

Red Lion, Red Bull: Consolidation of Broadcast Media, Conservative Homogenization  
of Public Issues and the Necessity for the Return of the Fairness Doctrine

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Abstract

The consolidation of the broadcast media industry during the last two decades has been dramatic. This intensive period of consolidation began when the Federal Communications Commission (“FCC”) repealed the fairness doctrine. At the time of the repeal of the fairness doctrine, the media industry consisted of approximately 50 media companies. With the recent merger of Newscorp and Dow Jones, the industry has imploded from 50 media companies to 10. This consolidation and homogenization of the media industry triggers thoughts of the famous *Lord of the Ring* passage, “one [view] to rule them all, one [view] to find them, one [view] to bring them all and in the darkness bind them.” The result of such intense media consolidation is homogenized conservative programming of public issues that permeates the American consciousness and psyche whereby media companies are able to reduce public issues into ratable airtime that can be easily transferred to generate profit.

An unfortunate consequence of the consolidation of the media industry has been the drastic decrease of ownership opportunities for minority or small locally-owned media companies, which often provide progressive and liberal programming on issues of local concern and pertinent matters of interest to the general public. The FCC established the fairness doctrine, in part, to regulate content by requiring licensees to provide programming on issues of public disagreement. The doctrine was also intended to ensure that non-conservative programming was also broadcasted on the airwaves. The fairness doctrine is based upon the First Amendment constitutional right of freedom of speech and of press. It is not, however, an absolute right. Nowhere is that fact more apparent than the FCC’s repeal of the fairness doctrine, which was upheld by the U.S. Court of Appeals for the D.C. Circuit in the *Red Lion* decision. The repeal of the fairness doctrine was due, in part, to the FCC’s mistaken belief that media diversification had been achieved and the fairness doctrine was no longer necessary. Since the repeal of the fairness doctrine, and the decisions in *Red Lion*, Congress’ attempts to mandate the fairness doctrine have been unsuccessful.

The time has come for a re-assessment of the necessity for the fairness doctrine based upon a public policy paradigm that promotes access to and ownership of dominant media for all Americans on issues of concern to all Americans. The reality is that the public, having played no role in the transference of public airwaves to private ownership, has become captive to the opinions and preferences of individual broadcasters. As a result, the American broadcast media industry has developed to a large extent into a homogenized, conservative, insular market that permeates the American economy, consciousness and psyche.