FCC Ownership Workshop – Remarks of C. Edwin Baker

Note: due to time constraints, my oral testimony will be a somewhat shortened version of these remarks; some of these remarks repeat prior informal comments made to FCC or its staff.

I. Recommendations: The biennium review gives the FCC an opportunity to determine what ownership rules or policies are in the public interest. I suspect that after hearing more, I would conclude that existing rules either are fine or should be strengthened with the aim of increasing source diversity and that the FCC should consider whether additional rules, including routine conditions to be placed on any waivers, would serve the public interest. The place to start evaluation of the rules is with consideration of the values or goals that the rules concerned with ownership should serve. That is my primary topic here but I will also comment on the significance of the Internet for policy in this area and on areas where additional empirical information could be useful.

II. Values: The FCC's traditional policy goals of 'competition, diversity, and localism' are vessels that can be filled or interpreted only on the basis of more basic values. These values justify maintaining the traditional goals, provide for their proper interpretation, and could be added as an further statements of concerns underlying ownership policy. Because of their importance for interpreting and justifying these traditional goals, I will describe here the three underlying values that I believe properly justify restraints on ownership concentration is appropriate.

First is a democratic ***distribution value,*** which provides the single most important reason to favor *dispersal* of ownership and *diversity* in owners' identities. Democracy aims to be responsive to discursively generated public opinion. Like the constitutional one person/one vote standard for elections, true democracy implies as wide as practical a dispersal of power within the public discourse that creates this public opinion. Ownership of multiple media entities contradicts this value.

Policy ought also to aim at *diversity* in the people owning or controlling media entities. All people should be able to find some media owned or controlled by people with whom they can identify. This aim justifies policies such as those that attempt to increase ownership by minorities and women.

Dispersal of ownership may or may not empirically promote diverse content. But more relevant than diverse content is the creation of a fairer, more democratic allocation of communicative power, which is the proper aim policy. This distributive value was probably the single most significant consideration that prompted nearly two million people to write, petition, or email the FCC in opposition to reducing restrictions on concentration. Like the commitment to one person/one vote, this democratic value is not a matter of empirical investigation. Dispersal of power always provides a proper ground for imposing greater limits on media mergers and *any* other policy designed to increase the number of separate owners of media entities. The Supreme Court approved the propriety of essentially this value judgment when it held that strict limits on media cross-ownership were appropriate to prevent an 'undue concentration of economic *power*' in the communications realm. Tradeoffs between this and other well defined values sometimes can be proper but the burden should be on those favoring greater concentration to make a persuasive case that other benefits exist that justify the sacrifice of maximum dispersal.

Second are ***democratic safeguards.*** Any institution, including democracy, is subject to varying forms of failures. The widest possible dispersal of media ownership provides several significant types of democratic safeguards.

Concentrated ownership creates the possibility of an individual decision-maker exercising enormous unchecked, undemocratic, potentially demagogic power in whatever local, state, or national community the concentration exists. Even if this power is seldom exercised, no democracy should risk the danger. Dispersal of media ownership is the structural method to prevent this potential anti-democratic 'Berlusconi' effect. Like separation of powers in government, this value is not a commodity to be bought by individual consumers in a market but a safeguard of a proper process of governing.

Dispersal of ownership also increases safety by increasing the number of ultimate decision makers who have the power to commit journalistic resources to exposing government or corporate corruption or identifying other societal problems. Rather than argue whether the goal ought to be to create four or eight significant voices, 35 years ago the FCC, echoing the Supreme Court judgment noted above, explained:

> 'A proper objective is the maximum diversity of ownership... We are of the view that 60 different licensees are more desirable than 50, and even that 51 are more desirable than 50.... It might be the 51st licensee that would become the communication channel for a solution to a severe social crisis.'

Third are concerns with ***media quality***. A largely economic argument related to an unregulated market's predictable radical inability to produce the media that people want underlies this third point. I have written about but will not dwell on here various relatively complicated reasons for this about which. Note, however, two important facts for initial support of this failure and then consider why dispersal of ownership can be expected to at least marginally improve results.

(i) One reason media entities fail to provide what people want relates to the media's products' capacity and tendency to produce rather huge externalities, both positive and negative, with the result that those that produce positive externalities are overpriced and under-produced (from the perspective of what people want), with the opposite true of those producing negative externalities. For example, a high quality journalistic unit can produce high quality reportage and analysis that exposes corruption and causes corrective responses. Those benefits, however, go equally to the many non-media consumers and to that extent do not generate revenue for the media entity. The result is that the entity has too little profit-based incentive to produce good journalism that produces value for people. Even more dramatically, a high quality journalistic unit's reputation for exposing corruption or incompetence creates incentives for better government performance, which is a huge benefit to media consumers and non-consumers alike without providing any story for the media to sell – a huge positive externality.

(ii) Successful media entities tend to have particularly high *potential* operating profits. Here, I emphasize that 'operating profits' is the relevant factor, not the losses created by the debt often created by misconceived mergers or buyouts that has recently caused many bankruptcies.

Given potentially huge positive externalities and potentially high operating profits, the policy goal ought to be to get ownership into the hands of the categories of people most likely to devote a larger portion of the media entities' potentially high operating profits to providing better journalistic products rather than trying to maximize actual income from operations. Though the concepts are separate, quality journalism roughly equates with content likely to have high positive and relatively less negative externalities. The goal is that the aim of pursuing good journalism should override, at least to a degree, a bottom line focus. Sociologically, both high and mid-level executives of publicly traded large media companies predictably measure their success and are rewarded largely based on the profits they produce. In contrast, smaller, more local, more family based entities often identify with the quality of their journalistic efforts and their service to their communities.

Structurally, the undesirable focus on profit-maximization is exacerbated by mergers. The high bidder in a purchase is the party most willing and able to capitalize potential profits of the purchased entity. But its high bid locks it into needing to maximize profits. In contrast, the original owner not saddled with the high debt created by the purchase can choose to forgo some potential income to provide better quality products – employ more journalists and provide more investigative journalism and more hard news. Thus, the policy goal ought to be to reduce turn-over of media properties and, if mergers occur, to develop devices that favor purchases by other than the higher bidders and/or that impose conditions about devoting revenue to journalistic or other content efforts.

A final point relates to the default position or placement of the burden of argument in considering the choice between policies that predictably either increase or decrease media concentration. The point is subtle and must be put somewhat delicately. The ideal legal regime involving the media is inevitably debatable. However, if the country allows a few media entities to become too powerful in their capacity to mold public opinion or in lobbying power, the likelihood diminishes that subsequent debates and legislative decisions will reflect members of Congress or policymakers informed and thoughtful evaluation of the public interest. Rather, it becomes increasing likely that the economic interests (or ideological interests, as we have seen in Italy) of these huge media corporations will largely control the political debate and legislative outcomes.

III. *Implications of values for interpreting goals of competition, diversity, and localism*

The democratic distribution, democratic safeguard and the quality media values suggest the possibility of adding to the goals of media regulatory policy an explicit statement that it should serve democracy and promote quality content. In any event, these values should influence the interpretation of the traditional goals as follows:

Competition. Economic theory predicts that for some products (or industries) the same level of competition will eliminate firms' excessive power to act at the expense of consumer interests in relation either to profits or to products offered but that for certain types of products (or industries), which include media products, these two come apart. That is, in the media realm, the level of competition that eliminates a firm's power over price does not eliminate its power over content. For this reason, the law should prevent concentrated market power for standard antitrust reasons related to power over price and monopoly profits but the FCC should also reduce concentration further out of democratic concerns related to concentrated power in the realm of opinion formation.

Diversity. Different types of diversity exist. The democratic distributional value, the democratic safeguard value, and quality value mandate an emphasis on so-called ***source diversity*** in the form of greater dispersal of ownership and the importance of emphasizing different types of owners, for example, female or minority owners. For similar reasons, policy should favor inclusion of owners representing diverse organizational structures, for example, by non-profits, unions, workers broadly conceived (integration of ownership/ management/ employment), and low profit corporations (lpc).

Policy should understand ***content diversity*** not in quantitative terms but rather in product quality associated with positive externalities that, by definition, the market under-produces. That might mean imposing enforceable revenue percentage commitments to journalism, maybe while allowing buyouts of journalistic obligation if but only if the media entity makes the payments to other stations or other enterprises that will use the payments for this type of content.

On the other hand, the goal should not be ***viewpoint diversity*** per se. As a quantitative matter, no one thinks that a meeting of scientists is improved by assuring representation of the flat earth view even though its inclusion increases quantitative viewpoint diversity. Rather the goal should be non-suppression of the viewpoint diversity that actually exists in society, to reduce any risk that viewpoints that exist will be subject to suppression, and to develop quality information relevant to these views. These non-suppression and quality concerns are generally well served by precisely the policies aimed at the more obvious goal of source diversity.

Localism. Both the democratic and quality values suggest that localism should aim to assure local news and cultural content. Because of local ownership's likely greater responsiveness to demands for quality and because of its tendency to create a wider distribution of voice, it should be an independent aim. That is, whether or not empirically correlated, local content and local ownership should be independent policy aims.

IV. ***Relevance of the Internet***. Though the Internet is having profound effects on politics and cultural, most of these are not particularly relevant for media ownership policy. I suggest here two effects that do have implications, implications easily missed in policy thought, and one feature that, though often emphasized, should have little relevance.

First, the Internet creates a distribution mechanism that may make local media less important for providing access to societal wide or distant sources of information. To the extent this is true in respect to actual public usage – usage, not availability, is the socially relevant concern – use of the Internet may justify increased emphasis on local broadcast stations' role in producing local news and providing access to local culture, thus increasing importance of localism in content as a goal.

Second, advertising expenditures are likely a roughly fixed total. Huge advertising on Internet searches as well as social networks are taking away advertising revenue that historically supported broadcast stations and newspapers' professional content production, thereby threatening journalism generally and local journalism in particular. This feature justifies FCC policies that emphasize stations' journalistic and democratic roles.

Finally, though the Internet makes everyone a potential publisher, most bloggers reach a smaller audience than the blogger historically would have reached if she went to the town square and passed out leaflets. The democratic distributional value concerns communicative *power – audience share* – not mere voice that, absent censorship, always exists but that before and still with the Internet is heard by few. Moreover, the democratic values require publishers with adequate resources to produce quality content. The Internet's capacity to allow everyone to publish in no way assures either the democratic dispersal of communicative power or the quality journalism that serve the media's democratic roles.

Thus, the two relevant research questions related to the Internet are: how does it affect the economic structural support for the journalistic (or cultural creation) role; and how does it affect the actual dispersion of audience shares. If a few corporate entities directly (or indirectly, e.g., due to stripping and recirculation of their content) control most of the audience share for news, the Internet may have increased rather than eliminated relevant media concentration.

V. Study Issues.

Empirical evidence is largely irrelevant for some reasons adequate to justify restricting ownership concentration. Without more, the democratic distributional value justifies severe limits. Only sensitive judgment can justify finding it occasionally outweighed if higher concentration clearly provides benefits. Empirical evidence has greater relevance for the concern with quality. Better theoretical modeling or better empirical data could cast light here. This suggests the following research questions:

Relating to cross-ownership of newspaper and broadcast station:
A major value of prohibiting cross-ownership is dispersal of media power. But its effect on media quality is also important. The prediction should be that cross-ownership of two journalistic units in a community will improve the quality of weaker journalistic unit, presumably the broadcaster (and also for predictable reasons that a purchased broadcaster will be of or will become the best broadcast journalistic unit because of synergies of specializing in news and of its access to the newspaper's product). But assuming this is true does not mean that allowing cross-ownership will improve journalism in the community. Rather the issue should be its affect on journalism in the community as a whole as well on the concentration of journalistic power. Thus, the research questions should include: i) the effect of cross-ownership on competitor journalistic units; ii) cross-ownership's effect on the stronger, more important news unit, presumably the paper.

Thus, it would be interesting to see:

1) Does cross-ownership create competition that causes other broadcasters to expand commitment to news (a benefit) or does it dominate such that other broadcasters decrease their emphasis on journalism?

2) Does cross ownership increase or decrease the commitment to news or journalism of the cross-owned entity.

Data relevant for these two questions might include:

-cross-ownership's effect on overall employment of journalists in area, e.g., more or less than in similar city without cross-ownership
-its effect on competition in journalism, e.g., is the second or third best broadcaster (in terms of quality ranking or resource commitment to news) better with or without cross-ownership
-its effect on journalistic employment or total journalistic salaries of newspaper and the area's top broadcaster higher as compared to these two entities in communities without cross-ownership. Policy should favor more employment and expenditures on journalism.
-cross-ownership's effect on the quality of the newspaper.

Relating to concentration in general:
Holding other factors constant:

3) Which ownership structures (e.g., entities owning more or less broadcast stations, entities that are or are not publicly traded, entities owned by profit-oriented corporations as compared to units owned by non-profit entities of varying sorts, entities with non-local versus local owners) devote higher portions of revenue to journalism or public affairs
4) same question as (3) but comparing number of employees in entities' news or public affair division
5) same question as (3) but comparing resources devoted to producing all local content including local cultural content

The policy judgment is that more employees and revenue devoted to journalism and local content should count as a reason to favor that structure.

Relating to waivers:
As a policy matter, the FCC should consider imposing commitments when and if granting waivers to ownership limits – e.g., requiring the merged units' editorial independence and its devotion of resources to local content and to news and public affairs. Thus, research should consider:

> 6) What is the experience in the US and other countries as to whether and when commitments are effective in the long term. Investigate ways/condition under which commitments have been/ could be made more effective – e.g., structural provisions and/or giving rights to sue to various stake holders as well as to complain to initiate agency enforcement.

Relating to digital realm:

> 7) Determine concentration, in terms of audience share, among entities providing online content in general and among those providing online news or journalistic content in particular;
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> 8) Make some assessment of the journalistic budget of those Internet news or journalistic content producers that are independent of traditional media entities; determine to what extent are these resource commitments making up for the recent decline in resources committed to journalism by traditional media.

Relating to ownership structures:

> 9) What is the experience with ownership by non-traditional owners, e.g., various forms of associations, foundations, or non-profit entities. This research is relevant to question of whether these forms should be favored in some way.

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