Refusing to Play by the Rules: A Political Economic Analysis of Broadcasters' Sidecar Agreements

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REFUSING TO PLAY BY THE RULES: A POLITICAL ECONOMIC
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ABSTRACT

In 2013, Gannett Company, Incorporated acquired the Belo Corporation and its twenty broadcast television licenses (Gannett.com, 2013b). However, for seven of these television stations, outright ownership by Gannett would be in direct violation of the Federal Communications Commission’s (FCC) newspaper broadcast cross-ownership rule (NBCO) and the local television ownership rule, also referred to as the duopoly rule (Turner, 2014). To retain control, if not outright ownership, of these stations, Gannett entered into Joint Sale Agreements (JSAs) and Shared Service Agreements, also known as sidecar agreements, with Sander Media and Tucker Media Management, which allowed Gannett to circumvent the NBCO and duopoly rules (Malone, 2013). Specifically, the agreements concerned seven television stations in five Designated Market Areas (DMAs): Phoenix, Arizona; Tucson, Arizona; Louisville, Kentucky; St. Louis, Missouri; and Portland, Oregon.

These DMAs raised concerns in terms of the NBCO rule and the duopoly rule because Gannett already owns and operates either a top four broadcast television station or a major daily newspaper in these areas, which critics suggest would severely impact the number of unique voices in each DMA. The research questions that this thesis addresses include: how did sidecar agreements gain traction as a business practice for broadcasters despite the NBCO and duopoly rules? How are the sidecar agreements realized specifically between Gannett, Sander, and Tucker? And, how do the sidecar agreements allow Gannett to exert undue influence on Sander and Tucker? Ultimately, this research will demonstrate the importance of the NBCO and duopoly rules in protecting the democratic function of the media.
CHAPTER ONE

INTRODUCTION

On June 13, 2013, the Belo Corporation announced its acquisition by the Gannett Company, Incorporated (Gannett.com, 2013a). Included in the deal is the transfer of Belo’s twenty broadcast television licenses to Gannett; however, for seven of these television stations, outright ownership by Gannett would be in direct violation of the Federal Communications Commission’s (FCC) newspaper broadcast cross-ownership rule (NBCO) and the local television ownership rule, commonly referred to as the duopoly rule (Turner, 2014). In order to circumvent the NBCO and duopoly rules, Gannett and Belo agreed to divest six of the broadcast television stations to Sander Media and one broadcast television station to Tucker Media Management (Malone, 2013). To retain control, if not outright ownership, of the stations, Gannett entered into Joint Sale Agreements (JSAs) and Shared Service Agreements (SSAs) with Sander and Tucker. Specifically, the agreements concerned seven television stations in five Designated Market Areas (DMAs): Phoenix, Arizona; Tucson, Arizona; Louisville, Kentucky; St. Louis, Missouri; and Portland, Oregon (Federal Communications Commission, 2013a). These DMAs raised concerns in terms of the NBCO rule and the duopoly rule because Gannett already owns and operates either a top four broadcast television station or a major daily newspaper in these areas, which critics suggest would severely impact the number of unique voices in each DMA (Turner, 2014; See also Yanich, 2011; Yanich, 2014).

The outright ownership of these broadcast television stations is not being contested – Gannett, on paper, does not have ownership of the stations discussed. Instead, Gannett maintains and retains de facto control of these stations in a way that limits the number of unique voices in these DMAs through sidecar agreements, which are agreements between competing broadcasters.
to provide services, programming or support (Reed, 2010). These types of agreements are not unique to the Belo-Gannett deal, but instead appear to be a systemic loophole to the NBCO and duopoly rules. As documented by Free Press, sidecar agreements, are also utilized by Nexstar Broadcasting Group, Raycom Media, Tribune Company, and Sinclair Broadcasting (Turner, 2014). This thesis attempts to answer how these sidecar agreements gained traction as a business practice and the extent to which the sidecar agreements between Gannet, Sander, and Tucker violate the goals of the NBCO and duopoly rules.

Setting the Stage

Since 1975, FCC cross-ownership rules, such as the NBCO and duopoly rules, have prevented common ownership “by a single entity of a daily newspaper and television or radio broadcast station operating in the same local ‘market’” (FCC.gov, n.d., para. 4). Because, as stated by Eggerton (2012), too few controlling too much media undermines democracy, especially in terms of localism, diversity and competition, which the Commission has determined to be the public interest. According to Baker (2007), the health of democracies “depends on having a free press” (p. 5; See also McChesney, 2004). Yet this claim becomes problematic in a society in which media owners function primarily to produce commodities for profit, regardless of the democratic value of the media. Furthermore, despite the avowed goal of maintaining a competitive marketplace, within American capitalism there is an “inevitable tendency for markets to become concentrated” (Wasko, 2005, p. 34). This trend toward concentration is inherent to capitalism because competition drives down prices for the consumer which negatively impacts profits; subsequently, to increase profits it is necessary to reduce competition and increase concentration. As stated by Bettig and Hall (2012), “media concentration is an ongoing trend that follows the predominant tendency within capitalism toward centralization of
economic power in the hands of oligopolies” (p. 18). This concentration of economic power is detrimental when it also places the power of the media in the hands of just a few media owners. Therefore, cross-ownership rules are important because they attempt to ensure that “communities have access to the greatest number of independent sources of news and information” (Karr, 2014, para. 9).

In the United States broadcast services utilize airwaves that are legally owned by the public, and as such, the FCC grants licenses to television stations to serve communities by offering diverse, local news that meets the interests and needs of the citizens in a community. In a democracy, the media should function as a rigorous watchdog of the powerful and those who wish to be powerful; this serves to inform citizens and to expose corruption (McChesney, 2004). To fulfill this function, the media need ownership restrictions, like the NBCO and duopoly rules, to encourage competition so that concentrated media ownership cannot negatively impact the democratic function of the media. Because, as explained in more detail in chapter three, the media control and shape citizens’ access to information that is necessary for democratic participation.

Currently the Commission evaluates a cross-ownership combination “on a case-by-case basis to determine whether it would be in the public interest – specifically, whether it would promote competition, localism and diversity” (FCC.gov, n.d., para 4). To determine whether or not a proposed combination would be in the public interest, the Commission relies on a set of presumptions. The first presumption is predicated on the size of the community affected. In the top twenty largest markets, as defined by Nielsen’s Designated Market Areas (DMAs), “the FCC presumes that a combination of a newspaper and a radio station is in the public interest” (FCC.gov, n.d., para. 5). Additionally, the Commission presumes that common ownership of a
newspaper and a television station is in the public interest when the television station is “not ranked among the top four stations in the DMA” and when “at least eight independently owned major media voices (major newspapers and/r full-power TV stations) would remain in the market following the transaction” (FCC.gov, n.d., para. 6).

For smaller DMAs not in the top twenty, the Commission presumes that the combination would not be in the public interest (FCC.gov, n.d.). However, waivers may be obtained by DMAs ranked twenty-one and smaller if “the newspaper or broadcast station is ‘failed’ or ‘failing,’ as defined in longstanding FCC rules; or if the proposed combination results in a new sources of a significant amount of local news in a market” (FCC.gov, n.d., para. 7). The logic here is that a failing news source should be saved because local communities need news sources that keep citizens informed of national and local news so that they can participate in the democratic process. Or, if the combination results in a significant source of news for the community, then that community’s citizens would benefit from increased new coverage.

In addition to these presumptions, a proposed combination is further subjected to a four-factor analysis to determine whether or not the combination is in the public interest. The four factors include whether the combination will increase the market’s amount of local news, the extent to which each media outlet involved can exercise independent news judgment, the amount of concentration already present in the DMA, and the financial status of the media outlets (FCC.gov, n.d.). The duopoly rule refers to limited ownership of multiple television stations in a DMA. Formally referred to as the Commission’s Local TV Multiple Ownership rule, the duopoly rule states that an entity may own up to two television stations in a DMA if the service areas of the stations do not overlap or if “at least one of the stations is not ranked among the top four stations in the DMA (based on market share), and at least eight independently owned TV
stations would remain in the market after the proposed combination” (FCC.gov, n.d., para. 12). This rule in particular functions to prevent consolidated ownership of television stations in a single community because a concentrated media industry is damaging to a healthy democracy, for citizens need to be informed and have access to a diverse number of sources in order to make informed political and economic decisions. When one entity controls most, or all, of the news outlets in a single community, that corporation can exercise undue influence on the information that citizens in that community have access to. Baker (2007) points out that dispersed ownership creates democratic safeguards that prevent this kind of influence from negatively affecting public discourse.

The JSAs and SSAs that Gannett holds with Sander and Tucker are an example of what Yanich (2014) refers to as “covert consolidation:” these agreements “violate both the spirit and the letter of the laws that limit ownership” (p. 161). These agreements contribute to the negative effects that consolidated media ownership have on media content because even though the sidecar agreements do not allow for direct, legal ownership, they do allow for one broadcaster to make decisions, about programming and advertising for example, that should be left to the licensee. Such negative effects include less diversity in news and minority affairs programming; less critical examination of both the media industry and of parent companies; an emphasis on infotainment, soft news, reality programming and human interest stories; news as just a product in the race for increased profits; and branding innovations hide the decline in information diversity and distinctiveness (Bennett, 2012; See also Baker, 2007; McChesney, 2004; Yanich, 2014). Similarly, according to Napoli (2001), the FCC and the U.S. Congress have restricted these concentrated ownership practices in national and local markets because consolidated ownership results in homogenized content and decreased diversity of political and social views.
Furthermore, Wasko (2005) points out that a concentrated media industry leads to poor quality and significantly reduced quantity of news media and tabloidization of the news. Turner (2014) states that by approving deals like Gannett’s with Sander and Tucker, the FCC is perpetuating “a system that places private profits above the public interests and keeps one of our most valuable natural resources – the airwaves – in the hands of a few politically well-connected companies” (p. 44). Therefore, in order to minimize or restrict these negative effects, the FCC needs to enforce its NBCO and duopoly rules and address how sidecar agreements are evading these rules.

SSAs and JSAs are evident in almost half of the television markets in America (Yanich, 2014). Yanich (2014) concludes that these agreements were “implemented to increase the bottom line” and that “we will see more content that makes that possible – infotainment that passes for the news that a democracy requires for an informed citizenry” (p. 173). Verveer (2014) adds that these agreements do lead to “higher revenues and to lower costs for the stations involved;” however, it is also evident that these arrangements undermine the values of competition, localism and diversity (para. 5). The service agreements that Gannett established with Sander and Tucker come from the “sidecar business model,” which involves a dominant and weaker broadcaster in the same market (Verveer, 2014, para. 1). According to Phil Verveer (2014), the Senior Counselor to the current FCC Chairman Tom Wheeler, the primary benefits this model provides are overcoming the rules that are designed to promote, competition, diversity, and localism, and the increase of profits to the broadcasters involved. The sidecar business model typically has three components: “(1) a joint sales agreement (JSA); (2) shared services agreements (SSAs); and (3) special financial arrangements” (Verveer, 2014, para. 2). JSAs are responsible for addressing advertising revenue, and Verveer (2014) states that usually this agreement entitles the
dominant broadcaster to take over the ad sales of the weaker broadcaster to “raise the average per unit price they receive” (para. 3). This means that the dominant broadcaster has the ability to broker the advertising sales for the weaker broadcaster. Therefore, entering into these agreements creates antidemocratic power dynamics between the broadcasters, and it becomes difficult to count the weaker broadcaster as an independent media voice.

Like the JSAs, the SSAs are intended to increase profits. The SSAs address the “cost side of the broadcasting business” (Verveer, 2014, para. 4). This type of service agreement helps the companies operate on economies of scale to reduce costs and increase profits. This is achieved through “the sharing of talent, other human resources, and hard assets” (Verveer, 2014, para. 4). For example, it is cheaper for the companies to share these resources by just hiring one news director rather than two or to “maintain one studio rather than two” (Verveer, 2014, para. 4). How these arrangements are realized, which will be explained in more detail in Chapter Five, demonstrates that these sidecar agreements “undermine the values of competition (whether measured in terms of advertising prices, independence of programming, or rivalry for viewers)” and undermines “diversity (because the two stations operate as one entity rather than two, thus raising barriers to entry to broadcast ownership for independent and potentially underrepresented groups)” (Verveer, 2014, para. 5). The third component of sidecar arrangements is the special financial arrangements. These arrangements typically “demonstrate beyond any doubt the dependence of the weaker station on the dominant station,” and they “are designed to avoid triggering the Commission’s attribution rules” (Verveer, 2014, para. 7). These agreements often include loan guarantees, and in combination with the JSAs and SSAs, they “deprive the licensee of its economic incentive to control programming” (Verveer, 2014, para. 7).
Ultimately, what is important to acknowledge about these service agreements is that they are “not ownership arrangements, but they stipulate a set of conditions in which the parties share fundamental aspects of the operation of the station” (Yanich, 2011, p. 27). These arrangements offer media owners the ability to circumvent the NBCO and duopoly rules. Effectively a loophole to the cross-ownership rules, these arrangements offer practical, if not legal, ownership of the weaker broadcaster by the dominant broadcaster. According to Karr (2014), these arrangements “are used to evade the FCC’s ownership rules... to form otherwise illegal duopolies between two top-four ranked stations in 78 markets” (para. 9). Although they do not outright violate the NBCO and duopoly rules, JSAs and SSAs are being used to consolidate ownership of the media by reducing the number of unique voices in a community.

As a result, the FCC needs to address the ways companies like Gannett have managed to circumvent the NBCO and duopoly rules, specifically through JSAs and SSAs. This kind of wheeling and dealing is not in the public interest, the only interest the FCC is required to uphold, as these sidecar agreements further concentrate the media industry, reduce the number of unique voices in communities, and do little to encourage localism, competition and diversity. Overall, the goal of this research is to demonstrate how these sidecar agreements are being used to circumvent the NBCO and duopoly rules and how evading these rules is detrimental to the public interest, in terms of localism, diversity and competition. Therefore, media ownership matters because, as explained in more detail in chapter three, in a democracy the structure should “be consistent with respect for citizens’ equal claim to be recognized as part of the self-determination process” (Baker, 2007, p. 6). And since political economy of media is concerned with how the media “reinforce, challenge, or influence existing class and social relations,” understanding the
impact of media ownership is an important question for political economists of media (McChesney, 2000, p. 109).

Outline of Chapters

This research will utilize various types of documents to examine the sidecar agreements used by media companies in the United States. Several documents produced by the FCC, such as news releases, rule adoptions, and the actual sidecar agreements between Gannet, Sander, and Tucker. In addition, popular press and scholarly research will be examined for context and evidence. Other resources will include the work of media activist groups, such as Free Press, who have greatly contributed to media ownership data. Also, information from industry groups will be examined as well to present a more comprehensive context of the sidecar agreements.

The rules and regulations governing the media landscape are numerous and varied, as is the literature that examines them. This thesis attempts to contribute to the literature on the NBCO and duopoly cross-ownership rules by analyzing the recent Belo-Gannett transaction, and the accompanying agreements with Sander and Tucker, as a case study for how these rules are circumvented. Furthermore, this thesis will examine the historical origins of the JSAs and the SSAs, as they exist in their current form, to shed light on how these agreements came to be. A historical approach provides rich context for the current sidecar agreements and according to Mosco (2014), political economy of media as a method is characterized by its social totality approach to articulate how this phenomenon is situated within economic, political, social and cultural relations. Currently, there are few studies that examine specific case studies of sidecar agreements in the media industry – especially from a political economic perspective. Also, there is limited literature on the first sidecar agreements that were used to violate the NBCO and duopoly rules. This thesis seeks to address this gap in the literature on sidecar agreements.
The research questions that this thesis addresses include: how did sidecar agreements gain traction as a business practice for broadcasters despite the NBCO and duopoly rules? How are the sidecar agreements realized specifically between Gannett, Sander, and Tucker? And, how do the sidecar agreements allow Gannett to exert undue influence on Sander and Tucker? To answer these questions, this research will begin with a literature review that will attempt to give an overview of the current debate surrounding the NBCO and duopoly rules and the sidecar agreements. This chapter will also detail the Commission’s rationale of the public interest standard that informed these ownership rules. The following chapter will discuss political economy of media as both the theoretical framework and method informing this research. McChesney (2000) states that one of the main dimensions of political economy of media is the examination of “how ownership, support mechanisms (e.g. advertising) and government policies influence media behavior and content” (p. 110). Examining this relationship between media structure and media output will demonstrate the influence media ownership can have on the media products it produces. Political economy of media uses a critical-historical approach in order to analyze the structures and policies that affect the media industry. The fourth chapter, then, will detail the history of the first sidecar agreements utilized by media companies to evade the NBCO and duopoly rules. According to Reed (2010), sidecar agreements have existed since before the 1934 Communications Act; however, it was not until the deregulation era of the 1990s that the JSAs and SSAs came to exist in their contemporary form. As a result, emphasis will be placed on the formation of sidecar agreements that formed in the media industry during the 1990s.

The fifth chapter will examine the Belo-Gannett transaction as a case study to explore the nature of the JSAs and SSAs actually in place with Sander and Tucker that enable Gannett to
exert undue influence in markets that would otherwise violate the NBCO and duopoly rules. By examining this case study, this chapter will attempt to clarify how JSAs and SSAs function in the marketplace. Lastly, this thesis will conclude with an examination of the current state of the media in terms of the sidecar agreements, suggestions for change, and how to move beyond theory to practice. Ultimately, this research will demonstrate the importance of the NBCO and duopoly rules in protecting the democratic function of the media.
CHAPTER TWO

LITERATURE REVIEW

This chapter provides a review of relevant literature. Beginning with why media ownership matters and the importance of the public interest standard in terms of localism, diversity, and competition, these sections explain the rationale behind the cross-ownership rules. The following section will examine the NBCO and duopoly rules and how they function to foster localism, diversity, and competition. The importance of these rules to democracy is also considered. This chapter concludes with a discussion of literature regarding sidecar agreements.

Media Ownership Matters

The ownership structure of the mass media is vital to a functioning democracy. According to McChesney (2004), in a democracy, the media should function as a rigorous watchdog of the powerful and those who wish to be powerful; to inform citizens and to expose corruption – whether in government or big businesses. Similarly, Baker (2007) states that “the mass media, like elections, serve to mediate between the public and the government” (p. 7). As a result, the United States is democratic only to the extent that its media, as well as its elections, are “structurally egalitarian and politically salient” (Baker, 2007, p. 7). Subsequently, a concentrated media ownership structure is not democratic because it is fundamentally not egalitarian. When ownership is concentrated, there are fewer voices controlling what information citizens have access to, yet when ownership is dispersed amongst several owners, there is, presumably, greater diversity of information that enables citizens to be more informed. Subsequently, in a capitalist and democratic society, there need to be media ownership restrictions that foster dispersed ownership to prevent the inevitable concentration of ownership under capitalism. Therefore, media ownership regulation in a democratic nation should strive to
disperse media ownership, which would then disperse the undue political power that media
owners enjoy in a concentrated media industry. The logic here is that a diversity of ownership
leads to a diversity of ideas. Napoli (2001) points out that “optimum citizen decision making
arises from the consideration of information from diverse and antagonistic sources” (p. 129).
Therefore, media ownership matters because when there is a lack of diverse ownership, there
also tends to be a lack of diverse ideas that are essential for citizens in a democracy.

Baker (2007) suggests that there are three main reasons for opposing concentrated media
ownership. The first is that the egalitarian principle of democracy in the United States is the
“central, possibly the most fundamental, reason to oppose media concentration” (p. 7). This
egalitarian principle that Baker (2007) refers to can be described as the “one-person/one-vote
institutional principle” (p. 6). This concept is perceived as “a fundamental concept for a self-
governing population” (Baker, 2007, p. 6). Although this principle does not reflect the actual
distribution of political power of individuals in the United States, the actual distribution of power
does depend on people’s political actions within the political structure (Baker, 2007).

Subsequently, this same egalitarian value that is exemplified in people’s right to be self-
governing requires that the “one-person/one-unit-of-formal-political-power” as applied to the
ballot box also applies to the public sphere of the United States’ mass media (Baker, 2007, p. 7).
According to Croteau and Hoynes (2006), the public sphere model suggests that “media are more
than just profit-making components of large conglomerates;” instead, the media contribute to
“democratic processes… by helping to cultivate social spaces for ongoing public dialogue” (p.
22). Further, Croteau and Hoynes (2006) argue that media as a public sphere should serve
citizens – rather than treat them as consumers in the marketplace. Therefore, for media as a
public sphere, media contribute to democracy through “creating and sustaining a citizenry that is prepared for participation in public life” (p. 23).

Additionally, this public sphere, the mass media, influence how citizens choose to exercise their right to vote (Baker, 2007). Higgins-Dobney and Sussman (2013) demonstrate that the “most appalling consequences of [concentration] have been for the community that continues to lose its voice in the representation of public interests and as informed stakeholders in society” (p. 860). An equally important function of the public sphere is the creation of public opinion, the public sphere which influences “how elected and appointed public officials actually exercise their formal decision-making power” (Baker, 2007, p. 7). This is important because in order for citizens to be self-governing, “people require the capacity to form public opinion and then to have that public opinion influence and ultimately control public ‘will formation’ – that is, government laws and policies” (Baker, 2007, p. 7). Furthermore, as stated by Bagdikian (2004), that is why it is important that, in a democracy, the news media provide “the balance that best serves rational decision making among the population at large” (p. 87). The key value, Baker (2007) argues, is that ownership dispersal allow for a “fairer, more democratic allocation of communicative power” (p. 16).

Baker’s (2007) second argument for opposing concentrated media ownership is because dispersion of ownership “creates democratic or political safeguards” (p. 6). Baker (2007) states that “media concentration can lead to authoritarian results;” therefore, it is vital to protect dispersed ownership because it provides a safeguard against threats to democracy (p. 18). McChesney (2004) articulates this same point by stating that “by virtually all known theories of democracy and according to world history, concentration in media ownership is highly correlated with authoritarianism and political corruption” (p. 226). Baker (2007) suggests that the
safeguards of dispersed media ownership include reducing the risk of undemocratic dominance of the public sphere, increasing the number of decision makers more likely to devote resources to watchdog roles, and reducing the amount of media that are failing to fulfill the watchdog role. For as McChesney (2004) stated, the media are expected to act as watchdogs of the powerful, which is a significant safeguard to protecting democracy. These safeguards prevent just a few media owners from unduly influencing the public sphere, which in turn can foster democracy.

Baker (2007) concludes that the danger of a concentrated media industry is simple one of logic: that “dispersal of media ownership, like separation of powers, is a key structural safeguard for democracy” (p. 19).

Lastly, Baker (2007) states that there should be opposition to a concentrated media industry due to the effect that profit maximization has on the quality of media content. Pursuit of profits and the “constant focus on the bottom-line restrict investment in creating the news and other cultural media content that people want and citizens need” [emphasis added] (Baker, 2007, p. 29). Similarly, according to Bagdikian (2004), “control of public information by a handful of powerful global firms weakens democracy by omission of news that might interfere with media’s maximizing their own profits” (p. 102). This overemphasis on the bottom-line “tends to be more extreme among larger conglomerates, especially publically traded ones” (Baker, 2007, p. 29).

Although news is expected to produce profit margins, as are the other holdings of a media conglomerate, it is when the emphasis on profit to the detriment of meeting the public interest and keeping citizens informed that problems arise.

Conglomerates also present dangers to a well-functioning democracy due to their vulnerability to outside influences, such as to advertisers (Baker, 2007). As Bettig and Hall (2012) demonstrate, advertisers have the ability to “exert direct influence over media content”
Advertisers, in some cases, seek to suppress media content or to punish companies for content that has already been published (Croteau & Hoynes, 2006). Since advertisers are in the business of keeping citizens misinformed or uniformed, they are diametrically opposed to the function of a democratic media. However, advertising “helps support an oligopolistic media structure by deluging audiences with information about a handful of media products and keeping them largely uninformed about alternatives” (Bettig & Hall, 2012, p. 6). This structure reinforces the profit-driven media industry, albeit to the detriment of a well function democratic media.

The internal pressures, from owners, CEOs, and editors, to distort and frame the news, also present significant dangers (Baker, 2007). Bettig and Hall (2012) point out that big media have often tried to “suppress news and information detrimental to their corporate interests” (p. 40). For example, there could be a news story about a media conglomerate’s unethical, or illegal, business practices but because that story could negatively impact profit margins, that company would have significant incentive to suppress that story on the news outlets they control. As a result of this practice, self-censorship among journalists has become institutionalized (Bettig & Hall, 2012, p. 41). The flip-side of this coin is the pressure from media owners “to report favorably on their … commercial ventures or investments” (McChesney, 2004, p. 85). These pressures to either censor or promote media owners interests have “seriously [hurt] the quality of the news” (Bettig & Hall, 2012, p. 41). Therefore, a concentrated media industry leads to poor quality media products because the emphasis on profit tends toward cheaper costs and decreased innovation because of increased uncertainty and financial risk (Baker, 2007).

Ultimately, as McChesney (2004) states, “ownership does matter, especially in media, where control over ideas, news, and culture rates as a unique power even among powerful corporations” (p. 225). Therefore, studying this relationship between the media, ownership
practices and democracy can shed light on how necessary dispersed media ownership is to a democracy. The normative impulses behind dispersal of media ownership “are to prevent one person or small group from being able to use the power of wealth to dominate the (electoral) public sphere and to provide a more egalitarian distribution of opportunities to participate” (Baker, 2007, p. 17). Therefore, examining concentrated media ownership practices is vital to understanding democracy in the United States.

The relationship between media ownership and democracy is explored in contemporary political economic analyses. According to McChesney (2000) political economy of media is concerned with “how ownership, support mechanisms and government policies influence media behavior and content” (110). As a result, political economy of media is a useful approach to examine the media industry in terms of ownership structures, because political economy of media is interested in social totality, according to Mosco (2014). This concept of social totality is concerned with the relationships between the “economic, political, social, and cultural areas of life” (Mosco, 2014, p. 38). Subsequently, this institutional approach privileges understanding the structures, systems, and institutions that shape and influence the media – one of which being media ownership. Chapter three will explore political economy of media as the theoretical framework informing this research in greater detail.

The Public Interest: Localism, Diversity, and Competition

In order to understand the Federal Communications Commission’s regulation of media ownership in the United States it is important to examine the Commission’s rationale of the public interest standard that informed the early ownership rules. The 1927 Radio Act is the first piece of telecommunications legislature that referenced the importance of the “public interest, convenience, and necessity” to media regulation (Aufderheide, 1999, p. 12). Aufderheide (1999)
argues that since its inception, however, the public interest as a regulatory parameter has not been formally, or legally, operationalized despite requiring broadcasters to fulfill this still ambiguous phrase. With the Communications Act of 1934, the Federal Communications Commission (FCC) was created to regulate the media industry. Section 302 of the Communications Act of 1934 states that the “Commission may, consistent with the public interest, convenience and necessity, make reasonable regulations governing the interference potential of devices which in their operation are capable of emitting radio frequency energy” (Communications Act of 1934, section 302). Although this section clearly establishes the FCC as capable of regulating the communications industry, it fails to define what it means to operate in the public interest.

Napoli (2003) summarizes how public interest has been conceptualized into three categories: majoritarian, procedural, and normative conceptualizations. Majoritarian defines public interest as the “aggregation of individual interests, such that majority rule determines which policy options are in the public interest” (Napoli, 2001, p. 72). Procedural articulates public interest in terms of “the process by which decisions are reached” (Napoli, 2001, p. 74). Lastly, the normative, or unitary, conceptualization defines the public interest as “a unitary, coherent scheme of values,” and Napoli (2003) finds this definition to be the most appropriate for the industry (p. 75). The ambiguity of public interest “results in a greater likelihood of applications that favor industry interests” (Napoli, 2001, p. 90). Corn-Revere and Carveth (2004) concluded the Commission needed to represent the interests of the media industry because "broadcasting is a business and it generally can provide greater service to the public when business is good" (p. 71). As a result, the Commission’s ownership policies have attempted to balance the industry's public interest with the public's public interest. This is problematic because
the industry’s main goal is profit – there is little regard for the public interest in terms of keeping citizens informed. Therefore, the industry’s interests are fundamentally at odds with citizens’ interests. This is because quality news and media content are more expensive to produce; to meet the needs of citizens, media companies would have to devote more resources to produce the quality and quantity of content needed to keep citizens informed.

Much of the FCC’s rules and regulations for media ownership has been prohibitive, rather than proactive: they describe what is not in the public interest rather than what is, hence the NBCO and duopoly rules. While this serves to define what is not in the public interest, it provides little direction as to what does constitute the public interest. Napoli (2003) concludes that there has been little success by the FCC to “solidify the public interest standard into a concrete set of operational principles” (p. 94). Subsequently, the public interest standard has been leveraged as a “rhetorical tool, used on behalf of justifying particular policy actions, and less as it was originally intended to function – as an analytical tool for the design and assessment of policies” (Napoli, 2001, p. 94). This lack of clarity of how the public interest should be addressed has arguably allowed for policies and practices that serve industry, rather than public, interests to become implemented.

In understanding the rationale of FCC policy making in terms of ownership regulation, it is also important to discuss localism, diversity and competition. According to Goldfarb (2012), ownership restrictions are “intended to foster the three long-standing goals of U.S. media policy – competition, localism, and diversity of voices,” and these goals are intended to “serve the public interest” (p. 1). Similarly, Napoli (2003) recognizes that these three principles are prominent, enduring and controversial, and “they represent the key guiding principles that those engaged in the design and analysis of communications policy need to employ” (p. 23).
Diversity

The foundation principle of diversity has been described as “one of the paramount goals of broadcast regulation in America” (Napoli, 2001, p. 125). To operationalize diversity in order for it to be an effective evaluating tool for policy goals, Napoli (2001) presents a framework to demonstrate the dimensions of diversity. Napoli (2001) explains source diversity in three separate ways: “in terms of diversity of ownership of media outlets; in terms of the diversity of ownership of content/programming; and in terms of the diversity of the workforce within individual media outlets” (p. 129). Understanding and articulating diversity is important because “media serve the public interest to the extent that they portray the diversity of experiences and ideas in a given society” (Croteau & Hoynes, 2006, p. 34). Sandoval (2011) argues that “analyzing media ownership is critical because it is upon ownership that public policy places primarily reliance with respect to diversification of content, and that has proven to be significantly influential” (p. 88). The goal of Sandoval’s (2011) study was to analyze “data about media ownership diversity, a cornerstone of FCC policies to ensure that the broadcast spectrum serves the public interest” (p. 89). In order to accomplish this, Sandoval (2011) utilized data produced by the FCC describing minority media ownership. For example, the FCC reported that “there were 11,249 commercial AM and FM radio stations in June 2009 and minorities controlled 7.2 percent of those stations” (p. 90). Sandoval (2011) contrasts this number with the results of the 2008 U.S. Census which reported that “104.6 million Americans were members of the racial or ethnic minority groups the FCC tracks, constituting 34 percent of the U.S. population, a level almost five times higher than their representation among owners of commercial broadcast radio stations” (p. 90).

This discrepancy in radio ownership reflects the issue of Napoli’s (2001) subcategory of source diversity: ownership diversity. Napoli (2001) claims that “implicit within the marketplace of ideas metaphor is the assumption that optimum citizen decision making arises from the
consideration of information from diverse and antagonistic sources” (p. 129). Similarly, Croteau and Hoynes (2006) point out that it is only through “exposure to a wide range of perspectives can citizens begin to truly understand their society and make informed decisions” (p. 34). However, as the statistics described by Sandoval (2011) reveal, diversity in media ownership, specifically for radio stations, is lacking. This ineffectiveness may be due to the “FCC’s practice of fractured rulemakings that do not consider all relevant issues as a whole” when creating policy for the diversity principle (Sandoval, 2011, p. 100). According to Sandoval (2011), “the correlation between minority radio ownership and diversity in program service is robust” because in 2009, “74.7 percent of all minority-owned stations broadcasting programming air minority-oriented programming” (p. 101). However, critics of using media ownership to define diversity question “whether minority ownership contributes to diversity because the market shapes programming to a tremendous extent” (Sandoval, 2011, p. 104).

This type of opposition in defining diversity is why Napoli (2001) argues that the foundation principles, like diversity, have not been operationalized and therefore are difficult to use effectively. Sandoval (2011) counters that in the face of “economic disincentives to broadcast in formats designed to appeal to minorities, more than 74 percent of minority broadcasters” offer minority targeted programming (p. 104). This demonstrates that the “nexus between ownership and content transcends the market” (Sandoval, 2011, p. 104). Sandoval (2011) concludes that the “FCC should recognize minority broadcasters’ contributions to our nation’s democratic dialogue and analyze how its media ownership rules can ensure that minority broadcasters… thrive” (p. 107). For as echoed by Croteau and Hoynes (2006), the media should serve the public interest by “regularly including ideas that are outside the boundaries of the established consensus” so that “media become a place where old ideas can be scrutinized and where new ideas can emerge and be debated” (p. 34).
The different measures of diversity presented here – Baker’s (2007) dispersal of ownership and Sandoval’s (2011) emphasis on minority ownership – are both important to a democratic media system. McChesney (2004) states that the bias in democratic societies must be toward “diverse and decentralized ownership” (p. 226). This means there should be as many different owners as possible and that those owners should be as diverse as possible. Further, media content should also be diverse. If a diverse, large number of broadcast radio owners are all playing the same five programs – again diversity suffers. Therefore, it is important for these three levels of diversity to be examined in terms of the public interest.

Localism

Studies from Proffitt (2007), Yan and Napoli (2007), and Yanich (2011) present opportunities to examine how localism has been either defined or applied, and to assess how effective regulation has been in addressing localism. According to Napoli (2001), localism has traditionally been viewed “as a means of achieving broader social objectives,” like diversity and competition (p. 205). By ensuring local ownership and local content, diversity benefits from the increase in local owners and when these owners air local news and information they present more diverse content that communities that have no local news. For as stated by Croteau and Hoynes (2006), the public interest standard of localism has two important elements: “local control and local content” (p. 162). It is through these two areas of localism that diversity of content and competition between broadcasters is achieved. Subsequently, localism impacts competition by creating a market for local owners that compete amongst themselves and against regional and national media corporations.

Unfortunately, competing interests can negatively impact these objectives. Proffitt (2007) explores this issue by examining the National Television Station Ownership (NTSO) rule as a case study in terms of ownership regulation (p. 577). In 1985, the FCC proposed changing the
NTSO rule that limited television station ownership to 7 stations to allowing a single entity to own 12 stations with a 25% cap on audience reach (Proffitt, 2007, p. 583). These changes were dominated by deregulatory and free market rhetoric, so much so that the FCC dismissed “criticism of deregulation” and evidence that found that relaxation of the NTSO rule would lead to a concentrated market and centralized production (Proffitt, 2007, p. 582). Proponents of the change argued that the increased cap was consistent with public interest goals because concentration would give viewers what they want and lead to an increase in quantity and quality of programming (Proffitt, 2007, p. 584). However, these results would negatively impact the public interest objectives of competition, diversity, and localism.

FCC Commissioners of 1985 justified the decision by arguing the change would enable market forces to protect the social goals of competition and diversity, and that it would not affect localism goals (Proffitt, 2007, p. 588). Proffitt (2007) demonstrates that by 2003, however, the FCC justified a national cap because it “does in fact promote localism” and that a cap of 45% preserves the balance of power between competing interests (p. 588). The opposing NTSO justifications in 1985 and 2003, however, define localism through the marketplace, which proves problematic because “localism requires content dedicated to the people of the community and thus must be decentralized” (Proffitt, 2007, p. 592). Ultimately, Proffitt (2007) reveals that the definition and application of localism in the changes to the NTSO rule were not effective in achieving the broad social goals of competition and diversity.

Yan and Napoli’s (2007) study sampled news programming in order to examine how ownership structures and market structures relate to the provision of local programming (p. 40). To determine whether a program should be considered local, Yan and Napoli (2007) relied on program types and classifications utilized by a commercial data provider (p. 46). Like the case
study of the NTSO rule presented by Proffitt (2007), Yan and Napoli (2007) note that deregulation of television ownership has been justified on the assumption that more local news programming would be a result of relaxed ownership rules (p. 53). In analyzing the results of their sample, Yan and Napoli (2007) conclude that although market forces provide greater incentive, ownership structures did not. For example, Yan and Napoli (2007) state that Big four network ownership was “negatively related to the likelihood of providing any local news” as was duopoly ownership (p. 54). Although Yan and Napoli (2007) focus on quantity of local programming, their results demonstrate the ineffectiveness of ownership deregulation in addressing localism. This is because bigger companies and conglomerates focus on efficiencies and economies of scale in a deregulated industry. What this means is that these companies, who tend to focus on national media markets, will replicate content across outlets rather than incur the costs associated with producing localized content.

Yanich (2011) offers further research in examining the application of localism and its effectiveness, in addition to providing a different approach of content analysis to study the effect of cross-ownership on local programming (p. 115). In the decision to eliminate limits on cross-ownership of television and radio, the FCC relied primarily on Study 6, an FCC commissioned study that examined the effects of cross-ownership on political slant and the content of local television news (Yanich 2011). The study concluded that cross-ownership enhances localism (Yanich, 2011). Yet, Yanich (2011) demonstrates that Study 6 defined local so broadly it violated common sense and, ironically, the FCC’s own definition of local; as a result, almost every instance of programming examined was considered local (p. 118). In response to these findings, Yanich (2011) obtained the same sample for Study 6 to conduct a less methodologically flawed analysis. Yanich (2011) found that when localism was defined by
television markets, and excluded weather and sports segments, consolidation strongly and negatively affected total news and local news programming (p. 130). Additionally, the number of unique newspaper parents, commercial television parents and noncommercial television parents “all positively affected total and local news content” (Yanich, 2011, p. 131).

The focus of the FCC in utilizing studies that promote the free market and so-called deregulatory interests is having a direct impact on television programming, especially in terms of localism. The principle of localism is so vital because it is “a necessary condition for informed citizens” (Yanich, 2011, p. 133). For without an emphasis on local content and local control, there are significant negative outcomes for a community. For example, when there is little local ownership of media in a community, the specific needs of a community are often unaddressed because management “has migrated to the national corporate offices” and decisions are made by “executives with little or no connection to the community” (Croteau & Hoynes, 2006, p. 162). When there is little local content, citizens tend to not have access to information that meets the needs of self-governance: when standardized chain content fills the airwaves, there is little room for information about local elections, local leaders, and ways to engage with local government.

And, as McChesney (2004) states “commitment to ‘localism’ is considered a primary mechanism for broadcaster to serve the public interest” (p. 45). Napoli (2001) argues that “localism is a policy objective worth pursuing” because greater localism promotes “personal empowerment and increased political knowledge” and “a greater sense of community and more participatory – and ultimately better – decision making that is more closely aligned with the true values and interests of the citizenry” (pp. 204-205).
Competition

For measuring media competition, Napoli (2001) describes that competition, alongside diversity, is a “central component of a well-functioning marketplace of ideas” (p. 153). Additionally, the social value of a competitive marketplace of ideas is based on “the widest possible dissemination of information from diverse and antagonistic sources” (Stucke & Grunes, 2009, p. 103). According to Croteau and Hoynes (2006), a “healthy media industry” emphasizes “the amount of competition that exists in the industry and on the ability of competitors to enter the market” (p. 21). There are a variety of ways to measure competition in order to attempt to account for diversity of ideas. The simplest measure involves “counting the number of sources or outlets” (Napoli, 2001, p. 171). However, Stucke and Grunes (2009) are critical of this method because simply counting is a poor indicator of competition in the marketplace of ideas since a small number of owners control the largest number of outlets (p. 112).

Stucke and Grunes (2009) demonstrate two concerns with concentrated ownership: first, that media giants are able to raise prices above competitive levels, and second that “excessive media concentration may threaten the public’s access to important information or viewpoints” (p. 102). For example, a survey of journalists and news executives found that more than one-third admit that news is not reported if it can harm the financial position of media firms (Stucke & Grunes, 2009, p. 107). As a result, concentrated ownership has an obvious and measurable effect on news content and the diversity of ideas. Prior the passage of the Telecommunications Act of 1996, it was claimed that concentrated ownership would allow for more diversity, especially in radio; however, since its inception, it has not been evident “that increased radio ownership concentration has led to greater program diversity (Stucke & Grunes, 2009, p. 109).
Unfortunately, concentrated media ownership has had some adverse effects. For example, concentrated radio ownership has led to diminished quality and homogenized content (Stucke & Grunes, 2009, p. 108). This can be seen when the same songs play across all broadcast radio outlets, when the same programming airs across stations, and when the same disc jockeys host multiple stations. Arguably the most important consequence is that industry concentration diminished minority and women ownership, which is problematic because this would limit diversity of viewpoint to white men – no matter how many different outlets or sources were counted. In order to address the issue of regulating competition in the aftermath of the 1996 Act, Napoli (2001) suggests that there should be increased empirical attention to reduce “ambiguity as to what effectively constitutes competitive media markets” so that the competition principle can be an effective “analytical tool for communications policymakers” (p. 176). Competition is an important aspect of the public interest because “competition spurs innovation and keeps prices down, because consumers have choices and can take their business to a competitor” when prices are too high, the products or services are inferior, or when the company does not keep up with industry innovations (Croteau & Hoynes, 2006, p. 144). For “even by the traditional standards of market advocates, the growth in media conglomeration and concentration in ownership present potential threats to the basic function of the market” (Croteau & Hoynes, 2006, p. 144). As a result, it is important to protect and foster competition in the media.

Cross-Ownership Rules: The Current Debate

Since 1940, policymakers have acknowledged that “the field of broadcasting is one of free competition” (Napoli, 2001, p. 155). As a result, broadcast regulation has attempted to protect and promote competition through the regulation of monopolistic practices and concentrated ownership. According to Napoli (2001), Congress and the FCC historically have
been concerned with restricting ownership concentration within both local and national markets because evidence indicates that concentrated ownership leads to homogeneity of content and less diversity of social and political views (p. 15; see also McChesney, 2004). The FCC has tried to limit concentrated ownership by applying antitrust doctrines in order to achieve the goals suggested by the public interest standard (Napoli, 2001). However, this approach has not been particularly successful as policymakers attempted to limit either media ownership concentration or its effect on content through rules such as the Fairness Doctrine, the financial interest and syndication rules, and rules governing broadcast license renewals (Croteau & Hoynes, 2006, p. 71). Therefore, despite the current concentrated media environment, regulators have historically attempted to slow or prevent concentrated media ownership. But due to media industry lobbying and other forms of influence on regulation, these measures to prevent consolidation have met with significant resistance and are eventually overturned or modified in the interests of the industry.

In arguing to relax the cross-ownership rules, the FCC and the media industry have cited FCC-commissioned studies on cross-owned television stations and newspapers as having more local news and public affairs programming (see Honig, 2012); however, these findings have been debunked in peer reviews that found “cross-owned stations actually aired less hard news than non-cross-owned stations” (Stearns, 2013, para. 15). Furthermore, the lack of news produced on the cross-owned station actually negatively impacts other local news programming because “the presence of a cross-owned station leads other stations in a market to collectively curtail their news output by about 25 percent” in order to compete with the cross-owned station (Stearns, 2013, para. 16). Ultimately, this demonstrates that cross-ownership has a negative effect on local production of news and reinforces the need for the NBCO and duopoly rules. Additionally, as
Craig Aaron, founder of Free Press, points out that “all the existing data – and common sense – tells us that consolidation raises barriers to entry and makes it next to impossible for new owners to get in the market” (Aaron, 2012, para. 20). Media consolidation hurts diversity because it creates barriers to entry by limiting the number of stations available and by driving up costs for new owners (McChesney, 2004).

Part of the problem is that media conglomerates have vertically integrated. McChesney (2004) defines vertical integration as “owning both the content and the conduits to distribute that content” (p. 180). As a result of this trend to integrate vertically, barriers to entry for prospective entrants into the market are raised “because they must be able to generate vertically integrated operations in order to compete” (McChesney, 2004, p. 180). This is typically not feasible for a newcomer into the media industry because of the high costs and risks of entering not only on aspect of the industry (i.e., just content or just distribution) but entering all of them. Furthermore, according to Croteau and Hoynes (2006), “consolidated ownership protects a corporation’s market share” which is just yet another barrier to entry (p. 145). To maintain their market share, corporations reinforce these barriers to entry because “it is in the interest of companies to stabilize markets so as to reduce risk [and] one way to ensure profitability, then, is to reduce competition” (p. 147). As a result, any agreement between competing broadcasters is going to function as an attempt to limit competition and achieve economies of scale. Therefore, these agreements do not act in the public’s interest but rather the media industry’s interests.

Sidecar Agreements

According to the Pew Research Journalism Project’s the State of the News Media, as of early 2014, joint service agreements exist in almost half of the 210 local TV markets nationwide (Mitchell, 2014). As the practice of entering into sidecar agreements becomes more prevalent,
the literature on the practice has increased. As a result, this section is intended to summarize the research and findings of those who examine sidecar agreements. Subsequent chapters will reference these works in order to address the nature of sidecar agreements in terms of the NBCO and duopoly rules.

Duhe et al. (2004) examine the incentives for convergences in broadcast television. Duhe et al. (2004) found that to generate more content, media owners have entered into news partnerships with former competitors, which has forced newsroom workers to work for several media entities. Similarly, Reed (2010) demonstrates that media firms that have instituted shared service agreements (SSAs) do so to coordinate the sharing of services to increase efficiencies. Reed (2010) begins by studying the service agreements between the Tribune Company and Local TV Holdings, LLC in Denver, station KWGN, and in St. Louis, station KPLR. These agreements, though they vary in form, “fundamentally involved two or more competing broadcasters combining forces, pooling resources or otherwise collaborating” (Reed, 2010, p. 3).

Typically, coordination among competitors would raise anti-trust concerns; however, as Reed (2010) demonstrates, the Justice Department’s Antitrust Division and the Federal Trade Commission (FTC) have not addressed the practice, even though both agencies are responsible for enforcing antitrust laws. Reed (2010) concludes that if these cooperative agreements between competing broadcasters are “left unchecked, there exists the potential that some broadcasters may use cooperative agreements nefariously, to avoid ownership limitations or other regulatory restrictions aimed at maintaining the integrity of the public’s spectrum” (p. 49).

This would have significant implications for citizens trying to participate in their local communities and governments, as this would decrease the number of unique voices in the
community and, as previously demonstrated, lead to decreased quality and quantity of local news programming.

According to Hagin (1994), the FCC began to allow time brokerage agreements, or service agreements, in 1971. However, despite their longevity, these sidecar agreements have varying degrees of legality. Drawing on the work of Reed (2010), McMillan (2012) argues that these service agreements significantly inhibit quality-based competition between competing stations. Similarly, Krotoszynski and Blaiklock (2000) point out that local marketing agreements (LMAs) are damaging to structural diversity. A LMA is another type of service agreement between competing broadcasters defined by Reed (2010) as an agreement that involves a broadcaster leasing all or a significant amount of airtime to a third party who controls the operational aspects and programming of the station. These are damaging to structural diversity in terms of reducing the number of diverse outlets in a community, and they recommend that the FCC should resist these “efforts to further weaken its multiple ownership rules” (p. 878).

McMillan (2012) concludes that in order to take advantage of sidecar agreements, broadcast stations need to eliminate any redundancies, “including news crews, scriptwriters, reporters, video technicians, news anchors, and studio space;” therefore, sidecar agreements result in a reduction in the uniqueness of each broadcaster for these factors (p. 1919). As a result, news crews are laid off, “regional news services that feed standardized stories to all” of the conglomerate’s news outlets dominate, segments like weather reports become outsourced, and there is an overall lack of diversity of viewpoints and reduced emphasis on local content (Croteau & Hoynes, 2006, p. 162). McMillan (2012) references the work of Danilo Yanich who has conducted several quantitative studies examining side car agreements. In his most recent study, Yanich (2014) begins by examining the FCC’s attempt in 2003 to significantly relax
media ownership rules and the public outcry that prevented this relaxation. Yanich (2014) examines shared service agreements in light of this tension between relaxation and maintaining the ownership rules. Conducting a content analysis of newscasts in eight television markets in which sidecar agreements exist, Yanich (2014) studies the “impact these agreements have on the content of local news” in these stations (p. 161). Yanich (2014) concludes that service agreements have “a significant effect on local broadcast news content” and that the pressures to achieve economies of scale “dictate that production costs and cross-platform marketability will drive the news selection process” (p. 173). This is problematic because the drive to achieve economies of scale results in “standardized chain content” which either replaces or leaves little room for original local news content (Croteau & Hoynes, 2006, p. 162). This homogenization of content has huge cost saving potential for conglomerates but negatively affects citizens’ access to information and is not in the public’s interest because it prevents a diversity of media content that serves to keep citizens informed from a diverse range of information and ideas. Local media should be meeting the needs and interests of the citizens they serve. This can be done by emphasizing the public’s interest through the production of local and diverse news programming and by encouraging the democratic function of the media rather than pursuing profits to the detriment of its citizens. Therefore, there is a need to restrict agreements that prevent these needs from being met and that negatively impact citizen’s ability to participate in self-governance.

The following chapter will examine political economy of media as a method and theoretical framework. In doing so, chapter three will begin by defining political economy of media. Then move on to discuss key issues that political economists of media study, such as the relationship between media and democracy, the culture industry, the consciousness industry, and
communication regulation and policy. The chapter will conclude by outlining political economy of media as a method and how it will be applied to the evidence for the analysis chapters.
CHAPTER THREE
THEORETICAL FRAMEWORK: POLITICAL ECONOMY OF MEDIA

Political economy of communications, or more specifically, of media, refers to the study of the “interrelationships existing among a society’s political, economic and communications systems” (Norris, 1990, p. 1). Political economy of media is a subfield within the larger political economy field. Mosco (2014) defines the political economy tradition as the study of “the social relations, particularly the power relations, that mutually constitute the production, distribution, and consumption of resources” (p. 37). Likewise, political economy has also consistently emphasized the goal of “understanding social change and historical transformation” (p. 37). This goal alludes to the roots of political economy that began with Adam Smith and John Stuart Mill and their desire to understand the capitalist revolution and the social upheaval that accompanied the transformation into industrial societies (p. 37). For Karl Marx, whose work influenced early political economy, this goal meant comprehending the “relationship between capitalism and other forms of political economic organization, in order to understand how social change would ultimately lead from capitalism to socialism” (p. 37). Political economy is largely concerned with the interrelationships between political institutions and economic institutions. Political economy of media incorporates communication institutions and practices as a third dynamic to the study of political economy.

McChesney (2000) states that political economy of communications has two main dimensions. First, that it address “how media and communication systems and content reinforce, challenge or influence existing class and social relations” (McChesney, 2000, p. 110). Second, political economy of communication examines how “ownership, support mechanism (e.g. advertising) and government policies influence media behavior and content” (p. 100). Therefore,
this approach is an effective method to address structural factors of the media, such as
ownership, and issues of power that permeate the regulatory process. Furthermore, these two
dimensions of political economy of media are what distinguish the field from other methods of
social and cultural analyses. Social and cultural analyses tend to privilege the audience over
institutions and conversely, political economy of media provides a strong institutional approach
to the study of the media.

Ultimately, according to Gandy (1992), “the approach of political economy to the study
of mass communication is uniformly critical of the status quo in theory as well as in the systems
that the theory seeks to understand” (p. 24). By critically analyzing how media systems influence
society and produce content, political economy of media generates research that can have
important implications for communication systems and democracy. The remainder of this
chapter will examine the issues that political economy of media emphasizes, such as the
relationship between media and democracy, the culture industry, the consciousness industry, and
media regulation and policy. Then the chapter will conclude with a discussion of political
economy analysis of media as method.

The Media and Democracy

The media have an important role in a democratic society. According to Baker (2007),
“almost universally accepted is the view that a free press is an essential institution of democracy”
(p. 131). In a democracy the media act as a watchdog of the powerful and those who wish to be
powerful, which serves to inform citizens and expose corruption (McChesney, 2004). A
fundamental concept for a democratic society is that “each person equally should have a say, at
least a formally equal right to have a say, in choosing at least its officials and, ultimately, its laws
and policies and maybe its culture” (Baker, 2007, p. 6). But in order to make informed decisions,
citizens need access to media that serve these democratic functions. A democracy “requires that the structure itself embody or at least be consistent with respect for citizens’ equal claim to be recognized as part of the self-determination process” (Baker, 2007, p. 6). Therefore, without a free press, citizens cannot fully participate in a democracy or this self-determination process. This is because “virtually all theories of self-government are premised on having an informed citizenry,” and the more democratic a society is will determine how likely it is that decisions made about how to regulate social life will be the result of informed, widespread debate (McChesney, 2004, p. 17). Alternatively, when the media are not free there is little incentive to keep citizens informed for purposes of self-governance. For without a free press, “the more likely those decisions will be made by powerful self-interested parties with a minimum popular participation” (McChesney, 2004, p. 19).

As a result, the basic standard for democracy is “a very wide and fair dispersal of power and ubiquitous opportunities to present preferences, views, visions” (Baker, 2007, p. 7). Similarly, Kunz (2007) states that “the American conception of the media evolved from the founding notions of a representative democracy, within which the media, in theory, make self-government possible through the creation of a marketplace of ideas that challenges citizens to grapple between truth and falsehood in a free and open encounter” (p. 10). Consequently, the importance of a free media to a democracy cannot be stressed enough because the media control citizens’ access to information that is crucial to making decisions about their government.

Media ownership in particular can have important implications, especially in terms of localism, competition, and diversity, in the political and economic structures of U.S. society because media owners simultaneously produce commodities for profit as they control the flow of information necessary for citizens to participate in their democracy. Therefore, understanding the
relationship between media ownership and the commodities they produce for profit is vital in terms of the importance of media to the democratic process. According to Baker (2007), concentrated communicative power increases “demagogic dangers for a democracy, reduces the number of owners who can choose to engage in watchdog roles, [and] may reduce the variety in perspectives among the smaller group of people who hold ultimate power to choose specific (varying) watchdog projects” (p. 120-121). Therefore, “dispersed ownership is crucial for democracy” (Baker, 2007, p. 3). Too few controlling too much media undermines democracy by being harmful to the public interest ideals of diversity, localism and competition (Eggerton, 2012). For political economy of media, consolidated ownership of media organizations “is a central concern since the dispersal of power and a plurality of elite individuals and groups is essential so no one can dominate the marketplace of ideas” (Kunz, 2007, p. 10). By understanding this relationship between democracy and the media, political economy of media illuminates the importance of analyzing media institutions, systems, laws and products and how they impact an individual’s ability to participate in U.S. democracy. Relatedly, political economists of media also examine the implications of the pursuit of profit and the ideologies perpetuated by the media, known as the culture and consciousness industries, respectively.

The Culture Industry

According to Wasko (2005), political economy of media is predicated upon the concept that the media are “first and foremost industrial and commercial organizations which produce and distribute commodities” (p. 28). These media organizations are producing commodities to sell to consumers, regardless of the democratic function that the media serve. The relationship is articulated by Horkheimer and Adorno (2001) as the culture industry. The culture industry can be defined as the process through which culture is manufactured and that “mass culture is
identical” (Horkheimer & Adorno, 2001, p. 71). Within the culture industry, there is little regard for the potential non-commercial value of media products. As a result, the democratic value of the media is subordinated to commercial interests. Important relationships to be examined then include understanding not only how the media function as products to be bought and sold in the marketplace, but also the impact of concentrated ownership and the importance of diversity, localism, and competition.

McChesney (2008) demonstrates that the current U.S. corporate media system is characterized by the United States’ emphasis on and protection of the free market and neoliberal concepts. Neoliberalism is the “political philosophy that dogmatically equates generating profits with generating maximum human happiness” (McChesney, 2004, p. 12). As Bagdikan (2004) demonstrates, neoliberal practices have led to a dramatic decrease in the number of independent media owners and a highly consolidated media industry. Similarly, McChesney (2004) states that government policies and media structures informed by neoliberalism are responsible for the core problems of the United States media, which he argues is inadequate journalism and hyper-commercialism. For political economists, concentration in the media industry is a significant issue (Wasko, 2005).

Although free market rhetoric encourages maintaining a competitive market, Wasko (2005) points out that within U.S. capitalism there is an “inevitable tendency for markets to become concentrated” (p. 34). This is because from a media owner’s stand point, “marketplace competition is a potentially negative thing because it threatens profitability” (Croteau & Hoynes, 2006, p. 147). Yet according to Napoli (2001), Congress and the FCC historically have been concerned with restricting ownership concentration within both local and national markets because evidence indicates that concentrated ownership leads to homogeneity of content and less
diversity of social and political views (p. 15). However, the economic incentives for media corporations to participate in this concentrated and oligopolistic market are “obvious” because concentration “tends to reduce risk… raise profits… force prices up” for consumers and gives these corporations “much greater leverage over their suppliers (and labor) to negotiate better prices” (McChesney, 2004, p. 177). As a result, media conglomerates driven by profit have little reason to prioritize the democratic function of media.

Political economy of media explores the relationship between media ownership and competition levels to challenge the capitalistic myth of a competitive market (Wasko, 2005). The works of Bagdikian (2004), Croteau and Hoynes (2006), McChesney (2004), and Wasko (2005) identify the dangers of a concentrated media industry, that it affects the quality and quantity of news media, diversity of news, tabloidization of news and homogenization of content. Especially in terms of localism, diversity and competition, a concentrated media industry is detrimental to a democracy. McChesney (2004) points out that deregulating media industries, which allowed for more concentration, led to the rise of sensationalism and tabloidization and subsequently, “the exclusion of serious news stories to make room for scandal became routine” (p. 61). These type of stories are cheap to produce, generate profits for the media conglomerates and they “create a political vacuum” (Bourdieu, 2006, p. 332). Bourdieu (2006) states that these types of stories “depoliticize and reduce what goes on in the world to the level of anecdote or scandal” (p. 332).

As stated previously, a free and open media is vital for a function democracy, and when ownership is concentrated very few voices control what citizens see, hear, and read in the media and when the profit motive dominates, there is little incentive to meet the needs of citizens. The problem, as articulated by Bettig and Hall (2012), is that “the goals of amassing great profits and informing ordinary citizens are distinctly at odds with one another” (p. 176). When the profit
motive of the culture industry overrides the democratic function of media, then the media products which citizens consume do little to ameliorate democratic participation.

The Consciousness Industry

Gandy (1992) states that the media have “an economic as well as an ideological role” (p. 36). Not only do the media produce commodities, the media also produce ideology. This relationship is articulated as the consciousness industry (Jhally, 1989). The consciousness industry is defined as “an industry which attempts to produce a form of consciousness in the audience that benefits the class that controls the media and industry in general” (Jhally, 1989, p. 68). In a concentrated media industry, where fewer voices control the media, it is important to examine this relationship between the ideologies and the commodities they produce. The negative effects of a concentrated media industry reveal inherent institutional inequalities, especially when examined in relation to issues of power and capitalism, and indicate “serious challenges to democracy” (Wasko, 2005, p. 35).

Similarly, McChesney (2004) points out that history demonstrates that concentrated media ownership is “highly correlated with authoritarianism and political corruption,” which is would be detrimental for a democratic society (p. 226). For as Norris (1990) states, “no economy, no polity, merely is… every society, economy and polity are justified and rationalized by a system of beliefs concerning the nature of man, the world, truth, and so forth – beliefs heavily laden with moral implications” (p. 21). Therefore, political economy seeks to understand the ideas of the ruling class are in every epoch the ruling ideas: i.e., the class which is the ruling material force of society is at the same time its ruling intellectual force. The class which has the means of material production at its disposal, consequently also control the
means of mental production, so that the ideas of those who lack the means of mental production are on the whole subject to it. (Marx & Engels, 2001, p. 39)

The press, according to Herman and Chomsky (2002), is effective at reinforcing consciousness: it fosters values systems and frameworks for looking at the world. This ability to spread the ideologies of the ruling class through the media to the masses is important to examine in political economy of media because it explains “how a minority but dominant social class (capitalists) can maintain power over the vast majority of the population” (Jhally, 1989, p. 67). News media, then, do little to provide a “free marketplace of ideas” and instead “work to legitimate the existing distribution of power by controlling the context within which people think and define social problems and their possible solutions” (Jhally, 1989, p. 67). Media ownership, especially in a concentrated media industry, is not just a structural phenomenon according to Jhally (1989), but it directly affects the products that these conglomerates produce.

Besides the tangible products, ideologies are also produced by the media industry. For example, consumption, or purchase, of products is a necessary function of the market in capitalism. Yet it is not simply buying a product, but the ideology of consumerism that the media industry produces and reinforces. Consumerism is defined as the “ubiquitous product marketing that leads to a preoccupation with individual consumption to the detriment of oneself and society” (Bettig & Hall, 2012, p. 166). Croteau and Hoynes (2006) argue that “in market-oriented societies such as the United States, the consumer identity looms very large, often crowding out notions of citizenship” (p. 224). Within this notion of consumerism, the media industry becomes “indifferent to the needs of citizens” and privileges a “consumer-friendly” market (p. 224). This emphasis on consuming does little to keep citizens informed so that they can participate in their democracy; instead, this concept serves the profit-maximizing goals of a
media industry dominated by neoliberal practices. As a result, the ideologies, of consumerism and many others that media products produce and reproduce are a significant concern to political economists of media and in terms of a concentrated industry where fewer voices control what products are being produce it is necessary to look at the regulations and policies that structure these practices.

Communication Regulation and Policy

Media ownership in the United States has been dominated by a particular set of policies for decades: “gradual deregulation, free market economics and the reduction of direct public accountability” (Scott, 2004, p. 648). Political economy of media offers a strong theoretical framework to address these structural factors affecting media ownership, as well as issues of power that permeate the regulatory process. Political economy of media explores issues such as social justice, open governance, and the effectiveness of participatory democracy by examining market and organizational structures (McChesney, 2008). McChesney (2008) argues that the current landscape of the American corporate media system is protected by the idea that the United States has a free market media system and that this system is natural. However, according to Wasko (2005), levels of concentration in various media markets is a major issue for political economists. Mosco (2014) states that the institutional and Marxian traditions of political economy are characterized by a “sense of injustice about the fact that the communication industry has become an integral part of a wider corporate order – one that, they maintain, is both exploitative and undemocratic” (p. 40).

As a result, broadcast regulation has attempted to protect and promote competition through the regulation of monopolistic practices and concentrated ownership. According to Napoli (2001), Congress and the FCC historically have been concerned with restricting
ownership concentration within both local and national markets because evidence indicates that concentrated ownership leads to homogeneity of content and less diversity of social and political views (p. 15). The FCC has tried to limit concentrated ownership by applying antitrust doctrines in order to achieve the goals suggested by the public interest standard (Napoli, 2001). Policymakers attempted to limit either media ownership concentration or its effect on content through rules such as the Fairness Doctrine, the financial interest and syndication rules, and rules governing broadcast license renewals (Croteau & Hoynes, 2006, p. 71). Therefore, despite the current concentrated media environment, regulators have attempted to slow or prevent concentrated media ownership; however, due to the move to deregulate the media industry that began in the 1970s, these attempts have either been completely reversed or modified (McChesney, 2004).

The desire to deregulate the media industry is based on the neoliberal view that markets and profits “should be allowed to regulate every aspect of social life possible” (McChesney, 2004, p. 49). It was argued that markets could more effectively regulate the media than the government or the public interest standard (McChesney, 2004). This argument highlights an important tension between the rhetoric of regulation and deregulation, particularly in terms of media ownership (p. 648). McChesney (2004) critiques the term deregulation as “somewhat misleading” because “it means, more often than not, government regulation that advances the interests of the dominant corporate players” (p. 20). Therefore, deregulation is not dismantling existing regulation; it is just another form of regulation, but one that is generally in the corporate interest, not in the public’s interest. Eliminating media ownership limits has had demonstrable negative effects on public interest ideals such as localism and diversity (see McChesney, 2004; Yanich, 2011); subsequently, deregulation then must be in the interests of some group since it is
not in the public’s interests. As a result, as McChesney (2004) argues, “antidemocratic tendencies in media policy making have grown more powerful over the past quarter century” (p. 48).

Media regulation, specifically broadcast services, has typically encouraged competition through the restriction of monopolies and concentrated ownership. According to Napoli (2001), the FCC and the U.S. Congress have restricted these practices in national and local markets because consolidated ownership results in homogenized content and decreased diversity of political and social views. A political economic analysis of the media ownership regulations, like the NBCO and duopoly rules, and how these rules that are intended to protect competition, diversity, and localism are circumvented, is an effective method then for understanding why Gannett’s service agreements with Sander and Tucker are so problematic.

The Method

Mosco (2014) explores several characteristics of political economy as a theoretical framework. First, that political economy is characterized by its examination of the “totality of social relations that make up the economic, political, social, and cultural areas of life” (Mosco, 2014, p. 38). This idea of social totality demonstrates the importance of recognizing the relationship between the political and the economic, the influence they exert on each other, and that these spheres are not mutually exclusive. This idea is apparent in political economy of media’s commitment to historical research. By analyzing media products, systems, and laws in their historical context, political economy of media effectively incorporates this idea of social totality. Second, political economy has consistently emphasized “understanding social change and historical transformation” (Mosco, 2014, p. 37). Once orthodox economics began to diverge from political economy in the late 1800s, the concern for the dynamics of social change and
history came to the forefront of political economy (Mosco, 2014). Examining the context of the media, in terms of social change and historical context, is important especially in evaluating contemporary issues.

Third, political economy requires a commitment to moral philosophy (Mosco, 2014). Political economy is a normative discipline, which seeks to not only to conduct research to describe what is, but also what “ought to be” and what “should be” (Norris, 1990, p. 7). For contemporary political economists, according to Mosco (2014), the moral philosophy that informs their research is to “promote the extension of democracy to all aspects of social life” (p. 38). Due to political economy’s dedication to social totality, this extension of democracy is not only in the political realm and the ability to participate in government, but to the “economic, social, and cultural domains” as well to address “income inequality, access to education, and full public participation in cultural production on the basis of the right to communicate freely” (Mosco, 2014, p. 38).

Lastly, political economy emphasizes social praxis, or the “unity of thought and action” (p. 38). From Adam Smith’s support for free markets to Karl Marx’s call for labor revolution, political economy is concerned with removing the artificial barrier between research and action (Mosco, 2014). Similarly, Gandy (1992) points out the importance of being critical for political economy of media. Incorporating a critical dimension is necessary to connect research to action. Although there is no step-by-step or how-to guide to writing a political economic analysis, there are some tools that make up the political economic method. For example, in his biography of political economist Herbert Schiller, Maxwell (2003) describes Schiller’s method of “listening in to power-wielders and decision-makers” and using sources from “mainstream press accounts, government documents, testimonies of government representatives” (p. 63). Schiller’s method of
political economy is characterized by Maxwell (2003) as including “structural analysis of the largest governmental and corporate producers/users of information, as well as historical analysis” (p. 30).

A political economy analysis of media, then, is utilized in this thesis to examine the sidecar agreements that circumvent the NBCO and duopoly rules. Historical analysis and Schiller’s method of “listening in” are applied to the documents analyzed (Maxwell, 2003, p. 63). Popular press articles are examined in order to understand how the producers of information depict the sidecar agreements. These articles were gathered through a search of the Lexis-Nexis database using “sidecar” and “JSA” and “SSA” as search terms in order to catch as many relevant articles as possible. Government published documents are also analyzed, especially those produced by the FCC and its Commissioners. These documents indicate the official position of the FCC as decision makers in this regulatory context and provide insight into the rationale behind any changes to regulation or lack thereof. The actual sidecar agreements, the JSAs and SSAs that Gannett holds with Sander and Tucker are also examined as these documents reveal the nature of these agreements. The documents will be analyzed in terms of how these agreements function to violate the public interest ideal that informs the NBCO and duopoly rules. Further, understanding why these agreements were entered into in the first place will also be studied because it is important to examine why Gannett entered into these sidecar agreements and how they stand to benefit from such an arrangement because of how imperative it is that media are free, diverse, locally-oriented, and competitive in a democracy.

The subsequent chapters will focus on the analysis of these documents, examining the Gannett-Belo transaction as a case study. Guiding questions for this analysis include: how the sidecar agreements gained traction as a business practice for broadcasters despite the NBCO and
duopoly rules? How are the sidecar agreements realized specifically between Gannett, Sander, and Tucker? And, how do the sidecar agreements allow Gannett to exert undue influence on Sander and Tucker? Chapter four, then, will focus on a historical analysis of the first sidecar agreements utilized by media companies to evade the NBCO and duopoly rules. Sidecar agreements in the media industry have existed prior to the 1934 Communications Act; however, it was not until 1991 that the first sidecar agreement materialized in the television broadcast industry. As a result, emphasis will be placed on the formation of sidecar agreements in the media industry during the 1990s in order to understand how these agreements gained legitimacy. Chapter five will examine the Belo-Gannett transaction as a case study to explore the nature of the sharing agreements actually in place with Sander and Tucker that enable Gannett to exert undue influence in markets that would otherwise violate the NBCO and duopoly rules. By examining this case study, this chapter will attempt to clarify how JSAs and SSAs function in the current media marketplace. Chapter six of this thesis will conclude with an examination of the current state of the media in terms of the sidecar agreements, suggestions for change, and how to move beyond theory to practice.
CHAPTER FOUR

THE SIDECAR BUSINESS MODEL

The purpose of this chapter is to answer the question regarding how sidecar agreements gained traction as a business practice that enables broadcasters to circumvent the Newspaper Broadcast Cross-Ownership (NBCO) and duopoly rules. Sidecar agreements have been utilized in broadcasting since before the 1934 Communications Act, as well as in industries outside of the media industry (Reed, 2010). Yet the focus of this chapter is to examine the first sidecar agreement in broadcast television formed in the 1990s in order to understand how these agreements gained legitimacy. Thus, this chapter will begin by providing a more detailed overview of the sidecar business model. Next, the chapter explores how the sidecar business model started in radio, followed by an examination of the first U.S. Local Marketing Agreement (LMA), which provided the basis for JSAs and SSAs, in the broadcast television industry, and next, a discussion of how LMAs fell out of favor, which spurred the turn to JSAs and SSAs. Lastly, this chapter will conclude with an examination of service agreements in the current media landscape and the consequences of these agreements.

Sidecar Agreements

As introduced in Chapter One, sidecar agreements are entered into by competing broadcasters to share programming, operations, advertising sales, retransmission negotiations, and other services (Hagey, 2013). However, to clarify, sidecar agreements is catch-all term, with the term outsourcing agreements also used, to collectively refer to the different types of agreements possible. These types of agreements include Local Marketing Agreements (LMAs), also referred to as Lease Management Agreements (LMAs) or Time Brokerage Agreements (TBAs); Joint Service Agreements or Joint Sales Agreements (JSAs); Shared Service
Agreements (SSAs), which have also been termed Local News Service (LNS) agreements; and any other special financial agreements (see Baggerman, 2006; Hagey, 2013; Turner, 2014; Verveer, 2014). All of these agreements are characterized by existing between a dominant and a weaker broadcaster in the same designated market area (DMA) (Verveer, 2014). These agreements do not affect ownership of the broadcasting license; however, they do enable the dominant broadcaster to exercise control of the weaker broadcaster as outlined in the specific sidecar agreements the two parties enter into.

According to Yanich (2014), there are sidecar agreements in over half of the television markets in America. Companies such as Sinclair Broadcasting, Raycom Media, Nexstar Broadcasting Group and Tribune Company all hold sidecar agreements in markets where outright ownership would violate the FCC’s newspaper-broadcast cross-ownership (NBCO) or duopoly rules (Turner, 2014). The sidecar business model has clear financial incentives for both the dominant broadcaster and the weaker broadcaster. JSAs are arranged between broadcasters to enable the dominant broadcaster to broker the advertising sales of the weaker broadcaster. The dominant broadcaster is able to leverage its scale and scope of advertising space and platforms to command greater advertising sales and profits than the weaker broadcaster could on its own. Therefore, the dominant broadcaster benefits from the JSA by adding the weaker broadcaster to its repertoire of available advertising options, and this increase in scale and scope gives the dominant broadcaster more advertising power in a DMA because it no longer has to compete with the weaker broadcaster. The weaker broadcaster then benefits as it receives greater advertising revenue than it could without the dominant broadcaster.

There are also clear economic incentives for SSAs. These agreements involve the sharing of “talent, other human resources, and hard assets” between the dominant and weaker
broadcaster (Verveer, 2014, para. 4). From equipment to the actual buildings that house these broadcasters, SSAs enable both the dominant and weaker broadcasters to reduce costs and increase revenue. The main benefit for SSAs is the increase in efficiencies. For example, by sharing property the two broadcasters can also save on “groundskeeping, security, and building management services” (Reed, 2010, p. 5). Further, a common aspect of SSAs is the sharing of news or the “content pooling agreement,” which provides for the sharing of raw material and footage between the broadcasters (Reed, 2010, p. 6). It is from these types of arrangements that enable the broadcasters involved to operate through economies of scale. Another aspect of the sidecar business model is the ability to create special financial agreements that fall outside of the JSA or the SSA. This type of arrangement, which often comes in the form of a loan guarantee, is generally used in combination with JSAs or SSAs to further deprive the weaker broadcaster of any economic incentive to exercise control over programming (Verveer, 2014).

As a result, it is clear that sidecar agreements lead to lower costs and greater revenues for the broadcasters involved; yet, it is also clear that these arrangements undermine competition and diversity (Verveer, 2014). Despite how competition is defined, whether as “in terms of advertising prices, independence of programming, or rivalry for viewers,” or how diversity is defined, through source diversity or content diversity, it is obvious that the sidecar business model either reduces or eliminates competition and diversity of media outlets in a DMA. Yet JSAs and SSAs would not be as prevalent without LMAs, which were pioneered by Sinclair Broadcasting in the 1990s (see Klinenberg, 2007; Kunz, 2007; Schmelzer, 2003). As this section explained the sidecar business model and described the incentives for broadcasters to enter into such agreements in order to demonstrate why sidecar agreements are so prevalent in today’s
media landscape, the following section will detail how this model began in the U.S. radio industry.

The Radio Industry and Sidecars

As stated previously, sidecar agreements are not unique to the media industry; however, prior to 1991, sidecar agreements had not yet existed for television broadcasters. Instead, the practice entered the media industry through radio. Radio broadcasting in the U.S. has “long been marked by the sale of discrete blocks of time to brokers who provide both programming and the commercial messages which support it” (Federal Communications Commission, 1980, p. 108). According to Sewell (1995), the first mention of a sidecar arrangement in broadcast radio occurred in the form of a time brokerage agreement (TBA) in 1938 for the Metropolitan Broadcasting Corp., “which involved a comparative hearing among several mutually exclusive applicants for new or modified broadcast stations” (p. 90). Ultimately, the Commission found one of the applicants to be unqualified; however, because the Commission did not explain the basis for its decision, “it is not possible to determine the extent to which time brokerage was a problem by itself” (p. 90). Yet, it was not until 1945 that the FCC adopted any rules for service agreements. The Commission required radio stations entering into TBAs to file the contracts with the FCC, and the only rationale offered for the rule was that it was intended to “serve the public interest,” and at this time there were no limits to the amount of time that could be brokered (Sewell, 1995, p. 91).

Service agreements grew in popularity, especially throughout the 1970s and 80s, due to the financial difficulties radio stations faced (Gomery, 2010). During this time, ownership restrictions limited ownership of radio stations to only one AM and FM in a single market and twelve AM or FM stations nationally (Hand, n.d.). Subsequently, LMAs were a popular
arrangement among radio stations to achieve economies of scale and increase profits. In addition, service agreements were also used to provide specialized programming, such as foreign language programming, that was otherwise too costly to produce without such arrangements (Federal Communications Commission, 1980). But prior to the 1980s, TBAs involved “a limited amount of a licensee’s broadcast week, often split among several different brokers” and the brokered licensee produced most of the remaining programming and still “retained its own sales staff” (Sewell, 1995, p. 98). However in 1980, the Commission “decided to encourage time brokerage” in the hope that TBAs would act as “a competitive mechanism enabling the market to respond to audience segments which would otherwise be denied their preferred program alternatives” (Federal Communications Commission, 1980, p. 108). In 1986, the FCC decided to eliminate the prohibition against joint sales practices and relied on antitrust laws to set the limitations of such agreements (Sewell, 1995). These decisions created a very friendly environment for service agreements in radio until the 1990s.

This tendency towards deregulation in the media industry, as introduced in chapter three, was based on the concept that a free market could do more to regulate the media than the government. Yet, as explained by McChesney (2004), the media industry is uniquely ill-suited to market regulation. First, the biggest difference between media markets and markets – that are suited to market regulation – is the role of advertising as a source of revenue (McChesney, 2004). Relying on advertising drastically changes the logic of media markets, “since the interests of consumers must be filtered through the demands of advertisers” (McChesney, 2004, p. 189). Second, subjecting media, or more specifically journalism, as well as culture and ideas to the market is problematic in terms of understanding media as a commodity (McChesney, 2004). With free market regulation of the media, the rational thing for media companies to do “is to
produce exactly what the market shows a preference for, what everyone else is producing” (McChesney, 2004, p. 190). This does not necessarily cause a problem for the production of shoes or candies; however, for culture and ideas, market regulation “poses deep problems for tradition liberal democratic notions” (p. 190). This concept is especially important for the regulatory trends in the radio industry, for by moving towards market regulation, the FCC emphasized profits and cost-saving synergies to the detriment of the public interest.

Beginning in 1991, a series of rulings from the Commission determined that TBAs and other service agreements could be brokered “without restriction” as long as the competing station “could own the brokered station under the amended multiple-ownership rule” (Sewell, 1995, p. 96). Ironically, this led to a decrease in popularity of service agreements between competing radio broadcasters because the broadcaster could purchase the desired station outright. Yet by 1992, the FCC began attributing ownership interest in radio LMAs and TBAs, especially for stations that would otherwise violate the multiple-ownership rule (Reed, 2010, p. 19). Two years later, the FCC regulated the arrangements and determined that “an LMA involving brokerage of more than 15 percent of a station’s programming can be viewed as ‘ownership’” (Gomery, 2010, p. 1451). The Commission also ruled that service agreements would be examined on a “case-by-case basis” (Lewyn, 1995, p. 6). Despite this, after the Telecommunications Act of 1996, it “became simpler to just purchase a station” rather than enter into LMAs because the ownership restrictions had been significantly relaxed (Gomery, 2010, p. 1450). As a result, service agreements in radio are no longer quite as common as they used to be; however, the practice did set precedent for service agreements in the television industry. The following section, then, will
examine Sinclair’s use of LMAs to demonstrate how the sidecar business model gained traction as a practice in the broadcast television industry.

The First LMA in U.S. Broadcast Television

In 1991, David Smith, President and Chief Executive Officer of Sinclair Broadcasting, wanted to purchase WPGH-TV in Pittsburgh, Pennsylvania; however, Sinclair already owned Pittsburgh’s WPTT, and FCC ownership restrictions prohibited Sinclair from owning both television stations (Baggerman, 2006; Klinenberg, 2007). In order to circumvent this prohibition, Sinclair’s lawyers requested that the FCC allow Sinclair to follow radio industry trends and set up an LMA (Klinenberg, 2007). The FCC agreed, especially because Sinclair proposed selling WPTT to its “African American station manager and Sinclair employee, Eddie Edwards,” and the FCC had expressed interest in supporting minority-owned stations (Klinenberg, 2007, p. 102). The sale was doubly beneficial to Sinclair as the divestiture of WPTT to Edwards qualified Sinclair for “a minority tax certificate, allowing Sinclair to defer a tax on the proceeds from WPTT-TV” (“Renaissance Agrees,” 1991, para. 1). The Commission stipulated, however, that its approval was “subject to the condition that the sale of Station WPTT-TV be consummated prior to the consummation of the sale of Station WPGH-TV” (Kreisman, 1991, p. 7).

Sinclair was able to purchase WPGH-TV from Renaissance Communications for $55 million (“Renaissance Agrees,” 1991). Yet the deal for Edwards’ acquisition of WPTT, and the subsequent LMA with WPGH, demonstrates how even the first sidecar arrangement barely concealed the dominant broadcaster’s control of the weaker station. According to Kunz (2007), the terms of the deal were very favorable, as Edwards secured ownership of WPTT’s license with “a $10 down payment and a $7 million loan from Sinclair” (p. 93). The deal also stipulated that the 8.5% interest on the loan could be converted into an 80% voting interest for Sinclair in
WPTT (Kreisman, 1991). As part of the deal, Edwards signed an agreement to carry the Home Shopping Network on WPTT (Baggerman, 2006).

The deal between Sinclair and Edwards was challenged in Petitions to Deny filed by Mark I. Baseman. Although his identity was initially kept quiet, Foisie (1992) reported that Baseman was working on behalf of ABRY Communications’ station WNUV-TV, located in Baltimore, Maryland. ABRY decided on an “indirect approach because of concerns that Sinclair would try to injure it economically” in the Baltimore DMA (Foisie, 1992, para. 4). Baseman contended that Sinclair would be able to exert undue control over WPTT after the consummation of the sale through its LMA and argued that the provision for Sinclair to convert the loan interest Edwards would owe into an 80% voting stock violates the FCC’s multiple-ownership rule (Kreisman, 1991). Baseman concluded that Sinclair retains interests in WPTT which would provide it with substantial control over the station, ensuring that WPTT “will remain noncompetitive with Station WPGH-TV” (Kreisman, 1991, p. 2). In response, Sinclair stated that WPTT had never been a serious competitor with WPGH because “WPTT-TV has consistently been last among Pittsburgh’s over-the-air stations” (p. 2). However, Sinclair also amended the terms of the deal after the Petitions to Deny were filed by Baseman.

Sinclair amended the option to convert the loan interest into voting stock by changing it into “nonvoting common shares” (Kreisman, 1991, p. 3). The Commission concluded in September 1991 that Baseman “failed to raise a substantial material question of fact that would warrant any further inquiry” and concluded that the applicants are “fully qualified” and “will serve the public interest” (Kreisman, 1991, p. 6). Yet, six months after the deal was concluded, Foisie (1992) reported that WPTT stopped airing the Home Shopping Network, as indicated in part of the deal, and instead was “carrying WPGH’s programming from 3 p.m. to midnight”
In 1999, as part of a deal to buy ten stations Sinclair already serviced through sidecar agreements, Edwards sold WPTT back to Sinclair after ownership rules were relaxed, permitting the sale (Ribbing, 1999). Thus demonstrating that these agreements are used to circumvent the Commission’s ownership rules and do not foster competition between broadcasters nor do they promote content or source diversity. In the pursuit of profits, Sinclair effectively reduced the number of unique voices in Pittsburgh, Pennsylvania.

During the 1990s, LMAs enabled the weaker broadcaster, the licensee, to sell “pretty much all of its broadcast air time” to a competing broadcaster (Lovelady, 2011, para. 4). A few years after the WPTT and WPGH deal, Sinclair wanted to buy television stations in Milwaukee, Birmingham, Washington, D.C., and Baltimore, yet these stations overlapped with Sinclair’s holdings already in those cities (Hagey, 2013). To circumvent FCC ownership restrictions, Edwards formed Glencairn Ltd. with the Sinclair President and CEO David Smith’s mother, Carolyn Smith, as Edwards’ main partner and financial backer (Kunz, 2007). Despite Petitions to Deny filed by the Rainbow PUSH Coalition, which contended that Glencairn “had unlawfully ceded control to Sinclair as part of a scheme by Sinclair to control more stations than permitted under the duopoly rule,” the Commission granted the applications and largely approved the service arrangements between Glencairn and Sinclair (Federal Communications Commission, 2013b, p. 4).

Although the Commission did find that Sinclair exercised de facto control of Glencairn and that Glencairn transferred control to Sinclair without the FCC’s authorization, the Commission simply determined that both Sinclair and Glencairn owed a “forfeiture each of forty thousand dollars” (Federal Communications Commission, 2001, p. 16). As a result, it becomes clear that the FCC needed to regulate these agreements. Without a clear regulatory approach for
broadcast television, Sinclair was able to not only circumvent the FCC’s ownership regulations but also to exploit the system in pursuit of cost-saving efficiencies even though outright ownership of these stations would have been an obvious violation of those ownership rules. This is problematic as those ownership restrictions are intended to ensure that local communities have access to media that serve democratic functions; such as, acting as a watchdog of the powerful, providing information from diverse and antagonistic sources, and sustaining a citizenry that is capable of self-governance (Croteau & Hoynes, 2006; McChesney, 2004; Napoli, 2001).

As LMAs gained prominence in the television industry, the issue of attributable interest began to concern the FCC – much like the evolution of sidecar agreements in the radio industry. The FCC’s attribution rules identify the interests in a broadcast station “that constitute control over that station and must be counted in applying the broadcast ownership rules” (Goldfarb, 2012, p. 4). In 2004, the FCC found that service agreements in local television markets have similar effects as in local radio markets (Goldfarb, 2012). Therefore, the FCC considered extending the attribution rule to television, but it “never adopted a final order,” and “as long as the Commission’s multiple ownership rules are not violated and the participating licensees maintain ultimate control over their facilities,” the sidecar agreements remain permissible (Goldfarb, 2012, p. 4). Despite the lack of a final ruling from the FCC, LMAs fell out of favor with television broadcasters, and again taking cue from Sinclair, JSAs and SSAs rose in prominence. The JSAs and SSAs were formed as “an alternative to LMAs that would still conform to the rules” (Lovelady, 2011, para. 7). And, according to Turner (2014), much like the initial LMA for television broadcasting, Sinclair created the SSA to continue to circumvent the FCC’s multiple ownership rules and to avoid triggering attributable interest.
By 2005, Glencairn had been renamed to Cunningham Broadcasting Corp. and it owned six television stations – all operated by Sinclair through sidecar agreements (Kunz, 2007). Since introducing LMAs into the television industry in 1991, Sinclair has had ample opportunity to perfect the sidecar business model. As explained above, Sinclair started out with just one station operated through service agreements. By 1995, it operated five stations through LMAs (McClellan, 1995). As of this writing in 2015, Sinclair owns, operates or services 162 television stations (Sinclair Broadcast Group, n.d.-a). Of those stations, twenty-six are serviced through JSAs, twelve are serviced through LMAs, one through SSA, and five through various other arrangements (Sinclair Broadcast Group, n.d.-b). Sinclair’s use of sidecar agreements demonstrates that this practice is primarily used to circumvent FCC ownership restrictions that are in place to promote diversity, competition and localism.

Tracing how Sinclair was able to introduce service agreements to broadcast television demonstrates that these arrangements are not intended to foster the public interest, as they were introduced by a company that is not beholden to serve the public but rather investors and shareholders. As the sidecar business model has gained prominence in the broadcast television industry, it becomes more apparent that the FCC needed step in and regulate these arrangements in favor of the public interest rather than corporate interests. These service agreements are consolidating the media industry, and consolidated media ownership results in homogenized content, or duplicated content in the case of Sinclair’s LMAs, and less diversity of viewpoints and sources (Napoli, 2001). It is important to examine these types of agreements that are detrimental to citizens and their ability to participate in their democracy. Although sidecar agreements help broadcasters reduce risks and increase profits, they need to be clearly operating in the public’s interests.
Service Agreements in the Current Media Landscape

Since Sinclair’s initial success with service agreements, use of sidecar agreements among the broadcast television industry as a whole has become widespread. According to the Pew Research Center’s State of the Media 2014 report, service agreements now “exist in at least 94 markets, almost half of the 210 local TV markets nationwide, and up from 55 in 2011” (Potter & Matsa, 2014, para. 2). Sinclair’s success with the sidecar business model explains how these agreements gained traction as a viable, and profitable, option despite ownership restrictions. The sidecar business model in the television industry functions primarily to increase profits, lower costs, and to circumvent the NBCO and duopoly rules. As outlined in previous chapters, the NBCO and duopoly rules are grounded in the belief that the media should serve the public interest and that the public interest is defined through the promotion of competition, diversity and localism. Yet Sinclair describes in a 1999 Petition for Reconsideration in a section titled, LMAs Have Served the Public Interest, that prior to the 1991 LMA, WPTT was operating on a marginal basis and that

As a result of the LMA, WPTT(TV) has become profitable. WPTT(TV) has expanded its entertainment programming each year to the point where it is now airing 20 hours per day. Through the LMA, WPTT(TV) has been able to secure better syndicated programing. In addition, the station has strengthened its lineup of children’s programing… In 1997, WPTT(TV) won the rights to broadcast 12 hockey games. From the start of the LMA in 1991 to February 1997, the station’s ratings/share went from 0/0 to 1/3. (Federal Communications Commission, 1999, p.18)

Sinclair intended for this description to demonstrate how the WPTT and WPGH has served the public interest; however, the emphasis on profit and entertainment values fail to indicate how the
public interest was served when the public interest is defined in terms of competition, localism and diversity. The LMA is harming competition by preventing WPTT from competing with WPGH. It is not promoting localism because it is not producing original, locally oriented content; in fact, Sinclair neglects to mention anything about content that will help citizens of that community make informed decisions about their government and community. Lastly, syndicated programming is not diverse content, and by replicating the content of WPGH on WPTT it is difficult to make a case for source diversity. The burden should have been on Sinclair to demonstrate how the LMA was going to promote the public interest - public interest as the FCC defines it, not as profits and economic incentives. Thus, the profit justification for the sidecar business model is severely lacking in demonstrating how these agreements serve the public interest.

Ultimately, sidecar agreements became a common business practice in the broadcast television industry because the FCC set the precedent itself within the radio industry. Sinclair took advantage of that precedent by applying it to television because there are significant economic incentives for broadcasters to not only enter into these agreements but to make sure that they remain largely unregulated. Although these agreements do not outright violate the multiple ownership rules, they are being use to form what would otherwise be illegal duopolies and to consolidate the media industry. Consolidation raises barriers to entry for new broadcasters seeking to enter the industry by driving up costs and limiting the number of stations available. Without the safeguards ownership restrictions provide, the media industry would grow increasingly monopolistic and thus anti-democratic.

Further, analyzing sidecar agreements in terms of how they can impact a citizen’s ability to participate in democracy is crucial for understanding why the FCC’s ownership restrictions
are so vital. By protecting diversity, localism and competition, the Commission ensures that the media operate not just as commercial entities but as democratic proponents meeting the needs and interests of its citizens. The very nature of sidecar agreements is antidemocratic, as the decision-making power of the weaker broadcaster is subverted to that of the dominant broadcaster. Subsequently, these power dynamics between the broadcasters illuminates the lack of competition the service agreements ensure and it is difficult to count the weaker broadcaster as an independent media voice. Therefore, the following chapter examines the more recent Gannett-Belo transaction and how the details of the service agreements between Gannett, Sander and Tucker are problematic because they grant Gannett *de facto* control of stations that it is prohibited from owning outright.
CHAPTER FIVE
THE GANNETT-BELO TRANSACTION: A CASE STUDY

When the Gannett Company acquired the Belo Corporation in 2013, Gannett became the fourth largest owner of the Big 4 network affiliates in the U.S. – reaching thirty percent of the national audience (Gannett.com, 2013a). Further, Gannett became the largest player in the top twenty-five designated market areas (DMAs), with twenty-one stations in the top twenty-five markets (Gannett.com, 2013a). Yet these numbers are not possible without including the stations Gannett services through sidecar agreements. As seen in a presentation to investors, Gannett acknowledges that these numbers include the “stations to be serviced by Gannett though sharing arrangements” (Gannett.com, 2013a, p. 7). This is significant because even though Gannett can include these stations in reports to investors, the FCC still does not recognize Gannett as having attributable interest in these stations.

It should be noted that before the Belo-Gannett transaction could be concluded, the Department of Justice (2013) announced that Gannett would be required to divest KMOV-TV in St. Louis to “an independent purchaser to be approved by the United States” and that the “purchaser will not be permitted to have any agreements with Gannett” (para. 5). Subsequently, Sander would not be able to hold the license to KMOV and allow Gannett to service that particular station. The Department of Justice (2013) argued that the proposed acquisition “would less competition in broadcast television spot advertising” in the St. Louis DMA and that the sidecar agreements between Gannett and Sander “would align the incentives of the two stations” (para. 5). What set the St. Louis station apart from the other former Belo stations was the inclusion of a joint negotiation of retransmission rights agreement. The Department of Justice (2013) describes concerns that apply to the other stations: the “option for Gannett to assign or
acquire the Belo stations sold to Sander, a financing guarantee and a long-term shared services agreement” (para. 3). Yet, the St. Louis station was the only one the Department of Justice required Gannett and Sander to sell to a third-party, without entering into sharing arrangements. Gannett ultimately sold KMOV to Meredith Corporation, and as part of the deal also included the former Belo stations located in Phoenix, Arizona, for $407.5 million in cash (Gannett.com, 2014). Subsequently, this chapter focuses solely on the former Belo stations that Gannett still services through sharing agreements.

This chapter intends to examine the agreements Gannett has entered into with Sander and Tucker to demonstrate that these sidecar arrangements enable Gannett to exert undue influence in markets that would otherwise violate the NBCO and duopoly rules and to establish that sharing agreements grant *de facto* control to the dominant broadcaster. This chapter will begin by describing the general terms of the various service agreements between Gannett and Sander and Tucker. The following sub-sections will examine the specifics of these agreements in the Tucson, Arizona; Louisville, Kentucky; and Portland, Oregon designated market areas (DMAs) in terms of sales agreements, physical assets, profits and financing, the Station Option Agreement, and programming. The next section will examine the press releases and statements issued by Gannett, Belo, Sander, and Tucker to demonstrate that Gannett holds little regard for the Commission’s ownership restrictions. Ultimately, this chapter intends to demonstrate how these arrangements grant Gannett ownership-like control over these stations and provides a useful case study to understand how these agreements work.

Terms of the Agreements

The Asset Purchase Agreement between Gannett, Sander and Tucker specify the nature of not only the sale of stations in Tucson, Louisville and Portland to Sander or Tucker, but also
how Gannett plans to service these stations through service agreements. The sidecar arrangement Gannett holds with Sander and Tucker includes JSAs, SSAs, Transition Services Agreements (TSAs), Parent, or Station, Option Agreements, and other special agreements. The specifics of these agreements will be examined in the following subsections, but the general terms of the agreements are as follows. For the sale of KTTU(TV) to Tucker from Belo, facilitated by

<table>
<thead>
<tr>
<th>DMA</th>
<th>Station</th>
<th>Licensee</th>
<th>In Service Agreements With</th>
<th>Monthly Service Fees ($)</th>
<th>Length of the Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tucson, AZ</td>
<td>KMSB(TV)</td>
<td>Sander</td>
<td>Raycom Media, Inc., Gannett</td>
<td>41,666</td>
<td></td>
</tr>
<tr>
<td></td>
<td>KTTU(TV)</td>
<td>Tucker</td>
<td>Raycom Media, Inc., Gannett, Sander</td>
<td>41,666</td>
<td></td>
</tr>
<tr>
<td>Louisville, KY</td>
<td>WHAS-TV</td>
<td>Sander</td>
<td>Gannett</td>
<td>750,000</td>
<td>Effective for 8 years with renewal options</td>
</tr>
<tr>
<td>Portland, OR</td>
<td>KGW(TV)</td>
<td>Sander</td>
<td>Gannett</td>
<td>1,250,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>KGWZ-LD</td>
<td>Sander</td>
<td>Gannett</td>
<td>1,250,000</td>
<td></td>
</tr>
</tbody>
</table>

1 Asset Purchase Agreement, 2013; Asset Purchase Agreement, 2013
Gannett, the purchase price was set at $3,183,199 (Asset Purchase Agreement, 2013, Article II, section 2.1). For the sale of KMSB(TV), WHAS-TV, KGW(TV), and KGWZ-LD to Sander, the purchase price was set at $101,777,739 (Asset Purchase Agreement, 2013, Article II, section 2.1). Yet these agreements also stated that all fees “including those fees relating to the FCC Applications” shall be paid by Gannett (Asset Purchase Agreement, 2013, Article V, section 5.12; Asset Purchase Agreement, 2013, Article V, section 5.12(a)). Further, for all of these stations, the agreements stipulate that the arrangement shall be effective for eight years and the Portland and Louisville stations will renew automatically every two years and the Tucson stations will renew automatically every year (Asset Purchase Agreement, 2013, Exhibit C).

These details of the purchase of the stations by Sander and Tucker from Belo appear fairly unremarkable – if the sale was being conducted between truly competing broadcasters. If Gannett cannot own these stations outright, why is it involved in the sale at all if Belo is selling these stations to Sander and Tucker? In addition, the Asset Purchase Agreement stipulates that Sander, and similar language appears in the agreement with Tucker, shall not “enter into any local marketing agreement, joint sales agreement, shared services agreement or other similar Contract with any Person in respect of the programming or operations of the Stations, except for those certain agreements expressly contemplated hereby” (Asset Purchase Agreement, 2013, Article V, Section 5.2(c)(ii)). This sidecar arrangement grants Gannett not just the ability to hold service agreements with Sander and Tucker, but also grants Gannett the ability to decide what agreements Sander and Tucker can, or cannot as the case may be, enter into. These types of stipulations placed on Sander and Tucker, that places these licensees under the power or control of Gannett, are inherent throughout the JSAs, SSAs and other agreements Gannett holds with Sander and Tucker. This is significant because it demonstrates that although Gannett’s name is
not on the license, it still retains a decision making position that should be reserved for the licensee. In the following subsections, the details of these agreements will demonstrate that Gannett has the ability to exercise *de facto* control over these stations nominally owned by Sander and Tucker.

**Sales**

The JSA between Gannett and Sander states that “in view of the important efficiencies to be obtained by the Station through the provision of certain joint sales services provided by the Sales Agent… the parties hereto desire to enter into this Agreement” (Asset Purchase Agreement, 2013, Exhibit B-2, para. 3). Specifically, this part of the sidecar arrangement requires Sander to retain Gannett on an exclusive basis to sell and market all forms of local, regional, and political advertising as well as direct response, sponsorships, paid programming, and long-form advertising for Sander’s television stations (Asset Purchase Agreement Exhibit, 2013, B-2, section 4.1(a)). And, “for the avoidance of doubt,” this includes all forms of advertisements “whether by mobile device or other means of distribution” (Asset Purchase Agreement, 2013, Exhibit B-2, section 4.1(a)). The agreement requires Sander to grant Gannett control over advertising sales; therefore, Sander is unable to make decisions about advertising sales on the stations it holds the license to. The JSA also specifies website advertising sales. It grants Gannett the “exclusive right to sell any and all advertising on the Station’s websites” (Asset Purchase Agreement, 2013, Exhibit B-2, section 4.1(c)).

These same terms of the JSA between Gannett and Sander also apply to the JSA with Tucker; however, Sander holds the position of Sales Agent – not Gannett due to the pre-existing service agreements KTTU(TV) and KMSB(TV) held with Raycom Media when Belo owned these stations. In Tucson, Tucker entered into a JSA with Sander in order to continue receiving
“local news, weather, traffic, sports and website administration” from Raycom Media, Incorporated, because these stations, KMSB and KTTU, already has service agreements with Raycom prior to Gannett’s acquisition of Belo (Federal Communications Commission, 2013a, p. 25). However, after one year, or two if Sander or Tucker choose to renew the service agreements, Gannett will provide these stations with its own programming and support (Federal Communications Commission, 2013a).

By controlling advertising sales of Sander and Tucker’s stations, Gannett is capable of yielding significant power in these DMAs and capable of raising significant barriers to entry. These markets are characterized by Gannett’s ownership of a major daily newspaper or local broadcast television stations, in addition to the stations held by Sander and Tucker. This situation enables Gannett to sell advertising spots in bulk, across markets, as well as on a variety of media platforms: in print, on television, on mobile devices and online. Gannett’s control over advertising sales not only impacts how Gannett can yield its influence in these DMAs and with advertisers, but also how Gannett can impact programming. The relationship between advertising and its effect on programming and content is well documented (See Bettig & Hall, 2012; Croteau & Hoynes, 2006; McChesney, 2004). Bettig and Hall (2012) state that advertisers exert influence over media content and programming by threatening to pull advertising due to negative portrayals in programming. Gannett, however, is in a position to sell large chunks of multi-platform advertising spots to advertisers.

This arrangement prevents Sander or Tucker from attempting to air original programming that might conflict with Gannett’s advertisers. Ultimately, then, the control of the advertising sales ceded to Gannett disempowers both Sander and Tucker in not just advertising sales decisions but also, potentially, programming decisions. By having a large market share in these
communities, Gannett is able to reinforce these barriers to entry. Further, by controlling multiple media outlets Gannett will likely be producing homogenized content that will lack diversity in terms of social and political views (See Bettig & Hall, 2012; McChensey, 2004; Napoli, 2001). This has significant implications for democracy in these communities, and while these LMAs might save these stations money in the short term, the lasting effects of the sidecar business model is likely to be severe for these communities and their ability to make informed decision and participate in government.

Physical Assets

Gannett is a publically traded company, and therefore, its assets are much more easily determined than Sander or Tucker, which are privately owned. However, the Asset Purchase Agreements specify several physical assets of Sander that Gannett has either exclusive access to or outright control over. For example, Schedule 6.5 Lease Terms of the SSA, dictates that Gannett shall provide “access and use of space” to Sander, in common with Gannett, to include furnishings, office equipment and studio space (Asset Purchase Agreement, 2013, Schedule 6.5, section 1). By sharing the physical property that Gannett owns with Sander, Sander holds no real property and has no incentive to purchase property and physically separate itself from Gannett. The SSA agreement specifies that Gannett shall monitor and provide maintenance for all of Sander’s equipment and will assist Sander “with the installation, repair, maintenance and replacement of the Station’s operating equipment” (Asset Purchase Agreement, 2013, Exhibit D-2, section 6.1(a)).

Besides equipment and furnishings, Gannett also provides human resources to Sander. As a part of the SSA, Gannett is required to provide to Sander “a staff engineer employed by [Gannett]” (Asset Purchase Agreement, 2013, Exhibit D-2, section 6.1(b)). In addition to a staff

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engineer, Gannett is also responsible for providing “reasonable and customary back-office support services with respect to the business and operation of the Station including payroll” (Asset Purchase Agreement, 2013, Exhibit D-2, section 6.3). Other human resources provided by Gannett for Sander includes the operation of any websites associated with Sander’s television stations (Asset Purchase Agreement, 2013, Exhibit D-2, section 6.2). By providing these human resource services, equipment and physical property for Sander, it appears as though there are few assets left that Sander owns besides the actual broadcast license.

In addition, these cost saving efficiencies demonstrate how the democratic function of the media can be subordinated to commercial interests. By providing Sander with these resources, it is clear that Sander cannot subvert Gannett’s decisions, assuming Sander wanted to act as an independent, competing broadcaster. Because otherwise, Sander would lose a significant portion of employees who serve vital functions in airing content and whose salaries are paid by Gannett, would lose access to equipment and technology, and would no longer have a physical location within which to operate. Subsequently, it is clear that Sander is not in fact an independent and equally competing broadcaster to Gannett. Therefore, this model is contributing to the concentration of the media industry and does not bode well for the future of U.S. democracy.

Profits and Financing.

The JSAs between Gannett, Sander and Tucker require Sander and Tucker to pay a portion of their revenues to Gannett. Per the agreement, Sander and Tucker shall pay to Gannett “a monthly commission in an amount equal to thirty percent (30%) of the total amount of Net Sales Revenue for each calendar month” (Asset Purchase Agreement, 2013, Exhibit B-3, section 3.1(a); Asset Purchase Agreement, 2013, Exhibit B-2, section 3.1(a)). This is a significant portion of Sander and Tucker’s profits; however, on top of this monthly commission, both
licensees must pay a service fee to Gannett. The service fee is the sum of a base payment amount plus either a supplemental fee or a performance fee. For KTTU(TV) in Tucson, the base amount to be paid to Gannett by Tucker monthly is $41,666, and any supplemental fees are to be determined by both parties (Asset Purchase Agreement, 2013, Exhibit C, Schedule A). For the Portland stations, KGW(TV) and KGWZ-LD, Sander is to pay $1,250,000 monthly for each station serviced by Gannett (Asset Purchase Agreement, 2013, Amended and Restated Exhibit D-2, Schedule A). In Louisville, the base amount is set at $750,000 monthly for WHAS-TV (Asset Purchase Agreement, 2013, Amended and Restated Exhibit D-2, Schedule A). For these stations in Portland and Louisville, there is also the performance fee. This performance bonus is to be paid by Sander to Gannett to reflect the value of the services provided. The agreement does not specify what the performance bonus entails beyond stating that Sander will determine “in good faith that the performance of [Gannett] has contributed to an increase in the performance of the station” (Asset Purchase Agreement, 2013, Amended and Restated Exhibit D-2, Schedule A, section 2).

As a result, it is very difficult to ascertain exactly how much of Sander’s and Tucker’s profits are given over to Gannett on a monthly basis. Yet the number is still significant when the base payment, monthly commission and unknown supplemental or performance based fees are considered in total. This suggests that Gannett, not licensees Sander and Tucker, is in control of these stations - otherwise there would be no reason to divert such a significant amount of money away from Sander and Tucker to Gannett. This arrangement also begs the questions of how much is leftover for Sander and Tucker? Is it even enough for Sander and Tucker to maintain the station? If not, then Gannett’s status as financier for Sander and Tucker becomes problematic.
Gannett services the Sander and Tucker stations as financier. If, due to the performance of the stations, Sander or Tucker are unable to pay all or any portion of expenses, then Gannett “shall advance to Station Licensee the differential of such amounts” (Asset Purchase Agreement, 2013, Schedule A, section 3.1; Asset Purchase Agreement, 2013, Schedule A, section 3.1).

Expenses that Gannett is willing to finance if Sander or Tucker cannot include, but not necessarily limited to, utilities, rental payments for property, the wages for two of the Station’s full-time employees and a general sales manager and the sales force for the Station, hourly rates for accounting and human resource services, expenses related to filings for FCC licenses and related attorney’s fees, property taxes, insurance, and music rights. Therefore, whatever few expenses are left over after Gannett’s support and service that Sander or Tucker are responsible for can still be given over to Gannett’s decision making if the licensees cannot pay the full amount of these expenses. These financial arrangements give Gannett significant financial interest in these stations, yet the FCC does not recognize this influence as attributable interest.

These financial arrangements grant Gannett substantial influence over Sander and Tucker. Therefore, it becomes clear that these sidecar stations are beholden to Gannett, and it is unlikely that these stations could function independently with Sander and Tucker as the licensees because they have given so much control over to Gannett. This type of consolidation presents clear dangers to the citizens in these communities. As their options for diverse, independent news and information sources dwindle, these citizens lose access to information that could be vital for their participation in local and national government. These sharing arrangements are entered into by companies like Gannett due to profit maximization goals. Yet when profit is emphasized to the detriment of the public interest it should be the FCC’s duty to step in, especially when these service agreements are already violating the spirit of the Commission’s rules. If the media outlets
in a community become increasingly consolidated, whether through outright ownership or covert consolidation, this is a significant threat to democracy. As famously stated by former Supreme Court Justice Hugo Black: “the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public” (Associated Press v. United States, 1945, para. 20). The sidecar business model does not promote diversity, and it certainly does not ensure media sources remain antagonistic. Therefore, not only do service arrangements between competing broadcasters violate the intent of the Commission’s ownership restrictions, they are detrimental to the welfare of the public. It is the purview of the FCC to ensure that the public interest is protected. Black continues to state that “a free press is a condition of a free society” (Associated Press v. United States, 1945, para. 20). Without safeguards to protect the media against consolidation, this notion of a free press diminishes – as does the notion of a free society.

The Station Option Agreement.

One aspect of the sidecar arrangements between Gannett and Sander or between Gannett and Tucker is the Station, or Parent, Option Agreement. This agreement, which applies to all the broadcast television stations owned by either Sander or Tucker, stipulates that if the FCC makes changes to its ownership rules that allows Gannett to own these stations outright, then Sander and Tucker have agreed to sell their stations to Gannett. Specifically for Tucson’s KTTU(TV), the agreement states that Gannett will have the option to purchase “(i) all of the Membership Interests in the Company or (ii) all of the Company’s assets relation to the Station” from Tucker (Asset Purchase Agreement, 2013, Exhibit D Section 1). However, for Sander, the agreement “gives, grants, transfers and conveys” to Gannett “the sole and exclusive right, privilege and option to purchase” all four of Sander’s stations (Asset Purchase Agreement, 2013, Exhibit F
section 1). What this means is that Sander is contractually obligated to sell its stations only to
Gannett should this option become legally viable.

Not only does this Parent Option Agreement prohibit Sander from selling its stations to
another company besides Gannett, the agreement also specifies how much Sander will sell its
stations for. As stated in Section 2 of Exhibit F, this option to purchase is granted “in return for,
among other consideration, the payment by Option Holder to Grantor of an amount equal to
Sixty Thousand Dollars ($60,000)” (Asset Purchase Agreement, 2013, Exhibit F, section 2).
Gannett, the Option Holder, is only obligated to purchase all four stations of Sander’s, the
Grantor, for just $60,000. For perspective of just how cheap this option to purchase for Gannett
is, according to Potter and Matsa (2014), in 2013 there were 290 television stations sold for a
total of $8.8 billion. This comes out to more than $30 million per television station.

This Option Agreement enables Gannett to purchase Sander’s four television stations
very much below market value. If the relationship between Sander and Gannett was truly
competitive, then why would Sander accede to such an arrangement, when, if the 2013 numbers
are comparable, Sander could charge two thousand times that amount per station? The only
reason a company would accede to such an arrangement is if that company is not acting in its
own interests. What this means then, is that Sander and Tucker are not truly independent
companies. Instead, Sander and Tucker appear to be operating much like subsidiaries of Gannett
rather than as competitive, independent companies.

Programming

In Portland and Louisville, the JSA specifies the amount of programming that Gannett
will deliver to Sander. The agreement states that the delivered programming Gannett shall
provide for Sander will “be less than twenty-five (25) hours per week and less than fifteen
percent (15%) of the Station’s broadcast hours for any week” (Asset Purchase Agreement, 2013, Exhibit B-2, section 4.2). Further, Gannett retains “editorial judgment” of the delivered programming (Asset Purchase Agreement, 2013, Exhibit B-2, section 4.2). Therefore, not only will fifteen percent of Sander’s television stations consist of Gannett produced programming, Sander as the licensee cannot exercise editorial judgment over that programming. In addition, the JSA stipulates that Sander shall not “copy, reformat or otherwise manipulate material furnished by [Gannett] other than inserting cartridges or similar broadcast-ready media into machinery or computers for broadcast” (Asset Purchase Agreement, 2013, Exhibit B-2, section 5.3). If Sander was a truly independent owner of WHAS-TV, KGW(TV) and KGWZ-LD, then as licensee, Sander should be able to make programming decisions, for all of its programming, that requires more than inserting the broadcast-ready media into a machine.

Gannett’s ability to supersede Sander as a decision maker for programming is further evident by the provision that outlines that Sander can only preempt the Gannett supplied programming with “material of greater local or national importance” (Asset Purchase Agreement, 2013, Exhibit B-2, section 4.3). Yet if Gannett owns the equipment, pays the employees and controls a significant portion of Sander’s finances, it seems doubtful that Sander is even capable of preempting Gannett’s programming with original programming of greater importance. Therefore, it is difficult to claim that these sidecar stations are independent from Gannett. This business model serves as a way for Gannett to circumvent FCC rules that are intended to promote the public interest. This model is exploitative of the loopholes in FCC rules, it is exploitative of weaker broadcasters, and it is exploitative of citizens who need access to a variety of sources in order to participate in their own self-governance. All of these different aspects of the various service agreements Gannett holds with Sander and Tucker do little to
demonstrate that Gannett does not exert undue influence in these markets. Instead, this analysis finds that Gannett’s use of sharing agreements is undemocratic and needs to be reexamined by the FCC and the burden of responsibility to demonstrate that Gannett is operating in the public’s interests should be on Gannett.

Gannett Talks

The service agreements themselves demonstrate that Gannett holds considerable decision making power, such that it often supersedes that of the licensees, in these stations nominally held by Sander and Tucker. However, further evidence from Gannett, found in popular press and in communications to Gannett’s investors and stockholders, reveal that Gannett perceives itself to hold control over the Sander and Tucker stations. For example, on Gannett’s website, it states that Gannett “owns or services through shared service agreements or other similar agreements 46 television stations” (Gannett.com, n.d., para. 4). Gannett makes little attempt to differentiate between the stations it owns outright versus those its services through service arrangements in its description of the company. This is because there is little reason to. The control that these agreements offer Gannett differs very little from outright ownership: the distinction is not even enough for Gannett to explain on its website.

Similarly, Gracia Martore, Gannett president and CEO, when speaking of the Gannett-Belo transaction stated that Gannett expects “to consolidate all the results from these stations into our overall financial results” (Malone, 2013, para. 5). By neglecting to separate the stations that Gannett owns from the stations Gannett services through sharing agreement, Martore reveals that the distinction between these stations is negligible. If it were otherwise, Gannett would make an effort to recognize that these stations are different, and not just lumped together with the stations it owns outright. The only reason Gannett does not own these stations outright and had to give up
the licenses to Sander and Tucker is because under the NBCO and duopoly rules, Gannett is not permitted to do so. The benefit for Gannett to instead service these stations is to circumvent these restrictions to profit off of these stations as if it owned them outright. David Lougee, Gannett’s President, stated that these sidecar stations will be “almost” independent and “will be consolidated in the financials” (Gannett Co. Inc., 2013, p. 7). The phrase almost independent reflects the nature of these agreements: for these stations are mostly dependent on Gannett. If they were truly independent stations, Lougee would not need to qualify the nature of their independence. Further, by admitting to consolidating these stations in the financials, Gannett demonstrates a clear lack of differentiation between the stations it owns versus the stations it services. The use of the word consolidation as well indicates just how Gannett views its sidecar stations.

Gannett’s inclusion of the television stations it services, but does not hold the licenses to, demonstrates the lack of regard for the NBCO and duopoly rules that prevent the outright ownership of these stations. This attitude is easily explained by the financial benefits operating through economies of scale provides, and Gannett readily incorporates these financial benefits in communications with investors. For example, in a presentation uploaded to its website, Gannett indicates that its revenue numbers include “stations to be serviced by Gannett through sharing arrangements” (Gannett.com, 2013, p. 7). The presentation also reveals that Gannett expects “to support station operations through a combination of joint sales and shared service agreements” (Gannett.com, 2013, p. 13). Although seemingly innocuous, these statements were included on a presentation that appeared to be intended for stakeholders and investors. This would indicate that although the FCC might not recognize Gannett as the owner of the seven television stations that would violate the NBCO and duopoly rules, Gannett does. These types of communications
reveal how Gannett views its sidecar stations. If Gannett does not have an ownership stake in these stations, it should not be able to include these kinds of statement in communications to investors and stakeholders. Therefore, Gannett might not hold the licenses to these stations, but it is clear that Gannett does exercise some amount of control over these sidecars.

Similarly, in a memo to employees, Gannett stated that “this expanded footprint will give us an even greater opportunity to leverage our hometown advantage and strong brand leadership across all of our businesses – Publishing, Broadcast and Digital” (Eck, 2013, para. 8). This indicates that Gannett perceives itself to be in a position to control these stations. Furthermore, according to Eggerton (2013), Gannett includes the Sander and Tucker owned stations when “talking about the super group it is creating” (para. 3). This kind of language, as well as the terms of the service agreements outlined above, demonstrate that Sander and Tucker do not have ultimate authority over the stations specified; instead, it is clear that this authority rests with Gannett. The ties between Gannett and the stations it services, but does not hold the licenses to, are so close that they have been mistakenly referred to as owned by Gannett. For example, in an article written for The Buffalo News, Pergament (2014) reports that “WHAS is owned by Gannett” (para. 5). The mistake is an easy one and does little to affect the integrity of the article; however, this mistake demonstrates that for all intents and purposes, it appears as though Gannett does in fact own the stations it services.

What’s In a License?

Gannett claims the stations it services through sharing agreements as a part of its “broadcasting assets,” yet the FCC only recognizes the name on the broadcast license for ownership (Gannett.com, 2013a). As seen through this analysis of the sharing arrangements between Gannett and Tucker and Sander, Gannett acts as a significant decision maker, and as
such, Gannett should be acknowledged by the FCC to hold an attributable interest in these stations. The evidence from the service agreements suggests that for all intents and purposes Sander and Tucker are little more than shell companies operating in primarily in Gannett’s interests, and not the public’s interests. As succinctly stated by Wood (2014), “no one other than the FCC treats so-called ‘sidecar’ companies of large broadcasters as separate entities from the controlling stations” (p. i). This analysis reveals that Gannett is in fact able to exert undue influence in these DMAs where outright ownership would violate the NBCO and duopoly rules and these sharing agreements grant de facto control to Gannett and therefore, the FCC needs to recognize how these arrangements are impacting the competitiveness and diversity of media markets. The following chapter concludes this thesis by summarizing main arguments, demonstrating how this thesis contributes to the literature, proposing policy recommendations, examining limitations and opportunities for future research, and closes with final thoughts.
CHAPTER SIX

CONCLUSION

After the Belo-Gannett transaction was concluded, Gannett was required to divest television stations in markets that outright ownership of would have placed Gannett in violation of the Newspaper Broadcast Cross-Ownership rule and the duopoly rule. Subsequently, the companies Sander and Tucker were formed to hold licenses in Tucson, Arizona, Louisville, Kentucky and Portland, Oregon and to enter into service agreements with Gannett. These agreements do not confer ownership; however, they do grant Gannett de facto control over these stations. This type of consolidated media ownership, especially from a political economic framework, is detrimental to the public interest – which the FCC is required to uphold – and democracy in the United States. By tracing the history of sidecar agreements, starting with Sinclair in 1991, this thesis sought to demonstrate how from the beginning these arrangements were used to circumvent FCC ownership rules. Following with the analysis of Gannett’s service agreements with Sander and Tucker, it is clear that these arrangements are used to illicitly transfer control of the license to Gannett, since Gannett cannot own the stations outright.

In 2014, the Commission took steps to close the loophole to the NBCO and duopoly rules. The FCC decided to apply the same standard of attribution used in radio JSAs to television: that JSAs that allow for the sale of 15% or more of the advertising on a competing television station “creates an ownership interest” (Federal Communications Commission, 2014, para. 2). Additionally, parties to existing JSAs will have “two years to come into compliance with the applicable local ownership limits” (Federal Communications Commission, 2014, para. 2). Although the Commission is making strides to prevent sidecar agreements from negatively impacting the public interest, this rule change only applies to JSAs - not SSAs or any other type
of service agreement. As such, hopefully this analysis can provide evidence for any future examination of the sidecar business model by the FCC and decisions to limit SSAs and other types of service agreements that violate the nature of the Commission’s ownership restrictions.

This thesis contributes to the literature by tracing the history of how Sinclair implemented the first LMA in U.S. television broadcasting in 1991. Following the history of sidecar agreements in television broadcasting demonstrates how sidecar agreements gained traction as an acceptable business practice. Understanding this history provides context for the current regulatory environment, how recent service agreements operate, and demonstrates that these agreements, when implemented by Sinclair, were motivated by profit – not the public interest. This is significant because media firms – like Gannett and Sinclair – rely on the assumption that operating through economies of scale will prevent communities from altogether losing a media outlet to financial difficulties. By demonstrating that the original intent of these agreements had little to do with the public interest, these claims of saving struggling stations become problematic. Although, operating through economies of scale and consolidating production does reduce duplicative costs for the stations in sidecar arrangements, these agreements result in an increase in syndicated programming and therefore, an increase in the centralization of production. This, in turn, leads to less diversity of content and ultimately, an inferior media product that cannot serve the needs of citizens, or consumers, in a democracy.

Further, this thesis addresses the gap in literature on the specifics of sidecar agreements by analyzing the service agreements between Gannett, Sander and Tucker after Gannett purchased Belo. In addition, by incorporating a political economy perspective, this thesis adds to literature that examines specific media ownership issues from a critical paradigm. This analysis and its findings are significant because it demonstrates how media corporations exploit loopholes
and take shortcuts to increase profits – despite potential harms to citizens. Service agreements are the glaring holes in the NBCO and duopoly rules, and dominant broadcasters have taken advantage of that to covertly control weaker broadcasters. Understanding this arrangement, and how it impacts local communities, individual citizens and the welfare of the public as a whole, is vital because it reveals how media firms are capable of circumventing the FCC’s attempts to ensure that the media operate in the public interest.

Additionally, the sidecar business model is not receiving enough attention. Yet this problem too stems from the nature of a consolidated media industry that seeks to maintain the status quo. Covering these types of arrangements on their local broadcast television stations would negatively impact profits, even though media ownership regulation is clearly an area that citizens should be informed about in order to participate in their own self-governance. If the function of the media is to serve the public to foster democratic participation, then the public needs to understand how the media industry operates and is regulated. For example, several details of these sidecar arrangements detailed in Chapter Five are not mentioned in popular press or even in documents prepared by the FCC. This lack of available information does not benefit citizens – instead, media companies not only benefit from this arrangement but they also seek to maintain the status quo by deliberately not covering issues of media ownership regulation. Further, this thesis demonstrates how the sidecar business model has not received the consideration it needs from the FCC; as such, a number of policy recommendations are suggested below.

Policy Recommendations

When considering to grant a waiver to the NBCO rules, the Commission considers “the extent to which each media outlet involved can exercise independent news judgment” (FCC.gov,
n.d.). This standard is in place when considering a waiver for outright ownership; yet, this basic consideration is not applied to service agreements. As this analysis has shown, the relationship between Gannett and Sander and Tucker is not one of independence between competing broadcasters; instead, through these service agreements, Gannett is able to exert undue influence on the stations whose licensees are held by Sander and Tucker. There is a reason the FCC has prohibited Gannett from owning these stations outright through the NBCO and duopoly rules - because to do otherwise would not be promoting the public interest as the Commission defines it. Therefore, the FCC needs to more closely examine these service agreements in terms of how they violate the intent of the NBCO and duopoly rules, which is to preserve competition, localism and diversity.

Cost saving efficiencies and the chance for greater profits is not the purview of the FCC and as such, these considerations should not be how companies like Gannett justify entering into such agreements. Even though since the 1980s neoliberal rhetoric has dominated media policy, the FCC needs to focus on policy that reinforces the public interest. Even though media companies like Gannett and Sinclair would argue that their service agreements are competitive and they help save financially struggling stations, they neglect to mention how this arrangement places weaker stations under their control. Further, competition does not increase profits. As Croteau and Hoynes (2006) demonstrate, competition threatens profitability by bringing down prices for consumers. Therefore, these service agreements are anti-competitive as the dominant broadcaster acts as the decision maker in terms of advertising sales, programming, human resources, equipment, and finances of a weaker broadcaster – this is not promoting competition. Instead, these arrangements offer an illusion of competition for the dominant broadcasters to hide behind. Therefore, it would also be prudent for the FCC to facilitate an alternative process to
help stations that are struggling that simultaneously protects their independence and prevents covert consolidation.

Besides more closely scrutinizing service agreements, the Commission needs to place the burden of proof on the licensee to demonstrate that the station is operating independently and in the public interest. Right now, several Petitions to Deny; filed by media activist groups, like the Rainbow PUSH Coalition (RPC); are pending. These documents request that the FCC examine whether companies, like Sinclair, possess “the basic qualifications to be a Commission licensee” (Federal Communications Commission, 2013b, p. 3). Since 2002, RPC has “repeatedly asked the Commission to answer this question;” however, the Commission has been extraordinarily slow in processing petitions to deny broadcast applications (Federal Communications Commission, 2013b, p. 3). The responsibility, however, should not be on media activist groups or individual citizens to demonstrate that a broadcast licensee is not operating in the public interest. The responsibility should rest with media companies because they use the airwaves that are owned by the public. Ideally, as licensees, media companies should be beholden first to the public and then to the profits shareholders and investors require. The Commission needs to implement a policy that requires broadcast licensees to demonstrate very clearly how their stations are operating in the public interest - without mentioning profit margins and economies of scale. Having such a policy in place would very likely put an end to service agreements, for as this analysis has shown these service agreements are not promoting competition, localism and diversity.

Although the FCC has made great strides in restricting JSAs to 15%, there is still significant incentive to restrict service agreements between competing broadcasters in a DMA. The Commission needs to revisit service agreements generally, not just specifically examining one type. Further, the Commission should continue to rely on the public interest standard in
determining new rules and regulations for service agreements. By providing a clear, justified explanation of any policy changes, the FCC reinforces its own credibility as a regulating body and demonstrates its commitment to serving the public interest. These policy recommendations, based on the analysis presented in this thesis, seek to promote the public interest in terms of making sure U.S. citizens are given every opportunity to fully participate in their democracy and to prevent profit maximizing goals from obliterating the functions of a media in a democracy.

Limitations and Further Research

A number of the limitations of this research can be addressed through further research. The most significant limitation of this thesis is while its political economic analysis of media approach gives great depth to the examination of service agreements, it is lacking in scale. This research would be well served by further research that examines how widespread service agreements are and the characteristics of these agreements across the media industry. This thesis, while it provides a historical overview of early service agreements in the United States, it only examines Gannett’s current service agreements with Sander and Tucker. An area for further research would be to examine other companies and the sidecar arrangements they currently hold. This practice is not limited to just a few media companies, and therefore, employing quantitative methods might be useful in widening this area of literature, as quantitative methods can offer additional evidence and insights in terms of scale and scope.

Another limitation of this thesis is the lack of analysis of the television stations Sander and Tucker hold. Examining the actual content airing on these stations, as well as interviewing employees, would significantly contribute to understanding service agreements. Yet due to the issue of timeliness, literature about Gannett’s arrangements with Sander and Tucker was difficult
to come by, even in the popular press. Revisiting these agreements with the benefit of hindsight might produce even more information than is available presently.

Final Thoughts

Ultimately, it is the responsibility of the FCC to examine the sidecar business model and to restrict the practice in favor of upholding the public interest. Although as a licensee it is the responsibility of Gannett, and other dominant broadcasters, to uphold the public interest - it is the FCC who has to regulate their behavior. Therefore, policy changes, in addition to the changes to JSAs made in 2014, are necessary to prevent broadcasters from openly circumventing ownership restrictions. Already the FCC has acknowledged that by restricting JSAs to 15%, it has reduced barriers to entry and the Commission has “approved transactions that will result in ten new minority- and women-owned stations” (Seyler, 2014, para. 9). As long as the FCC begins to closely scrutinize service agreements, besides just JSAs, and close loopholes to ownership restrictions, similar strides for minorities and women are likely.

Additionally, closing these loopholes to the NBCO and duopoly rules would well serve citizens by promoting diversity, competition and localism. Ensuring that citizens have access to information in order to participate in their democracy is vital for the welfare of the public. Therefore, it is time for the Commission to step up and protect the public interest. As pointed out by Free Press President and CEO Craig Aaron, “for too long the agency has looked the other way” as media companies have “used outsourcing agreements to dodge the FCC’s ownership rules and grow their empires at the public’s expense” (Stearns, 2014, para. 4). It is time for broadcasters to stop refusing to play by the rules.
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BIOGRAPHICAL SKETCH

Richelle Crotty was born and raised in Orlando, Florida. She did a combined Bachelor’s-to-Master’s program with Florida State University’ College of Communication and Information in Media and Communication Studies. Her research interests include political economy and media regulation and policy.