

RACE- AND GENDER-CONSCIOUS POLICIES: TOWARD A MORE EGALITARIAN COMMUNICATIONS FUTURE

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In this essay the authors, all faculty at Howard University, advocate more egalitarian ownership of broadcast media, especially with respect to minorities and women. They designate five areas for attention: objective standards for judging public interest performance; strengthening public oversight; strengthening localism; identifying metrics for diversity and localism; and mechanisms to promote minority and female ownership. They offer recommendations for the implementation of each area. In a larger sense, they argue that media ownership policies remain blocked by corporate-oriented neoliberalism, and the current media oligopoly needs to be dismantled under an antitrust model to insure robust discussion of issues of common interest into the future.

INTRODUCTION

The US 3rd Circuit Court of Appeals' decision on July 7, 2011 to deny the telecommunication industry's petition to expand mergers and acquisitions through further cross-ownership of media companies will have far-reaching effects.¹ Most importantly, the decision will serve to stave off some of the ravages of further conglomeration within the nation's media, particularly in broadcasting. Also crucial is that the decision opens the door for the development of race- and-gender conscious communication policies that are long overdue if ownership by women and racial minorities is to ever rise above the minuscule percentages they presently occupy.

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[∇] The Howard Media Group (HMG) is a multicultural collaborative composed of faculty members and graduate students at Howard University. HMG's goals are to 1) advance greater understanding of media industries and public policy through education; and 2) promote egalitarian communications policies through scholarship.

¹ *Prometheus Radio Project v. Federal Communications Commission*, 652 F.3d 431 (3rd Cir., 2011) [*hereinafter* *Prometheus v. FCC (2011)*]. Numerous other organizations advocating for equality in media joined in the lawsuit, as well as the original 2004 *Prometheus* case (see below), including groups like Institute for Public Representation at Georgetown Law School, Media Alliance, and Reclaim the Media.

In this essay we take a public interest stance, reviewing the context and points of the ruling, exploring why conglomeration acts *against* the public interest, and finally advancing a set of principles and measures that might guide policymaking toward a more egalitarian future.

THE CONTEXT FOR THE RULING

Media policy has been contested ground for a long time, but particularly over the last decade, with citizens' groups and a growing number of scholars in diverse fields challenging communication policies of the 1980s and 1990s that allowed conglomeration to run rampant in all communications industries. Such policies were shaped by neoliberalism, a philosophy of public policy that emphasizes the role of markets and de-emphasizes the role of government regulation in all social institutions. As Des Freedman notes, with regard to media, "many critics saw in this process not the withdrawal of the state from media regulation but the pursuit of specific ideological ends: to reshape media markets in order to provide increased opportunities for accumulation and profitability."² Citizen challenges have included protesting the effect of conglomeration in squeezing out female, African American, Latino, and other under-represented groups and creating a media landscape in which a few wealthy, powerful mega-corporations have come to dominate ownership in broadcast, cable, book publishing, and other communications. Thousands of citizens came to public hearings sponsored by the FCC around the nation in 2007 on the proposed rule changes – 1100 alone at the Seattle hearing – to tell commissioners they opposed further deregulation of media ownership.³

To be sure, the problem has been visibly growing for decades. Bagdikian brought attention to an encroaching media monopoly nearly three decades ago.⁴ McChesney has more recently tracked patterns in conglomeration and become its loudest academic critic, serving in many ways as the informed voice of a citizens' media reform movement. Among other things, that movement allowed issues of race and gender discrimination in communications policy to arise in public forums when citizens challenged FCC regulations that have contributed to a pattern of white, male ownership in the communications industries.⁵ In a 1973 Supreme Court decision, *TV9 Inc. v. FCC*, the court required the FCC to take racial diversity into account in licensing broadcast stations. In 1978, the FCC adopted two measures to further strengthen minority access – distress sales (which gave financially stressed station owners a tax advantage if they sold to minorities) and tax certificates (which enabled broadcasters selling to minorities to postpone paying capital gains taxes). According to Honig, these measures boosted minority ownership from 60 stations in 1978 to more than 300 by

² Des Freeman, *The Politics of Media Policy* (Malden, MA: Polity Press, 2008), 49.

³ While many media reported on these hearings, a good summary can be found in Reclaim the Media, "The People Speak Out at FCC Hearings in Seattle," *Yes Magazine*, Nov. 14, 2007, accessed Nov. 1, 2011, www.yesmagazine.org/multimedia/yes-audio/the-people-speak-out-at-fcc-hearing-in-seattle.

⁴ Ben H. Bagdikian, *The Media Monopoly* (Boston: Beacon Press, 1983).

⁵ Robert W. McChesney, *The Problem of the Media: U.S. Communication Policies in the 21st Century* (New York: Monthly Review Press, 2004).

1995.⁶ Yet without court action, the FCC has not been responsive to interest groups' numerous recommendations for ways to address the deep, persistent, and discriminatory exclusion of females and racial minorities from media ownership.

Women have found the greatest difficulty gaining legal ground for gender equality in communications policy. In fact, feminist legal scholar Angela J. Campbell has observed that the paucity of relevant case law even makes it difficult to determine what the law requires.⁷ An illustrative example is one court ruling, *Lamprecht v. FCC* in 1992,⁸ in which the District of Columbia Circuit Court said that the FCC's effort to give preference to women employees in broadcast station management (similar to preferences for minorities) was unconstitutional. Moreover, the court said the FCC had established "no factual record as to either past discrimination against women or their contribution to diversity," nor had the FCC even attempted to build a record justifying gender preferences on remand.⁹ In looking at similar non-media cases for guidance, Campbell surmised that "The most we can conclude from these non-broadcast cases is that strict scrutiny applies where race is a factor and intermediate scrutiny applies where gender is a factor."¹⁰

THE BASICS OF THE RULING

The July 7, 2011 ruling is the latest spawned by the 2003 landmark *Prometheus Radio Project vs. FCC* case, known informally as *Prometheus I*, in which the bench of the same 3rd Circuit Court granted a stay in the implementation of the FCC's planned ownership rules. Public interest attorneys had successfully argued that loosening regulations to make mergers and acquisitions among media companies easier would expand conglomeration and hurt smaller media owners (like the Prometheus network). In that same ruling, the court remanded the rules back to the FCC to address low ownership levels by women and minorities.¹¹

The July ruling extended principles set forth in *Prometheus I*, by siding with public interest groups who argued that the FCC had acted improperly in attempting to liberalize its rules prohibiting ownership of newspapers and broadcast companies in the same market. In addition to rejecting cross-ownership, the court agreed that the Commission had failed to consider the impact of its rules on women and minority ownership of the media (which remains in the low single digits). Lastly, the court agreed with public interest groups that pre-existing limits on the number of TV and radio

⁶ David Honig, "How the FCC Helped Exclude Minorities from Ownership of the Airwaves," lecture, Fordham University, New York, NY, Oct. 5, 2006, accessed Nov. 1, 2011, mmtconline.org/lp-pdf/DH-McGannon-Lecture-100506.pdf.

⁷ Angela J. Campbell, prepared statement, Minority Media Ownership Workshop, Jan. 27, 2010. This workshop was sponsored by the Federal Communications Commission Media Bureau, in connection with media ownership proceedings spelled out in MP Docket No. 09-182.

⁸ *Lamprecht v. Federal Communications Commission*, 958 F.2d 382 (D.C. Cir., 1992).

⁹ Campbell.

¹⁰ *Ibid.*

¹¹ *Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d 372 (3rd Cir., 2004).

stations a broadcaster can own in one market should remain in place.¹² Attorney Andrew Jay Schwartzman, who had argued the case on behalf of the Prometheus Radio Project, stated:

We won on almost every point. This decision is a vindication of the public's right to have a diverse media environment. The FCC majority knew that its effort to allow more media concentration was politically and legally unworkable, so it tried to end-run the procedural protections that are designed to give the public the right to participate in agency proceedings. It was disappointing that FCC Chairman [Julius] Genachowski chose to defend his predecessor's erroneous action, but now that the Court has directed the FCC to make sure the public is not ignored, we can look forward to having a right to meaningful participation as the FCC looks at these questions again.¹³

THE CASE FOR MEDIA DIVERSITY, NOT CONCENTRATION

While corporations derive great economic benefits from conglomeration, the same is not true for the public that uses and relies on media corporations for news and other information vital to personal well-being and political participation. In this last regard, the danger of concentrated ownership in telecommunications and related communications industries was noted by the 3rd Circuit in its July 2011 ruling as including the loss of diversity of opinion in the marketplace of ideas.¹⁴ Six giant conglomerates today – General Electric, Disney, News Corporation, Time Warner, Viacom and CBS – own the majority of traditional media (e.g., television, radio, magazines and newspapers), as well as cable, Internet, cellular and other new media technologies.¹⁵ Nearly all owners of these enormous, powerful conglomerates are dominated by males and Caucasians.¹⁶

Media concentration is the outcome of neoliberal economic philosophies that emerged in the 1970s and have found their way into public policy of all kinds within the United States, Europe, Latin America, and other regions. Neoliberalism emphasizes market forces over government regulation, organized labor, and general principles of equality. In regards to media, neoliberals have recast audiences as “consumers,” knowledge as something that is commoditized, ownership of media as

¹² Reclaim the Media, “Victory! 3rd Circuit Court Overrules FCC on Media Consolidation,” July 7, 2011, accessed July 12, 2011, http://www.reclaimthemedial.org/legislation_and_regulation/victory_3rd_circuit_court_over0727.

¹³ Andrew Jay Schwartzman, “Appeals Court Broadcast Ownership Decision is ‘A Vindication of the Public’s Right to Have a Diverse Media Environment,’” Media Access Project, July 7, 2011, accessed July 12, 2011, <http://www.mediaaccess.org/2011/07/appeals-court-broadcast-ownership-decision-is-a-vindication-of-the-publics-right-to-have-a-diverse-media-environment/>.

¹⁴ *Prometheus v. FCC* (2011), 457.

¹⁵ Free Press, “Ownership Chart: The Big Six,” accessed Nov. 1, 2011, <http://www.freepress.net/ownership/chart/main>.

¹⁶ Carolyn M. Byerly, “Questioning Media Access: Analysis of Women and Minority FCC Ownership Data,” in *Does Bigger Media Equal Better Media?* ed. Benton Foundation, Social Science Research Council, Oct. 2006, 27-37; S. Derek Turner and Mark Cooper, *Out of the Picture: Minority & Female TV Station Ownership in the United States* (Washington: Free Press, 2006).

something that is best concentrated in fewer hands, and profits as something that should be privately controlled.¹⁷

The late legal scholar C. Edwin Baker joined critical media scholars like Robert W. McChesney¹⁸ in setting forth a number of major reasons to oppose media concentration. Among these is the “diversity of voices” argument, something that incorporates an understanding that expanding the volume and range of ideas will better inform public opinion; in turn, public opinion containing greater diversity is understood to expand equality of access to power.¹⁹ Baker also noted that a larger number of news media owners is better able to act as a watchdog over government activities (a major function of the press historically) and to do so from a wider array of perspectives. His third reason is that greater numbers of media owners enhance the potential for better content generally because editors (he is assuming the news media here) are in competition for audiences. Baker acknowledged that none of these functions serve the bottom line of media companies, but they do serve the public’s need to know about their society, their government, and other aspects of the world around them.²⁰ Numerous social scientists, including critical media scholars cited throughout this essay (and, in fact, the present authors) are in agreement with Baker’s views.

PRINCIPLES AND MECHANISMS FOR DIVERSITY OF OWNERSHIP

Proceeding from the legal framework advocated by Baker and others, we endorse a number of principles and possible mechanisms for achieving the goal of bringing greater equality to communications policy. While many of these have been proposed by others, as cited, we offer a particular standpoint that integrates the broad public interest with the specific interests of women and people of color – groups historically marginalized by nearly all social indicators.

Principle #1: Set Standards for the “Public Interest”

Problem: What is the public interest? The concept was first applied to communications policy in the Communications Act of 1934, which established the Federal Communications Commission to regulate broadcast in “the public interest, convenience and necessity.”²¹ This language has endured in communications laws and regulations in the years since, as well as in court opinions intended to refine its meanings in specific cases. In 1960, the FCC took a deliberate step to delineate its meaning

¹⁷ Many media scholars have examined neo-liberalism’s effects. For extended discussions see Freedman; McChesney; and Carolyn M. Byerly, “Women and Concentration of Media Ownership,” in *Seeking Equity for Women in Journalism and Mass Communication Education*, ed. Ramona R. Rush, Carol E. Oukrop, and Pamela J. Creedon (Mahwah, NJ: Lawrence Erlbaum Associates, 2004), 245-262.

¹⁸ For comparisons, see Robert W. McChesney, “The Escalating War Against Corporate Media,” in *Communications Policy: Theories and Issues*, ed. Stylianos Papathanassopoulos and Ralph Negrine (New York: Palgrave Macmillan, 2010), 97-114.

¹⁹ We revisit and expand upon this argument in the conclusion of this essay, calling attention to the relationship between the ability to communicate and access to power, as these connect to the democratic process.

²⁰ C. Edwin Baker, “Viewpoint Diversity and Media Ownership,” *Federal Communications Law Journal* 60, no. 3 (2009): 651-672.

²¹ Erwin G. Krasnow and Jack N. Goodman, “The Public Interest Standard: The Search for the Holy Grail,” *Federal Communications Law Journal* 50, no. 3 (1997): 606.

by adopting a *Report and Statement of Policy re: Commission En Banc Programming Inquiry* (usually referred to as the “1960 Programming Policy Statement”). This document listed 14 “major elements,” some mix of which was considered to be necessary for broadcasters to serve the public interest. These included the opportunity for local self-expression; development and use of local talent; programs for children; religious, educational and public affairs programs; editorials by licensees; political broadcasts; agricultural programs; news, weather and market reports; sports; service to minority groups; and entertainment.²²

These elements, or criteria, were later eliminated. Then, in 1981 the FCC further eroded any possible use of standard measures when it ended the use of rules and policies governing the keeping of program logs, commercial time limitations, ascertainment of community problems, and non-entertainment programming requirements by radio stations in order to “remove the illusory comfort of a specific, quantitative guideline.”²³ Three years later, the Commission extended these same rules to television stations.

The erosion and final disappearance of standards by which to evaluate the degree to which broadcast media served the public interest follow the timeline of the rise of neoliberalism’s influence in media deregulation. Couldry,²⁴ and Papathanassopoulos and Negrine,²⁵ have commented on the different effects that more than two decades of neoliberal policy have had on media across the world. These include the inability of those with critical voices to enter the public discourse so necessary to democracy when media companies (and production of information by them) are able to limit the diversity of opinion. The lack of standards today assure that citizens who are concerned about the loss of diversity in programming on the public’s airwaves have little ground on which to stand either in forming expectations or in bringing complaints.

Recommendation: We believe that if there is to be a fair, consistent, and transparent process by which to determine whether the public interest is being served, there must be some kind of stated markers by which the performance of broadcasters in relation to serving the public interest may be determined. We strongly encourage adoption of such markers for use by the FCC.

Principle #2: Maintain Mechanisms for Public Oversight of Broadcast Performance

Problem: As with the need to establish markers (or indicators) of the public interest, there need to be ways for members of the public to become more actively involved, on a regular basis, in evaluating the performance of broadcast stations. When stations were required to renew their licenses every three years, broadcasters issued a series of announcements providing the date the

²² Federal Communications Commission, *Report and Statement of Policy*, 25 Fed. Reg. 7291, 7295 (1960).

²³ Cited in Erwin G. Krasnow, “The ‘Public Interest’ Standard: The Elusive Search for the Holy Grail,” briefing paper prepared for the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, Oct 22, 1997, 10, accessed Nov. 1, 2011, <http://govinfo.library.unt.edu/piac/octmtg/Krasnow.htm>.

²⁴ Nick Couldry, *Why Voice Matters: Culture and Politics after Neoliberalism* (Los Angeles: Sage, 2010).

²⁵ Stylianos Papathanassopoulos and Ralph Negrine, “Public Broadcasters in the Digital Age,” in *Communications Policy: Theories and Issues*, ed. Stylianos Papathanassopoulos and Ralph Negrine (New York: Palgrave Macmillan, 2010), 133-147.

license will expire, the filing date for the application renewal, the date by which formal petitions against it must be filed, and the location of the station's public inspection file that contains the application. Now that the renewal period has been extended to eight years – something permitted by the Telecommunications Act of 1996 – the public's vigilance is substantially weakened. Stations must still announce their intent to renew licenses and alert their audiences to the public files available to them; however, audiences are ever less aware of the importance of documenting problems during the interim years, or otherwise taking an initiative in playing the oversight role that the law entitles them to. Empirical research is needed to establish longitudinal data by which levels of public comment and interest can be established over time to shed more precise light on the degree to which audience involvement in licensing has waned.

The possibility that citizen oversight of broadcast stations' performance has been curtailed by the extension of the license renewal period was in fact raised by FCC Commissioner Michael Copps at the January 28, 2004 hearing on Localism and License Renewal, during which Copps noted that “the Commission pared back its license renewal process from one wherein we looked closely, every three years, at how stations were serving the public to one wherein companies now only need send us a short form every eight years and their renewal wishes were granted.”²⁶

There are two corollaries to this time-lag factor which similarly serve to dissipate active public involvement in the review of station performance. The first corollary is the way in which stations are asked to announce the review period. FCC requirements for commercial stations to air public service announcements are both confusing and ineffective. They say, for example: “During the period beginning of the date on which the renewal application is filed to the sixteenth day of the next to last full calendar month prior to the expiration of the license, all applications for renewal of broadcast station licenses shall broadcast the following announcement on the 1st and 16th day of each calendar month. [...] At least two of the required announcements must be between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m., at least two of the required announcements shall be made during the first two hours of broadcast operation.”²⁷

The number of announcements is unspecified. In addition, the requirement assumes that there is validity in arbitrarily establishing the 1st and 16th days of the month for when these announcements should be aired. Why not a more regular frequency, both in times of day and numbers of days per week, so that a wider range of listeners and viewers can be alerted to the public review and comment period?

The second corollary to the time-lag problem has to do with the amount of information that accumulates over an 8-year period in the “public files” which the FCC requires stations to create and maintain. These files must contain documents relevant to the station's operation and dealings with the community and the FCC. The FCC has noted the importance of these files to the public: “Because we do not routinely monitor each station's programming and operations, viewers and

²⁶ Michael Copps, Remarks of Commissioner Copps: FCC Hearing on Localism and License Renewal, San Antonio, TX, Jan. 28, 2004, accessed Nov. 18, 2009, <http://tap.gallaudet.edu/Policy/FCC/CoppsComments.asp>.

²⁷ 47 CFR Ch. I, § 73.3574 [10–1–07 Edition].

listeners are an important source of information about the nature of their area stations' programming, operations and compliance with their FCC obligations. The documents contained in each station's public inspection file have information about the station that can assist the public in this important monitoring role."²⁸

The public file must contain the license, applications, citizen correspondence, materials related to any complaints to the FCC, ownership reports, political affiliations, equal employment opportunity materials, quarterly program reports, children's (television) programming reports, local public service announcements, and a number of other documents that illustrate the station's adherence to licensing requirements and performance. Over an 8-year period, the public file requirement can amount to a massive amount of data for both the public and the FCC to analyze. McDowell and Lee suggest that "the FCC articulate more clearly the specific data collection purposes of the public inspection file and to outline standardized procedures for the filing system."²⁹ The present authors advocate a better filing and reporting system to encourage the public to interact more actively with local stations.

Recommendation: In view of the problems discussed above, we recommend that the renewal of broadcast licenses be moved back from every eight years to a shorter period – ideally three years, but at a minimum five years. In addition, we recommend that in order to better serve the public interest broadcast radio stations should be required to broadcast PSAs (public service announcements) four times between 6 a.m. and 10 a.m., and again between 3 p.m. and 7 p.m. (i.e. major drive times), as well as once per hour during the remainder of the broadcast day, for the period of time they are required to notify their audiences. The pre-filing announcement should be run for four months before the expiration of the license to allow sufficient time for those within the listening/viewing audiences to take note of the renewal deadline and act in their own interests.

Lastly, we concur with McDowell and Lee that making information available to the public in a practical and easy to understand format would be conducive to public awareness and comment on station performance. Broadcasters should tell the public how they are serving the interests of their audiences by making this information available in a standardized format – not only at the station, but also posted on the station's own website.

Principle #3: Maintain Localism

Problem: Localism, or the media's emphasis on concerns in the local environment, is one of the three primary goals (along with diversity and competition) that the FCC identified in 2003 in its new rules for media ownership.³⁰ Localism concerns are specifically embodied in news and public affairs content, rather than in entertainment, the logic being that public affairs are most closely associated

²⁸ Federal Communications Commission, "The Public and Broadcasting," July 2008, accessed Nov. 1, 2011, <http://www.fcc.gov/guides/public-and-broadcasting-july-2008>.

²⁹ Stephen D. McDowell and Jenghoon Lee, "Tracking 'Localism' in Television Broadcasting: Utilizing and Structuring Public Information," in *Media Diversity and Localism: Meaning and Metrics*, ed. Philip M. Napoli (Mahwah, NJ: Lawrence Erlbaum Associates, 2007), 177-192.

³⁰ *Ibid.*, 177

with public opinion formation and citizen engagement. Localism is harmed under concentrated ownership, as research shows. McChesney cites one study that of local television stations in six different markets, less than 1% of the programming focused on local public affairs.³¹ Furthermore, there is empirical evidence that suggests the broadcast television stations' financial resources have little relationship to the provision of public affairs programming.³²

The loss of local content has grown increasingly obvious since the 1980s when FCC Chairman Mark Fowler abandoned the 14 stated criteria from 1960 for determining "public interest, convenience and necessity," in favor of letting the marketplace determine how the public would be served.³³ Belief in "competition," which may be understood as a synonym for "marketplace," gradually accelerated in the years to follow, as did mergers and acquisitions. In 1981, the FCC eliminated rules and policies governing the keeping of program logs, commercial time limitations, ascertainment of community problems, and non-entertainment programming requirements by radio stations in order to "remove the illusory comfort of a specific, quantitative guideline."³⁴ Three years later, the Commission extended this rule to television stations. The 1996 Telecommunications Act opened the floodgates of deregulation,³⁵ resulting in a dominance of the mega-corporations that characterize today's media landscape. While large corporations advanced to the top (and accumulated the profits that accompanied this ascent), small and middle-sized broadcast stations either went bankrupt or were forced to sell out. Women and minority-owned stations were the biggest losers in this process, with such ownership now in the low single digits.³⁶ With parent companies whose management emanates from national-level headquarters, the content of full-powered broadcast radio stations has been homogenized for the national audience. Very little local content beyond some advertising, a few station breaks, and the occasional public service announcement can be heard on local stations. Competition (i.e. the marketplace) has won, and diversity and localism have lost.³⁷

Recommendation: In our view, the problem is a structural one that can be significantly mitigated by race- and gender-conscious communication policies that will enable larger numbers of females, African Americans, Latinos, Asians, Native Americans, and other people of color to own stations and to purchase newspapers. We believe structural remedies that bring ownership closer to local audiences are warranted and would best serve the public interest. The stations of concern are

³¹ McChesney, *The Problem of the Media*, 45.

³² See for example Michael Zhaoxu Yan and Yong Jin Park, "Duopoly Ownership and Local Informational Programming on Broadcast Television: Before-After Comparisons," *Journal of Broadcasting & Electronic Media* 53, no. 3 (2009): 383-399; Philip M. Napoli, ed. *Media Diversity and Localism: Meaning and Metrics* (Mahwah, NJ: Lawrence Erlbaum Associates, 2007).

³³ Ian Masters, "Media Monopolies Have Muzzled Dissent," *Los Angeles Times*, May 1, 2003: B15.

³⁴ Krasnow, 10.

³⁵ The term "floodgates of deregulation" has been accepted into the public record via comments made to the FCC by the present authors. See Federal Communications Commission, *Comment for Consideration on the FCC's Planned Reconsideration of the 2010 Media Ownership Review Proceeding*, MB Docket No. 09-182 [Comments from Howard Media Group], Nov. 19, 2009.

³⁶ This has been reported by a number of sources in recent years. For a comprehensive statement see Government Accounting Office, *Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and Is Difficult to Assess*, Mar. 2008, accessed Nov. 1, 2011, <http://www.gao.gov/new.items/d08383.pdf?source=ra>.

³⁷ McChesney, *The Problem of the Media*, 271-272.

primarily broadcast – radio and television – which, as the 3rd Circuit Court opinion of July 7, 2011 observed, are the predominant sources of news and information for people today. We strongly advocate lower ownership levels through re-regulation in the public interest in order to bring local content and diversity of ideas back to broadcasting. The law has defined the airwaves as a public resource to be utilized in the public interest since passage of the Radio Act of 1927, which established that stations could use that public resource as long as they “acted in the public interest, convenience and necessity.”

Principle #4: Establish Measures for Diversity and Localism

Problem: There are presently no specific criteria for determining diversity and localism. The courts have looked at diversity in ownership as a determinant of content. There has been empirical evidence to underpin this legal view. Busterna’s content analysis dating back three decades, for example, suggested that media whose owners possess multiple outlets (i.e. newspapers, radio, and television stations) contain fewer viewpoints (i.e. they lack diversity) than those whose owners possess single stations.³⁸ However, solid empirical evidence is lacking on the extent to which ownership correlates to viewpoint. One recent study by Rennhoff and Wilbur, commissioned by the FCC, sounded a note of frustration when their efforts to produce reliable statistical findings on the correlation between numbers of owners and viewpoint diversity were “limited by the range of the available data.” They reminded readers of their report that “an absence of evidence is not necessarily evidence of absence.”³⁹

With the majority of broadcast radio and television stations owned by white males, there is little basis on which to trust that diversity of ideas on the nation’s airwaves is even a possibility. Mark Cooper states that the diversity measure endorsed by the FCC in its commissioned studies tends to underestimate the concentration of the local news market because it assumes different types of media (e.g. newspapers and the Internet) are close substitutes.⁴⁰ While true, the fact is that only broadcast media utilize the public resource of airwaves. This has always set them apart from other media and confronted policymakers with the enduring responsibility to see that those airwaves are truly used to serve the public interest, necessity and convenience – as required by the law.

With more specificity to gender and race, there is also a demonstrated relationship between ownership and content, though data are stronger with the latter. Oberholzer-Gee and Waldfogel’s research has shown that Black-oriented newspapers and radio stations exist in communities where those demographics predominate, and these media serve those populations intended with desirable

³⁸ John C. Busterna, “Television Station Ownership Effects on Programming and Idea Diversity: Baseline Data,” *Journal of Media Economics* (Fall 1998): 63-74.

³⁹ Adam D. Rennhoff and Kenneth C. Wilbur, “Local Media Ownership and Media Quality,” Federal Communications Commission, June 12, 2011, accessed Nov. 1, 2011, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308504A1.pdf.

⁴⁰ Clint Hendler, “A Consumer View on the FCC’s New Consolidation Rule,” *Columbia Journalism Review*, Dec. 20, 2007, accessed Nov. 18, 2011, http://www.cjr.org/behind_the_news/mark_cooper_on_crossownership.php?page=1 (interview with Mark Cooper).

content.⁴¹ In their research, these researchers have also shown that a positive relationship exists between ethnic- and race-specific ownership and political participation, including voting. Feminist scholars have criticized the media industries for being dominated by men at the ownership and management levels, but empirical research related to women's ownership and content is harder to come by. Turner and Cooper's research found that women own less than 5% of all full-powered television stations and approximately 6% of radio stations.⁴² Comparing these findings to other recent research that shows women's near-absence at these ownership and management levels, as well as very low inclusion rates for women as the subjects of serious news, particularly politics and economics suggests the high likelihood that content reflects a gender balance consistent with ownership.⁴³

The principle of localism has long been problematic for its ambiguity in meaning.⁴⁴ The difficult task for policymakers has been to preserve local voices in local media markets while, at the same time, allowing market forces to operate. McDowell and Lee have observed that the difficulty of definition arises not just from ambiguity but also from "uncertainty of the voices to be encouraged."⁴⁵ The problem of how to identify and mobilize silent voices is also described by Napoli, who suggests that great challenges lie in prescribing applications of diversity principles as tangible policy measures. To date, he observed, such efforts have been plagued by ambiguity and inconsistency.⁴⁶ Here we remain specifically concerned about the overall low level of diversity and localism as a consequence of media ownership, which we assume has silenced female and minority voices and the perspectives and experiences those voices might contribute to the making of a vibrant public sphere. The need for indicators that might be used to help in the development of public policy is great. McDowell and Lee explore several ways this might be approached, looking to Canada's complex mechanism for mapping and evaluating whether local needs are being addressed by stations.⁴⁷ We are particularly intrigued by their suggestion that it is possible to make station programming data publicly available to better measure localism in programming.

Recommendation: We join with McDowell and Lee in advocating the development of a localism/diversity index that would include: adoption of multiple criteria for diversity and localism; narrowly focused objectives; application of criteria and objectives to small portions of the total broadcast schedule; measurements that capture the participation of female and minority employees

⁴¹ Felix Oberholzer-Gee and Joel Waldfogel, "Strength in Numbers: Group Size and Political Mobilization," *Journal of Law and Economics* 48 (April 2005): 73-91.

⁴² Turner and Cooper; S. Derek Turner, *Off the Dial: Female and Minority Radio Ownership in the United States* (Washington: Free Press, 2007).

⁴³ See for example Byerly, "Women and the Concentration of Media Ownership," 245-262; and Global Media Monitoring Project, *Who Makes the News? North America Regional Report*, 2010, accessed Nov. 1, 2011, <http://tinyurl.com/7adgyhx>. We note that the latter study reported that women's inclusion in news and politics stories was only 31% of the news subjects in media examined, and that the media in both Canada and the United States have highly concentrated media ownership.

⁴⁴ McDowell and Lee, 177-181.

⁴⁵ Ibid.

⁴⁶ Napoli, *Media Diversity and Localism*.

⁴⁷ McDowell and Lee, 177-192.

in the production process; and broadening the institutional and cultural context within which content is considered.

Principle #5: Adopt Mechanisms to Expand Media Ownership by Women and People of Color

Problem: While some may question whether minority-owned stations produce a positive and measurable impact on the communities they serve, two studies by Oberholzer-Gee and Waldfogel suggest that such does occur.⁴⁸ Their 2005 study found that Black-targeted newspapers and radio stations function as mobilizing channels for political participation among Black voters. In other words, controlling for the size of the Black population in the market, the availability of Black-targeted media had an elevating effect on Black voter participation, but had no apparent similar effect on White voters.⁴⁹ In their more recent investigation, Oberholzer-Gee and Waldfogel sought to learn whether the presence of local television news affects local civic behavior among a Spanish-speaking audience. The authors used cross-sectional and time series variation in the availability of news on Spanish television with local news to study its effects on Hispanic voter turnout in presidential and non-presidential years in the United States. They then measured the relationship between Spanish news and voter turnout, finding that turnout was higher in areas with Spanish-language local news, and in fact that “Spanish-language news programs boost Hispanic turnout by 5 to 10 percentage points overall.”⁵⁰ On the other hand, they said, those without access to local television news were significantly less likely to participate in elections.⁵¹ While these findings may be at odds with other findings contending that the spread of television has brought a decline in political participation among the American general population, we believe that Oberholzer-Gee and Waldfogel’s investigations provide evidence that minority-owned broadcast media can influence citizen participation in public affairs.⁵²

There is no research to date that has investigated whether women-owned media similarly serve to influence patterns in political participation. However, one study by Byerly suggests that women who both own broadcast stations and take a hand in managing them recognize the potential influence their gender might have in shaping content for the female audience.⁵³ Another study found that young female voters pick up gender cues in the media related to politics and candidates; they say they are influenced by the media’s coverage of candidates when they vote.⁵⁴

⁴⁸ Felix Oberholzer-Gee and Joel Waldfogel, “Media Markets and Localism: Does Local News en Español Boost Hispanic Voter Turnout?” working paper, National Bureau of Economic Research, Cambridge, MA, June 2006, accessed Nov. 1, 2011, http://www.nber.org/papers/w12317.pdf?new_window=1; Oberholzer-Gee and Waldfogel, “Strength in Numbers,” 73-91.

⁴⁹ Oberholzer-Gee and Waldfogel, “Strength in Numbers,” 73-91.

⁵⁰ Oberholzer-Gee and Waldfogel, “Media Markets and Localism,” 11.

⁵¹ Ibid.

⁵² Ibid., 13.

⁵³ Carolyn M. Byerly, “Behind the Scenes of Women’s Broadcast Ownership,” *Howard Journal of Communication* 22, no. 1 (2011): 24-42.

⁵⁴ Joanna Lian Pearson and Donna Rouner, “The 2008 Elections and the Role of Gender Among Young Voters,” *Sz. John’s Journal of Legal Commentary* 24, no. 2 (2009): 343-358.

While further empirical research is needed to broaden our understanding of the various ways that women- and minority-owned media shape perceptions and behavior within the electorate, there is at present a compelling argument for setting mechanisms in place to better enable these groups to enter more decisively into media ownership than their present numbers (under 6% nationally in broadcast) denote. This is particularly important at this time in history, when national demographics are shifting steadily toward a minority majority population and when both racial (and ethnic) minorities and women continue to struggle for equality in education, employment, and representation in legislatures and in Congress.

Recommendation: With these arguments in mind, we advocate the following interrelated measures:

1. The re-adoption of the tax certificate benefit (which the FCC abandoned in 1995) as one method of accomplishing diversity and localism. In fact many, including the 3rd Circuit Court of Appeals in its July 7, 2011 ruling, have endorsed this. Other measures, such as those suggested by Ofori et al.,⁵⁵ include the following.
2. Technical and financial assistance at the organizational level, such as establishing stronger incentives and supports for the employment and advancement of minority and female personnel toward attaining the skills and experience needed for station ownership. In this regard, we believe that there is a more proactive role for the FCC's Office of Communications and Business Opportunities, which could be training and otherwise assisting those with the potential to gain knowledge in how to complete applications, successfully seek capital, and competently manage stations.
3. Rigorous antitrust enforcement by state attorneys general and federal authorities. Ofori et al.⁵⁶ observe that divestiture is often required of companies that have been found to exceed the standards of Department of Justice merger guidelines. As a part of the negotiated settlement investigation, then, we believe companies should be encouraged to sell stations for a price that is affordable to small racial minority enterprises, as well as those owned by females, whose ownership has similarly declined under deregulation.
4. Finally, we believe it is critical to maintain the connections among the scholarly, regulatory, and industry sectors – all of which play key roles in advancing women- and minority-oriented skills, awareness, and broadcast content in the public interest. We recognize that minority and female ownership at the structural level alone will not be sufficient in assuring that local voices or diverse content will be achieved toward fulfillment of the public interest requirement. We believe these additional measures will enable the steady changes that are needed to expand those minority and female voices that have been silenced over the public airwaves due to deregulation.

⁵⁵ Kofi Ofori, Karen Edwards, Vincent Thomas, and John Flateau, *Blackout? Media Ownership Concentration and the Future of Black Radio: Impacts of the Telecommunication Act of 1996* (New York: Medgar Evers College Press, 1997).

⁵⁶ Ibid.

CONCLUSION

The foregoing discussion advanced a public interest perspective on the status and future of media policy within the United States, noting where possible the ways in which the needs and interests of women and people of color figure into such policy. Going back to the 3rd Circuit Court of Appeals decision on July 7, 2011, we find the spirit of the decision potentially in line with more egalitarian policy principles than presently exist. After all, the court ruled that the FCC had failed to adequately address proposals to foster minority and female ownership of broadcast media. That same ruling noted that the FCC had also failed to give adequate consideration to proposals from interest groups to limit eligibility to socially and economically disadvantaged businesses. Women and minority media owners have consistently been among those disadvantaged businesses. The ruling reinforces the necessity of regulatory intervention in addressing the low rates of ownership in broadcast media by women and people of color. Granted that the measures and principles suggested in the foregoing discussion need technical substantiation, we make the point that the current status of media ownership policies remains blocked by corporate-oriented neoliberalism. In our view, the time to entail an appropriate policy shift is long overdue.

We are neither the first to observe the severe lag time in the FCC's actions nor to shine a light on the barriers erected by the economic system that privileges the powerful few over the less powerful majority. The imbalance in bargaining power, according to legal scholar Jerome Barron, is the inequality it spawns in the power to communicate ideas.⁵⁷ Extending Barron's reasoning, C. Edwin Baker argued that the need for a confrontation of ideas in democracy is so important that it "demands some recognition of a right to be heard as a constitutional principle." Baker believed that Barron's ideas, which have long been cited in communications law, encapsulate access reform proposals even more far reaching than those we have set forth in this essay. The more extensive reform would be based in the recognition that excessive private control over communication channels prevents important, worthwhile information and ideas from reaching the broader public.⁵⁸ The situation requires legal solutions to limit the oligopolistic reality we now have in order to truly open up broader citizen access to media ownership and the ideas that might subsequently flow from more diverse voices. Addressing oligopoly implicitly follows an antitrust model, in which government intervenes to prevent concentrations of private power that impede important social objectives, such as insuring robust discussion of issues of common interest (including policy). Creating regulatory mechanisms that better ensure citizen access to airwaves would put the United States in better line with other industrial nations whose cultural policies assure that minority views are seen and heard, thereby enabling diverse communities to participate in their nations' affairs.

⁵⁷ Jerome A. Barron, "Cohen v. Cowles Media and Its Significance for First Amendment Law and Journalism," *William & Mary Bill of Rights Journal* 3 (1994): 419-466.

⁵⁸ C. Edwin Baker, "Giving the Audience What it Wants," *Ohio State Law Journal* 58, no. 2 (1997): 317.

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