The Free State Foundation

A Free Market Think Tank For Maryland...Because Ideas Matter

Perspectives from FSF Scholars
November 2006
Vol. 1, No. 8

MEDIA OWNERSHIP--DROP OUTDATED RULES

Randolph J. May/Special to The National Law Journal

November 27, 2006

The Federal Communications Commission (FCC) is once again reviewing its media ownership rules. These are the rules that dictate the extent to which various types of media outlets may be commonly owned. So, for example, one rule prohibits common ownership of a daily newspaper and a radio or television broadcast station in the same community, and another limits the number of commonly owned radio and TV stations in a local market. There are others as well.

The stated purpose of the ownership rules is to promote competition, diversity of viewpoint and the availability of local news and information. These may be worthy public policy objectives. The problem is that the restrictions were adopted between the 1940s and the 1970s, when most people got their news and information from the local newspaper or a few over-the-air broadcast stations-in other words, before cable television, before satellite TV, before wireless networks and, most significantly, before the Internet. Nevertheless, most of the analog-era ownership rules remain in place. They should be substantially relaxed or eliminated to reflect the realities of the diversity of information sources available in today's media marketplace.

There is insufficient space here to recount the tortured history of even the most recent FCC actions and conflicting judicial responses relating to all of the ownership rules. So here I want to focus on the newspaper/broadcast station cross-ownership rule, which was adopted in 1975.

The Telecommunications Act of 1996 requires the FCC to review periodically all its ownership rules to determine whether they "are necessary in the public interest as a result of competition." The agency must "repeal or modify any

regulation it determines to be no longer in the public interest." Applying this standard, in June 2003, the commission concluded that the blanket ban on newspaper/broadcast station cross-ownership was no longer justified. The agency found that because newspapers and broadcast stations do not compete in the same economic market, eliminating the ban could not harm competition. There was evidence demonstrating that the efficiencies from co-ownership actually promoted localism because such commonly owned media outlets produce more and higher quality local news and public affairs programming than noncommonly owned outlets.

Finally, the FCC determined, in light of the array of media outlets available in most media markets today, that the blanket prohibition was not necessary to promote viewpoint diversity. Rather than eliminating the restriction outright, however, as it should have done, the agency devised a complicated diversity index (DI) as a means of measuring the availability of outlets that contribute to viewpoint diversity in local markets. The Internet was included in the DI as a source of local information. Applying the complex DI formula, the FCC barred newspaper/broadcast cross-ownership in smaller markets and allowed some common ownership in larger markets.

Upon review in *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), the court agreed with the FCC that the blanket ban was no longer in the public interest. But it found fault with the DI's application to the newspaper/broadcast rule, especially the inclusion of the Internet as a media outlet for purposes of contributing to viewpoint diversity: "[M]edia outlets have an entirely different character from individual or organizations' websites and thus contribute to viewpoint diversity in an entirely different way. They provide an aggregator function (bringing news/information to one place) as well as a distillation function (making a judgment as to what is interesting, important, entertaining, etc.)."

Diverse viewpoints

Even in 2004 this was a decidedly dated old-media perspective. In any event, today there is no doubt that an almost uncountable number of Web sites and blogs of individuals and organizations offer a diversity of viewpoints on issues, including local ones, not only routinely exposing inaccuracies in reporting by traditional media but performing similar aggregation and distillation functions. The court's refusal to count the Internet as contributing to the diversity of viewpoints exemplifies the increasing disconnect between today's fast-changing competitive media environment and the decades-old ownership regulations.

We are bombarded almost daily with jarring reminders that the existing rules no longer make sense. Just in October we learned that Google Inc. is acquiring, for $1.65 billion, YouTube Inc., a popular site for sharing video content, much of it original. YouTube didn't even exist when the court rejected Internet sites as separate sources of information. NBC Universal announced that it is slashing its

costs at its TV operations to focus more resources on Internet content. And a new batch of reports confirms continuing declines in daily newspaper circulation. The *Los Angeles Times* lost 8% of its daily circulation in the past six months.

While it is past time for the FCC to relax all of its outdated media restrictions, the newspaper/broadcast rule is especially ripe for jettisoning. Indeed, within a short time, there actually might be calls for the government to aid ailing newspaper and broadcast outlets in order to keep them from failing.

That will be another story. For now, the truth is that the American people have never had available such an abundance and diversity of information, including information about local affairs. The government ought to just get out of the way-a stance much more consistent with our First Amendment values-and let the marketplace dictate the ownership arrangements that most efficiently satisfy the very diverse tastes and needs of America's media consumers.

Randolph J. May, an NLJ columnist, is president of The Free State Foundation in Potomac, Md.

The Free State Foundation
10701 Stapleford Hall Dr.,Potomac, MD 20854
Tel. 301-299-3182 Fax: 301-299-5007 E-Mail: rmay@freestatefoundation.org
www.freestatefoundation.org