Consumer Access to Video and Audio Information Sources: Trends and Policy Implications

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Introduction

Do individuals have access to more sources of news, information, and entertainment from their homes, cars, or workplaces now than 20 years ago? Is there a crisis impending due to the perception of increased consolidation of the media industry? Are the proposed rules of the Federal Communications Commission for lessening broadcast station ownership limits a reasonable response to court rulings and the changing media landscape or a threat to diversity of viewpoints and to democracy in the United States?

This paper addresses these issues. It seeks to assess whether media consumers in the U.S. are better able to find the variety of news, entertainment, and information that we want and need, from more sources, with reasonable cost, than a generation or more ago, when presumably the media were less concentrated and, by inference, "better." [1]

The subject of media ownership trends is as timely in 2005 as it was in 1978, when the Federal Trade Commission held a two-day public symposium as part of its inquiry into the consequences of the mergers in the print media – growing newspaper chains, book publisher combinations, and magazine acquisitions.[2] Throughout the 1980s and 1990s, various federal agencies have been called on to pass judgment on dozens of proposed mergers and acquisitions.[3] Congress weighed in with specific orders to the FCC to eliminate many ownership restrictions on radio and television broadcasters.[4] And in 2003, the FCC issued new rules on radio and broadcast television ownership limits. Implementation of those rules was stayed by various appellate courts.[5] Thus, the subjects remain current, contentious, and dynamic.

In order to better understand the media consolidation debate, it is necessary to examine data from a relevant point in the past and compare data from the present to determine whether consumers of media (in this study television and radio) have more or less access to more or less information from more or fewer sources.

It is regularly contended that "five large corporations" control 80 percent of the prime time television audience"[6] and thus control how and what information people have access to. On the other hand, the rise of

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[1] 25 years is a convenient period. Though admittedly somewhat arbitrary, it does takes us back to the time just before cable reached most large cities, the effects of satellites were widespread other than for telecommunications, and just on the cusp of the personal computer. Certainly if we looked back 100 years one would not need much research to state flatly that there was less access to information.

[2] Federal Trade Commission, Bureau of Competition, *Proceedings of the Symposium on Media Concentration*, 2 vols. (Washington, DC: Government Printing Office, 1978).

[3] Benjamin M. Compaine and Douglas Gomery, Who Owns the Media? Competition and Concentration in the Mass Media Industry, 3rd ed. (Mahwah, NJ: Lawrence Erlbaum Associates, Publishers, 2000), p. 571.

[4] U.S. Congress, Telecommunications Act of 1996, Sec 202. Available at http://www.fcc.gov/Reports/tcom1996.pdf.

[5] "Media Ownership Policy Reexamination," Federal Communications Commission, accessed Sept. 9, 2004 at http://www.fcc.gov/ownership/Welcome.html.

[6] I have seen the 5 companies = 80% content figure bandied about. In this case the source is David Hatch, "Media Ownership," *CQ Research*, Oct 10, 2003, p. 845. However, Hatch cites back to Marc Fisher, "Sounds Familiar For a Reason," The Washington Post, May 18, 2003, Outlook Section. Accessed July 16, 2004 at http://www.highbeam.com/library/doc3.asp?DOCID=1P1:73985312&num=1&ctrlInfo=Round6%3AProd%3ASR%3AResult&ao=. This article, however, says that five companies "boast 75 percent of primetime TV viewers" which is at odds with the 80% figure of Hatch. Either way, this figure represents the share of the TV audience at that moment. It ignores the 40% of households that may be using other media (reading books, listening to CDs, etc.) or using no media. And it measures households, not people.

new communications technology, coupled with new producers of information, may have fragmented the overall mass audience once captured by the old mass media.

The rapid growth of new technologies as distribution channels for both old and new information forces us to review what we know about media competition, what we think we know, and whether ownership really matters given the expansive reach of the new channels. An examination of media economics, media metrics, and media competition for traditional television and radio programming compared with the new distribution channels of the Internet (via satellite, cable modem service, digital subscriber lines, fiber optics, etc.) shows that the distinctions between "old" and "new" media are already blurring and are providing increasing opportunities for choices by consumers.

The relevant issue then becomes how does one reconcile the notion of less competition with the reality of great consumer choice and options?

What is Known About Media Competition?

In 1982 it was already clear that the blurring of the boundaries among the traditional media would create unsettled boundaries among previously well-defined technology-defined media products and services:

> Computers and connected terminals in homes and offices increasingly allow users to *select* the information they wish to receive, at precisely the time they wish to use it. Computers have made it economically feasible to mail identical, "personalized" messages to millions of recipients using the postal system that at one time was reserved for point-to-point communication. The telephone can give countless users almost simultaneous access to the same computer data base. The telephone and computer are also being combined to provide "electronic mail," perhaps doing for mail what the Xerox machine did for memos. Video and audio cassette recording devices allow individuals to record broadcast programs for replay at a time of their own choosing.[7]

Less than 20 years later the online "Drudge Report" received a greater viewership than the weekly circulation of *Time* magazine.[8] In 2003, the three dominant commercial broadcast television networks – ABC, CBS, and NBC – claimed only two-thirds the prime time rating they held in their heyday of the 1960s and 1970s.[9] Meanwhile, by June 2003, nearly 85% of households got their television signal from a cable or satellite service instead of from terrestrial broadcast signals.[10] Radio stations, limited by licenses allocated by the Federal Communications Commission, are sharing their audiences with unregulated Internet-only "radio" stations as well as national satellite-distributed radio services. And the Internet itself, originally accessed via pokey conventional telephone lines, is increasingly accessed by much faster connections not only from the telephone companies but by cable and satellite providers as well.

Between the mid-1980s and the end of the following decade the media industry in aggregate grew faster than the U.S. economy, rising from under 10% of GDP in 1987 to nearly 13% by 1996.[11]

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[7] Benjamin M. Compaine, et al, Who Owns the Media? Concentration of Ownership in the Mass Communications Industry, 2nd ed. (White Plains, NY: Knowledge Industry Publications, Inc., 1982), p. 3.
[8] Matt Drudge, "Anyone with a Modem Can Report to the World," transcript of speech to The National Press Club, Washington, DC, June 2, 1998. Accessed May 5, 1999 at http://www.frontpagemag.com/archives/drudge/drudge.htm.
[9] Tom Wolzien and Mark Mackenzie, "TV Ratings Study: Viacom, Disney Up Across Ad-Based Networks; Surprising Warning Signs for TWX's HBO," Bernstein Research Call, January 28, 2004, p. 2.
[10] "In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming," MB Docket No. 03-172, Tenth Annual Report, FCC 04-5, Released January 28, 2004 at pp. 4-5.
[11] Derrick Huang, "Size and Growth Trends in the Information Industries, 1987-1996," Chapter 11 in B. Compaine and W. Read, eds., The Information Resources Policy Handbook (Cambridge, MA: The MIT Press, 1999), pp. 347-361.

What Is Said About Media Competition

In this context, however, a debate rages whether the media industry has become more concentrated.[12] Actually, there is less a debate than an explicit assumption that ownership in the media industry has become more concentrated despite the new technologies and industries that have joined the older print, and broadcast and motion picture sectors.[13] Media critic Robert McChesney sums up a widely held perception: "Over the past two decades, as a result of neoliberal deregulation and new communication technologies, the media systems across the world have undergone a startling transformation. There are now fewer and larger companies controlling more and more, and the largest of them are media conglomerates, with vast empires that cover numerous media industries."[14]

A similar viewpoint is voiced by Stanford law professor and FCC critic Lawrence Lessig who decries an era "when fewer and fewer control access to media."[15] Sen. Byron L. Dorgan (D-N.D.) said rules proposed by the FCC would lead to "galloping concentration" in the media industry.[16] Five conglomerates, we are told, "control most prime time TV programming and one company…dominates radio."[17] Those in the "creative community" of packagers, directors, writers for television, etc. complain that "these conglomerates strongly favor their own in-house production when ordering new shows, whether their shows are better or not."[18]

"Yet, in the paradox of today's media landscape," observes a *Congressional Quarterly* research report, is that "consumers have more choices than ever."[19]

How then does one reconcile, if at all, the apparent paradox of "few and fewer" resulting in "more choices?" On the one hand, the number of owners of television stations has declined from 540 to 360 since the 1970s, while the number of companies owning daily newspapers declined to 300 from 860.[20] Yet even these reduced numbers would seem not to support the assertion of being "close to a monopoly or oligopoly situation" proclaimed by a FCC Commissioner.[21] And what is the disconnect between the concern of Pat Mitchell, chief executive of the Public Broadcasting Service that "The American public seems less informed than ever"[22] with the reality of the change from 1980 with 30 minutes per night of prime time

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[12] See, for example, www.opendemocracy.net, [compaine-mcchesney].
[13] For example: "Today, a remarkable number of leading Americans of all political and ideological stripes are joining that call, expressing grave concerns about the harmful effects of media concentration on our nation's democracy and culture." Jonathan Rintels, Reply Comments of the Center for the Creative Community Regarding Competition and Media Concentration in the Television Industry, In the matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277, Feb 3, 2003, p.1; or "The news industry in America is already far down the road to media concentration—too far, in our view." "The troubling arc of media concentration," *The Seattle Times*, March 31, 2004, Accessed and filed April 1, 2004.
[14] "Policing the thinkable," www.OpenDemocracy.net, Accessed July 21, 2004 at http://www.opendemocracy.net/debates/article-8-24-56.jsp.
[15] Larry Lessig, "Lessig Blog," October 20, 2003. Accessed July 13, 2004 at http://www.lessig.org/blog/archives/cat_mediacon.shtml.
[16] Frank Ahrens, "Senate Votes to Block FCC Media Rules," *The Washington Post*, Sept. 17, 2003, p. A1.
[17] David Hatch, "Media Ownership," *CQ Research*, Oct. 10, 2003, p. 845.
[18] Jonathan Rintels, "Comments Of The Center For the Creative Community Regarding Competition and Media Concentration In the Television Industry," In the matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277, January 2, 2003, p. 4
[19] Hatch, "Media Ownership," p. 845.
[20] Hatch, "Media Ownership," p. 847.
[21] Ibid.
[22] Ibid., p. 852.

news from each of three national networks to 24 x 7 news shows from three additional national networks in 2004?

As suggested just above, the critics of current trends in media structure have two related arguments. One, typified by Dorgan and Lessig, focus on consolidation as purportedly leading to a reduction in diversity of content. Bagdikian seems to have best articulated this concern in writing that "our view of the social-political world is deficient" if there is a regular omission or insufficient inclusion of certain elements of reality. And that is happening, he believes, when "the most important institutions in the production of our view of the real social world," the mass media, are becoming "the property of the most persistent beneficiaries" of the mass media's biases.[23] Another stream of concern, typified by McChesney and Mitchell, among many others, is that it is the quality and/or ideology of the content of the media companies that is most disturbing. Less often cited is the argument presented in antitrust terms; that is, that media mergers in general could be driving up the cost for advertisers and/or consumers.

Approach of this Study

The debate on media competition constantly keeps returning to television, and to a lesser extent, radio. Newspapers, motions pictures, book and magazine publishing, the multi-dimensional Internet—all also are part of the media competition landscape. But whenever policymakers or critics start a media ownership discussion, the focus always seems to end up back on television and radio broadcasting. There is some rationale to this obsession. The largest circulation newspaper, *USA Today*, sells 2.3 million copies on a typical weekday, with readership of perhaps 5.6 million.[24] The broadcast network with the lowest evening news show rating, CBS, has 6.8 million viewers.[25] A single episode of a moderately successful prime time TV series is seen that night by more people than the cumulative sales of a book on the fiction best seller list.[26] Paradoxically, most people live in places that have only one or two local daily newspapers, but three or more locally based and separately owned television stations and a dozen or more separate owners of local radio stations. Thus, this study looks particularly at television and radio. Further it considers any mode of transmission—traditional terrestrial broadcast, satellite or cable—in its approach to these media. Finally the study incorporates the Internet to the extent that it too is a relevant conduit for connecting users with video and audio content.

Much of the data presented in this study includes raw secondary data that has been newly aggregated and analyzed in the context of the implications of media ownership structure. The primary question that this paper seeks to address is: "Do consumers across the United States have greater or fewer choices for sources of video and audio content than two decades previously?" Twenty years prior to 2005 presents a time of three commercial television networks that characterized the national television landscape since advent of television and just about the time the major cities were wired for cable. The ensuing discussion will address why this matter of choice—rather than actual viewership or listenership—is the relevant operational question for judging the policy implications of media structure and regulation.

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[23] Ben H. Bagdikian, The Media Monopoly, 4th ed. (Boston: Beacon Press, 1992), p. xxiv.
[24] Craig Moon, "Mid-Year Review Presentation," June 22, 2004. Accessed July 16, 2004 at http://www.gannett.com/go/press/mymr04/mymrcm04.htm.
[25] "Evening news ratings race heating up," CNN.com, June 3, 2004, Accessed July 16, 2004 at http://www.cnn.com/2004/SHOWBIZ/TV/06/03/nielsens.ap/.
[26] Ibid. For the Week of May 24-30, 2004, the 10th rated show, "Still Standing," on CBS had 12.1 million viewers. The biggest selling fiction book of 2003 was Harry Potter and the Order of the Phoenix. It sold 11 million copies in the U.S. from its publication in June through November. "Harry Potter Sales Reach 250 Million," *Book Publishing Report*, Dec. 3, 2003. Accessed (by subscription) July 16, 2004 at http://www.highbeam.com/library/doc3.asp?docid=1P1:89464398.

Old Metrics and New

The metrics typically used to address media competition have included traditional antitrust measures such as revenue of the largest four or eight firms in a sector and the Herfindahl-Hirschmann Index, a somewhat more fine-tuned measure also based on revenue. The percentage of circulation of newspapers, the number of publications owned, the advertising share of radio stations, or the number of journals in a discipline, are other common measures. They have been used not only to address economic power -- or lack thereof -- but by extension, the range of potential editorial and cultural diversity that many competing owners are presumed to encourage.

The notion of diversity of political opinion lay behind the press freedom clause of the First Amendment. The fear at the time of the Founding Fathers was that only government might have the power to limit that diversity.[27] But today, there is concern in some quarters that the range of opinions to which the public has access is being limited by large media conglomerates.

"Diversity" has been the overall goal of much broadcast regulation. "In setting its licensing policies, the [Federal Communications] Commission has acted on the theory that diversification of mass media ownership serves the public interest by promoting diversity of programming and service viewpoints."[28] Preventing undue concentration of economic power has also been served by the FCC's ownership policies. But over the years the contentious policy issues have been most concerned with "diversity."

Diversity and how it can be objectively measured has never been well established. Competition and localism have been thought to foster diversity. But neither policy has been proven to guarantee diversity of content. Often, diversity has inferred a "higher quality" than the prevailing standard, particularly in television. Take this slightly edited comment by a media critic:

> You will see [on television] a procession of game shows, violence, audience participation shows, formula comedies…blood and thunder, mayhem, violence, sadism, murder, western bad men, western good men, private eyes, gangsters…and cartoons…And most of all, boredom. True, you will see a few things you will enjoy. But they will be very, very few.[29]

This critic's list of program genres suggests that television programming was quite varied: game shows, comedies, westerns, audience involvement shows, detective stories, cartoons. This despite the time frame, 1961. The critic, Newton Minow, then Chairman of the FCC, however, let on that most of it bored him. The mass audience at the time may have disagreed.

The time period of the diversity reference is important. In 2003, an FCC commissioner held that the FCC's media ownership rules are "about the ability of a very small number of companies to control [the content of] our media. To dictate what the entertainment is going to be, to dictate what the civic dialog is going to

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[27] "The way to prevent these irregular interpositions of the people is to give them full information of their affairs thro' the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter." Thomas Jefferson in a letter to Edward Carrington, January 16, 1787. "The Founders' Constitution" Volume 5, Amendment I (Speech and Press), Document 8 Accessed August 2, 2004 at http://press-pubs.uchicago.edu/founders/documents/amendI_speechs8.html . The University of Chicago Press.

[28] Morton Hamburg and Stuart Brotman, Communications Law and Practice (New York: Law Journals Seminars—Press, 1996), p. 3-11. See also *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 780, 98 S.Ct. 2096, 56 L.Ed.2d 697 (1978).

[29] Newton N. Minow, "Television and the Public Interest," Speech, Washington, DC May 9, 1961. Accessed Aug. 2, 2004 at http://www.americanrhetoric.com/speeches/newtonminow.htm.

be, to dictate that we'll no longer have as much…diversity as we had *before*."[30] [emphasis added]. The reference point of "before" could refer to the period of Commissioner Minow's era of quite varied if boring programming, or some other "before" which needs to be identified in order to compare with "after."

Perhaps the FCC's more ambitious regulations to foster diversity and localism ended with at best mixed results in the mid-1990s, having had a 25-year run without achieving their goal. These were the frequently paired policies codified as the Prime Time Access Rule (PTAR) and the Financial Interest and Syndication Rule (Fin-Syn). Combined, these regulations were intended to lessen the role of the three networks by limiting the hours of programming they could supply individual stations during the prime time viewing period and prohibiting them from having an ownership stake in most prime time entertainment programming.[31] The expectation–or hope–was that local stations would fill their non-network time slots with local programming and that independent producers would be providing higher quality programs than the networks had been broadcasting.

These regulations are credited with helping to foster the growth of powerful financially strong production companies and syndicators (King World Productions, Viacom, and Lorimar among them).[32] They may have helped along independent television stations in the 1970s by making a steady supply of old network re-runs available. They also aided the major Hollywood movie studios to become prominent players in television production.[33] But none of these outcomes substantially improved the quality or diversity of content on television.

By the 1980s it was already evident to many that such enforced attempts at diversity were ineffective or even counter productive. Based on a staff study issued in 1980, the FCC in 1983 had signaled its intention to repeal the rules.[34] Congressional pressure squashed such a policy change. Eventually, the U.S. Court of Appeals, in *Schurz Communications, Inc., v. FCC* (1992) told the FCC that the Financial Interest and Syndication rules could no longer be justified and they soon were repealed, along with PTAR.[35]

There are empirical studies that make a strong case that simply having more sources of programming does not create diversity in programming. There is strong empirical evidence that it was the waiver, and ultimate elimination, of these rules that permitted vertical integration in production and distribution, which created the economic model that brought about the fourth and subsequent broadcast networks that television's harshest critics had long sought.

An academic study by Einstein[36] measured diversity as the number of different genres of content (situation comedies, musicals, variety shows, news, documentaries, reality, and so on). Figure 1 shows that diversity (higher values) decreased in the years after the initiation of the Fin-Syn and PTAR rules and increased substantially within several years of the end of the rules. Figure 2 further shows that the three networks tended to have the same programming types–less diversity–at any given time slot during the years that the policies were in effect than before or since.

Finally, "Although many media critics have decried the consolidation of the media industry because of its negative effects on diversity, this research just does not support that theory."[37] The study did find that the sources of programming for all the current broadcast networks have greatly consolidated since the Fin-Syn

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[30] Hatch, "Media Ownership," p. 847.
[31] Hamburg and Brotman, Communications Law, pp. 3-27--3-30.
[32] James Walker and Douglas Ferguson, The Broadcast Television Industry, (Boston: Allyn and Bacon, 1998), p 80.
[33] Ibid, pp. 79-80.
[34] *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043 (7th Cir. 1992), in Thomas G. Krattenmaker, Telecommunications Law and Policy, 2nd ed. (Durham, NC: Carolina Academic Press, 1998), p. 300.
[35] Ibid, pp. 298-306.
[36] Mara Einstein, "The Financial Interest and Syndication Rules and Changes in Program Diversity," Journal of Media Economics, 17(1), pp. 1–18.
[37] Ibid.

rules ended. However, this consolidation has been taking place in the context of the trends seen in Figures 1 and 2–an increase in diversity from the levels when there were far more players supplying programming. On the other hand, diversity, as seen in Figure 1, has not reached the level of the 1960s. The new equilibrium—for traditional broadcast networks–has been less diversity. Einstein's study confirmed what others had found: despite more outlets, diversity of genres has actually declined.[38] However, it notes that diversity does not increase if the sources creating programming increase[39] nor when the number of outlets increases.[40] It is the economic model of selling TV advertising that pushes programmers to genres that attract large audiences that matters.

There also remains an inherent vagueness about measuring diversity. Einstein admits that measuring diversity as it has often been done–by the variety of genres–does not capture much of what is often imputed by the term. Einstein concludes that the predominant measures do little to inform us of whether there is truly a multiplicity of viewpoints:

> For example, although "All in the Family" and "Suddenly Susan" are both situation comedies, they do not present the same political point of view. The other issue with the methodology is that no one has defined diversity. This particularly becomes an issue when examining the full palette of programming available for the majority of viewers, that is, viewers who get cable or DBS, which represents more than 80% of the country. For instance, if you have a Spanish language channel on cable, is that in and of itself diverse? Much of the programming is similar to formats on English-language channels, so that may not be so. What about something like the Golf Channel? It is simply 24 hours of sports, a format that has existed since the Wednesday Night Fights in the 1950s.[41]

Indeed, by this measure of diversity, the two leading all-news networks, CNN and Fox News Channel, are both in the news and information genre and would not be seen as creating any diversity. Yet for those truly seeking diversity on television CNN and Fox News are widely perceived as having distinct voices.

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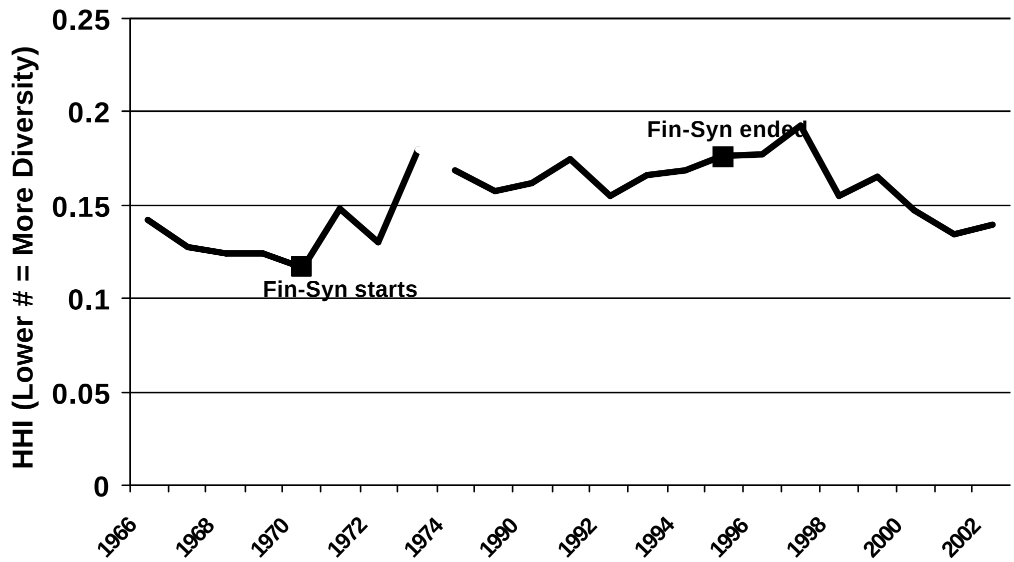
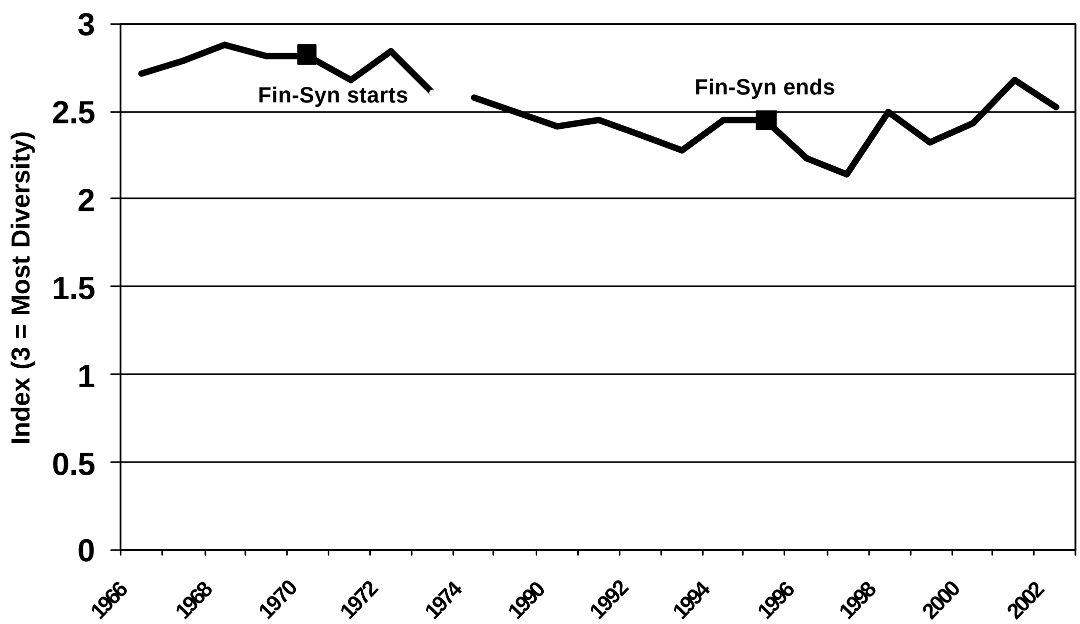
[38] Mara Einstein, "Broadcast Network Television, 1955–2003: The Pursuit of Advertising and the Decline of Diversity," The Journal of Media Economics, 17(2) pp. 145–155.
[39] P. M. Napoli, "Deconstructing the Diversity Principle," Journal of Communication, 1999, 49(4) pp. 7–34.
[40] A. S. De Jong, & B. J. Bates, "Channel Diversity in Cable Television." Journal of Broadcasting & Electronic Media, 35, (1991) pp. 159–166.
[41] Einstein, "Broadcast Network Television," pp. 153-154.

Figure 1
Network Program Diversity Pre/Post Fin-Syn



Source: Einstein, n. 31, Table 1.

Figure 2
Network Program Diversity Across Time Slots Pre/Post Fin-Syn



Source: Einstein, n. 31, Table 2

Does Ownership Matter?

The academic research that has been reported does not support the contention that media ownership by chains or conglomerates leads to any consistent pattern of lowered standards, content, or performance when compared with media owned by families or small companies. For example, a review of 17 studies concluded that there were few differences in the editorial page slant of newspapers owned by groups and those that were independent.[42] On the other hand, editors of chain-owned newspapers were found to have greater editorial latitude in determining editorial policy than those at family-owned newspapers. Put another way, publishers of family-owned newspapers exert greater editorial control over the editorial process than at group-owned publishers.[43] While publicly owned newspaper chains may be more focused on profitability than those that are family controlled, they are less likely to have an ideological agenda they want to promote. The overall consistency of studies show that large group, corporate, and public ownership have had a neutral to positive effect on the editorial side of newspapers.[44]

The findings in video programming are along the same lines. To what extent do commonly owned newspapers and television stations in a community speak with a single voice about important political matters? One study looks at coverage of the 2000 Presidential campaign in 10 communities where a local television station owned a local newspaper. The finding was, for the markets studied, "common ownership of a newspaper and a television station in a community does not result in a predictable pattern of news coverage and commentary about important political events in the commonly owned outlets."[45]

Ownership Does *Matter*

One of the most thorough studies of the role of ownership was a five-year study by the Project for Excellence in Journalism. It looked specifically at television news at the local station level. As most broadcast television programming at local stations comes from the networks–ABC, CBS, NBC, Fox, WB, UPN, and Pax—the one area for decisions about original programming at the local station level comes in the form of the local news shows.

The Project for Excellence in Journalism study confirms that ownership does matter, but not always in ways that support conventional hypotheses. The study attempted to create objective measures of "quality" and then used a content analysis to apply these to 23,000 stories in 172 news programs over five years. "Taken together, the findings suggest the question of media ownership [as it affects local television news] is more complex than some advocates of both sides of the deregulatory debate imagine."[46] Among the study's findings:

- Stations with cross-ownership—in which the parent company also owns a newspaper in the same market—tended to produce higher quality newscasts.
- Ownership type made no measurable difference in terms of the diversity of people depicted in the news and little difference in the range of topics a station covered. In general, there is striking uniformity across the country in what local television stations define as news.[47]

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[42] Benjamin M. Compaine and Douglas Gomery, Who Owns the Media: Competition and Concentration in the Mass Media Industry, 3rd ed., (Mahwah, NJ: Lawrence Erlbaun Associates, Publishers, 2000), p. 18.
[43] Ibid., p.19.
[44] Ibid., p.20.
[45] David Pritchard, "Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign," (Washington, DC: Federal Communications Commission, Sept. 2002). Accessed October 15, 2002 at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A7.pdf.
[46] "Does Ownership Matter in Local Television News: A Five-Year Study of Ownership and Quality," (Washington, DC: Project for Excellence in Journalism, April 29, 2003), p. 1.
[47] This is consistent—and likely for the same reasons—with the findings in Herbert Gans' classic study, Deciding What's News (New York: Vintage Books, 1980). His empirical study of reporters and editors at national television news networks and news magazine concluded that their story selection and editorial judgment were remarkably similar because they all were similarly acculturated to the news process and faced similar demands—such as content limitations of air time or column inches.

- Stations owned by the largest groups produced higher quality early evening newscasts than those owned by the smaller groups. Smaller station groups tended to produce higher quality late evening newscasts than stations owned by larger companies.[48]
- Network affiliated stations tended to produce higher quality newscasts than network owned and operated stations.
- Local ownership offered little protection against newscasts being very poor and did not produce superior quality.
- Stations of privately-owned companies and publicly-owned companies did not perform significantly differently from each other.[49]

Even within these overall conclusions there is something for everyone. For example, the notion of "quality" is highly dependent on the criteria used and how they are weighed. Although small company stations were found overall to have higher quality than those owned by the largest companies, those owned by this latter group rated highest on the criteria of "offering communities a variety of viewpoints in their newscasts." And medium-sized owners were better than smaller owners when it came to enterprise reporting and the greatest localism.[50]

Local newscasts are the most prominent programming that can distinguish one local television station from another. For the most part, "television" is defined and described by the programming provided by networks. In any market, most programming most of the time is the same, whether the station is owned by a large multi-media conglomerate or an independent local owner, whether the station is owned and operated by a network or is simply an affiliate of a network.

The Video Landscape in 2005

In the 1960s – the time frame of Minow's "vast wasteland," – there were three "powerhouses" in the mass medium of television: the ABC, CBS, and NBC networks. These three controlled 90% of the prime time viewership.[51] By 2004, those three networks accounted, on average, for a share of under 40% of the prime time audience.[52]

Over the extended period 1960 to 1980, these commercial broadcast networks dominated the television landscape. As illustrated in Figure 3, on average during that period they had a combined prime time rating of 56%.[53] That is, 56% of all households with television sets (whether in use or not) were tuned to one of those networks on a average weekday night. (The 90% share of the 1960s and 40% share today was of households actually watching television).

Today, Ratings for Networks are Way Down

But with the development of cable, competition from new networks, video rentals, and other distractions (e.g., gaming, Internet use), the audience share of those big three networks has declined steadily. Today the most widely viewed series shows during the evening prime time hours garner half the percentage of households as they did in the 1970s, as the television audience has been fragmented by dozens of choices

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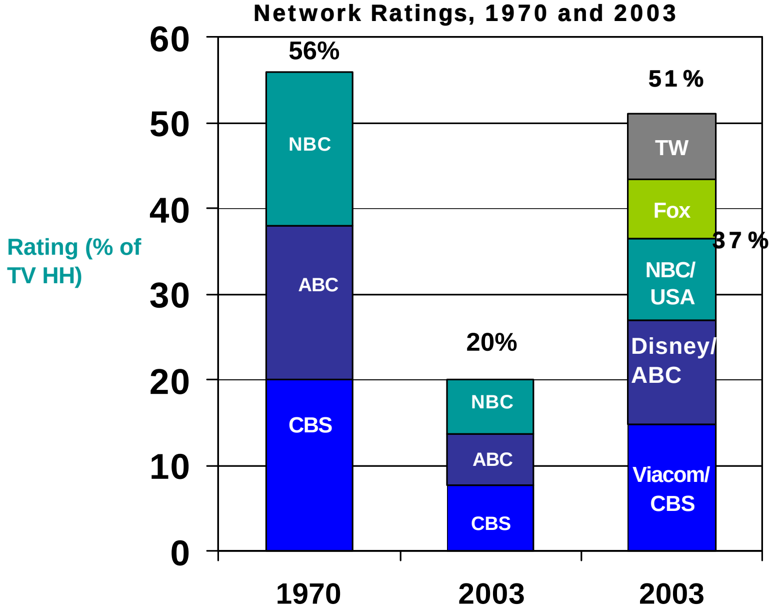
48 "Does Ownership Matter," p. 15.
49 Ibid., p. 5.
50 Ibid., p. 7.
51 David Cotreth, "Impact of Technology on Media, Panel at Deutsche Bank Securities 12th Annual Media Conference 2004 – Final," June 7, 2004. Accessed July 30, 2004 at http://www.highbeam.com/library/doc3.asp?DOCID=1P1:95731319&num=12&ctrlInfo=Round5a%3AProd%3ASR%3AResult&ao=. That is, 90% of those watching television were tuned in to one of the three networks.
52 Ibid.
53 Tom Wolzien, "TV Ratings Study," Bernstein Research Call (New York: Sanford C. Bernstein & Co. January 28, 2004) p. 2.

instead of three or four. For the 1970-71 ratings period, the top rated TV series was ABC's Marcus Welby, M.D., which had a Nielsen rating of 29.6.[54] The average rating for the top 20 shows was 19.0, spread over *three* networks.[55] For the 2003-04 season, the average rating for the top 20 shows was 11.6, spread over *five* networks,[56] a 39% decrease.

Figure 3 shows that by 2003, the three old broadcast networks were averaging only a cumulative 20% rating.[57] Starting in the 1980s and continuing to the present, those three networks either invested in the start-up of programming services distributed by cable operators, acquired such services, or were themselves merged into other entities that were in the video content business. CBS, which had divested itself of Viacom after a 1970 FCC ruling prohibiting television networks from owning a financial interest in the shows they broadcast,[58] was acquired by its spin-off in 1999.[59] By that time Viacom had become a major provider of cable programming, as well as motion pictures and books. Ironically, CBS had over the years divested itself of its books and magazine publishing holdings, so it was very much a stripped down version of the conglomerate it had become in the 1980s. ABC, which had previously merged with Capital Cities to become Capital Cities/ABC, was acquired by the Walt Disney Company in 1996.[60] NBC, acquired by General Electric in 1986, had remained largely to itself until its acquisition of the cable networks and movie studio holdings of Vivendi Universal in 2004.[61]

Figure 3
Network Ratings, 1970 and 2003



Source: See endnote 5

[54] "TV Ratings, 1970-1971," Classictvhits.com, Accessed March 20, 2004 at http://www.classictvhits.com/tvratings/1970.htm.
[55] Ibid. My calculation.
[56] Paszaz Entertainment Network, compiled by Nielsen Media Research. Accessed August 5, 2004 at http://www.pazsaz.com/tvseasn.html.
[57] Ibid., Exhibit 1, p. 3.
[58] Christopher H. Sterling, "Cable and Pay TV," in B. Compaine, et al, Who Owns the Media? Concentration of Ownership in the Mass Media Industry, rev. ed. (White Plains, NY: Knowledge Industry Publications, Inc., 1981), p. 388.
[59] Compaine and Gomery, "Who Owns the Media?" p. 584.
[60] Ibid., p. 240.
[61] Frank Aherns, "GE, Vivendi Give Rise To a Giant; New NBC Universal A $43 Billion Concern," The Washington Post, May 13, 2004. Accessed July 5, 2004 at http://www.highbeam.com/library/doc3.asp?DOCID=1P1:94510773&num=7&ctrlInfo=Round5a%3AProd%3ASR%3AResult&ao=.

Table 1 identifies the networks owned by the entities that now include the three traditional broadcast networks. Viacom includes CBS, Nickelodeon, MTV, TNN, BET, and TV Land, among others. Besides ABC, Disney owns ESPN and the Disney Channel, plus minority interests in others. The table also Incorporates the networks NBC acquired in May 2004. The inventory encompasses both advertiser supported networks and those that are subscriber supported, such as Viacom's Showtime and The Movie Channel.

Table 1, therefore, shows that adding in the audience share of all the new cable/satellite-distributed networks under the same ownership as the older broadcast networks—and subtracting the loss of viewership affecting the same networks—the surviving entities had an audience share in 2003 of about 37%, one-third lower in household viewership than in the pre-cable era.

Table 1
Share of All TV Households of Owners of
The Three Traditional Broadcast Networks, 1970 and 2003
(% of Prime Time Audience, TV HH= 108.4 million)

	2003 Rating	1970 Rating
Viacom Total	**15.0%**	
CBS	7.8	20%
MTV	0.7	
Nickelodeon/Nick at Nite	1.5	
TV Land	0.6	
BET	0.6	
VH1	0.4	
UPN	1.7	
Spike TV	0.7	
Comedy Central	0.1	
Country Music TV	0.3	
Noggin	>0.05	
Showtime	0.3	
Movie Channel	0.1	
Disney Total	**12.4%**	
ABC	6.0	19%
ESPN, ESPN2	2.3	
Lifetime*	1.6	
Soapnet*	0.2	
Toon Disney	0.2	
ABC Family	1.0	
Disney Channel	1.3	
NBC/Universal Total	**9.5%**	
NBC	6.4	17%
MSNBC	0.2	
CNBC	0.1	
Bravo	0.4	
USA Network	1.5	
SciFi	0.9	
Total, 3 Traditional Nets		**36.9%**

Source: Nielsen Media, "Television Activity Report" for December 2003. See Note 42. Totals may not add due to rounding.

Table 2 provides a similar itemization for the networks of News Corp. and Time Warner. The Fox Network, which did not exist until 1986, is a traditional broadcast entity, while Fox News and FX are cable/satellite distributed networks. Time Warner started the over-the-air WB network in 1995 to add to its cable networks, CNN, TNT, HBO, and the like. Time Warner is unlike the other four network operators in that it is the only one that owns no local television stations. The WB network was created exclusively from affiliates. News Corp. and Time Warner together add 14.3% of households to the share of the now five major television program distributors.

These five entities combined had a prime time audience rating in December 2003 of 51.2%, or nearly 5% less than the combined rating of the three networks of the "vast wasteland" era. That is, in 2003, Viacom, with CBS plus all its cable networks, Disney, with ABC and its cable networks, and NBC, with its newly acquired cable networks, accounted for 15% fewer households during prime time than in the pre-merger days.

Table 2
Share of All TV Households of Owners of the New Broadcast Networks Dec. 2003
(% of Prime Time Audience, TV HH= 108.4 million)

Time Warner Total		8.7%
WB	1.8%	
CNN	0.6%	
CNN-Headline News	0.2%	
TBS	1.5%	
TNT	1.5%	
Cartoon Network	1.1%	
HBO	1.4%	
Multimax	0.5%	
News Corp. Total		5.6%
FOX	4.2%	
Fox News	0.9%	
FX	0.5%	

Source: Nielsen Media, "Television Activity Report" for December 2003. See Note 42.

Ratings of New "Big Five" Networks Smaller than Old "Big Three

That the make-up and competitiveness of television has changed dramatically since the 1980s can be further seen in the list in Table 3, which shows the ten programs with the highest ratings since Nielsen began measuring audiences. Only one of the ten post-dated the start of the fourth network in 1986 and that was from early 1994. Four of the 10 were from the 1970s.[62]

[62] "Top 10 Network Telecasts of All Time (Ranked By Household Rating)," Nielsen Media Research, Inc. Accessed August 5, 2004 at http://www.nielsenmedia.com/ratings/topnetworktelecasts.htm.

	Table 3 **Top 10 Network Telecasts of All Time** (By Household Rating)			
	Program	**Date**	**Network**	**Rating %**
1	M*A*S*H Special	Feb. 28, 1983	CBS	60.2
2	Dallas	Nov. 21, 1980	CBS	53.3
3	Roots Pt. VIII	Jan. 30, 1977	ABC	51.1
4	Super Bowl XVI Game	Jan. 24, 1982	CBS	49.1
5	Super Bowl XVII Game	Jan 30, 1983	NBC	48.6
6	XVII Winter Olympics	Feb. 23, 1994	CBS	48.5
7	Super Bowl XX Game	Jan. 26, 1986	NBC	48.3
8	Gone With The Wind-Pt.1	Nov. 7, 1976	NBC	47.7
9	Gone With The Wind-Pt.2	Nov. 8, 1976	NBC	47.4
10	Super Bowl XII Game	Jan. 15, 1978	CBS	47.2
Source: © Nielsen Media Research, Inc.				

The Radio Landscape

The largest operator of radio stations in 2004 was Clear Channel Communications, owner of more than 1,200 stations, as well as outdoor billboards and concert promotion. Detractors complain of the homogenized play lists used on many Clear Channel stations around the country and their lack of local content.[63] In 2003, Clear Channel owned 8.8% of the almost 14,000 radio stations nationwide (12% excluding non-commercial stations).

Industry Background

For most of the second half of the 20th Century, radio was a rather sleepy industry. In the early 1950s it had been eclipsed by television as the medium with the greatest national interest to audiences and to advertisers. From its peak in 1945, when 15% of all advertising revenue was devoted to radio, to its trough just 10 years later at just 6% of advertising expenditures, radio seemed like a moribund medium.[64] Slowly, over the next five decades, the radio industry first stabilized and modestly increased its competitive position, so that in 2003 almost 8% of advertising revenue went to radio broadcasters.[65]

Over the same time period, the number of radio stations proliferated. In 1945 there were 973 stations in the U.S., 94% of them operating on the AM band while less than 1% were non-commercial.[66] By 2003, there were just under 14,000 stations, 20% of them non-commercial. Slightly over 36% of the stations were AM and the remainder used FM spectrum.[67]

It was the radio industry that created the network model later adopted by the television industry. Today, radio is largely a local medium serving primarily local advertisers and local audiences. But at its pre-television peak, radio was dominated by four national networks: NBC, CBS and a second tier of ABC and

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[63] Hatch, "Media Ownership," p. 850.
[64] Christopher Sterling and Timothy Haight, The Mass Media: Aspen Institute Guide to Communication Industry Trends (New York: Praeger Publishers, 1978), Table 303-C, pp. 130-131.
[65] "Facts About Newspapers 2004," Newspaper Association of America (2004). Accessed July 30, 2004 at http://www.naa.org/info/facts04/expenditures-allmedia.html.
[66] Sterling and Haight, Table 170-A, p. 43.
[67] Arbitron, Inc., "Station Trends," Radio Today 2004, Accessed July 30, 2004 at http://www.arbitron.com/downloads/radiotoday04.pdf.

Mutual.[68] Although no entity owned more than seven AM stations, by 1947 94% of all stations—and all of the largest—were part of one or more networks. As early as 1937 the networks, and their handful of 10 owned and operated clear-channel stations, accounted for fully 50% of industry revenues.[69] Even in 1947, when the number of stations had increased by two-thirds, these networks still accounted for 25% of industry revenue. Stations owned by newspapers accounted for another 25% of industry revenue and stations owned by radio equipment manufacturers had another 13%. Even more germane for understanding policy today, the nature of the long-term contracts that the networks had with their affiliates gave these four networks "final say on [most of] what local stations programmed."[70]

As with local television station ownership, FCC regulations kept a tight cap on the number of radio stations a single owner could control until the 1990s. Up to 1985 a single owner was limited to seven AM and seven FM stations, and not more than one of each service could be in the same market. In cases where the AM and FM were in the same market, they could not be used to simulcast the same programming.[71] Over the next decade, the FCC expanded the limits, in stages, to 20 of each service. In the Telecommunications Act of 1996 Congress directed the FCC to lift the number of stations that could be owned by any entity nationally, though limits were imposed on ownership within local markets.[72]

Table 4 tracks the growth in the number of radio stations with the ownership limits provided by FCC regulation and by Congress. In the early days of radio, when newspaper publishers were encouraged to start

Table 4
Radio Stations and National Ownership Limits, 1937-2003

	Total Stations	Station Ownership Limit	Max National Ownership %
1937	646	No Limit (NL)	N/A
1947	1,212	AM=NL/FM=6	N/A
1960	4,306	AM=7/FM=7	.33
1970	6,889	AM=7/FM=7	.20
1980	8,748	AM=7/FM=7	.16
1990	10,631	AM=12/FM=12	.23
2003	13,898	No limit	8.8*

*Maximum national ownership limit for 2003 is actual % of stations owned by largest station group.

Sources: Stations 1937-1970, Sterling & Haight, fn 60, Table 170-A; 1970-2003, Arbitron, Inc.

radio stations as a way to promote growth of the fledgling medium, there were no limits on the number of stations that could be owned. It was not until 1940 that the FCC created the first such regulation and that was to limit the authorized, but nonexistent, FM band owners to five stations. In 1944, the FCC refused to allow CBS to purchase an eighth AM station, although a seven-station limit was not codified and made final until 1954, along with a similar limit on FM and TV stations (five of which could be VHF).[73]

For decades the limits on radio ownership remained constant even as the number of stations expanded. In 1944, when the *de facto* limit was seven AM and six FM stations, there were 910 stations.[74] By the time the

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[68] Sterling, "Television and Radio Broadcasting," in Compaine, ed., p. 303.
[69] Ibid.
[70] Ibid.
[71] Marc Sophos, "The Public Interest, Convenience, or Necessity: A Dead Standard in the Era of Broadcast Deregulation?" Pace Law Review, 10 Pace L. Rev. 661 (1990) Section III, Accessed August 19, 2004 at http://www.wdfh.org/art_3.htm.
[72] Hamburg and Brotman, pp 2-37--2-38.
[73] Sterling, in Compaine, ed., pp. 328-330.
[74] Sterling and Haight, Table 170-A.

limit was raised to 12 AM and 12 FM in 1985, there were 8,600 commercial stations alone.[75] Until the further loosening and final elimination of the national ownership caps, radio station groups were held by regulation to levels of a fraction of one percent of stations as shown in Table 4. Of course, their audience reach and share of advertising revenue could be much higher, as enterprises with such strict limits would tend to own stations in larger markets and program them to reach the maximum audience.

Table 5
Non-Commercial Radio Stations, 1937-2003

	Total Stations	Non-Commercial Stations	As % of Total Stations
1937	646	0	0
1947	1,212	10	0.8
1960	4,306	162	3.7
1970	6,889	413	6.0
1980	8,748	877	10.0
1990	10,631	1,252	11.8
2000	13,307	2,730	20.5

Sources: Stations 1937-1970, Sterling & Haight, fn 60, Table 170-A; 1980-2000, calculated from U.S. Census Bureau, Statistical Abstract of the United States: 2003, Table 1126: Utilization of Selected Media: 1970 to 2001.

Non-commercial radio has become a major media force. Primarily on the FM band, they have grown faster than the number of radio stations overall, accounting for 10% of all stations in 1980 and tripling in number and doubling in proportion to over 20% of stations by 2000. Non-commercial radio stations are often affiliated with higher education, municipalities, or public television stations.

Out from the Shadows: Noncommercial Radio Gets Stronger

Non-commercial station growth has been accompanied by the emergence of National Public Radio as a programming network that rivals the reach of the largest commercial owners. NPR's most well known programming includes "Morning Edition" and "All Things Considered." The role of NPR is important in the context of radio competition.

- NPR provides content for much of the programming day on a national basis for the 780 public radio stations it serves.[76]
- NPR's reach is so pervasive it claims "Just about anywhere you find yourself, you'll find NPR."[77]
- NPR reaches 26 million listeners on a typical week, double the number of 10 years previously. In the 1980s, NPR claimed an audience of about 2 million weekly.[78]
- Public radio listeners outnumber the combined circulation of the top 35 U.S. daily newspapers.[79]

For comparison, Infinity Broadcasting, the second largest owner of radio as measured by the number of stations owned, has one-fourth the number of stations as those that carry NPR and attracts a weekly audience of 76 million listeners.[80] On the other hand, the nationally syndicated talk show of political

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75 U.S. Census Bureau, Statistical Abstract of the United States: 1995-1996, Table 897.
76 "About NPR," Web site accessed August 20, 2004 at http://www.npr.org/about/.
77 Annual Report 2002, National Public Radio. Inc., p. 2.
78 "NPR's Growth During the Last 30 Years," Web site accessed August 2, 2005 at http://www.npr.org/about/growth.html.
79 "Public Radio Listening Grows Amidst Downward Trend on the Commercial Dial," The WBEZ Alliance. Accessed Aug. 16, 2004 at http://www.thirdcoastfestival.org/pages/extras/press/03/radiofacts.html.
80 Viacom, Inc. "Letter of Stockholders," April 15, 2004, p. 3. Accessed August 6, 2004 at http://www.viacom.com/pdf/stockholderLetterApr2004.pdf.

commentator Rush Limbaugh has a weekly audience between 15.5 and 20 million listeners on about 600 stations.[81]

Table 6 finds that NPR programming is available to roughly the same audiences as Infinity Broadcasting in the top markets. Iin practical terms the NPR stations are providing a national blanket that offers uniform programming accessible, as NPR promotes, virtually anywhere in the United States.

Table 7 considers the financial fortunes of the radio industry by looking at advertising revenue of the industry in the framework of the growing number of stations that divide up the total. The impact of new competition from television for the mass audience eroded radio as the primary electronic medium for national network advertising. At the same time, radio's share of the total pool of advertising expenditure fell from 15% in 1945 to 6% in 1955. The number of new local stations that were starting up meant that the total revenue was split into more slices, leaving less, on average, for each. "The very growth of radio was one of its worst problems, since more stations meant more operators scrambling for available advertising dollars."[82]

Table 7 shows that advertising revenue for the industry appeared to increase slightly from $605 million in 1950 to $692 million in 1960, or about 1.4% annually. However, when adjusted for inflation to current dollars, industry revenue actually decreased 11% over that period. At the same time, the growth in stations meant that average revenue per station was declining through the 1950s and into the 1970s. Not until the 1990s–the period when ownership restrictions started to ease—did average per-station ad revenue reach the real dollar level of 1950. For most of this period, radio did not have the characteristics of a thriving industry.

The Local Station Context

From the standpoint of individual users of radio, the context becomes what choices do they have and from whom when they turn on their radio in the car, the kitchen, or wherever they want to have access. In the Telecommunications Act of 1996, Congress was very specific in its instructions to the FCC for creating new caps on local ownership:

> (A) in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

[81] William Mayer, "Why talk radio is conservative," Public Interest, June 22, 2004. Accessed August 20, 2004 at http://www.highbeam.com/library/doc0.asp?docid=1G1:119025431&refid=hbr_flinks1; Steve Carney, "In Rush Limbaugh's World, He's Always Right," Talk Radio / Radio Talk, August 6, 2003. Accessed August 19, 2004 at http://www.radiotalk.org/news/alwaysright.html.

[82] Christopher H. Sterling and John M. Kittross, Stay Tuned: A Concise History of American Broadcasting (Belmont, CA: Wadsowth Publishing Co., 1978), p.270.

Table 6
Infinity Broadcasting Owned Stations and NPR Affiliated Stations in 25 Largest Markets 2003

Market	Infinity-owned radio stations	NPR-affiliated radio stations
New York	6	4
Los Angeles	7	7
Chicago	3	1
San Francisco	4	3
Dallas-Ft. Worth	4	1
Philadelphia	5	3
Houston	4	1
Washington, D.C.	4	4*
Boston	6	3
Detroit	6	1
Atlanta	3	2
Miami-Ft. Lauderdale	0	1
Puerto Rico	0	2
Seattle-Tacoma	5	3
Phoenix	3	2
Minneapolis	4	1
San Diego	2	2
Baltimore	7	4*
St. Louis	3	1
Tampa-St. Petersburg	6	2
Denver	3	3
Pittsburgh	4	3
Portland	6	1
Cleveland	4	1

*Includes both Washington and Baltimore located station (2 in each city). NPR total for each city includes stations located in metro area of named city, when known. The signal may not cover the entire named city.

Sources: Infinity: Viacom Form 10-K for Year Ending Dec. 31, 2003, pp. I-19 -- I-22, accessed at http://www.viacom.com/pdf/form10KMar2004.pdf; NPR: "NPR Stations," accessed at http://www.npr.org/stations/pdf/nprstations.pdf.

Table 7
Commercial Radio Stations and Advertising Revenue, 1950-2000

	# Commercial Stations	Advertising Revenue (million)	2000 Current $ (million)	Avg. Revenue per Station, Current $ (million)
1950	2,819	$605	$3,700	$1.3
1960	4,144	692	3,295	0.795
1970	6,476	1,308	4,839	0.747
1980	7,871	3,702	6,972	0.886
1990	9,379	8,839	10,879	1.16
2000	10,577	19,295	19,295	1.82

Sources: Stations, see Table 5; Advertising revenue: Universal McCann (formerly McCann-Erickson); Conversion to current dollars from GDP Price Deflator: http://www.jsc.nasa.gov/bu2/inflateGDP.html Budget of the United States Government, Fiscal Year 2005, Table 10.1—Gross Domestic Product and Deflators Used in the Historical Tables- 1940–2009.

(B) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(D) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM),except that a party may not own, operate, or control more than 50 percent of the stations in such market. [83]

Since implementation of this mandate, radio station operators have indeed acquired additional licenses in many markets. The practical impact on content and diversity of content has been inconclusive. Sen. Russell Feingold asserts, "The homogenization of radio is a prime predictor of the ravages of deregulation."[84]

Whether radio was less homogeneous in the past may be addressed by looking at the history of radio. With four networks providing the bulk of radio programming, radio in the 1930s looked much like television did prior to the 1980s: hundreds of local stations that relied on national networks for their content. In 1937, for example, during typical weekday evening prime time hours, the Milwaukee AM radio station WTMJ (owned by the *Milwaukee Journal* newspaper) broadcast all NBC-Red network programming. The bulk of its afternoon schedule was network as well. [85]

After television gained audience share in the 1950s, radio localism began to take the form of "Top 40" formats. Packagers such as Todd Storz and Gordon McLendon helped stations across the U.S. implement their formula. From 20 such stations in 1955 there were hundreds by 1960.[86] Although the names of the disc jockeys may have been different–Hy Lit in Philadelphia, Alan Freed in New York—the sound was the same. They subscribed to national "tip sheets" to identify the emerging hits and Top 40 play list services. "Time and time again an MOR-format [middle-of–the-road] station would take the plunge and achieve dramatic increases in listeners and income."[87]

Empirical research data does not support the widely held assumption that changes in local ownership regulation has *prima facie* resulted in less diversity in radio. Results have shown mixed effects, and often with small likely impact. Several studies using data from the first round of local consolidation of radio stations found that consolidation had a positive effect on the diversity of formats available to listeners at the local level. [88] These studies confirm the classic hypothesis proposed by Peter Steiner in 1952: that a monopoly radio operator in a community would be more likely to provide a variety of formats than would several competitors all looking to adopt the format that would gain the largest audience.[89] That is, in markets where often 20 or 30 owners were competing, a smaller portion of the audience would be served because more of the owners would be trying to program to the handful of formats that attract the largest audiences. Some amount of consolidation should–and apparently has–allowed owners to increase their aggregate audience by programming for smaller and unserved audiences as they acquired more stations in a

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[83] Telecommunications Act of 1996, Sec. 202 (b)(1). P.L. 104-104.
[84] Hatch, "Media Ownership," p. 852.
[85] Sterling and Kittross, Stay Tuned, p. 163.
[86] Ibid, p. 339.
[87] Ibid.
[88] Joel Waldfogel and Steven Berry, "Do Mergers Increase Product Variety? Evidence from Radio Broadcasting," The Quarterly Journal of Economics (116:3, pp. 1009-1024; Bruce E. Drushel, "The Telecommunications Act of 1996 Radio Market Structure" The Journal of Media Economics 11(3) June 2003, pp. 3-20.
[89] Paul Steiner, "Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting," The Quarterly Journal of Economics 66(2), pp. 194-223.

market. A major academic study of radio format diversity in local markets between 1995 and 2000 found that slightly over half the population had the same or more choice in radio formats available at the end of the period–and less than half had less choice.[90] Yet another study concluded that in comparing the actual music play lists of similar-format stations in low and moderately concentrated local radio markets to those considered highly concentrated, in only one of the three measured criteria did the more highly concentrated markets appear to be slightly less diverse than the lesser concentrated markets.[91]

Table 8 looks at station ownership in eight large, medium and very small markets.[92] (See the footnote for a description of the selection process). Excluded are educational and not-for-profit stations and some commercial stations, mostly small ones, which Arbitron does not cover in its measurements.

There are a total of 213 commercial radio stations in these eight markets, ranging from 46 in the 75th ranked Monterey-Salinas-Santa Cruz, California metropolitan area to 11 in 250th ranked State College, PA (home to Penn State University) and 275th ranked Cookeville, TN. The stations are owned by 62 different organizations. Clear Channel Communications owns 37 of the stations, or about 17%. The next largest total is Viacom subsidiary, Infinity, with 9% of the stations. None of these enterprises owns stations in all eight markets. Clear Channel has no presence in Kansas City, the 29th largest market with 25 measured commercial stations, or in State College.

On the other hand, the largest presence in Yakima, WA, the 198th market, is New Northwest Broadcasting, with seven of the 18 stations. New Northwest does not have any properties in the other seven markets in the table, but does own 29 other stations in 11 other Washington, Oregon, and Alaska cities.[93] Clear Channel owns six stations in Yakima. Four other companies own the other five commercial stations in Yakima.

Boston, the largest market by population of this group, had 34 measured stations. Three groups, Clear Channel, Infinity, and Greater Media each owned five. The latter owned no other stations in these eight markets and owned a total of 19 stations spread over six markets. Overall, Boston had a total of 16 separate "voices" besides the public and university-owned stations available to listeners.

A similar analysis of each of these markets–and by implication any other market—finds that there are a substantial number of voices and even more variety in program formats. In a small market such as Yakima listeners can choose among 12 different formats, from Adult Contemporary to Regional Mexican. It has three news/talk format stations provided by three different owners. Even tinier Cookeville, TN with a population of 83,000 (12+ years old), had 11 commercial stations, run by seven different owners, with 10 formats serving a spectrum of interests.

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[90] Todd Wirth, "Direct Format Competition on the Radio Dial and the Telecommunications Act of 1996: A Five-Year Trend Study," Journal of Radio Studies, 9:1 (2002), p. 44.

[91] Todd Chambers, "Radio Diversity in the Era of Consolidation," Journal of Radio Studies, 10 (1) June 2003, pp. 33-45.

[92] The eight were selected from the Arbitron database of measured stations available at their Radio and Records.com Web site (www.radioandrecords.com). The selection process was random, as the term is popularly used, though not a statistical random sample of the universe, which in August 2004 included 287 geographic markets down to size of 57,000 population of 12 years and older. My intention was to look at a selection of stations in large, medium and small markets. The Web site allows users to enter a market size (e.g., 31, which turned out to be Salt Lake City). The resulting table is intended to be a snapshot of these markets. There were no markets that I initially selected that were subsequently not included in the table for any reason. I entered eight sets of numbers and used those eight markets. Thus, this is not a statistically valid sample of any sort, but nor is it created to select markets with any preconceived structure, other than population size. The stations listed in each market are those rated by Arbitron. Excluded are educational and not-for-profit stations and some commercial stations, mostly small ones, that Arbitron does not include in its measurements.

[93] "R&R Directory," RadioandRecords.Com, accessed August 3, 2004 at http://www.radioandrecords.com/RRDirectory/Directory_Main.aspx.

The consolidation of radio station ownership at the local level looks substantial when compared to the pre-1996 baseline of an industry artificially fragmented as a result of past regulatory limits. However, for an observer untainted by the way it "used to be," the impications fo the data in Table 8 is that there would appear to be meaningful numbers of owners in communities serving the vast bulk of the population.

One popular perception is that radio has become more homogenized or less likely to provide local news.[94] However, this again needs to be comparted to a baseline of what radio programming was in the decades between the ascendancy of television and the Telecommunications Act of 1996. Regardless of who owns the stations, radio is used primarily as a source of music, often as background to another activity. Only 10% of Americans consider radio as their primary source for news, compared to 57% who say the same for television and 23% for newspapers.[95]

New Competition and Alternatives to Broadcast Radio

Another player in the mix of radio competition is the growth of satellite radio The two national services, Sirius and XM Radio, more than 6.2 million subscribers in mid-2005[96] more than doubling the total of a year earlier in mid-204[97]. The reality of the potential of satellite radio as a competitor to terrestrial broadcast radio was highlighted by the announcement in October 2004 that the controversial syndicated radio show of Howard Stern was leaving Infinity Broadcasting for a slot at Sirius.[98] Besides an attractive financial package, at Sirius Stern will not be subject to the FCC's limits imposed on his content.

Various portable devices, successors to the older portable cassette and CD players, that are used for downloading and storing personal archives of music and spoken-word content. An estimated 47 million portable digital music players were sold worldwide in 2004[99], up from 17 million in 2003[100] This is formidable competition for the non-talk radio segment of the radio industry. Finally, there is the increasingly robust phenomenon of Internet-transmitted radio, which has already gone beyond the restriction of having to sit by a computer to hear it.

The Internet and World Wide Web

The Internet is the popular shorthand term for not a single medium but a collection of services and service providers. These include but are not limited to backbone providers, Internet Service Providers (ISPs), utilities (e.g., search engines), merchants (e.g., Amazon.com), portals (e.g., Yahoo! or MSN), traditional information providers offering advertising supported content (e.g., *The New York Times* online) or subscription supported content (e.g., *The Wall Street Journal* online), customer service and convenience

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94 Hatch, "Media Ownership," p. 850.
95 Nielsen Media Research, "Consumer Survey on Media Usage," Federal Communications Commission, Sept. 2002, p. 22. Accessed January 18, 2004 at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A17.pdf.
96 "XM Satellite Radio Holdings Inc. Announces Second Quarter 2005 Results And Increases Year-End Subscriber Guidance To 6 Million," July 28, 2005. Accessed August 15, 2005 at http://www.xmradio.com/newsroom/screen/pr_2005_07_28.html; "SIRIUS Satellite Radio Reports Record Revenue for Second Quarter 2005," August 2, 2005. Accessed August 15, 2005 at http://www.shareholder.com/sirius/ReleaseDetail.cfm?ReleaseID=170152&cat=Earnings&newsroom=.
97 Kathleen Kingsbury, "Satellite Radio Captures Ears of Millions," CNN.com, August 4, 2004. Accessed Aug. 8, 2004 at http://www.cnn.com/2004/TECH/science/07/30/satellite.radio.
98 Andrew Bary, "Shock Stock: Just like Howard Stern, Shares of Sirius Satellite Radio are Mighty Pricey, *Barron's Online,* October 11, 2004. Accssed Oct 20, 2004 at http://online.barrons.com/article/SB109728355122340948-search.html?collection=barrons%2F30day&vql_string=stern+sirius%3Cin%3E%28article%2Dbody%29.
99 "MP3 player shipments surging, says iSuppli," March 15, 2005. Accessed August 15, 2005 at http://www.eet.com/news/latest/showArticle.jhtml?articleID=159900293.
100 Alex Salkever, "iPod: Leader, but Not Ruler," *Business Week Online*, May 27, 2004. Accessed August 25, 2004 at http://www.businessweek.com/technology/content/may2004/tc20040527_8900_tc056.htm.

applications (e.g., view bank transactions online); and information providers who did and could not exist without the Internet (e.g., Internet radio stations). The Internet itself is the sum of the processes through which bits of data are sent from computer to computer via sundry networks using the common TCP/IP format. The World Wide Web is one component of the Internet that enables the use of hyperlinks to locate documents and data files on remote servers connected to the Internet.

In the United States, about 75% of adults had access to the Internet in 2004.[101] An estimated 140 million were active Internet users.[102] At the same time, more than 50% of households that subscribe to an Internet service do so with a broadband connection. This represented a 47% increase from the same period in 2003.[103] This has several ramifications: households using broadband have an always-on connection and thus spend more time online. They also can use the Internet for what is termed "rich media," including higher quality audio and video streams and downloads.

Web Sites with Highest Traffic

Table 9 gives some sense of the most popular destination sites of Internet users from home. The comparable list of site accessed from the workplace is only slightly different.[104] They use it to access sites that are provided by traditional media companies, by other large though not traditional media companies, and a host of new players, from travel agencies to U.S. government agencies. Microsoft affiliated sites receive visits from 6.6 million more users than second ranked Time Warner. Microsoft's sites would include their MSN service as well as visits to the corporate site for updates and downloads on Microsoft products. Time Warner's audience of 85 million monthly from home would include visits to the AOL and CNN Web sites, as well as to the sites of the Time, Inc. publications. InterActiveCorp is the parent of many ecommerce services, such as travel agencies Expedia and Hotwired, financial service provider LendingTree, and event planning service Evite. The substantial use of sites run by various U.S. government agencies is a positive indicator of the use of online access for making it easier to obtain information and services from government.

Internet Radio and Video

Both early research and continuing trends in the data support the contention that "by delivering diverse programming to a significant portion of the market, Internet radio broadcasters complement traditional radio and provide more overall diversity to audiences."[105] Aggregate tuning hours for Internet radio were up

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[101] "Three Out of Four Americans Have Access To The Internet, According To Nielsen//Netratings," NetRatings, Inc. March 18, 2004. Accessed at http://www.nielsen-netratings.com/pr/pr_040318.pdf.
[102] Robyn Greenspan, "Active Internet Users by Country, June 2004," Nielsen//NetRatings, June 2004. Accessed August 19, 2004 at http://www.clickz.com/stats/big_picture/geographics/article.php/3386051#table.
[103] "U.S. Broadband Connections Reach Critical Mass, Crossing 50 Percent Mark For Web Surfers, According To Nielsen//Netratings," NetRatings, Inc., August 18, 2003. Accessed at http://www.nielsen-netratings.com/pr/pr_040818.pdf.
[104] "United States: Top 10 Parent Companies, Month of July 2005, Work Panel," Nielsen NetRatings, accessed August 9, 2005. Note that this URL shows the latest monthly figures. It is not archive for July 2005.
[105] Benjamin Compaine and Emma Smith, "Internet Radio: A New Engine for Content Diversity?" International Telecommunications Society Conference, Dublin, September 2001 at http://itc.mit.edu/itel/docs/2001/compaine_smith_radio.pdf.

Table 8: Radio Station Owners in Eight Markets, 2004																	
	Boston		**Tampa**		**Kansas City**		**Salt Lake City**		**Monterey, CA**		**Yakima, WA**		**State College, PA**		**Cookeville, TN**		**Group Total**
Total Measured Stations	34	100%	31	100%	25	100%	37	100%	46	100%	18	100%	11	100%	11	100%	213
Clear Channel	5	14.7	8	25.8	0	0.0	4	10.8	10	21.7	6	33.3	0	0.0	4	36.4	37
Infinity (Viacom)	5	14.7	6	19.4	4	16.0	0	0.0	5	10.9	0	0.0	0	0.0	0	0.0	20
Entercom	4	11.8	0	0.0	9	36.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	13
Citadel	1	2.9	0	0.0	0	0.0	6	16.2	0	0.0	0	0.0	0	0.0	0	0.0	7
New Northwest	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	7	38.9	0	0.0	0	0.0	7
Susquehana	0	0.0	0	0.0	3	12.0	0	0.0	4	8.7	0	0.0	0	0.0	0	0.0	7
Cox	0	0.0	6	19.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	6
Millcreek	0	0.0	0	0.0	0	0.0	6	16.2	0	0.0	0	0.0	0	0.0	0	0.0	6
Simmons	0	0.0	0	0.0	0	0.0	6	16.2	0	0.0	0	0.0	0	0.0	0	0.0	6
Greater Media	5	14.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	5
Bonneville	0	0.0	0	0.0	0	0.0	4	10.8	0	0.0	0	0.0	0	0.0	0	0.0	4
Cumulus	0	0.0	0	0.0	2	8.0	0	0.0	0	0.0	0	0.0	0	0.0	2	18.2	4
Dame	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	36.4	0	0.0	4
Entravision	0	0.0	0	0.0	0	0.0	0	0.0	4	8.7	0	0.0	0	0.0	0	0.0	4
Forever	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	36.4	0	0.0	4
Mapleton	0	0.0	0	0.0	0	0.0	0	0.0	4	8.7	0	0.0	0	0.0	0	0.0	4
Mega	2	5.9	2	6.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4
Wolfhouse	0	0.0	0	0.0	0	0.0	0	0.0	4	8.7	0	0.0	0	0.0	0	0.0	4
ABC Radio	0	0.0	0	0.0	0	0.0	1	2.7	2	4.3	0	0.0	0	0.0	0	0.0	3
Univision	0	0.0	0	0.0	0	0.0	0	0.0	3	6.5	0	0.0	0	0.0	0	0.0	3
Buckley	0	0.0	0	0.0	0	0.0	0	0.0	2	4.3	0	0.0	0	0.0	0	0.0	2
Butterfield	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	11.1	0	0.0	0	0.0	2
Carter	0	0.0	0	0.0	2	8.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Genesis	0	0.0	2	6.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
KSOP	0	0.0	0	0.0	0	0.0	2	5.4	0	0.0	0	0.0	0	0.0	0	0.0	2
Mercury	0	0.0	0	0.0	0	0.0	2	5.4	0	0.0	0	0.0	0	0.0	0	0.0	2
Peoples	0	0.0	0	0.0	0	0.0	0	0.0	2	4.3	0	0.0	0	0.0	0	0.0	2
Phoenix Media	2	5.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Radio One	2	5.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Union	0	0.0	0	0.0	2	8.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Webb	0	0.0	0	0.0	0	0.0	2	5.4	0	0.0	0	0.0	0	0.0	0	0.0	2
WGUL	0	0.0	2	6.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
ZGS Broadcast	0	0.0	2	6.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Zwerling	0	0.0	0	0.0	0	0.0	0	0.0	2	4.3	0	0.0	0	0.0	0	0.0	2
3 Points Media	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0	0	0.0	0	0.0	0	0.0	1
Allegheny Mt. Network	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0	1
Bob Bittner	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1

Bott Radio Network	0	0.0	0	0.0	1	4.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Carlson Communications	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0	0	0.0	0	0.0	0	0.0	1
Chalres River	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Commonwealth Communications	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	5.6	0	0.0	0	0.0	1
Costa-Eagle	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Cromwell	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	1
First Media Radio	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0	1
Gaylord Entertainment	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	1
J&M	0	0.0	0	0.0	0	0.0	0	0.0	1	2.2	0	0.0	0	0.0	0	0.0	1
Jesscom	0	0.0	0	0.0	1	4.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
JWC Broadcasting	0	0.0	0	0.0	0	0.0		0.0	0	0.0		0.0	0	0.0	1	9.1	1
KANZA	0	0.0	0	0.0	1	4.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
KMPG Radio	0	0.0	0	0.0	0	0.0	0	0.0	1	2.2	0	0.0	0	0.0	0	0.0	1
Lobo	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0	0	0.0	0	0.0	0	0.0	1
Marlin	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Metropolitan Radio	0	0.0	1	3.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Monterey County	0	0.0	0	0.0	0	0.0	0	0.0	1	2.2	0	0.0	0	0.0	0	0.0	1
Moon	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	5.6	0	0.0	0	0.0	1
Moshannon Valley	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0	1
Northeast Broadcasting	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Northwest Communities	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	5.6	0	0.0	0	0.0	1
Plymouth Rock Broadcasting	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Radio Campesina	0	0.0	0	0.0	0	0.0	0	0.0	1	2.2	0	0.0	0	0.0	0	0.0	1
Radio Tropical	0	0.0	1	3.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Saga	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Salem	1	2.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
South Central	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	1
TAMA Group	0	0.0	1	3.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
United Broadcasting	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0	0	0.0	0	0.0	0	0.0	1
Way-FM Media Group	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	1
	34	100.0	31	100.0	25	100.0	37	100.0	46	100.0	18	100.0	11	100.0	11	100.0	213

Table 9 Home Audience Reach of Top 10 Web Sites for July 2005, Aggregated by Parent Companies			
Parent Name	**Unique Audience (000)**	**Reach %**	**Time Per Person (hours)**
Microsoft	91,823	65.61	01:26:20
Time Warner	85289	60.94	03:46:50
Yahoo!	82770	59.14	02:00:36
Google	63158	45.13	00:18:31
eBay	41140	29.40	01:25:08
United States Government	32422	23.17	00:15:53
InterActiveCorp	28555	20.62	00:17:56
Amazon	27412	19,59	00:22:52
RealNetworks	26253	18.76	00:42:14
Viacom	24823	17.74	00:15:13
Source: Nielsen NetRatings at http://www.nielsen-netratings.com/reports.jsp?section=pub_reports&report=parent&period=monthly&panel_type=2			

by 118 percent in 2004, with the top ten sites averaging 137.5 million hours during the first two months of the year, compared to 63 million hours in 2003.[106] Delivery of video has followed closely the adoption of broadband to the home. Internet users with broadband accessed an average of 15.4 video clips per month in 2004, up 43% from a year earlier. Nearly 80% of the video streams provided during the first half of 2004 were to broadband users.[107] Video streams served during January and February 2004 by the top ten sites averaged 523 million, compared to 292 million in 2003, which itself was up 104% from 2002. Music video captured the largest share of the streaming audience in 2003, followed closely by news.[108]

Internet users with broadband connections have been found to spend almost as much time per day online (two hours) as they spend with television (2:45) and radio (2:23). On average, they spend 11 minutes with newspapers.[109]

Both the absolute numbers and the steep positive trends on adoption, penetration and broadband validates the use of the Internet as a serious avenue for distributing and accessing what have collectively been called the mass media: news, entertainment, information and commerce – as text, audio and video – bypassing many of the geographic, regulatory and capital barriers associated with older processes of distributing the same type of content.

Internet radio is particularly relevant, given the high profile radio mergers have had in the policy debates since 1996. Internet radio encompasses traditional, licensed radio stations in the U.S. and elsewhere that provide real-time access via the Internet, as well as radio-like stations that operate only via the Internet, popularly called "Webcasting." These include professional ventures that aim for substantial audiences and

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[106] Robyn Greenspan, "Streaming More Mainstream," ClickZ Network, April 15, 2004 Accessed at http://www.clickz.com/stats/big_picture/applications/article.php/3341031#table. As measured by AccuStream iMedia Research.
[107] "AccuStream Report: User Consumption of Broadband Video Streams up 42% in First Half of 2004." Accessed August 24, 2004 at http://www.accustreamresearch.com/news/aug17-04.html.
[108] Ibid.
[109] "Internet and Multimedia 11: New Media Enters the Mainstream," Arbitron/Edison Media Research, Sept. 23, 2003, p.9. Accessed at http://www.arbitron.com/downloads/Internet_Multimedia_11.pdf.

revenue as well as "garage" ventures that are operated as hobbies, small businesses, or to promote other agendas.

Cutting the PC Cord for Streaming Media

So long as streaming media, whether radio or video, is restricted to reception on a PC, its role as a potential competitor with broadcast or cable is limited. The widespread implementation of the 802.11 wireless protocol (best known as Wi-Fi), as well as other wireless technologies for wider range broadband, such as Wi-Max (Worldwide Interoperability for Microwave Access),[110] have begun the process of cutting the cord and making truly portable Internet radio—to be used around the house, at the beach, or in the car. The first such devices are on the market.[111] Equipment manufacturers have introduced portable "boom boxes" for the satellite-distributed XM and Sirius radio services as well.[112]

Internet as New Video Competition for Cable and DBS

Even as the old line television networks adjust to the impact of multichannel distribution alternatives such as cable and satellite, these new players are looking over their shoulder at the Internet and the telephone companies as potential competitors. As cable companies encroach on the old regional exchange carrier's turf by offering consumers local and long distance telephone service using their wires to the home, the telephone companies are looking at their own wires for a response. The 500 Kbps to 1.5 megabits-per-second (Mbps) downstream speed of today's cable and DSL broadband is fast enough to offer decent quality video in a five inch square window on a computer screen. It is expected that it will take capabilities of 5 Mbps to stream over the Internet a DVD quality signal that would compete with cable—and even faster for a high definition picture.[113] "The fiber platform for broadband will pervade our world and how we live," is the flat-out assessment of the president of retail markets for Verizon.[114] To that end, Verizon has initiated a build out of fiber optic cable to pass more than three million homes by the end of 2005 at a cost of $2.5 billion.[115] Verizon began offering video services in 2005 over its new fiber lines. Verizon says it will not develop its own programming, providing an opportunity for current and potential new program producers.[116]

In addition to this fourth very high-speed channel to the home (beyond terrestrial broadcasting, cable TV and two major national DBS providers), there are several ventures looking at ways to provide consumers with high quality video using the existing Internet infrastructure. TiVo, the maker of a popular digital video recorder, has initiated a service that further blurs the line between programming delivered over traditional cable and satellite channels and content from the Internet. The service connects the current DSL, cable modem, or DBS Internet input to a personal digital recorder, storing downloaded movies, music, or other programming that users can then watch or listen to at their convenience. Thus, the download speed does not

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[110] Bob O'Hara, "Will Wi-Max Make Wi-Fi Obsolete?" Network World Fusion, January 12, 2004. Accessed August 20, 2004 at http://www.nwfusion.com/columnists/2004/0112wizards.html.

[111] Bill Howard, "Time for the Internet Boom Box," PC Magazine, August 3, 2004. Accessed Aug. 25, 2004 at http://www.pcmag.com/article2/0,1759,1619716,00.asp.

[112] At http://www.live365.com/info/index.html

[113] "New Service by TiVo Will Build Bridges From Internet to the TV," *The New York Times*, June 9, 2004. Accessed June 9, 2004 at http://www.nytimes.com/2004/06/09/technology/09net.html?ei=5007&en=7bd25f7836498ba2&ex=1402113600&partner=USERLAND&pagewanted=all&position=.

[114] "Video Services Are Big Lure," *The Wall Street Journal*, August 19, 2004, p. B1. Accessed Aug. 19, 2004 at http://online.wsj.com/article/0,,SB109286816672195246,00.html?mod=article-outset-box.

[115] Ibid.

[116] Ibid; "Verizon FiOS TV Will Offer a New Customer Experience,Seidenberg Says," April 18, 2005. Accessed August 15, 2005 at http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=90601.

have to provide real-time streaming, only a speed fast enough to be measured in minutes or a few hours, perhaps during the night.[117]

A similar service was offered by, Akimb in 2005.[118] The package includes a $200 box that, like the TiVo system, plugs into a TV set and, through a home network, to a high-speed cable or DSL Internet connection. Akimbo charged $10 monthly charge (or $200 for a lifetime subscription), for which users can select movies, sports clips, and other programs to download to their set-top boxes. From the viewpoint of consumer options, it is significant that the Akimbo business plan expects that content creators will view this as a new form of distribution, as much of the programming will be content that is not repurposed from other video outlets.[119]

The clear implication of these trends around the Internet is that current characterizations about the nature of markets for audio, video, and even text content are likely to continue shifting.

Findings

The data assembled for this paper is far from exhaustive of all the research and data that address the topic of media competition and ownership. It does present strong evdience that the choices have for obtaining their news, information and entertainment, not only in absolute numbers of television chanels but in the number of different providers of that programming.

Among the findings are:

Television/Programming

- The three traditional broadcast networks, ABC, CBS and NBC, have seen their prime time ratings slide from 55%-60% in the 1970s to about 20% in 2003.
- Even after accounting for their startups and acquisition of cable networks, the new parent companies of those three networks now aggregate under 40% of the typical prime time evening.
- Adding in broadcast television networks that have been started by new players in the TV network business as deregulation was phased in, the five largest media owners account for a household rating of slightly over 50% of prime time, still below the level of three networks in the 1960s and 70s.
- TV program diversity does not increase merely when the sources creating programming increases nor when the number of outlets increases. It is rather a function of the economic model of advertising-supported broadcast TV.
- Diversity of programming genres declined during the period of the Prime Time Access Rule and Financial Interest and Syndication rule. Program diversity increased somewhat with the end of those regulations.
- Local ownership of television stations offers little protection against newscasts being very poor and does not produce superior quality compared to large group or network owned stations.
- The growth of cable TV and satellite delivered programming networks has increased diversity of programming choices for viewers. The FCC reports that as of June 2003, "there were more than 339 national non-broadcast programming networks" compared with about 106 non-broadcast programming networks at the end of 1994.[120]

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117 "New Service by TiVo," *The New York Times*, June 9, 2004.
118 http://www.akimbo.com/order.html, accessed August 13, 2005.
119 "Start-Up Akimbo Systems Gets Funding For Internet-TV System," *The Wall Street Journal*, July 12, 2004, p. B5. Accessed July 12, 2004 at http://online.wsj.com/article/0,,SB108958511185860813,00.html.
120 "FCC Releases Tenth Annual Report on Competition in Video Markets," FCC News Release, January 28, 2004, p. 8.

Radio

- Consolidation in the radio industry has been pronounced. The context, however, was that of an industry that had more than tripled in the number of stations over three decades with no change in the limits of stations ownership. By 1980, a single owner could hold no more than 0.16% of stations nationally.
- National Public Radio, a loose network of 780 not-for-profit radio stations that broadcast common programming for varying amounts of their air time, would be the second largest radio chain. It claims to be available everywhere in the U.S.
- The number of separate owners of radio stations in local markets is lower than prior to the lessening of regulatory limits in the 1990s. Still, larger markets have 15 or more separate owners—in addition to noncommercial stations—and in most of even the smallest markets there is more competition in radio than television and newspapers combined.
- Thousands of radio and radio-like stations are available via the Internet. Stations are available from around the globe.

The Internet

- The Internet has profound implications for access to information. Barely 10 years after its "coming out" as a consumer medium, about two-thirds of Americans are using it[121] for everything from e-mail to news to weather to government forms to shopping, porn, sharing family photos, listening to radio and watching "television."
- Of the five largest media companies, the Web sites of only two (Time Warner and Viacom) are among the top ten organizations whose Web sites get the most unique visitors per month. The sites run by federal government agencies are among the most frequented.
- In 2004, for the first time, more Internet households had broadband than dial-up Internet connections. With research showing that households with always-on broadband used the Internet more than narrowband users, the expectation is that Internet access for information, commerce, and communications will continue to grow.
- The number of hours spent listening to Internet radio grew by triple digits between 2003 and the same period in 2004. Users with broadband spend far more time using Internet radio than dial-up users.
- New devices are becoming available to make Internet radio accessible apart from a personal computer, including access via various current and potential wireless technologies.
- Video and film via the Internet are on the verge of becoming more mainstream. As some of the local telephone carriers upgrade their systems with fiber optic cable to the curb or the home, the transmission speed of downloads will be competitive with cable and satellite services. Devices are on the market that allows even today's broadband users to download movies and video programming for storage on personal video recorders for viewing at their convenience.

Finally, researchers as well as observers unaffiliated with stakeholders have consistently found that media outlets controlled by local owners exert greater direction of editorial content than do chain owners, who tend to leave editorial decisions to local editors.

In brief, by many useful metrics, the empirical reality does not support a simple assertion that in the United States, in 2004, consumers of content via the media have fewer choices of sources or fewer choices for any type of content that has been available in the past. Even in the radio industry, which of the old media has seen the greatest change in ownership structure in the past decade, the contrast is largely a function of the extremely fragmented state the industry had been kept in by federal ownership caps that had not changed in

[121] Internet usage has been measured so many ways that it is difficult to know what the "real" number is. It can be measured simply as those who "use" it regardless of from where. It may mean those who have access from home; or from home or work. It may be measuring just adults or include school-age children. The two-thirds figure is extrapolated from September 2002 estimates at http://www.nua.ie/surveys/how_many_online/.

decades despite the prodigious expansion of outlets. With the cap loosened, the industry has, like a bottle of seltzer that had been jostled before opened, spurted to find the equilibrium it could have been moving to more gradually—and less visibly—if the cap had been loosed slowly over time. By standards of American industry – and even much of the other media – radio in most places is still highly competitive and diverse.

Other than an anecdotal story here or there, there is no suggestion that the managers of major media companies are individually or in concert fostering a political ideology or suppressing an ideology through the media properties they program. *Washington Post* columnist Robert Samuelson observed, “The idea that ‘big media’ has dangerously increased its control over our choices is absurd. Yet much of the public, including journalists and politicians, believe religiously in this myth.”[122]

The data, as seen in Figure 1, shows that on a typical weekday evening, about 51% of adults in the U.S. are watching television programs that originated from the five largest television programmers.” The rest are watching PBS, The Weather Channel, or any of the hundreds of other viewing choices on cable or DBS, or reading the newspaper (only one of which, the *New York Post*, is published by any of these five enterprises).

The data does confirm that a relatively small number of firms account for a large share of the television audience at any given time – though s smaller share that even fewer firms divided up in the not-so-distant past. Thus, there is more competition sharing a smaller mass audience than as recently as the 1980s. Indeed, individuals have ready and inexpensive access to so much information that they need search engines and on-screen directories to help find and manage it.

The term “mass media” implies that there must be a mass somewhere. That would be the “mass audience.” There are a handful of forms of entertainment that cut across income, education, race and other cultural differences among Americans: The Super Bowl, the Olympics, a handful of comedies, dramas and news events that can strike a common chord. Those are logically tapped by a relatively small number of content providers who have the skills and the distribution mechanism to serve a mass audience. If 60 firms all tried to serve the mass audience there would not be enough of a mass to sustain them. They would all be providing similar, common denominator books or magazines or video productions or music. Diversity is the antithesis of mass. So it would seem that in fact society is always going to have a relatively small number of firms that will serve large markets, while there are and should continue to be thousands of entities serving niches.

Those niches, meanwhile, can aggregate into significant numbers. For example, the old television networks and their local affiliates continue to be profitable even though their audience is way down from 20 years ago. At any given moment, more than half the audience for television is watching something other than broadcast network programming. But that half is cut into 40 slices: a percent for CNN, half a percent for Bravo, 0.1% for the Sundance Channel. The mass audience is smaller these days, as the traditional broadcast networks retain more of an audience than other individual networks can provide at one time for an advertiser.

Robert Samuelson proposed that those who keep trying to throw roadblocks into regulatory change “confuse size with power. It’s true that some gigantic media companies are getting even bigger at the expense of other media companies. But it’s not true that their power is increasing at the public’s expense.”[123]

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[122] “The Myth of ‘Big Media’,” *The Washington Post*, August 6, 2003, p. A17. Accessed Sept. 10, 2003 at http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A21980-2003Aug5&notFound=true
[123] Ibid.

The findings of this paper are consistent with the policies that have been advanced by the Federal Communications Commission in recent years, though at odds with the position of many in Congress. The latter has the ultimate jurisdiction over media ownership and structural matters, within the limitations imposed by the First Amendment. However, prior to any legislation in this arena Congress might ponder the advise of the majority decision of the Supreme Court in the *Brand X* case, "The questions the Commission resolved in the order under review involve a 'subject matter [that] is technical, complex, and dynamic.' …. The Commission is in a far better position to address these questions than we are. Nothing in the Communications Act or the Administrative Procedure Act makes unlawful the Commission's use of its expert policy judgment to resolve these difficult questions."[124]

[124] *National Cable & Telecommunications Association Et Al. V. Brand X Internet Services et al*., June 27, 2005. V. Accessed August 15, 2005 at http://laws.findlaw.com/us/000/04-277.html