Fact Sheets on Media Democracy

Most Americans today get their information and entertainment from the mass media - radio, television, newspapers, movies, and the Internet. The companies that own these mass media outlets thus have a powerful influence over our culture, our political system, and the ideas that inform public discourse.

In the past half-century, media companies have grown into large conglomerates. With this growth and consolidation have come concerns about the implications of corporate media control for the free and open system of communications that is needed for democracy to work.

The media democracy movement aims to change the current mass media system into one that is more diverse and less consolidated, that offers a balance of commercial and noncommercial programming, and that fosters the informed debate essential to democracy. This series of interconnected Fact Sheets gives an overview of the mass media system and the concerns of the media democracy movement.

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I. What are the Mass Media, and Who Owns Them?

- The mass media are communications systems that reach millions of people every day through sophisticated technologies like broadcasting, cable, and the Internet.

    - *Broadcasting* transmits radio and television signals of different frequencies over the public airwaves. Depending on the strength of the signal and the technology used, broadcasting encompasses everything from low-power community radio stations to satellite signals that are beamed anywhere in the world.

    - *Cable* transmits TV programming through fiber-optic cables. By the 1980s, it had become the primary medium for television. Broadcast TV networks are now included as a basic part of cable service.

    - *Film and video* include both the photographic process for making movies and the videotape and "digital video disk," or DVD, technologies. Today, films are viewed not only in movie theaters, but on television, via video or DVD players, and on computers.

    - *The Internet* is an interlocking system of computer networks that were originally connected by "dial-up" telephone lines. Today, cable companies offer high-speed Internet access (or "broadband") through their cables, and telephone companies offer high-speed DSL, or "digital subscriber lines."

    - *Print* media consist of newspapers, magazines, and books. Despite the proliferation of electronic media, many people still like to read.

- Six corporations own or have controlling interests in most of the American mass media today:

    - *Viacom*'s holdings, up until 2006, included the broadcast network CBS, the cable channels MTV, Nickelodeon, BET, VH1, and Showtime, the film studios Paramount, United International, and Famous Players, the Infinity radio network, Blockbuster Video, Simon & Schuster book publishers, more than 35 TV stations, and more than 180 radio stations around the U.S. In January 2006, Viacom split into two companies: Viacom and CBS. Sumner Redstone is chairman of both companies.

    - *Time Warner*'s holdings, in addition to about 20% of the nation's cable television market, include the Internet service provider America Online, the Warner Brothers and New Line Cinema film production companies, cable channels CNN, HBO, WB, Cinemax, Cartoon Network, TNT, TBS, and TCM, Atlantic Records, Elektra Records, Time-Life Books, DC Comics, and *Fortune, Sports Illustrated,* and *People* magazines.

- *The Walt Disney Company*'s holdings include the ABC television network, the cable channels Disney, ESPN, A&E, and History Channel, Miramax Films, the music companies Hollywood and Buena Vista, 10 TV stations, and more than 60 radio stations around the country, in addition to Disney Theme Parks and the Anaheim Angels.

- *General Electric*'s holdings include the NBC television network, Universal Pictures, Universal Parks & Resorts, the cable channels CNBC, Telemundo, Bravo, USA, SciFi, and MSNBC, and large holdings in non-media business sectors including Madison Square Garden.

- *News Corporation*'s holdings include the FOX Network, DirecTV, the cable channels National Geographic, Fox News, and Fox Movies, Sky satellite systems around the world, 20th Century Fox film studios, *The New York Post*, Harper Collins book publishers, and 34 TV stations in the U.S.

- *Vivendi Universal*'s holdings include CANAL+, Cineplex Odeon Theatres, the music companies MCA, Polygram, Universal Music Group, Geffen, A&M, Island, Decca, Deutsche Grammophon, and MCA, Vivendi Telecom, and 26.8 million shares of TimeWarner stock.[1]

- The cable industry is highly concentrated. By 2005, Comcast had become the nation's biggest cable operator, with almost 22 million subscribers. Time Warner was next, with about 11 million subscribers.[2]

- Cable television is a "natural monopoly" in that it is usually only practical for one company in a local area to make the investment necessary to build and operate a cable system. By the 1990s, more than 90% of American communities had only one cable system.[3]

- In 1996, Congress passed a new Telecommunications Act, which accelerated the consolidation of mass media ownership. The Act relaxed many limitations on media ownership that the Federal Communications Commission had established over the years.

- For example, the 1996 Act abolished a rule that limited the number of radio or TV stations a single company could own. Within a few years after the Act went into effect, Clear Channel Communications had acquired more than 1,200 radio stations nationwide, with more than 100 million listeners.[4]

- Today, four companies control 2/3 of the nation's news format radio programs. Two of these firms, Viacom and Disney, also control major television networks.[5]

II. The Effects of a Consolidated Mass Media System

The Decline in Public Interest Programming

- As media companies have grown larger, their public affairs and local programming has declined. In 1968, the average length of a TV news sound bite in an election campaign story was 43 seconds; in 1988, it was nine seconds.[6]

- In the 2004 election, an average half-hour of TV news contained three minutes and 11 seconds of campaign coverage. 92% of the broadcasts contained no coverage of any local election, whether for the U.S. House of Representatives, state legislature, or a city or county post. In races for the U.S. Senate, campaign ads outnumbered news by as much as 17-to-1.[7]

- In 2002, a train accident in Minot, North Dakota spilled 210,000 gallons of hazardous material. When authorities called local radio stations to warn about the toxic cloud, they found no one present who could make the announcement. Clear Channel owned all six of the commercial radio stations in Minot. Its programming was being piped in from national headquarters.[8]

- A study of radio music programs after the consolidation in ownership that followed the 1996 Telecommunications Act found that despite different names for programming formats, such as "Adult Contemporary" or "Classic Rock," many the same songs were played repeatedly, with as much as 76% overlap across different formats.[9]

Political Bias

- All media owners have the ability to slant news and suppress stories that are not in the interest of company management. This becomes a threat to democracy when a few large companies dominate communications.

- Shortly before the 2004 election, Sinclair Broadcast Group, the nation's largest owner of local TV stations, ordered its 62 stations to air "Stolen Honor," a film attacking Democratic Presidential candidate John Kerry. Sinclair executives were major contributors to the Republican Party and its candidate, George W. Bush. After widespread protests, Sinclair aired a balanced program instead.[10]

- In April 2004, Sinclair ordered its seven ABC affiliates not to air a "Nightline" episode in which the anchor Ted Koppel read the names of American soldiers killed in Iraq. The company objected because it believed Koppel's purpose was "to focus attention solely on people who have died in the war in order to push public opinion toward the United States getting out of Iraq."[11]

- In early 2004, the Walt Disney Company barred its Miramax division from distributing Michael Moore's anti-war documentary, *Fahrenheit 9/11*. The company

was concerned that distributing the movie "would have endangered Disney's tax breaks for its theme parks in Florida, where the president's brother Jeb is governor."[12]

- Later in 2004, the three major TV networks refused to air advertisements for the DVD of *Fahrenheit 9/11*.[13]

- Media companies refuse many other advertisements, including ads from labor unions. One union officer said that his union's ads "are often critical of a company that's an advertiser."[14]

- In 2003, MTV, owned by Viacom, refused an advertisement opposing the Iraq war. In 2004, Viacom blocked an anti-Bush ad from airing during the Super Bowl. Viacom CEO Sumner Redstone is a supporter of George W. Bush and has said: "I do believe that a Republican administration is better for media companies than a Democratic one."[15]

- After the terrorist attack of 9/11, Clear Channel circulated to its radio stations a list of songs that should not be played. The list included several antiwar songs such as John Lennon's "Imagine." After the list was leaked to the press, Clear Channel said that it was compiled by program directors and did not represent company policy.[16]

III. Regulating the Structure of the Broadcasting Industry

Broadcast Licensing

- Soon after radio was invented, it became apparent that regulation was needed to prevent broadcast signals from interfering with each other. Congress passed a law authorizing the Federal Radio Commission (later the Federal Communications Commission, or FCC) to grant licenses giving different companies the exclusive use of different broadcast frequencies.

- The law required the FCC to grant licenses according to how well a company would serve "the public interest, convenience, and necessity."

- There were debates over how the powerful new medium of broadcasting should be used.

    - One option was a commercial model, with paid advertisements supplying the financial support for broadcasting that would be free to the public.

    - Another option was to avoid commercialism and develop broadcasting on a nonprofit educational model.

    - A third option was a "common carrier" model, meaning that the companies supplying broadcast technology would be conduits, and would allow anyone to buy airtime.[17]

- The commercial model prevailed, with only the "public interest, convenience, and necessity" standard for licensing as a reminder that the airwaves are a public resource.

- The law also gave the FCC power to regulate the structure of the broadcast industry in order to foster diversity and attention to local needs (or "localism"), and to prevent undue concentrations of power.

- From 1941-1975, the FCC enacted various rules to accomplish these goals. The FCC initially prohibited any company from owning:

    - more than one major TV network;

    - more than one TV station in the same local media market (unless there were at least eight stations in the market);

    - more than one AM radio station or more than one FM radio station in the same market;

    - both a radio and TV station in the same market; and

- both a daily newspaper and a broadcast station in the same market.

- The FCC also prohibited one company from controlling TV stations that reached more than 35% of the nation's homes.[18]

- Over the years, some of these ownership rules were modified, but all still existed in some form when Congress passed the 1996 Telecommunications Act. This law required the FCC to review six media ownership rules and decide whether any of them were still necessary in light of competition in the media industry.[19]

- After several rounds of rulemaking, followed by court challenges, the FCC announced new rules in June 2003.

The FCC's 2003 Broadcast Ownership Rules

- The new rules addressed, among other issues:

"National Market Share"

- The FCC defined National Market Share as the total number of households reached by a company's television stations, counting UHF stations as reaching half as many households as VHF stations. The 2003 rules raised the ceiling for this national market share from 35% to 45%.

- Responding to widespread protests, Congress overturned this increase as part of its 2003 appropriations bill. After President Bush threatened to veto the entire appropriations bill, a compromise was reached at 39%, which allowed Viacom and the News Corporation to keep all of the stations they currently owned.[20]

Media "Cross Ownership"

- In 1975, the FCC prohibited one company from owning a full-service broadcast station and a daily newspaper in the same local market.[21] Over the years, this rule was diluted. The FCC's 2003 rules eliminated the cross-ownership ban entirely.

- The FCC's 2003 rules also eliminated the agency's previous ban on radio/TV station cross-ownership. The agency replaced both types of cross-ownership bans with a single set of "Cross-Media Limits."

- Under the new rules, a company could own two TV stations and six radio stations in the same market, if at least 20 "independently owned media voices" would remain after the merger. It could own two TV stations and four radio stations if at least 10 independent voices remained in the local market after the merger.

- In creating these new Cross-Media Limits, the FCC relied on a "diversity index" to determine whether enough different viewpoints on news and public affairs were being offered in different markets. Only where the diversity index showed that there wasn't sufficient competition would the FCC impose any limits on further media consolidation.

- In compiling the diversity index, the FCC assigned different weights to different media, such as broadcast TV, daily newspapers, radio, and the Internet. It then counted the number of outlets in different communities for each medium, and assigned each outlet an equal market share.

- For example, in examining the the New York City area media market, the FCC accorded the same market share to a rural community college radio station as to the local ABC stations.

- The same community college station was also given more overall weight on the diversity index as a source of news and public affairs programming than the combined *New York Times* and its radio station, WXQR.[22]

- Using its diversity index, the FCC decided that limits on cross-media ownership were only needed in smaller media markets. In markets with more than eight TV stations, there would be no restrictions on cross-ownership of newspapers, TV stations, and radio stations.

Multiple Ownership of Local TV Stations

- In the 1940s, the FCC prohibited one company from owning two radio or TV stations in the same market. Over the years, this rule was relaxed.

- Before its 2003 rulemaking, the FCC allowed dual ownership of TV stations in the same market, but only if one of the merging stations was not among the four highest-ranked in the market, and at least eight independent stations remained.

- The FCC's 2003 rules relaxed these limits. They allowed one company to own three commercial TV stations in local markets that had 18 or more stations overall. They allowed ownership of two TV stations in markets with 17 or fewer stations overall. Neither of the merging stations could be one of the top four in the market.

- The result was that "triopolies" (three stations owned by the same corporation) would be allowed in the nine largest markets, representing 25.2% of the American population. "Duopolies" (two stations owned by the same corporation) could exist in the largest 162 markets, representing 95.4% of the population.[23]

- The FCC created these limits to assure that there would be at least six equal-sized competitors in any TV market. In determining whether this condition existed, it assumed equal market shares even though TV stations' actual market shares vary widely.

- The result of the new rules was to allow more media consolidation in markets that are already concentrated. For example, Philadelphia has more than 18 TV stations, so that Viacom, with two stations, would be allowed to acquire a third, and potentially increase its audience share from 25% to 34%.[24]

Multiple Ownership of Local Radio Stations

- The 1996 Telecommunications Act ordered the FCC to allow one company to own up to eight commercial radio stations in markets with 45 or more stations, and lower numbers in smaller markets. This meant that communities with 45 or more stations could have five eight-station combinations.

- The FCC's 2003 rules followed these mandates. But the FCC changed its definition of local radio markets. Instead of defining markets in terms of how far broadcast frequencies carry, the FCC decided to define local markets geographically, relying on the Arbitron rating service's "Designated Market Areas." Overall, this change resulted in a decrease in the number of stations that the FCC considers to be within a particular market.

- In setting numerical limits, the FCC tried to assure that local markets would have at least five equal-sized competitors. As with its TV ownership rule, the FCC relied on the incorrect assumption that different radio stations had equal market shares.

➢ The FCC's 2003 rules also allowed national networks to buy more local affiliated stations. For the largest cities, the rules allowed one network to own three TV stations, eight radio stations, a daily newspaper, and the company holding the cable franchise, all in the same local market.

The FCC's Broadcast Ownership Rules in the Courts

➢ Both public interest groups and media corporations challenged the FCC's 2003 ownership rules. In 2004, a federal court of appeals invalidated almost all of them. The court said the rules were not justified by the factual record before the agency, and were in many instances arbitrary, capricious, or irrational.

➢ The court of appeals particularly criticized the FCC's "diversity index." The court found that the FCC gave too much weight to the Internet as a source of local news

and irrationally assigned equal market shares to every outlet in a particular medium, no matter what its actual size or importance. These errors, the court said, led to

- "absurd results."[25]

- The court of appeals also ruled that the FCC's cross-media limits were arbitrary and capricious because they allowed mergers in some communities where the diversity index showed less competition than in communities where mergers were forbidden.[26]

- The court said that the cross-media rules and the limits on TV and radio station ownership in local markets "all have the same essential flaw: an unjustified assumption that media outlets of the same type make an equal contribution to diversity and competition in local markets." The court sent the case back to the FCC "to justify or modify its approach to setting numerical limits."[27]

- The companies whose expansion plans were delayed as a result of the court of appeals' decision included Viacom, General Electric, News Corporation, the Tribune Company, and the Gannett Company.[28]

- As of January 2006, the FCC had not issued new regulations in response to the court of appeals decision.

IV. The First Amendment and Government Regulation of the Mass Media

Structural Regulation and First Amendment Values

- As far back as the 1940s, the media industry challenged FCC regulations, claiming that they violated the companies' First Amendment rights. In 1943, the Supreme Court upheld FCC rules that sought to prevent excessive market power by prohibiting national networks from dictating the content of programming by their affiliated stations.[29]

- The Supreme Court explained in this case that the aim of federal communications law is "to secure the maximum benefits of radio to all the people of the United States," and to prevent the public interest from being subordinated to "monopolistic domination in the broadcasting field."[30]

- The Court also wrote in this case:

  > Freedom of utterance is abridged to many who wish to use the limited facilities of radio. Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to government regulation.[31]

- The Supreme Court's statement that government regulation of broadcasting is justified because of the limited availability of broadcast frequencies is known as the "scarcity" rationale. Many scholars have criticized the scarcity rationale, saying that:

  - All resources are limited, not just the public airwaves;
  - Other media, such as cable and the Internet, are available alternatives; and
  - Modern technology allows much greater use of the airwaves than in the past.

- Nevertheless, use of the airwaves is still not available to all. Because of the cost of starting a full-power radio or TV station, the need to avoid frequency interference, and the fact that the most desirable frequencies are already taken by existing broadcasters, not everybody who wants a broadcast license can get one.

- In addition to the scarcity of broadcast frequencies, the Supreme Court has relied on the First Amendment itself to justify government regulation of the structure of the mass media.

- For example, in 1945, the Court said that it was legitimate for government regulators to stop monopolistic practices by a news agency. The justification was 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."[32]

- In a later case, the Supreme Court rejected an industry challenge to the FCC rule prohibiting the cross-ownership of newspapers and broadcast stations. The Court said that the FCC's policy was intended to increase the diversity of information sources and viewpoints, and that it is unrealistic "to expect true diversity from a commonly owned station-newspaper combination."[33]

- In a more recent case, the Supreme Court required the government to show that its regulation of the mass media was necessary to serve "an important" public interest. The case involved a law requiring cable companies to carry local broadcast stations. The Court upheld the law because it found that the requirement was needed to preserve broadcast television.[34]

The FCC's Censorship of "Indecency"

- In contrast to laws and FCC rules that regulate the *structure* of the media industry, government regulation of media *content* invades core First Amendment values. The FCC's ban on "indecent" programming during all but late-night hours is an example of such content regulation.

- "Indecency," unlike "obscenity," is constitutionally protected speech. The FCC defines indecency as any speech that is "patently offensive" according to "contemporary community standards for the broadcast medium."[35] This definition is highly subjective, and includes expression that has serious political, literary, or artistic value.

- The Supreme Court nevertheless upheld the FCC's regulation of "indecency" in a 1978 case involving a comic monolog that satirized social taboos against vulgar words. The Court justified the FCC's rule by stating that broadcasting invades the home without warning and that children are harmed by hearing indecent speech.[36]

The Fairness Doctrine

- The Supreme Court has also upheld the FCC's "Fairness Doctrine," which required broadcasters to cover controversial issues evenhandedly and to offer reply time to anyone who was attacked on the air.

- In explaining why the Fairness Doctrine was a legitimate condition of a broadcasting license, the Court said:

> The people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.[37]

- Despite this affirmation, the FCC abandoned the Fairness Doctrine in 1987.[38]

- The Fairness Doctrine was a form of content regulation, and broadcasters argued that it would force them to self-censor, in order to avoid giving reply time to those who were attacked.

- The Fairness Doctrine was different from the indecency rule, however. The Fairness Doctrine sought to expand the range and diversity of expression. The indecency rule seeks to shrink the range and diversity of expression, by censoring certain words and topics of discussion.

Regulation of Advertising

- Government regulation of advertising is also "content-based." But advertising is "commercial speech," which receives less First Amendment protection than political or artistic speech.

- This is partly because advertising is not generally part of the exchange of ideas essential to democracy. In addition, the government has a strong interest in protecting consumers from false or deceptive advertising claims.[39]

V. Regulating the Structure of the Cable Industry

Monopolization of Cable Markets

- Cable TV operators negotiate "franchise agreements" with local governments, which allow them to use public property in operating their systems, in exchange for certain fees and other obligations.

- Since the beginning of cable, many local governments (or "local franchising authorities") have required that cable operators set aside some channels for public, educational, and governmental, or "PEG," programming.

- In the 1984 Cable Communications Act, Congress recognized local franchising authorities' power to require PEG channels as a condition of a cable franchise.

- The 1984 Cable Act also required cable operators to set aside a certain number of channels for "leased access" channels. However, high prices have generally made leased access an unrealistic option for independent programmers.

- In 1992, Congress passed a law directing the FCC to set limits on both "horizontal" and "vertical" consolidation in the cable TV industry.[40]

    - "Horizontal" consolidation refers to nationwide growth in a cable operator's size and number of subscribers.

    - "Vertical" consolidation refers to a cable operator's ownership of, or affiliation with, companies or channels that offer cable programming.

- Congress passed this 1992 law because it believed that horizontal and vertical integration in the cable industry could harm the public. Increasing market power and lack of local competition could lead to high prices, poor customer service, and less diverse programming.[41]

- In accordance with the 1992 cable law, the FCC set a 30% limit on the number of subscribers a single cable operator can serve nationwide, and a 40% limit on the number of cable channels a single cable operator can control. This left 60% of the cable dial for programmers not affiliated with the cable operator.

- The FCC based its 30% horizontal limit on the belief that if a cable operator is any larger than this, it will have the power to decide the economic fate of a cable channel. Without acceptance by Comcast or Time Warner today, independent cable producers cannot achieve the level of exposure necessary for economic survival.[42]

- A federal court of appeals invalidated the FCC's cable ownership limits in 2001. The court said that the FCC's goals - preserving competition and promoting diversity of

ideas - were important, but that the Commission had not justified its horizontal or vertical limits as necessary to achieve these goals.[43]

- In 2005, the FCC began a proceeding to write new cable ownership rules. Common Cause and other public interest groups filed Comments in this proceeding. They argued that ownership limits are necessary in order to reduce cable operators' monopoly and "monopsony" power.

    - *Monopoly power* is the ability to dictate customer prices and terms of service because of the absence of competition.

    - The public interest groups pointed out that as a result of monopoly power, prices charged to cable subscribers had increased at a rate much higher than inflation in the previous five years. Profit per subscriber had also increased. Complaints about poor response time and missed installation and service appointments, particularly against Comcast, the nation's largest cable company, had also increased.[44]

    - *Monopsony power* is the ability to dictate how much the cable operator will pay cable channels for programming, and to squeeze independent programmers out of the market.

    - The public interest groups argued that Comcast and Time Warner had used their monopsony power to exclude independent programmers from their cable lineups. The America Channel, Current, the Catholic Television Network, and other channels with potential for wide audiences had not been able to get carriage on cable systems operated by Comcast and Time Warner.[45]

- In 2005, media companies began to lobby Congress, the FCC, and state legislatures to eliminate local franchising, and with it, the requirement of PEG access. In late 2005, Senator Jim DeMint introduced a bill that would give "right of way authority" to set up cable systems with no compensation to local communities and no franchising. In January 2006, the FCC opened a new rulemaking proceeding to decide whether to eliminate local franchising requirements.[46]

The Adelphia Bankruptcy

- In 2002, the cable operator Adelphia Communications filed for bankruptcy protection. Part of its bankruptcy reorganization plan provided that Comcast and Time Warner would take over all of Adelphia's local cable franchises.

- A Comcast/Time Warner takeover of Adelphia's franchises would give them 5.2 million new subscribers.[47] Adding Comcast's new share (2.2 million) to its existing base would give it 23.7 million subscribers, and equity in partnerships serving another

4.6 million, for a total of 28.3 million subscribers nationwide, or 42.5% of all U.S. cable customers.[48]

- Media democracy groups in many communities protested the further consolidation of cable company power that would result, and noted that Comcast has been the subject of many consumer complaints.

- The takeover of Adelphia franchises by Comcast and Time Warner must be approved by the FCC, the Federal Trade Commission, the bankruptcy court, and the various franchising authorities.

VI. Internet Access and "WiFi"

From Dial-Up to High-Speed Access

- When the Internet was first developed, people accessed it through dial-up telephone service. Numerous for-profit and nonprofit companies competed to provide customers with email and Web access using these telephone lines. They were able to do this because telephone companies are "common carriers." Common carriers are required by law to allow others to use their facilities.

- By the late 1990s, cable operators had developed technology for much higher-speed, or broadband, Internet access through the same cable lines that they use to transmit TV programming. At the same time, telephone companies developed DSL, or "digital subscriber lines," another form of high-speed access.

- The increasing size and technological sophistication of Web sites, email attachments, and audio and video files has made high-speed Internet access increasingly necessary for business and personal Internet use.

- Cable operators argued that they were not common carriers, and so did not have to allow other Internet service providers to use their cable lines. In 2002, the FCC issued a ruling that agreed with the cable operators.

- This put cable operators in a position to dominate the high-speed Internet business. They would be able to control both the price of high-speed access and the content that subscribers would be able to see online.

- A federal court of appeals disagreed with the FCC, ruling that although cable operators are "information services" when they supply cable TV or Internet content, they are "telecommunications services" (that is, common carriers) when they supply Internet access.

- In 2005, the Supreme Court resolved the conflict by siding with the FCC.[49]

- Two months after this Supreme Court ruling, telephone companies providing DSL service persuaded the FCC to give them the same power that the Supreme Court had just given to cable operators - to eliminate competition by denying other Internet service providers access to their telephone lines.

- Under these rulings, Americans have limited, if any, choice of high-speed Internet service providers. With near-monopoly control, the local cable and telephone companies supplying high-speed access can shape their customers' Internet experience by restricting the range of Web sites they can access, diverting Web traffic to sites that the company owns, or providing quicker access to sites whose owners pay for favored treatment.

The Call for 'Net Neutrality

- In response to the growing monopolization of high-speed Internet access, members of Congress and public interest advocates began to call for a principle of "'Net neutrality" that would prevent Internet service providers from restricting their customers' Web access or preferring some Web sites over others. In 2005, Congress debated including a 'Net neutrality principle in its large-scale revision of the telecommunications law.

- Telephone companies opposed 'Net neutrality, indicating that they would like to exert more control over the material that is accessed through their high-speed networks. The chairman of AT&T said that he disapproved of companies like Google using his network for free. A BellSouth executive said his company wants to prioritize services according to which companies pay for faster access to their sites or other favors.[50]

- In late 2005, the FCC announced a policy of 'Net neutrality, but it had no legal force. In January 2006, the agency modified the policy to say that Internet service providers could offer tiers of service, with different speeds of access for different Web sites.[51]

The Municipal Broadband Movement

- In 2005, only about 30% of U.S. households had high-speed Internet access; the number was 24% for rural households.[52] Many municipalities began to consider offering this service to their citizens directly, through either wireless (or "WiFi") networks, or high-speed cables or telephone lines.

- Telecommunications companies opposed this trend, arguing that public, nonprofit Internet access would unfairly compete with private enterprise, and that municipalities lack the resources to provide Internet access. They lobbied state legislatures to bar municipalities and other governmental entities such as public power companies from offering Internet services.

- By the end of 2005, 14 states had passed laws that either prohibit or significantly restrict the ability of municipalities and public power companies to offer Internet access.[53]

- In other states, however, municipalities are offering high-speed Internet access on a nonprofit basis. Some examples are:

    - *Philadelphia* is creating one of the largest municipal WiFi systems. After the city first announced its plans, Verizon persuaded the state legislature to pass a law banning public entities from supplying Internet access - unless they got the permission of the local telephone company. Verizon promised, however, not to interfere with wireless broadband plans in Philadelphia. In October 2005, the city contracted with Earthlink to build

and manage a 135-square mile public WiFi network. The city will offer low-income residents Internet access for about $10 a month.[54]

- *San Francisco* announced plans for free wireless Internet service in 2005. Companies seeking a contract with the city to provide the service included Google, Earthlink, Motorola, and a local nonprofit called SFLan. The plan will give free access to more than 750,000 local residents. The current local providers, Comcast and SBC, offer high-speed access at costs ranging from $25 to $70 a month.[55]

- In 2005, about 300 other municipalities around the country launched or considered high-speed Internet services, among them Atlanta, Georgia; Tempe, Arizona; Lafayette, Louisiana; and Cleveland, Ohio. Their plans ranged from full-scale wireless networks like Philadelphia's to delivery of services over power lines or experiments in limited wireless access along a few city blocks.[56]

- Some municipalities have decided that they do not have the resources to provide public Internet access. In early 2006, a Minneapolis official in stated that the city lacked the money and competence "to build that kind of a network right now."[57]

- In 2005, two bills were introduced in Congress relating to public or community Internet services. One bill would impose a nationwide ban on states or their subdivisions providing Internet service. The other bill would have the opposite effect, overruling the existing ban in 14 states, and allowing public Internet access programs to go forward throughout the country.[58]

VII. Licensing, Going Digital, and Using the Broadcast Spectrum

From Free Licenses to Auctions

- For most of American broadcast history, the FCC gave away broadcast licenses to commercial corporations. In exchange, radio and TV stations were expected to serve the public interest. This included broadcasting a certain amount of educational and public affairs programming. Citizens could object to the renewal of broadcast licenses if they believed that local stations were not meeting their public interest obligations.

- Most of the broadcast spectrum remained unlicensed under this system. The frequencies most useful for radio and television were assigned, but other frequencies (generally above 800 megahertz) were left open for military uses, cordless telephones, and appliances such as garage door openers, and radar.

- In the 1980s, FCC Chair Mark Fowler argued for a change in the system. He urged that new radio and TV licenses should be sold to the highest bidder, instead of being awarded for free. In the 1990s, Congress gave the FCC this power. Although broadcast licenses were already primarily in the hands of commercial corporations, this change to an auction system further reduced opportunities for nonprofit or less-wealthy entities to obtain a license.

- Auctions began in 1994, and are now the sole method for distributing new broadcast licenses. Mobile telephone companies have since then paid about $36 billion at auction for licenses to use certain frequencies.[59]

- In 2004, the FCC held its first auction for FM radio, selling 258 licenses to 110 buyers, for a total of $147.4 million. Clear Channel paid $4.7 million for three additional licenses.[60]

Spectrum Policy

- As auctions continue, media reform advocates have urged the FCC to leave ample unlicensed spectrum available for WiFi Internet networks and other common uses. They argue that with advanced technology, there is a low likelihood of interference even when frequencies that are very close together are used by more than one broadcaster.

- The use of unlicensed spectrum is part of a broader debate:

    - Should American broadcast policy continue to be dominated by a "command-and-control" system, where the government decides who gets a license and what they can use it for?

    - Should a "market" system prevail, in which licenses are viewed as property, and owners can use them as they wish, or sell them to others?

- Should the U.S. adopt a "commons" model, viewing spectrum not as something exclusive but as a resource shared among many users, who could use sophisticated technologies to avoid or minimize interference?

- In 2002, FCC Chair Michael Powell created a Spectrum Policy Task Force to address these questions.[61]

- The Task Force found that "advances in technology create the potential for systems to use spectrum more intensively and to be much more tolerant of interference than in the past."[62]

- The Task Force said that in order to "increase opportunities for technologically innovative and economically efficient spectrum use," the U.S. should shift away from the "command and control" model, and toward "a balanced spectrum policy" that includes both exclusive usage rights "through market based mechanisms," and open access to spectrum "commons."[63]

The Transition to Digital Broadcasting

- Today, digital technology allows far more broadcast programming than was possible using the traditional, or "analog" spectrum. As many as six different programs can be broadcast digitally, without interference, using the same frequency.

- In 1996, some policymakers proposed that broadcasters pay for the use of the highly profitable new digital channels. The industry launched a successful lobbying campaign to oppose this idea. As a result, broadcasters acquired the right to use digital spectrum estimated to be worth $70 billion for free. FCC Chair Reed Hundt described this as "the largest single grant of public property to … the private sector in this century." Another observer called it "the lobbying coup of the decade."[64]

- Once the transition to digital broadcasting is complete (now scheduled for 2009), the old analog technology becomes available for other uses. The 1996 Telecommunications Act requires broadcasters to relinquish their use of analog spectrum once the transition to digital is 85% complete.[65]

- Broadcasters have argued that they should be allowed to keep their control of analog spectrum even after the full transition to digital broadcasting. The FCC has allowed some broadcasters to conduct private sales of their analog channels.

- Public interest groups have urged that the analog spectrum be turned over to common uses such as community WiFi. They argue that the portion of the spectrum now occupied by analog TV signals has the best frequencies, that signals sent at these frequencies can penetrate solid objects, and that technology has reached a point where analog spectrum can be shared without interference.[66]

VIII. Low-Power Radio and Other Noncommercial Alternatives

Low-Power FM

- Since the early days of radio, full-power broadcast licenses have been out of reach financially for most individuals and community organizations. The FCC was unwilling to grant lower-power licenses that would enable nonprofit organizations and community groups to communicate using the public airwaves.

- By the 1960s, unlicensed low-power "pirate" radio stations, with broadcasting ranges of a few miles or less, sprang up. The FCC closed down these unlicensed broadcasters and sometimes subjected them to criminal prosecution.

- In 2000, the FCC changed course and authorized noncommercial low-power FM (LPFM) radio. It did so in order to "enhance locally focused community-oriented radio broadcasting."[67]

- Full-power broadcasters persuaded Congress to delay implementation of low-power licensing. Congress directed the FCC to commission a study on whether low-power radio signals would interfere with the signals of full-power stations.[68]

- The study commissioned by the FCC established that fears of signal interference by low-power broadcasters were unfounded. Congress then authorized the licensing of a limited number of low-power stations - provided that their signals were not closer than "third adjacent channels" to full-power stations.

- The FCC began licensing low-power stations. The new licensees included local government agencies, groups promoting arts and education, schools, churches, organizations promoting literacy, and other community groups.

- Because of Congress's ban on low-power stations within "three adjacent channels" of any full-power signal, the FCC still could not license low-power stations in any major metropolitan area.[69]

- In 2004, the FCC recommended that the third adjacent channel requirement be eliminated.[70] Two bills were introduced in Congress in 2005 adopting the FCC's recommendations.

- The Prometheus Radio Project in Philadelphia helps community groups set up low-power stations. It organizes "barn raisings" for new local stations and helps with the technical aspects of community radio.

- By early 2006, the FCC had granted more than 1,200 low-power FM licenses. More than 700 noncommercial LPFM stations were operating in cities and towns across America.[71] Examples of successful projects included:

- *A station in Opelousas, Louisiana*, operated by a local foundation active in the African-American community and offering public affairs shows, religious programming, and zydeco music.

- *A community station in Frogtown, Georgia*, broadcasting in English and Cherokee with cultural and community affairs programming.

- *A station in Immokalee, Florida*, operated by a coalition of Hispanic farmworkers.[72]

Public Broadcasting

- The most prominent full-power alternatives to commercial broadcasting are public radio and public television.

- Public radio and television are supported in part by the Corporation for Public Broadcasting (CBP). Congress created the CPB in 1967 as a private, nonprofit corporation and the steward of the federal government's investment in public broadcasting.

- The mission of the CPB "is to facilitate the development of, and ensure universal access to, non-commercial high-quality programming and telecommunications services."[73] The CPB provides grants and technical support to noncommercial public radio and TV stations.

- The law creating the CPB recognized a strong public interest in public broadcasting, "including the use of such media for instructional, educational, and cultural purposes."[74]

- The law said that public broadcasting depends on "freedom, imagination, and initiative," that it should be "a source of alternative telecommunications services for all the citizens," and that "it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities."[75]

- The law also noted the need for "objectivity and balance" in all programming "of a controversial nature." It sought to shield public broadcasting from political pressures by directing the CPB to assure public broadcasters freedom from "interference with, or control of, program content or other activities."[76]

- National Public Radio (NPR) and the Public Broadcasting Service (PBS) were created a few years later. They are private nonprofit organizations operated by their member radio and television stations. Whereas the CPB is a resource and funding mechanism, NPR and the PBS are organizations of noncommercial broadcasters that provide radio and TV programming.

- NPR today has more than 780 independently operated noncommercial radio stations as members, and an audience of about 26 million weekly listeners. PBS has 349 public TV stations members, and a weekly audience of about 100 million.[77]

- Despite Congress's intentions in setting up the CPB, public broadcasting has been subjected to political pressures. In 2004, for example, CPB Chair Kenneth Tomlinson politicized the CPB by:

    - attacking NPR stations for perceived "liberal bias";
    - appointing a former co-chair of the Republican National Committee as CPB President;
    - assigning a White House staffperson to draft guidelines for two new ombudsmen who would review the content of programming;
    - secretly hiring a consultant to examine particular shows on public radio and television for "liberal bias";
    - launching a new PBS series to be hosted by conservative staff at *The Wall Street Journal*.[78]

- In November 2005, Tomlinson resigned after an investigation by the CPB's inspector general concluded that he had violated the law and the CPB code of ethics.[79]

- Because governmental funding has always been limited, and has decreased since the 1970s, PBS and NPR have sought support from private sources. In the 1970s, NPR received 90% of its funds from the CPB; by 2005, the amount of federal support was down to 2%. By the 1990s, NPR was relying on major corporations such as Wal-Mart, Citibank, and Procter & Gamble for funding.[80]

- Although public broadcasters cannot sell advertising, their announcements of private corporate support increasingly resemble ads. Dependence on corporate sponsorship presents a challenge to the editorial independence of public broadcasting.

- Since the beginning of public broadcasting, proposals have been made to secure its financial independence. A proposal to tax TV sets in order to create a system similar to the British Broadcasting Corporation, or BBC, was opposed by commercial broadcasters and defeated. The government subsidy for public broadcasting in Great Britain is $27 per citizen, compared to $1.80 in the U.S.[81]

- The BBC, with nine TV channels and 10 radio channels (some of them digital), as well as an international news service in 33 languages, is supported by a license paid by every British TV household. The BBC says this means that "it does not have to serve the interests of advertisers, or produce a return for shareholders. This means it

can concentrate on providing high quality programs and services for everyone, many of which would not otherwise be supported by subscription or advertising."[82]

- Partly because of its long history of independence, the BBC has been relatively free of political interference. It has twelve "Governors," who, it says, uphold standards and defend it "from political and commercial pressures."[83]

- In 2002, the New America Foundation published a paper advocating a "spectrum usage" fee for commercial broadcasters instead of allowing them to continue renewing their licenses for free. The fee, 5% of gross advertising revenues, would be deposited in a Trust and used to support public broadcasting.[84]

Other Nonprofit Alternatives

- Other nonprofit alternatives to the commercial mass media include "indie media" outlets such as Free Speech TV, which describes its mission as "exposing the public to perspectives excluded from the corporate-owned media," and "empower[ing] citizens to fight injustices, to revitalize democracy, and to build a more compassionate world."[85]

- Free Speech TV broadcasts documentaries on public issues such as the environment. It develops programming partnerships with social justice organizations. It is available on the Dish satellite network and 140 public access cable channels in 30 states.[86]

- Another alternative media production, "Democracy Now!," is a daily news and analysis program that offers "access to people and perspectives rarely heard in the U.S. corporate-sponsored media." It is available on Pacifica radio, NPR, community and college radio stations; and on public access, PBS, and satellite TV.[87]

- "Democracy Now!" is funded "entirely through contributions from listeners, viewers, and foundations." It does not accept "advertisers, donations from corporations, or donations from governments." It says: "This allows us to maintain our independence."[88]

- Podcasting offers other possibilities for alternative media. It operates using “RSS feed” technology, which allows URL links to audio or visual files that have been uploaded on a public server.[89]

- With podcasting, users can automatically download audio files to their computers or iPods. This opens the door for any tech-savvy individual or group to create an Internet-based radio station.[90]

- For example, in 2005, a group in New York started the online audio magazine “Dailysonic,” which attracts 2,000-6,000 listeners per episode. The show highlights music from local bands, alternative news, and comedy segments. Dailysonic

webcasts and podcasts also offer low-cost advertising spots to independent media producers.[91]

- Nonprofit organizations around the world are also taking advantage of podcasting technology. In January 2006, the New York-based Center for Reproductive Rights offered commentary on the confirmation process for Supreme Court Justice Samuel Alito through its podcast. In England, a government-funded nonprofit, the Birmingham Community Empowerment Network, has created "The Grassroots Channel," which shares stories from community activists who are working to strengthen their neighborhoods.[92]

IX. The Media Democracy Movement

- Activist groups such as Free Press, Common Cause, and Consumers Union (on the national scene) and San Francisco's Media Alliance and Seattle's Reclaim the Media (among the larger local groups) are working to educate the public about the structure of the American mass media.

- These groups also organize national and local coalitions to press for changes in FCC rules, and to oppose further media consolidation.

- Lawyers at the Media Access Project and Georgetown University's Institute for Public Representation help the media democracy movement by submitting Comments to the FCC in many of its proceedings, and by participating in litigation to represent citizens' interests in preventing further consolidation of media ownership.

FOR MORE INFORMATION: See the resources at

Free Press, http://www.freepress.net
Media Access Project, http://www.mediaaccess.org
New America Foundation, http://www.newamerica.net/index.cfm?pg=home
Prometheus Radio Project, http://www.prometheusradio.org/
Center for Digital Democracy, http://www.democraticmedia.org
Common Cause, http://www.commoncause.org
Consumers Union, http://www.consumersunion.org/phonesandmedia.html
Future of Music Coalition, http://www.futureofmusic.org
Center for Creative Voices in Media, http://www.creativevoices.us
Independent Press Association, http://www.indypress.org/site/index.html
Reclaim the Media, http://www.reclaimthemedia.org
Media Alliance, http://www.media-alliance.org
Center for International Media Action, http://www.mediaactioncenter.org

Brennan Center for Justice, Free Expression Policy Project
January 2006

NOTES:

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[2] See BMEdia Reports, "Cable's New Giant Flexes His Muscles," Oct. 20, 2003, www.bmedia.org/archives/00000412.php (visited 12/9/05); John Higgins, "Is Comcast Too Big?" *Broadcasting & Cable*, July 25, 2005, www.broadcastingcable.com/article/CA628786.html?display=Search+Results&text=comcast (visited 12/9/05).

[3] Joseph Ryan, "Unhappy with Cable TV Bill? Too Bad," *Daily Herald*, Jan. 9, 2006, http://www.freepress.net/news/13310 (visited 1/13/06) [get FCC cite]; see also *Denver Area Educational Telecommunications Consortium v. FCC*, 518 U.S. 727, 738 (1996).

[4] Jeff Sharlet, "Big World: How Clear Channel Programs America," *Harpers Magazine*, Dec. 2003, p. 37-45; NOW with Bill Moyers, Media Regulation Timeline, http://www.pbs.org/now/politics/mediatimeline.html (visited 12/7/05).

[5] Peter DiCola & Kristin Thomson, Radio Deregulation: Has It Served Citizens? (Future of Music Coalition, 2002), p. 38, http://www.futureofmusic.org/images/FMCradiostudy.pdf (visited 12/11/05).

[6] See Anthony E. Varona, "Changing Channels and Bridging Divides: The Failure and Redemption of American Broadcast Television," 6 *Minn. J. L. Science & Technology* 1, 71-72 and sources cited (2004); Norman Solomon, "TV News Diet: 'Sound Nibbles'," April 26, 2000, http://www.alternet.org/columnists/story/7731/ (visited 12/2/05) ("During the 1968 presidential race, when Nixon squared off against Hubert Humphrey, the average length of one of their sound bites on network TV news was 43 seconds. By 1988, when George Bush and Michael Dukakis ran for president, the average length had dropped to nine seconds. … Which should raise a key question: What, of substance, can be said in nine seconds?").

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[9] Peter DiCola & Kristin Thomson, Radio Deregulation: Has It Served Citizens? (Future of Music Coalition, 2002), p. 56, http://www.futureofmusic.org/images/FMCradiostudy.pdf (visited 12/11/05).

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[11] Jim Rutenberg, "Broadcast Group to Pre-empt Programs for Anti-Kerry Film," *New York Times*, Oct. 11, 2004; Eric Alterman, "Is Koppel a Commie?" *The Nation*, May 24, 2004, p. 10.

[12] David Sirota et al., "The Progress Report," Center for American Progress, May 6, 2004, http://www.americanprogress.org/site/apps/nl/content3.asp?c=biJRJ8OVF&b=837247&ct=48110 (visited 12/12/05); Jim Rutenberg, "Disney Is Blocking Distribution of Film That Criticizes Bush," *New York Times*, May 5, 2004, p. A1.

[13] Nikki Finke, "When Big Media Turns Right," *LA Times*, Sept. 30, 2004, reprinted at http://www.commondreams.org/views04/0930-14.htm (visited 12/12/05).

[14] David Swanson, "Media Outlets Refuse Union Advertising," International Labor Communications Association, Dec. 6, 2004, reprinted at http://www.freepress.net/news/5673 (visited 12/8/04).

[15] "Action Alert: Viacom Blocking Political Ads" (Fairness & Accuracy in Reporting, Oct. 18, 2004), http://fair.org/activism/viacom-mtv-ads.html (visited 12/12/05).

[16] Jeff Sharlet, "Big World: How Clear Channel Programs America," *Harpers Magazine*, Dec. 2003, p. 37-45.

[17] See Henry Geller & Tim Watts, "The Five Percent Solution - A Spectrum To Replace the 'Public Interest' Obligations of Broadcasters," New America Foundation Public Assets Program, Spectrum Series Working Paper #3, May 2002, p. 2-3. On the history of American media regulation, see Robert McChesney, *Rich Media, Poor Democracy* (1999); Paul Starr, *The Creation of the Media* (2004); C. Edwin Baker, *Media, Markets, and Democracy* (2002).

[18] See "FCC's Review of the Broadcast Ownership Rules," http://www.fcc.gov/cgb/consumerfacts/reviewrules.html (visited 1/11/06); NOW with Bill Moyers, Media Regulation Timeline, http://www.pbs.org/now/politics/mediatimeline.html (visited 12/7/05).

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[21] See "FCC's Review of the Broadcast Ownership Rules," http://www.fcc.gov/cgb/consumerfacts/reviewrules.html (visited 1/11/06).

[22] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 402-09 (3d Cir. 2004).

[23] *Prometheus Radio Project v. FCC*, 373 F.3d at 387.

[24] *Prometheus Radio Project v. FC*C, 373 F.3d at 419.

[25] *Prometheus Radio Project v. FC*C, 373 F.3d at 402-09.

[26] *Prometheus Radio Project v. FC*C, 373 F.3d at 411.

[27] *Prometheus Radio Project v. FC*C, 373 F.3d at 435.

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[29] *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943).

[30] *National Broadcasting Co. v. United States*, 319 U.S. at 217-19.

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[32] *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

[33] *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 795-97 (1978) (quoting in part the FCC's Rules Relating to Multiple Ownership, 50 FCC 2d 1046, 1079-80 (1975).

[34] *Turner Broadcasting System v. FCC*, 520 U.S. 180 (1997).

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[36] *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). For more background on the FCC's indecency regime, see "What is the fuss about Janet Jackson's breast?," http://www.fepproject.org/commentaries/superbowl.html (visited 1/16/06), and related links on the FEPP Website.

[37] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

[38] *Syracuse Peace Council*, 2 FCCR 5043 (1987), affirmed, *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989).

[39] See *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 566 (1977).

[40] Cable Television Consumer Protection and Competition Act of 1992, amending 47 U.S. Code 533(f).

[41] Senate Report 102-92, "Cable Television Consumer Protection and Competition Act of 1991," pp. 3-9; House Report 102-628, "Cable Television Consumer Protection and Competition Act of 1992," pp. 30-34. See also Jonathan Rintels, Cable's "Level Playing Field" - Not Level, No Field (Center for Creative Voices in Media, 2005); Joseph Ryan, "Unhappy With Cable TV Bill? Too Bad," *Daily Herald*, Jan. 9, 2006, http://www.freepress.net/news/13310 (visited 1/12/06) (Comcast, the dominant cable provider in the Chicago area, raised basic rates about 22.7% between 2003 and 2006; more than 90% of markets have only one cable provider, according to recent FCC statistics).

[42] Second Further Notice of Proposed Rulemaking, FCC 05-96, MM Docket No. 92-264, p. 5 (May 13, 2005). Actually, this proceeding began in 2001, but did not lead to any final rules. The process languished until it was revived in 2005.

[43] *Time Warner Entertainment Co. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001).

[44] Comments of Common Cause *et al.* in *The Matter of Cable Horizontal and Vertical Ownership Limits*, MM Docket 92-264 (Aug. 15, 2005), p. 12-13, http://www.mediaaccess.org/CitizenCableOwnership.pdf (visited 1/11/06).

[45] Jonathan Rintels, Cable's "Level Playing Field" - Not Level, No Field (Center for Creative Voices in Media, 2005); John Higgins, "Is Comcast Too Big?" *Broadcasting & Cable*, July 25, 2005, www.broadcastingcable.com/article/CA628786.html?display=Search+Results&text=comcast.

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[48] John Higgins, "Is Comcast Too Big?" *Broadcasting & Cable*, July 25, 2005, www.broadcastingcable.com/article/CA628786.html?display=Search+Results&text=comcast (visited 12/9/05).

[49] *National Cable & Telecommunications Assn v. Brand X Internet Services*, 125 S. Ct.

[50] Public Knowledge, "In the Know," Dec. 14, 2005, http://www.publicknowledge.org/news/intheknow/itk-20051214 (visited 12/14/05); Marilyn Geewax, "Battle Looms Over Prioritizing Net Speed," Cox News Service, Dec. 19, 2005, http://www.freepress.net/news/12965 (visited 12/20/05) (both paraphrasing Edward Whitacre of AT&T and BellSouth Chief Technical Officer William Smith).

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[53] The states are: Arkansas, Colorado, Florida, Louisiana, Minnesota, Missouri, Nebraska, Nevada, Pennsylvania, South Carolina, Tennessee, Utah, Washington, and Wisconsin. See Community Internet - Broadband as a Public Service" (Free Press), http://www.freepress.net/communityinternet/=states (visited 12/1/05).

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[55] Andy Kessler, "When Brotherly Love Goes Wireless," *Wall Street Journal*, Sept. 1, 2005, http://www.freepress.net/news/11207 (visited 9/1/2005); Timothy Karr, "Google

Plans Free WiFi For San Francisco," MediaCitizen.org, Oct. 1, 2005, http://www.freepress.net/news/11636 (visited 10/3/05); Stephen Lawson, "San Francisco Leaders Voice Concerns about Wi-Fi Project," IDG News Service, Dec. 19, 2005, http://www.freepress.net/news/12950 (visited 12/20/05).

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[59] New America Foundation, The Citizen's Guide to the Airwaves, July 1, 2003, http://www.newamerica.net/index.cfm?pg=article&DocID=1273 (visited 12/21/05); Henry Geller & Tim Watts, "The Five Percent Solution - A Spectrum To Replace the 'Public Interest' Obligations of Broadcasters," New America Foundation Public Assets Program, Spectrum Series Working Paper #3, May 2002, p. 2-3.

[60] Bill McConnell, "FCC Sells 258 Stations in First FM Auction," *Broadcasting & Cable*, Nov. 29, 2004, http://www.freepress.net/news/5577 (visited 11/30/04).

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[62] Spectrum Policy Task Force Report, ET Docket No. 02-135 (FCC, Nov. 2002), p. 3.

[63] Spectrum Policy Task Force Report, ET Docket No. 02-135 (FCC, Nov. 2002), p. 3.

[64] Paul Taylor, "Superhighway Robbery," *The New Republic*, May 5, 1997, p. 20, quoted in Anthony E. Varona, "Changing Channels and Bridging Divides: The Failure and Redemption of American Broadcast Television," 6 *Minn. J. L. Science & Technology* 1, 7-8 (2004); James Surowiecki, "The Financial Page - Free Air," *The New Yorker*, Oct. 18, 2004, p. 60.

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