



# Stealth regulation: moral meltdown and political radicalism at the Federal Communications Commission

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The drama and scope of government policy affecting new media and society may not be accurately captured if we look only at what has happened since 1999. If we look back just a few years earlier, to the Telecommunications Act of 1996, just about any US media policy action before or since pales by comparison (Aufderheide, 1999). This is not to say that there have been no important events shaping and redirecting the communication and media environment in the past five years. In the United States, we saw the overnight disappearance of internet euphoria as the start-up dreams of countless dot com companies dissipated. We also saw the giant US telecommunications utilities bleed through bankruptcies, massive layoffs, and dramatic losses in stock value. Suddenly, on the eve of the new millennium, the US economy's brightest stars – its high-tech information and communication technology (ICT) industries – were flickering and faltering, and with them, many private fortunes and public hopes for continued overall economic prosperity. In the midst of this decline came the 11 September 2001 terrorist attacks on US targets, an event that not only challenged US complacency and isolationism, but one which also seemed to contribute further to declining confidence in the US economy, deepening a the recession that was already underway.

So what has been the role of US media policy during this time? The administration of George W. Bush, like that of his predecessor Bill Clinton, has been decidedly supply-side. In addition to telecommunications law,

Clinton introduced and signed major legislation to reform 'welfare as we know it', resulting in a leaner and meaner life for America's poorest. Within his first year in office, Bush successfully passed a \$1.35 trillion tax cut, mostly benefiting the country's wealthiest citizens. Welfare for the poor was out, and welfare for the rich has been steadily on the upswing. And the ICT industries have been among the greatest beneficiaries. From giveaways, such as the \$70 billion in broadcast spectrum granted to the broadcast industry in 1996, federally-sponsored research and development, corporate bailouts and massive tax cuts, to international trade and export negotiations and assistance, the US corporate welfare state has never been more bloated. Never mind the moralism so often expressed by our nation's leaders and communitarian philosophers, who wring their hands over the 'culture of dependency' that a welfare state can cause. Such worries do not seem to apply to the CEOs and shareholders of corporations that are the greatest beneficiaries of the American government's world-historic largesse. Apart from its efforts to maintain law and order at home and abroad, the most legitimate role achieved by the American nation state in the 1990s became that of *developmental state*: corporate legal counsel and advocate in global trade forums, and world venture-capitalist extraordinaire.

In the currently stagnated economy, a *laissez faire* attitude on the part of government officials can be a detriment to political futures. This is why it should come as no surprise that the Republican majority of the current US Federal Communications Commission (FCC) has been actively promoting an unprecedented program of corporate welfare. On 2 June 2003, the FCC decided to relax and eliminate many of its longstanding regulations that were designed to limit the concentration of ownership in the broadcast industries. It was a culminating and radical move, perhaps the most far-reaching set of changes made by the FCC at any time in its history. These decisions illustrate a continued pattern of government-industry cooperation in accelerating media ownership and the consolidation of media power, further eroding any semblance of even lip service to a public interest standard. The changes were made with impunity, reflecting administrative stealth and intellectual dishonesty. During the writing of this article, the ultimate outcome of these decisions was not certain, due to opposition by many members of Congress in response to the snowballing effect of public complaints and petitions by millions of US citizens since the announcement. The main concern among those that have been voiced repeatedly about the FCC decision was that FCC chairman Michael Powell failed to promote public knowledge and debate about matters of great political consequence. The decision, which was brewing for two years, was rated the single most under-reported story of 2001-2002 by 'Project Censored' (Project Censored, 2003). According to the Pew Research Center, 72 percent of American

adults knew ‘nothing at all’ about the subject during the months just prior to the decision (Project for Excellence in Journalism, 2003).

On the day that the FCC announced its decision, several short speeches were given at a press conference by members of the FCC and key staff. One of the strategic masterminds behind the changes was Mass Media Bureau chief, Kenneth Ferree. At the beginning of his televised speech, Ferree pulled out an old pair of ‘rabbit ears’, the type of antennae that sat on top of a television set in the decades before the spread of cable television. Ferree marveled at how far we had come to a time when there are so many crystal-clear channels to watch. He used this show-and-tell moment to set the stage before he and his colleagues presented what they had done as an act of grace, a universally-valuable public service that would unlock the chest of treasures that the good life holds in store. Ferree called the FCC’s decision ‘a shiny new key to the digital future’ (Ferree, 2003).

The decision announced that day was put in terms of a religious experience. According to the FCC’s rhetoric, new media would be our economic (if not spiritual) salvation, if only the well-intentioned but mistaken public interest do-gooders would step aside and let the free market do its magic. In a statement that seemed geared more to delivering souls than to clearing the path for corporate plunder, Powell spoke to the press of how ‘perilously high’ the stakes were if they did not act now and deregulate. On that occasion, Powell congratulated himself and his colleagues in the Commission for a job well done, one that he characterized as both thorough and democratic:

This proceeding has been the subject of extraordinary public attention. It is right that it has been so, for the values these rules are intended to advance are critically important to a vibrant democracy. (Powell, 2003a)

Powell did not mention that he had ignored the estimated 97 percent of the 750,000 US citizens who gave feedback prior to the rule changes and who vigorously opposed his agenda. Powell and his fellow Republican colleagues on the Commission made a mockery of overwhelming public opposition to the proposed regulatory changes.

With pretensions to democratic openness, Powell also took the opportunity that day

to express my deep appreciation to each of my colleagues for their tireless efforts over these past many months. Commissioners [Jonathan S.] Adelstein and [Michael J.] Copps have organized numerous hearings throughout the country and deserve credit for bringing unprecedented public input to this proceeding. (Powell, 2003b)

So moved by his own gratitude and depthless magnanimity, Powell neglected to say that he himself had held only one such event, that he

denied staff support and funding to Copps and Adelstein (both Democrats who opposed the Republican majority position) to hold forums to discuss the issues with the public, and that he made a special effort to make it be known publicly that forums held by dissenting commissioners were not officially sanctioned. Travel to over a dozen locations around the country by Copps and Adelstein was funded mainly by citizen groups and universities.

According to the Center for Public Integrity, FCC commissioners and staff members have accepted nearly \$2.8 million for travel expenses over the past eight years, courtesy of the interests that they are charged with regulating. Chairman Powell himself travels in style, and frequently, on the dime of the major media industry lobbies and the largest media conglomerates. Since he joined the Commission in 1997, he has done a Herculean job to feel the pulse of the people, at the least the people who run the top media and telecommunications corporations, by taking 44 trips, many at top tourist destinations around the world, at a cost of nearly \$85,000 (Nichols, 2003).

Publicly acting within the letter of the law, and scoffing at the democratic spirit that underlies it, Powell's FCC has been a radical force in the service of the insatiable appetites of big media. As this case illustrates, to the extent that radical politics in America were once associated with the Left, that is no longer the case. Rather, it is the Right that has built the intellectual and political foundations of the most potent radicalism in effect today: free-market fundamentalism. Of course, markets are never free, but rather they require intensive intervention and maintenance, for example, to define and enforce private property rights. Recently, such radicalism has even been too much for many Republicans. In the case of the struggles against the FCC's latest deregulatory adventures, many powerful Republicans and Democrats in the House and Senate joined forces with progressive media activists, associations of journalists, musicians and filmmakers, along with rock stars, civil rights organizations, the National Rifle Association, the Consumer Federation of America, CodePink Women for Peace, and owners of some of the leading independent newspapers in the country.

Without shame, and with the sincerity of ideologues who thoroughly believe in the product they are selling, Republicans on the FCC delivered the goods to those whom Powell has called 'our clients', that is, the media behemoths that his agency is charged with regulating.<sup>1</sup> Without blinking, Powell and his colleagues in the Republican majority in the FCC dispatched with any meaningful distinction between the private interests he assiduously aims to satisfy, and those he has declared to be the public interest. The radicalism practiced by the FCC, in fulfillment of its industrial supporters' wildest dreams, makes a bold statement about how thoroughly the Commission aims to unmistakably redefine the historical ideals of a free press in terms of the market logic of big corporate media.

Chairman Powell, a Washington insider and self-appointed James Watt of the media environment, claimed that the ownership rules were unenforceable, but that is because he chose not to enforce them, despite the persistent complaints of public interest groups. He also claimed that the federal courts demanded change in compliance with the will of Congress. But in reality, the main message that the courts had sent was for the FCC to provide sound reasoning for its rules. Powell was more than happy to fall down on that duty, claiming to have been given a mandate to eliminate important ownership rules, and so doing while suppressing public discussion and disregarding widespread public dissent.

Powell based much of his deregulatory evangelism on the rhetoric that we must unshackle the new media in order to enter the economic and cultural promised land. One of the main goals that he stated at the time of the Commission's 2 June announcement was that the rules governing ownership must 'take proper account of the explosion of new media outlets for news, information and entertainment' (Powell, 2003a: 1). Elsewhere, he stated that 'Cable and the internet explode the model for viewpoint diversity in the media', presenting these technological changes as the evidence of 'a powerful paradigm shift in the American media system', one that is having 'a tremendous impact on our democracy' (Powell, 2003b: 6). Of course, the internet and other new and emerging media have become important instruments in a wide range of political, economic, and cultural activity. But this does not mean that everything under the sun is new since the dawn of the internet. Big media corporations wanted to get bigger and to eliminate competition, long before the appearance of cable and the internet, and that is why regulations to limit consolidation have existed for so long. 'New media' were a Trojan horse for the FCC to further abandon its public interest obligations.

Today, we see a large number of cable channels owned by a very small (and decreasing) number of very large corporations. And although there are millions of websites, research on internet usage has shown that when citizens search online for news, most tend to go to sites owned by the largest news organizations. Despite its maverick status at the early stages, whatever advantages the internet offers as far as enabling citizens to become more engaged politically, this technology has been rapidly incorporated into the political, economic, and cultural mainstream. Moreover, the increasing concentration of ownership among internet service providers (ISPs), coupled with the power that ISPs have to exert private control over the content on their servers, along with the surveillance capacities that they can and do provide to law enforcement agencies in violation of civil liberties, are further indications of a dangerous pattern of consolidation. This is a particularly worrisome problem in the wake of the post-9/11 crackdown.

Perhaps the most important of the rules that the FCC has decided to eliminate is the restriction on the cross-ownership of newspapers and broadcasting stations in the same local market. There is no evidence to indicate that the internet and cable pose a competitive threat to principles of independently-produced local news and public affairs content, which are supposed to be principles the FCC is working to secure. National cable channels (e.g. ESPN and CNN) and internet-based news services compete for audiences for *non*-local content and *non*-local advertising dollars. At the local level, the internet and cable mainly function as delivery systems for existing suppliers of local content. To the extent that the internet is an important platform for the delivery of local news, it is nearly exclusively in the distribution of enhanced offerings by newspapers and local stations. Newspapers have already benefited from technological advances by making the transition into multimedia local news and information sources more rapidly, which has been occurring effectively without cross-ownership in most markets. Likewise, without the need for cross-ownership, the broadcast industry has moved aggressively and effectively into providing expanded news services, using the internet to combine text, graphics, audio, and video. This comes in the form of extended news coverage, streaming video and audio, hyperlinks to additional sources, and various other forms of innovation, reflecting an already existing capacity by both broadcasters and newspapers to develop and expand into each other's fields of expertise *without* cross-ownership. It makes no sense to stifle the prospects for different forms of innovation by different media sectors with independent traditions, but that is what the FCC's actions threaten to accomplish.

The manner in which the Commission has conducted this recent wave of deregulation demonstrates how a particular philosophy of communication governs both the process of media policy-making at the national level in this country, as well as the expected policy outcome. The process is one in which regulatory decision-making is highly consistent with the interests of the corporations and industry groups that spend enormous amounts of money to obtain specific outcomes. In the past four years, the top 10 owners of broadcast properties spent \$68 million lobbying regulators and lawmakers (Mulkern, 2003). Shameless but legal *quid pro quo* relationships between regulators and the regulated also bolster industry confidence in the cash nexus as the primary governing principle of the media environment in which they operate. Why should we expect corporations that spend enormous sums wooing policymakers to adopt a higher moral standard when it comes to deciding what is newsworthy or what editorial opinions to express?

Counter to the images in the 1990s that the 'new media' had for being maverick and 'unregulable', they have been domesticated rapidly into a regulatory pattern that favors absorption into the logic of big media

'synergy'. While reasoning that they are acting in response to forces beyond their control to accommodate – the juggernaut of technological change – regulators consciously (or unconsciously) downplay the way in which technological change is the product of political will, rather than inexorable logic. In the case discussed above, that will is amply expressed by a deeply anti-democratic and captive regulatory agency. Of course, there is a vitally important global dimension to all of this, in that for many years the US has served as both the model and, when models fail, the primary source of political and economic pressure, to get the rest of the world to fall into line with its media policy frameworks.

Instead of making this subject a focus of political scandal, the large corporate media of the US have done their perfunctory bit to provide 'balance', while under-reporting on the widespread opposition to policy decisions that they clearly favor in the first place.<sup>2</sup> The internet has been a useful and important tool in the mobilization of resistance to these developments, but the major frames through which the vast majority of the public has seen the issues have been ones constructed by big media.

## Notes

- 1 According to Brendan Koerner, shortly after his appointment as FCC chairman, 'Powell referred to corporations simply as 'our clients' (Koerner, 2001: 42). A little more than a month before the 2 June 2003 announcement about the deregulation of ownership restrictions, Powell spoke before the Newspaper Association of America, a lobbying organization that favored the elimination of one of the rules (the newspaper–broadcaster cross-ownership prohibition), indicating his clear alignment with the NAA. Following Powell's speech, outgoing NAA chairman and vice chairman and CEO of MediaNews Group, Inc, William Dean Singleton, announced 'I could have written the speech myself' (Moses, 2003). See also Boehlert (2001).
- 2 For example, see my invited guest opinion in the Denver *Rocky Mountain News*, whose parent company is the E.W. Scripps Co, which advocates the elimination of the newspaper–broadcast cross-ownership ban (Calabrese, 2003). The article was published alongside a 'counterpoint' article by a representative of the 'Progress and Freedom Foundation', a Washington, DC-based think-tank that is funded by many of the largest media and telecommunications firms in the US.

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