

leaders: Catholic, Moslem, Orthodox and Jewish. And I was struck by the fact that each of them spoke, not of hatred, but of the need to work together and to look to the future]

One of them, a Moslem leader, told me how he had lost his wife and two daughters to a single shell, on a single day of fighting, as they went to the market to buy some water. And yet, as I sat with him on a carpet in his mosque, he spoke of the meaning of the Koran — and of forgiveness. "We have to work together," he told me, "It's our only hope. "

Working together is a challenge for us all and a responsibility for our world: for social justice, for economic opportunity, for human well-being — and for history. We are all here because we share the dream of a better world.

To achieve it, we have to work together.

Public Policy

Regulatory Oblivion: The 1996 Telecommunications Act and the Public's Interest

By Nicole Ferrandino

Perhaps the major premise upon which the First Amendment is based is the societal necessity of a flourishing marketplace of ideas, with truth emerging not by governmental fiat but, rather from the clash of many voices .. Where no government regulation is constitutionally permitted, the economic market place determines the number of voices to be heard. The government role is limited to ensuring... that the economic model succeeds. Where as in broadcasting governmental regulation is allowed and where inherently it creates market monopolies, the question arises as to how the Commission should act to ensure hoped for multiplicity, competition and diversity. - T. Barton Carter

Unregulated television possesses too much power to influence people and too few constraints to prevent its misuse. - Ronald A. Cass

In setting guidelines and hammering out the details of the 1996 Telecommunications Act, the Federal Communications Commission (FCC) continues to promote a trend of deregulation. On paper the Telecommunications Act is designed to promote and foster horizontal growth; however, within the media industry, a recent trend of mergers and buyouts indicates the opposite occurring and a "media monopoly" continues to build (Bagdikian title page). By enlarging their already great empires and taking on new media ventures, conglomerates increase the power and influence they have over the content and quality of programming. Instead of promoting the growth of smaller media outlets, competition, and in turn wider diversity and improved quality, thus far, recent events show a rise in mergers and vertical growth among media giants. Although still too early to make definite conclusions about the effects of the Telecom Act, several questions may be raised in looking ahead towards the possible impact this Act may have on the public and the possible structural and functional changes that might occur in the media industry and its regulatory body: the FCC.

Besides the direct effect that the centralization or decentralization and continued deregulation of the mass media will have on the public, it seems that the continuing push in the direction of a hands-off policy, set by the FCC back in the 1980's, is headed towards complete "regulatory oblivion" (Ray 163). In other words, the FCC is creating a plan that over the next five to ten years could write them out of the regulatory process. What does this mean for the future of the current FCC? If the FCC

is eliminated or at least changed to fit in with the governmental hands-off policy of the media, who, or what, will oversee the industry? What governing body will deal with the problems and issues that arise within and between the mass media, the public and the government? To better understand the possible effects this new legislation will have, it is important to examine the past. First, by looking at the development of the FCC and its main responsibilities, the Communication Act of 1934's public interest standard and the start of the deregulatory push in the 1980's, and then by exploring the major changes created by this new legislation, the future consequences faced by the industry and society can be more thoroughly studied.

Formed by Congress under the Communications Act of 1934, the FCC became the main regulatory body of electronic mass communication. Under this Act, the FCC was given the task to regulate "interstate and foreign commerce in communication by wire and radio so to make available, so far as possible, to all the people in the United States a rapid, efficient, nationwide and worldwide wire and radio communication service with adequate facilities and reasonable charge (emphasis mine)" (Carter 327). With this legislation, Congress set up various guidelines. Most importantly, Congress entrusted the FCC with the responsibility to "regulate broadcasting according to 'public interests, convenience, or necessity'" (Chamberlain and Middleton 551). Under this "vague regulator guideline," the seven commissioners of the FCC are granted the authority to determine the type of programming content that is appropriate or inappropriate to broadcast to the public (Chamberlain and Middleton 551).

While the FCC was designed as a regulatory body with the primary responsibility of regulating both the content and structure of the mass media, the Commission's means of regulation are limited. Specifically, the FCC does not have the authority to censor or directly determine programming content. Nonetheless, the Commission is able to regulate broadcasting through the power to grant, deny and/or revoke licenses. During the license renewal period, the FCC determines whether or not a broadcaster has served the public interest. Broadcasters must satisfactorily show that they have met the needs and interests of their communities.

Yet, while the FCC has the responsibility to the citizenry to enforce restrictions by which broadcasters shall follow, as the appointed watchdog over the mass media industry, the FCC has not been watching too closely. Presently, the FCC mandates that broadcasters only keep records of those programs that are "most significant" in dealing with community issues (Chamberlain and Middleton 554-555). In fact, the FCC does not ordinarily know what programming a station broadcasts because the Commission no longer requires a station to send programming records to Washington D.C.

Regarding the 1934 Communication Act, former Chairman of the FCC, Newton Minnow once wrote: "Its language is purposely vague and open to all kinds of manipulation. The FCC is supposed to look after the 'public interest, convenience and necessity' but this term had never been satisfactorily defined" (qtd. in Ray xv-xvi). While it was made clear in the 1934 Act that broadcasters are required to serve the public interest, what the "public interest" consists of was left up to the Commission to decide. The vague rhetoric of the 1934 Act was based on the broad definitions set in 1927 under the Radio Act, that stated: "Broadcasting stations are licensed to serve the public and not for the purpose of furthering the private or selfish interests of individuals or groups of individuals ... in a sense a broadcast station may be regarded as a sort of mouthpiece on the air for the community it serves" (emphasis mine) (qtd in Kahn 146). No single definition of public interest exists. It is often understood that the public interest is "determined by reference[s] to the values of the various members of society...some composite of the views of the citizenry" (Cass 57). Former FCC Chair-

man Reed Hundt saw the public interest obligation as "serving the public with programming the marketplace would not otherwise provide" (Halonen 38). On the other hand, FCC Chairman Mark S. Fowler, who played an instrumental role in the deregulation of the media industry and the changes within the commission during the Reagan Administration, did so based on his interpretation and understanding of "public interest." According to Fowler, "the public's interest... defines the public interest" (qtd. in Chamberlain and Middleton 555). In contrast to Hundt, Fowler interpreted "public interest" to mean that what the public wants, and thereby argued that based on the economics of the industry, a broadcaster's service to the public would be based on market incentives.

While the trend of deregulation has its advantageous aspects, such as broadcaster independence it also has a quality of neglect built in to it—neglect of the public and looking out for the public's interests. While between the 1940's and 1970's the FCC may not have denied the renewal of a single license based on a "station's overall programming," the 1980's was a time in which broadcasters were not even recognized or reprimanded for failing to meet "community needs and interests" (Chamberlain and Middleton 554). While today the FCC still requires that broadcasters "carry community-oriented programming," the trend of deregulation continues to dominate the '90s (Chamberlain and Middleton 555). The FCC is now at a point in which the 1934 Communication Act can no longer be picked apart and reinterpreted or further amended; they are at a point in which the only step forward in keeping with the ongoing trend of deregulation is to rewrite the law. This is being accomplished through implementation of the 1996 Act.

One effect on the industry as a result of the deregulation since the 1980's has been the increase in mergers and the formation of media conglomerates. There is a strong debate about the effects of media monopolies on the industry and society as a whole. While some claim that a large danger exists in the growth of conglomerates, others assert that growing companies are in fact only expanding within a rapidly enlarging industry, and therefore, in relation to the market they have not increased their power.

The hazard existing within the media industry that is not inherent in any other big business is that the concentration of power can alter and shift the "values, ideas and politics" of the nation and may even change "the national character" (Bogart 244). The danger lies in the view that if the power of the media industry is concentrated in the hands of the few, there would be a lack of diversity of information and messages that would be released. This becomes increasingly alarming if the owners use the media's powerful influence over the masses as a means to promote selfish ideas or personal goals. Leo Bogart, writing about the increase in the concentration of power among media owners and its acceleration due to the implementation of the 1996 Telecom Act, emphasizes how mergers, leading to "common ownership," will result in the development of "larger and more heterogeneous companies" and the production of "lowest common denominator" programming (247). In other words, while there may be more information available, it does not necessarily mean that the content will be of value or Merest to the public.

On the other side of the debate are those who look at media mergers as having an advantageous, or at least a non-negative impact on the industry. Columbia University professor of Economics Eli M. Noam, explains how the assumption that an increased amount of power is being concentrated in the hands of a few is actually a fallacy. Noam reasons that while communication companies may be growing, the control these companies have within the market has remained stable if not already

declined. This occurred because as companies expanded so did the industry as whole—especially between the 1980's and 1990's with the increased trend of deregulation and the rapid growth of cable TV and various other new technologies, such as satellite transmission and the Internet (254). Noam implies that as the industry itself grows with the increasing technological advancements, there will be room for new media companies to emerge along side the already stable companies, and that this expansion will only occur until a competitive market takes over.

Why does this debate over the increasing power of large media corporation exist? The growing concern is largely due to the fact that the expanding media companies and merging corporations result not only in the development of media monopolies but also monopolies on information. Those who control communications media have great power and influence over what information gets produced and released. As a result of the monopolies companies have over content, they gain both enormous social and political control. Whether or not those who control the media, and therefore the information, use or misuse their power depends on the success of either the FCC's regulations, or the laws of economics within the marketplace. The body that will eventually regulate the media industry is being developed within the policies constructed from the framework of the 1996 Telecommunications Act.

According to the FCC, the goal of the 1996 Act is "to let anyone enter any communications business—to let any communications business compete in any market against any other" ("Telecom Act" FCC on-line). The Telecom Act emphasizes the significance of opening up and increasing the size of the market, increasing investment into the industry and maintaining pro-competitive regulatory principles. The FCC is still obligated to ensure that the "public interest convenience and necessity" is met by licensed broadcasters. The 1996 Act through its pro-competitive design has made a promise of "new investments], job growth, lower prices and better service" (Hundt FCC on-line). The FCC has the responsibility to make sure the public is not only receiving information that is appropriate (in the public interest), but that the media outlets are accessible to the public either for producing or receiving information.

How does the FCC plan on accomplishing the goals that have been set? Several important aspects of the Act deal with universal service, ownership regulation and licensing regulations. Among other things, the 1996 Act is designed to promote technological advancements, cross-media ownership, greater broadcaster independence and increased accessibility and service. Foremost, to accomplish their goal of creating a more pro-competitive universal market, the FCC, under Section 253 and Section 257, has removed market barriers between local and long distance telephone, cable and broadcast, thereby allowing these once distinct industries to step on each other's toes and play in the same field. The FCC has set up, under Sections 707 and 714a "Telecommunication Development Fund." The purpose of Section 714 is "to promote access to capital for small businesses in order to enhance competition ... to stimulate new technology development, and to promote employment and training ... [and] to promote universal service" ("1996 Telecom Act" FCC on-line). This fund will aid small media companies and help others who would like to break into the business. The more new growth within the industry, the more the competition will increase.

In regards to the broadcasting industry, the Act has effected radio and television ownership as well as cable ownership. Under Section 202: "Broadcast Ownership," the FCC is to rewrite the policy to "modify its regulations pertaining to the restrictions on national radio ownership, local radio diversity, national and local television ownership, relaxation of one to a market, dual network rule changes, and cable cross ownership" ("Overview" Benton on-line). As a result, the Act has dra-

stically changed ownership guidelines. The limitations of radio ownership in the national market has increased from four to eight, and similar relaxed limitations have been implemented for television station ownership. The Act also allows for common ownership of multiple cable systems, broadcast networks and telephone companies.

Aside from the changes in ownership patterns, under Section 203: "Term of Licenses," the Act has also relaxed the licensing power of the FCC. Instead of the FCC reviewing and granting renewal of licenses to broadcasters every four years, the length of a license has been extended to eight years. This has an enormous impact on the FCC ability to enforce and regulate the public interest standard. Under the new policy, the FCC's main objectives remain the same—to regulate the power and impact that broadcasters have over the public. However, if the Commission's most powerful tool of regulation, the ability to limit and regulate ownership, is relaxed, then the FCC's power is lessened. Overall, the result of these relaxed regulations results in the FCC having less regulatory and enforcement power, and therefore, less control over ensuring that broadcasters fulfill the public interest requirements.

Many of the reforms within the 1996 Act, either by breaking down market and ownership barriers or providing funds to smaller communications companies, try to increase competition one way or another. One way that the FCC is hoping competition will increase is through the development of new technology. As companies start to invest in technological advancements—HDTV (high definition television), DBS (direct broadcast satellite), fiber optics, etc.—competition should increase. One example of how this may work is between the already established cable systems and the up and coming DBS systems. DBS, the industry's greatest hope for diversity, will offer more channels than cable. As direct broadcasting increases, so will its threat to cable. As a result of the competition between Cable and DBS, prices for service should go down and the quality of service and programming should be improved. By allowing the market to take over, this is what the FCC is hoping the Telecom Act will accomplish. However, there is always the possibility that this will not occur and that the already existing cable systems will capitalize on the growing industry that DBS is offering. If cable systems offer their customers either a choice of cable or DBS, then instead of competition, there would be an increased control over content and mediums.

Ideally, the FCC hopes that through the changes in the 1996 Act, by replacing regulation with competition and increasing the independence of broadcasters, the incentive for broadcasters to provide the public with diverse news and information will also increase. Yet, the growing reliance on the market could have a negative effect on the amount and quality of news. If the public's demand for the news decreases within the market, then those who control the news will increase competition by altering the kind of information that is emphasized. In other words, if there is a decrease in the demand for hard news and an increase in the demand for entertainment, then, in order to attract the largest audience possible, producers of the news may sensationalize and fictionalize the content to increase its entertainment value.

Is the pro-competitive nature of the industry really in the public's best interest, or does it merely reflect the best interests of those who developed it: Congress and the like many governmental bureaucracies, the policy enacted is done so based on the influence of many outside forces—executive branch, legislative branch, media, public interest groups, etc. One argument that has been made against the Telecommunications Act is that it is not only promote and encourage the growth of big business, but also to influence regulations, or may one say deregulations, have so far shown an increase in mergers, consolidations, buyouts, partnerships and joint ventures. Such features have started to change the "shape and texture of the nation's media"

and will continue to do so until the "nation's media" reflects the big business ideology (Hickey on-line). How, if the trend is towards the formation of media monopolies, in which there are fewer and fewer owners, could this Act possibly generate greater competition and increased diversity? The mass convergence of media ownership results in what one reporter has described as a "chilling concentration of common economic ownership" (Hickey on-line). If recent trends continue and big business gets even bigger, then the public is at risk of receiving information from a select few sources that are "predominantly controlled by those who are benefiting from a monopolistic environment:" the owners, white, upper-class, privileged, "politico-economic conservatives" (Hickey on-line, Davis 79). As a result, the public does not know what they are missing because the opposing views and diverse voices will be shut out and shut up.

The growth of the industry, over the last ten years or so, has created a media environment that looks very different today than it did in the beginning of the 1980's. Technological advancements play a large role in the booming industry. Technology increased the diversity of ways messages can be delivered as well as a diversity in the messages being relayed. According to the Supreme Court, diversity of messages is beneficial to the functioning of society. In the decision of the US vs. Associated Press it was concluded that "the first amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society (Davis 116). Therefore, in order to insure that there are "diverse and antagonistic sources" regulation is instituted to maintain the "diversification principle— notion that the diversity of sources of information is paramount" (Davis 116).

To achieve a more consistent relationship between the programming and the public interest, an increase in channels, which is better suited to provide more diverse programming, could be implemented. Both Cable and now DBS offer the means by which to convey a diverse array of messages to the public. The Telecommunications Act, through the "Development Fund" and by breaking down market barriers, has begun to encourage smaller, reluctant companies to participate. Those who were instrumental in adopting this act, and now the FCC, in developing the exact policies, expect that as a result of increased participation, the resources and access the public will have to new ideas and engaging information will rise (Bogart 247). Despite the growing number of channels, media scholar, Ben Bagdikian points out that even though new technology may lead to increased access and resources, the "recent growth in the number of channels offered has been accompanied by an increasing uniformity of content" (xii). Therefore, just because there may be more channels to receive information, and more channels to produce and send out information, the content that is being relayed over these outlets may not be as diverse as the FCC and Congress had hoped.

Success of a democracy rests upon an intelligent and informed electorate. An important question to ask is whether or not the 1996 Telecommunications Act will increase the number and types of voices being heard or will it stifle and shut out those voices that are necessary to maintain a properly functioning and effective democracy? The 1996 Act, through deregulation, relies on the free market and free enterprise system to promote and foster competition among media owners. As mentioned before, the increased competition among broadcasters also promotes greater freedom of broadcasters from government control. However, a decrease in regulations does not necessarily create a better informed public. Specifically, the increased freedom that broadcasters acquire give them more leeway to manipulate the content and in turn the mass audience (Entman 92). Not properly informed and therefore less capable of

isting the manipulation by those who control the information, the citizenry can not pirate to the best of their abilities within a democracy. By deregulating communication policy and thereby increasing competition and broadcaster independence it is not guaranteed that the diversity of information will meet the public interest.

Under Part IX: "FCC Reforms," the Telecommunications Act consists of two parts, Sections 402 and 403, that specifically deal with the future of the Commission as a regulatory body. Section 402, "Regulatory Reform," determines that "in every year, the FCC shall review all regulations under this act and has the authority to repeal any regulation that is no longer necessary in the public interest as the result of meaningful competition" ("1996 Telecom" FCC on-line). Under Section 403 the FCC has the power to eliminate any unnecessary Commission regulations and functions. These two sections imply that when the market begins to take over governmental control (while meeting the public interest obligation), then the FCC will eliminate those controls it may still have that the market has proven to be capable of taking care of.

Will the FCC exist in the next few years? The popular word associated with the fate of the FCC has been "reform." During a congressional hearing in April of 1996, while former Chairman Hundt stressed the need for increased funding, "lawmakers questioned the commissioners about ways to eliminate commission functions and reallocate resources" (McConnell 18). While the discussions and talks about restructuring heighten, no actions are being taken immediately (despite what some would like to see occur). At this time, and for the next few years, the FCC is going to be busy sorting out and setting the policies based on the changes made by 1996 Act. While the FCC is not going to be completely eliminated as of now, no one can predict what the future holds. No one can say for sure that the market will hold up and succeed in regulating the communication industry. If the marketplace does indeed succeed, and the airline industry is any indication of the outcome of a market regulated industry, then deregulation will result in fewer, but more powerful players fighting within a more intense and competitive market (O'Malley).

Inevitably, it looks as if the FCC's transformation will leave the Commission in a much different state than it is today. As technological advancements are made, the new services that will be offered are expected to become increasingly difficult to regulate. Whatever the results, the FCC will not be gone tomorrow and it will not vanish in the next few years; however, give or take ten years, the FCC will be a very different Commission regulating a very different industry.

Since the 1980's and the push for government deregulation of the media industry, the Telecom Act has been in the making. The effects that this act will have will change the way in which the media, public and government all relate and interact with one another. Some have claimed that the Act is merely a law made specifically for big business, and others have indicated that this Act has been created for the public and in the public interest. Either way, the 1996 Telecommunications Act will have a profound and lasting impact on the structure and function of the media, especially electronic communications. The events that lead up to the Telecommunications Act had as much of an impact on the industry and society as will the Act itself. Now, the future is in the hands of the FCC, until the market takes over, and then, the future of telecommunications and the service to the public, relies on what the public wants. At that point, the Public interest will simply reflect the public's interests, regardless to whether or not the Public has its own best interests in mind.

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