

# The Diversity Policy Model and Assessment of the Policy: Debates and Challenges of (Media) Diversity

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## Abstract

Diversity is a central policy goal in achieving democracy, which has guided the Federal Communications Commission's action in media ownership regulation. Although the role of diversity in sustaining democracy is presumable, the diversity principle and regulatory concepts applied to communications policy seem far from reaching a practical consensus. Among the regulatory challenges to achieving diversity goals are controversy on a theoretical level, inconsistent measurement, the interplay of conflicting public interest motivations, and the changes in the media system. This article investigates the diversity policy within a broad context of legal, political, economic, and sociocultural grounds: It proposes an integrative policy model that offers a platform for the analysis of the policy implications and decisions, analyzes the existing policy imposed to achieve diversity goals, and suggests alternative ways of responding to current regulatory challenges for strengthening policymaking.

## Keywords

media diversity, media ownership, competition, marketplace of ideas, media law, media & society, mass communication, social sciences

## Introduction

Diversity is a central policy goal in achieving democracy, which has guided the Federal Communications Commission's (FCC) action in media regulation (see Report and Order and Notice of Proposed Rulemaking, 2003; Report and Order and Order on Reconsideration, 2008). Although the role of diversity in sustaining democracy is presumable, the diversity principle and regulatory concepts applied to communications policy seem far from reaching a practical consensus. Among the regulatory challenges to achieving diversity goals are controversy on a theoretical level, inconsistent measurement, the interplay of conflicting public interest motivations, and the changes in the media system. Critics, for example, have indicated that policies designed to promote diversity are contradictory due to the FCC's imprecision in defining its regulatory concepts and the limitations of diversity measurement (see Candeub, 2008; Hill, 2006; Ho & Quinn, 2009). An increasingly politicized policymaking process itself, struggling over ideological conflict (see Braman, 2003; Napoli, 2008; Napoli & Gillis, 2006), is also another problem associated with diversity policy. The transformed media environment due to technological developments and media convergence has eliminated much of the legal validity of the scarcity concept that has served as a fundamental justification for the FCC's public interest standard in broadcast regulation. The marketplace of ideas that has

replaced the scarcity rationale, and served a primary justification for ownership regulation is now under critical scrutiny due to its contradictory effects on diversity. Growing judicial skepticism about the FCC's economic antitrust-based decision in formulating the logic of public interest has opposed to the long-standing presumed link between ownership diversity and content diversity (see *Schurz Communications, Incorporated v. FCC and the United States of America*, 1992; *Lutheran Church-Missouri Synod v. FCC*, 1998).

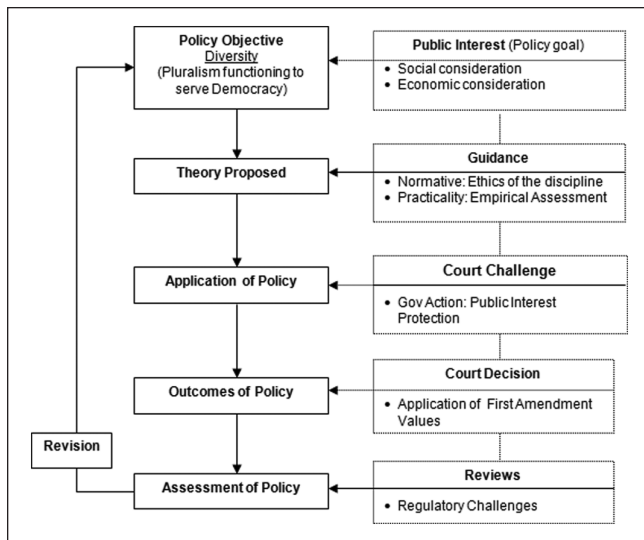
The discussion above reflects the conceptual, legal, and regulatory challenges the FCC confronts for the promotion of pluralism and diversity. In response to the issue highlighted, this article investigates the diversity policy within a broad context of legal, political, economic, and sociocultural grounds: It (a) proposes a policy model that offers a platform for the analysis of the policy implications and decisions, (b) analyzes the existing policy imposed to achieve diversity goals, and (c) addresses regulatory challenges. Derived from an overview of the analysis, it (d) suggests alternative ways of responding to current regulatory

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**Figure 1.** Media diversity policy paradigm.

challenges for strengthening policymaking. The proposed policy model is integrative, self-reflexive, and procedural in its nature, which provides several benefits: First, it reconciles the perceived theoretical and ideological schism in formulating the public interest, as it combines the benefits of economic development with social unity in fulfilling democracy. Second, it is flexible in responding to the current policy condition because the self-reflexive mechanism corrects and renews the ongoing policy system. Finally, it offers the grounds for communication research contributing to the policy process for its procedural step essentially involves various contextual analyses that in turn demands communication resources and research. See Figure 1 for the proposed model.

### The Policy Objective: The Public Interest Standard

One major challenge in the development of diversity policy stems from the competing principles of the public interest. The FCC's interpretation of the public interest mandate means achieving competition, diversity, and localism (Report and Order and Notice of Proposed Rulemaking, 2003; Report and Order on Reconsideration, 2008). Alas, these concepts are elusive, and difficult to measure. There is considerable conceptual overlap between localism and diversity, which makes it difficult to distinguish localism from diversity. More importantly, not all these values fit into the existing policy framework due to its deficiency in social and political evaluative criteria. While competition lends itself to the existing economic analysis, diversity and localism do not (Ho & Quinn, 2009). As history tells us, the failure of diversity policy is often a result of the FCC's vague definition of regulatory concepts of diversity, closely tied to the public interest standard.

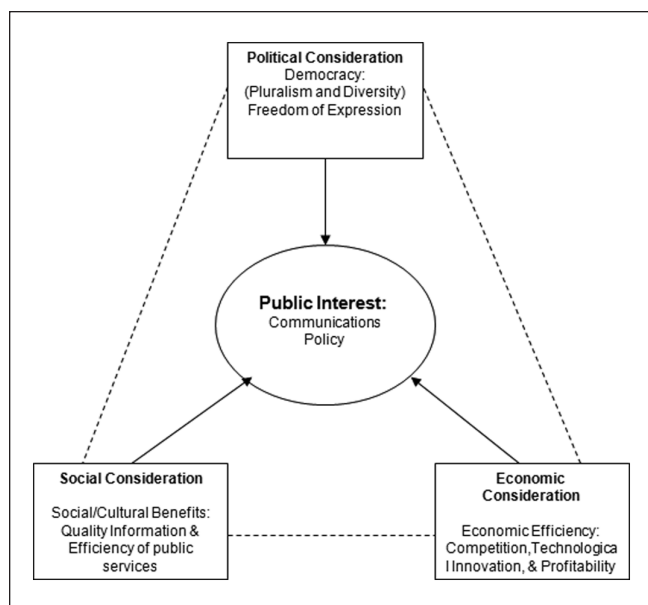
### Establishing the Public Interest Standard: Political, Social, and Economic Values

Media and communications policy is made for the *benefit of the public*. The public, according to John Dewey, is a social creation that is not biased toward government administrative goals nor individual freedom, but the product that reflects consequences of *social, political, and economic considerations* we all share (see also Aufderheid, 1999; Van Cuilenburg & McQuail, 2003, for the dimensions of the public interest). Although the public interest may take various forms, depending on what current national policy emphasizes and how a legal system operates in a society, the general components of public interest should encompass these three considerations, necessary for guiding media and communications policy.

The criteria defining political values are associated with the function of democracy, ensured by the adoption of the First Amendment: Pluralism and diversity are political goals, concerned with whether diverse ownership and content would cultivate informed citizenry for their meaningful participation in democratic public life. Social values relate to the social impact of media content in terms of cultural and social benefits; under this consideration, diversity concerns whether diverse viewpoints in media content foster socially desirable outcomes for the public needs. Economic values relate to the economic efficiency of technology, competition, and profits; under this consideration, diversity concerns whether diverse competition and media outlets provides an access for citizens' participatory democracy. Economic values, however, are more effective in facilitating pluralism than diversity. Understood by and large, the political premise of freedom of expression, such as democracy, has been enforced through the economic consideration of effective competition as well the social consideration of critical and substantive media content. Discerning the complementary function of the public interest is thus desirable for approving particular communication services and improving the policies while avoiding a potential political conflict, fueled by following the narrow logic in competing principles (see Figure 2).

### Diversity Policy Objective: Pluralism to Serve Democracy

Diversity as political pluralism is to achieve democracy. By creating diverse sources, and ideas (i.e., pluralism) through an open communication system (i.e., public sphere or marketplace), it attempts to facilitate genuine public debate by participation of well-informed citizens (i.e., democracy). Within this framing, diversity policymaking starts from stating a clear policy objective, that is, "creating pluralism to serve democracy." The critical relationship between media and democracy in a society has often been debated, primarily due to the presumption that media exercises a critical public



**Figure 2.** Dimensions of the public interest and media institution.

role in cultivating citizenship. Whether citizens take an active role in making a democratic decision largely hinges on the responsibility of media in a self-governing system. This raises a diversity inquiry into whether the current media system functions as a source of guidance for citizens' participation and deliberation in democracy, which ultimately guides the FCC's implementation of the public interest standard for the diversity policy.

## Theory Proposed: Guidance to the Policymaking

### *The Integrative Theory: Political Outcomes in Economic and Social Contexts*

Two major approaches to diversity revolve around the economic and social values of media's democratic performance: Each conceptualizes media diversity within separate domains and proposes divergent ways of envisioning audiences, namely, "citizens" and "consumers," respectively. Responding to such division, many critics have suggested the need for conceptual clarification in the study of communications policy (e.g., Braman, 2003; Entman & Wildman, 1992; Giddens, 2000; Meehan, 1981; Mullender, 2000; Streeter, 1990; Vick, 2006). Braman (2003), for example, pointed out that the failure of issue-oriented policy analysis is due to certain theoretical propositions that oversimplify contradictions and complexities of the negotiation held by policymakers. In a similar vein, Entman and Wildman (1992) criticized the lack of constructive discussion between the market economics and social value schools of thoughts and unwillingness to learn from the other's approach.

The proposed theory responds to the need for developing an analytical framework for diversity policy that involves the wider intellectual frames consistent to the public interest standard, and discerning complementary functions of social and economic goal in achieving political goal, democracy. Social and economic theories share common goals in the specific context of media regulation, such as pursuing liberty, pluralism, and diversity, although they differ in their preferred means of achieving these goals. The effort in conceptual clarification of the diversity principle, thus, should examine common goals as well as contentious issues developed from social and economic standpoints on the diversity policy.

### *Economic Approach: Empirical Claim and Efficiency of Competition*

The economic approach has its roots in market liberalism, dubbed the market economics. It maintains that the media should carry content that most appeals to consumers, and success of media performance is primarily measured by market behavior (see Candeub, 2008; Croteau & Hoynes, 2006; Miller, 2011; Shelanski, 2006). Entrenched in laissez-faire economics, the market economics proposes the benefits of the free market, advancing the neutral role of government due to its distrust of government. The market is more responsible to consumers than the state, thus can enhance consumer choices (Vick, 2006). By establishing a free market line, the economic approach legitimized deregulation policy (see Candeub, 2008; Curran, 2000; Hopkins, 1996; Vick, 2006). To that extent, the market theory offers an assumption that pluralism and diversity will flourish within a free marketplace.

The economic concept of market liberalism has been widely applied in the courts and ownership regulations, dubbed the marketplace of ideas metaphor. Accordingly, the marketplace of ideas has served as the theoretical underpinning of the diversity principle in the United States (see Candeub, 2008; Curran, 2000; Hopkins, 1996; Napoli, 1999; Vick, 2006) as it was introduced by Justice Holmes (1919) in his dissenting opinion in *Abrams v. United States*. The metaphor suggests that the best policy can be made out of the "competition of extensively various ideas" in an unregulated market, well reflected in the FCC's assumption that ensuring *antagonistic sources* would be instrumental to achieving diverse viewpoints for audiences.

In policy and juridical circumstances, empirical evidence takes an important role in justifying FCC's regulatory efforts. Economic analysis is inherently quantitative, and thus can estimate the causal mechanism involved in the issue by either proving or disproving the theory. Such an empirical assessment functions to narrow down a general claim of diversity to testable outcomes, and accordingly can generate pragmatic alternatives to the market reality. Historically, economic analysis has a large role to play in policymaking.

However, the empirical analyses of the economic approach alone do not effectively capture the democratic values associated with media content (i.e., diverse viewpoint cultivating citizenship). Although mass media policy has used various methods to serve the policy interests of market efficiency and democratic issues (Shelanski, 2006), democratic values within the economic approach have often been defined as pluralism satisfying popular demands rather than diversity. Moreover, the FCC has failed to provide substantial evidence to prove the nexus between liberalizing media markets and preserving deliberative democratic values. Consumers' ideas are often the opposite of the diverse intellectual activity and politically informed public body the marketplace of ideas suggests, as they tend to eschew challenging established notions (see Curran, 2000; Entman & Wildman, 1992). This illustrates the limitation of market economics in offering appropriate insights into diversity policy goals, and the need for incorporating a social approach to the diversity principle and policy development.

### *Social Approach: Moral Claim and the Media Content in Cultivating Deliberative Democracy*

The social-based theory, in general, pursues statism, egalitarian, and deliberative democracy (see Baker, 2007; Croteau & Hoynes, 2006; Curran, 2000; Entman & Wildman, 1992; Giddens, 2000; Mullender, 2000; Vick, 2006). Statism finds expression in the advocacy of government intervention for enhancing social values and protecting the public interest against the private market power. It purports that unregulated private market power is socially detrimental, and can be a threat to democracy, diversity, and freedom of expression; thus, it does not identify market efficiency as a primary goal of media policy (see Giddens, 2000; Mullender, 2000; Vick, 2006). Concerned with the inequality of market power, social advocates would argue that the decentralization of media ownership, for its own sake, should be a political goal (e.g., Baker, 2005, 2009; Croteau, 2003; McChesney, 1997, 1999). However, they also view the ownership restrictions relying on economic mechanism of antitrust law as failure in terms of connecting to any quantifiable social and political goals (see Candeub, 2008).

With an emphasis on deliberative democracy, promoting diversity is seen as facilitating an informed public discussion of important issues and rational-critical debates (see Shelanski, 2006). To achieve such goals, it underlines the media's obligation to pursue social goals as public resources over their professed organizational goals. Hence, diversity is assessed in terms of whether the media facilitate critical independent thought among citizens, information quality, and the social/cultural order in society, and whether policy can effectively help the media provide different viewpoints. Because of assuring citizens' informed judgments about public issues, the social approach meets the requirement for

deliberative democratic values of media content vital to achieve diversity. Unfortunately though, social values are often dismissed as externalities by market economics proponents because they are not easily quantifiable (see Baker, 2009; Entman & Wildman, 1992).

### **Application of the Policy: Government Action and Court Challenges**

The application to policy involves not only government regulations on behalf of the public interest, but also court challenges and judicial decisions about the constitutionality of proposed rules. The constitutionality of the rules and regulations, in this way, hinges on the government's logic to justify the public interest. The following briefly provides regulatory concepts of diversity defined by the FCC to increase the understanding of how the FCC uses them, and second examines the imposition of the regulations rules and the FCC's justifications for them.

### *Concepts of Diversity Defined by the FCC*

The FCC defined diversity as five distinctive yet interrelated concepts, namely, viewpoint, program, outlet, source, and minority and women ownership diversity (FCC, 2011; Report and Order and Notice of Proposed Rulemaking, 2003): Viewpoint diversity refers to the availability of media content reflecting a variety of perspectives; Program diversity refers to a variety of programming formats and content; Outlet diversity means that, in a given market, there are multiple independently owned firms; Source diversity refers to the availability of media content from a variety of content producers; Minority and female ownership diversity refers to encouraging minority and female ownership (Report and Order and Notice of Proposed Rulemaking, 2003, para 19-42). The first two concern content diversity while the later three concern ownership diversity. Insisting on the presumed link between ownership diversity and content diversity, the FCC has attempted to create viewpoint and program diversity through outlet, source, and workforce diversity. This explains that the FCC regulatory concepts center primarily on competition of ownership to achieve diversity goals.

### **Content Control: Fairness Doctrine—Political Viewpoints**

In spite of the First Amendment conflict, the content of broadcasting has been subject to censorship due to its legally distinctive nature; broadcasting can reach the general public and broadcasters are public trustees for the public. A primary example is the fairness doctrine, mostly linked to viewpoint diversity. The fairness doctrine reflects the public interest rationale for content restriction, allowing government



supervision of broadcasters' programming, mandating more diverse programming, and particularly political viewpoints (see "In Re Application of Great Lakes," 1929). The fairness doctrine-based content restriction was validated and constituted by firm establishment of the scarcity rationale in *Red Lion Broadcasting Co. v. FCC* (1969). Nonetheless, faced with First Amendment challenges, the public interest demand for media delivering diverse viewpoints does not seem applicable to an increasingly competitive economic environment. Accordingly, with its opinion in *Syracuse Peace Councils* in 1986, the FCC refused to enforce the fairness doctrine, and formally abolished it in 1987.

### **Ownership Regulations: Economic Analysis of Antitrust Law**

The FCC's efforts to achieve diversity goals have focused heavily on ownership structure, largely guided by the economic principles of antitrust law (see Connolly & Kwerel, 2007; Ho & Quinn, 2009). The ownership regulations involve the three areas: ownership of outlet (outlet diversity), ownership of programming (source diversity), and ownership of workforce within the distribution system (minority and female ownership diversity).

*From the cross-ownership rules to cross-media limit: Outlet and viewpoint diversity.* The FCC adheres to the presumption that outlet diversity is the most reliable means of promoting viewpoint diversity (Report and Order and Notice of Proposed Rulemaking, 2003). To preserve outlet diversity, the FCC has imposed various cross-ownership rules to prevent common ownership within the same market (e.g., newspapers–broadcaster cross-ownership and the television–radio cross-ownership). The public interest rationale for these rules was to protect the availability of viewpoint diversity, pertinent to editorial content, to local communities, closely linked to localism. Yet, the newspaper–broadcast cross-ownership rule was substantially relaxed and the television–radio cross-ownership rule was entirely eliminated (retained now due to a failure of justifying the new rules), based on the FCC's adoption of the cross-media limits in 2002. The Commission explained that there is no substantial record that indicates that the cross-ownership limits significantly protect a diversity of viewpoints (or localism) in those media (Report and Order and Notice of Proposed Rulemaking, 2003; Report and Order and Order on Reconsideration, 2008).

When the commission first proposed the newspaper–broadcast cross-ownership rule it was challenged in *FCC v. National Citizens Committee for Broadcasting* (1978). The court, however, held the validity of the challenged regulations, accepting the difficulty of defining and measuring viewpoint diversity (436 U.S. 793-815). Although it was conceded that the rulemaking record was inconclusive in establishing the connection between ownership limits and viewpoint diversity, the court recognized the need

for qualitative judgment on defining an elusive concept of viewpoint diversity. Nevertheless, the court began to take seriously the connection between them in the *Prometheus Radio Project v. FCC*, in which the court criticized the FCC's use of the DI to measure viewpoint diversity, and remanded it (Dissent by Chief Judge Scirica).

*Fin/syn rules: Source and program/viewpoint diversity.* The FCC's ownership regulation to ensure content diversity is also concerned with the ownership of program producers (i.e., source diversity). Based on the belief that increasing independent program suppliers furthers program and viewpoint diversity, the FCC imposed Financial Interest and Syndication rules (fin/syn). The fin/syn rules were originally adopted in 1970 to restrict the three established networks (ABC, CBS, and NBC) from owning monetary rights in syndicated programs while encouraging the bargaining power and profitability of independent program suppliers (see Review of the Syndication and Financial Interest Rules, 1995; Rosencrans, 1990). The public interest rationale for the fin-syn rules is to limit the networks' control over television programming and thereby encourage the development of a diversity program through diverse and antagonistic sources of program services (Review of the Syndication and Financial Interest Rules, 1995).

Notably, the rules have received substantial criticism. Along with changes in the media market, the networks, restricted from the syndication market, seemed unable to compete with the cable and video companies in terms of the price offered. The independent producers have tended to purchase inexpensive products from domestic syndicators rather than producing innovative and diverse television content. As a result, in 1983, the FCC proposed eliminating much of the fin/syn rules fueled by a deregulation climate. In 1991, after receiving extensive comments and conducting a hearing, the FCC relaxed certain aspects of the fin/syn, yet retained the revised fin/syn rules. On appeal, however, the 1991 decision was overturned by the United States Court of Appeals for the Seventh Circuit due to the failure of proving the nexus between the modified rules and diversity goals (Review of the Syndication and Financial Interest Rules, 1995). In *Schurz Communications, Incorporated v. FCC* (1992), Judge Posner criticized the logic of the public interest built on the FCC's long-standing economic antitrust foreclosures applied for enhancing diversity, and struck down the revised fin/syn rules.

*EEO rules: Workforce diversity and viewpoint diversity.* The Equal Employment of Opportunity rules (EEO) are an obvious example of the FCC's effort to create diverse viewpoints or programming through the ownership of the workforce within the distribution system. The EEO rules were designed to ensure that minority groups (racial, ethnicity, and gender based) have a fair chance of being employed in electronic media services to foster diversity in programming. Yet, in

*Lutheran Church-Missouri Synod v. FCC* (1998) the D.C. Circuit court criticized the FCC's logic of formulating the race-based rules, and rejected the FCC's ruling against the church. According to the court, the FCC did not clarify what exactly constitutes diversity of programming, and thus failed to establish a connection between the minority ownership and viewpoint diversity.

## Outcomes: Court Decisions and First Amendment Values

### *Scarcity Rationale: Constraint on Media Voices for Socially Desirable Media Content*

The legal question, raised by the court challenges, involves the validity of the primary justification for media regulations, which lends itself to different applications of First Amendment values to the diversity policy. It addresses the significant challenges in regulatory justification for achieving diversity goals. The scarcity rationale is the primarily legal justification for broadcast regulations, allowing government intervention to promote the First Amendment values for *the public* (see Krattenmaker & Powe, 1999; Spitzer 1989). The court imposed a legal presumption of distinctive treatments for different communications media for First Amendment purposes (476 U.S. 496), drawing on "the social impact of the media content." Democracy (i.e., diversity) is, thus, achieved through an adoption of the legal framework based on the normative principle that demands diverse programming or "socially desirable content," equally applicable to all "citizens."

However, the constitutional significance of the scarcity rationale was widely attacked during the convergence era that legitimized deregulation policy. The blurring media services, due to technological innovation and digitalization, goes beyond the ability of the broadcast model that is confined to single media legislation. In this way, it seems impossible for the Supreme Court to apply a distinctive legal framework to First Amendment issues, evidenced when the Supreme Court expressed doubts about continued reliance on scarcity, and the minimal control of government over broadcast programming in *Turner Broadcasting v. FCC* (1994). Consequently, the diversity goals envisioning social values and deliberative democracy, enforced within broadcasting, have been greatly undermined.

### *The Marketplace of Ideas: Constraint on Government Actions for a Robust Competition*

While the changing media landscape eliminated much of the scarcity in broadcast regulations, the marketplace of ideas has been a prominent guiding metaphor for ownership decisions. It has been primarily used for justifying economic antitrust laws, drawn upon the value of efficient market, responsive to the public needs. Democracy is thus achieved

through the First Amendment purpose that protects *a robust competition of multitude of media voices* against the government intervention, which in turn meets *the public needs*. Nevertheless, the courts threw the validity of the marketplace of ideas into doubt, calling into question a mere economic authorship over media structure with little regard to its connection to democratic values of content diversity, particularly viewpoint diversity (e.g., *Schurz*, *Lutheran Church*, *Time Warner*, and *Prometheus* cases). With an undercurrent of the demand for substantial proof to justify ownership rules, the courts discredited the marketplace of ideas. The question raised about the continued validity of the regulatory justifications addresses the critical demands for reframing the existing policy framework for an adequate implementation of the policy.

## Assessment of Policy: Reviews and Regulatory Challenges

Section 202 (h) of the Telecommunication Act of 1996 allows the Commission to periodically review its ownership rules (except the national television ownership limit) and determine whether any of such rules are necessary in the public interest as the result of competition (Report and Order on Reconsideration, 2008). The reviews of 1998, 2002 Biennial and 2006 and 2010 Quadrennial involve important policy issues of (a) the deregulatory climate governing the marketplace ideas, (b) the challenges in defining regulatory concepts in terms of competition, diversity, and localism, and (c) the limitation of the entire range of existing economic regulation to further diversity.

### *Deregulation Policy and Value of Monopoly*

The FCC's decisions within the 2002 Biennial and 2006 and 2010 Quadrennial Review Orders reflect their profound consideration of diversity at the local level or localism, and the increased provision of the benefits of common ownership. In 2002 Biennial Review and Order, the Commission significantly relaxed the cross-ownership limits with an adoption of the cross-media limits, derived from the Diversity Index (DI). In completing the 2006 Quadrennial Regulatory Review, the FCC further relaxed the 32-year-old ban on newspaper/broadcast ownership rules within the television market (Report and Order and Order on Reconsideration, 2008). The rules ban not only certain newspaper/broadcast cross-ownership combinations in the top 20 markets, but generally will apply to all other markets (Report and Order and Order on Reconsideration, 2008).

The ownership decisions, contained in 2002 and 2006 Orders, are based on the FCC's belief that the cross-ownership actually produces localism rather than harms competition; the newspaper-owned television stations tend to produce local news and public affairs programming (Report and Order and Order on Reconsideration, 2008, para. 15). The FCC's

consideration of the benefits of common ownership is also based on the assumption that the technological advancements support the operation of mainstream media companies delivering news and information to their local communities (see Report and Order and Notice of Proposed Rulemaking, 2003; Report and Order and Order on Reconsideration, 2008). The growing number of media outlets for news and information, and entertainment today provides more choices via nontraditional modes of media, such as cable, satellite television, digital transmission, and the Internet (Report and Order and Notice of Proposed Rulemaking, 2003; Report and Order and Order on Reconsideration, 2008).

The FCC's significant liberalization of the media ownership was not a simple modification of the rules, but rather a significant change in media structure, which allows substantial concentration in the national and local television markets. The ownership decisions encompass the benefits of a free market, provisioned by values of monopoly in creating multiple media outlets or voices for consumers. In fact, the significant technological advancements have fully developed economic sectors around electronic media and telecommunications since the 1970s, leading to vertical integration of the previously separated communication industry, known as convergence (see McQuail & Siune, 1998; Miller, 2011; Vick, 2006). With increased provisions of economic viability of communication services, the value of monopoly has been reconsidered. The market liberalists and economists advanced the benefit of monopoly and contrived competition among corporate media, necessary for increasing national compatibility within globalized market.

Nevertheless, the commonly expressed concern raised by critics indicates a gradual decline of the public accountability of media and rational debates among citizens (see Miller, 2011). Today's highly competitive media system with increased news outlets hasn't yielded a sufficient amount of public issues and diverse news (see Entman, 2003; Miller, 2011). One of major caveats is that more outlets produced by new media do not necessarily offer new media content when "broadcast TV programs are recycled for cable channels, and newspaper and cable news content is repackaged for the internet, and so on." (Croteau, D. Federal Communications Commission Broadcast Ownership En Banc. Virginia, 27 February 2003. [http://transition.fcc.gov/ownership/enbanc022703\\_docs/Croteau.pdf](http://transition.fcc.gov/ownership/enbanc022703_docs/Croteau.pdf)) Relevant research also indicated that media diversity has declined where scarcity has been more present after the passage of the Telecommunication act of 1996, in broadcasting and local media (e.g., Croteau, 2003; Einstein, 2004). The decline of space for new programs and for public services and the creation of polarized online discussions were also true in spite of a multichannel environment (see Campbell, Martin, & Fabos, 2012; Dahlberg, 2007).

### Defining Regulatory Concepts

In the 1998 Biennial Review, the cross-ownership limits of cable and broadcasting were vacated by the D.C. Circuit due

to the FCC's inability to precisely define what constitutes a voice for diversity. For the constitutionality of the proposed ownership rules, the Commission used the DI (Report and Order and Notice of Proposed Rulemaking, 2003) to measure viewpoint diversity at the local market. The DI was designed to measure viewpoint diversity by giving insight into consumers' reported preferences for their media sources of information and news (see *Prometheus*). It weighs the market share of various media outlets in local media markets for antitrust purposes. Nevertheless, the DI does not directly measure, nor sufficiently measure viewpoint diversity. With its economic scheme, it measures the number of participants rather than to coherently measure viewpoint diversity (see Candeub, 2008; Hill, 2006). The court found that DI is not clearly linked to viewpoint diversity, citing in its remands that the Commission irrationally assigned outlets of the same media-type equal market shares, and inconsistently derived the cross-media limits from its DI results (*Prometheus*).

On the issue remanded by the Third Court in *Prometheus*, the FCC commissioned the empirical research, namely, the Media Ownership Study that informed the 2006 Quadrennial Review of the ownership policies. Yet, the broad and inconsistent definition of local and localism renders contradictory results from the research, making its application questionable. The definition of local identified by the FCC was based on a Designated Market Area (DMA) as determined by Nielsen Media Research, which has boundaries of geographically distinctive television viewing areas. For example, the FCC's previous research conducted by Alexander and Brown (2004) established the necessarily condition for measuring localism where viewpoints or local stories take place within DMA. In contrast, under the Media Ownership Study of 2006, localism does not appear to be precisely delineated from DMA, expanding from geographically bounded definition of local within state to a broader one across state (e.g., Milyo, 2007). Furthermore, a broad definition of localism resulted in inconsistency in defining the local content and news. According to the FCC, localism is broadly defined as the level of responsiveness of a station to the needs of its local communities and local news and quality. Given such a definition, any story would be considered a local content. The inconsistency of defining local content is apparent when Milyo's (2007) study included sports and weather in the component of local news, which has been excluded in the FCC's previous research (e.g., Alexander & Brown, 2004). Of course, a broad definition of local and localism inevitably overestimates the local content. More importantly, what makes the FCC's research unsustainable is that only a few studies respond to the intention of the court's demand for precisely defining viewpoint diversity. For instance, Milyo's (2007) study appears to be the only one performing content analysis that directly measures local content and the political slant of local television news among the others of the Media Ownership Study.



### *Limitation of Economic Regulation for Democratic Values*

The use of the DI to measure viewpoint diversity and inconsistency of measuring localism indicate the FCC's inability or unwillingness to define viewpoint diversity. It also explains the FCC's assumption that viewpoint diversity could be empirically established by a justification for economic effects-based competition policy. Approached empirically though, the existing economic analysis is not effective to measure political or democratic values of viewpoint diversity. As Baker (2009) noted, the problem with viewpoint measurement is its reliance on what is easy to measure rather than what is important. Similarly, Entman and Wildman (1992) argued that democratic values of media diversity do not seem to render economic analysis. Along with scholarly criticism, growing judicial skepticism about viewpoint diversity clearly points out an inclusiveness of the entire range of the existing economic regulations to further democratic values of diversity. In retrospect, the FCC would continually confront difficulty in making its regulation constitutional in the future unless it provides substantial empirical backing for the presumption that diversity of ownership is an essential proxy for content diversity or viewpoint diversity.

### **Revision**

#### *Policy Objectives: Government Responsiveness to the Major Problem*

The policy analysis in the previous sections addresses insufficient government responsiveness to the major problem with the unpredictable impact of a new media landscape on the marketplace. Instead of balancing the potentially negative effect of ownership concentration on diversity against the economic viability of struggling media outlets, the policy tends to leave out the democratic value of diversity, insofar as the assessment of diversity has relied on the economic impact of the marketplace. In opposition to the democratic purpose of antitrust law, its economic analysis has provided justification for significant relaxation of ownership. Although the First Amendment principles for unprecedented media convergence inherently value the liberalization of ownership undermining the traditional regulatory rationale, it is important to recognize the courts' shifting concern from the structure of the communication market to the content of communication, and government is responsible to that content contributing to democracy (see Krattenmaker & Powe, 1995). With this regard, two possible responses the FCC could make to the given regulatory challenges are (a) developing a more sophisticated and rigorous measure of viewpoint diversity, aimed at democratic values, and (b) diversity of ownership as a separate political goal from viewpoint diversity.

### *Metrics of Viewpoint Diversity: Input of Communication Research Into the Policy*

The regulatory challenges address the need for empirical evidence about viewpoint diversity, yet existing quantifiable measures lack in accounting variables that influence outcomes of viewpoint diversity. More critically, a substantial effort to increase analytical resources has been degraded in spite of increasingly evidence-driven policymaking demanded by current law (see Napoli, 2008). The perceived gap between the FCC's rationale for economic regulations and judicial interpretation of First Amendment values of diversity addresses the need for a collaborate effort of policymakers, legal, and communication scholars in answering the constitutional questions and capitalizing the norms for an empirical assessment of diversity. Indeed, the input of communication research into the policymaking is valuable in responding to the courts' increased requirement for convincing empirical justification for viewpoint diversity. A number of scholars provide the value of communication research that provides informational inputs to policymaking (e.g., Braman, 2003; Napoli, 1999).

To develop a more sophisticated and meaningful metrics of viewpoint diversity, diversity inquires should entail the complementary functions of (a) deliberative democracy that ensures substantive ideas and information for cultivating informed citizenry and (b) participatory democracy that encourages citizens' engagement in the democratic process. The norms for assessing viewpoint diversity thus encompass the inquiry into how media democratic system affects informed citizenry, and in turn how citizens' widespread habit of media use affects their democratic decisions. Such metrics of viewpoint should be drawn from a collective understanding of normative and empirical inferences developed and contextualized within and across economic and social disciplines that propose reasons for value-laden inquires as well as statistical analysis, respectively.

### *Normative and Empirical Inferences*

Unlike the critical social approach that challenges the uncritical acceptance of empirical findings and proposes an unquantifiable nature of social values with its normative approach, social scientists have empirically or statistically measured "social values" with its positive approach. Inversely, statistical analysis quantified by the market economics is not necessarily drawn from positive inferences, as its conceptual root is grounded in Marxist's critical perspective that proposes normative social justice based on class analysis. Moreover, contemporary economic approaches have imposed a critical role of government to attain the desired democratic needs, which is opposed to the classical market approach (see Van Cuilenburg & McQuail, 2003). Understanding such complexity of theoretical and methodological propositions in terms of democracy, developed within and across the social and



economic field, is important to avoid theoretical schism and ideological conflict that often hinders developing a comprehensive and schematic assessment of diversity. In other words, two democratic values of diversity, such as deliberative and participatory democracy, should be explained from the interdisciplinary interplay between normative and empirical inquiries developed across a variety of disciplines without generalization of each approach.

*Deliberative democracy: Political diversity reflected in media content.* The FCC's definition of viewpoint diversity and various approaches to it have involved these two democratic values stated above. Traditionally, as reflected in *Red Lion*, and enforced through the fairness doctrine, viewpoint diversity would measure "political endorsement." Later, as stated by Hundt (1996), the measure of viewpoint diversity involves "editorial perspective" or editorial content. Most recently, the FCC in the 2003 Report and Order states that viewpoint diversity is most easily measured through "news and public affairs programming," concerning political ideas and information necessary to guide the cultivation of rational deliberation between citizens. These tell that the norms of viewpoint diversity underline deliberative democratic values represented in media content, which affects the robustness of democratic participation of citizens by increasing political knowledge or ideological viewpoints. Under this direction, many researchers have developed variables relevant to political endorsement, and editorial perspectives and positions in news and public affairs programming in measuring viewpoint diversity (e.g., Entman, 1989; Halavais, 2007; Ho & Quinn, 2009; Miller, Goldenberg, & Erbring, 1979). The variables that involve such deliberative democratic values of viewpoint diversity are

- Newspaper or broadcast content based on political endorsements
- Counts of time and space allotted to political candidates in broadcast.
- Political content (liberal vs. conservative positions) of news articles offered by newspaper editors and broadcasters
- Word frequencies in editorials and news article

Viewpoint diversity reflecting deliberative democracy is critical to cultivate well-informed citizenry; thus, their participation in democracy is accountable. The scholarly criticism questioning the reliability of viewpoint diversity stems from the deficiency of critical social values of deliberative democracy in its measurement, which is closely linked to the methodological flaw of the DI that measured the number of participants in a market (number of media outlet) rather than substantive viewpoints. Continual efforts in capitalizing and advancing norms for deliberative democratic values of viewpoint diversity are critical to empirically assessing the social benefits of media content.

*Participatory democratic values: Survey of citizens and use of media.* Viewpoint diversity extends its definition to participatory democracy that accentuates the citizens' participation in their democratic public life. Technological advances have greatly increased citizens' active participation in public issues and democratic decisions through an interactive medium, namely, the Internet. The emphasis of participatory democratic values of viewpoint diversity inherently involves audience research, such as surveying citizens or ethnographic inquiries into citizen's information processing through various mediums. The norms for viewpoint diversity in this approach involve access for civic engagement in democratic decision via news and information served by various media outlets (see Braman, 2007; Horwitz, 2005; Waldfogel, 2007). The citizens' right to receive a diverse range of ideas through guaranteed access has been understood as a more encompassing notion of the freedom of communication system and is a central principle of diversity.

It is, however, important to note that the market approach to participatory democracy has measured viewpoint diversity based on media reflection of public demands with little regard to how their demands fulfill democratic ideals. However, the public demands are not necessarily equivalent to the public needs in their democratic decisions. Emphasized earlier, the literature supports that audiences' demands are popular rather than intellectually diverse. Thus, measuring political dimension of viewpoint diversity in participatory democracy should entail the inquiry into whether citizens' response to or use of media information (i.e., citizens' participation) through various mediums (i.e., access offered by media outlets) affects their public or democratic decisions. Considerable research in the communication field has addressed this diversity inquiry (e.g., Braman, 2007; Dalton, Beck, & Huckfeldt, 1998; Gunther, 1992; Horwitz, 2005; Napoli, 2007; Waldfogel, 2007). The variables that potentially measure such participatory democratic function are

- Citizen's public competence or knowledge that affects civic engagement in political issue and public decision
- Citizens' education level that affects information processing in terms of political issue
- Cultural or demographic aspect, including racial, gender, and age background that affect their participation in political issue and
- How these variables affect their particular use of mediums and its relevance to democratic decisions.

### *Diversity of Ownership as a Separate Goal From Viewpoint Diversity*

Developing objective and meaningful metrics of viewpoint diversity is necessary and should be a primary goal in academic research because such an effort has its own

intellectual rigor. But, particularly, in times of increased judicial skepticism about viewpoint diversity and empirical justifications for regulations, the FCC inevitably faces methodological challenges. Even if more rigorous and advanced methodologies of viewpoint are developed within and across various disciplines, ongoing debate on its conceptual elusiveness and subjectivity is more likely to exist as a result of the contradictory effects of the economic antitrust law on diversity. Dealing in a practical manner, there seems no greater chance that the FCC would satisfy the court's critical demand for objective and scientific proof for establishing the connection between ownership diversity and viewpoint diversity, thereby continually hindering the government responsiveness to media's democratic performance. If this is the case, an alternative way of countering such struggle in regulations is setting diversity of ownership as a separate goal from viewpoint diversity. Put differently, the FCC may simply make ownership diversity by itself as a political goal (consideration reflected in the 2002 Biennial Review). Enforcement of antitrust law, in this way, is preserving democratic values of not content diversity but ownership diversity in a First Amendment principle.

The proposition of decentralizing ownership is not a new concern. Grounded in normative concern, numerous media scholars have addressed the danger of ownership concentration. For example, McChesney (1997, 1999) proposed reform of media structure to affirm the democratic function of media. He argues that concentrated corporate control is detrimental to any notion of participatory democracy, yet the First Amendment has provided an exclusive shield for corporate media. Croteau (2003, Croteau & Hoynes, 2006) addressed the potential danger of corporate media power that undermined democracies deemed in the public interest, thus the relaxation of ownership would reduce diversity in terms of quantity and quality. Baker (2009) also provided reasons for decentralized ownership regardless of the contradictory effect of antitrust law on viewpoint diversity. The commonly expressed concerns, addressed by these scholars are that concentration of ownership

- would reduce quality diversity, journalism, cultural pluralism in commercial media content;
- would hinder informed public participation or distribution of citizens' voices with the democratic public sphere;
- would undermine democratic value of egalitarian premise in sharing political power;
- would lead to demagogic political power, failing to serve watchdog function.

Implementing diversity of ownership as a separate political goal from viewpoint diversity would avoid burdensome scrutiny as a result of its content neutral restriction. This approach, while encouraging government responsiveness to media democracy, may also be less competing against the

courts' interpretation of the First Amendment values than approving its connection to viewpoint diversity.

## Conclusion

Media diversity is central to democracy, through which the First Amendment is expressed and promoted by specific policies. In the goal of greater precision of the diversity principles, and of implications and decisions of the diversity policy, this article proposed an alternative policy model, acknowledging the social, economic, and political schisms in fulfilling the goal of media diversity. The policy model attempted to establish the policy objective, that is, creating pluralism of outlets, ownership, and choices of people to serve democracy, such as diversity of media content to cultivate citizenship. The predicable connection between pluralism and diversity, in this way, should not be overlooked. The theoretical underpinning of media diversity proposed in the article entailed the wider intellectual frames consistent to the public interest. With the analysis of the integrative function of market economics and social values of media diversity and desirable outcomes on their own, it attempted to avoid oversimplification of complexities existing in the concept of media diversity. Clearly while the empirical analysis of the economic approach can be appropriate to measuring the pluralistic value of competition, the critical analysis of the social approach is equally important to assess the democratic value of media content that can cultivate intellectual activity and politically informed public body.

The application of diversity policy involves judicial decisions about the constitutionality of proposed rules and regulations. The clarification of regulatory concepts of media diversity was attempted to understand the FCC's logic to justify the public interest for preserving the competition of outlets and ownership, and diversity of content (i.e., viewpoint diversity). The major regulatory challenge the FCC has faced was the failure to establish the substantial connection between competition and diversity closely connected to localism. The improvement of the FCC's use of the DI to measure viewpoint diversity is thus critical to justify the public interest rationale. Two regulatory justifications historically used for achieving diversity goals were the scarcity rationale and the marketplace of ideas, each of which renders different applications of legal framework to First Amendment issues. The shift from the scarcity rationale to the marketplace ideas due to the changing media landscape consequently undermined social values of media content while justifying economic antitrust laws designed to protect ownership competition. Hence, the continued validity of the marketplace of idea for promoting viewpoint diversity is largely questionable.

The critical analysis of the FCC's periodical review of the ownership rules and regulations raised important policy issues, such as the continual decline of media diversity fueled by deregulation, the challenges in defining regulatory

concepts, left poorly defined, and the limitation of an entire range of existing economic regulations for promoting democratic values of viewpoint diversity. The potential revision of the existing policies precisely responding to these problems is a key factor in effective policymaking. For that reason, the article suggested developing a rigorous assessment for measuring viewpoint diversity strengthened by entailing the complementary function of deliberative and participatory democracy to ensure substantive and critical content for rational deliberation, public participation, and citizen empowerment rather than diversity policies serving as mere rhetorical tools for justifying market motivation of corporate media. With the increased attention to the current media ownership, which is heavily concentrated, the article finally suggested implementing diversity ownership as a separate political goal from viewpoint diversity. This attempt may eschew the recurring problem of equating competition of ownership with diversity of media content.

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