

Growing Media Consolidation Must Be Examined to Preserve Our Democracy

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The proposed acquisition of CBS by media giant Viacom, along with the recent wave of mergers among media companies, raises some very troubling questions for our system of representative democracy and is an issue that deserves a much wider debate in Congress and with the public.

These media mergers warrant the highest level of scrutiny by our antitrust agencies and by the Federal Communications Commission (FCC). They may also require Congress to consider a new legislative framework to address the growing problem of media concentration.

Some of my colleagues may be aware of my concerns about increasing concentration in other sectors of the economy, especially in agriculture and finance. But of all the industries where concentration is now accelerating at such a rapid pace, its really consolidation in the media and entertainment industries that should alarm us the most.

The media is not just any ordinary industry. It is the life-blood of American democracy. We depend on the media for the free flow of information that enables citizens to participate in the democratic process. As James Madison wrote in 1822, "A popular government without popular

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Editor's Note: When asked to comment, Senator Wellstone provided his testimony presented at *The Viacom/CBS Merger: Media Competition and Consolidation in the New Millennium: Hearings Before the Subcomm. on Antitrust, Monopolies, and Business Rights of the Senate Comm. on the Judiciary*, 106th Cong. (1999).

information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both.” That’s why freedom of the press is enshrined in our Constitution. No other industry enjoys that kind of protection.

For our democracy to work, we depend on the media to do two things. We depend on them to provide citizens with access to a wide and diverse range of opinions, analyses, and perspectives. And we depend on the media to hold concentrated power—whether public or private power—accountable to the people. The greater the diversity of ownership and control, the better they will be able to perform those functions.

On the other hand, as ownership and control of the media becomes concentrated in the hands of fewer and fewer people, the less we can rely upon the media to fulfill these basic responsibilities. Common ownership and control is not conducive to a diversity of viewpoints and perspectives. And, as these far-flung multinational corporations extend their holdings and influence into more and more other industries, how much confidence can we have that they will hold any of those interests accountable to the people?

Some have argued that the recent round of consolidation in the media and entertainment industries, especially the trend towards vertical integration, will offer consumers a more diverse array of choices. But it is important to distinguish between outlets and content. A proliferation of new media outlets does not guarantee any greater diversity of viewpoint. After all, one corporate conglomerate can still exercise control over the content of media that reaches citizens through many different outlets. The safest and best way to ensure diversity of viewpoint is through diverse ownership.

I think most people would be shocked by the degree of media concentration that has occurred in the last fifteen years. When Ben Bagdikian wrote *The Media Monopoly* back in 1983, about fifty media conglomerates controlled more than half of all broadcast media, newspapers, magazines, video, radio, music, publishing, and film in this country. By 1986, that number had shrunk from fifty to twenty-nine. By 1993 it had shrunk even further to twenty firms. Today fewer than ten multinational media conglomerates—Time/Warner, Disney, Rupert Murdoch’s NewsCorp, Viacom, Sony, Seagram, AT&T/Liberty Media, Bertelsmann, and GE—dominate most of the American mass media landscape. The range and diversity of their holdings is astounding.

However, the focus of my concern is not specifically CBS or Viacom. Their merger is really part of a larger problem. Yes, this would be one of the largest media mergers in history, but these two companies undoubtedly felt compelled to act by competitive pressures—namely, the rapid vertical

integration in the industry through a spate of high-profile mergers and acquisitions in recent years.

By the same token, one problem with this merger is that it would increase pressure on other firms to do the same, accelerating the momentum towards further concentration in the industry. The Chairman of Sony commented on the merger: "After a deal like this, the urge to merge becomes feverish. And right now temperatures are soaring all over the city." We need to concern ourselves not only with the effects of this merger, but also with the aftershocks that will be felt for years to come.

The FCC and our antitrust agencies need to address these concerns about media concentration. Congress has directed the FCC to uphold a "public interest" standard in approving media mergers, though that standard has been severely weakened in recent years. In September 1999, Chairman Kennard said in a speech, "[B]roadcast ownership rules serve principles that we still cherish principles like competition, localism, and a diversity of voices [W]e can and must do more to make sure that there are a multitude of voices and opinions on the airwaves."¹ These are admirable principles. Yet they are difficult to reconcile with the Chairman's statement on the CBS/Viacom deal, in which he said "the essential question will be: How does this merger accelerate delivery of digital age services to all consumers?"² The more important question is: When and why do the principles of competition, localism, and diversity lose out to other considerations, such as delivery of digital age services to consumers?

I believe media concentration warrants heightened scrutiny by our antitrust agencies, as well. In a law review article entitled *The Political Content of Antitrust*, renowned antitrust authority Robert Pitofsky addressed the relevance of antitrust law to the noneconomic concerns surrounding media concentration: "[S]uppose that a single wealthy family were to acquire the leading newspaper in each of the twenty largest cities in the United States," he wrote. "One possible response would be enactment of special legislation to head off that development. If a bill were to become bottled up in committee, however, the Sherman Act would be sufficiently flexible to take into account the threat to political values."³

1. Chairman William E. Kennard, Remarks at the National Association of Broadcasters Radio Show (Sept. 2, 1999), *available at* (visited Mar. 29, 2000) <<http://www.fcc.gov/Speeches/Kennard/spwek929.html>>.

2. Chairman William E. Kennard, Statement on Proposed Viacom-CBS Merger (Sept. 8, 1999), *available at* (visited Mar. 29, 2000) <<http://www.fcc.gov/Speeches/Kennard/Statements/stwek955.html>>.

3. Robert Pitofsky, *The Political Content of Antitrust*, 127 U. PA. L. REV. 1051, 1054 (1979).

Pitofsky wrote:

It is bad history, bad policy, and bad law to exclude certain political values in interpreting the antitrust laws. By "political values," I mean, first, a fear that excessive concentration of economic power will breed antidemocratic political pressures, and second, a desire to enhance individual and business freedom by reducing the range within which private discretion by a few in the economic sphere controls the welfare of all.⁴

Professor Pitofsky concluded that "Such considerations . . . can and should be feasibly incorporated into the antitrust equation."⁵

Clearly, something needs to be done. If our antitrust agencies and the FCC fail to address the problem of media concentration within their current legislative mandates, a legislative remedy may be necessary. One option would be to breathe new life into the FCC's "public interest" standard by giving presumptive weight to considerations of competition, localism, and diversity of viewpoint from independent sources. Another option would be to provide additional guidance for the application of our antitrust laws to media mergers, either through new legislation or through new enforcement guidelines.

Undoubtedly such an effort would meet considerable resistance, not least from media corporations themselves. Progress in the area of antitrust has almost always come in response to public pressure. Yet this is the quandary of democratic media reform: involvement of the public in this debate depends on coverage and attention by the major media. Unfortunately, the record to date has not been encouraging. There has been virtually no public awareness or public discussion of the rapid concentration of media that has occurred over the past fifteen years.

As they say, "Freedom of the press is great if you own the press." As fewer and fewer presses are concentrated in the hands of fewer and fewer people, we need to start asking ourselves how we can make that freedom meaningful for more people. But that's a debate that we need to engage in with a larger audience. We can start by bringing attention to it in this Congress.

4. *Id.* at 1051.

5. *Id.* at 1075.