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11. The elder abuse and neglect program has additional means of assisting the mentally competent elderly, which will not be addressed here.
12. 755 ILCS 5/11a-1 (2003).
13. 755 ILCS 5/11a-10e (2003).
14. Center for Social Gerontology, National Study of Guardianship Sytstems: Findings and Recommendations 98 (1994).
15. For a discussion of the development of family courts in the United States, see Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. Cal. L. Rev. 469 (1998).
16. 755 ILCS 5/11a-11(a) provides that "[U]nless excused by the court upon a showing that the respondent refuses to be present or will suffer harm if required to attend, the respondent shall be present at the hearing."
17. 755 ILCS 5/11a-10 (b) provides that the court may appoint counsel for the respondent if it will best serve his interests, and shall appoint counsel if respondent requests counsel or if the respondent takes a position adverse to that of the GAL. Judges will appoint pro bono counsel for respondents who do not have funds for a private attorney. The statute also authorizes the court to order the petitioner to pay for the respondent's attorney.
18. Although the proposed guardian is required by statute to notify the elderly person's living relatives by mail, there is no proof of this other than the statement of the proposed guardian himself, which may not be made under oath.
19. 755 ILCS 5/11a-10.
20. 755 ILCS 5/11a-10(a).
21. 755 ILCS 5/11a-10(a).
22. Id.
23. 755 ILCS 5/11a-10(a).
24. 755 ILCS 5/11a-10(c).
25. 755 ILCS 5/11a-11(d) provides that in an uncontested proceeding for the appointment of a guardian the person who created the report required by Section 11a-9 will only be required to testify at trial upon order of court for cause shown.
26. Eg. Rules of the Circuit Court of Cook County, Rule 12.13(d).
27. The National Center on Elder Abuse, *Problems Facing State Adult Protective Services Programs and the Resources Needed to Resolve Them* (Jan. 2003).
28. 320 ILCS 20/4 (2003).
29. The Office of the State Guardian is created by 20 ILCS 3955/30 (2003), and the Office of the Public Guardian is created by 755 ILCS 5/13 (2003) in counties having a population in excess of 1,000,000.
30. 20 ILCS 505/9.8(a) (2003).
31. Investigators offer a variety of explanations for why this occurs. Some were informed by the attorney for the petitioner (the alleged abuser) that they could not testify unless they were called by a party as a witness. Others stated that they attended court proceedings but did not speak up because they did not know how or when to do so.
32. 320 ILCS 20/8 (5) (2003).
33. Id. Access is limited to an in camera inspection, unless the Court rules otherwise.
34. Marshall B. Kapp, *Reforming Guardianship Reform: Reflections on Disagreements, Deficits, and Responsibilities*, 31 STETSON L. REV. 1047 (2002) citing AP Special Report, Guardians and the Elderly: An Ailing System, (Sept. 1987).
35. Id.
36. Morris A. Fred, *Illinois Guardianship Reform Project, Final Report*, Equip for Equality (Feb. 2001).
37. Kapp, supra note 37.
38. Id.
39. Breaux and Hatch, *supra*, note 3.
40. Id. at 210.

FCC's Media Ownership Plan Axed: Deregulation and the Debate Over Democracy

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In June 2003 the United States Senate voted 55 to 40 to overturn the Federal Communication Commission's ("FCC") new ownership rules.[1] The decision comes after a Senate Committee's vote to block one part of the FCC's new rules that would have allowed national media companies to own more television stations.[2] The Senate's vote, under a rarely used procedure called a "resolution of disapproval,"[3] sends the matter to the United States House of Representatives. The House's July 23rd vote of 400 to 21, for a bill that would essentially overturn the FCC's decision to relax regulations, indicates that it would be a long shot for the FCC's decision to be supported.[4] If the House sends the resolution to the White House, aides to President George W. Bush at the Office of Management and Budget say they will recommend the President veto it.[5] The decision of whether to overturn the landmark liberalization of the rules will be one of the most important deregulatory actions undertaken in the Bush administration.

Congressional and Court Directives

In the 1996 Telecommunications Act ("Act"), Congress mandated that the FCC review its broadcast ownership rules every two years to determine whether any of them are necessary in the public interest as a result of competition.[6] The Act requires the FCC to repeal or modify any regulation it determines to be no longer in the public interest.[7]

In addition to this statutory mandate, the old rules had been under attack in court. In February 2002, the U.S. Court of Appeals for the D.C. Circuit sided with media companies, including Fox, NBC, Viacom, and the National Association of Broadcasters against the FCC.[8] The organizations had claimed the FCC exceeded its authority and violated both the First Amendment and the Administrative Procedure Act.[9] In *Fox Television v. FCC*, the Court agreed, finding that the FCC's 35 percent national ownership cap for television was "arbitrary and capricious" and, therefore, contrary to law.[10]

A few months later, in April 2002, the same appeals court reached a similar conclusion in *Sinclair Broadcast Group v. FCC*, holding that the Commission failed to demonstrate that its adoption of local television ownership rules was "necessary in the public interest."[11] In both cases, the court ruled that the Telecommunications Act of 1996 demanded more than broad theories about the benefits of diversity or competition to justify ownership regulations. It is from this series of controversial rulings that the FCC decided the recent media ownership guidelines.

Agency Action

"No other decision made in Washington will more directly affect how you will be informed, persuaded and entertained," writes conservative columnist William Safire of the New York Times.[12] On June 2, the FCC voted in a contentious 3-2 split to relax rules limiting ownership of TV stations, radio stations, and newspapers.[13] The action represents the most comprehensive review of media ownership regulation in the agency's history, spanning 20 months and encompassing a public record of more than 520,000 comments.[14] The vote split along party lines, with the three Republican Commissioners backing the new rules and saying that a pair of recent appeals court decisions provided a strong impetus for change.[15]

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The two Democratic members of the FCC, Jonathan Adelstein and Michael Copps, voted against the changes, having earlier sought to postpone the vote to allow more public consultation. Although the Republican Commissioners agree that the new rules reflect the continuing goals of ensuring diversity and localism and guarding against undue concentration, the FCC's Democrats disagree.[16] Commissioner Adelstein stated, "This is the most sweeping and destructive rollback of consumer protection rules in the history of American broadcasting . . . Consumers' anger will flash as they surf through their channels only to find more sensationalism, commercialism, crassness, violence, homogenization and noticeable less serious coverage of news and local events."[17]

Effect of FCC's New Rules

In their recent decision, the FCC loosened and eliminated several major ownership restrictions. The new rules permit one company, in a market with nine or more TV stations, to own a newspaper, a TV station, and several radio stations, lifting a decades-old ban on cross-ownership.[18] In markets with between four and eight TV stations, one company can own one of the following: a daily newspaper; one TV station; and up to half of the radio station limit for that market (i.e. if the radio limit in the market is six, the company could only own three); or a daily newspaper; and up to the radio station limit for that market; or two TV stations (if permissible under local TV ownership rule), and up to the radio station limit for that market.[19] "Cross-ownership" among TV, radio, and newspapers is still barred in markets with three or fewer TV stations, but a company can obtain a waiver of that ban if it can show that the television station does not serve the area served by the cross-owned property.[20]

The national TV ownership cap was also relaxed, allowing broadcast networks to own a group of TV stations that collectively reach up to 45 percent of the national television audience, up from the current 35 percent cap.[21] However, the FCC did retain its dual network ownership prohibition, banning mergers among any of the top four national broadcast networks.[22] The U.S. market is already dominated by five major broadcasters - Fox, AOL Time Warner, Walt Disney (ABC), General Electric (NBC), and Viacom (CBS and UPN).[23] Two of the networks are presently over the current cap: News Corporation's Fox is at 37 percent and Viacom Inc.'s CBS is around 40 percent.[24] The FCC also eased rules governing local TV ownership so one company can own two television stations in more markets and three stations in the largest cities such as New York and Los Angeles.[25]

In addition, the FCC ruled to maintain the 50 percent "UHF Discount" when calculating a company's national reach, meaning that two UHF stations count as one station for the purpose of calculating the national broadcast ownership cap.[26] Yet, the FCC determined that when the transition to digital television is complete, the UHF discount would be eliminated for the stations owned by the four largest broadcast networks.[27] Finally, the agency maintained local radio ownership caps, but tightened how local radio markets will be defined to correct the problem of companies exceeding ownership limits in some areas and to prevent intense concentration.[28]

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First Amendment, Marketplace Competition, and Consumer Concerns

The fundamental question raised by the FCC's review of the rules is whether the First Amendment goal of information dissemination from diverse and antagonistic sources can be preserved if different forms of media are allowed to be cross-owned in the same community or national limits on ownership are eliminated.[29] As a result of the 1996 Telecommunications Act, broadcasting consolidation has proliferated and the proposals to reform the current rules have provoked a storm of debate.

Broadcasters see a triumph of the First Amendment in the FCC's action.[30] They assert that the recent rulings will be beneficial to the consumer by protecting localism and competition.[31] Advocates of the new rules say the changes are long overdue to take account of the new realities of the U.S. market. The limits on newspaper and television ownership have not been updated since the mid-1970's, when cable television was still in its infancy and the Internet had not yet been conceived.[32] Advocates further contend that greater participation by newspaper publishers in the television and radio business improves the quality and quantity of news available to the public.[33] The FCC concluded that the large number of media outlets, in combination with ownership limits for local TV and radio, were more than sufficient to protect viewpoint diversity.[34] The FCC also found that the former newspaper-broadcast prohibition and TV-radio cross-ownership prohibition rules did not promote competition because radio, TV, and newspapers generally compete in different economic markets.[35]

Critics warn that changes in regulations could lead to a further concentration of media power in the hands of already dominant companies.[36] "As big media companies get bigger, they're likely to broadcast even more homogenized programming that increasingly appeals to the lowest common denominator. If this is the toaster with pictures, soon only Wonder Bread will pop out," charges Commissioner Adelstein.[37]

Consumer groups consider it a blow to the three defining public interest goals: diversity of views; competition; and healthy local news and commentary.[38] Acknowledging that ownership rules are essential to a healthy democracy, Karen Young of Chicago Media Action opposes the FCC's new rules and argues that they do not prohibit vertical integration-media companies' ability to control the media food chain.[39] "For example, GE, NBC's parent company, plans to buy Universal Studios from Vivendi, and this means all the TV networks will own their own film production companies. Instead of having to buy Law and Order from another company, NBC gets to negotiate with itself."[40] According to Young, the public has suffered the ill effects of corporate consolidation through lost jobs, an inundation of product placements, less actual news coverage, and less consumer control.[41] "Big Media does not serve the public interest at all. We're going into one of the most critical Presidential elections in our history and we need to know what's going on so we can make good decisions. We need a democratic media system for our very survival."[42]

As media ownership faces further review in the House, the new rules, if sustained, will affect the number of "voices" in the marketplace and the "informed electorate" will certainly respond with vigor. While it has been proposed that the future of media deregulation will imperil democracy and create a monopoly on information, it is indisputable that the coming Congressional decisions will have a profound impact on the quality of the channels from which citizens receive information.

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7. Federal Communications Commission Press Release, *FCC Sets Limits on Media Concentration* (June 2, 2003), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2003/db0602/DOC-235047A1.doc at 1-10.
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10. Fox Television v. FCC, 350 U.S.App.D.C. 313 (2002).
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14. Id.
15. Declan McCullagh, *FCC Eases Rules On Media Ownership,* CNET, at http://news.com.com/2100-1028-1012027.html (June 2, 2003).
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20. Id.
21. Id. The share of U.S. households is calculated by adding the number of TV households in each market that the company owns a station. Regardless of the station's ratings, it is counted for all of the potential viewers in the market. Therefore, a 45% share of U.S. TV households is not equal to a 45% share of TV stations in the U.S.
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25. Federal Communications Commission Press Release, *FCC Sets Limits on Media Ownership,* supra note 7.
26. Id. at 6.
27. Id.
28. Id. at 5.
29. Gene Kimmelman, Senior Director for Public Policy and Advocacy, Consumers Union, *Deregulation of Media: Dangerous to Democracy,* available at http://www.consumersunion.org/telecomm/kimmel.303-htm.
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38. Hickey, supra, at 30.
39. Id.
40. Id.
41. Id.
42. Id.