westfield State College).

Honorable Commissioners:

First, I want to thank the Commission for scheduling at least the Feb. 27 hearing in Richmond, Va. on this important review of ownership regulations. I also want to urge the Commission not to rush into changes on this order of magnitude without further opportunity for public comment. The proposed changes are of the nature that are much harder to reverse once they are made than they are to implement after all due deliberation.

Second, I want to express my strongest possible opposition to the withdrawal of current restrictions on cross-ownership of multiple media formats in a single market. There are very few restrictions on ownership remaining, but these are crucial to preserving any opportunity for diversity of viewpoints in public discourse in the media markets of this country.

Allow me to briefly review the important history of the FCC in protecting the public's interest in preventing monopoly of mass media.

In the early 1940s, the FCC was taking a closer look at how the radio industry was dominated by two major networks, NBC and CBS, but especially NBC. By the late 1930s, about 97 percent of all night-time transmitter wattage was dominated by NBC, CBS, and the lesser Mutual Broadcasting System. They locked in their local affiliate to five-year contracts that barred them from taking material from other networks and controlled most of their prime-time programming.

In 1941, the FCC decided to break up this oligopoly with its Chain Broadcasting Regulations; which prohibited a number of the worse practices. It also forced NBC to sell one of its networks (the Blue Network). NBC challenged the ruling and the Supreme Court in an important 1943 decision (prior to AP v. US), upheld the FCC's authority to issue the ownership restrictions. NBC sold its Blue network to the newly formed American Broadcasting Company.

For a long time, the FCC restricted ownership, applying what became known as the rule of sevens; No individual or corporation could own more than 7 TV stations, 7 AM stations, and 7 FM stations across the country. In 1984, the FCC raised that number to 12. For radio, the limit went to 18 in 1992 and 20 in 1994, staying at 12 for TV. By 1996, however, Congress passed the Telecommunications Act and abolished the ownership restrictions on radio altogether.

They also essentially removed the limit on how many TV stations one owner could own. But they kept one limitation; that no single owner could control enough stations to reach more than 35% of the nation's households. There were also some restrictions on cross-ownership; that is barring one person or company from owning TV and radio stations in the same market, or TV and newspaper companies in the same city. The Duopoly rules kept one owner from owning more than one AM or FM station in any market.

The 1996 Act liberalized the restrictions with a formula that pegged the number of stations one owner could own to the total number of stations in the market. So in a big city with 45 or more stations, one company could own eight of them, and this goes down proportionately by size of market.

The drop in multiple-station radio ownership rules caused a revolutionary sea-change in the radio ownership picture. A Texas investor bought his way up to 325 stations by mid-1997 and to 400 by 1999, and then merged with Clear Channel Communications, which by now owns more than 1,200 stations. A disturbing window into the dangers that all of these prior regulations were established to guard against came after the attacks on the World Trade Center and Pentagon on Sept. 11, 2000. Clear Channel put out a list of songs that its stations shouldn't play after Sept. 11; including; Imagine; Blowing in the Wind; and Bridge Over Troubled Waters; as well as anything by Rage Against the Machine. The company denied that it intended the list to be a dictated; DO NOT PLAY; list to its station managers. But the point is that it was taken that way by some, and could easily have been a mandated corporate censorship list.

One cross-ownership rule that was not eliminated by the 1996 Telecomm Act was that restricting a single owner from owning both the local TV station and the newspaper. The FCC had already started granting waivers to a number of owners to bypass that rule, and now it looks that this restriction on control of information may also be swept out in this tidal wave of industry-applauded deregulation.

I begin my course in communication law each semester with a history of the concept of free expression, its relationship to democracy, the American revolution, and ratification debates over the Constitution and Bill of Rights. Later in the semester, we review the development of both administrative and case law on regulation of broadcast media, including a close look at the relationship between the structure of media ownership and its implications for the kind of free and open exchange of diverse views so vital to a healthy democracy. I ask students to consider the recent deregulatory steps and the subsequent increased concentration of corporate ownership of the mass media in light of the principles articulated by Jefferson, Madison, Adams, and other architects of the body of laws, rights, administrative decisions, Congressional mandates, and case law which, for many years, were aimed at preserving broadcast media as an open platform, serving the needs of a democracy for fair and open discourse, and avoiding the dangers of any single company or handful of companies dominating our sources of information and cultural production.

You now hold in your hands the legacy of this nation's founders who labored hard to construct a system with checks and balances, and guarantees of open discourse sufficient to peacefully resolve all manner of differences or, as Madison put it, factionalism throughout this diverse republic. The First Amendment was adopted by a people who had just thrown off despotic rule to guarantee the ability of citizens to hear and exchange diverse views, not to provide a rationale for a single corporate owner or two to control all the means of communication. The corporate hijacking of the First Amendment toward that end is a betrayal of the American revolution in the most literal sense.

The FCC was right, in the past, to protect the public airwaves from monopoly rule, and to seek to instill as much fairness and accountability as could be enforced onto those who acquired licenses to use those airwaves. Market forces could not, would not, achieve those same ends. As both the FCC and Congress, as well as the courts, have begun to tear down that fabric of control in the public interest, we have witnessed the increased concentration of ownership of major mass media. With now fewer than a dozen (5 or 6 in the top tier) major corporations controlling a vast majority of what our citizens see, hear, and read through the media, we are fast moving in the direction of what media scholar George Gerbner calls a "private ministry of culture";

Please do not remove these last bulwarks against total monopoly control over single media markets. Democracy will not be served. The public will not be served. Our historical legacy will not be served. Only a few powerful media companies will be served. They have had plenty of assistance of late, including a give-away of valuable public property in the digital spectrum. It is time to shift the balance back toward the public interest. The FCC has a proud legacy, since its inception, in working for the public interest. Please don't abandon that legacy now. And if it is to be abandoned, please allow sufficient opportunity for a full public deliberation on this radical departure from the historical effort to assure our citizens of an open and diverse public common. There is no need for a rush to judgment on these matters. Please give them much more deliberation and opportunity for public discussion.

Thank you for entertaining my statement.

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