

## The “Vast Wasteland” Revisited: Headed for More of the Same?

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Things change, but still they stay the same. The broadcast world was in many respects a very different place when the legendary Newton Minow gave his “Vast Wasteland” speech in 1961. At that time, there were only three broadcast television networks, cable television was still in its infancy, and satellite TV was not even a twinkle in its inventors’ eyes. The “golden age” of television was on its way out,<sup>1</sup> and three of the top ten television shows for the 1961-62 season were Westerns.<sup>2</sup> The Federal Communications Commission (“FCC” or “Commission”) had granted its first radio license to a non-white applicant only five years earlier, and had not yet granted a television license to a non-white applicant; that did not come until 1973.<sup>3</sup> The landmark *WBLT* case—which first established the right of plain American citizens to petition the Commission instead of

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1. Television’s “golden age” generally refers to the period between 1949 and 1960, characterized by classic drama anthologies and variety shows such as *Playhouse 90*, *Philco Television Playhouse*, *Studio One*, *Your Show of Shows*, and *Toast of the Town*. See, e.g., “Golden Age” of Television Drama, at <http://www.museum.tv/archives/etv/G/htmlG/goldenage/goldenage.htm> (last visited Mar. 4, 2003); <http://www.internetcampus.com/frtv/frtv025.htm> (updated Jan. 7, 2003).

2. The top ten television shows that season were: *Wagon Train*, *Bonanza*, *Gunsmoke*, *Hazel*, *Perry Mason*, *The Red Skelton Show*, *The Andy Griffith Show*, *The Danny Thomas Show*, *Dr. Kildare*, and *Candid Camera*. See <http://www.TVparty.com>, Super-Sixties Fall Seasons, at <http://www.tvparty.com/fall61.html> (last visited Mar. 4, 2003).

3. Antoinette Cook Bush & Marc S. Martin, *The FCC’s Minority Ownership Policies from Broadcasting to PCS*, 48 FED. COMM. L.J. 423, 439 (1996).

limiting such petitions to commercial interests—would not be decided for another five years.<sup>4</sup>

Today, we have four major broadcast networks—ABC, CBS, FOX, and NBC—and three newer, smaller ones—PaxTV, WB, and UPN. We have hundreds more channels available to us via cable or satellite. There are more, but not nearly enough, minority-owned broadcast stations now<sup>5</sup> and the public can exercise its right to petition the FCC.

But rereading the “Vast Wasteland” speech today evokes an eerie sense of sameness. Chairman Minow’s enumeration of the typical TV fare of that time sounds breathtakingly familiar today: “. . . a procession of game shows, violence, audience participation shows, formula comedies about totally unbelievable families, blood and thunder, mayhem, violence, sadism, murder, Western badmen, Western good men, private eyes, gangsters, more violence and cartoons. And, endlessly, commercials—many screaming, cajoling and offending.”<sup>6</sup> With the exception of the decline of Westerns, and the rise of pervasive sex on the airwaves, Minow’s description remains strikingly relevant.

If *this* is how far we have come in forty years, where can we be headed? And why are we not at least as concerned now as Minow was then? I argue that we should be even *more* concerned now. There are issues currently before the Commission fraught with such profound significance for our media industries, our consumers, and our country that, wrongly decided, could lead us into a consolidated media wasteland that we could not even imagine in 1961.

Last September, the Commission commenced a far-reaching review of our media ownership rules.<sup>7</sup> This was done in the context of the congressionally mandated biennial review of FCC ownership rules<sup>8</sup> and

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4. *United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966).

5. By one account, as of December 2001, 399 radio stations were privately held by minority-owned companies; 156 additional radio stations were owned by publicly held, minority-controlled firms; and 20 full-power television stations were minority-owned. *See* 2002 Biennial Reg. Review—Review of the Comm’n’s Brdcast. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996, MB Dkt. No. 02-277 (Initial Comments of Diversity and Competition Supporters, filed Jan. 2, 2003), at 17-18.

6. Newton N. Minow, *Television and the Public Interest*, Speech Before the National Association of Broadcasters (May 9, 1961) [hereinafter *Vast Wasteland Speech*].

7. *See* 2002 Biennial Reg. Review—Review of the Comm’n’s Brdcast. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act Of 1996, *Notice of Proposed Rulemaking*, 17 F.C.C.R. 18503 (2002).

8. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

also as a result of court decisions mandating further review of these rules.<sup>9</sup> At issue is the FCC's review of rules that seek to protect localism, independence, and diversity in the media. These rules, among other things, currently limit a single corporation from dominating local TV markets;<sup>10</sup> from merging a community's TV stations, radio stations, and newspapers;<sup>11</sup> from merging two of the four major TV networks;<sup>12</sup> and from controlling more than thirty-five percent of all TV households in the nation.<sup>13</sup>

Certainly no issue before the FCC is as important as the decision whether to eliminate or significantly change our media concentration protections. Much more is at stake here than just satisfying a requirement for periodic review of an industry or even satisfying the demands of a particular court. At stake in this proceeding is how the media industry is going to look in the next generation and beyond. At stake are core values of localism, diversity, competition, and maintenance of multiple voices and choices that undergird our open marketplace of ideas. Also at stake is the ability of Americans to enjoy the best, most creative, and most diverse entertainment, rather than more and more prepackaged, lowest-common-denominator programming devised hundreds of miles away from the communities in which it is aired.

I am frankly concerned about consolidation in the media and particularly concerned that we are on the verge of dramatically altering our nation's media landscape without the kind of national dialogue, debate, and careful analysis that these issues so clearly merit.

Why am I concerned? I don't believe that we have the foggiest idea right now about the potential consequences of our actions. Not only don't we have all the answers to our questions, we haven't even teed up all the relevant questions. We do have, however, something of a model to look at as we attempt to analyze what eliminating concentration protections might do to the media—namely, the radio industry. The late 1990s brought new rules, premised on changes in the Telecommunications Act of 1996 that loosened earlier, more stringent ownership caps. But the consolidation that took place went far beyond what anyone expected. Conglomerates now

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9. See *Fox TV Stations, Inc. v. FCC*, 280 F.3d 1027, *reh'g granted*, 293 F.3d 537 (D.C. Cir. 2002); *Sinclair Brdcast. Group, Inc. v. FCC*, 284 F.3d 148, *reh'g denied*, No. 01-1079, 2002 U.S. App. LEXIS 16618 (D.C. Cir. Aug. 12, 2002).

10. Radio Broadcast Services, 47 C.F.R. § 73.3555(b) (2002).

11. *Id.* § 73.3555(c)-(d).

12. *Id.* § 73.658(g).

13. *Id.* § 73.3555(e).

own dozens, even hundreds—and, in one case, more than a thousand—stations all across the country.<sup>14</sup>

Many believe that the elimination of radio consolidation rules created serious problems. There are thirty-four percent fewer radio station owners than there were before protections were loosened.<sup>15</sup> The majority of radio markets are dominated by oligopolies.<sup>16</sup> Ten companies, according to one survey, now control two-thirds of radio programming and two-thirds of radio revenues,<sup>17</sup> and all this in just a few short years.

These changes no doubt created efficiencies that allow broadcasters to operate more profitably and on a scale unimaginable a few years ago. I recognize that without some mergers and acquisitions, some stations may well have gone dark, depriving their communities of service. The acquisitions that led to the current state of affairs, however, did not always save struggling stations or add to diversity on the dial.

Some media watchers argue that this concentration has led to far less coverage of news and public interest programming.<sup>18</sup> In its multiyear study, the Future of Music Coalition finds a homogenization of music that gets airplay and that radio serves now more to advertise the products of vertically integrated conglomerates than to entertain Americans with the best and most original programming.<sup>19</sup> More and more programming originates hundreds of miles away from listeners and their communities.

Television, too, is already a changed animal. Maybe there never was a true “golden age” of television, but once upon a time, not so very long ago, there *was* a medium that tried to reach out and inform and entertain a majority of the American people. I don’t believe I do that present medium vast injustice when I say it often seems to have narrowed its mission to one of delivering eyeballs to advertisers and its focus to delivering especially

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14. See PETER DI COLA & KRISTIN THOMSON, FUTURE OF MUSIC COALITION, RADIO DEREGULATION: HAS IT SERVED CITIZENS AND MUSICIANS? 22-23 (2002), available at <http://www.futureofmusic.org/images/FMCradiostudy.pdf> [hereinafter FMC RADIO STUDY].

15. GEORGE WILLIAMS & SCOTT ROBERTS, RADIO INDUSTRY REVIEW 2002: TRENDS IN OWNERSHIP, FORMAT, AND FINANCE 3 (FCC Media Bureau, Staff Research Paper No. 11, 2002), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-226838A20.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A20.doc).

16. FMC RADIO STUDY, *supra* note 14, at 36-39.

17. *Id.* at 24-26.

18. See, e.g., William Safire, *On Media Giantism*, N.Y. TIMES, Jan. 20, 2003, at A19; Robert W. McChesney, *Oligopoly: The Big Media Game Has Fewer and Fewer Players*, THE PROGRESSIVE, Nov. 1999, at 20, available at <http://www.progressive.org/mcc1199.htm>.

19. FMC RADIO STUDY, *supra* note 14, at 53-59.

18- to 34-year-old eyeballs.<sup>20</sup> That kind of television is tunnelvision, and the target audience of tunnelvision is no longer the majority, but a small, albeit free-spending, minority. But there are other consumers, too, with different programming and even different advertising interests, and I think these interests—*ergo*, an important component of the public interest—are getting beat up on pretty badly.

Despite this history, we are now set to decide whether to eliminate the rules that govern the rest of the media world. If all these rules are scrapped, or if the FCC loosens them significantly, one company could dominate a region's access to information by controlling its radio stations, television stations, newspapers, and cable systems. And those who believe the Internet will save us from this fate should realize that the dominant Internet news sources are owned by the same media giants who control radio, TV, newspapers, and cable.<sup>21</sup> New technology alone, without rules that protect against its being co-opted by media giants, will not guarantee healthy, independent local media.

In our broader analysis of these issues, let us keep in mind that the effects of media consolidation are not just economic. I have already mentioned localism, diversity, and safeguarding the integrity of America's marketplace of ideas. How are America's various ethnic groups being served in this more consolidated era? What happens to station ownership opportunities and executive management prospects for minorities in an environment where a few companies own so many stations? What are the impacts on local and regional artistic creativity when local and regional input is compromised? Are we hearing, as some argue, significantly less-diverse music? Has the quality of both local and national news suffered? With more station outputs, why do we not have more breadth and depth to our news?

Recently, I have asked my colleagues, the industry, and the public to consider whether the rising tide of violent and excessively graphic sexual programming on the air, particularly when children are watching, may be another result of consolidated programming put together by those who see media as primarily an advertising vehicle and who have no ties to the communities where their shows are seen and heard. Is it simply

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20. See, e.g., L. Brent Bozell III, Weekly Syndicated Column, *Old Money, Young Money* (Apr. 30, 2002), available at <http://www.parentstv.org/PTC/publications/lbbcolumns/2002/col20020430.asp>.

21. See Press Release, Nielsen//NetRatings, Current News Events Boost Traffic to Online Newspapers, According to Nielsen//NetRatings (Feb. 7, 2003), at [http://www.nielsen-netratings.com/pr/pr\\_030207.pdf](http://www.nielsen-netratings.com/pr/pr_030207.pdf); Nielsen//NetRatings, *Top 25 Parent Companies, Week end of February 23, 2003* (Feb. 23, 2003), at <http://pm.netratings.com/nmpm/owa/NRpublicreports.toppropertiesweekly> (last visited Mar. 5, 2003).

coincidence that the rising tide of indecency seems to be accompanying the rising tide of media consolidation?

Even more disturbingly, why is it that some in the broadcast and other media industries who oppose further consolidation are afraid to speak out on the issue? Is career intimidation also a product of consolidation?

I do not know the answers to many of these questions. But I do know this: It would be folly for the Commission to rush to judgment without teeing these questions up and making at least a credible effort to understand the consequences of our decisions before we forge ahead. Unfortunately, there are no signs of a more measured and studied approach. Instead, I have been hamstrung in my attempts to hold hearings around the country so that these issues can be dealt with in a national dialogue rather than through the usual inside-the-Beltway machinations.

There is another reality that Chairman Newton Minow mentioned in 1961. It still exists; it just isn't talked about so much these days. It is the public interest. It is the lodestar that both broadcasters and broadcast regulators are charged to follow. It is the service broadcasters are supposed to provide in return for their licenses to use the people's airwaves. Information. News. Insight. A reflection of one's community. Quality entertainment for a diversity of audiences. Sensitivity to the needs of children. A mission to serve.

In the "Vast Wasteland" speech, Chairman Minow paraphrased John F. Kennedy: "Ask not what broadcasting can do for you—ask what you can do for broadcasting."<sup>22</sup> To demonstrate the nonpartisan nature of these issues, let me quote a Republican Secretary of Commerce who, many years earlier, expressed his own concern: "[I]t is inconceivable that we should allow so great a possibility for service [for news, for entertainment, for education and for vital commercial purposes] to be drowned in advertising chatter."<sup>23</sup> It wasn't some firebrand Washington regulator who said that; it was Herbert Hoover. Hoover also said that no one should cry unfair interference or deprivation of freedom "if he is compelled to prove that there is something more than naked commercial selfishness in his purpose."<sup>24</sup>

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22. Vast Wasteland Speech, *supra* note 6.

23. Herbert Hoover, Keynote Address at First National Radio Conference, Washington, D.C. (Feb. 27, 1922), *reprinted in* HERBERT HOOVER, THE MEMOIRS OF HOOVER: THE CABINET AND THE PRESIDENCY 140 (1952).

24. Herbert Hoover, Opening Address at Fourth National Radio Conference, Washington, D.C. (Nov. 9, 1925), *available at* <http://www.binghamtonpublicaccess.org/special/hoover> (last visited Mar. 5, 2003).

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Yes, the stakes are high. We need a diversity of input into the Commission on these issues that goes beyond anything we've ever had before. We need to hear from stakeholders of every stripe; and when we're dealing with the media, which is so central to our lives and our democracy, every American is a stakeholder. One thing is for sure—each of us is going to be living with the results of these decisions for a long time to come. It is our public interest responsibility—yours and mine—to encourage a national dialogue on this before it is too late.

