

New Rules, Old Rhetoric

By MICHAEL K. POWELL

As the debate about media ownership has moved to Congress during the last two months, the tone of the rhetoric has grown increasingly shrill. One member of Congress said the Federal Communications Commission's June 2 decision to modernize media ownership rules would produce "an orgy of mergers and acquisitions," while another said the new rules could create a new generation of Citizen Kanes.

A key portion of the F.C.C.'s decision would allow one company to own broadcast stations reaching up to 45 percent of the national market, an increase from the current cap of 35 percent. Last week the House approved a \$37 billion measure to finance several federal agencies, which also included a provision to restore the 35 percent limit. Yet there is a distressing lack of consensus, and even some basic misunderstandings, over exactly what problem Congress is trying to solve.

There is no doubt that this debate about the role of the media in America is important. It involves not only the core values of the First Amendment, but also issues like how much we value diversity of viewpoints and to what extent the government should promote competition and encourage local control of television.

Whether changing the ownership cap will address these concerns is another question. If the problem is lack of diversity among the media, then the fact is that the United States has the most diverse media marketplace in the world. There are more media outlets, owners, variety and diversity now than at any point in our nation's history. Moreover, our nation's media landscape will not become significantly more concentrated as a result of changes to the F.C.C. rules.

Some say the problem is media concentration, and point out that only five companies control 80 percent of what we see and hear. In reality, those five companies own only 25 percent of more than 300 broadcast, satellite and cable channels, but because of their popularity, 80 percent of the viewing audience chooses to watch them. Popularity is not synonymous with monopoly. A competitive media marketplace must be our fundamental goal, but do we really want government to regulate what is popular?

Others claim that ownership limits are necessary because TV has too much sex or too much violence, is too bland or too provocative. Is television news coverage too liberal, as the National Rifle Association maintains, or too conservative, as critics of networks like Fox say?

The importance of this debate requires accurate facts about the marketplace and clarity from the government about what it is doing. Such an approach helps distinguish legitimate concerns about media concentration from more worrisome efforts to use the government hammer to shape future viewpoints or punish viewpoints expressed in the past.

Much of the pressure to restrict ownership, I fear, is motivated not by worries about concentration, but by a desire to affect content. And some proposals to reduce concentration risk having government promote or suppress particular viewpoints.

The solution proposed by some in Congress is to rescind the ownership cap and restore the status quo. These are the same ownership rules that governed during the time of widespread public discontent with television. It is hard to see how the status quo will produce the results some in Congress say they want.

Keeping the national ownership cap on television stations at 35 percent is also a rule previously struck down by the courts. Moreover, many cable channels — with whom broadcast stations compete for viewers — often reach more than 80 percent of the viewing audience.

Some argue that the cap is necessary to limit concentration. Yet not one of the four major networks (CBS, NBC, ABC or Fox) owns more than 3 percent of the nation's television stations. The national cap is not what is preventing greater concentration.

More critically, the national cap does not limit the number of stations one can own in a local market. Fortunately, the F.C.C. maintains strong local ownership restrictions that limit the number of stations one can own in a single market. It is important to consider the rules comprehensively, as the F.C.C. has done, and not piecemeal.

In any case, the national cap does not limit the number of stations one can own; it limits only the number of people one can reach. If a company owns a handful of stations in populous markets like New York or Los Angeles, it will bump into the cap quickly. But if the stations are in smaller markets, it can own many more.

This oddity is why so-called local affiliate groups own many more stations nationally than the networks. Fox Network, for example, is over the 35 percent cap with 35 stations, but Sinclair Broadcasting is well under the cap (at 14 percent) with 56 stations. One can see why many local broadcast groups support the national cap — it allows them to own more stations than the networks. It does not prevent a company with headquarters in Atlanta from owning stations in Muncie, Ind., no matter what numerical limit is drawn. Such has been the case for decades.

At the same time, the current debate has ignored a disturbing trend the new rules will do much to abate: the movement of high-quality content from free over-the-air broadcast television to cable and satellite.

It is difficult to see exactly how setting a lower cap will improve television. Already, most top sports programming has fled to cable and satellite. Quality prime-time viewing, long the strong suit of free television, has begun to erode, as demonstrated by HBO's 109 Emmy nominations this year. Indeed, for the first time ever, cable surpassed free TV in prime-time viewing share last year. If they can reach more of the market, broadcasters will be able to better compete with cable and satellite.

All of this demonstrates that media ownership is no easy issue. When striving to promote the public interest, we must also honor the values of the First Amendment. That's why, following the 1996 mandate of Congress, the F.C.C. armed itself with the facts and spent an exhaustive amount of time and resources to strike this constitutionally important balance. Let's have a national debate, but let's keep it in focus.

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