

Devil in the Details

**10 Facts Kevin Martin Doesn't
Want You to Know About His
New Media Ownership Rules**

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November 2007

Introduction

Despite overwhelming public opposition from across the country and the political spectrum, Federal Communications Commission Chairman Kevin Martin isn't letting up in his relentless push to let a small handful of big media corporations swallow up even more local outlets.

Martin wants to lift the longstanding ban that keeps one company from owning both a major daily newspaper and a TV or radio station in the same market. The 32-year-old prohibition on "newspaper/broadcast cross-ownership" has helped prevent media monopolies in local news markets. But media conglomerates whose holdings include both TV stations and newspapers have lobbied for years to get rid of the rule.

On Nov. 13, in the first step of a carefully crafted PR campaign, Martin wrote an op-ed in the *New York Times*, in which he argued that without a "relatively minor loosening of the ban on cross-ownership of newspapers and TV stations in markets where there are many voices," the American newspaper would "wither and die."¹ He proposed that:

A company that owns a newspaper in one of the 20 largest cities in the country should be permitted to purchase a broadcast TV or radio station in the same market. But a newspaper should be prohibited from buying one of the top four TV stations in its community. In addition, each part of the combined entity would need to maintain its editorial independence.

The same day, the FCC also issued a press release that painted Martin's proposal as a moderate compromise "that would allow a newspaper to own one television station or one radio station but only in the very largest markets and subject to certain criteria and limitations."²

But attached to the press release was the fine print of Martin's proposal — and there's nothing modest about it. Gaping loopholes contradict the chairman's lofty proclamations about "ensuring the quality of local news while guarding against too much concentration."³ And the new rules would undermine the FCC's fundamental responsibility to protect media competition, localism and diversity.

As this report illustrates, the chairman's claims simply don't match the facts:

FACT #1: Martin's 'modest' proposal is corporate welfare for Big Media.

Martin's plan would unleash a buying spree in the top 20 markets, making it easier for companies like Belo, News Corp. and Tribune Co. to push out independent, local owners.

FACT #2: Loopholes open the door to cross-ownership in *any* market.

Under Martin's loose standards, cross-ownership waivers could be approved in hundreds of smaller cities and towns.

FACT #3: Loopholes allow newspapers to own TV stations of *any* size.

The same technicalities could permit top-rated stations in any market to combine with major newspapers.

FACT #4: FCC history shows weak standards won't protect the public.

The current rules forbid cross-ownership, but the FCC hasn't denied any temporary waiver request in years.

FACT #5: Cross-ownership doesn't create more local news.

The latest studies — using the FCC's own data — show that markets with cross-ownership produce less total local news, as one dominant company crowds out the competition.

FACT #6: Cross-ownership won't solve newspapers' financial woes.

Claims that the newspaper industry is about to "wither and die" are greatly exaggerated, and no evidence shows that cross-ownership would make things better.

FACT # 7: The Internet is an opportunity, not a death sentence.

Mergers and consolidation are not the answer to the financial problems of the traditional media.

FACT #8: Martin's plan would harm minority media owners.

Nearly half of the nation's minority-owned TV stations are lower-rated outlets in the top 20 markets, making them a target for Big Media takeovers.

FACT # 9: A broken and corrupt process creates bad policies.

The FCC's lack of transparency, flawed research and secret timetable have tossed aside basic fairness and accountability in the rush to change media ownership rules.

FACT # 10: The public doesn't want more media consolidation.

Martin's actions ignore the millions of Americans — and 99 percent of the comments in the FCC docket — who oppose letting a few media giants swallow up more local media.

The devil, as they say, is in the details. Martin's rhetoric can't hide the reality that his plan is a massive giveaway to the largest media companies. If passed — and Martin seems hell-bent on holding a vote at the FCC by Dec. 18 — these rules would unleash unprecedented consolidation across the country.

The bipartisan "Media Ownership Act of 2007" — now pending in the Senate — would stop Martin's rush and take a major step toward restoring fairness and accountability to policymaking at the FCC. If the agency refuses to listen to the American people, Congress must take action.

Commissioners Michael Copps and Jonathan Adelstein — who oppose unchecked media concentration — rightfully characterize Martin's proposal as "a wolf in sheep's clothing." Their warning should echo across Capitol Hill and in communities large and small throughout America: "Don't let the wool be pulled over your eyes."⁴

FACT 1:

Martin’s ‘modest’ proposal is corporate welfare for Big Media

Chairman Martin has portrayed his proposed changes to the nation’s media ownership rules as “significantly more modest” than the rules put forward by his predecessor, Michael Powell, in 2003.⁵ And in the face of widespread public opposition, Martin — at least for now — took changes to the local and national ownership caps off the table.

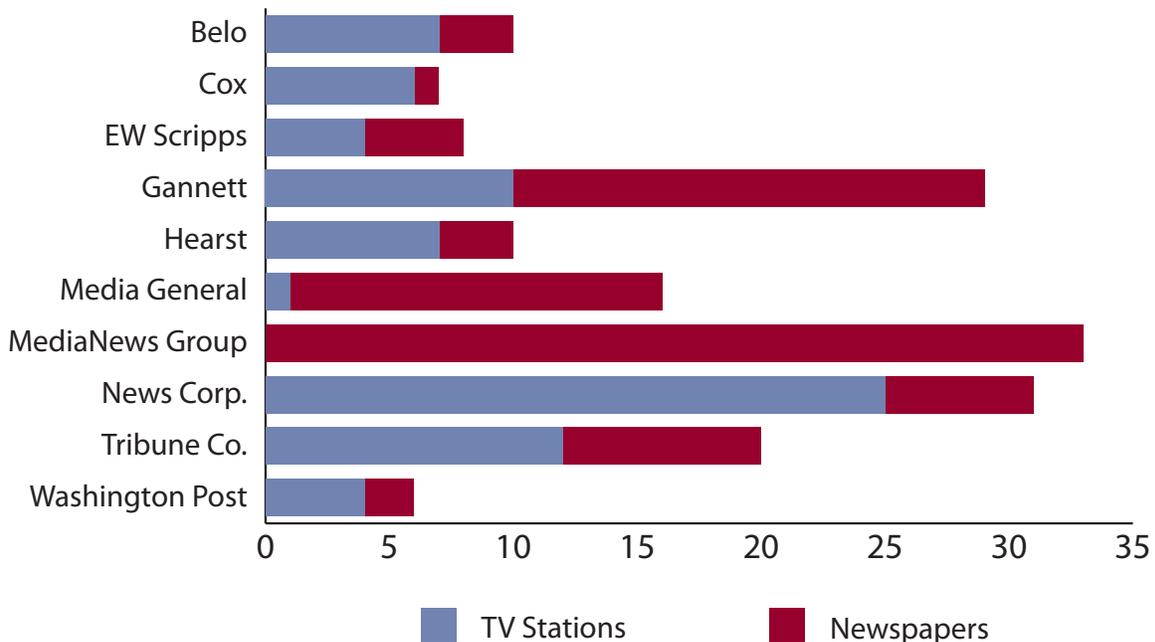
Lifting the longstanding ban on cross-ownership — a rule change long coveted by the media titans, especially Tribune Co. — is no small matter. Even taking Martin’s word that he intends to loosen the rules “only for the largest markets” (a claim disputed in detail below), we’re still talking about a tectonic shift in the American media landscape.

Martin claims his new cross-ownership rules would only apply in the top 20 markets to newspaper-TV combinations that don’t involve the four top-rated stations. Yet Copps and Adelstein note that “the top 20 markets account for *over 43%* of U.S. households.” They add: “Even on its face, this proposal directly affects over 120 million Americans.”⁶

Who benefits?

Martin’s proposal is little more than corporate welfare for the biggest media companies. One way to see who stands to benefit the most is to look at which companies already own TV stations and newspapers across the top 20 markets (see Figure 1).⁷

Figure 1
Companies with TV Stations and Newspapers in the Top 20 Markets



Source: Free Press research; data based on BIA Financial Media Access Pro

Martin's proposal would allow many of these firms to keep cross-owned properties they've attained through "temporary" waivers. And it would encourage all of them to sell or swap their properties with other media giants to establish local or regional dominance.

The new rules certainly wouldn't benefit independent local owners. The smaller stations beyond the top four are the same ones more likely to be owned by independent broadcasters, women and people of color.⁸ And they're likely to be prime targets in the ensuing frenzy of acquisitions.

Zell of a deal

The elephant in the room here is Tribune Co., which needs further waivers or a rule change before the end of the year to complete its sale to real estate mogul Sam Zell. Martin knows that if Tribune fails to secure cross-ownership waivers or a rule change by Jan. 1, 2008, the price to purchase the remaining stock would rise, endangering the deal.⁹

But the Tribune deal shouldn't be exploited to allow sweeping changes on such a short timetable. As Copps and Adelstein recently wrote about this "hostage" situation: "There is simply no excuse for using Tribune as a human shield."¹⁰

FACT 2:

Loopholes open the door to cross-ownership in *any* market

Chairman Martin has portrayed his plan as a “compromise” that would only remove the cross-ownership ban in the 20 largest media markets. However, a closer reading of the actual rule changes makes it clear that any company wanting to break the cross-ownership rule and form a combination of local TV stations and newspapers in *any* market needs only to apply for a “waiver.”

To appreciate just how dramatically the standards have been relaxed, consider that under the existing rules permanent waivers almost never have been issued. Since 1975, the FCC has granted permanent waivers just four times, and, in each instance, an outlet was at risk of going out of business entirely.¹¹

Under Martin’s new plan, however, cross-ownership is “presumed” to be in the public interest as long as it takes place in the top 20 markets; involves only one TV or radio station; at least eight other TV stations or “major” newspapers would remain after the deal; and the TV station is not among the four top-ranked stations in the market.¹²

But that doesn’t prevent other mergers — potentially hundreds more — from taking place in smaller markets. In fact, such waiver requests will almost certainly be granted under the loose and vague language of Martin’s plan.

When the exception is the rule

That’s because there’s a giant loophole in the language of Martin’s proposal. In all markets outside the 20 largest, cross-ownership would be “presumed” unlawful. But the new waiver standard is so lax and ambiguous that it’s almost toothless.

When issuing unlimited permanent waivers, according to the text of the “proposed change” included with Martin’s press release, the FCC can still consider several factors (which themselves raise more than a few follow-up questions):¹³

- Whether the company “will increase the local news disseminated through the affected media outlets in combination.” (Does that mean 10 minutes of news a day? a week? a year?)¹⁴
- If each of the outlets would still “exercise its own independent news judgment.” (How much collaboration is too much?)
- How concentrated the market would become. (What measurement would the FCC use?)
- The newspaper’s “financial condition” and whether it’s in “distress.” (Does this mean a paper would have to be going out of business or just have had a bad year?)

Martin’s proposal outlines no benchmarks or process of verification. The first two criteria are so vague they could be met by any applicants who cross their hearts and promise to do more news. Once cross-ownership is permitted, there’s no way for the FCC to hold the companies accountable.

Furthermore, there's no definition of which measure of concentration the FCC would use. It could be the "eight voices test" that the agency is applying to the top 20 markets, meaning that at least eight independently owned and operated full-power TV stations and major newspapers (with at least 5 percent of the market share) would remain after the outlets combined. This standard would allow mergers in hundreds of markets.

Finally, the standard of "financial distress" is incredibly vague. Previously, permanent waivers were only granted if an outlet was bankrupt and about to close its doors. But Martin's murky language suggests a lowered bar. Would a bad quarter or two pave the way to more consolidation? With this loophole, it might.

Burden of proof

To stop a merger in the top 20 markets under Martin's scheme, the burden of proof would rest with those opposing the deal. They would have to show that the proposed combination didn't meet these criteria.

Outside the top 20 markets, the burden of proof would rest with a company's lawyers, but the companies would control all the information and could make promises that would be almost impossible to enforce. Average citizens don't have the resources to prove whether companies will increase news a little bit, and they would have a hard time accounting for claims of "financial distress."

The bottom line: The waiver standard is so loose that cross-ownership in almost every market could be approved by the FCC.

FACT 3:

Loopholes allow newspapers to own TV stations of *any* size

On its face, Martin’s proposal would also prohibit a company that owns a newspaper from buying one of the four top-rated stations in the same market. But the same vague standards that would allow cross-ownership outside the top 20 markets could also permit combinations that include *any* station in a market. Companies looking to combine would only need to obtain a waiver from the FCC.

Again, the standards are so lax that almost any combination could be approved by a willing FCC. Instead of allowing just smaller stations to merge, a company that can meet the same vague requirements could apply for a waiver to own the major daily newspaper and the top-rated station in nearly every market (see Figure 2).

Figure 2

Martin’s Cross-Ownership Rule

**Scenario A:
Merger Between a Newspaper and
a Lower-Ranked TV Station
in the 20 Largest Local Markets**

Burden of Proof:

Is on those OPPOSING the merger. To stop the merger, those opposed must prove that the cross-ownership IS NOT in the public interest

What Those OPPOSING the Merger Must Show:

- That the merging paper and station will produce less local news after the merger
- That the merging paper and station will not each maintain independent news judgment
- That the merger will result in an unacceptable increase in market concentration (by an undefined standard)
- That the newspaper is not in financial “distress,” and there will not be significant newsroom investment

**Scenario B:
Merger Between a Newspaper and
a Top-4 TV Station in Markets 1-20
OR
Merger Between a Newspaper and
Any TV Station in Markets 21-210**

Burden of Proof:

Is on the companies WANTING to merge. To merge, they must prove that the cross-ownership IS in the public interest

What Those WANTING the Merger Must Show:

- That the merging paper and station will produce more local news after the merger
- That the merging paper and station will each maintain independent news judgment
- That the Merger will not result in an unacceptable increase in market concentration (by an undefined standard)
- That the newspaper IS in financial “distress,” and there will be significant newsroom investment

Bottom line: The waiver standard is so loose that EVERY merger will likely be approved by the FCC

FACT 4:

FCC history shows weak standards won't protect the public

The ease with which waivers could be granted under Martin's plan is very troubling given the FCC's record under the current, stricter standards. The existing cross-ownership rule *forbids* newspaper-broadcast cross-ownership, but the FCC has still managed to grant "temporary" waivers indefinitely or to simply ignore the rule altogether. And Martin's proposed rules make no mention of what would happen to cross-owned stations currently operating under waivers.

The problem with waivers

By themselves, waivers are problematic. Waivers eliminate *transparency*. Citizens lack the time to follow hundreds of waiver cases in markets across the country. Waivers also require *more resources* than consumer groups can muster. Media companies can hire million-dollar lawyers for each application, while consumer groups and citizens cannot.

But the FCC's record makes the prospect of more waivers even more discouraging.

Since 2001, the FCC has *never* denied a request for a temporary cross-ownership waiver, even though citizen groups have challenged requests in at least eight cases in California, New York, Connecticut, South Carolina, Florida, Georgia and Tennessee.¹⁵

FCC inaction

The FCC also grants "temporary" waivers requiring sales — but doesn't force the companies to sell when waivers expire:

- In 2001, Tribune received a temporary waiver from having to sell a TV station or newspaper in Hartford, Conn. Tribune sold nothing. In 2003, after the waiver expired, a local citizen sued Tribune and a federal judge ruled against Tribune. Then the FCC stepped in and — instead of punishing Tribune — granted another two-year waiver, overruling the judge.¹⁶
- In 2001, the FCC gave Fox a "temporary" waiver to sell a newspaper or broadcast station in two years. Fox made no effort to sell. The FCC made no effort to enforce. In 2006, after three years in violation, the FCC gave Fox another two-year waiver.¹⁷

Remember, these examples occurred under much stricter rules than Martin has proposed. Under the much weaker standard of "presumption," we can expect the FCC to open the floodgates of consolidation permanently.

FACT 5:

Cross-ownership doesn't create more local news

Chairman Martin — and his media industry backers — long have criticized the ban on one company owning both the daily newspaper and broadcast outlets in the same market as an outdated relic. They've even claimed that increased consolidation creates more local news. *This simply is not true.*

The case against cross-ownership

In reality, cross-ownership results in a net loss in the amount of local news produced across local broadcast markets. The latest studies by Free Press, Consumer Federation of America and Consumers Union include detailed analysis of recent FCC data that conclusively demonstrates the harms of cross-ownership.¹⁸ Among their findings:

- Cross-ownership crowds out the competition. The presence of a cross-owned station leads other stations in a market to collectively curtail their news output by about 25 percent.¹⁹
- Cross-owned stations — and markets with cross-owned stations — don't produce more local news.²⁰

In markets without cross-ownership, local TV news stations generally take their cues from the local newspaper. Since these papers are independently owned, all the local TV news departments have reasonably equal access to the newspaper's reporters and editors.

However, this mutually beneficial relationship is destroyed in markets with cross-ownership. Cross-owned TV stations are able to use their exclusive access to the local newspaper to shut out competitors from the stories that they would normally report. This leads these stations to curtail their local news operations.

Moreover, the data shows that cross-owned stations *do not* increase their own local news output. When cross-ownership is permitted, the public is harmed not only because they lose an independent voice, but because less news is available to them.

Ignoring the evidence

Martin is not unaware of this evidence. It has been filed in the official FCC docket and was presented to the commission at its Oct. 31 localism hearing in Washington, D.C. At that event, one of the other FCC commissioners even called it "a bombshell."²¹

Yet Martin moved forward anyway with a proposal that argues cross-owned combinations should be considered "in the public interest" in the top 20 markets and allowed elsewhere. This claim flies in the face of compelling evidence that reaches the exact opposite conclusion.

FACT 6:

Cross-ownership won't solve newspapers' financial woes

Chairman Martin claims that he is removing the cross-ownership ban to “improve the health of the newspaper industry,” which he claims will “wither and die” without drastic action. But there is simply no good evidence showing the newspaper industry is in such grave danger.

Moreover, it is highly questionable whether the FCC, which has no jurisdiction over newspapers, should be using broadcast regulations to “save” the newspaper industry. If the goal here is to promote media diversity, it's hard to see how that would be accomplished with fewer newsrooms.

Endangered species?

Though print circulation of daily newspapers has declined, Martin's claims that newspapers are an “endangered species” are greatly exaggerated. Consider that:

- Revenue per circulated copy increased from 2005 to 2006 (the last year for which full financial data is available).²²
- Industry-wide, newspapers still enjoy operating profit margins near or above 20 percent — higher than the S&P 500 average.²³
- Recent mergers and acquisitions demonstrate that newspapers remain highly valued properties. Prices paid for newspaper companies have been above 10 times cash flow, with average stock prices at eight times cash flow. These values are considered quite healthy by financial industry standards.²⁴
- William Dean Singleton, CEO of MediaNews Group (a strong advocate of eliminating the cross-ownership ban) recently characterized the newspaper industry as “very, very, very profitable” and predicted it will continue to be so “for a very long time.”²⁵

Bad business bailout?

Moreover, there's little or no evidence to suggest that cross-ownership will improve the finances of newspaper companies.

- Tribune Co. is often cited as one of the most financially troubled newspaper companies. Yet it is by far the largest owner of cross-owned newspaper-TV combinations operating under temporary waivers. If cross-ownership hasn't helped save Tribune, why will it bring financial benefits to other newspaper companies?
- Many TV-owning newspaper companies are selling off their broadcast properties. The New York Times Co. recently sold all of its TV stations, and Belo Corp. has spun its TV stations off separately from its newspaper business.²⁶

These trends suggest that newspaper companies will be fine if they focus on their core mission of providing quality journalism and work to attract online readers. Lifting the cross-ownership ban seems designed to benefit certain companies like Tribune, Media General and Gannett, which bet heavily on this specific business model. The public interest is too important to bail out to a few conglomerates that mismanaged their businesses.

FACT 7:

The Internet is an opportunity, not a death sentence

In making his case against the ban on newspaper-broadcast cross-ownership, Chairman Martin cites “the undeniable reality that the media marketplace has changed considerably over the last three decades.”

But the emergence of the Internet needs to be put in the proper context. The Internet hasn’t replaced TV or newspapers as the primary sources of local news for most Americans — and it won’t do so anytime soon.

Internet threat down

The Internet presents more of an opportunity than a threat to the newspaper industry. Local newspapers are by far the dominant source for local news on the Internet. As these companies navigate the changing terrain and modify their business models, they will continue to thrive financially. Consider:

- Recent data from the Newspaper Association of America shows that nearly 60 million Americans visited local newspaper Web sites during the second quarter of 2007, visiting an average of eight times per month, a jump of nearly 10 percent from the year before.²⁷
- While newspapers may have lost some of their traditional circulation since 2000, they’ve gained that back over five-fold in online readership.²⁸
- Online ad spending continues to grow rapidly, increasing to \$5.5 billion for the first half of 2007, a nearly 20 percent increase above the same period in 2006.²⁹

More competition, not less

There will always be a strong demand for local news reporting, regardless of how it is delivered. Data suggests that some of the more financially “troubled” newspaper chains (such as Tribune) haven’t navigated the online transition as well as other chains that are thriving online and off.³⁰

Mergers and consolidation — and more corporate welfare — certainly aren’t the answer to solving the mismanagement of traditional media. There is very little evidence that this strategy will succeed financially in the long run, and it is not worth the democratic costs in terms of the loss of diverse and antagonistic news sources.

These enterprises need to adapt and take advantage of the opportunities in cyberspace. Print and broadcast outlets are just beginning to compete head-to-head in the online sphere. To allow them to consolidate now will only stifle viewpoint diversity and competition in the future.

FACT 8:

Martin's plan would harm minority media owners

The U.S. media system doesn't look like the vast majority of Americans. People of color — who comprise a third of the population — own approximately 3 percent of the nation's commercial TV stations.³¹

Martin's proposal doesn't merely ignore the disgraceful state of media diversity; it would actually make the situation worse. On the surface, Martin hoped to quell critics' concerns by only relaxing the newspaper/broadcast cross-ownership ban in the top 20 markets and by only letting newspapers combine with broadcast stations outside of the four top-rated channels.

The problem is that nearly half of the stations owned by people of color are in the top 20 markets, and none of these are among the top four stations.³² That puts the few minority-owned stations directly in the cross-hairs of consolidation.

Targets for takeover

Overall, nearly 90 percent of minority-owned stations are not ranked among the top four in their respective markets.³³ If the ban is lifted, minority-owned stations will be targeted by newspaper owners seeking to purchase a station. And increased consolidation will only decrease opportunities for people of color to enter the market and purchase stations of their own.

One of the myths manufactured by Martin and his allies is that the current ban is especially bad for minority owners, because it keeps them from establishing synergy between print and broadcast outlets. But there are currently no minority-owned companies that already own both daily newspapers and radio or TV stations.³⁴ And it's the Big Media giants — not smaller minority owners — that are pushing for these rule changes.

Who's counting?

Martin released his new plan despite repeated requests from his colleagues, Congress and civil rights leaders to first address the crisis in minority ownership by creating an independent task force to examine the impact of consolidation — before considering any new rules.

So far, the FCC has failed even to conduct an accurate count of minority-owned stations.³⁵ And a recent FCC study failed to identify 69 percent of minority owners and 75 percent of women owners.³⁶ Yet Martin's accelerated timetable leaves no time for an independent study of how his proposal will affect minority media ownership.

In rejecting the FCC's previous attempt to overhaul media ownership rules in 2003, the federal courts specifically cited the issue of minority ownership.³⁷ In addition, congressional leaders such as Sen. Barack Obama (D-Ill.), Sen. Robert Menendez (D-N.J.), Sen. John Kerry (D-Mass.), Rep. Hilda Solis (D-Calif.) and Rep. John Conyers (D-Mich.) as well as more than 20 national civil rights groups, including Rainbow PUSH, the Leadership Conference on Civil Rights and the National Council of La Raza, have called on Martin to address the ownership diversity crisis rather than perpetuate it.³⁸

Reining in media consolidation is the only way to promote media ownership by people of color and by women. Other policies aimed at promoting minority and female ownership won't work if media consolidation continues unchecked.

FACT 9:

A broken and corrupt process creates bad policies

The FCC's lack of transparency, flawed research and secret timetable have tossed aside basic fairness and accountability in the rush to change media ownership rules. At every turn, the FCC — whether through omission, incompetence or malice — has kept the public in the dark about its true plans.

Skewed from the start

The FCC's process in reviewing the new rules has been skewed toward foregone conclusions from the start. Overwhelming evidence suggests that the commission wanted to dramatically relax or eliminate the cross ownership rule. It buried studies demonstrating the harmful impact of consolidation and then commissioned studies to support its preconceived notions.

The FCC started from the results the chairman wanted, and then worked backward. A paper written in June 2006 by the FCC's then-chief economist, Leslie Marx, leaves little doubt as to the agency's motivations. Marx wrote: "This document is an attempt to share some thoughts and ideas I have about how the FCC can approach relaxing newspaper-broadcast cross-ownership restrictions."³⁹

Facts vs. foregone conclusions

Also in June 2006, the FCC announced it was reviewing the nation's media ownership rules but didn't detail any specific rule changes. In August 2007, after more than a year of inaction, the commission finally released a series of 10 official studies — including three that focused on cross-ownership and followed the bogus methodology outlined by Marx. Trying to pass off junk science as legitimate research, the FCC failed to conduct a proper peer review and the supporting data wasn't initially made available to the public.⁴⁰

Making matters worse, the FCC gave the public barely two months to independently analyze and comment on the studies.⁴¹ Despite the time crunch, Free Press, Consumer Federation of America and Consumers Union filed a detailed refutation of the studies, which dismantled the agency's claims about the supposed benefits of media consolidation.⁴²

Among other things, this original research detailed the FCC's slanted agenda and flawed process; accurately counted the number of female and minority owners for the first time; and used the FCC's own data to show how cross-ownership negatively impacts local news. Without offering any substantive critique of this groundbreaking research, the commission is moving full-speed ahead with more consolidation.

Policy by press release

Perhaps the most glaring example of the FCC's corrupt process is the manner in which Martin unveiled his latest cross-ownership proposal. Policymaking by press release (or op-ed) is not the normal procedure at the FCC. There was no vote by the rest of the commissioners on whether to issue a final rule, and no notice was posted in the Federal Register. And the arbitrary Dec. 11 deadline for public comment is completely Martin's own invention, aimed at sneaking through new rules by the end of the year.⁴³

At a minimum — as both members of Congress and two FCC commissioners have demanded — the public should have 90 days to evaluate and comment on any new rules. Anything less could be grounds for the courts to toss out the rule changes entirely.

FACT 10:

The public doesn't want more media consolidation

This last fact may be the most obvious and the most important: The American people overwhelmingly oppose more media consolidation. Chairman Martin's actions ignore the millions who have spoken out against letting a few media giants swallow up more local media.

Déjà vu all over again

The unprecedented public outcry sparked the last time the FCC tried to change the rules in 2003 hasn't diminished. Then, under former Chairman Michael Powell, millions contacted Congress and the FCC to oppose the changes, which were ultimately thrown out by the courts. Some 99 percent of the public comments received by the FCC opposed changing the rules.⁴⁴

Since the FCC announced its latest review of media ownership rules in June 2006, hundreds of thousands of public comments have been filed with the FCC. Once again, 99 percent of them oppose loosening media ownership limits.⁴⁵

In addition, between October 2006 and September 2007, the FCC held six official public hearings across the country on media ownership and localism. At these events, the vast majority of speakers opposed changing the rules. In fact, Martin recently admitted he remembers "only one" public witness calling for relaxation of media ownership rules at the hearings.⁴⁶

Merry Christmas, Big Media

Yet this undeniable record of public opposition hasn't slowed down Martin. He scheduled the FCC's final two public hearings with little public notice, giving communities in Washington, D.C., and Seattle barely a week's advance warning. Though the two events may have been nothing more than a charade to Martin, hundreds of citizens turned out anyway to make their voices heard.⁴⁷

Martin's rush is clearly designed to sneak through his complex rule changes at a time when most of the public isn't paying attention. He's trying to wrap up his priceless gift to Big Media before Christmas.

Conclusion

Chairman Martin has demonstrated an unyielding determination to ignore the public will and any evidence that challenges his predetermined conclusions. And he's pulling out all the stops to push through his overhaul of media ownership rules before the end of the year.

It's up to Congress to put the brakes on runaway media consolidation. The day before the last ownership hearing in Seattle hearing, a bipartisan group of senators — led by Sens. Byron Dorgan (D-N.D.) and Trent Lott (R-Miss.) — introduced new legislation that would slow down Martin's timeline and ensure that the FCC follows its mandate to protect the public interest.⁴⁸

The "Media Ownership Act of 2007" (S. 2332) is co-sponsored by Sens. Joe Biden (D-Del.), Maria Cantwell (D-Wash.), Hillary Clinton (D-N.Y.), Dick Durbin (D-Ill.), Diane Feinstein (D-Calif.), John Kerry (D-Mass.), Bill Nelson (D-Fla.), Barack Obama (D-Ill.) and Olympia Snowe (R-Maine).⁴⁹

The bill would allow for public comment on and unbiased analysis of any new rules. And it would create a long overdue independent task force to address the crisis in minority media ownership. The legislation is an important step toward restoring basic fairness and transparency to the FCC's broken process.

It's time the FCC and its chairman started listening to their real constituents — the American people — and doing their job to ensure that the public airwaves actually reflect America's diverse local communities.

Notes

- 1 Kevin J. Martin, "The Daily Show," *New York Times*, Nov. 13, 2007. Available at: http://www.nytimes.com/2007/11/13/opinion/13martin.html?_r=2&oref=slogin&oref=slogin
- 2 "Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule," FCC News Release, Nov. 13, 2007. Available at: http://www.fcc.gov/commissioners/martin/articles/news_release_11132007.pdf
- 3 Martin, *ibid.*
- 4 "Joint Statement by Commissioners Copps and Adelstein on Chairman Martin's Cross-Ownership Proposal," FCC News Release, Nov. 13, 2007. Available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278142A1.pdf
- 5 Molly Peterson and Leon Lazaroff, "FCC Chief Proposes Letting Newspapers Own TV Stations," Bloomberg News, Nov. 13, 2007. Available at: <http://www.bloomberg.com/apps/news?pid=20601103&sid=a3.MxTXHctoU&refer=us>
- 6 Copps and Adelstein, *ibid.*
- 7 Free Press research; data based on BIA Financial Media Access Pro.
- 8 S. Derek Turner and Mark Cooper, *Out of the Picture: Minority & Female TV Ownership in the United States*, Free Press, October 2006. Available at: http://www.stopbigmedia.com/files/out_of_the_picture.pdf
- 9 Peterson and Lazaroff, *ibid.*
- 10 Copps and Adelstein, *ibid.*
- 11 See, e.g., Cross-Ownership of Broadcast, 16 FCC Rcd. 17,283, 17,285 (2001) (noting "The Commission has granted only four permanent waivers in the twenty-six years since it adopted the rule.").
- 12 "Chairman Kevin J. Martin Proposes Revision," *ibid.*
- 13 "Chairman Kevin J. Martin Proposes Revision," *ibid.*
- 14 There's a further discrepancy here within Martin's own press release. In the text of the release itself, the standard is described as "a showing that the combined entity will increase the amount of local news in the market." But in the text of the proposed change, the standard appears as an "increase the local news disseminated through the affected media outlets in combination." It's unclear whether that means the higher market standard, or just if the newspaper-TV combination by itself must do more local news.
- 15 See Petition to Deny Application for Renewal of Broadcast Station License of KTLA, Inc., by Media Alliance, File No. BRCT-20060811ASH, filed Nov. 7, 2006; Petition to Deny Renewal Office of Communication of United Church of Christ, Inc. and Rainbow/Push Coalition, File Nos. BRCT – 20070201AJT, BRCT – 20070201AJS, filed May 1, 2007; Reply to Opposition to Petition to Deny Application for Renewal of Broadcast Station Licenses of WTXN, Waterbury, CT, and of WTIC-TV, Hartford, CT, File No. BRCT – 20061201APT et al., filed May 25, 2007; Comments of Office of Communication of United Church of Christ, Inc., National Organization For Women, Media Alliance, Common Cause, Benton Foundation, 2006 Quadrennial Regulatory Review, MB Docket Nos. 06-121 et al., 71-72, October 23, 2006 (discussing the challenges brought in Florence, S.C., Panama City, FL., Columbus, GA., and Bristol, TN).
- 16 *Ellis v. Tribune Television Co.*, 443 F.3d 71 (2d Cir. 2006).
- 17 See *In the Matter of K. Rupert Murdoch and Fox Entertainment Group*, 21 FCC Rcd. 11,499 (2006); see also Petition for Reconsideration of Office of Communication of the United Church of Christ, Inc. and Rainbow/Push Coalition, File No. BTCCT-20050819AAF, et al, filed Nov. 6, 2006.
- 18 See "Consumer Groups Close the Case Against Cross-Ownership," Free Press, Oct. 23, 2007. Available at: <http://www.freepress.net/press/release.php?id=286>. See also "Cross-Ownership Crowds Out Local News," Free Press, Nov. 14, 2007. Available at: <http://www.freepress.net/press/release.php?id=302>. For the complete research, see copies of the group's FCC filings at http://stopbigmedia.com/=coalition_analysis and http://www.freepress.net/docs/cu_cfa_fp_ownership_studies_ex_parte.pdf
- 19 See ex parte filing by Free Press, Consumer Federation of America and Consumers Union on Nov. 14, 2007, re: *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets*, MB Docket Nos. 06-121, et al. Available at: http://www.freepress.net/docs/cu_cfa_fp_ownership_studies_ex_parte.pdf.
- 20 Ex-partie filing, Nov. 14, 2007, *ibid.*
- 21 "Testimony at FCC Hearing Blasts Flawed Research," Free Press, Oct. 31, 2007. Available at: <http://www.freepress.net/press/release.php?id=296>
- 22 Data based on BIA Financial Media Access Pro, for papers published five or more times per week.
- 23 See Richard Siklos and Katherine Q. Seelye, "Fitfully Blending Papers and TV," *New York Times*, June 19, 2006; also see <http://www.forbes.com/feeds/ap/2007/11/14/ap4337463.html>.
- 24 Steven Levington and Terence O'Hara, "McClatchy's Paper Chase: Family Owned Chain to Buy Knight, Plans to Sell Off 12 Dailies," *Washington Post*, March 14, 2006.

- 25 Phil Rosenthal, "Singleton Sold on Newspapers," *Chicago Tribune*, June 21, 2006.
- 26 Louise Story, "Times Co. Agrees to Sell TV Stations to Equity Firm," *New York Times*, Jan. 5, 2007. Available at: http://www.nytimes.com/2007/01/05/business/media/05times.html?_r=1&oref=slogin. David Koening, "TV station owner Belo plans to spin off its newspaper business," Associated Press, Oct. 1, 2007. Available at: <http://www.signonsandiego.com/news/business/20071001-1346-belo-newspaperspinoff.html>
- 27 "Online Newspaper Readers a 'Sophisticated Audience,'" Center for Media Research, see http://www.centerformediaresearch.com/cfmr_brief.cfm?fnl=070801
- 28 Data based on circulation figures as reported in BIA Financial Media Access Pro and Web site traffic figures cited by the Newspaper Association of America in previous footnote.
- 29 "Core Ad Spending Facing Challenges While Web, Outdoor and Cable Up," Center for Media Research, see http://www.centerformediaresearch.com/cfmr_brief.cfm?fnl=070917
- 30 See Mark N. Cooper, "The Case Against Media Consolidation," Chapter 9, Exhibit III.
- 31 Free Press research. See also S. Derek Turner and Mark Cooper, *Out of the Picture: Minority & Female TV Ownership in the United States*, Free Press, October 2006. Available at: http://www.stopbigmedia.com/files/out_of_the_picture.pdf
- 32 Free Press research. As of October 2007, there were 43 stations owned by minorities, 19 of which were ranked outside the top four stations in the 20 largest Designated Market Areas.
- 33 Free Press research. Only four of the 43 minority-owned stations are ranked in the top four in their respective markets.
- 34 Free Press research; data based on BIA Financial Media Access Pro.
- 35 Comments of Free Press, Consumer Federation and Consumers Union, Oct. 1, 2007, re: *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, MB Docket Nos. 06-121, et al.*
- 36 *ibid.*
- 37 *Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (2004), stay modified on rehearing, No. 03-3388 (3d Cir. Sept. 3, 2004), cert. denied, 73 U.S.L.W. 3466 (U.S. June 13, 2005).
- 38 "Congressional Leaders Call for Minority Ownership Task Force," Free Press, Sept. 24, 2007. Available at: <http://www.freepress.net/press/release.php?id=274>. Sens. John Kerry and Barack Obama, "Why minority-owned media matters," *Bay State Banner*, Oct. 25, 2007. Available at: <http://www.baystatebanner.com/issues/2007/10/25/opinion10250758.htm>. "Civil Rights Groups Unite Against Media Consolidation," *StopBigMedia.com* blog, Nov. 5, 2007. Available at: <http://www.stopbigmedia.com/blog/?p=144>.
- 39 Leslie M. Marx, "Summary of Ideas on Newspaper-Broadcast Cross-Ownership," FCC, June 15, 2006. Notably, a Freedom of Information Act request was filed to obtain this document. Available at: <http://www.fcc.gov/ownership/materials/newly-released/newspaperbroadcast061506.pdf>
- 40 Furthermore, the FCC posted major revisions to the data weeks and months after the studies were released. And critical peer reviews were not released until final comments were due, leaving no time to examine the critiques. Note also that the author of one of the studies that supported Martin's agenda was recently hired as the commission's chief economist. See further comments of Free Press, Consumer Federation of America and Consumers Union, Oct. 22, 2007 re: *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, MB Docket Nos. 06-121, et al.* See also reply comments from consumer groups, Nov. 1, 2007, and ex-parte filing, Nov. 14, 2007, *ibid.*
- 41 See "FCC Stifles Public Debate on Media Ownership," Free Press, Aug. 2, 2007. Available at: <http://www.freepress.net/press/release.php?id=263>
- 42 See further comments, reply comments, and ex-parte filing of Free Press, Consumer Federation of America and Consumers Union, *ibid.*
- 43 "Chairman Kevin J. Martin Proposes Revision," *ibid.*
- 44 Free Press research and analysis of filings in the FCC docket.
- 45 Free Press research and analysis of filings in the FCC docket.
- 46 Archived hearing audio can be found here: <http://www.fcc.gov/realaudio/agendameetings.html>
- 47 "Public Rally for Better Media," Free Press, Oct. 31, 2007. Available at: <http://www.freepress.net/press/release.php?id=293>. "Big Turnout Against Big Media in Seattle," Free Press, Nov. 10, 2007. Available at: <http://www.freepress.net/press/release.php?id=300>.
- 48 "Senate Takes a Stand on Media Ownership," Free Press, Nov. 8, 2007. Available at: <http://www.freepress.net/press/release.php?id=299>
- 49 For an updated list of sponsors, see <http://www.freepress.net/congress/billinfo.php?id=198>