

Consumer Advisory Committee

Further Recommendation Regarding 2006 Quadrennial Regulatory Review of the Commission's Media Ownership Rules

The Commission's Consumer Advisory Committee (CAC) recommends that the Federal Communications Commission adopt media ownership rules that create an environment for civic discourse where numerous, independently-owned, institutionally-distinct media outlets are accessible to the public including people with disabilities, responsive to local needs and reflective of diverse socio-economic and cultural points of view.

INTRODUCTION

The Commission's stated goals in reviewing and possibly revising its media ownership rules are to promote localism, competition and diversity. From the earliest days of broadcasting, federal regulation has sought to foster the provision of programming that meets local communities' needs and interests. Thus, the FCC has licensed stations to serve local communities and it has obligated them to serve the needs and interests of their communities. Stations may fulfill this obligation by presenting local news and public affairs programming and by selecting programming based on the particular needs and interests of the station's community. Further, one of the FCC's purposes in retaining the national TV ownership rule has been "to preserve the power of affiliates in bargaining with their networks and thereby allow the affiliates to serve their local communities better."

The FCC has relied on the principle that competitive markets best serve the public because such markets generally result in lower prices, higher output, more choices for buyers, and more technological progress than markets that are less competitive. In general, the intensity of competition in a given market is directly related to the number of independent firms that compete for the patronage of consumers.

Diversity advances the values of the First Amendment, which, as the Supreme Court stated, "rests on the assumption that *the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.*" The FCC has elaborated on the Supreme Court's view, positing that "*the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level.*"

The FCC has considered four aspects of diversity:

- *Viewpoint diversity* ensures that the public has access to "a wide range of diverse and antagonistic opinions and interpretations." The FCC attempts to increase the diversity of viewpoints ultimately received by the public by providing opportunities for varied groups, entities and individuals to participate in the different phases of the broadcast industry
- *Outlet diversity* is the control of media outlets by a variety of independent owners.
- *Source diversity* ensures that the public has access to information and programming from multiple content providers.
- *Program diversity* refers to a variety of programming formats and content.

Since 1973, minority media ownership has been a goal of the Commission's structural ownership regulation. However, recent research shows that 1) Women comprise 51 percent of the entire U.S. population, but own a total of only 67 stations, or 4.97 percent of all stations in the US, 2) Minorities comprise 33 percent of the entire U.S. population, but own a total of only 44 stations, or 3.26 percent of all stations, 3) Hispanics or Latinos comprise 14 percent of the entire U.S. population, but only own a total of 15 stations, or 1.11 percent of all stations, 4) Blacks or African Americans comprise 13 percent of the entire U.S. population but only own a total of 18 stations, or 1.3 percent of all stations, 5) Asians comprise 4 percent of the entire U.S. population but only own a total of 6 stations, or 0.44 percent of all stations, and 6) Non-Hispanic White owners controlled 1,033 stations, or 76.6 percent of the all stations.

Minority ownership is endangered because of the present effects of past discrimination, much of which was practiced with the participation of the Commission itself. Discrimination among advertisers and lack of access to capital also remain systemic impediments to diversity. Unless implemented with caution and wisdom, further consolidation is likely to imperil the prospects for a fully integrated radiofrequency spectrum.

Minority ownership promotes competition by ensuring that all sources of intellectual and creative capital are put to their highest use, and because an integrated industry serves the public better and thus competes more effectively than a segregated industry. Minority ownership promotes diversity because minority owners serve interests and address needs not served or often recognized by most majority media.

RECOMMENDATION

I. Localism, Competition, and Diversity

The CAC reiterates its call that the Commission adopt rules that will promote the core values of localism, competition, and diversity, and that will expand the multiplicity of voices and choices that support our marketplace of ideas and that sustain American democracy and creativity. Specifically, accessibility for people who are disabled – including appropriate quality captioning and video description – should be part of each broadcast station's mandate.

Localism

The CAC recommends that the Commission adopts rules that encourage local ownership of media outlets. In addition, the CAC again calls on the Commission to define the consumer interest obligations of broadcasters so that local communities know what to expect from licensees and that these media outlets disclose their public service in an easily-accessible format.

Competition

As representatives of consumers, the CAC recognizes the benefits of competition to be innovation, better services and lower prices. The CAC recommends that the Commission adopt rules that it can justify with the delivery of these benefits and manifested through increased responsiveness to community needs and increased diversity of programming.

Diversity

The CAC recommends that the Commission adopt rules to promote ownership opportunities for minorities, women, and people with disabilities before it considers other changes to its media ownership rules. Specifically, the CAC asks the Commission to consider six steps to design its structural rules to promote and protect minority ownership:

- 1) **Manage radio spectrum more efficiently -- including modernizing the antiquated FM allotments process -- so as to create opportunities for new entrants to build and operate their own facilities.** There are three ways the Commission could achieve this result:
 - i. The Commission could create two new FM classes: Class A1 (1,500 watts at 100 meters) And Class A2 (1,000 watts at 50 meters).
 - ii. The Commission could perform a comprehensive engineering search of the FM spectrum to identify the most-needed new allotment opportunities.
 - iii. The Commission could replace FM station classes with pure interference-based criteria.
- 2) **Require “Equal Transactional Opportunity”** – analogous to Equal Employment Opportunity – barring discrimination on the basis of race, or gender, in broadcast transactions. The FCC should design a nondiscrimination and modest outreach program in a manner that provides “transactional transparency” and does not disrupt the expectations of station sellers that potential buyers be qualified and observe confidentiality.
- 3) **Build incentives into the rules to reward licensees for trading with, selling to, or incubating socially and economically disadvantaged businesses, including but not limited to minorities, women, and people with disabilities.** For example allowing holders of expiring construction permits to sell the permits to socially and economically disadvantaged businesses, as an alternative to forfeiting the permits entirely.
- 4) **Adopt a Zero Tolerance Policy for ownership structure abuse**, thereby assuring that if new rules are adopted, companies will not push the limits even farther, on a de facto basis, than the Commission wishes to go.
- 5) **Phase new regulations into operation cautiously through a Staged Implementation Plan.** If the Commission changes media ownership rules, the regulations should take effect in a series of logical Stages (i.e., large markets, then medium, then small; or a few percentage points of permissible market power added at each Stage). Before each Stage, the Commission should measure diversity, competition, localism and minority ownership levels, and each deregulatory Stage would take effect only if each of these measurements shows that the factor being measured is healthy. This procedure will ensure that those lacking quick access to capital (particularly minorities) will have sufficient time to reconfigure themselves in order to compete effectively in the new regulatory environment. A Staged Implementation Plan would avoid the market dislocations that often attend sudden deregulation, and it would have the highly desirable effect of allowing the Commission to terminate its current practice of evaluating requests for waivers of its ownership rules.
- 6) **Encourage voluntary industry efforts to assist minority entrepreneurs**, and taking account of these efforts, both in crafting new regulations and in evaluating their impact as they are phased into operation.

II. A Complete Record

The CAC recommends that the Commission compile a complete record, including independent research studies, so that it can make an informed decision. Studies should include updated

analyses of concentration in radio and television markets and accurate analysis of the number, location and type of broadcast stations owned by minorities and women.

The CAC urges the Commission freeze all media ownership rulemaking until a full Inspector General investigation can be performed on recently-disclosed FCC studies concerning media ownership. Further, the CAC recommends expansion of the investigation in order to search for any more suppressed research including the results of a contract worth over \$300,000 with Edison Media Research to analyze local radio content.

III. Full Notice

In July, the CAC recommended that the Commission provide full notice and a significant comment period on the specific proposals, as warranted, so that the public knows what new rules the Commission is considering. Shortly after, the Commission released its current Further Notice of Proposed Rulemaking (FNPRM) in this proceeding. Upon review, the CAC finds the Commission is not being specific enough in its inquiry to generate relevant comments. The CAC recommends the Commission adopt and release another FNPRM with specific proposals concerning the changes to media ownership rules it plans to vote on.

IV. Enforcement

The CAC recommends that the Commission insure that the media ownership rules it does retain or modify are aggressively enforced. The CAC recommends that the Commission clearly state that it will not endorse efforts to evade the spirit of its ownership rules through devices like Local Market Agreements (LMAs) and Joint Services Arrangement (JSAs). An LMA, or time brokerage agreement, is a type of contract in which the licensee of a broadcast station makes available blocks of broadcast time to a broker, who then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. JSAs are agreements for the joint sales of broadcast commercial time. Without effective enforcement these agreements could lead to “virtual duopolies” in markets where such ownership is prohibited.

The CAC also recommends that the Commission ensure and provide clear guidance that requests for ownership rules waivers will be closely scrutinized.

V. CAC Assistance

The CAC offers to assist the Commission with the above recommendations by working with Commission staff to create specific language for the above recommendations.