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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal and Almighty God, You are the alpha and omega, the beginning and the ending. Keep us alert to the needs of our time. Give us enough humility to respect the opinions of others and enough wisdom to acknowledge our common humanity. Give this Senate a unity of mind and purpose and the realization that all things work together for good to those who love You. Bless our military men and women who stand as guardians of our freedoms. Lord, from the cradle to the grave, we need You. Guide and sustain us until the journey ends. We pray this in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume debate on S.J. Res. 17, relating to the disapproval of an FCC rule. Under the order, the vote will occur on passage of that resolution at 10:45 this morning.

Following that vote, the Senate will resume consideration of the energy and water appropriations bill. Pending is the Feinstein amendment relating to the robust nuclear earth penetrator. I encourage Members who would like to speak to that amendment to remain following the vote on the FCC resolution. It is hoped we can dispose of that amendment and continue with additional amendments to the energy and water appropriations bill.

Rollcall votes will occur throughout the day as we attempt to finish our work on this bill, which will be the sixth appropriations bill to be completed.

In addition, we will resume consideration of the House message to accompany S. 3, the partial-birth abortion ban, for the remaining 6 hours. Last night, the Senate used 2 of the 8 hours that were provided under the previous unanimous consent agreement. We will return to the debate following today's action on the energy and water bill.

Also, today, we will recess from 12:30 to 2:15 for the weekly party luncheons to meet.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The acting minority leader is recognized.

Mr. REID. Mr. President, I think we might be in a position to set a time for a vote on the Feinstein amendment. If we do that, I think it would be to everyone's best interests. Maybe it could be right after the caucuses or something such as that.

Mr. FRIST. Mr. President, at this juncture, until I talk to our manager of the bill, I do not want to establish a fixed time. I do want to proceed to that vote earlier rather than later. We will continue that discussion and understand that they are ready fairly early in the day.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

DISAPPROVING FEDERAL COMMUNICATIONS COMMISSION BROADCAST MEDIA OWNERSHIP RULE

The PRESIDENT pro tempore. Under the previous order, the Senate will resume the consideration of S.J. Res. 17, which the clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 17) disapproving the rules submitted by the Federal Communications Commission with respect to broadcast media ownership.

The PRESIDENT pro tempore. The time until 10:45 is equally divided between the two leaders or their designees.

Who yields time?

The Senator from North Dakota.

Mr. DORGAN. Mr. President, I yield 10 minutes to the Senator from Texas.

Before yielding, let me just briefly say, this resolution of disapproval dealing with the rules on broadcast ownership by the Federal Communications Commission is a rarely used——

Mr. MCCAIN. Mr. President, is the Senator from North Dakota granting himself time?

Mr. DORGAN. Mr. President, there is 30 minutes granted to each side, as I understand it.

The PRESIDENT pro tempore. The time until 10:45 is equally divided.

Mr. DORGAN. Mr. President, let me grant myself such time as I may consume. Then I will yield 10 minutes to the Senator from Texas.

The PRESIDENT pro tempore. The Senator is recognized.

Mr. DORGAN. I was simply making the point that this is a resolution of disapproval. It is rarely used in the Senate. I think this is only the second time it has been used. But this is a critically important issue. We will have a number of speakers describing why this resolution of disapproval has been brought to the floor of the Senate.

I yield 10 minutes to the Senator from Texas.

The PRESIDENT pro tempore. The Senator from Texas.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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Mrs. HUTCHISON. Mr. President, I rise today to speak for the resolution that would disapprove the FCC ruling of June 2. In 1996, we passed the Telecommunications Act which said Congress should work toward deregulating the media. We charged the FCC with ensuring the protection of competition, diversity, and localism.

I think the rule that came out does the opposite. It does not protect the localism and the diversity, particularly in the newspaper and television markets. We must turn back the entire rule, even if we agree with part of it, in order to tell the FCC to go back and start again.

I think the FCC could come up with another rule which would have some of the components of its June 2 rule, along with taking out parts that many of us believe actually will hurt localism.

There are 100 Senators in this body. Probably each one has a different view of what would be best in the media. Overall, I think it is important for us to be more cautious rather than less cautious, because what can happen if you lower the number of voices in the media, and companies make investments based on the rules at the time, is later, down the road, if you determine that, in fact, we have lowered the number of voices in the media—and it is to the detriment of the consuming public—then I don't think you should penalize the companies that made decisions based on the rules at the time.

I think stability in regulations is a good business principle. I think if you look at the particular part of the rule that deals with newspaper/television cross-ownership, you have the worst part of the decision and the one that concerns me the most. And we have examples because three companies were grandfathered when the rules were made on cross-ownership. So we have seen what can happen in a local market when a company is allowed to own the only newspaper in town plus the major television station in town, and then perhaps even radio.

I believe radio is pretty diversified. I do not think we have a problem with the number of voices in radio. My concern is ownership of the only newspaper in a market plus a major television station in the market. And we have examples of that.

In Dallas, we have one company that owns the only newspaper in town plus the largest ABC television affiliate, which has the largest market share of viewers for all editions of the news.

In Atlanta, we have one company that has the only newspaper in town that is a regular newspaper. It also owns the major television station in town, one of the Nation's top performing ABC affiliates, and it also happens to own 25 percent of the radio market. So I think that is a pretty alarming amount of concentration.

Maybe they do a good job. But what we are talking about is not Atlanta. We are not talking about Dallas. They do good jobs in many respects. What we are talking about is other cities and allowing this kind of concentration to pop up all over the country—the only newspaper in town plus the major television station.

In the FCC's own poll, it showed that 74 percent of the people in a community get their local news from a combination of television and newspaper—74 percent. If you have one company owning the newspaper and the major television station, you have a concentration that could be unhealthy. If it is unhealthy, it will be too late to go back and retrofit because these companies will make these investments based on the rules of the time.

We should proceed with caution. I think we should overturn this rule, ask the FCC to go back to the drawing board and take more testimony. They had one hearing—one hearing—before they came out with this rule. Two of the members of the Commission were so concerned that they went out across the country and had hearings of their own. But even though there was a lot of testimony, it does not appear that the FCC took that testimony into account when they made this rule of June 2. In fact, those two members voted the other way.

They had heard the people speak, and they were concerned about this kind of concentration.

So whether you agree in part with the FCC or not at all, I hope you will support the turning back of the rule so that we will give the FCC a chance to go back to the drawing board, hear what Congress says, hopefully hear more from the public, and come out with rules particularly in the area of newspaper/television cross-ownership that I think should continue the ban.

Congress passed the law in 1996, giving the responsibility to the FCC. Some people say: Well, why is Congress getting involved? Well, it is Congress's responsibility to get involved with regulators when the regulators do not implement the law that Congress passed when they were given the responsibility to do just that. It would be an abdication of our responsibility if a majority of Congress disagreed with part of the ruling that we would not take control of the decision. We are the elected representatives. The FCC is an appointed body to which we have delegated responsibility to make rules. If we do not agree with the entire rule, it is our responsibility to act, and that is why the Congressional Review Act was passed.

I want to talk for a minute about what this is not. I was amazed, because I think very highly of the Wall Street Journal in most respects—in almost every respect—but they had an editorial last Friday that said if we turn back the rule on cross-ownership of newspapers and television, somehow this is going to bring back a review of the fairness doctrine.

I do not support the fairness doctrine. I think radio is quite diversified. I think the voices that are coming into radio are very healthy. I think talk radio has given voice to the silent majority. The last thing this has anything to do with is the fairness doctrine, and yet my friend Rush Limbaugh and the Wall Street Journal somehow tied the fairness doctrine to a newspaper/television cross-ownership issue.

Letting one entity own the only newspaper in town and the major television station in town is lowering the number of voices in the media, not increasing the number. So while some people are more concerned about the 35 to 45 percent, I am focused on the newspaper/television ownership that I think affects our country.

The PRESIDENT pro tempore. The Senator's time has expired.

Mrs. HUTCHISON. I ask unanimous consent for 1 additional minute.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. HUTCHISON. I will close by saying that when we are talking about lowering the number of voices in the media, we should proceed with caution. Voting for this resolution of review says to the FCC: You went too far in some respects—not every respect. We may disagree on the areas, but you need to listen more to Congress and to the people who have spoken.

I hope people will vote yes, and I hope the FCC will be responsive.

I thank the Chair. I yield the floor.

The PRESIDENT pro tempore. Who yields time?

Mr. MCCAIN. Is the Senator speaking for or against?

Mr. FEINGOLD. Mr. President, I am speaking for.

Mr. DORGAN. Mr. President, I think appropriately at this point, Senator MCCAIN in opposition will yield time and then I will be happy to yield time to the Senator from Wisconsin at an appropriate time.

Mr. MCCAIN. How much time does the Senator from Louisiana wish?

Mr. BREAUX. A couple minutes—3 minutes.

Mr. MCCAIN. I yield 5 minutes to the Senator from Louisiana.

The PRESIDENT pro tempore. The Senator from Louisiana is recognized for 5 minutes.

Mr. BREAUX. I thank the distinguished chairman of the committee.

Mr. President, I will just make a couple of comments in opposition to the resolution because I think the resolution is sort of a broad-brush approach that takes down everything the FCC has recommended, things that make sense that are good and also things about which some people may have questions. It really is a resolution that assumes, in my opinion, that if things are small, they are necessarily good; if things are big, they are necessarily bad.

I think particularly as this is clearly spelled out with regard to part of the FCC's rule that deals with the question of television ownership, the rule from the FCC basically allowed the television stations to move up to a 45-percent-of-viewer cap before they would be

prohibited from owning additional television stations.

It seems to me that if you look at media concentration now, you have 1,721 television stations in the United States and the networks only own a very small percentage of those stations. If you consider the people who watch the stations, you will find also that the viewership of these network-owned stations, indeed, is very small.

It is not as if a couple of networks have all the viewers and are therefore monopolizing what people see and there is no diversity. That is simply not the fact at all. If you look at Viacom, which owns CBS, in prime time viewing, they have about 3.4 percent—3.4 percent of the total TV households. News Corp, which owns Fox, has about 3.1 percent. General Electric, which owns NBC, has 2.8 percent. And Disney, which has ABC stations, has about 1.5 percent of the total TV households watching their network programming in prime time.

The problem with the argument that the cap is somehow going to change things and make a concentration of ownership of what people see makes no sense whatsoever, because the way it is currently measured, stations that are in large television markets are assumed to have everybody in the market watching their stations.

A station that is owned by the network that happens to have a station in Los Angeles, Houston, Miami, New York, or Chicago probably exceeds a cap of 35 percent of the potential viewing audience, but in reality they may have only a very small number of people in those cities actually watching them.

So the standard of measurement that we use is totally illogical. It would be like saying an automobile dealer in New York has 6 percent of the total sales in the United States because New York is about 6 percent of the market. That would be fine if the automobile dealer sold every car that is bought in New York, but that is not the case. There are probably literally thousands of other competitors in that market.

The same thing is true in the television market. As an example, an ABC station in Los Angeles does not have everybody in the Los Angeles market watching their station. There are probably 200 to 300 additional stations that a viewer can watch in the evenings and look at a diverse range of programs that happen to be available.

So the argument that because a station happens to have a tower in a large city it has all the viewers in that city is illogical at best and misleading in fact.

Another point is when we look at the amount of diversity that networks give, obviously the studies have shown they, in fact, offer far more local programming than nonnetwork-owned stations. Those facts are clear. They are indisputable.

I think what we do in saying we are going to throw out what the FCC has done makes no sense. The network-owned stations, in fact, show about 37 percent more local news than locally owned stations do. So I argue that this resolution be voted down.

I yield the remainder of my time.

The PRESIDENT pro tempore. The Senator's time has expired.

Who yields time?

Mr. DORGAN. Mr. President, I yield 4 minutes to the Senator from Wisconsin.

The PRESIDENT pro tempore. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I will vote in favor of S.J. Res. 17, the bipartisan resolution of disapproval which would overturn the Federal Communications Commission's new rules on broadcast media ownership. I am very proud to be an original cosponsor of this measure because I believe the FCC has acted in gross disregard of its mandate, of good public policy, and of the will of the American people.

When the public became aware that the Federal Communications Commission was considering new rules on media consolidation earlier this year, the explosion of concern was immediate, heartfelt, and unprecedented. Close to three-quarters of a million people registered their views with the FCC before it issued its decision, more than for any proceeding in its history. Public opinion was almost unanimous in opposition to further relaxation of media ownership restrictions.

So how did the FCC respond to this clear statement of the will of the people? With the back of its hand. Only one official public hearing was held. This was more than carelessness or bureaucratic inertia. This was simple disdain for the public in whose interest the FCC by statute is required to act.

Among the many letters I have received on this issue was one from Nicholas Dzubay, a Republican alderman on the city council of Barron, WI. Alderman Dzubay said his area's radio stations were suffocating under the control of a single corporation. He hopes we will not allow television and other broadcast media in his area to be monopolized in the same way.

I was also particularly struck by a letter from the Reverend Robert Stiefvater, the Vocations Director for the Archdiocese of Milwaukee. He wrote:

> I find it very difficult to get news into our local market here in Southeastern Wisconsin. The FCC's June 2 decision to radically weaken the remaining ownership rules will unacceptably harm my ability, the Archdiocese's and its community's ability to receive and distribute local independent programming.

If any of us doubts the dangers of the road down which the FCC wants to send us, the story of American radio stands as a powerful warning. Unprecedented consolidation followed the Telecommunications Act of 1996, but the real story is told over the airwaves. Radio does not sound like it used to. Like most of us in the Senate, I travel a lot, and wherever I go, radio stations sound more and more alike. Why? Because they are no longer programmed by local DJs but by executives at corporate headquarters hundreds of miles away.

As we begin to examine the issue of file-sharing, and look for ways to protect copyright owners and artists from infringement of the copyrights on works they struggled to create, we should keep in mind that there used to be a time when American young people heard new music on the radio, when they explored the variety of musical styles and genres by flipping channels. DJs used to make a name for themselves by playing new artists, or taking changes on records other DJs had overlooked. New local programmers do not have the freedom to deviate from the corporate playlist, and young people are turning off their radios and booting up file-sharing programs like Kazaa.

The homogenization of American radio is a grim predictor of the consequences of deregulation. If allowed to stand, the FCC rules will ravage the independence and character of other forms of media, from television to newspapers, the way radio has already been ravaged. This resolution is our chance to say no.

If this resolution of disapproval passes, I hope the FCC will finally understand how seriously we in Congress feel about this issue. I hope the FCC gets the message. They did not just make an honest mistake. They did not just misinterpret a complicated or ambiguous statute. They headed off in entirely the wrong direction. They ignored the will of the American people. That is why I will support this resolution, and I urge my colleagues to do so as well.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. MCCAIN. Mr. President, I yield 10 minutes to the Senator from Nevada.

The PRESIDENT pro tempore. The Senator from Nevada is recognized for 10 minutes.

Mr. ENSIGN. Mr. President, I rise to speak against the resolution that we have before us today. I will make a few points that are being overlooked in this debate. First, when the original ideas for this cap on percentage of media ownership were put into place, they were put into place because of the principle that we did not want a small group of people owning our airwaves to the point where they would be able to control thought, whether it is political thought or any other kinds of thought, in the United States. So when these were put into place, we had basically three networks.

When I was growing up, there virtually was no cable and everybody had over-the-air broadcast television. We had the three stations, and whatever were on those three stations is what one watched. We were lucky to have one or two, maybe three, radio stations, especially if we were not in a major media market.

The reality of today is that we not only have the over-the-air broadcast with the three networks, we also have Fox, UPN, and others, but we have systems whereby the vast majority of the homes in America can either get cable or some kind of a direct satellite TV system that has hundreds of stations which provide news, which provide entertainment, which provide all kinds of information.

In media markets, for instance, where I live in Las Vegas, NV, someone cannot turn the dial without getting a new radio station, both AM and FM. The choices are incredible. Other types of information we have coming into our household today include the Internet. Anybody can set up Web sites or news information-sharing sources. That is becoming a larger part of how people get their information.

Other than the major media outlets, there is the Drudge Report and other places on the Internet where people are getting information. The point is that there are so many more places for information to be had today than when these rules at 25-percent caps were initially put into place.

The other major point I make is that what we are talking about is potential viewership. Right now, the cap is set at 35 percent. It wants to be raised to 45 percent. I believe the FCC tinkered a little bit around the edges. This is not the tidal wave of change that people are talking about. This is a minor change in that it is potential viewership, it is how many homes can be reached. It is not how many people are watching a station at any one time. It is how much potential reach can one have into the home?

So we are not only saying it does not matter how many choices one has, it only matters how many homes can somebody potentially reach. It does not matter if somebody reaches 100 percent of the homes, as long as they have plenty of other choices. We should be making sure there are plenty of choices. When people choose which station they watch, they should be free to choose whatever stations they want.

We have also heard mention in this debate about cross-ownership with newspapers. One of the big complaints I hear about localism is that a lot of the TV stations today do not cover local politics. We know when there is cross-ownership there are more resources, especially in smaller media markets where necessarily TV stations or the newspapers do not have the kind of resources to put good reporters on the beat and they do not cover as much local politics. When there is cross-ownership, we see 50 percent more local news and public affairs programming, and an important thing is that local politics is covered. This is one of the big gripes I had in my last few campaigns, that the local TV stations—whether they are owned inside the State or outside the State, it was the same thing—didn't cover local politics enough.

I happen to be a Republican. In Las Vegas, NV, these two entities I am going to talk about lean more to the left. There is a TV station in cross-ownership with one of the newspapers in Las Vegas and, since they have been in existence, the coverage of local politics, not only by them but also by their competitors, has increased dramatically. I think that is good. That is more localism. There is cross-ownership there, but that is localism.

I think the precautions the FCC has put into place on cross-ownership, where you have to have a certain number of TV stations within a market if there is only one major newspaper, are the right kind of precautions to put in.

The point is, are we giving people choice? Where they choose to view is up to them. We should not be in the business of regulating what they watch, what they read, and who owns those, if we have enough choices in an area. I actually believe the FCC could have gone farther than they went. This is a very conservative move they have made today. If we are starting to be in the business of regulating how many people you can attract to your television stations, then we are starting to regulate whether you are getting too popular. That seems to be wrong-headed, in my opinion.

It seems to be right that if you have a couple of gas stations in an area, as long as you have choice among the gas stations, that is the important aspect. You don't want a monopoly saying this is the only gas station to which you can go. If we have 200 different gas stations, it doesn't matter whether Exxon reaches 100 percent of the cities in the United States. If there are 200 different gas stations in each one of the markets around the country, who cares? Because there would be competition to make sure Exxon is keeping its gas at the right price; otherwise, they would not be able to compete.

That is the same thing we have here. It really doesn't matter, in my opinion, whether ABC or NBC covers the entire United States. If there are 200 active choices just on television to be able to choose from, then let people choose where they are going to watch based on their remote control or based on how they flip channels. That seems to be the right kind of choices America should be all about.

We are in this fear. There are some on the right and there are some on the left who are afraid that either liberals or the conservatives are going to control too much of the media and control too much thought in one regard. Whichever side of the political spectrum people may have had a bad personal experience because in their area maybe the liberals controlled it or in another area maybe the conservatives controlled it. People complain about Fox News today; people complain about talk radio; you hear conservatives complaining about the major TV networks and all that. But as long as people have the choices of where they view, the market will determine where they get their information based on people choosing which stations they choose to watch.

That seems to me to be the American way. Let there be plenty of choices out there. Let freedom ring, basically, and then Americans will choose what the percentage of viewership is based on the choices they make.

In this Senator's opinion, this resolution before us today would go the exact opposite way of that we should be going. We should be liberalizing these rules so broadcast stations have a chance to compete. We are watching daily the quality of programming in our broadcast television go down because it is incredibly expensive to produce those shows today. So we are seeing more shows like ''Survivor,'' with these people on reality television shows that frankly don't cost a lot of money to produce because you don't have to pay the big actors. We want to reverse that trend, go the other way, and the way to do that is to liberalize the ownership rules.

I yield the floor.

The PRESIDENT pro tempore. Who yields time?

Mr. DORGAN. Mr. President, I yield 3 minutes to the Senator from Washington, Senator MURRAY.

The PRESIDENT pro tempore. The Senator from Washington is recognized for 3 minutes.

Mrs. MURRAY. Mr. President, like many Americans, I was disappointed by the Federal Communications Commission's recent order on media ownership. As my colleagues know, on June 2 the FCC voted to relax the rules on media ownership. That order could reduce local news coverage and could hinder the diversity of views presented in the news media.

I rise in support of the bipartisan resolution offered by Senators DORGAN and LOTT to invalidate the FCC's media ownership order. Passage of this resolution will help ensure that the marketplace of ideas is not dominated by a few corporate conglomerates at the expense of our citizens and our democracy.

Since its founding, our Nation has always recognized the importance of a free press in helping citizens make informed decisions on critical public issues. Over the past few years, we have seen massive mergers take place in many industries, but Americans recognize that the news media are different. They don't just produce a product to make a profit. They also provide a vital public service that could be undermined if just a few mega-corporations control what we can read, see and hear. That is why the FCC's order has provoked such a large public backlash.

By a 3–2 vote, the FCC made two major changes. First, it lifted a restriction that prevents mergers between newspaper and television stations in the same market. This is known as the cross-ownership rule. Until now, that restriction has ensured that one company does not control both newspaper

and television coverage in an area. That helps ensure that consumers have access to diverse sources of information.

By eliminating this cross-ownership rule, however, consumers could end up with fewer voices and perspectives on the public airwaves and in the newspaper. The number one television station in a market could be owned by the dominant newspaper or even the only newspaper in that same market. We are not talking about something that could happen in just one or two cities. This could happen all over the country. Down the road, the order could encourage just a handful of powerful corporations to own nearly every media outlet. That could hinder diverse and alternative viewpoints. It could also mean fewer reporters and resources for covering local and community events.

The newspaper market is already much less diverse than it was 25 years ago. Since 1975, two-thirds of independent newspaper owners have disappeared. The FCC's first order sets the stage for a further reduction in independent newspaper ownership.

The FCC's second order would allow broadcast networks to own more stations across the country. Currently, one broadcast network cannot own stations that reach more than 35 percent of the public. The FCC just raised that limit to 45 percent. This order threatens to reduce the amount of local news coverage available to citizens. Just look at what has happened in the radio industry. National radio networks have gobbled up local stations. Many have consolidated their news operations to the detriment of local consumers. Getting rid of local news coverage is not good for our local communities and their residents. This change could be especially troubling in rural areas.

I have been working on this issue for several months, and I believe we have reached a critical juncture that calls for Senate action.

On April 9, nearly 2 months before the ruling, I sent a letter to FCC Chairman Michael Powell along with 14 other U.S. Senators from both political parties. We asked the FCC to let the Congress and the public review and comment on the proposed changes before they were enacted.

When the order came out in June, I expressed my concerns.

A couple of weeks ago in the Appropriations Committee, I echoed the comments of Senators DORGAN and HUTCHISON on the need to either fix or eliminate this order through action on the Senate floor, and that is why I'm here today in support of this resolution.

The rule was scheduled to take effect on September 4, but was postponed when the Third Circuit Court of Appeals issued a temporary stay. This stay could be lifted if the FCC meets the court's requirements, so the Senate needs to act quickly.

One option before the Senate is to pass a law invalidating the FCC's order. Unfortunately, that approach would still leave the door open for the FCC to simply rewrite the rule and do an ''end run'' around Congress. A better way to invalidate the rule is to use the Congressional Review Act, CRA. It would stop the rule and would also prevent the FCC from re-imposing it later under a different name.

In the Appropriations Committee, we included a provision that would lower the media cap back to 35 percent. That mirrored a similar provision in the House's Commerce, Justice, State, and Judiciary Appropriations bill. We must finish the job today by using the CRA to invalidate the whole rule.

Mr. President, 80 percent of Americans get their news from local TV and newspapers. We cannot allow a handful of corporations to dictate what all Americans can see, hear, and read as they make decisions on critical public issues. I urge my colleagues to vote for diverse media ownership by supporting this resolution.

The PRESIDING OFFICER (Mr. ENSIGN). Who yields time?

Mr. MCCAIN. Mr. President, I yield the Senator from Alaska such time as he may consume.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I oppose this resolution which would disapprove all of the FCC's recent rulings on media ownership. I oppose it for several reasons.

In the first place, the court of appeals has stayed this resolution, and it is reviewing its contents. I do not think it is appropriate for the Senate to pass such a resolution when there already exists legislation that addresses the most contentious media ownership issues.

As one of the original sponsors of the legislation that is on the calendar already, I urge the Senate to take up that bill and not approve this resolution. My legislation, S. 1046, has the support of a majority of the Members of the Senate Commerce Committee.

I do not support this attempt to unravel everything that the FCC did regarding the media ownership rules. For the most part, I think the Commission did a good job on the media ownership issues, absent one issue regarding 35 percent.

My main concern all along was to keep the national ownership cap at the 35 percent level, and that was the primary focus of the bill that I introduced. In fact, that bill already passed out of the Commerce Committee.

My bill prohibits ownership of TV broadcast stations if the ownership exceeds 35 percent of the national TV audience. It maintains the status quo for the cap and closely tracks what Congress originally intended in the Telecom Act.

There were several amendments that were added to my bill in the Commerce Committee which addressed other parts of the rules. One was offered by my colleague from North Dakota. That amendment undid the Commission's decision to lift the cross-ownership ban.

I didn't agree with his original amendment because I thought that the FCC's decision to lift the cross-ownership ban was prudent. I was concerned that the amendment of the Senator from North Dakota didn't contemplate situations in small markets where cross-ownership between newspapers and TV stations is necessary. Therefore, in committee I added language to his amendment which allows for a waiver procedure in small markets.

This pending resolution, however, does not contemplate the small markets at all in the context of cross-ownership. This concerns me and should certainly concern others as well, especially those who represent small markets.

Last week the Third Circuit issued an order staying the FCC media ownership rules, pending resolution of the consolidated proceeding before that court. Therefore, this Third Circuit stay has creates status quo allowing the stake holders to fully brief and argue their sides.

Finally, the issue that has received the most support and attention from my colleagues and from diverse interest groups is the 35 percent cap issue. That issue has been addressed by both the House in the CJS appropriations bill and by the Senate Appropriations Committee in the CJS bill.

Therefore, with all of these various tracks already in play, I don't think it is wise to open another can of worms on the same issues. It is not productive.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I will use my leader time to make a statement on the matter before us.

Mr. President, the Senate faces a critical decision today—whether new media ownership rules proposed by the FCC truly serve the public interest. They do not, and we should pass this resolution of disapproval and force the FCC to rework them.

On June 2, 2003, the Federal Communications Commission adopted new broadcast media ownership rules that would allow greater concentration of ownership of U.S. broadcast television stations, both at the national and local levels. At the national level, a single owner could own stations capable of reaching up to 45 percent of the national audience—up from 35 percent—under the new rules. A single entity could reach up to twice that percentage of the national audience if he or she owned UHF stations. In most markets, duopolies ownership of two stations in the same market would be allowed, and triopolies would be allowed in the largest markets.

The new rules would also allow cross-ownership of broadcast television stations and major newspapers in all but the smallest of media markets as well as greater cross-ownership of television

and radio stations. The rules would theoretically allow one owner to reach 90 percent of national TV audience and, in a large market, own three television stations, eight radio stations, the only daily newspaper, and the cable company.

The public overwhelmingly opposes these new rules. In fact, a recent CNN poll found that 96 percent of Americans believe there is already too much media concentration—that ownership of too many media outlets is already under the control of too few corporations.

Why should Congress care? For several reasons.

Congress has repeatedly mandated, most recently in the Telecommunications Act of 1996, that the FCC serve the public interest by promoting competition, diversity of viewpoints, and localism. These rules fail on all counts.

First, competition. Remember that there are a limited number of broadcast licenses available. Ted Turner, who bought one station and turned it into a media giant, addressed the rules' potential effect on competition. Turner wrote in an op-ed that if he had been faced with the FCC's new rules, he never could have started his own media company: ''If a young media entrepreneur were trying to get started today under these proposed rules, he or she wouldn't be able to buy a UHF station, as I did. They're all bought up,'' he wrote.

Turner added that even if that young entrepreneur could buy a UHF station, he or she wouldn't have access to the programming and distribution needed, as both are largely controlled by the major media companies. ''Today both (programming and distribution) are owned by conglomerates that keep the best for themselves and leave the worst for you if they sell anything to you at all. It's hard to compete when your suppliers are owned by your competitors,'' he said.

Second, independence and diversity of viewpoints. Many argue there are an infinite number of media outlets today, especially given the huge growth in cable channels and internet addresses. But the vast majority of Americans get their news and information from television news and/or their local newspaper. And realize that none of the cable news channels have anywhere near the viewership of the broadcast media, and that most of the major cable and internet news outlets are affiliated with the print and broadcast media that are already controlled in large part by just a handful of companies. Diversity of viewpoints is already in jeopardy, and the new rules would only exacerbate the situation.

Third, localism. If many of those so-called diverse viewpoints are actually controlled by a handful of companies, then one can see that localism, too, is in trouble. The loss of localism in radio is well known, sometimes with dangerous consequences like the famous Minot, ND case that Senator DORGAN has talked about. In fact, the lack of localism in radio is so undeniable that even the FCC has agreed to address it in the one aspect of the proposed rules that makes sense.

But localism in television is also at risk local entertainment choices as well as news. James Goodman of Capital Broadcasting in North Carolina explained it well in his testimony before the Commerce Committee. He owns Fox and CBS stations in Raleigh. Out of respect for his local audience's sensibilities, he has refused to carry either network's ''reality TV'' shows, including ''Temptation Island,'' ''Cupid,'' ''Who Wants to Marry a Millionaire,'' and ''Married by America.'' His actions have met with intense resistance from the networks, and he has expressed his grave concern that if the networks' ability to own more and more of the broadcast outlets goes unchecked, local stations and communities won't have any ability to choose their own programming. They will be forced to air the network fare, even when it is offensive to local viewers.

Finally, and most important, there is an even more basic threat posed by these new rules: It is a threat to democracy itself. The integrity of our democracy depends on an informed electorate. Again, the vast majority of Americans get their news and information from television and/or their local newspaper. If we allow the limited broadcast spectrum to be controlled by a handful of companies, how can we maintain the free marketplace of ideas?

Those in the print media rightfully chafe at the prospect of government restrictions. Anyone in America has the right to print their ideas. But when we talk of broadcast media, we are talking about public airwaves, and that is a different matter altogether. Again, space on the spectrum is limited, and so are broadcast licenses. And the FCC was created to regulate them in the public interest—not to rubber-stamp the industry's wish list.

Not only are the new rules a threat to democracy, but the process by which they were approved is a threat to democracy.

In response to pressure from the Democratic appointees to the Commission, FCC Chairman Michael Powell called only one official field hearing. Field hearings are intended to solicit input from the general public from across the country to overcome the ''inside the Beltway'' virus that often infects policies born in Washington, DC. Chairman Powell's ''field'' hearing was held 90 miles from Washington, and much of his invited testimony came from industry representatives, many of whom, in fact, live and work inside the Beltway.

It appears the Chairman thought a pro-industry decision would sail through with minimal attention. After all, other than paid lobbyists, how many people have the time to follow the details of an FCC decision-making process? But a funny thing happened on the way to the vote. As soon as people outside the Beltway did learn what the FCC was planning to do, they protested, and they protested in large numbers.

Of the 2 million individuals who commented on the FCC's proposed rules, 99 percent opposed them. Ninety-nine percent. Of the first 10,000 comments that were sampled separately, there were only 57 comments in favor of the rules, and only 11 of those 57 were from people with no vested interest in the rules changes.

Those margins are essentially unheard of in American politics. Near unanimity. But in the halls of the FCC, that overwhelmingly negative input was essentially ignored. The votes of the American people didn't count. Only three votes counted—the votes of three commissioners who decided that they knew better than 99 percent of the people who commented on the rules.

The FCC's hasty process also effectively blocked public comment on many issues. Allowing for public comment isn't just the right thing to do. It generally leads to a better product. The FCC has an expert staff. But mistakes can and do happen. And an agency as determined to act quickly as the FCC was on this matter is more likely to make mistakes.

One such apparent mistake affects my state of South Dakota and would classify Sioux Falls as having more television stations than Detroit. It does so by counting five public broadcast stations as separate stations even though they broadcast the same signal. As a result, Sioux Falls is considered to have 11 stations instead of 7. And Sioux Falls, the 112th-largest market by population, is counted as having more stations than Detroit, the 10th-largest market.

Some commercial broadcasters own multiple stations that broadcast identical signals. FCC rules appropriately treat them as one station. But the exemption applies only to commercial stations, not public television stations. FCC Commissioner Jonathan Adelstein, a South Dakota native, identified the error and encouraged his colleagues to correct it, but the Commission has not done so.

The consequences of such an error are real. Because the new rules consider Sioux Falls to have 11 stations instead of 7, the city is placed in a category without any cross-ownership restrictions. That would allow the newspaper to acquire two television stations instead of one, and own twice as many radio stations as would be permitted if Sioux Falls were properly classified. Fortunately, I don't see any rush for that to happen. But who knows what a future owner of the Sioux Falls Argus Leader or one of the Sioux Falls television stations might wish to do? This is just the kind of mistake that could have been avoided if the FCC had employed the more deliberative, inclusive process that so many of us advocated.

Let's review the mission of the Federal Communications Commission, as stated repeatedly by the Commission and by acts of Congress: to serve the public interest by promoting competition, diversity of viewpoints, and localism. The public interest—that phrase should be italicized in this debate.

As we define the public interest, the public—the people who receive the radio and TV news and programming that beams across the airwaves their taxes paid for—has a right to be heard. Public comment, input, and involvement in our democratic processes is not a box to be checked before the petitions, call, e-mails, and letters are thrown in the trash and disregarded. It is a basic tenet of our social contract and the principle that underlies our form of government. Of the people, by the people, for the people.

I am all for ensuring the rights of the minority. Indeed, I feel strongly about our civic responsibility to ensure that a reactionary or powerful majority does not trample on the rights of those in our society whose voices are not as easily heard or fully represented. In fact, that's one key reason I oppose the substance of these rules—I fear the voices of those who may have quite valuable things to say, but lack the means to gobble up TV and radio stations, will not be heard.

But in this case we don't have a powerful majority trampling on the rights of the vulnerable. We have three people—with an obvious push from the current administration—trampling on the rights of the majority. To add insult to injury, they are telling the majority—the American people—that they are doing this in their interest. Of course, the interests being served are those of the handful of large media companies that already control a huge percentage of America's major media outlets.

Let me be clear: I don't blame the media companies for advocating for their own interests. They have every right to fight for their interests. I do blame the Chairman of the FCC and the other commissioners who voted for these rules for failing to give the rest of the country the consideration they deserved in this debate.

The Congressional Review Act was intended for exactly this kind of situation. A Federal agency has turned a deaf ear to the very public it was intended to serve. It is appropriate to send them back to the drawing board, especially if that is the only option available to us.

The Commerce Committee actually reported a bill that deals with the issues individually, and I would be happy to debate that bill. But it has been made clear to us that the majority has no intention of bringing the Commerce Committee bill to the floor, and we have no ability to force it to the floor before these rules take effect.

Mr. President, I want to make one final point. This isn't a partisan issue. The Republican supporters of this resolution of disapproval include Republican Party stalwarts like TRENT LOTT and KAY BAILEY HUTCHISON. It is not a liberal versus conservative issue, either.

The list of well-recognized people and organizations who oppose all or part of the FCC's media ownership rules is one of the strangest list of strange bedfellows you will ever hear. Opponents include Walter Cronkite, William Safire, the National Rifle Association, the U.S. Conference of Catholic Bishops, the National Organization for Women, Senator Jesse Helms, the National Council of Churches, MoveOn, the Parents Television Council, former Universal Studios Chairman and CEO Barry Diller, Mort Zuckerman, and many, many more. That sampling of the list gives you a sense of how broad and deep the opposition to these FCC rules is.

We should respect that overwhelming opposition and vote accordingly.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, parliamentary inquiry: How much time is remaining on both sides, and at what time will the vote take place?

The PRESIDING OFFICER. There are 18 minutes 39 seconds on your side and 15 minutes 45 seconds on the other side. The vote will occur around 11 o'clock.

Mr. DORGAN. Mr. President, I yield 3 minutes to the Senator from Maine, Ms. SNOWE.

The PRESIDING OFFICER. The Senator from Maine is recognized for 3 minutes.

Ms. SNOWE. Thank you, Mr. President. I thank Senator DORGAN for his remarkable leadership on this most important matter.

Drastic times require drastic measures. That is why I stand with my colleagues today in support of this resolution which will help and safeguard one of our most precious possessions—the right of free and diverse exchange of opinions.

The decision that has been made by the FCC will no doubt pave the way for even greater concentration of media ownership in the hands of a select few and deprive the public of the diversity of viewpoints that I happen to believe is so essential to democracy and objective reporting in America.

The FCC's June vote on media ownership ultimately, as I said in the committee, is truly the ''deregulatory'' express out of the station. Now we are on track toward even greater ownership concentration and unfettered consolidation.

Some have said that with exponentially more media outlets than ever before, we should have nothing to fear. While more mouths speaking is good, having more mouthpieces guarantees neither diversity of opinion nor information. The point is the amalgamation of control in media outlets. We cannot ignore the fact that diversity of discourse in America is an essential underpinning.

When it comes to changes allowing media mergers in over 150 markets representing 98 percent of the American population, and when reports show that 5 companies or fewer control about 60 percent of television households in just the next few years, we should all be very concerned.

I know some have said the process and the outcome of the FCC media ownership, as we heard from the FCC Commissioners before the Senate Commerce Committee, were preordained by the statutes and by the courts. The courts did not prescribe what the limits should be. Neither did they set a date certain. Rather, what they said was that whatever the limits are, there needs to be a solid factual record demonstrating that they are in the public interest.

How does one determine what is in the public interest? It is aggressively seeking the input of all stakeholders—not just simply notifying the public, notifying the Congress, and that simple disclosure is, in and of itself, sufficient. Absolutely not—not in this unprecedented realm of issues.

When we look at the record, what we find is that the FCC only held one public hearing. The committee urged them to conduct a series of public hearings across the country. But they only held one public hearing. Even with one public hearing, the FCC received an unprecedented amount of input from the public when it came to this issue. Even though they did not have the opportunity to participate in public hearings, they sent more than 700,000 e-mails, letters, and calls from across the country.

This is unprecedented in the history of the FCC.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume.

I rise to speak in opposition to S.J. Res. 17. I had the opportunity to make a full statement last week. In my time as chairman of the Senate Commerce Committee, no issue has erupted so rapidly and evoked such passion from the public as media consolidation. These are critically important decisions.

If we could have a little straight talk this morning, if the Senate passes this resolution, there is no objective observer that believes the House will act accordingly. Now, the Senator from North Dakota may think it is important to have this Senate on record, and I don't disagree with that at all. Any prospects of it becoming a reality is minimal, at best. We should all recognize that.

Second, all kinds of allegations have crept in about various motivations on both sides of this issue. Some have been accused of wanting to return to the fairness doctrine. Some are saying it is because of ideological bias, dislike of talk radio, or dislike of the New

York Times acquiring more cable companies and media. I don't accept any of those arguments from both the right and left. There is legitimate basis for concern about continued consolidation of the media. This is not the appropriate vehicle for addressing that in 4 hours of debate and a blanket repudiation of regulations, some of which have been good, in my view, because they have reined in, at least to some degree, the continued consolidation in the most egregious and most incredible media consolidation, and that is radio in America today.

We have legislation passed through the Commerce Committee, S. 1046, which after being composed, marked up, amended, and debated in the Commerce Committee is on the calendar and ready for floor consideration. If we are serious about addressing this issue, we should do it by calling up from the calendar for debate and amendment S. 1046 and we can explore the myriad and complex aspects of this issue.

For example, the Appropriations Committee has now added, I am told, to their bill the 45-percent cap being rolled back to 35 percent. According to BusinessWeek magazine, the 45-percent cap has become a rallying symbol, but the regulations that would truly reorder America's media landscape and affect local communities have flown under the radar. These allow companies to snap up not only two to three local TV stations in a market but also a newspaper and up to eight radio stations.

If the courts and Congress are worried about the dangers of media consolidation, they will have to resist calling it a day after dispensing with the network cap and go after the rules with real bite. As it now stands, TV's big networks will be losers among media outlets, thanks mostly to vociferous lobbying by independent TV affiliates. With strong ties to lawmakers who depend on them for campaign coverage, the affiliates have succeeded in getting a House vote against the 45 percent and will likely see a rerun of that episode when the Senate votes by October.

With Fox and CBS already each owning stations that cover about 40 percent of the Nation's audience, going up another 5 percent is not going to make a dramatic difference. In contrast, opening the floodgates to allow local behemoths to combine newspapers, TV, and radio stations under one roof would change media ownership in towns and cities, concentrating it in the hands of a few. Even in midsized cities such as San Antonio, for instance, one company might own the leading newspaper, two TV stations, eight radio stations, and several cable channels.

What we are doing is interesting but if we are going to address this issue in a serious fashion, and there is reason for concern, we ought to do it in a fashion far different from this.

I point out that the CRA precludes an agency adopting similar rules without substantive congressional legislation. In other words, the FCC would be prevented, if this is passed, from acting on any rules regarding media consolidation. Almost all Members of this body have some degree of concern at least about some aspect of it.

I hope all of our colleagues had the opportunity to see the Wall Street Journal article on September 15 entitled: Show of Strength: How Media Giants Are Reassembling The Old Oligopoly; Mix of Broadcast and Cable Proves Lucrative in Making Deals.

Viacom and its big media peers have been snapping up cable channels because they are one of the few entertainment outlets generating strong revenue growth these days. More broadly, the media giants have discovered that owning both broadcast and cable outlets provides powerful new leverage over advertisers and cable- and satellite-TV operators. The golaiths are using this advantage to wring better fees out of the operators that carry their channels and are pressuring those operators into carrying new and untried channels. They're also finding ways to coordinate promotions across their different holdings.

Entertainment giants such as Viacom, NBC parent General Electric Co. and Walt Disney Co., which owns ABC, now reach more than 50 percent of the prime-time TV audience through their combined broadcast and cable outlets. The total rises to 80 percent if you include the parents of newer networks—such as New Corp.'s Fox and AOL Time Warner Inc.'s WB—and NBC's pending acquisition of Vivendi Universal SA's cable assets, estimates Tom Wolzein, an analyst at Sanford C. Bernstein & Co.

The big media companies are quietly re-creating the ''old programming oligopoly'' of the pre-cable era, notes Mr. Wolzein, a former executive at NBC. Of the top 25 cable channels, 20 are now owned by one of the big five media companies.

The idea of owning broadcast networks as well as cable channels is ''comfortable for people like ourselves,'' says Bob Wright, chairman of NBC, which two weeks ago signed a preliminary agreement to acquire Vivendi Universal's USA and Sci-Fi cable channels, along with the Universal film studio, bolstering a stable of cable channels that includes Bravo, MSNBC and CNBC. ''There has been so much consolidation'' among the distributors that ''unless you are equally big . . . you risk a situation where you can be marginalized,'' says Viacom President Karmazin.

Viacom president Karmazin is a man, who, by the way, I happen to admire enormously.

I am not blaming any of these people, executives or organizations, for seeking to gain as much market share as they can. But the reason I refer to this Wall Street Journal article is this is a complex set of issues. When we are talking about cable consolidation, cable rates, all of the other.

Since 1990, almost half of the top 50 cable channels have changed hands. Among the big deals: Disney's $19 billion acquisition of ESPN's parent, Capital Cites/ABC, and Time Warner's $6.7 billion purchase of CNN parent Turner Broadcasting, both negotiated in the summer of 1995. In 2001, Disney bought the Family Channel from News Corp. for $5.2 billion.

Last year, NBC bought Bravo for $1.3 billion. CBS, owner of The Nashville Network—now Spike TV—and Country Music Television, itself was gobbled up in 2000 by MTV's longtime parent, Viacom. Viacom has since added channels such as BET and Comedy Central.

Mr. Karmazin recently boasted to investors that the company's broadcast and cable outlets reach 26 percent of the Nation's viewers in prime time, a significantly bigger share than any other company. Having such a big market share is ''real important for lots of reasons, in terms of dealing with advertisers and our cable partners,'' he told investors.

There is something going on here that deserves investigation, not just a simple CRA vote and then move on. At the hearing before the Commerce Committee, all five FCC Commissioners agreed—all five, for one of the first times I have ever heard the FCC Commissioners agree to anything—the consolidation of radio that occurred in local markets has been excessive. While it received little credit amid the outcry against the regulations, the FCC attempted to address this problem by describing new market definitions designed to tighten the limits on logical radio ownership.

The resolution would have the perverse consequences of eliminating these efforts and prohibiting the FCC from adopting similar measures in the future, a move that surely will be applauded in the corporate offices of large radio station groups that hope to perpetuate their ability to benefit from existing loopholes.

Likewise, this resolution could have grave unintended consequences for other media ownership rules the Commission decided to leave unchanged.

For example, the FCC retained its limit on the number of local radio stations one entity may own and retained its rule prohibiting one entity from owning two of the four largest television networks. The decision to retain these rules will also be rejected if the resolution is enacted. If the FCC were to read this statute, as many have, as limiting its permissible actions in biennial review proceeding to exclusively deregulatory changes to its rules, the FCC may have no choice but to raise the number of stations that one entity is permitted to own in a local market or eliminate the dual rhetoric network rule. This cannot be the outcome intended by the sponsors of this resolution, though it is one that could conceivably result.

Finally, the use of the CRA in the present case will create a regulatory

void likely to be filled only by uncertainty about the status of the FCC's media ownership rules. As a result, all of the rules, even those that the proponents of the resolution favor, may be vulnerable to court action. The absence of an affirmative congressional directive will cast considerable doubt on the FCC's ability to enforce its previous rules given that one of the FCC's previous attempts to retain the rules was found by the DC Circuit to be arbitrary and capricious. Another was found not to have justified that the rules are necessary in the public interest. In both cases, the DC Circuit remanded the rules to the FCC and directed the agency to either articulate a justification for retaining the rules or modify them. The lack of an enforceable FCC order will leave these court orders unanswered, risking additional court action that relaxes the rules even further or even invalidates them entirely.

My point is that we have a very complex set of issues to address. I believe there is reason for concern about media consolidation, as the Senator from North Dakota has fairly overused the comment that there are many voices and one ventriloquist. At the same time this action would invalidate both good and bad, this action would make many believe that we have resolved the issue and moved on.

On the calendar is S. 1046, a bill that was properly considered and reported out by the Commerce Committee. That is the way we should be addressing this issue so that this issue can be fully ventilated and fully understood.

I reserve the remainder of my time.

Mr. BOND. Mr. President, I oppose the Dorgan Resolution, S. 17, which would block the entire Federal Communications Commission's ruling revising the rules on media ownership.

Since the FCC issued this ruling on June 2, 2003, a multitude of interest groups have proclaimed that this decision represents a serious blow to democracy in America as we know it. To say that this claim is a gross exaggeration is a huge understatement.

While I do not agree with every element of the FCC ruling, I must admit that I believe it would be short sighted to block the ruling entirely. I also think that every stakeholder who is concerned about this ruling should look at the facts that prompted the FCC to make this ruling. Furthermore, I believe it is imperative that one examine the actual facts in the ruling in order to dispel some of the myths that have surfaced with regard to it.

In its ruling, the FCC incrementally increased the national TV ownership limit from 35 percent to 45 percent. What this says is that one company can own TV stations reaching no more than 45 percent of U.S. TV households. It does not mean that one company can own up to 45 percent of all TV stations across the country. In addition, the ruling does not even say that a company can own stations whose programs reach 45 percent of the viewing public or market share.

For example, Newscorps, Fox, the second largest owner of stations currently owns 37 or 2.8 percent of the 1,340 commercial stations across the country. Under the new 45 percent cap set forth in the FCC ruling, Newscorps would be able to acquire, at best, another five stations nationwide. In light of this information and in light of the court mandates, the FCC action on this issue hardly represents a massive increase.

The FCC promulgated this increase in response to several court decisions striking down specific limits on the number of broadcast entities that one company may own. Since 1998, the FCC has lost five out of five cases that challenged its previous media ownership rules. According to the U.S. Court of Appeals for the District of Columbia, the Telecommunications Act of 1996 ''carries with it a presumption in favor of repealing or modifying the ownership rules (Fox v. FCC).''

In the Fox v. FCC decision, which was handed down in February 2002, the court ruled that the FCC's action—on broadcast ownership limits—was ''arbitrary and capricious and contrary to law'' because ''it failed to give an adequate reason for its decision'' to keep the 35 percent cap. In the same case, the court ruled that the commission ''provided no analysis on the state of competition in the television industry to justify its decision to retain the national cap.'' The court in its remanding decision ordered the FCC to rethink its rules on media ownership.

Another aspect of the FCC ruling involved the modification of the FCC's rules relating to newspaper/broadcast cross ownership and radio-television cross ownership. In its ruling, the FCC replaced these rules with a new set of cross media limits. It is important to understand that the FCC did not totally repeal the 28-year-old newspaper/broadcast ownership ban in all markets; it simply modified its rule with newer broadcast/cross ownership regulations to reflect the changing circumstances of today's diverse media marketplace.

Under the new FCC rules, in small markets with three or fewer TV stations the ban will continue to be enforced. In mid-sized markets, with 4 to 8 TV stations, limited cross ownership is allowed. In diverse and competitive markets with 9 or more TV stations, the ban is lifted entirely.

This is the major decision in the FCC ruling that I support, and it is the main reason that I cannot support the Dorgan resolution. Simply put, the previous rule supporting the cross ownership ban is outdated given the current diversity and multiple sources of news information in today's media marketplace.

When the broadcast/newspaper cross ownership provisions were adopted in 1975, the three television networks of the time held more than 90 percent of the viewing audience and only 17 percent of households subscribed to cable TV. However, due to the technological revolution of the past two decades, there has been a significant increase in the number of news and information sources with the widespread availability of cable TV, satellite and the internet as well as substantial increase in the number of radio and TV stations, magazines, and free weekly newspapers.

Yet, despite the availability of these new media sources, many groups are still objecting to this modest change in media cross ownership. They feel that this modification will drastically reduce the quality news and diversity of voices in the media. I believe there is strong evidence to refute this claim.

Unlike other ownership rules, the FCC has actual historical data on what the effect of relaxing this ban will have on the media market. That is because there are already 49 media cross ownership entities that were grandfathered prior to the implementation of this ban in 1975. Some of these cross ownership entities are in major markets such as New York, Chicago, Dallas, Atlanta, Phoenix, Tampa, and Milwaukee.

All of these existing cross ownership entities have had practically no adverse impact on competition. In the past 23 years, there has been no major court case, FCC, FTC, or Department of Justice, DOJ, action objecting to any of these grandfathered cross ownership media entities. Furthermore, the FCC informs me that no entity has ever challenged a license renewal of a TV station owned by a newspaper in the last 25 years. Two recent studies, one by the FCC and one by the Project for Excellence in Journalism, also found that co-owned newspaper/broadcast combinations provide higher quality and more news and informational programming than other broadcast stations.

In light of this evidence, I feel that the FCC's ruling on newspaper/broadcast cross ownership needs to be preserved, and therefore, I oppose the Dorgan resolution.

As stated previously, I do not agree with every aspect of the FCC ruling. I do not support the new method by which the FCC will utilize to define a local radio market. This new definition has resulted in many companies that own multiple radio stations exceeding the new station caps. While the FCC did grandfather all existing combinations to ensure that these radio companies would not be forced to divest stations that they legally acquired, it imposed harsh restrictions on the transferability or resale of these newly noncompliant radio station clusters.

Under the new market definition, those radio clusters that no longer comply with local radio market limits may only be sold intact to small businesses. If a ''small business buyer'' cannot be found, a cluster owner must break up his or her cluster and sell the stations individually. I believe that this strict resale provision unfairly penalizes certain radio broadcasters, who

acquired their stations in good faith under the previous ownership framework.

By narrowing the eligible market of buyers, this resale provision would prevent a radio cluster seller from receiving fair-market value on his or her investment. If most companies are prohibited from bidding on a cluster, the prices offered in these transactions will be considerably smaller than otherwise.

I also believe this resale provision will only make bigger radio conglomerates stronger because it will result in the immediate breakup of clusters that directly compete with these conglomerates.

I intend to petition the FCC for reconsideration of these new local radio rules set forth in the FCC order. However, I do not believe that the entire FCC order should be disapproved, and that is why I oppose the Dorgan resolution.

Ms. SNOWE. Mr. President, drastic times require drastic measures and that's why I stand with my colleagues today in support of S.J. Res. 17, disapproving the FCC's June 2 vote to relax, and in some cases eliminate, the rules that safeguard one of our Nation's most precious possessions, the right of free and diverse exchange of opinion. This decision will pave the way for even greater concentration of media ownership in the hands of a select few and deprive the public to the diversity of viewpoints that are so important to democracy and objective reporting in this country.

In response to the FCC's action, Senator DORGAN and I along with seven other colleagues sponsored S.J. Res. 17. This resolution would simply declare the FCC's June 2 rules on media ownership without force or effect and would leave in place the media ownership rules that existed prior to the Commission's decision.

With the FCC's June vote on media ownership, the ''deregulatory express'' is out of the station—and we are now on track toward even greater ownership concentration and unfettered consolidation. Now, some have said that, with exponentially more media outlets than ever before, we should have nothing to fear. But while more mouths speaking is good, having more mouthpieces guarantees neither diversity of information nor opinion. The point is the amalgamation of control in media outlets and its impact on content—especially with the overwhelming majority of Americans receiving their news from television and newspapers.

We cannot ignore that diversity of discourse in America is an essential underpinning of our society and our democracy. So when it comes to changes allowing media mergers in over 150 markets representing 98 percent of the American population—and when reports show that five companies or fewer could control about 60 percent of television households in just the next few years—we should all be very concerned.

I know that some have said, well, the process and the outcome of the FCC's media ownership review were essentially preordained by statute and the courts. But the courts never proscribed what the limits should be. Neither did they set a date certain by which the FCC must have concluded its process. What the court did say is that, whatever the limits are, there needs to be a solid factual record demonstrating they are in the public interest.

And what is the best way to determine public interest? It's to go above and beyond in notifying and providing full disclosure to the public and Congress, and aggressively soliciting input from all stakeholders—so the public can be confident the best possible decision has been reached. The FCC failed to do this. With more than 700,000 individuals and groups weighing in against the FCC's rule change, the Commission held only one public hearing on the subject of media ownership, I can't help but think there must be a better way.

Let me speak to the FCC's modification of the cross ownership ban, one of the more devastating changes made by the Commission on June 2. Many of us represent States that have communities with only one newspaper, under the new rules the FCC would allow that single remaining paper to be purchased by the dominant television broadcaster in the area. In the context of other FCC rules, the agency recognized that it is bad for local competition to allow 2 of the top 4 broadcast outlets to be consolidated, but in this context, the FCC is allowing the top TV station to buy the top newspaper in almost every media market in the country. Newspapers are one of the most important sources of independent reporting. When the leading TV station gobbles up the paper, what happens to the other TV broadcasters in the market? They simply can't compete at the same level. It seems apparent that the remaining TV stations do less news, or they move to softer news formats. This isn't good for news, this isn't good for democracy.

If the FCC had acted to create more voices—perhaps by requiring those broadcasters who want a television-newspaper combination to start a new newspaper rather than just buying one—I could see the wisdom in their decision. Instead, the FCC has acted to reduce the total number of voices in communities all across the country. Some say that the FCC's decision will allow these newspaper/broadcast combinations in over 190 media markets, covering 98 percent of America's population. Since the newspaper/broadcast rule was put in place in 1975, we have already lost two-thirds of our independent newspaper owners. Let me reiterate that: two-thirds of our independent newspaper owners have disappeared since 1975. And somehow we're going to make democracy better by further reducing the number of independent newspaper owners by allowing broadcaster television owners to buy them—it just doesn't make sense.

The issue of media ownership goes to the heart of our democracy and the crux of the way in which we form our opinions on other issues of critical importance. We need to be extremely careful that in deregulation we don't undermine diversity in the marketplace of ideas and information. I look forward to continuing my work in this area and urge the public to keep the pressure on Congress to undo the damage unleashed by the FCC on June 2. I ask that my colleagues support S.J. Res. 17.

Mr. HATCH. Mr. President. I rise to outline my concerns about Senator DORGAN's resolution to disapprove the Federal Communications Commission's June 2, 2003 decision to relax the broadcast media ownership rules.

The FCC's decision to increase the proportion of market share broadcasters may own in any given market from 35 percent to 45 percent and to give newspaper owners the ability to own radio stations and vice versa has raised significant questions relating to the proper scope of regulation and protection of our fundamental First Amendment values.

As a procedural matter, I am concerned about the Senate acting on the Dorgan resolution given the pending court proceedings reviewing the FCC's rule modifications. On September 3, 2003, in Prometheus Radio Project v. Federal Communications Commission, the Third Circuit Court of Appeals stayed the effective date of the FCC's new rules, pending resolution of the appeal on the merits. No. 03–3388, 2003 U.S. App. LEXIS 18390. Given the procedural status of the FCC's rules, it is premature for the Senate to act on the Dorgan resolution. A more prudent course for the Senate is to await the Court of Appeals decision, review it carefully, and then determine what action, if any, is warranted.

With respect to the substance of the FCC's rule modifications, I want to reiterate my strong support of the bedrock principles underlying the FCC's regulation of our Nation's media: diversity of viewpoints; localism; and competition. I have been—and remain—committed to these principles, particularly with respect to examining critical regulatory and enforcement issues surrounding increased concentration of our Nation's media outlets. We must preserve our fundamental First Amendment values by protecting our marketplace of ideas—that is, freedom of expression and diversity of viewpoints.

When it comes to ensuring competition and diversity in our media markets, I have not—and will not—analyze the issue by blindly condemning all merger consolidations. To me, ''big'' is not necessarily bad. Rather, the issue of media consolidation requires a careful weighing of our Nation's interest in promoting competition and diversity.

In my view, such an analysis requires careful examination of the potential

for anti-competitive conduct, rather than adherence to inflexible regulatory restrictions or hard and fast enforcement rules. Market forces—not Federal across-the-board regulations—will ensure that consumers benefit from a merger or consolidation in the media industry.

Like many of my Senate colleagues, I am concerned about the health and well-being of the small and mid-sized media companies in our nation. In the State of Utah, we have many excellent small and mid-sized media companies who provide a great service to all Utahns. To this end, traditional antitrust enforcement can more effectively and efficiently protect competition and enhance diversity than regulatory one-size-fits-all approaches. I believe appropriate enforcement of our nation's antitrust laws will provide greater protection to small and mid-sized media owners than any arbitrary FCC rules.

In light of all of these considerations, I urge my colleagues to vote against the Dorgan resolution. Given the significant interest in the issue here in the Senate, we should monitor the court proceedings reviewing the FCC rule. Once the Court has acted, we should then determine what appropriate steps, if any, are needed to preserve and protect our bedrock First Amendment principles of media ownership: diversity, local programming and competition.

Mrs. FEINSTEIN. Mr. President, I rise in support of the Dorgan resolution, and in the hope that the FCC will take a careful, second look at the changes it made to media ownership rules.

Not everything the FCC did was something I would oppose. For instance, I support what the FCC did in terms of allowing companies to own a combination of television, radio, and newspapers in the largest of media markets, like Los Angeles, Chicago, New York or San Francisco.

But on the whole, the new FCC rules raise some very real concerns that one or two national companies may begin to dominate too much of the news and other content delivered to American homes.

The American experiment has been one of free press, diversity of voices, fair competition, and the ability to hear, and to be heard. That experiment, in my opinion, has been a resounding success.

Of course, the world has changed, and will continue to do so. As a result, it is sensible for our regulatory agencies to revisit outdated rules and modify them to better suit changing technologies and the changing realities of a more crowded, more advanced nation.

Nevertheless, it is possible to go too far in trying to address these changing realities, and I believe that the FCC has gone too far in crafting some of these new media ownership rules. For instance, in allowing a broadcast network to own and operate local broadcast stations that reach, in total, up to forty-five percent of U.S. television households, instead of thirty-five percent under the old rules, the FCC has opened the door to vast conglomerates of news stations all feeding the same content to almost half the people in the country.

We don't know how or even whether this would happen, but the potential for eliminating local content and reducing the diversity of opinions presented on television is simply too great.

Likewise, the cross-ownership rules—the rules that determine whether a company can own both television and newspapers in the same market, or television and radio, and so on—raise some concerns for markets with just four of five television stations.

In those small- to medium-sized markets, with between four and eight television stations, combinations are limited to one of the following:

One daily newspaper, one television station, and up to half of the radio station limit under the local radio ownership rule for that market; one daily newspaper, and up to the radio station limit under the local radio ownership rule for that market, but no television stations; or two television stations, if permissible under the local television ownership rule, and up to the radio station limit under the local radio ownership rule for that market, but no daily newspapers.

The old rule prohibited common ownership of a full-service broadcast station and a daily newspaper within the same city. In fact, according to the Congressional Research Service, when it adopted the rule in 1975, the commission not only prohibited future combinations between newspapers and broadcast stations, but also required existing combinations in highly concentrated markets to divest holdings to come into compliance within 5 years. But under this new rule, one company could own the largest television station in town, the only newspaper, and half the radio stations. It is easy to see how, in these mid-sized markets, the amount of diverse content would rapidly diminish.

On the other hand, I am not as concerned with the new rules pertaining to larger markets like Los Angeles. In a market with more than two dozen television stations and countless radio stations and newspapers, it is far less likely that one or two companies could come to control enough of the media market to truly stifle diversity of opinion or competition among content sources.

So it is my hope that the FCC will go back and reexamine these new rules, keeping in mind the concerns of Congress and the American people, who have spoken out loud and clear about this issue. Fix what needs to be fixed, keep what is not broken. But come up with a new set of rules that makes sense for all Americans.

Mr. LEVIN. Mr. President, I have long been concerned about the implications of too much media concentration. During the Senate consideration of the 1996 Telecommunications Act, I voted for an amendment authored by Senator DORGAN to keep the Television National Broadcast Cap at 25 percent of television households that a broadcast company could reach through its local broadcast stations. I opposed increasing the cap to 35 percent as the 1996 bill allowed.

In June the Federal Communications Commission, FCC, voted to adopt an order to relax current media ownership rules. I am a cosponsor of S.J. Res. 17, authored by Senator DORGAN, being considered by the Senate today to disapprove of the FCC ruling to lift media ownership restrictions. Loosening current media concentration restrictions would allow the media to become less responsive to local concerns and less likely to represent broad and diverse viewpoints. This is not in the public interest and should not be allowed.

Today Members of the Senate can oppose these detrimental rule changes that will result in greater media concentration and less consumer choice by voting to disapprove them under the Congressional Review Act.

I have supported the congressional review of rules dating back even before I came to the Senate. And I am proud and pleased that we have the opportunity to use it to stop this FCC rule today. This is exactly the situation in which the legislative review process is not only useful but necessary.

When I first ran for the Senate in 1978, legislative review was actually a part of my platform. With all of the power executive agencies have we need to have a mechanism by where the politically accountable—that is the elected officials—can have a direct say in the rules and regulations issued by Executive Branch agencies. These agencies are supposed to be carrying out the will of Congress, and we have not only the right, but the responsibility to oversee their actions.

I joined forces in the late 1970's and early 1980's with then Congressman Elliott Levitas in the House. In fact, along with Senator David Boren of Oklahoma, we got the legislative veto passed. But that law was held unconstitutional by the courts in the Chadha case because it allowed for a one house veto. The court ruled that legislation subject to the President's veto power is necessary to avoid violating the principle of separation of powers.

We then fought to establish a congressional review process. It was with the bipartisan effort of Senators HARRY REID and DON NICKLES almost 10 years ago, that we finally got legislative review enacted into law and I was proud to be part of that effort.

And I'm glad to see that what many of us argued decades ago in support of this review process has proven to be true. This congressional review process is a two-edged sword. Some opponents argued it would be used only to limit

valuable social programs, but we proponents argued that it was neutral politically—that it could be just as useful to protect against an agency that is regulating too little as it could be to rein in an agency that is regulating too much, or as with the case of the FCC, regulating unwisely.

Ms. CANTWELL. Mr. President, earlier this year, the Federal Communications Commission, FCC, issued rules making changes to long-standing limits on the types and amounts of media outlets that can be owned and controlled by a single company. These rule changes drastically increase the ability of a few companies to control access to information in this country. The rule changes undermine the public interest and do nothing to ensure diversity of viewpoints, ''localism,'' coverage of events in local communities by people who are a part of that community, or to ensure that healthy competition exists amongst media outlets.

The American people know these changes are not in the public interest, and that is why I have heard directly from more than 1,650 of my constituents urging Congress to overturn the FCC's actions.

Specifically, the rule changes adopted by the FCC earlier this year would allow a single company to control television stations with access to almost half of the American broadcast audience. How that can be billed as increasing competition or diversity of viewpoint is a mystery. Given that these rules were written with only one public hearing and without opportunity for public comment, it is not surprising that they fail to reflect the public interest.

It is important to recognize that overturning these rules is not just about preventing additional domination of the airwaves. It is about ensuring the survival of local newspapers that genuinely know and are a part of the community.

The rule changes would allow the sole or dominant newspaper in a city to merge with the top broadcaster in 200 of the 210 media markets in the country! That would mean 98 percent of the American public could effectively lose an independent voice in their community. Already, since 1975, two thirds of independent newspaper owners have ceased to exist, leaving only 290 independent newspapers in a country of 292 million people.

If these rules are allowed to take effect, it will mean fewer reporters on the ground chasing stories in our local communities, and less local investigative journalism. It would make it possible for individual markets to be dominated by a single newspaper/TV conglomerate which could control well over half the news audience and two-thirds of the reporters in a given local market.

Inevitably, the merging of broadcasters and newspapers reduces the number of voices in individual markets and threatens to place too much control over local news and information in the hands of too few companies. Repackaging and repeating stories produced in other venues is not the same as real reporting of local news.

One of the most common refrains that we hear to justify this tremendous change is that new outlets for news and information are now available. While I firmly believe that we are only at the cusp of an information age that will drastically change how we receive information, it makes no difference if the new access points are controlled by fewer people.

The reaction to these rules has been quick and sure. I have heard from over 1,650 of my constituents directly, an additional 10,000 through the Move On petition. The House and the Senate Appropriations Committee have taken action to reverse the increase in the cap on broadcast audience in the appropriations process, and the Third Circuit Court of Appeals has temporarily halted implementation of these rules. But the clearest way to send a message to the FCC that these rules cannot stand is to pass this resolution disapproving the rule changes. We expect the FCC to be a watchdog not a lapdog.

I urge my colleagues to vote for this resolution as a first step in reinvigorating competition and preserving local control in mass media.

Mrs. BOXER. Mr. President, I rise to support the Senate resolution to overturn the Federal Communications Commission's, FCC, decision to relax our Nation's media concentration rules. That decision threatens our democracy by placing more power over what we see and hear in the hands of fewer big interests.

The voices of those who oppose the FCC decision range from Bill Clinton to Bill Safire, from the National Rifle Association to the National Organization for Women. I am particularly disappointed with the manner in which the agency has ignored these voices. The FCC held only one public hearing on these rules. But commissioners and their staff met with just one firm lobbying on behalf of big media more than 30 times.

The agency received more than 700,000 letters opposing the relaxation of the rules and only a handful supporting that decision but failed to take that overwhelming public sentiment into consideration. I reject the FCC rule because the FCC ignored the people's concerns.

Congress must send the agency a clear bipartisan message—the airwaves belong to the American people, not to you and not to a small group of media elites. The FCC must be forced to address the concerns of the American people. The people know that the FCC decision to relax our media ownership threatens democratic discourse and participation. It will allow massive media giants to grow—media giants that already use multiple media outlets to promote their views and overwhelmingly dominate public debate.

The courts told the FCC to explain why the rules were justified. With the more than 700,000 public comments opposing relaxation of the rules, the agency had that justification. The American people understand that it cannot be in the public interest to further relax the rules that protect the public's access to multiple sources to information and media. My office alone has received 4600 letters and e-mails on the issue.

The FCC is charged with protecting the public interest. In this case, I believe the commission has failed and Congress must act.

Mr. BUNNING. Mr. President, in June, the Federal Communications Commission, FCC, issued an order that modified its media ownership rules in accordance with the 1996 Telecommunications Act. The modified rules increased from 35 percent to 45 percent of households the cap governing broadcast network ownership. The new rules also make easier newspaper-broadcast cross ownership by largely lifting the ban prohibiting a newspaper from buying a TV or radio station in the same market.

S. J. Res. 17 would overturn all aspects of the FCC ruling. I do not believe the FCC ruling is without flaw, but a blanket negation of the rulemaking is not an appropriate response. Though I am not in favor of the increased cap governing broadcast network ownership, I do support the modified newspaper-broadcast cross ownership rule. I believe the relaxed cross ownership ruling encourages a concordant relationship between newspapers and television stations that will offer a higher standard of quality in news content and reporting. This, in turn, reaps innumerable benefits for communities across America. As I believe the value of the modified cross ownership ruling usurps the potential dangers of the increased cap governing broadcast network ownership, I cannot support S. J. Res. 17.

To unequivocally vacate all aspects of the FCC ruling is to do a disservice to incalculable citizens across this country who will benefit from the modified newspaper-broadcast cross ownership rule. For the aforementioned reasons, I am voting ''no'' on S. J. Res. 17.

Mr. KENNEDY. Mr. President. In a strong democracy, a variety of views must be available to citizens. Protections are essential so that minority views can be heard. That was the vision of America's founders when they drafted the First Amendment to the Constitution, and it has served the Nation well. Its principles are especially important today. Neither the broadcast industry nor anyone else is entitled to a monopoly over the dissemination of information in our society.

The presence of a diversity of voices, each contributing to our national discourse, is essential for the functioning of our democratic society. And the best way to foster that diversity is through competition.

Today, however, an increasingly serious problem is being caused by the buyouts of local broadcast stations by national media conglomerates. Competition suffers, and local issues of great importance to individual communities often go unheard.

Many of us in Congress are deeply concerned that the remaining diversity of our media will be further be reduced by the Federal Communications Commission's recent decision to weaken media ownership rules. The new rules allow even greater media concentration, in spite of its adverse effect on competition, the diversity of views, and major national, State, and local priorities.

I support Senator DORGAN's proposal to reject these rules, because they are not in the public interest, and would seriously weaken the protections in current law that prevent excessive concentration in the broadcast industry. The public has little to gain and a great deal to lose if we allow the FCC to slash the protections that serve them so well.

Each weakening of restrictions on media ownership in recent years has been followed by a burst of new corporate consolidation. Mergers have sharply reduced the number of media companies and threaten to erode the diversity and competition that are so important to our Nation. The new rules will greatly increase this problem, by allowing fewer firms to control the flow of information—locally or nationally. It makes no sense for Congress to allow restrictions on the flow of information that is so important to our democracy in this information age.

As a trustee of the Nation's public airwaves, the FCC has a responsibility to include the American public in its decision-making process. Yet the commission has largely ignored public comment and debate before it these sweeping changes in the nation's broadcasting rules.

The commission agreed to one public hearing on the overall issue, and it refused to publicly disclose the rules before they were voted on. Such secrecy is unacceptable. What possible harm can come from public disclosure? The commission's ''notice and comment'' procedure is intended to allow an informed debate about these important issues of public policy, but in this case the agency used its procedures to keep the public in the dark.

Even with incomplete information, the public reaction against the proposed changes has been unique in the history of the FCC. The commission received nearly three quarters of a million comments, and over 99.9 percent of them opposed the increase in media consolidation.

As a result, a wide variety of organizations—including civil rights groups, churches, family values groups, and labor unions—have called on the FCC to reconsider the proposal. The National Rifle Association, the National Organization for Women, and many others expressed grave doubt about the wisdom of allowing greater consolidation. Nevertheless, the FCC approved the new rules.

I urge my colleagues to send a clear message today to the commission and the public by nullifying these rules and reversing this misguided decision the commission to support the interest of media conglomerates and ignore the public interest.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. KERRY. Mr. President, today the Senate will vote on a joint resolution, of which I am a proud cosponsor, to disapprove the Federal Communications Commission's June 2, 2003, rules designed to loosen restrictions on broadcast media ownership. It is the Commission's responsibility to ensure that media ownership rules serve our national goals of diversity, competition and localism. Unfortunately, the Commission's June 2, 2003, ruling fails to meet this standard.

The resolution before us today would reverse the FCC's decision to change the national television ownership cap from 35 percent to 45 percent, a decision that threatens local and independent voices in television. The television industry is undergoing rapid consolidation as a handful of national networks have acquired local stations across the country. I am concerned that when local stations are purchased by a national network, independent voices are lost in the media marketplace. Locally owned and operated stations are more likely to be responsive to local needs, interests and values than those stations owned and operated by national networks. Indeed many local stations are small businesses that drive innovative competition. A system of concentrated station ownership will trend toward nationalized programming aimed primarily at maximizing revenue with less concern for local interests and less room for competition.

The resolution before us today will also reverse the FCC's decision to significantly loosen restrictions on cross-ownership of broadcast stations and newspapers within single markets. The cross-ownership rule is intended to increase or at least maintain the number of independent editorial voices in a community. This is especially important in smaller communities where citizens have fewer media operations covering local matters. While there is scant evidence that weakening this rule will result in significant economic benefit, leading academics and media experts have argued that doing so will dangerously reduce the venues for independent public discourse.

I am also concerned with the process by which the FCC conducted these proceedings. This media ownership rulemaking is among the most important the FCC has undertaken, and it has garnered unprecedented public interest. Despite this, the Commission moved forward with dramatic rule changes without first taking public comment on a specific proposal. The Commission's outreach was simply insufficient. All parties concerned would have been better served if the Commission published a specific proposal and then allowed for a period of public comment before promulgating any rule changes.

The Commission's first responsibility is to ensure diversity, competition and localism. The Commission has no responsibility to facilitate the business plans of the major networks or any other narrow economic interest. I strongly support the disapproval resolution before us today.●

Mr. LEAHY. Mr. President, the Federal Communications Commission's rules pertaining to media ownership have long served a vital function, helping to ensure a diversity of viewpoints in the media marketplace. The FCC's attempt to undo these important rules that have served us so well is misguided and harmful. The FCC's 35 percent cap on national audience reach has not only served to promote diversity, it also protects local programming, allowing it to reflect local values and preferences. If the cap is increased to 45 percent we can be sure that major networks will meet or exceed the new threshold, as some companies have done under the current standards, allowing for the acquisition of local stations while eliminating the unique choices that local programming can provide.

I am also concerned about the FCC's effort to remove the newspaper/broadcast cross-ownership limitations in 80 percent of all media markets. Currently, cross-ownership rules prevent a single corporation from becoming too powerful a voice in a given community. Lifting the cross-ownership ban will leave many communities reliant on one company to decide what they are able to see and hear.

There are those who argue that the increase in the number of media outlets has obviated the need for such rules. The reality, of course, debunks this notion. While the number of media outlets has increased, ownership has become more concentrated. What's more, many of the largest new media outlets appear to be owned and controlled by the same conglomerates that control traditional media.

In light of these facts, it seems illogical that the FCC would exacerbate a disturbing trend that is transforming the marketplace of ideas into little more than a corporate superstore. A recent, troubling tendency of the large media companies was highlighted in The Wall Street Journal this week in an article noting these companies' rapid acquisitions of cable channels to ''re-create the old programming oligopoly'' of the pre-cable era. The numbers tell the story. Of the top 25 cable channels, 20 are now owned by one of the big five media companies, according to The Wall Street Journal article of September 15, 2003.

The unsettling statistics extend to other communications branches as well. According to the Economic Policy Institute, the number of owners of commercial radio stations has declined by approximately 25 percent since 1996. Even more alarming is the fact that since 1995, ''the number of entities owning commercial TV stations has dropped by 40 percent.''

I welcome and strongly encourage the emergence and proliferation of new and different platforms for news and information. We can expect that more and more Americans will gain access to and will use these resources. In our democratic society, there still are good and sound reasons for encouraging and protecting the diversity of viewpoints available in more traditional media. The FCC—to which the American people have entrusted some of this responsibility—should be working to diversify, not homogenize, the news and information media available to the American public.

I ask the Wall Street Journal article of September 15, 2003, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Sept. 15, 2003]

HOW MEDIA GIANTS ARE REASSEMBLING THE OLD OLIGOPOLY

(By Martin Peers)

Two years ago, Mattel Inc. gave CBS a choice. The network had refused to broadcast the toymaker's movie ''Barbie in the Nutcracker'' in prime time. So Mattel threatened to pull millions of dollars of advertising from the Nickelodeon cable channel—owned by CBS parent Viacom Inc.

Viacom, which had spent a decade bulking up with acquisitions, now wielded its new clout, according to people familiar with the situation. If Mattel made good on its threat, Viacom said, it would be blacklisted from advertising on any Viacom property—a wide swath of media turf that also includes MTV, VH–1, BET, a radio broadcasting empire and even billboards. Mattel backed down, and the Barbie movie ended up running during a less-desirable daytime period.

Neither company will comment on the scrape, but Viacom says Mattel remains a ''valued advertising partner.'' More generally, President Mel Karmazin in an interview is blunt about his company's strategy: ''You find it very difficult to go to war with one piece of Viacom without going to war with all of Viacom.''

Viacom and its big media peers have been snapping up cable channels because they're one of the few entertainment outlets generating strong revenue growth these days. More broadly, the media giants have discovered that owning both broadcast and cable outlets provides powerful new leverage over advertisers and cable and satellite-TV operators. The goliaths are using this advantage to wring better fees out of the operators that carry their channels and are pressuring those operators into carrying new and untried channels. They're also finding ways to coordinate promotions across their different holdings.

Entertainment giants such as Viacom, NBC parent General Electric Co. and Walt Disney Co., which owns ABC, now reach more than 50% of the prime-time TV audience through their combined broadcast and cable outlets. The total rises to 80% if you include the parents of newer networks—such as News Corp.'s Fox and AOL Time Warner Inc.'s WB—and NBC's pending acquisition of Vivendi Universal SA's cable assets, estimates Tom Wolzien, an analyst at Sanford C. Bernstein & Co.

The big media companies are quietly recreating the ''old programming oligopoly'' of the pre-cable era, notes Mr. Wolzien, a former executive at NBC. Of the top 25 cable channels, 20 are now owned by one of the big five media companies.

The idea of owning broadcast networks as well as cable channels is ''comfortable for people like ourselves,'' says Bob Wright, chairman of NBC, which two weeks ago signed a preliminary agreement to acquire Vivendi Universal's USA and Sci Fi cable channels, along with the Universal film studio, bolstering a stable of cable channels that includes Bravo, MSNBC and CNBC.

For the past several years, Viacom and other media companies have pressed the Federal Communications Commission to relax restriction on owning local TV station. One of their main arguments: Their audience is shrinking as cable booms and the TV audience fragments. The original three broadcast networks now capture only 33.7% of the prime-time television audience, down from 69.3% in 1985–86. Cable now boasts a 49.3% share, compared with 7.5% in the mid-'80s, according to a Cabletelevision Advertising Bureau analysis of data from Nielsen Media Research.

But with the wave of consolidation and the increased reach of the media giants, some cable systems are fighting to keep restrictions on TV-station ownership in place. Cox Enterprises, parent of the fourth-biggest cable operator, Cox Communications, has argued that the big broadcasters are abusing protections granted them under federal law. The broadcasters, Cox argues, are using those protections to charge cable systems more for their cable channels. Cox and others have complained to the FCC that media companies make them accept less-popular cable channels in exchange for carrying their broadcast networks.

Media companies counter that their consolidation only puts them on a level playing field with cable operators, who are themselves merging into giants. Comcast Corp.'s acquisition of AT&T Corp.'s cable division last year gave it a reach of more than 21 million homes, for instance, almost 30% of homes served by cable. Comcast has already begun to tell cable channels it wants to save money on what it pays for programming, setting the scene for increasingly contentious negotiations with big media companies.

''There has been so much consolidation'' among the distributors that ''unless you are equally big . . . you risk a situation where you can be marginalized,'' says Viacom President Karmazin.

FOLLOWING THE MONEY

In buying up cable channels, the media conglomerates are simply following the money. The music business is shrinking rapidly as piracy eats into sales. Universal Music Group, the world's biggest, is now thought to be valued at $5 billion to $6 billion, less than half what it was a few years ago. The film business is volatile, with a quarter's performance dependent on whether movies bomb or not. The publishing business is steady but grows at a slow pace. Broadcast television's audience is shrinking, and its business model is entirely dependent on advertising revenue, a cyclical business.

Cable channels are gushing cash because they generate revenue from two sources—subscriptions and advertising. The subscriptions don't come directly from customers, but through cable-TV services, which operate the vast array of wires and pipelines connected to homes, and through satellite-TV services that beam the signal. For the right to carry the programming on their systems, these cable-operating companies pay a range of monthly fees, from 26 cents a subscriber for VH–1 to more than $2 for ESPN. These fees, for the most part, increase every year, providing a steadily rising annuity for the channel owners.

As cable viewership has increased, so has advertising. Since 1980, cable-channel ad revenue has risen from practically nothing to $10.8 billion in 2002, according to the Cabletelevision Advertising Bureau. Some channels, meanwhile, are cashing in on strong brand names. Nickelodeon, for one, is a merchandising powerhouse, with products including Dora the Explorer backpacks and SpongeBob SquarePants videogames.

The result has been an explosion in profits. MTV earned just $54 million in 1989, estimates Kagan World Media, but is expected to make more than 10 times that much this year. QVC, the home shopping channel, generates so much money that Liberty Media recently agreed to buy full ownership of the channel at a value of about $14 billion—the same value put on all of Vivendi Universal's film and TV assets.

Cable channels' surging profits have transformed the bottom lines of their parent companies. E.W. Scripps Co., the 125-year-old Cincinnati newspaper publisher and TV-station owner, now relies on its cable division for much of its profit growth. In 1994, Scripps launched the Home and Garden channel on the initiative of a TV executive, Ken Lowe, amid widespread skepticism. One Scripps newspaper publisher approached Mr. Lowe at the time to complain ''a lot of the cash that I'm making here is being shipped to you . . . You better know what you're doing,'' Mr. Lowe recalls.

Nine years later, HGTV has become one of the most popular cable channels with shows such as ''Design on a Dime'' and ''House Hunters.'' Scripps added a controlling stake to the Food Network in 1997. In the second quarter of this year, the impact of cable channels, including the Home and Garden channel and the Food Network, was clear; Newspaper and broadcast-TV profits both fell, while cable-channel profit jumped 70%, helping Scripps's net profit more than double. Scripps stock is trading near its 52-week high of $90.65, up almost 30% for the past 12 months.

The publisher who had complained about the cable-channel investment recently thanked Mr. Lowe, now Scripps's CEO, noting that the rise in Scripps's stock price would put his three children through college, Mr. Lowe says.

Since 1990, almost half of the top 50 cable channels have changed hands. Among the big deals: Disney's $19 billion acquisition of ESPN's parent, Capital Cities/ABC, and Time Warner's $6.7 billion purchase of CNN parent Turner Broadcasting, both negotiated in the summer of 1995. In 2001, Disney bought the Family channel from News Corp. for $5.2 billion.

Last year, NBC bought Bravo for $1.3 billion, CBS, owner of the Nashville Network (now Spike TV) and Country Music Television, itself was gobbled up in 2000 by MTV's longtime parent, Viacom. Viacom has since added channels such as BET and Comedy Central.

Mr. Karmazin recently boasted to investors that the company's broadcast and cable outlets reach 26% of the nation's viewers in prime time, a significantly bigger share than any other company. Having such a big market share is ''real important for lots of reasons, in terms of dealing with advertisers and our cable partners,'' he told investors.

Ad sales and marketing executives from the CBS and MTV Networks divisions meet regularly to share information and plot cross-promotional opportunities. In January 2001, MTV staged the halftime show for the Super Bowl, which was broadcast on CBS, featuring performances from Aerosmith and Britney Spears.

Last fall, CBS helped stem a slide in young women viewers of its reality blockbuster series ''Survivor'' with a documentary on the series that ran repeatedly on MTV before the new season of Survivor premiered. The premiere episode of ''Survivor'' on CBS saw a 25% jump in its young female audience, says George Schweitzer, executive vice president of marketing for CBS. CBS promoted its sitcom ''King of Queens'' through a special last Friday on Viacom's Comedy Central cable channel.

PROTECTING ONE ANOTHER

The broadcast and cable sides of Viacom generally don't try to sell ads jointly, but the common ownership allows them to protect each other's flanks. At a presentation to advertisers last spring, MTV executives compared the audience reach for most of MTV Networks with ABC, NBC, Fox and WB—but CBS's figures weren't included in the breakdown, so that MTV didn't siphon ads from its corporate cousin.

Meanwhile, Disney's ownership of both ABC and ESPN allows it to spread out the cost of expensive sports packages such as its deals with the National Football League and the National Basketball Association. ABC Sports is, in fact, overseen by the same executive who runs ESPN, George Bodenheimer, and the two operations regularly promote each other's programming and share talent.

Joint ownership of cable and broadcast is particularly valuable in negotiations with cable operators. A 1992 law allows broadcasters to regularly renegotiate the price for carrying TV stations' signal on cable. While broadcasters could charge a cash fee, they usually offer the broadcast stations free in exchange for carrying a new cable channel they've launched. Few viewers would subscribe to cable if ABC, CBS or NBC weren't on the channel line-up, so the cable operators have little leverage.

The strategy lets broadcasters add more cable channels, including many narrowly focused networks. Since 1993, big media companies have launched at least 35 new cable channels by bartering the right to carry their broadcast stations, estimates George Callard, an attorney with Cinnamon Mueller, a law firm that is counsel to the American Cable Association.

Using such a strategy, cable operators say, Disney has shoehorned its Soapnet cable channel, which features reruns of soaps such as ''General Hospital,'' into services reaching 33 million homes. Disney argues that fewer than half of those homes have the channel as a result of a barter arrangement.

Cox Enterprises complained in a filing with the FCC in January that Cox Communications has to agree to carry Soapnet nationally in exchange for the right to offer ABC stations in just a few of its markets. A Disney spokesman says Cox is a ''savvy negotiator'' that ''wouldn't have signed the deal unless they found value in it.''

Catalina Cable, a cable-TV operator on Catalina Island off the California coast, has only 1,449 customers. Ralph Morrow, Catalina's owner, says he was asked to carry Soapnet when he tried to renew his right to carry a Disney ABC affiliate for the beginning of 2000. He says he suggested paying cash for ABC instead. Disney's response was that the cash fee for ABC would be ''really high,'' he says. ''They made it clear to me'' that he didn't have that option ''at a reasonable price.'' A Disney spokesman says Mr. Morrow mischaracterized its offer, noting that Disney offers operators ''multiple options, including a stand-alone cash offer which we believe to be a fair offer and fair value.''

Mr. Morrow, who says he doesn't see the need for a soap-opera channel, now pays Disney 11 cents a subscriber for Soapnet. Disney responds that surveys of viewers have shown Soapnet to be popular. The channel drew 97,000 viewers in July and August, according to Nielsen. In the same period, HGTV—which is available in about two and a half times as many homes—averaged 457,000 viewers.

Mr. BURNS. Mr. President, I rise today in opposition to the resolution. I say this as someone who is unhappy with the core aspects of the FCC's ruling. I disagree with the move to lift the 35 percent national television viewership cap. I believe the 35 percent ceiling has served us well in preserving the goals of competition, localism, and diversity.

However, the decision was extremely comprehensive and complicated and included some changes which I do favor. For example, I strongly support the Commission's approach to ease the ill-advised restrictions on newspaper-broadcast cross-ownership. The empirical data from the newspaper/broadcast station combinations that were grandfathered in shows that this has allowed for a greater diversity of voices.

Miles City in my home State of Montana provides a vivid example. KATL–AM and the Miles City Star are one such operation. Each operates autonomously and KATL provides valuable local news coverage to the area. Through the pooling of resources, smaller stations which might not be viable are able to maintain their economic health and continue to serve the local community.

Again, I reiterate my strong opposition to the FCC's decision to lift the national broadcast ownership cap to 45 percent from 35 percent. If the major networks are allowed to own even more of their affiliate stations, local concerns will have less of a role in shaping what programming makes it on the air.

Affiliate stations that are independently owned may choose, from time to time, to preempt network programming that they believe does not conform to the mores of their local communities. That is localism. I guarantee that the local views of the citizens of Butte, MT differ from those of the citizens in New York City. Independently owned stations are answerable only to local demands. So, if the station owners feel certain programming doesn't reflect their local community values, they keep it off the air.

Not only will lifting the cap mean that stations are less likely to preempt programming, but it also means that there will be less local input into the composition of network schedules. As the networks own more and more of their affiliates, the independently owned affiliates will lose negotiating leverage. In short, you'll see programming decisions made more and more in Los Angeles and New York, instead of in local markets.

We already raised the national television cap in 1996 from 25 percent to 35 percent. It would be premature to raise it again so soon.

I fully understand the sentiment that lead to this resolution. I agree with the concerns of many of my colleagues, particularly on the television cap. However, this is not the way to go about it.

The Commerce Committee upon which I serve—has moved to protect the national broadcast cap. I also serve on the Appropriations Committee and the Commerce, Justice, State bill for this year includes a measure to protect the 35 percent cap. I support these moves, which target individual rule changes, rather than the resolution being considered today, which rolls back the entire decision.

Again, I emphasize I am not happy with the FCC ruling. But I don't think the answer is to wipe out every aspect of the FCC ruling with one single vote. If we are going to get it right, we need to look at each regulation and each issue individually. Let's not throw out the baby with the bathwater.

I urge my colleagues to oppose the resolution.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. MCCAIN. Mr. President, I control the time.

Mr. NICKLES. Mr. President, will the Senator from Arizona yield to me?

Mr. MCCAIN. We have been going back and forth, and I will yield to the other side and then yield to the Senator from Oklahoma.

Mr. DORGAN. Mr. President, I yield 3 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 3 minutes.

Mr. LAUTENBERG. Mr. President, I am proud to be a cosponsor of S.J. Res. 17, the joint resolution disapproving the rule submitted by the Federal Communications Commission with respect to broadcast media ownership.

I reviewed the press release the FCC issued on June 2 to announce its changes to the ownership rules. The press release was entitled, ''FCC Sets Limits on Media Concentration.'' The problem with that press release was that the FCC did not set limits; it virtually abolished them. A majority of the FCC commissioners capitulated to an industry they no longer hold at arms' length.

I say capitulated because I read that FCC commissioners and other agency officials have taken more than 2,500 trips valued at $2.8 million since 1995, paid for by the industry the FCC is supposed to regulate. How ''arm's length'' is that?

As an aside, I am heartened that the FCC reauthorization bill the Commerce Committee report puts an end to industry-sponsored travel for FCC Commissioners and staff.

With respect to the ownership rules, it was regrettable that FCC Chairman Michael Powell saw fit to hold one and only one public hearing on the subject.

And it was regrettable that Chairman Powell appeared to be willing to talk with industry officials and the press about the proposed rule changes, but not with the Commerce Committee, until the rule was issued.

It was regrettable that the FCC officials went to great lengths to point out that the agency received nearly one million comments and constituent post cards on the rule changes, and then chose to disregard the vast majority of them.

It is regrettable that the so-called ''diversity index'' cited as justification for further deregulation cannot be used in a petition to determine if companies are violating ownership limits.

It is particularly regrettable that three of the five Commissioners apparently feel that news is just another commodity, like shoes or cars.

News is not just another commodity, except to the media barons who stand to benefit most from the FCC rule changes.

Here is what Lowry Mays, the founder and CEO of Clear Channel, had to say in Fortune magazine recently:

> We're not in the business of providing news and information . . . We're simply in the business of selling our customers products.

Remember, this is the man whose company owns over 1,200 radio stations with some 110 million listeners spread across all 50 States and the District of Columbia.

So much for the public interest.

Over the years, Congress established media ownership rules to ensure that the public would have access to a wide range of news, information, programming, and political perspectives. Over the years, the courts have repeatedly recognized the public interest goals of diversity, competition, and localism.

Consolidating media ownership means that a few large corporations can exercise considerable control over the news.

Is it really in the public interest to make it easier for a few companies to dominate the airwaves and determine what news the American people will, or will not hear?

As the distinguished jurist Learned Hand remarked in 1942, ''The hand that rules the press, the radio, the screen, and the far-spread magazine rules the country.''

I am the only member of the Commerce Committee from the New York metropolitan area. In my back yard, News Corp. already owns two VHF broadcast stations, a daily newspaper, a broadcast network, a movie studio, a satellite service, and four cable networks. Under the new rules the FCC issued, News Corp. will be able to add another TV station and own a total of eight radio stations. And do not forget: News Corp. is gobbling up DirecTV.

That is not diversity. That is not ''fair and balanced.''

At a Commerce Committee hearing on media ownership, Mel Karmazin of Viacom argued that ''Americans are bombarded with media choices via technology never dreamed of even a decade ago, much less 60 years ago.''

That is true, but misleading. Who owns these media? Viacom owns CBS and UPN; 35 television stations that reach 40 percent of the national viewing audience; Paramount Studios; and cable channels such as VH1, MTV, BET, Nickelodeon, Comedy Central, and Showtime.

Viacom, through Infinity Broadcasting, also owns 185 radio stations and has substantial ownership interests in several Internet properties, including CBS.com and CBSMarketwatch.com. Viacom even owns Blockbuster, so it has a significant stake in video and DVD rentals.

It should be self-evident that consolidating media ownership would make it possible for a few large corporations to exercise considerable control over the news.

Media giants also exert enormous control over advertisers. I received a letter last month from Neil Faber, president of NexGen Media, a company that specializes in national and spot broadcasting, print, and outdoor media buys. He wrote:

> For decades I have been deeply concerned with this direction of increasing concentration of ownership. This concentration limits consumer choice and results in higher advertising rates that, in all probability, have been passed on to the consumer in the form of higher prices for products or services and tends to constrain diversity of viewpoints.

New York Times columnist William Safire summed up the problem and what is at stake in a May 22 column. He wrote:

> The overwhelming amount of news and entertainment comes via broadcast and print. Putting those outlets in fewer and bigger hands profits the few at the cost of the many. . . The concentration of power—political, corporate, media, cultural—should be anathema to conservatives. The diffusion of power through local control, thereby encouraging individual participation, is the essence of federalism and the greatest expression of democracy.

In the 1996 Telecommunications Act, Congress directed the FCC to conduct a biennial review of the rule changes the Act contained. Given the complexity of the issue, a biennial review was overly ambitious.

Be that as it may, Chairman Powell said during the biennial review that led up to the rule changes proposed in June, ''Getting it right is more important than just getting it done.'' He said that, but then he did the opposite. The FCC got it done, but did not get it right.

Getting it right means serving the public interest, not increasing ownership concentration and boosting profitability for a few companies' share-holders.

I hope the Senate will pass this joint resolution to send a strong, unequivocal message to the FCC that it got it wrong on June 2.

I ask Unanimous Consent that the letter I received from Neil Faber and the May 22 op-ed by William Safire that appeared in the New York Times be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NEXGEN MEDIA WORLDWIDE INCORPORATED,
August 8, 2003.

Senator FRANK R. LAUTENBERG,
U.S. Senate,
Washington, DC

DEAR SENATOR LAUTENBERG: I am the founder, President, and Chief Executive Officer of NexGen Media Worldwide Inc., a media company that specializes in the planning and execution of media buys across virtually every medium, including national and spot broadcasting, print, and outdoor. We have been in business almost twenty-five years.

As both a media and advertising professional, as an Adjunct Professor of Marketing at NYU for fifteen years, and as a concerned citizen of the U.S. and the State of New Jersey, I am responding to the recent article in The New York Times by Michael K. Powell, Chairman of the Federal Communications Commission on the subject of the FCC's decision that would allow one company to own broadcast stations reaching up to 45% of the national market, an increase from the current cap of 35%.

For decades, I have been deeply concerned with this direction of increasing concentration of ownership. This concentration limits consumer choice and results in higher advertising rates that, in all probability, have been passed on to the consumer in the form of higher prices for products or services and tends to constrain diversity of viewpoints.

It is certainly true that the U.S. has a diverse media marketplace. It is in the spirit of maintaining this diversity that we should avoid concentration of media in the hands of the few. In the past, each local radio station in most markets, as an example, was primarily run by separate entities. While the number of stations is greater, the ownership is by fewer companies. So, this results in fewer independent sources of information (i.e., news, weather, traffic), entertainment, and fewer diverse editorial viewpoints. When one looks at television, the Television Bureau of Advertising shows that from 1980 to the present, the number of television stations available per home grew 8 fold. Yet, the average number of television stations that viewers watch weekly increased by only 2½ times. So, while station options have grown dramatically over this period, relatively speaking, why did the number of stations viewed increase at a dramatically disproportionately lower rate? These facts strongly suggest that there should be more independent outlets, more diversity, with greater freedom of programming choices.

It is logical that even if each station in a corporate structure were totally independently run, at some place in this corporate hierarchy the general manager of each station still reports to one or more top level corporate executives whose major responsibilities include providing ''guidance'' to maximize the corporation's profits. This reality further supports the contention that concentration of ownership also tends to inflate advertising prices and limit editorial viewpoints.

Mr. Powell writes that the major networks own a small percentage of all television stations. The fact is, however, that the stations owned by the networks include those in the major markets that represent the lion's share of the audience in both the local markets and nationally. Here, too, concentration

of ownership presents a potential risk to independent and diverse editorials and creates the framework for higher advertising rates. This is analogous to what occurred in this year's Network Television ''upfront'' marketplace in which advertising prices skyrocketed in the area of approximately 15% to 20% despite an arguably weak economy. It is interesting to note that the advertising dollars deployed for the upfront were concentrated with just a few mega-media buying services accounting for more than 75% of the advertising spent with the networks.

As another example of how concentration of ownership can adversely affect the capacity to effectively negotiate, look at sports programming. It is true, as Mr. Powell states, that many top sports programs have moved to cable and satellite. But, the large media giants also own these outlets, i.e., more concentration. So when negotiating with these cable companies, e.g., advertisers are, in reality, negotiating with the same few media giants who control them.

We live in a free society. Limiting ownership and concentrating media power cuts against the grain of free society choice that is indigenous to our democracy. Competition allows for choice and the ability to have greater choice benefits both consumers and the advertising community. This country needs to move towards more independent stations in the future rather than continuing to concentrate media ownership in the hands of the few. It is not whether we should specifically increase the cap from 25% to 45%, it is the direction to more concentration that needs to be reversed.

Sincerely,

NEIL FABER,
President.

[From the New York Times, May 22, 2003]

THE GREAT MEDIA GULP

(By William Safire)

The future formation of American public opinion has fallen into the lap of an ambitious 36-year-old lawyer whose name you never heard. On June 2, after deliberations conducted behind closed doors, he will decide the fate of media large and small, print and broadcast. No other decision made in Washington will more directly affect how you will be informed, persuaded and entertained.

His name is Kevin Martin. He and his wife, Catherine, now Vice President Dick Cheney's public affairs adviser, are the most puissant young ''power couple'' in the capital. He is one of three Republican members of the five-person Federal Communications Commission, and because he recently broke ranks with his chairman, Michael Powell (Colin's son), on a telecom controversy, this engaging North Carolinian has become the swing vote on the power play that has media moguls salivating.

The F.C.C. proposal remains officially secret to avoid public comment but has forced into the open by the two commission Democrats. It would end the ban in most cities on cross-ownership of television stations and newspapers, allowing such companies as The New York Times, The Washington Post and The Chicago Tribune to gobble up ever more electronic outlets. It would permit Viacom, Disney and AOL Time Warner to control TV stations with nearly half the national audience. In the largest cities, it would allow owners of ''only'' two TV stations to buy a third.

We've already seen what happened when the F.C.C. allowed the monopolization of local radio: today three companies own half the stations in America, delivering a homogenized product that neglects local news coverage and dictates music sales.

And the F.C.C. has abdicated enforcement of the ''public interest'' requirement in issuing licenses. Time was, broadcasters had to regularly reapply and show public-interest programming to earn continuance; now they mail the F.C.C. a postcard every eight years that nobody reads.

Ah, but aren't viewers and readers now blessed with a whole new world of hot competition through cable and the Internet? That's the shucks-we're-no-monopolists line that Rupert Murdoch will take today in testimony before the pussycats of John McCain's Senate Commerce Committee.

The answer is no. Many artists, consumers, musicians and journalists know that such protestations of cable and internet competition by the huge dominators of content and communication are malarkey. The overwhelming amount of news and entertainment comes via broadcast and print. Putting those outlets in fewer and bigger hands profits the few at the cost of the many.

Does that sound un-conservative? Not to me. The concentration of power—political corporation, media, cultural—should be anathema to conservatives. The diffusion of power through local control, thereby encouraging individual participation, is the essence of federalism and the greatest expression of democracy.

Why do we have more channels but fewer real choices today? Because the ownership of our means of communication is shrinking. Moguls glory in amalgamation, but more individuals than they realize resent the loss of local control and community identity.

We opponents of megamergers and cross-ownership are afflicted with what sociologists call ''pluralistic ignorance.'' Libertarians pop off from what we assume to be the fringes of the left and right wings, but not yet realize that we outnumber the exponents of the new collective efficiency.

That's why I march uncomfortably alongside CodePink Women for Peach and the National Rifle Association, between liberal Olympia Snowe and conservative Ted Stevens under the banner of ''localism, competition and diversity of views.'' That's why, too, we resent the conflicted refusal of most networks, stations and their putative purchasers to report fully and in prime time on their owners's power grab scheduled for June 2.

Most broadcasters of news act only on behalf of the powerful broadcast lobby? Are they not obligated, in the long-forgotten, ''public interest,'' to call to the attention of viewers and readers the arrogance of a regulatory commission that will not hold extended public hearings on the most controversial decision in its history?

So much of our lives should not be in the hands of one swing-vote commissioner. Let's debate this out in the open, take polls, get the president on the record and turn up the heat.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I yield 3 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 3 minutes.

Mr. NICKLES. Mr. President, I urge our colleagues to vote no on this resolution. By using the Congressional Review Act, which I worked on and helped pass with my colleague and friend Senator REID from Nevada, we would totally throw out the entire FCC regulation. Some people disagree with parts of the regulation, but we would be throwing out the entire regulation.

The Senator from Arizona said let's do this the old-fashioned way. Let's have hearings and mark up a bill so there is a bill that is going through the authorizing committee and there is also some language going through the Appropriations Committee. Maybe those are better and more appropriate vehicles than the Congressional Review Act, which rejects the entire regulation.

What about the cross ownership rules? Cross-ownership rules say if one has a newspaper, they cannot own a TV station, or vice versa. Well, unless they were grandfathered years ago, they could, but if they are new in the business, they cannot own both. The ban on cross ownership was modified on sound reasoning and solid evidence. The antiquated ban should not be reinstated.

My colleague from Nevada, who is now presiding, said things have changed. We now have thousands of radio stations. We have lots of opportunities. We have new vehicles. We have the internet. We have cable. We have lots of opportunities for people to get their news from a variety of sources. If we throw out these rules, we are almost saying we want to live by and maintain those old rules, which really are archaic and do not work.

This is too Draconian of a measure, to throw out the regs in their entirety. I urge our colleagues to vote no on the resolution.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. How much time is remaining on both sides?

The PRESIDING OFFICER. On the Republican side, 3 minutes 44 seconds. On the Democratic side, there are 10 minutes 13 seconds.

Mr. MCCAIN. Mr. President, I will take 1 more minute.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, again, I do not view this issue as one that is driven by ideological bias, but it is one which I think deserves a great deal more consideration.

Again, I urge my colleagues, as busy and as crowded as our calendar is, to bring up S. 1046 which has been reported out and is on the calendar. That would give us time to fully debate and amend these very complex and difficult issues. Therefore, I oppose the passage of CRA.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I yield myself the remaining time.

I have great respect for those who disagree with the position that I, Senator LOTT, and many others have taken on this issue, but the resolution of disapproval, which is part of the Congressional Review Act, is, in effect, a legislative veto. It is perfectly appropriate to use it in this circumstance.

I will talk a little bit about why this bipartisan resolution is important. First, it is acknowledged by everyone that we have had galloping concentration in the broadcast industry in recent years. One company now owns

well over 1,200 radio stations. The same is happening in television. I do not happen to think big is always bad but I think the FCC's new rules will just hasten the day when we have fewer and fewer companies owning virtually all of the broadcast properties in this country.

So if one thinks that what the American people see, read, and hear should be controlled by fewer and fewer people, then they would like the FCC rules and they would want to oppose this resolution of disapproval. But if they believe in localism, diversity, and competition, which are the hallmarks of the reason we provide free licenses and the free use of the airwaves to companies by which they profit, in which we say to them they have responsibilities attached to this license, localism, diversity, competition, if you believe those enhance this country, enhance local areas or communities or counties or States, then you are going to want to support this resolution of disapproval.

A lot of our folks think the FCC has written rules that fundamentally weaken our democracy. Our democracy is nourished by the free flow of information, by localism, by competition. The fact is, three-quarters of a million people sent their comments to the FCC saying: Don't do this. It ranges from the National Rifle Association, National Organization for Women, Walter Cronkite, Jesse Helms. This is a broad-based group of American people who believe very strongly that what the FCC has done is wrong.

The most dramatic rule changes in the history of broadcasting have been embarked upon by the FCC with one hearing in Richmond, VA. They concocted this rule that said: Oh, by the way, here is what we think should happen. We believe it is all right, in the largest city in this country, for one company to own the dominant newspaper, three television stations, eight radio stations, and the cable company. And the same company can do that in the largest city, the next largest city, the next largest city, the next largest city.

It is not all right. We know better than that. Let me describe a little of what is happening with this concentration. Perhaps you are driving down the street in Salt Lake City listening to your car radio, tuning the dial until you find a radio station you happen to enjoy, one with good music, someone with a sonorous voice saying: Good morning in Salt Lake City. It's sunny here. What a beautiful day outside. The sky is blue.

And you think what a great announcer they have in Salt Lake City when, in fact, that person may be broadcasting from a basement broadcast booth in Baltimore, MD. It is called voice track. It is called let's pretend. Let's pretend someone is broadcasting locally, but instead that person is using the Internet information to say it is sunny here in Salt Lake City, trying to make folks in Salt Lake City believe they are broadcasting in Salt Lake City. ''Voice tracking''—remember that term.

Central casting—it is the same approach in television. You like that? You just take localism, take local interest out of broadcasting and pretend it is local. If localism is unimportant, why do they even have to pretend?

What about turning on your television set seeing people eating maggots? Yes, you can see that on television. Maybe you don't like seeing people eating maggots. Maybe you think seeing people eat a cupful of maggots shoved in front of them—maybe you think that ought not be shown in our community.

So you call the broadcaster, and you say I am going to complain about this programming. How did you do this? Why would you show a program in which people eat maggots?

And the broadcaster writes back—this happens to be a July 25 letter. I won't use names:

> We received your letter dated June 30, 2003, regarding the content of the . . . show. . . .
>
> We forwarded your letter to the . . . Network. The Network, not [us], decides what shows go on the air here for the . . . Owned and Operated Television Stations.

The network likes maggots. It comes to your hometown and you don't have a choice, nor would a local broadcaster, and certainly not affiliates, stations owned by the broadcaster. They are going to broadcast it.

What has happened to localism? Dead? Wounded? Bleeding? If the FCC has its way with this rule, it will be gone, just plain gone.

Is there a reason for us to be concerned? I think so. There is a broad, bipartisan group of interests in the Senate using the legislative veto to say let's say to the FCC: What you have done is wrong.

Let me read a letter from our distinguished former colleague, Jesse Helms, because, as always, he puts it very succinctly.

Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 4 minutes 13 seconds.

Mr. DORGAN. Jesse Helms wrote a letter to my colleague, Trent Lott.

> Dear Trent:
>
> Thank you for your leadership in trying to undo the disaster created by the Federal Communications Commission's new media ownership rules. These rules will benefit huge conglomerates and no one else.

Let me point out, Senator Helms is one of the few people who served in this Senate who came from a broadcast background.

> Sometimes I think people in Washington, particularly at the Commission, have forgotten that the FCC role is to preserve localism, diversity, and competition. In no way are those criteria supported by the recent FCC ruling. If the commission fails, as it has, then Congress must step in. You and Senator DORGAN have done that. I can think of no reason to allow fewer companies to own more and more of the media. Media ownership is a bipartisan issue that commands a close review by Democrats and Republicans.
>
> When your resolution comes to the Senate floor, I'll be cheering for 51 votes.

It is signed by Jesse Helms, former U.S. Senator.

In this morning's newspaper, the FCC chairman, Mr. Powell, makes comments about what we are doing here today. I happen to like Chairman Powell. Personally, I think he is a good person. We have had a good relationship. I think he has made a horrible mistake. His leadership on this issue at the Federal Communications Commission, as I have said previously, has led the Commission to cave in as quickly and as completely to the special interests as anything I have ever seen.

Mr. Powell says ''the move in the Senate today'' referring to this move ''is bordering on the absurd.''

I am sorry. There is nothing at all absurd about the Senate taking direct aim at a rule by a Federal regulatory agency that is wrongheaded, and saying we are going to veto this rule. There is nothing absurd about that at all.

This Congress has the right under this legislation to do it. This has been rarely used. It is the second occasion in which the Senate has used this. We would only do it when a regulatory agency, issuing regulations, has so starkly decided to misrepresent what is the public interest.

The FCC is a regulatory body. One would expect them to wear striped shirts and have a whistle and blow the whistle when it is needed on behalf of the public interest, to stand up for the public interest. But when regulatory agencies refuse to stand for the public interest, then we must take action.

My colleague, Senator MCCAIN, talks about S. 1046. I am a cosponsor of that legislation. I support it very strongly. I hope the Senate will pass that as well. I will only observe that this resolution of disapproval will run into some whitewater rapids when it comes to the House. I understand that. So, too, would S. 1046 if it gets to the House of Representatives.

The fact is, we ought to in every conceivable way avoid the problems that will come from these rules. My colleagues and others have talked about the problem of growing concentration in the media. It is getting worse, not better. The worst possible result, in my judgment, would be to say let's just let the FCC rules go into effect.

A Federal circuit court has already issued a stay. They understand that the American people were not given the opportunity in the hearing, the one hearing that existed in Richmond, VA. The case has not been made for this FCC rule. So we have a stay at the Federal court.

A reasonable step and a thoughtful step on behalf of this Senate is to stand up this morning for the public interest and say to the FCC: You had a responsibility and you failed. We have every right under the Congressional Review

Act to enact, this morning, a resolution of disapproval. I hope sufficient numbers of my colleagues will join me, will join Senator LOTT, and others, in a strong bipartisan resolution to say we don't like what the FCC has done. We think it is not at all in support of the public interest. We believe it undermines this democracy which rests on the free flow of information. We believe we ought to disapprove of this rule.

The PRESIDING OFFICER. All time has expired.

Mr. DORGAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MCCAIN. Mr. President, at the request of the leadership, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ENZI). Without objection, it is so ordered.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is on passage of the joint resolution. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Oregon (Mr. SMITH) is absent because of a death in the family.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Vermont (Mr. LEAHY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) and the Senator from Vermont (Mr. LEAHY) would each vote ''yea.''

The PRESIDING OFFICER (Mr. CORNYN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 40, as follows:

[Rollcall Vote No. 348 Leg.]

YEAS—55

Akaka	Conrad	Inouye
Alexander	Corzine	Jeffords
Allard	Daschle	Johnson
Baucus	Dayton	Kennedy
Bayh	Dodd	Kohl
Biden	Dole	Landrieu
Bingaman	Dorgan	Lautenberg
Boxer	Durbin	Levin
Byrd	Enzi	Lieberman
Cantwell	Feingold	Lincoln
Carper	Feinstein	Lott
Chafee	Harkin	Mikulski
Clinton	Hollings	Murray
Collins	Hutchison	Nelson (FL)
Nelson (NE)	Rockefeller	Stabenow
Pryor	Sarbanes	Voinovich
Reed	Schumer	Wyden
Reid	Shelby	
Roberts	Snowe	

NAYS—40

Allen	DeWine	McConnell
Bennett	Domenici	Miller
Bond	Ensign	Murkowski
Breaux	Fitzgerald	Nickles
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Specter
Campbell	Gregg	Stevens
Chambliss	Hagel	Sununu
Cochran	Hatch	Talent
Coleman	Inhofe	Thomas
Cornyn	Kyl	Warner
Craig	Lugar	
Crapo	McCain	

NOT VOTING—5

Edwards	Kerry	Smith
Graham (FL)	Leahy	

The joint resolution (S.J. Res. 17) was passed, as follows:

S. J. RES. 17

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Federal Communications Commission relating to broadcast media ownership (Report and Order FCC 03–127, received by Congress on July 10, 2003), and such rule shall have no force or effect.

Mr. DORGAN. I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE—H.R. 2754

Mr. DOMENICI. Mr. President, we are currently on the energy and water bill. There is pending a Feinstein amendment. We have talked about it.

I ask unanimous consent, and this is acceptable to the other side and the proponents, that a vote occur on or in relation to the Feinstein amendment at 2:30 p.m. this afternoon.

Mr. REID. Reserving the right to object, I ask there be no amendments in order prior to that vote and that the time between 2:15 and 2:30 be equally divided.

The PRESIDING OFFICER. Does the Senator so amend his request?

Mr. DOMENICI. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I say to the Senate, we are on an energy and water bill. There is no long list of amendments we are aware of. We are aware of two, maybe three amendments. We ask that Members help us finish this evening. It seems now it is the will of both the majority and the minority we finish tonight.

The next subject matter will be an appropriations bill, from what I understand. The majority leader has so committed the next bill will be an appropriations bill. There should be no reason why we cannot finish this bill tonight. There may be two amendments. There may be three. On the other hand, there could be just one. We would like Senators to help by getting those amendments as soon as possible so right after the 2:30 vote we can move right ahead with the next amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, through you to my distinguished Chair of the subcommittee, Senator JACK REED of Rhode Island is ready to offer his amendment immediately following the vote on the Feinstein amendment. We understand there may be an amendment offered by Senator CANTWELL. There may be some procedural problems with that. We are still working on that. I am confident she will be ready to offer that as soon as we finish the Reed amendment. There may be another amendment Senator DOMENICI and I have been working on, working with the chairman of the full committee to see if that can be resolved in some other way.

I have not spoken to either of the leaders about this, but I have had many questions about the storm that is coming. People are very concerned about that for very personal reasons. The storm, we believe they have indicated, now will strike about noon on Thursday. If it keeps going the way it is, it will be a very devastating storm. We know some people have obligations this weekend. As I said, I have not spoken to the two leaders, but as the storm develops I am sure they will talk to us.

I agree with the chairman of the subcommittee, Senator DOMENICI. We will move forward and have all the amendments offered tonight and finish this bill tonight. If there is some reason we cannot do the votes tonight, we will have the votes set for tomorrow morning. We will move to expeditiously finish this bill as soon as possible.

The PRESIDING OFFICER. The Senator from Wyoming.

GRAMPA ENZI

Mr. ENZI. Mr. President, this last weekend I got a new name. Fifty-nine years ago when I was born I was named Michael Bradley Enzi. The middle name comes from my Grampa and Gramma Bradley on my mother's side. They were homesteaders in Montana. My grandfather on my dad's side homesteaded in North Dakota and named his son Elmer, but he died shortly after I was born and before I could know him. My dad's favorite song was ''Elmer's Tune'' but he thought there were enough Elmers already and named me Michael. I grew up being Mickey and then Mike. As I mentioned, this last weekend I got a new name and I am truly delighted.

I am now Grampa—and that is spelled with an M, not an N, and there is no D in it. I will explain that in just a moment.

My son and his wife had a son. My son, also like me, had the good fortune to overmarry, to Danielle, a delightful young lady from Kentucky whom he