Inclusion or Illusion?
An Analysis of the FCC’s Public Hearings on Media Ownership 2006–2007

Jonathan A. Obar and Amit M. Schejter

An assessment of the extent of public involvement in the FCC’s media ownership hearings in 2006–07 was conducted through an analysis of the hearings’ structure, the 732 public comments made in them, and the FCC’s ensuing Report & Order (R&O). In light of the rising call for pluralism, direct democracy and public involvement in policy deliberations, the results reveal that the FCC consistently hindered public participation in the hearing process it initiated and managed through limited advance notice, inconvenient timing, a hearing structure that subordinated the public to experts and stakeholders, and scarce mention of public comment in the final report.

Throughout 2006–2007 the Federal Communications Commission held six public hearings in “diverse locations around the country” (FCC, 2006, p. 1) in an attempt to “fully involve the public” (FCC, 2007, p. 1) in a re-evaluation of the rules governing media ownership in the United States. The announcement of the hearings marked a turn in the way the FCC has addressed public participation in recent years. FCC Chairman Kevin Martin noted this in his comments when the new rules were brought up to vote in December 2007:

In 2003, when we last conducted a review of the media ownership rules . . . people complained that there were not enough hearings . . . and not enough opportunity for comments and public input . . . [this time] the Commission committed to conducting this proceeding in a manner that was more open and allowed for more public participation. (FCC, 2008, p. 99)
This is a study of the public’s participation in the abovementioned public hearings. It addresses the extent to which the FCC did indeed “fully involve the public” in its deliberations, as promised, and whether the public’s input as expressed at the hearings served as a factor in the design of the policy. Four questions are raised: 1) did the FCC encourage public participation in the hearings?, 2) did the FCC separate expert, stakeholder, and public input?, 3) what positions did members of the public articulate in the hearings?, and 4) was the public input taken into consideration in the formulation of the policy? To answer these questions, the methods utilized by the FCC to organize and conduct the hearings were studied; a quantitative content analysis of all public comments presented at the hearings was conducted, and the public input cited in the FCC’s Report and Order released February 4, 2008 (FCC, 2008) was identified. This three-part analysis documents the hearings before, during, and after they took place, and helps assess both the utility of the FCC’s public hearing process and its contribution to the policy.

Public Participation in Policymaking

The call for public participation in policymaking is a result of the need to overcome an inherent distortion in the government-controlled process in which normally only stakeholders and experts take part. In a perfect world, decision-makers would be rational agents making decisions based upon ideal objectives and balanced processes of deliberation; however, different boundaries affect these ideal conditions. One is the “structurally distorted/political economic” boundedness, which dictates that actors in political economic structures of inequality—defined by relations of power with differential resources, skills, and status—try to solve problems of ideological definitions which are structurally skewed and based on ideological misinformation (Forester, 1989). Another is the use of “professional authority and technocratic methods to buffer power elites against political challenges from below” (Fischer, 1993, p. 169) using “scientific” language and masquerading ideological policy positions as “science.” As the state subtly promotes the illusion that professionals and experts using “scientific” jargon can solve political problems, in effect it restricts public and political argument and participation (Forester, 1989, p. 141). Public participation is a strategy that enables decision-makers to transcend these levels of boundedness and work “toward effective equality, substantive democratic participation and voice.” (Forester, p. 61) This study is designed to assess how participatory the system is and whether the “professionalization” and “scientification” of the process had an influence on its outcome. Indeed, other questions focusing on internal FCC processes could be addressed as well; however, this is a case study of public participation in FCC policymaking and not an internal analysis of the way the FCC operates.

Variegated conceptions of public participation processes exist, especially in terms of their application to policymaking. The typology ranges from a mere aggregation
of citizen voices to well-designed deliberative processes in which values such as egalitarian representation and reflection are infused into the planning and design of the event (Guttman, 2007). Rowe and Frewer (2005) differentiate among public communication, public consultation and public participation, while Bishop and Davis (2002) identify consultation, partnership, standing, consumer choice, and control as five participation types which differ in their objectives, key instruments and limitations. Stewart (2007) emphasizes the degree of control awarded to the citizen players.

Though practices are far from uniform, in recent years, at the expense of the managerial model of public administration, and as a result of the rising call for pluralism and direct democracy, public involvement in policy deliberations has grown in popularity worldwide (Rowe & Frewer, 2004). An Organization of Economic Cooperation and Development (OECD) (2001) report states that “new forms of representation and public participation are emerging in all of our countries” (OECD, p. 9), and defines it as a “sound investment and a core element of good governance” (OECD, p. 11). Similar sentiment has been expressed by high level commissions and officials in the Netherlands, Sweden, and the United Kingdom (Coleman & Gøtze, 2001). In fact, the OECD Handbook on Information, Consultation and Public Participation in Policy-Making (Gramberger, 2001) provides 10 “tips for action” for government officials who wish to engage citizens in public policy making, ranging from “take it seriously” to “deliver what you promise.”

Singling out public participation as the only measure for an effective policymaking process can also be misleading. As Renn, Webler, Rakel, Dienel, and Johnson (1993) note, a balance needs to be struck among the input derived from expert opinion, stakeholder interest, and public participation. To ensure this balance, the authors contend that there must be clear separation among the three. During the process of evaluating testimony, separation ensures that the witnesses themselves are neither intimidated nor subordinated by the threatening existence of competing evidence provided by witnesses who may seem to be advantaged either through their personal acquaintance with those attending the hearing or through the use of “professional” or “scientific” terminology. More importantly, separation ensures that decision makers can appropriately assess the substance as well as the motivations of those participating. As well, testimonies are given the opportunity to be evaluated at their face value, and not in comparison to other types of speech provided at the same forum. Separation, therefore, is not only a condition for freedom of choice among competing ideas by the policymaker, but also a condition for equality among them (Walzer, 1984).

**Public Participation, Media Ownership and the FCC**

Public involvement in American communications policymaking is rooted in section 4(k) of the 1927 Radio Act, which authorized the Commission to hold hearings. The FCC’s predecessor, the Federal Radio Commission, started holding public
hearings in 1927, among them hearings to evaluate the expansion of the radio broadcast band (Moss & Lackow, 2008). The restructuring of the radio industry during the Great Depression served as the backdrop for public hearings held by the National Recovery Administration on workers’ wages in 1934 (Mazzocco, 2005). Between 1941 and 1944, the FCC held “newspaper divorce hearings” on newspaper ownership of television stations (Risley, 1995) as well as hearings to determine the national television standard (Slotten, 2000), and in 1958, on television network broadcasting rules (Barrow, 1957). In his famous “vast wasteland” address in 1961, FCC Chairman Newton Minow committed to hold a “well advertised public hearing” in each community to assure broadcasters were serving the public interest (Minow, 2003). Recent years however, have seen a decline in the FCC’s interest in expanding public participation beyond the filing of positions. This was most apparent in the criticism levied against the Commission following the 2003 ownership rulemaking procedure, in which only one hearing was held close to the end of the process (Blevins & Brown, 2006; Campbell, 2006; McChesney, 2004a). FCC Chairman Martin acknowledged in the 2008 ruling that the extensive round of hearings proposed was the result of public criticism (FCC, 2008, p. 99). Pressure from the Democratic Commissioners Michael Copps and Jonathan Adelstein who held numerous public hearings of their own during the 2003 rulemaking process also may have contributed to this result (Labaton, 2003).

Media ownership regulation allows for a more democratic distribution of the power the media provide to their owners, safeguarding the media’s role as a watchdog, and addressing the shortcomings of a system based solely on market forces (Baker, 2007). In addition, while ownership regulations are meant to preserve competition, they also impact the free flow of ideas and promote a diversity of viewpoints (Napoli, 2001). Diversifying ownership safeguards pluralism, as well as promises a more economically sound management of public resources (Doyle, 2002). Without such regulations, as McChesney (2004b) contends, the concentration of the media into the hands of a few will lead to its control by the wealthy. Such control can be a threat to the democratic order and the will of the people. Thus, the regulation of ownership is central to ensuring that the American media system serves the public “interest, convenience and necessity,” as the Federal Communications Act prescribes.

Ownership restrictions have been a staple of FCC policy since the Commission was formed in 1934. While for decades, individuals could not own more than a handful of television or radio stations—and in particular were restricted from owning more than one of each in a market or cross-owning a newspaper and a broadcast station in each market—the deregulatory trend that has characterized the Commission since the 1980s has led to increased relaxation of the rules. Whether or not this has contributed to a more concentrated market or to a less representative and democratic media is at the crux of a fierce debate (Noam, 2009). As such, encouraging public participation in the process of determining ownership rules seems natural, welcome and worthy of study.
Method

This study addresses the six public hearings on media ownership held by the FCC throughout 2006 and 2007—in Los Angeles and El Segundo, CA, on October 3, 2006; Nashville, TN, on December 11, 2006; Harrisburg, PA, on February 23, 2007; Tampa, FL, on April 30, 2007; Chicago, IL, on September 20, 2007; and Seattle, WA, on November 9, 2007. The study seeks to identify whether indeed once the FCC announced that it intended “to fully involve the public” in its media ownership review process, the Commission genuinely made an effort to encourage such participation, protect it from domination by experts and stakeholders, and consider the resulting input in their decision-making process. Four questions were posed:

RQ1: To what extent did the FCC encourage public participation in the hearings?

To answer this question, press releases made available by the FCC prior to each hearing on their website were reviewed. This assessment helped answer the following sub-questions:

RQ1a: How long before each hearing was notice provided?
RQ1b: How long before each hearing were details (such as location and structure) of the meeting published?
RQ1c: What time of day was each hearing scheduled?
RQ2: How was each hearing structured?

Press releases distributed closer to the date of the hearings included outlines for how each hearing would be organized, with time allocated for introductory and commissioner remarks, panel presentations and public comments. These allocations were the initial guidelines used in the analysis of the structural makeup of the hearings.

The next step was to assess how the hearings unfolded. The length, placement, and speaker makeup of each segment from each hearing was documented. Specific behaviors and statements that made each hearing unique were noted. Media materials were collected for these (and subsequent) assessments. Every minute of each hearing was analyzed through analysis of complete audio and partial video footage collected from the FCC website and various private sources. Transcripts provided on the FCC website were reviewed to ensure accuracy. In addition, the researchers personally attended the Harrisburg and Tampa hearings, thus enabling answers to the following sub-questions:

RQ2a: How much time was devoted to each hearing section and speaker?
RQ2b: To what extent were some testimonies given preference over others?
RQ2c: To what extent did the FCC separate expert, stakeholder, and public input?
RQ3: What positions did members of the public articulate in the hearings?
The second section of the study consisted of a quantitative content analysis of every individual who spoke during the public comment periods across the six hearings. The instrument developed for the analysis measured 24 variables. The first three dealt with speaker identification (race, gender and organizational affiliation). The affiliation variable was utilized to assess the extent to which individuals were representing stakeholders. If speakers mentioned that they worked for a media company they were coded as such; the remaining speakers who mentioned affiliations with other organizations had their affiliation coded as "non-media organization." Anyone affiliated with a non-media organization who spoke on behalf of a media company was coded as having a "media tie," and those that made no mention of affiliation were coded as "no affiliation." 

The two primary variables were labeled "media consolidation viewpoint" and "deregulation viewpoint." These variables measured whether individuals spoke in support of, or against media consolidation and/or deregulation. Speakers who did not refer to either of these issues or made statements that did not clearly articulate a viewpoint had these variables coded "unclear." To help recognize the speaker viewpoints, coders were provided with a list of reasons speakers might support consolidation/deregulation, and a list of concerns. The rest of the variables measured the language used. Coders noted when speakers used the following terms: consolidation, concentration, big media, deregulation, cross-ownership, duopoly, public interest, Telecommunications Act of 1996, and low-power FM.

Inter-coder reliability was assessed by three trained coders who evaluated 80 randomly selected speakers. A total of 732 individuals spoke during the public comment periods across all six hearings; therefore, the subsample tested was 10.9% of the total population. Using Holsti’s (1969) percentage agreement test, inter-coder reliability scores ranged from $p = .80$ to $p = 1.00$, with an average across the 24 variables of $p = .96$. Also calculated was Cohen’s $\kappa$; a more conservative test for reliability. This test analyzed two coders at a time, and calculated the appropriate combinations among the three coders and averaged the results for each variable. This test revealed a range of $\kappa = .71$ through $\kappa = 1.00$, and an average across the 24 variables of $\kappa = .90$. Two primary variables measuring consolidation and deregulation viewpoints scored $\kappa = .88$ and $\kappa = .80$ respectively.

RQ$_4$: To what extent was public testimony from the hearings taken into consideration in the formulation of the policy?

In order to answer this question, the FCC’s Report and Order released on February 4, 2008 was reviewed. All references made to the hearings were noted. Media materials and transcripts were checked to verify whether the individuals cited spoke during the public comment periods or at other points during the hearings and whether the references made to the public hearings in the report reflected what actually transpired.
Results

Encouragement of Public Participation

On September 8, 2006, the FCC announced that the first hearing would be held on October 3 in Los Angeles, CA. Final details regarding the location and time—as well as the addition of a hearing to be held later on the same day in El Segundo, CA—were provided a week before the hearings took place. Final details regarding location and time were also provided within a week of the Harrisburg and Seattle hearings. For the remaining hearings, final details were provided between 10 and 17 days beforehand. While the whole procedure and its extent—including the number of hearings—were known well in advance, the notice was made relatively close to the event. Notable here is the Seattle hearing, which was the last one, and still after 18 months of preparation was only announced a week in advance.

Hearing Access

At each of the hearings, members of the public who wished to present testimony during the public comment periods were required to arrive beforehand to sign their name to an official list. Those who arrived late were often allowed to speak at the end; however, in two instances (Los Angeles and Harrisburg) the hearings ended before all speakers were able to testify before the Commission. Due to the length of the non-public comment periods at each hearing (discussed hereon) members of the public that did not sign up early had to wait quite some time to testify—the hearings in Nashville and Chicago lasted 8 hours while the hearing in Seattle lasted 9.

Another problem of access resulted as the first few hearings began in the midst of the working day: the Los Angeles and Nashville meetings at 1 p.m., and the Harrisburg meeting at 9 a.m. After numerous complaints, the subsequent hearings in Tampa, Chicago, and Seattle all started at 4 p.m.; however, in order to testify after having waited a reasonable amount of time (the hearing in Seattle concluded at 1:30 a.m.), members of the public still had to arrive during working hours.

Across the six hearings, 237 individuals were called but were not present to testify. When speakers did not approach the microphone after being called, the moderator occasionally quipped, “I guess they went home.” Indeed, many of the individuals who missed work to attend the hearing could not remain until their names were called likely due in part to the structure (and resulting length) of the hearings.

Hearing Structure

Each hearing consisted of introductory remarks (always by a member of the Commission and often also by a variety of public figures), statements by the commissioners present, one or two panels consisting of experts and dignitaries, and then
the public comment periods. Modifications to this basic structure often occurred as some of the public comment periods were interrupted by additional speakers who were either not included in the panels or arrived late. Members of the Commission, public figures making introductory remarks and interrupting individuals generally spoke without a time limit, panelists were allotted 5 minutes each and members of the public 2 minutes each. Due to time restrictions in Tampa and Chicago, time allotted to members of the public was shortened to 90 seconds partway through the public comment periods.

Tabulated, all six hearings lasted more than 44 and a half hours; this included more than 17 and a half hours of non-public comment (39.4%) and slightly more than 27 hours for public testimony (60.6%). During the Los Angeles and Chicago hearings, the time devoted to non-public comment was actually longer than the time allotted to the public. In Nashville and Tampa, non-public comment time took up more than 40% of the total hearing time (44.4% and 41% respectively).

**Introductory Remarks.** Across the six hearings introductory remarks lasted 1 hour, 24 minutes, 11 seconds (3.2% of total hearing time). The majority of the hearings commenced with an introduction by FCC Chairman Martin. Invited remarks by local and state dignitaries generally followed. Statements were presented by or on behalf of four individuals in Nashville including two U.S. Senators, the president of Belmont University and the Mayor of Nashville. In Harrisburg, the Mayor of Lebanon, PA, and a representative for the Mayor of York, PA, spoke, while in Tampa the Mayor spoke as well. In Chicago, statements were presented by or on behalf of six individuals including two U.S. Senators, an Illinois State Representative, the State Attorney General, the Chief of the FCC Consumer and Governmental Affairs Bureau and the Chairman of the Rainbow PUSH Coalition. In Seattle, statements came from seven individuals including one Senator, two Congressmen, the Governor, the State Attorney General, the State Auditor and a Councilman.

**Commissioner Remarks.** The total time devoted to remarks made by the FCC commissioners themselves was 3 hours, 6 minutes and 40 seconds (7% of total hearing time). All five commissioners made opening remarks during each of the hearings, except for two instances where only four commissioners were present—Nashville and Chicago where Commissioner McDowell and Commissioner Tate were absent (respectively). Commissioners presented opening statements once in each of the California (Los Angeles and El Segundo) hearings and twice during the Nashville hearing.

**Panelist Remarks.** The total time allotted to panelist remarks was 12 hours, 1 minute and 37 seconds (27% of total hearing time). Across the six hearings a total of 125 panelists presented comments, 5 minutes allotted to each. Panelists were always experts, stakeholders or dignitaries. The Los Angeles, Nashville, Tampa, Chicago, and Seattle hearings had two panels each. The Los Angeles hearing had both panels back-to-back at the beginning of the hearing, while the rest had one
after the commissioners’ comments, and a second after the public had been allowed to speak for a short while. For example, in Chicago after only 29 speakers testified during the public comment period, the hearing was halted for a short break. When the hearing resumed, a second panel presented, followed by various interrupting remarks and the second public comment period.

**Interrupting Remarks.** On numerous occasions throughout the hearings, individuals were allowed to interrupt or further delay the public comment periods for a total time of 1 hour, 1 minute, and 6 seconds (2.3% of total hearing time). In El Segundo the public comment period was interrupted by three individuals. Twenty-five minutes into the public comment period (almost 2 hours into the hearing) Congresswoman Diane Watson—who had already presented earlier in the day at the Los Angeles hearing—was given the floor to speak without a time restriction. An additional 25 minutes later, Kelly McDowell, the Mayor of El Segundo (and brother of FCC Commissioner Robert McDowell), was also invited to interrupt the public comment period without time restriction. A third interruption followed; a panelist who was ‘‘caught in traffic’’ was given the 5 minutes to speak that he missed earlier in the evening.

In Nashville, after the first public comment period (38 individuals), the FCC stopped the hearing for a short break. Upon recommencement, the commissioners presented a second set of remarks, and Congresswoman Marsha Blackburn, Congressman Jim Cooper and Representative Steve Cohen were invited to speak without time restrictions. A second panel came next, followed by the second public comment period (more than 5 hours after the hearing had started).

In Tampa, the Commission allowed four interrupting remarks—two after each panel (before public comment). In Chicago, 10 individuals were invited to speak after the panels, however only 5 were present. Finally, in Seattle after the commissioner’s remarks, Mark Emmert, President of the University of Washington, was asked to speak without time restriction. After the first panel that followed, six individuals were invited to speak for 2 minutes each before the public comment period could commence.

**Public Comment.** The total time devoted to public comment was 27 hours, 1 minute, 25 seconds (60.6% of total hearing time); a total of 732 individuals testified. In Los Angeles, because of the length of the opening portion of the hearing, the public comment period was cut short. Three and a half hours into the hearing and less than an hour and a half into the public comment period, the moderator announced that the commissioners had to leave for El Segundo; only 35 members of the public had spoken. Members of the public protested, some shouting ‘‘more! more! more!’’ another pleading that one of the last independent owners from a radio station in the area (105.1FM) had yet to speak. After some additional discussion with Congresswoman Diane Watson who was present, 5 additional speakers were allowed to testify (40 spoke in total). All of the commissioners left thereafter, leaving 10 additional individuals who had to testify to the commissioners’ associates.
Once in El Segundo, the public had a chance to speak for more than 3 hours (75 individuals).

Harrisburg was unique because a specific group of individuals dominated the first portion of the public comment period. Of the 54 witnesses who spoke before the lunch break, 40 were either employees of media companies or affiliated with non-profit organizations that were coded as having media ties. While most of these individuals spoke favorably about the local media, few made reference to media ownership, consolidation or deregulation. After the lunch break, only 5 of the remaining 50 members of the public who testified were employees of a media company or with non-media organizations that had a media tie. In addition, numerous individuals from the public spoke out against consolidation/deregulation (detailed later). The outcome of this “stacking the deck” was that by the time the moderator announced at 3 p.m. that the hearing was over, there were 33 members of the public still registered to speak. Twenty-one presented in the lobby of the Whitaker Center, the site of the meeting, as the main auditorium in which the hearing took place was being prepared for another event. Only the two Democratic commissioners stayed to hear the remaining testimony.

In both Tampa and Chicago, time restrictions led to comments being shortened from 2 minutes to 90 seconds partway through the public comment periods. While this modification occurred near the end of the hearing in Tampa, in Chicago, the moderator made the change at 10:30 p.m. (more than 6 hours into the hearing) after only 55 public comments had been heard. 67 subsequent speakers spoke with the 90-second time limit.

The Seattle hearing was scheduled to run from 4 to 11 p.m. but concluded two-and-a-half hours later than expected. The commissioners remained through the extended period.

## Positions Articulated by Members of the Public

In total, 732 individuals spoke during the public comment periods across all six hearings. Chi square testing revealed a statistically significant difference between media consolidation viewpoints with 340 individuals (46.4%) speaking out against media consolidation and only 8 people (1.1%) speaking in support (384 were coded as “unclear”), $X^2(2, N = 732) = 346.36, p < .001$. Deregulation viewpoints also displayed a significant difference: 108 against (14.8%), 5 support (0.7%), and 619 unclear, $X^2(2, N = 732) = 886.24, p < .001$. Due to some speakers being coded as against both consolidation and deregulation, the total number of public testimonies coded as being against consolidation and/or deregulation was 385 (52.6%). The support measure had the same issue; in total 10 individuals (1.4%) were coded as supporting consolidation and/or deregulation.7

The majority of the individuals who spoke in support of further consolidation and/or deregulation were stakeholders. Of the 10 individuals who spoke in support, 6 were employees (or former employees) of broadcast affiliates (including
the President and Vice-President of Media General). One of the four remaining supporters worked for a non-profit with a media tie. This means that there were only three supporters that did not identify stakeholder affiliations (0.4% of all speakers). By comparison, 315 of the 385 that spoke against media consolidation and/or deregulation did not identify as employees of media companies or as representatives from non-media organizations with media ties. A total of 337 individuals did not express a clear viewpoint in support or against consolidation or deregulation. Many of these individuals criticized the media generally, expressing their concerns about the quality of investigative journalism, and the problems associated with hypercommercialism and indecent programming. Others used most of their time to criticize the FCC’s past actions and current process. Some individuals (most notably the representatives from the local affiliates in Harrisburg) spoke in glowing terms about the role the media play in their local community, while failing to make any reference to the benefits or problems associated with consolidation and/or deregulation.

The analysis of language used revealed that while 300 speakers (41%) used the term “consolidation” (or consolidate) and 91 used the term “public interest,” only 6 used the term “duopoly,” 17 “Telecommunications Act of 1996” and 17 “deregulation.” Twenty-one used the term “cross-ownership,” 27 “concentration,” 29 “big media,” and 53 “low power FM.”

Public Testimony and the Formulation of the Policy

On December 18, 2007, the FCC’s Report & Order (R&O) presenting the policy path it chose to adopt was voted upon (3-2 along party lines); it was made public on February 4, 2008. The Commission relaxed the newspaper/broadcast cross-ownership ban and retained its other broadcast ownership rules. Though the document was 124 pages long (51,532 words) the hearings were hardly mentioned. FCC Chairman Martin and two commissioners (Michael Copps and Deborah Tate) stated in their appended comments that “thousands” presented oral comments at the hearings. In total, 49 speakers from the hearings were referenced; however, 38 of them were panelists (i.e., experts or stakeholders) and one was an invited speaker (interrupting remark). Of the 732 individual members of the general public who spoke during the public comment periods, only 10 were cited—none from Nashville (112 speakers) or Seattle (169 speakers). Without citation, Martin referred briefly to the public comments presented in Seattle, noting that “only 2 people even mentioned newspaper cross-ownership, and one in fact supported relaxation” (FCC, 2008, p. 101).

Discussion

The pattern emerging from this sequence of events is difficult to overlook: the methods utilized by the FCC to organize and conduct the hearings consistently hindered public participation. Once the public finally had its chance to speak 385
of 732 individuals spoke against media consolidation and/or deregulation while only 10 spoke in support. In the end, the R&O made almost no mention of public comments, referring overwhelmingly to experts and stakeholders: 38 out of 125 (30%) as compared to 10 out of 732 (1.36%) members of the general public.

The FCC’s Methods Considerably Hindered Public Participation

While the stated goal of the six public hearings was “to fully involve the public” in the process, the FCC’s methods suggest otherwise. Indeed, notice was provided for every hearing, however, for three of the six, complete details were made public just a week in advance. At the Seattle hearing, the Governor of the State of Washington articulated the issue clearly, “had we been able to have more advance notice we would have packed this room. It would have been standing room only.” Access to the hearings was not ideal either. While the FCC recognized the mistake it made in Harrisburg, all hearings started during prime working hours, and required individuals to arrive even earlier in the day just so that they would not have to wait until the middle of the night to speak (the Seattle hearing ended at 1:30 a.m.). Clearly better planning was required. Had the FCC been genuinely interested in ensuring that the public had every opportunity to speak, they would have held the hearings on the weekends or would have allowed for early registration of participants. Hearings could also have been held over a two-evening period to ensure that individuals would not have to wait all night to speak for 90 seconds (as happened in Tampa and Chicago), or after the hearing had adjourned (as happened in Los Angeles and Harrisburg).

Hearing Structure Subordinated Public Participation

The methods utilized by the FCC to structure and conduct the hearings subordinated public participation. First, public comments always were relegated to the end of the hearings with dignitary after dignitary, panelist after panelist testifying before them. In two instances (Los Angeles and Chicago) the non-public portion of the hearings were longer than the public portions, and in two other instances, the non-public comment time lasted for more than 40% of the entire hearing. Public comments also were allocated the least amount of time per speaker. Whereas commissioners and dignitaries often were allowed to speak without a time limit and panelists were allotted 5 minutes each, members of the public were only allowed 2 minutes each, and in two instances (Tampa and Chicago) 90 seconds each. The most striking evidence of public subordination occurred as interrupting individuals at every hearing were repeatedly invited to cut ahead of members of the public who signed up hours earlier. An egregious example occurred in El Segundo when the FCC allowed a panelist who missed an earlier opportunity to speak (because he was caught in traffic) to testify for 5 minutes, between members of the public who were allowed only 2 minutes.
In the end, the relegation of public opinion to the back-of-the-line led to two of the hearings (Los Angeles and Harrisburg) being adjourned before the commission could hear all members who signed up to speak. In addition, 237 individuals who signed up to testify could not wait the many hours for their turns and left before they were called. This means that a quarter of the individuals registered to speak during the public comment periods, one of every four citizens who actually made the effort to sign up, went home before having the opportunity to testify.

Lack of Separation Among Experts, Stakeholders, and Public Comment

The structure of the hearings also subordinated public input by packing expert, stakeholder, and public testimony into one event. As maintained earlier, for each of these distinct groups to have an equitable opportunity for optimal impact, separation is essential to ensure that each group is evaluated within its individual context, as certain forms inherently have an advantage over others. Expert opinion in particular enjoys a “scientific” aura and language that carries a purported higher value, an element that the testimony of the ordinary citizen-witness may lack. The study’s findings suggest that scientific language was lacking from much of the public’s comments; 619 individuals did not express a clear viewpoint on deregulation, and few referenced the Telecommunications Act of 1996, or used the terms “duopoly” or “cross-ownership.” Stakeholders also enjoyed advantages. With most of the stakeholders who appeared at the hearings being industry professionals, many were also considered experts and therefore enjoyed the scientific-language advantage. Another advantage was access. Aside from the access stakeholders enjoy outside of the hearing process, many of the stakeholders (and experts) that presented at the hearings did not have to wait in line to sign up to testify as many were invited as panelists. As a result, access also subordinated public opinion, placing experts and stakeholders on panels that not only appeared earlier in the hearings, but afforded speakers 5 minutes each compared with the 2 minutes (or 90 seconds) allotted to each public comment.

The FCC’s Report and Order

There were a number of discrepancies between the information cited in the R&O and the findings of this study. Most notably was the comment that “thousands” presented oral comments at the hearings—noted in statements by FCC Chairman Martin, Commissioners Copps and Tate—when in actuality, only 732 individuals testified. Regarding Martin’s statement that in Seattle “only 2 people even mentioned newspaper cross-ownership, and one in fact supported relaxation,” (FCC, 2008, p. 101) while there was one public testimony in favor of consolidation (not relaxation), the witness did not reference newspaper cross-ownership; he stated that “the ability of our radio group to own multiple stations has given us those resources
to do research.” The results also show that in fact eight individuals in Seattle used the term “cross-ownership,” five were against further consolidation, and seven were against further deregulation.

Aside from the fact that the figures were inaccurate, Chairman Martin’s attempt to narrow the debate to whether or not members of the public referred specifically to the newspaper cross-ownership rule, played into the “scientification” of the debate. Commenting that “the majority of people expressed concern about consolidation,” (FCC, 2008, p. 101) Martin downplayed the huge difference between the “majority” and “minority” in this case. The majority of the individuals who spoke during the public comment periods across all six of the hearings against further media consolidation and/or deregulation was 385 of 732 (52.6%), while less than 1.5% (10 of 732) of the public comments spoke in support—with most of the support coming from stakeholders.

Ironically, yet somewhat appropriately, the final remarks of Commissioner Tate—as noted in the R&O—epitomized the disheartening attitude towards public participation that was revealed in the actions of the FCC throughout this entire process,

We have traveled across the country and heard from thousands of citizens. The process has been long, but fruitful. Many wanted us to go further in repealing the ownership restrictions, but we have chosen a measured and cautious approach. . . . thank you to all of those citizens who participated in this truly monumental process. We value your insight and hope you will continue to be part of this Commission’s work in the future. (FCC, 2008, p. 120)

**Conclusion**

While the introduction of public hearings into the media ownership debate was lauded as a demonstration of renewed openness to the involvement of the public in the policymaking process, the FCC’s methods highlighted by this study suggest that something akin to a public relations exercise was orchestrated; a fig leaf offered to those who would believe that the process is dominated by corporate interests and an indifference to the public’s will. It is not so much the fact that the Commission chose further consolidation; rather, it is the way the hearings were structured, managed and referred to in the R&O, which subordinated public participation and downplayed the significance of what the public had to say. As the results of this study reveal, the methods utilized by the FCC to organize and conduct the hearings consistently hindered public participation; notice and access were limited, and the structure of the hearings consistently subordinated public comment by providing preferential treatment to the testimony of experts, stakeholders, and dignitaries. When the Report and Order was released to the public on February 4, 2008, it made almost no mention of public comments, referring primarily to experts and stakeholders. What began as a half-hearted invitation was furthered by methods that made the public’s participation seem both inferior and unwelcome. In the end, the Commission both aggrandized the ritual of participation, while making little effort
to assess, describe and analyze the strident message that we have shown the public tried to communicate. While it is not claimed that due to the overwhelming public sentiment presented against further consolidation the FCC should have adopted a more restrictive policy than it did, the authors contend that the methods utilized by the FCC to organize and conduct the hearings, as well as the eventual references made to them in the R&O demonstrate that the FCC did not want to hear the public opinion, irregardless of what the public had to say.

Notes

1 Members of the public certainly have a stake in the outcome of the FCC’s decisions; however the term “stakeholder” in this context refers to individuals involved in the media business.

2 The authors are aware that some individuals coded as having no affiliation may in fact have been stakeholders or experts; this is a limitation of the study.

3 Remaining testimony was heard by the commissioners’ associates in LA, and by the two Democratic commissioners only in Harrisburg.

4 One woman, self identified as a student, noted in her testimony at the Harrisburg hearing that, “had this hearing not taken place on a work day during business hours, then perhaps those that are not only in the business of media, would be able to attend today. And if this valuable space provided for public opinion was scheduled at a time when the majority of Pennsylvania residents who have something to say on this issue of media ownership could attend, then perhaps the Commission would actually be informed of the public interest.”

5 The problem of access was further articulated by a student in Chicago, “these testimony hearings are virtually impossible for high school and college students to give their testimony… [the] location… is not readily accessible, and the registration process requires students to skip school in order to make it here, or to just sign up to testify.”

6 This figure does not include an additional 12 individuals in Harrisburg who were not present to testify after the three Republican commissioners left the hearing as a result of a time restriction.

7 Concerns regarding further consolidation/deregulation were varied. Of the 385, 158 were concerned with diversity, 124 democracy, 122 localism, 97 access and 23 downsizing of media staff. Comments from the 10 individuals who stated support varied from the idea that the rules are outdated to the notion that consolidation/deregulation would help companies to compete and increase localism/diversity.

8 The ten witnesses who spoke in support of media consolidation and/or deregulation were: 1) The president of Media General, 2) VP of News (publishing) for Media General, 3) a former employee of Media General, 4) the ex-president and GM of WFLA (now the COO for the Tampa Bay Buccaneers), 5) an employee of Hall Communications, 6) the GM for WJHL TV, 7) the executive director of the Pediatric Cancer Foundation (media tie), a representative from a free market advocacy group, and two individuals who mentioned no affiliation.

References


