
BOOK REVIEW

MORE THAN A FIGHT BETWEEN THE VERY RICH AND THE VERY WEALTHY: THE IMPACT OF THE INTERNET ON THE MEDIA CONSOLIDATION AND OWNERSHIP DEBATE

Media Diversity and Localism: Meaning and Metrics, Philip N. Napoli, ed., Lawrence Erlbaum Associates, Mahwah, New Jersey, 2007, 416 pages. \$45.00. ISBN: 0-8058-5548-3.

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I. INTRODUCTION

James Quello, a former Interim Chairman and Commissioner of the Federal Communications Commission (“FCC” or “Commission”),¹ once described the titanic battle between the Hollywood movie studios and the

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¹ Quello served as a Commissioner of the FCC from 1974–1997 and as Interim Chairman from 1993–1994. See Fed. Commc’ns Comm’n, *Biography of James Quello*, <http://www.fcc.gov/commissioners/previous/quello/biography.html> (last visited April 18, 2007).

television networks over the financial interest and network syndication rules as a fight between the “very rich against the wealthy.”²

More than these usual foes have a significant stake in the outcome of the latest media policy conflict: the fight over media consolidation and media ownership regulation. The new media policy book, *Media Diversity and Localism: Meaning and Metrics*,³ illustrates that media and media ownership matter. The book also demonstrates that media scholars as well as conglomerates care profoundly about what the FCC, Congress, and the courts decide to do regarding media ownership in America. Finally, the book shines a spotlight on whether the Internet actually does produce the media diversity claimed by promoters of media ownership deregulation.

Public concern about media ownership crystallized in 2003 when a Philadelphia low-power FM radio collective known as the Prometheus Radio Project brought suit in the United States Court of Appeals for the Third Circuit. The group challenged the major broadcast ownership deregulation adopted by the FCC as part of its third biennial ownership review.⁴ By a 3–2 decision in 2003, the FCC replaced its long-standing prohibitions on newspaper-broadcast and television-radio cross-ownership in the same media market with new cross-media limits.⁵ These cross-media

² Laura Asplund, *James Quello: Honor and Dedication*, THE FIN. MGR., April/May 2001, http://www.bcfm.com/financial_manager/JamesQuello4501.htm. The financial interest and network syndication (“fin-syn”) rules prohibited television broadcast networks from having a financial interest in independently-produced programming and severely restricted syndication of programming by the networks. See *In re* Amendment of Part 73 of the Commission’s Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting, *Report and Order*, 23 F.C.C.2d 382 (1970). Attempts in the 1990s to relax the restrictions were met with controversy. See *Schurz Communications v. FCC*, 982 F. 2d 1043 (7th Cir. 1992) (invalidating and remanding the Commission’s 1991 order promulgating a revised set of fin-syn rules for inadequately explaining how the revised rules promoted diversity). The Commission finally repealed the rules in 1995. See *In re* Review of the Syndication and Financial Interest Rules, Sections 73.659–73.663 of the Commission’s Rules, *Report and Order*, 10 F.C.C.R. 12,165, ¶ 2 (Aug. 29, 1995).

³ MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS (Philip N. Napoli, ed., 2007).

⁴ Section 202(h) of the Telecommunications Act of 1996 required the FCC to review its broadcast ownership rules “biennially,” or every two years, “to determine whether any of such rules are necessary in the public interest as the result of competition.” The law also instructed the FCC to “repeal or modify any regulation it determines to be no longer in the public interest.” See Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111–12 (1996). In 2004, Congress changed the biennial to a quadrennial review requirement. See Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, §629, 118 Stat. 3, 100.

⁵ See *In re* 2002 Biennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area, *Report and Order and Notice of Proposed Rulemaking*, 18 F.C.C.R. 13,620 (June 2, 2003), *aff’d in part and remanded in part*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (2004), *stay modified on reh’g*, No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied*, *FCC v. Prometheus Radio Project*, 545 U.S. 1123 (2005) [hereinafter 2002

limits were developed based on a “diversity index” (“DI”)⁶ methodology for measuring the impact of media consolidation on viewpoint diversity in local media markets.⁷ The agency also: revised how it counts stations for purposes of the local radio multiple ownership rule;⁸ increased the number of television and radio stations one entity may own in a local market;⁹ raised to 45% the percentage of the national television audience stations owned by a single entity can reach;¹⁰ and retained a prohibition on ownership of two networks by a single entity.¹¹

On June 24, 2004, the Third Circuit issued a 108-page decision affirming certain portions of the Biennial Review Order and remanding others to the Commission for further review and justification.¹² Generally, the court upheld the FCC’s limits on common ownership of broadcast stations, but rejected the justifications for the specific numerical limits adopted in the Biennial Review Order.¹³ The court upheld as “justified” and “supported by record evidence” the Commission’s decision not to retain the ban on newspaper-broadcast cross-ownership, and affirmed the FCC’s authority to regulate cross-media ownership.¹⁴ The new cross-media limits, however, were remanded for re-evaluation,¹⁵ as well as the revised numerical limits on the number of radio and TV stations one entity may own in a local market.¹⁶

The Commission is now engaged in the remand, and its staff is reviewing public comments on a Further Notice of Proposed Rulemaking the Com-

Biennial Review]. “In this Section we modify our rules by adopting a new set of cross-media limits (“CML”) in lieu of our former newspaper/broadcast and television/radio cross-ownership rules.” *Id.* ¶ 432.

⁶ *Id.* ¶ 433 (“To help us analyze [cross-media limits] data, we use a methodological tool—a diversity index or “DI”—that allows us to measure the degree to which any local market could be regarded as concentrated for purposes of diversity.”). For a full explication of the development, methodology, and application of the Diversity Index (“DI”), see *id.* ¶¶ 391–431.

⁷ See generally, *id.* ¶¶ 432–81.

⁸ *Id.* ¶¶ 132–34.

⁹ *Id.* ¶¶ 235–39.

¹⁰ *Id.* ¶¶ 499–500.

¹¹ *Id.* ¶¶ 499, 592.

¹² *Prometheus Radio Project v. FCC*, 373 F. 3d 372 (3rd Cir. 2004).

¹³ *Id.* at 382 (“[T]he Commission has not sufficiently justified its particular chosen numerical limits for local television ownership, local radio ownership, and cross-ownership of media within local markets. Accordingly, we partially remand the [Biennial Review] Order for the Commission’s additional justification or modification, and we partially affirm the Order.”).

¹⁴ *Id.* at 400–02.

¹⁵ *Id.* at 398–411.

¹⁶ *Id.* at 418–20. Among other holdings, the court criticized the FCC for giving weight to the Internet as a source of viewpoint diversity in the DI, assuming equal market share among same-service media outlets in the DI, and not resolving inconsistencies between the DI scores for some combinations and the new cross-media limits. *Id.* at 406–11. See MEDIA DIVERSITY & LOCALISM, *supra* n.3, at 157–58, 163–64, 195–205, for critiques of the DI and support for the court’s rejection of it.

mission released on July 24, 2006 as part of the now quadrennial review of broadcast ownership rules.¹⁷ Commission staff also summarized comments received in response to a Notice of Inquiry the FCC released in 2004 regarding “broadcast localism.”¹⁸ The five Commissioners meanwhile are conducting a half dozen field hearings around the country on media ownership and localism issues and awaiting the results of ten in-house and external studies the agency has commissioned on various aspects of media ownership.¹⁹

The release of *Media Diversity and Localism* is therefore well timed. With a number of insightful and provocative essays and observations, this book will help inform as well as frame the ongoing federal policy debate on media concentration and ownership regulation. The book also arrives at a time when the very focus of this debate may be shifting as major media companies confronting a digital future decide to invest in more interactive, Internet-related media, rather than just increase their holdings in over-the-air broadcasting stations.²⁰

¹⁷ *In re* 2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, *Further Notice of Proposed Rulemaking*, 21 F.C.C.R. 8834 (June 21, 2006) [hereinafter *FNPRM*]. The *FNPRM* seeks public comment on the issues remanded by the court in *Prometheus*. The item asks broad, general questions but does not indicate how the FCC is likely to respond to the court's remand. The *FNPRM*, however, does tentatively conclude that the DI is an inaccurate device to measure viewpoint diversity. It also solicits comments on how it should establish cross-ownership limits without relying on the DI.

¹⁸ *In re* Broadcast Localism, *Notice of Inquiry*, 19 F.C.C.R. 12,425 (June 7, 2004) [hereinafter *Localism NOI*]. The Media Bureau staff summary of comments in response to the *Localism NOI* may be accessed via the FCC's Electronic Comment Filing System, http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi (Enter “04-233” in the “Proceeding” box, then “Media Bureau” in the “Filed on Behalf of” box. Scroll down and click on “Retrieve Document List.” Click on first set of eight “View” icons for complete, 194-page summary of the public comments filed by the Media Bureau on October 20, 2006.)

¹⁹ For further information on the FCC's current media ownership field hearings and research studies, see Fed. Comm'n's Comm'n, 2006 Review of the Media Ownership Rules, <http://www.fcc.gov/ownership/>.

²⁰ See, e.g., David Lieberman, *View of Media Ownership Limits Changes: Digital Competition May Shift Focus of Monopoly Debate*, USA TODAY, Jan. 29, 2007, at 1B:

[M]any major media companies are looking to downsize and invest in new media, not increase their bets on over-the-air broadcasting . . . The situation may be one reason some companies appear to be investing only a little political capital fighting for the right to grow. ABC owner Disney, for one, told the FCC that it's sitting out this year's broadcast ownership fight.

Id.

II. "MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS"

Edited by Philip N. Napoli, Associate Professor, School of Business, and Director, Donald McGannon Communication Research Center, Fordham University, *Media Diversity and Localism* offers "a wide array of perspectives to bear on what has become increasingly contested terrain—the concepts of diversity and localism and their appropriate meaning and application in communications policymaking."²¹ Napoli explains that the book "arose out of the turmoil surrounding the [FCC's] controversial June 2003 decision to relax a wide range of media ownership regulations."²² This collection of sixteen essays by communications policy scholars, economists, and a few lawyers is a mostly dry, scholarly tome that at times is replete with social science jargon. But it succeeds in gathering together—apparently for the first time—current research on media diversity and localism principles, presenting theoretical and methodological perspectives on these elusive and elastic concepts.

Napoli correctly notes in his introductory essay that because diversity and localism are abstract and complex terms, they are difficult to define, much less measure. But with the courts increasingly "demanding that the FCC provide evidence that policies designed to preserve or promote diversity or localism effectively accomplish their objectives," Napoli concludes that these "normative principles" should be subject to "empirical assessment."²³

A. Diversity

The essays in the book not only address the measurable dimensions of the diversity and localism principles, but also their "conceptual and histori-

²¹ Philip M. Napoli, *Introduction: Media Diversity and Localism—Meaning, Metrics, and Policy*, MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS xi (Philip N. Napoli, ed., 2007).

²² *Id.* See also *supra* text and accompanying notes 4–16.

²³ See Napoli, *supra* n.21 at xviii–xix. See, e.g., *Fox TV Stations v. FCC*, 280 F.3d 1027, 1043 (D.C. Cir. 2002) (vacating cable and broadcast cross-ownership rules and remanding national TV ownership rule for "woefully inadequate" reasoning with regard to the diversity rationale for retaining the rules); *Sinclair Broad. Group v. FCC*, 284 F.3d 148, 164–65 (D.C. Cir. 2002). The court remanded the revised TV duopoly rule, which would have allowed common ownership of two TV stations in the same local market if eight independently owned TV stations remain after the merger (the "eight voice exception"), because the FCC failed to demonstrate that its exclusion of non-broadcast media from the exception was necessary to ensure broadcast diversity. *Id.* Cf. *FCC v. Nat'l Citizens Comm'n for Broad.*, 436 U.S. 775, 796–97 (1978). Twenty-four years before the *Fox* and *Sinclair* decisions, the Supreme Court showed far greater deference to the FCC, accepting the argument, in the Commission's "judgment, based on experience, that 'it is unrealistic to expect true diversity from a commonly owned station-newspaper combination.'" *Id.* (citation omitted).

cal underpinnings.²⁴ Robert B. Horwitz, professor of communications at the University of California at San Diego, does an excellent job of summarizing and analyzing the history of the diversity concept.²⁵ This history ranges from a longstanding “perception of a direct relationship between democracy and a vibrant communications system of diverse sources and owners,” to the period of the civil rights movement when the FCC’s diversity policy increased its focus on issues of race and minority ownership, to the more politically and judicially conservative modern era, in which the Commission is pressed to issue more empirically stringent ownership rules when it links a diversity of voices to issues of race.²⁶

Horwitz further notes that “[b]ecause the social science data on the nexus between ownership policies and programming are weak,” some D.C. Circuit judges and some FCC Commissioners interpret media ownership or structural regulations as “violations of the speech rights of corporations.”²⁷ Horwitz is especially insightful regarding the trend among federal appellate courts to insist in communications law cases “on a new concentration metric based on ‘nonconjectural’ empirical evidence of anti-competitive behavior and verification of the efficacy of regulatory remedies.”²⁸ He sees this trend “abetted by the way that a new conservative formalism in equal protection law has become attached to First Amendment jurisprudence.”²⁹ He explains that,

[a]s affirmative action and its jurisprudential logic have lost favor over the past 15 years, the principle of diversity in communications likewise has come under fire. This is best seen in a line of cases starting with Justice O’Connor’s dissenting opinion in *Metro Broadcasting v. FCC* [497 U.S. 547] (1990). In this, the courts have brought to the media ownership debate a formalistic reading of the First Amendment, the upshot of which is sympathy for the arguments asserting the free-speech rights of corporations

²⁴ See Napoli, *supra* n.21, at xvii. For discussion of the various “varieties of diversity,” including (in alphabetical order): “audience, content, exposure, format, outlet, ownership, programming, source, viewpoint, and workforce” diversity, see *id.* at 13, 29, 44, n.6; see also Philip Napoli, *Deconstructing the Diversity Principle*, 49 J. COMM. 7 (1999). For discussion of the problems of diversity as a regulatory policy, especially the use of structural outlet or source diversity as a proxy for FCC regulation of content diversity, more problematic because of the First Amendment, see Mara Einstein, *The Financial Interest and Syndication Rules and Changes in Program Diversity*, 17 J. MEDIA ECON. 1, 16 (2004).

²⁵ Robert B. Horwitz, *On Media Concentration and the Diversity Question*, in MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS 9 (Philip N. Napoli, ed., 2007).

²⁶ *Id.* For an early stress on the relationship between democracy and diversity, see *Assoc. Press v. United States*, 326 U.S. 1, 20 (1945) (“[First Amendment] rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public . . .”). For the high water mark of the courts upholding the FCC’s diversity/minority ownership policies, see *Metro Broad. v. FCC*, 497 U.S. 547 (1990). For the judicial “counter-revolution” on FCC diversity rationale and policies, compare *id.*, at 602 (O’Connor, J., dissenting) with *Fox TV Stations v. FCC*, 280 F.3d 1027, 1043 (D.C. Cir. 2002) and *Sinclair Broad. Group v. FCC*, 284 F. 3d 148, 164–65 (D.C. Cir. 2002).

²⁷ Horwitz, *supra*, n. 25 at 38.

²⁸ *Id.* at 15.

²⁹ *Id.*

and increasing skepticism of the role of government in promoting diversity in mass media. Corporations have successfully used the new formalism to challenge media ownership policies as not meeting heightened First Amendment scrutiny. So even as media corporations are becoming larger and presumably more powerful, ownership regulations are being rescinded or struck down.³⁰

B. Localism

Communications policymakers and analysts often cite the “policy triad” goals of competition, diversity, and localism.³¹ Compared with the embattled diversity rationale, the localism policy objective until now has received the least governmental attention. Yet this last policy objective may have the most significance for individual citizens, consumers, and communities concerned with preserving the local content of their local media markets.

Media Diversity and Localism, in fact, is most “concerned with the fate of local content and local media sources in the 21st century.”³² It focuses on this policy goal because the availability of local content is also of special interest concerning media diversity “as local content can easily be the first to disappear when national media buy up local media outlets.”³³

But what exactly is meant by “localism?” Neither Congress nor the Commission has ever defined the term precisely. An FCC fact sheet, for example, gives the following response to the question “what is broadcast localism?”

Broadcast radio and television are distinctly local media. They are licensed to local communities, and the [FCC] has long required broadcasters to serve the needs and interests of the communities to which they are licensed. Congress has also required that the FCC assign broadcast stations to communities around the country to assure widespread service, and the Commission has given priority to affording local service as part of this requirement. Broadcast ‘localism’ encompasses these requirements.³⁴

Not exactly a simple, concise definition.

In a 26-page *Notice of Inquiry* on broadcast localism (“NOI”) released in July 2004, the Commission again did not define “localism” but, in an introductory paragraph of the NOI, stated that

[a]s with competition and diversity, localism has been a cornerstone of broadcast regulation for decades. Broadcasters . . . must air programming that is responsive to the interests and needs of their communities of license. Even as the Commission deregulated

³⁰ *Id.*

³¹ Peter J. Alexander & Brendan M. Cunningham, *Public and Private Decision Making: The Value of Diversity in News*, in *MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS* 79 (Philip N. Napoli, ed., 2007).

³² Matthew Hindman, *A Mile Wide and an Inch Deep: Measuring Media Online and Offline*, in *MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS* 327, 333 (Philip N. Napoli, ed., 2007).

³³ Eszter Hargittai, *Content Diversity: Myth or Reality*, in *MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS* 349, 350 (Philip N. Napoli, ed., 2007).

³⁴ Fed. Comm’n’s Comm’n, FCC Consumer Facts: Broadcasting and Localism, http://www.fcc.gov/localism/Localism_Fact_Sheet.pdf.

many behavioral rules for broadcasters in the 1980s, it did not deviate from the notion that they must serve their local communities.³⁵

The NOI further summarized a number of existing FCC rules, policies, and procedures reflecting “the Commission’s overarching goal of establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities.”³⁶ These include such rules and policies as the “fair, efficient, and equitable distribution of radio service” to American states and communities as mandated by the Communications Act of 1934, as amended, 47 U.S.C. §307(b), the allocation priority of providing a “first local service to a community,” and the required placement of a radio signal over a “community of license to ensure that local residents receive service.”³⁷

Peter DiCola, a professor at the University of Michigan, relates two theories about localism previously developed by Napoli to make his main point about the negative effects of media consolidation on employment and wages in the radio industry. The first conceives of localism geographically as “any program produced and presented within a local community;” the second theory is more content-based, with the localism principle “only fulfilled if the programming addresses the unique needs and interests of the local community.”³⁸ DiCola writes that “[u]nder the rubric of localism, especially, but also in the context of promoting viewpoint diversity, the FCC can and should monitor job losses and wage reductions in radio industry occupations.”³⁹ He concludes that “more consolidated markets have fewer radio announcers, news reporters, and broadcast technicians” and that “[j]ob losses in these professions indicate that fewer local residents make decisions now about what music to play and what stories to report. The employment effects of radio consolidation thus represent a threat to both localism and diversity.”⁴⁰

Two other contributors to the book, Professors Stephen D. McDowell and Jenghoon Lee, both of Florida State University, note that “[t]o preserve the local voices in local media markets, the clear definition and identification of local voices is important.”⁴¹ They point out that “[t]he difficulty of definition results from not only the ambiguity of the concept of localism but also from uncertainty regarding the voices to be encour-

³⁵ *Localism NOI*, *supra* n.18, at ¶ 1.

³⁶ *Id.* ¶ 4.

³⁷ *Id.* ¶¶ 2–3.

³⁸ See Peter DiCola, *Employment and Wage Effects of Radio Consolidation*, in *MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS* 57, 62 (Philip N. Napoli, ed., 2007) (quoting PHILIP M. NAPOLI, *FOUNDATIONS OF COMMUNICATION POLICY: PRINCIPLES AND PROCESS IN THE REGULATION OF ELECTRONIC MEDIA* 210, 217 (2001)).

³⁹ *Id.* at 76.

⁴⁰ *Id.*

⁴¹ See Stephen D. McDowell & Jenghoon Lee, *Tracking ‘Localism’ in Television Broadcasting: Utilizing and Structuring Public Information*, in *MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS* 177, 178 (Philip N. Napoli, ed., 2007).

aged.”⁴² They propose some “practical guidelines to identify various forms of local participation in media markets and clarify the elements of localism.”⁴³ These include “local involvement, local outreach, and locally oriented programming.”⁴⁴

C. Impact of Internet on Media Concentration and Diversity

The most provocative and interesting points in *Media Diversity and Localism* concern the impact of the Internet on media concentration and diversity. Contrary to common assumptions and official assertions,⁴⁵ a number of scholars in the book note that the Internet and the availability of other new media outlets, such as i-Pods, music-playing cell phones, satellite radio service, and high definition radio and TV, should not be a justification or excuse for broadcast ownership deregulation. Nor they argue is the Internet a panacea to reduce media concentration, increase media diversity, or expand access to local news and other local content.

1. Concentration of Online Media Is Far Greater Than Offline Media

Various research studies presented in *Media Diversity and Localism* demonstrate that online content is more concentrated than content in traditional, offline media. For example, one sample reported in the book found that “the top 10 outlets in radio and print garner[ed] between 20% and 39% of the total audience for their respective media. On the World Wide Web, the top 10 sites account[ed] for 62% of total traffic.”⁴⁶ Professor Eli Noam of Columbia University has also statistically documented this consolidation of the “new media space” of the Internet, concluding that given current trends, the Internet might “move from an entrepreneurial and libertarian model to one of market power . . . resembling or even exceeding that of other electronic media.”⁴⁷

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See, e.g., Michael K. Powell, Chairman, Fed. Commc’ns Comm’n, Remarks Before the Assoc. Press Annual Meeting and General Session of the Newspaper Ass’n of Am. Annual Convention: Hear Ye, Hear Ye Read All About It! (April 28, 2003) (transcript available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-233732A1.pdf). Powell, on the eve of relaxing media ownership restrictions based in part on the existence of new technologies like the Internet to ensure diversity of media content, noted that “what’s happening now is that technology creates many different platforms and means of distributing news and content in a way that’s more dynamic and diverse. . . .” *Id.*

⁴⁶ See Hindman, *supra* n. 32, at 338.

⁴⁷ See Eli Noam, The Internet: Still Wide Open and Competitive? 13 (Sept. 2003) (paper presented at the Telecommunications Policy Research Conference), available at http://tprc.org/papers/2003/200/noam_TPRC2003.pdf. Confirming Professor Noam’s “market power” prediction, see also Richard Siklos, *Hey Boss, Permission for a Follow-Up Question?*, N.Y. TIMES, Mar. 26, 2007, at C7.

Professor Matthew Hindman of Arizona State University underscores this Internet concentration point in his essay, "A Mile Wide and an Inch Deep: Measuring Media Diversity Online and Offline." The essay's "central argument . . . is that, although the range of online content is vast, the range of sites that users actually visit is small. In fact, the diversity of media outlets that citizens use may be smaller online than in traditional media."⁴⁸ Hindman asserts that

online diversity is astonishingly shallow. Despite the vastness of online content—or, more accurately, because of it—Web users cluster tightly around a small number of successful sites. In almost every niche, a handful of Web sites get more traffic than all of the rest combined. Everyone knows that Amazon dominates online bookselling, and eBay dominates online auctions. But many have failed to recognize that these sorts of winners-take-all patterns show up in nearly every aspect of online life—including online outlets for politics, news, and entertainment. This fact naturally changes our assessment of what the Internet means for politics and culture.⁴⁹

Hindman identifies several causes of online concentration, or why "[t]he more choices that citizens have . . . the more they have converged on the same few outlets of information."⁵⁰ Ironically, these include the very "vastness of online content" putting a premium on both navigational aids such as hyperlinks and search engines and web surfing skills of users, "the link structure of the World Wide Web, and the economies of scale in online publishing."⁵¹ He therefore argues "against visions of the Internet as a radically decentralized medium where large media outlets are unimportant."⁵² Hindman acknowledges "that there are billions of Web pages on the open Internet, offering a plethora of possible information choices for citizens. Yet the data . . . suggest that expanding the number of options available to citizens has not had the expected effects. More choice has meant more concentration."⁵³ Discussing the diversity available on the Web, Hindman asks the reader to "confront a central contradiction. Online, a smaller number of outlets have consistently garnered a larger share of the total audience. It may be true that every web site has a voice—but most speak in a whisper and a powerful few have a megaphone."⁵⁴

Hindman ends his provocative essay by calling on "scholars and regulators . . . to reconsider their assumptions about what the World Wide Web

The Internet age was supposed to mean that concentration of the media in just a few hands is yesterday's news because the barriers to entry in the online world are so low. But judging from the banter on a conference call for reporters last week by the News Corporation and NBC Universal, corporate control of the news media is still going strong. The companies were announcing a new joint venture for Internet video.

Id.

⁴⁸ See Hindman, *supra* n. 32, at 328.

⁴⁹ *Id.* at 329.

⁵⁰ *Id.* at 339.

⁵¹ *Id.* at 344.

⁵² *Id.* at 341.

⁵³ *Id.* at 341.

⁵⁴ *Id.* at 345.

means for media diversity.”⁵⁵ He notes that “the World Wide Web may exacerbate, not remedy, long-standing concerns over media concentration, contradict[ing] commonly held notions of the Internet as an informational nirvana.”⁵⁶ Hindman concludes that “[h]igh levels of audience concentration must be acknowledged as a central feature of the online landscape. Diversity on the Internet may be broad, but it is also remarkably shallow.”⁵⁷

2. Internet Users Will Not Necessarily Be Exposed to a Wider Variety of Content Than Those Who Use More Conventional, Offline Media

Other essay authors in the book also make the related point that the mere presence of content diversity online does not guarantee its ease of accessibility for the average citizen or consumer. For example, Professor Esater Hargittai, Northwestern University, notes that “[s]everal factors such as online content organization and user skill are at work when users browse material on the Web and these influence what content people are more or less likely to access.”⁵⁸ Hargittai concludes that

it would be wrong to assume that the mere presence of diverse material on the Web will result in users accessing a smorgasbord of content . . . [A]n interplay of many factors determines what information is most realistically within the reach of users. It is important to draw a distinction between available and accessible content online. When we assess the state of online content diversity, we must rely on data about users’ actual behavior in addition to considering what content exists on the Web Internet use can reflect offline content utilization regardless of what is theoretically available to users.⁵⁹

3. Internet Does Not Guarantee Access to More Local Media Content.

Finally, a number of the authors in the book emphasize that the Internet does not increase or guarantee access to more local as opposed to national media content. They point out, for example, that the Internet is not a major source of local news. They cite studies such as one in 2004 in which the well-regarded Pew Research Center for People and the Press found that daily newspapers were a considerably more important source of local news than the Internet. The Pew study found that 35% of the respondents to its poll first mentioned daily newspapers as their source for local news compared with only 2% for the Internet.⁶⁰

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See Hargittai, *supra* n. 33, at 361.

⁵⁹ *Id.*

⁶⁰ Mark Cooper, *When Law and Social Science Go Hand in Glove: Usage and Importance of Local and National News Sources—Critical Questions and Answers for Media Market Analysis*, in *MEDIA DIVERSITY AND LOCALISM: MEANING AND METRICS* 193, 212 (Philip N. Napoli, ed., 2007) (citing PEW CTR FOR PEOPLE AND THE PRESS AND PRINCETON

These results were more than validated by a 2006 survey commissioned by the Consumer Federation of American and Consumers Union in which 82% of those surveyed “said that they still primarily get information about their communities from daily and weekly newspapers and TV and radio stations” rather than the Internet.⁶¹ And why do “Potemkin news operations”⁶² on the Internet rank far behind daily newspapers and radio and TV for the delivery of local news content? Internet critics say it is because “there’s no there, there”—no reporters, no original, investigative news content, just repetition of what news can be found elsewhere and almost always on the news pages of daily newspapers or on radio or TV.⁶³

This last point—questioning the Internet as a source of local news content—figured significantly in the Third Circuit’s decision to remand the FCC’s increased numerical media ownership limits based on its “Diversity Index,” which gave weight to the Internet as a source of viewpoint diversity. The court agreed with the petitioners that the FCC “gave too much weight to the Internet [as a source of local news] at the expense of television and daily newspapers.”⁶⁴ The court further explained that

[t]here is a critical distinction between websites that are independent sources of local news and websites of local newspapers and broadcast stations that merely republish the information already being reported by the newspaper or broadcast station counterpart. The latter do not present an ‘independent’ viewpoint and thus should not be considered as contributing diversity to local markets.⁶⁵

The court noted that any valid measure of diversity “should be based on media outlets that promote democratic and civic engagement, not on Internet sites that ‘may be useful for finding restaurant reviews and concert schedules,’ but fail to offer ‘the type of news and public affairs programming’ that public policies are supposed to promote.”⁶⁶

SURVEY RES. ASSOC., CABLE AND INTERNET LOOM LARGE IN FRAGMENTED POLITICAL NEWS UNIVERSE (Jan. 2004).

⁶¹ See Lieberman, *supra* n. 20.

⁶² *Id.* “Potemkin” comes from the term “Potemkin village,” meaning “something that appears elaborate and impressive but in actual fact lacks substance.” AM. HERITAGE DICTIONARY (4th ed. 2000), available at <http://www.bartleby.com/61/0/P0480000.html>. The word is derived from Grigori Aleksandrovich Potemkin who had elaborate fake villages built in order to impress Catherine the Great on her tours of the Ukraine and the Crimea in the 18th century. See *id.*

⁶³ See Lieberman, *supra* n.20.

⁶⁴ See Prometheus Radio Project v. FCC, 373 F. 3d 372, 404–05 (3rd Cir. 2004).

⁶⁵ *Id.* at 405–06.

⁶⁶ *Id.* at 407. See also ERIC KLINENBERG, FIGHTING FOR AIR: THE BATTLE TO CONTROL AMERICA’S MEDIA 273, 323 (2007). An associate professor of sociology at New York University, Klinenberg describes his polemical and anecdotal, but very well written and readable, investigative work, *Fighting for Air*, as “an accessible account of how and why the U.S. media has changed so dramatically during the past decade.” In it, he both “rounds up the usual suspects” of media consolidation such as the Clear Channel, Sinclair Broadcasting, and Tribune Company conglomerates, as well as describes “the emergence of an improbable social movement for media reform.” *Id.*

III. CONCLUSION

Woody Allen once quipped that “more than any other time in history, mankind faces a crossroads. One path leads to despair and hopelessness, the other to total extinction. Let us pray we have the wisdom to choose correctly.”⁶⁷ The choices facing the FCC on media concentration and ownership regulation may not be as dire and bleak. But one can still hope with Woody Allen as well as the authors in *Media Diversity and Localism* that the Commission has “the wisdom to choose correctly” for the future of both American media and democracy.

⁶⁷ See Woody Allen, My Speech to the Graduates, <http://www.quotationpage.com/quote/48.html>.

