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Before the Subcommittee on Courts and Competition Policy,
Committee on the Judiciary
House of Representatives
Congress of the United States

Hearing on: A New Age in For Newspapers, Diversity of Voices, Competition and the Internet

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Thank you for inviting me here today. I wish to make six brief points:

1) The market cannot be expected to adequately support professional quality journalism.

Much of the value produced by newspaper journalists goes to people other than media companies' customers. We all, including non-readers, benefit from the work of journalists in exposing corruption and the consequential remedial responses. We all benefit when governmental or corporate corruption and negligence do not occur due to news media's reputation for watchfulness. We all benefit from the wiser voting of those informed by journalism. To the extent that benefits go to non-readers, newspaper companies cannot adequately turn these benefits into revenue. This gap between benefits provided and revenue obtained results in inadequate incentives to put resources into producing news.

2) This inadequacy of the market was recognized at the country's founding and through most of the country's first 200 years.

Recognizing the vital role of newspapers in holding the fledgling country together and recognizing that the market provided inadequate support, Congress beginning in the first years of the Republic provided huge subsidies on which the news industry's success was highly dependent. In the early twentieth century, the annual postal subsidy to newspapers was $80 million – which in today's dollars, on a per-person basis, would amount to roughly $6 billion. Similarly, during much of the twentieth century, journalism broadly defined was subsidized by making commercial use of the airwaves legally dependent on stations devoting a portion of their revenue to public affairs programming.

3) The current crisis in the news industry is not caused by lack of public interest in news.

The highly publicized decline in newspaper circulation does not indicate any decline in public interest in newspaper journalism but rather arises mostly from two factors. First, the decline mostly represents a shift to online readership of newspaper stories. Evidence actually indicates little or no real decline in readership – only a change in people's method of access. But this change hurts newspaper companies because online readers do not produce near the advertising revenue that print readers produce. Second, the huge lay-offs of journalists have resulted in a degraded newspaper product. Circulation predictably should decline from the level it would be for the better paper that more reporters and editors would create.

4) The current crisis in the news industry takes three forms that have different significance and different causes.

Bankruptcies, newspaper closures, and huge layoffs – over 50% of the journalists at many papers – together represent the daunting nature of the crisis but actually the key concern should be the last: lay-offs. Bankruptcies mostly reflect papers' inability to generate sufficient operating profits to pay the interest on debt, usually debt that was taken on to finance unwise purchases. Unduly lax laws that failed to restrict the sale of newspapers to these new corporate owners exacerbated this phenomenon. Still, these bankrupt papers will continue after reorganization. Losses to the unwise purchasers merit no public concern.

Next, closures of a second paper in two newspaper towns – illustrated by the *Rocky Mountain News* or the *Seattle P-I* – merely continue a hundred-year trend of towns not being unable to support more than one English-language daily paper.

Finally, huge actual lay-offs of journalists as well as threatened closures of towns' only daily and are a major threat to democracy. This occurrence results from the deterioration of the advertising revenue long relied upon to support journalism. As advertising revenue declines, so does the value to the paper of journalism in attracting readers to sell to advertisers. The paper consequentially lays off journalists despite knowing that these lay-offs cause a decline in circulation and in quality journalism.

Some decline in ad revenue is a temporary result of the current recession. More worrying long term are advertisers spending more of their ad budget on online sites, especially on search engines that do not produce journalism. Also damaging is the migration of some advertising categories, especially the previously highly profitable classified ads, to online specialty sites. Unless public policy can create a replacement for these lost revenue streams, we may lose much of the professional journalism on which, as the country's founders recognized, any robust democracy depends.

5) ***Corporate consolidation is a problem, not a solution, for a democratic press.***

Reduced enforcement of anti-trust laws or of the requirements of the Newspaper Preservation Act not only does not respond to these problems but could make them worse. A primary rationale for corporate combinations is to save money, often through new opportunities to lay-off journalists, thereby endangering the democratic contributions of the media. In contrast, the widest possible dispersal of media ownership serves to democratize voice within the public sphere, serves to increase the number of watchdogs, provides a safeguard against demagogic abuse of media power, and places ownership in the hands of people most likely to be committed to the democratic role of quality journalism rather than merely to maximizing profits and paying off debts created by recent sales of the media entity. (See appendix to this testimony.)

6) A public policy response is needed and justified.

A number of public policy responses to the current, real crisis make sense, but one is most obvious. The real problem, the decimation of employed journalists, represents the inability of media companies to obtain revenue that even approaches the real value that journalists' efforts produce for the community. If the government gave these media entities a tax credit for half of the journalists' salary (up to a maximum credit of $45,000) the public interest would be served. These tax credits would reverse the incentive for newspapers to lay off journalists, and in turn would increase the quality of newspaper journalism and cause circulation to rebound. For the roughly 48,000 journalists now employed by the nation's newspapers, who are paid on average slightly less than $50,000 a year, this tax credit would cost about 1¼ billion dollars, a fraction of the amount in today's dollars per person that the country provided in the form of a postal subsidy a hundred years ago. This targeted subsidy would duplicate the financial commitment of the country's founders to the news media of their time.

Appendix to Baker Testimony

Excerpt from: 'Viewpoint Diversity and Media Ownership' by C. Edwin Baker

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II. RATIONALES FOR OWNERSHIP DISPERSAL

The three major reasons to oppose media concentration in general and mergers in particular can be labeled: (i) the democratic distribution value; (ii) the democratic safeguard value; and (iii) the media quality value, cashed out as an objection to a bottom-line focus. The first two reasons, I suspect, represented the primary but usually unarticulated concerns of the public when nearly two million people wrote to oppose the FCC's recent relaxation of concentration restraints,[1] while the third often finds expression, with various levels of articulation, among editors, journalists, artists and others in the media professions. I describe the logic of each in turn.

A. Democratic Distribution or Dispersal

A central premise of most normative theories of democracy is that democracy should constitute a wide, roughly egalitarian, sharing of political power. With a dire reference to the "unanimity of the graveyard," the Court asserts that here "[a]uthority . . . is to be controlled by public opinion, not public opinion by authority."[2] This basic democratic premise leads to the formal equality embodied in the Court's one-person/one-vote requirement.[3] Judicial resistance to a constitutional claim that political equality should be substantive, not merely formal, does not reject the normative claim. Rather, the Court correctly recognizes that, because the proper form of substantive equality is democratically contestable, because substantive equality can never be fully realized, because moves in that direction necessarily involve institutionally complex tradeoffs, and because some ways of advancing this value themselves create constitutional problems,[4] the claim should not have *constitutional* status.[5]

The egalitarian premise that justifies the formal one-person/one-vote requirement also applies to voice within the public sphere. Voice more than vote creates public opinion and provides the possibility of deliberation. It is likewise clear that the media is the central *institution* of a democratic public sphere. These observations lead inexorably to the recommendation of a maximum dispersal of media power,[6] power represented ultimately by ownership.[7]

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1. Prometheus Radio Project v. FCC, 373 F.3d 372, 386 (3d Cir. 2004).
2. West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 641 (1943).
3. Reynolds v. Sims, 377 U.S. 533 (1964).
4. Buckley v. Valeo, 424 U.S. 1 (1976). Contrast the permissibility of restricting corporate power in *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990); McConnell v. FEC, 540 U.S. 93 (2003). This is not the place for me to take up the vexed issue of campaign finance, but see C. Edwin Baker, *Campaign Expenditures and Free Speech*, 33 HARV. C.R.-C.L. L.REV. 1 (1998).
5. *See, e.g.*, Vieth v. Jubelirer, 541 U.S. 267 (2004); Davis v. Bandemer, 478 U.S. 109 (1986). C. Edwin Baker, *Neutrality, Process, and Rationality: Flawed Interpretations of Equal Protection*, 58 Tex L.Rev. 1029, 1072-84 (1980).
6. The reply that appropriate dispersion of power exists because the market responds to consumer demands might be advanced. The reasons to reject this suggestion take this comment far afield. *But see* C. EDWIN BAKER, MEDIA, MARKETS, AND DEMOCRACY (2002) (describing primary ways that the market, even if generally effective at responding

Various caveats to this "equal voice" goal exist—and I note three crucial ones. First, not everyone has the same ability or, possibly more important, the same desire to engage in significant, regular public communication. Moreover, media would not be "mass" without specialization in "voice." We would simply have babble—everyone talking ineffectively. Thus, the democratic distribution value of maximum dispersal must not overwhelm the value of allowing effective speakers to amass large audiences. Still, the significance of allowing effective media speech does not, in any way, require that a single owner should own multiple media entities. Rather, it recommends only against legal limits on any individual entity's appealing to and obtaining an audience of great size. The practical goal should be to assure a dispersal of ownership that leaves everyone able to experience some media as her own—as speaking for her or to her concerns—and thus able to view herself and her views as fairly included in public discourse.

Second, increasing ownership dispersal always works *in the direction* of equalizing the distribution of media power among groups. Nevertheless, reasonably advancing this aim often requires other policy measures. The market *might* result in all or, more likely, many of the inherently limited number of people who control media entities being people with similar values, experiences and perspectives. Therefore, with demographic commonalities often serving as rough markers, government policy should aim to disperse ownership among those coming from different groups that are salient in public life.[8]

Third, on "republican" or deliberative democracy premises, some media may usefully aim to embody society-wide discourses.[9] Thus, legal efforts to assure that different voices are represented within each of these broadly-aimed media entities may be appropriate.[10] Still, despite the caveats, a central reason to favor media ownership dispersal is to broaden the distribution of voice within the democratic public sphere.

B. *Democratic Safeguards*

Possibly most obvious among the benefits of ownership dispersal are various safeguards it creates for democracy. Four are noted here.

First, dispersal helps avoid the danger of demagogic power—the "Berlusconi effect." Although the primarily economic interests behind most media conglomerates often work against concentrated media power being leveraged into demagogic political power, the existence of this concentrated power within the public sphere creates a real danger of abuse. *No democracy should accept that risk.* Even if in the past the risk had never led to bad results (which would make the danger hard to measure by normal statistical techniques), good institutional design—like good

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to consumer preferences, systematically fails to give audiences the media content they want). Still, most people intuitively recognize not only that the market criterion of "one-dollar/one-vote" differs from the democratic ideal of "one-person/one-vote." They also recognize that, even though any effective speaker, including media speakers, cannot totally ignore their addressees, the media are still left with huge discretion as to what to say.

7. I put aside good policy arguments for an alternative or additional response: a partial legal separation of ownership and editorial control that is required by some European democracies. *See* BAKER, MEDIA CONCENTRATION AND DEMOCRACY, *supra* note 13, at 180-81.

8. *Cf.* Metro Brdcst. v. FCC, 497 U.S. 547 (1990).

9. From a British perspective, James Curran recommends this role for public broadcasting. James Curran, *Rethinking Media and Democracy*, in MASS MEDIA AND SOCIETY 120-54 (James Curran & Michael Gurevitch, eds., 3d ed., 2000).

10. BAKER, MEDIA, MARKETS, AND DEMOCRACY, *supra* note 13, at 143-53 (describing the need of "complex" democracy for both media that perform a "republican" societal-wide discourse role and media that provide for a "liberal" pluralist role with different media relating to different societal groups). Jerome Barron proposed improving the fairness of societal-wide discourse when recommending an access right. Jerome Barron, *Access to the Press – A First Amendment Right*, 80 HARV. L. REV. 1641 (1967). A plausible policy is to impose access obligations solely on media entities that reach a certain level of dominance within a locale or as a condition for allowing mergers. *See* BAKER, MEDIA CONCENTRATION AND DEMOCRACY, *supra* note 13, at 180-81, 186-87.

structural design of nuclear power plants—should not unnecessarily risk calamitous results. In fact, at least since the first major German media conglomerate supported the rise of Hitler,[11] various countries and, often, communities in countries that have both important local media and politically significant local or state governments, have experienced demographic abuse of the concentrated power implicit in conglomerate media ownership.

Second, dispersal simply results in more people with power to set directions and determine the energy that a media entity puts into being a watchdog, exposing both the incompetence and malfeasance of the powerful.[12] More people with this authority can translate into greater watchfulness from a broader range of perspectives and with different insights into potential problems. As the FCC explained in 1970:

> A proper objective is the *maximum diversity of ownership* . . . . We are of the view that 60 different licensees are more desirable than 50, and even that 51 are more desirable than 50. . . . If a city has 60 frequencies available but they are licensed to only 50 different licensees, the number of *sources for ideas* is not maximized. It might be the 51st licensee that would become the communication channel for a solution to a severe local social crisis.[13]

Third, simply by increasing the number of people over whom a potential corrupter of the media must exercise power or influence, greater dispersal of ownership predictably reduces the risk of effective external corruption.

Fourth, media concentration exacerbates the ubiquitous problem of conflicts of interest that can undermine journalistic integrity. Basically, responsible media entities try to maintain church and state separations—where business interests do not compromise journalistic integrity. A concentrated ownership structure can greatly and, since dispersal of ownership is a possibility, unnecessarily increase incentives to breach this wall. Mergers add to these conflicts in two scenarios: where media entities combine (a) with other media companies, and (b) with multi-industry conglomerates. And they create two problems: (i) incentives to distort journalism and independent content due directly to the owner's promotion of its other interests, and (ii) vulnerability to outside pressure (or internal incentives to leverage media power to influence outsiders' decisions). A two-by-two matrix could diagram these possibilities. Here, I merely note a few examples.

James Hamilton reports that during November 1999, ABC's affiliates mentioned ABC's popular quiz show, *Who Wants To Be a Millionaire*, in 80.2% of their local news programs, while no NBC affiliate found the ABC program newsworthy[14] (scenario illustrating a-i from the above matrix). In contrast, often media maintain the wall—but sometimes at a high cost. The *NYT* began an exposé series on the pharmaceutical industry at a time when few prescription drugs were advertised directly in the *NYT*. Unfortunately, the *NYT* also owned medical magazines.[15] Apparently, pharmaceutical companies threatened to withdraw ads in these medical magazines if the series continued. Though in this case the *NYT* resisted the intimidation, their prudent decision to sell the medical magazines arguably illustrates the intensity of the conflict (scenario illustrating a-ii). How often individual media entities temper criticism of politicians not merely in order to gain access or privileges but also to gain advantage for their other media properties—or how often politicians exploit this vulnerability—is unknown. The *Miami Herald*, then owned by

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11. Daniel C. Hallin & Paolo Mancini, Comparing Media Systems: Three Models of Media and Politics 155 (2004) (describing support for Nazis from Alfred Hugenberg's conglomerate).

19. Matthew Gentzkow and Jesse M. Shapiro, *Competition and Truth in the Market for News,* 22 J.Eco.Persp. 133 (2008) (discussing empirical and conceptual reasons to expect benefits from increased numbers of watchdogs).

13. Amendment of Sections 73.35, 73.240 and 73.636 of the Commission Rules Relating to Multiple Ownership of Standard FM and TV Broadcast Stations, *First Report and Order*, 22 F.C.C.2d 306, para. 21, 18 Rad. Reg. 2d (P & F) 1735 (1979) (emphasis added) [hereinafter *Multiple Ownership Report and Order*]. This standard of maximum dispersal is a far cry from the FCC's recent discussions of whether or not eight independent voices are necessary.

14. JAMES T. HAMILTON, ALL THE NEWS THAT'S FIT TO SELL 145, 148 (2004).

15. BEN BAGDIKIAN, THE MEDIA MONOPOLY 164-65 (1983).

Knight-Ridder, would have been unlikely to mute criticism of Attorney General Ed Meese if not for wanting his approval of a Joint Operating Agreement between Knight-Ridder's Detroit paper and another Detroit paper.[16] From the other side, conglomerate ownership allowed Nixon to try to retaliate against the *Washington Post* by making trouble for its renewal of broadcast licenses[17]—behavior which could induce future caution by vulnerable media conglomerates.

Likewise, incentives surely exist for a news broadcaster, say NBC, if owned by an industrial conglomerate, say General Electric, to report favorably on that owner's other economic interests—say, nuclear power or weaponry. Or Atlantic Richfield, an oil company that explicitly aims at "generat[ing] profits" but that recognizes that it "cannot expect to operate freely or advantageously without public approval,"[18] might find it useful to own the British *Observer* during the period when it was seeking North Sea oil leases (scenarios illustrating b-i). As a final example illustrating b-ii, Greece sought—though was stopped (I believe unwisely) by the European Community on the basis of its free trade laws—to statutorily prohibit firms that contracted with the government, for example, for government construction projects, from owning media entities.[19] An obvious rationale of such a law is that the combination gives the conglomerate leverage to get contracts that the public interest requires go elsewhere or makes the watchdog vulnerable to being muzzled by a fear of loss of government contracts.

Many more illustrations could be found. Nonetheless, empirical measurement of the effect of interest conflicts is predictably uninformative. Any informed sense of the degree of danger will likely reflect a structural examination of the possibilities of and incentive for this "corruption" combined with qualitative or ethnographic investigations and, possibly, quantitative surveys of editors' and journalists' self-reports, though with recognition that ingrained, unconscious practices will often be the repositories of the corrupting incentives. Admittedly, courageous professional resistance—maintenance of strong church and state lines by people committed to the integrity of their journalism—often occurs. Positivist study of the effectiveness of this courage will be unable to measure the costs and stability of this journalistic culture under historically changing conditions. As well as being an unreliable solution, requiring editors and journalists potentially to sacrifice jobs or advancement is unfair when better structures could avoid (or reduce) the problem at the source. Partial solutions, including Greece's structural proposal, are possible. Reducing conflicts, however, clearly provides a reason to favor ownership dispersal.

C. Media Quality or the Undesirable Bottom-Line Focus

The two-part claim is simple. First, the public benefits when media entities forgo maximizing profits in favor of spending money on (that is, subsidizing) quality journalism, quality cultural products, or greater circulation. Second, many small media entities have been willing to do this, but for predictable reasons, most conglomerates focus almost exclusively on the bottom line, cutting both journalists and journalistic quality. Though simple in form, the logic of this claim requires consideration of economic, normative, sociological and psychological theory only briefly noted here.

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16. JAMES D. SQUIRES, READ ALL ABOUT IT!: THE CORPORATE TAKEOVER OF AMERICA'S NEWSPAPERS 123 (1993).

17. *See* LUCAS A. POWE, JR., AMERICAN BROADCASTING AND THE FIRST AMENDMENT 130-33 (1987); Matthew L. Spitzer, *The Constitutionality of Licensing Broadcasting*, 64 N.Y.U. L. REV. 990, 1050-51 (1989).

18. JAMES CURRAN & JEAN SEATON, POWER WITHOUT RESPONSIBILITY: THE PRESS AND BROADCASTING IN BRITAIN 84 (5th ed., 1997) (quoting the Chairman of Atlantic Richfield). Curran describes numerous examples of large media owners intervening into their paper's editorial stance in order to advance their other corporate (and political) interests. *Id.* at 71-108.

19. Interview with Stylianos Papathanassopoulos, Author (June 2005). Papathanassopoulos is the author of a Greek-language book, TELEVISION IN THE 21ST CENTURY (Kastaniotis Editions, 2005).

Even if markets—as their fans hope—generally lead to efficient or otherwise socially desirable results, this is predictably not true in the media context.[20] The mass media generally, and their creative and journalistic inputs in particular, regularly produce huge positive or negative externalities that can be catalogued. A market orientation systematically generates inadequate incentives to produce socially desirable amounts of media products producing positive externalities—with the converse point applying to the overproduction of content (or use of practices having) negative externalities. Particularly of note here are potential positive externalities related to the democratic process. Mary, who does not read the newspaper or watch the news, benefits when Joe does and becomes a more informed or adequately motivated voter since Mary also benefits from good government and loses due to bad government. (This proposition about the benefits of accurate, relevant knowledge can be accepted even by those who disagree about when government is good or not.) Mary also benefits when the media uncovers and reports malfeasance or non-performance that leads to corrective governmental (or corporate) action.[21] And she benefits when the media's reputation for quality journalism and effective investigative reporting deters malfeasance or non-performance even though this reputation and deterrence dyad results in the media entity not even having a story to sell in the market.

Any good editor will correctly assert that with more journalistic resources she can offer better journalism—more significant, more accurate and more complete reporting and exposés. Though costly, the public often benefits (the positive externalities noted above) more from the editor having these resources than the media entity loses from its bottom line.

Before moving to a policy conclusion, one other important fact about the media must be noted. The media—in particular, broadcasting and newspapers—have historically been and largely continue to be very profitable, at least on an operating basis. (Recently, newspaper profits have plummeted not only as they always do due to withdrawal of advertising during a recession, but also more problematically long term as advertisers flee to online sites. Most daily newspapers, however, can still be very profitable on an *operating* basis, with the industry's gravest problem in relation to the entities' *net* profits being that the most recent purchaser must use operating profits to pay huge debts generated by its high purchase bid.[22]) Reasons for this high profitability are

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20. The economic claims in this and the next paragraph are developed in BAKER, MEDIA, MARKETS, AND DEMOCRACY, *supra* note 13.

21. DAVID L. PROTESS ET AL., THE JOURNALISM OF OUTRAGE: INVESTIGATIVE REPORTING AND AGENDA BURNING IN AMERICA (1991) (ethnographic study of how investigative journalism generates corrective responses).

22. Though older data clearly support the claim of great profitability, this claim might seem naïve today. Some newspapers, no longer able to make debt payments, are declaring bankruptcy. A few major dailies have closed or are ending their print editions (e.g., Rocky Mountain News and Seattle Post-Intelligencer). Lay-offs are rampant and accelerating, with many newspapers over the last few years reducing their newsroom count from 30% to 50%. C. Edwin Baker, *Shoptalk: Where Credit is Due*, EDITOR & PUBLISHER, Mar. 1, 2009.Given the reduction in the quality of the news product due to less journalistic inputs, a decline in readership might be expected—and is often claimed (and blamed on young people) as paper circulation has declined. *See also* PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2008), http://www.stateofthenewsmedia.com/2008/.

Actually, however, readership is apparently up, reaching 77% of adults, including 65% of those between 18 and 24 in a given week but with a much greater portion of these online where they provide newspapers about 5% of advertising revenue per reader as do print edition readers. Richard Perez-Pena, *Paper Cuts – An Industry Imperiled by Falling Profits and Shrinking Ads*, N.Y. TIMES, Feb. 7, 2008, at C-1; *see also* NEWSPAPERS ASS'N OF AM., WHY NEWSPAPERS? THEY ADD VALUE FOR ADVERTISERS (2008), *available at* http://www.naa.org/docs/TrendsandNumbers/Why%20Newspapers%202008%20FINAL.pdf; NEWSPAPERS ASS'N OF AM., NEWSPAPER FOOTPRINT (2007), http://www.naa.org/docs/TrendsandNumbers/NAANewspaperFootprint.pdf. Papers apparently even now know how to maintain print circulation, *see* Philip Meyer, *The Influence Model and Newspaper Business*, 25 NEWSPAPER RESEARCH J. 66 (2004), but mostly find the expenditures in quality do not produce enough revenue to be profitable.

Even in crisis, however, most papers continue to generate the profits that owners who did not recently incur huge debt to buy the paper could use to spend on quality journalism. PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA: NEWSPAPERS (2009), http://www.stateofthenewsmedia.org/2009/narrative_newspapers_intro.php?media=4 ("operating margins are dropping multiple, but mostly reflect the nature of monopolistic competition in industries that sell a product that has very high first copy costs and very low or zero costs for subsequent copies. Once the profit capacity is granted and combined with the externality point, the policy conclusion should be obvious. The goal should be to keep or get ownership into the hands of those who do not aim to maximize profits but rather are committed to spending at least some potential profits on quality journalism.

The owners most likely to favor journalism over profits include several predictable types: (a) smaller, usually local, owners who take identity from their firms' contributions to their community or from the journalistic product they create; (b) workers who take professional pride in the quality of their product; (c) non-profit entities whose goals include service to their community. Each category justifies policy moves to increase its ranks.

More relevant here is a category of people especially unlikely to sacrifice profit maximization: executives of conglomerate, especially publicly traded companies without dominant family or in-group ownership.[23] Both socio-psychological and structural reasons support this prediction. These executives are particularly likely to be rewarded (or fired) on the basis of their ability or inability to increase the bottom line. They also often take aspects of their

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and now [in 2008] average in the mid to low teens"). Admittedly, profits are down in newspapers everywhere and in individual cases may not even be generating operating profits. Still, as for now, and as for the last one hundred years, an obituary primarily applies only for papers in dwindling number of cities that had maintained competing dailies or other special cases—non-dominate national papers like the *Christian Science Monitor* without a local base. That is, most actual closures are in two newspaper cities where papers have been closing and competition has been unsustainable for the last one hundred years. *See* C. EDWIN BAKER, ADVERTISING AND A DEMOCRATIC PRESS (1994). Most bankruptcies reflect not lack of operating profits but excess debt created by overly-optimistic recent purchasers. Thus, in a world economy where few businesses have double-digit operating profit rates, evidence suggests newspapers in general remain profitable—just not as profitable as before or profitable enough to pay the debt created by recent purchases made under more optimistic predictions and not with the increasing earnings that would support stock prices with high earning multiples.

For example, when the *NYT* headlined *Gannett to Cut 10% of Workers as Its Profits Slip*, N.Y. TIMES, Oct. 29, 2008, at B11, Gannett's third quarter report had just reported major declines in profitability—but continuing great operating profitability. In publishing its newspaper division, revenues had gone down to $1.36 billion with operating expenses of $1.18 billion, leaving operating profits of $180 million or 13 percent margin (with operating cash flow, which management asserts provides a better showing of operations, at 17 percent of revenues), down from a 21 percent operating margin the year before. *Gannett Co., Inc. Reports Third Quarter Results*, BUS. WIRE, Oct. 24, 2008, *available at* http://findarticles.com/p/articles/mi_m0EIN/is_2008_Oct_24/ai_n30932911/.

Another large chain, McClatchy's third quarter operating profit rate was down to 9 percent, though most of this was then eaten up in interest, largely reflecting its recent acquisition of Knight-Ridder. Press Release, The McClatchy Company, McClatchy Reports Third Quarter Results (Oct. 21, 2008) (available at http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/10-21-2008/0004908224&EDA%20TE=).

The Tribune Company, although reporting huge billion dollar losses (reflecting write downs from recent purchases), and though its 2008 second quarter revenues from continuing operations declined 11 percent to $701 million and its operating cash flow declined 4 percent to $114 million, still maintained an operating profit margin of over 16 percent. Press Release, Tribune Company, Tribune Reports 2008 Second Quarter Results(Aug. 13, 2008) (availabe at http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=109&STORY=/www/story/08-13-2008/0004867052&EDAT%20E=).

Conclusion? Crisis, yes! But highly profitable, also mostly yes Nevertheless, the pain is real as exhibited by continued lay-offs, reduced wages, and the situation is fluid as I write. And this crisis, represented by huge losses of advertising revenue, partly due to the current recession (as it is optimistically called), which always causes sharp declines in advertising revenues, and more seriously long term, the movement of advertising to non-newspaper online sites, and the modern end to the major newspaper subsidies from the federal government that sustained them during the first 150 years of the country's history, will not go away. As noted above, this leaves a bleak future that requires a thoughtful response. *See* Posting of C. Edwin Baker to Balkanization, http://balkin.blogspot.com/2009/01/future-of-news-part-one-problem.html (Jan. 21, 2009, 6:35 EST) (The Future of News, Part 1 -- The Problem); Posting of C. Edwin Baker to Balkanization, http://balkin.blogspot.com/2009/01/future-of-news-part-two-solutions.html (Jan. 22, 2009, 6:35 EST) (The Future of News, Part 2 -- The Solution).

23. Gilbert Cranberg, Randall Bezanson & John Soloski, Taking Stock: Journalism and the Publically Traded Newspaper Company (2001).

identity from the same profit-making achievements. These bottom-line concerns are likely encouraged by day-to-day interactions not with people of a community they serve but with other executives who also value higher profits.

Two structural reasons make these owners not only less inclined but also less free to make the socially right choice of sacrificing profits for journalism. First, an executive of a publicly-traded company faces fiduciary obligations and sometimes intense shareholder pressure to serve the bottom line. Second, and especially important for merger policy, if its corporate parent recently purchased the media entity, this parent was presumably the high bidder. Its bid based on its calculation of the property's *potential* future profits now locks it into producing those profits to pay the debt created by (or otherwise to justify) the purchase. That is, the purchase, the merger, itself *forces* the socially undesirable focus on the bottom line.