The Democratic Media Legal Project

Project Outline

by

Dr. George Gerbner

Rev. Paul Sawyer

Peter Franck, Esq.

Henry Kroll

June 13, 2000

Democratic Media Legal Project

Vision and Purpose

When Ben Bagdikian, former dean of the Graduate School of Journalism at University of California, Berkeley wrote his groundbreaking book, **The Media Monopoly** (1983, Beacon Press), he identified 50 multi-national corporationsat that time which dominated all print, broadcast and entertainment media in the United States. His latest edition was published one month ago, and the count has dropped to 6 companies which now dominate all media and information services.

Our society and cultural environment are at risk when only 6 global media corporations control 90% of the electronic and print media on which we depend as individuals, families, citizens and communities in a free society.

The purpose of the Democratic Media Legal Project is to prepare a legal challenge in Federal court of the provisions of the Telecommunications Act of 1996.

We believe that the Federal law governoring broadcasting has perpetuated a commercially controlled system of television and radio that dominate the means of vital news, information and political discourse in the United States. The increased concentration of ownership and control of publicly licensed broadcasting outlets has adversely limited the diversity of viewpoints and representation of minority groups and interests which are vital to the functioning of a democratic form of government.

The principle aim of the legal action will be to lead to structural changes which can transform the landscape of the publicly owned airwaves so that our broadcast media system conforms and operates within the constitutional goals on which our democracy depends.

A network of many concerned individuals and activist organizations is taking shape to support and strengthen this effort to create a more truly democratic broadcasting medium.

In January 1998, the Cultural Environment Movement (CEM) lead by Dr. George Gerbner convened a special session with lawyers, media professionals, and academics to discuss the alarming increase in concentration of media outlets allowed by the recently enacted 1996 Telecommunication Act. Prior to this, Attorney Peter Franck authored a widely distributed paper challenging the constitutional basis of the commercially broadcasting system which dominates communications in the United States. In March 1999, CEM's Second Convention delegates overwhelming affirmed support and endorsement of opening this legal front in the struggle for more democratic media.

Independently, Unitarian Universalists for a Just Economic Community (UUJEC), affliatiated with the Unitarian Universalist Association, began to study this issue by bringing in speakers and program materials to their denomination's national and regional conventions. Speakers have included:

Ben Bagdikian, author, The Media Monopoly (Beacon Press);
Prof. Robt . W. McChesney , author, Rich Media, Poor Democracy (U.Illinois, 1999); and Telecommunication, Mass Media and Democracy (Oxford U, 1993);
Dr. George Gerbner, Bell Atlantic Professor of Communications, Temple University and Dean Emeritus, Annenberg School of Communication, Univ. of Pennsylvania.

It has become clear that a fundamental legal challenge to the structure of the commercially dominated broadcasting system must be mounted, just as Thurgood Marshall and others realized that legal action was a necessary front in the struggle to overcome de facto segregation and Jim Crow legislation.

Joining us in our commitment to battle the giveaway of the public airwaves with a strong constitutional legal challenge have been organizations and leaders groups including:

Alliance for Democracy; Cultural Environment Movement; Association of Independent Video and Filmmakers; Civil Rights Forum on Communications; Citizens for Independent Public Broadcasting; Program on Corporations, Law and Democracy; Council of Secular Humanists; Chicago Media Watch; National Lawyers Guild Democratic Communications Committee; National Coalition of Concerned Legal Professionals; among others.

At several national conferences over the last two years these groups among others have formed a concensus that the legal challenge we have proposed if fundamental to systemic change in the broadcasting landscaping and structure in our country.

In Winter 2000 support and planning meetings were conducted with prospective attorneys and supporters in San Francisco, Los Angeles, Chicago, Washington and New York.

With the help of the National Lawyers Guild Committee on Democratic Communications, and the National Coalition of Concerned Legal Professionals the basis of an experienced legal team has been formed. Leaders are: Peter Franck, San Francisco based attorney specializing in communication and cultural affairs law, and Jonathan Lubell, New York based First Amendment litigation attorney.

Filing- The Initial Complaint

We have the commitment of noted First Amendment attorney Jonathan Lubell, Esq. of Morrison, Cohen, Singer and Weinstein, New York, NY to be the litigation counsel in filing the initial complaint.

The initial filing in Federal Court is expected in Fall 2000.

Attorney Lubell is a member of the National Lawyers Guild and associated with the National Coalition of Concerned Legal Professionals who will be participating with the Project in the direction, research and preparation of the brief and the initial complaint.

Additional assistance in legal research is being sought by the Project Administrator from prospective law school programs which specialize in Communication Law.

Funding

As a mult-year legal project, on-going funds will needed to continue the legal program through the process of appeals and motions. Projections of these costs are for the initial six month period of $ 56,000 for research, brief preparation and support.

$ 117,220 for Year 2001, and $137,350Year 2002 are projections for the following two year budgets.

With initial brief documents in hand, the Project Administrator and the Project Governoring Board will create a program utilizing direct mail, electronic communications, and other means to reach significant prospective donors, including foundations, concerned organizations, activists, individuals and business entities to gain the necessary on-going funding to sustain this groundbreaking legal endeavor as a necessary element in the growing Media Democracy movement.

Electronic Communications

The Project will develop an informational and advocacy website which will be linked with regional and national media action organizations.

The form of electronic communication (e-mail) called a "list-serve" shall be created to link the Board of Directors, Advisory Panel and other key project supporters to keep all apprised of project developments and related activities.

Teleconference calls shall be employed whenever deemed useful and necessary to further communication between the project participants and reduce the need for many expensive face to face meetings.

The **Democratic Media Legal Project** shall be an affliated grantee with the San Francisco based**Media Alliance**.

The Media Alliance is a highly regarded nationally known organization of journalists, writers, photographers and other media workers dedicated to fostering a genuine diversity of media voices and perspectives, holding the media accountable for their impact on society and protecting freedom of speech. The Media Alliance shall act as Fiscal Transfer Agent of the Project and receive 5% of all amounts paid to the grantee for administering its restricted fund and this grant.

The Governoring Board of the Democratic Media Legal Project, will have the following initial membership:

Dr. Bernadette Barker-Plummer, Professor and Chair of Media Studies,
University of San Francisco; Board member,
International Union for Democratic Communication
San Francisco, CA

Dan Fiske, Publisher, Veritas Magazine, and West Coast Liaison for
National Coalition of Concerned Legal Professionals
Los Angeles, CA

Peter Franck, Esq., Attorney at Law, and Chair, National Lawyers Guild
Committee on Democratic Communication
former, Chair of Pacifica Foundation
Marin County, CA

Dr. George Gerbner, Bell Atlantic Prof. of Communications, Temple Univ.
Dean Emeritus, Annenberg School of Communication
Founder, Cultural Environment Movement
Philadelphia, PA

DeeDee Halleck, Professor of Communications, Univ. of California, San Diego
Founder, Paper Tiger Television and
Academy Award winning producer, Board member
Association of Independent Video and Filmmakers
San Diego CA and New York, NY

Henry Kroll, President, Western Government Supply, Inc. and
ormer member, Board of Directors, KQED, Inc.
San Francisco, CA

Rev. Paul Sawyer, Minister, Throop Memorial Church (Unitarian-Universalist)
Founding Director, Unitarian Universalists for a Just Economic
Community
Pasadena, CA

The Governoring Board will set policy and approve the work plan of the legal team undertaking the preparation of the legal brief.

Dr. Gerbner and Rev. Sawyer have agreed to act as Co-Chairs of the Democratic Media Legal Project.

Standard committees shall be established to conduct the business of the organization and to raise funds for its on-going work.

One or more Advisory Panels will be established to assist with the developing work of the Project. Now in formation, the initial Advisory Panel members will be:

Ben Bagdikian, Dean Emeritus, Graduate School of Journalism, University of California, Berkeley

Nolan Bowie*, Attorney at Law, Professor, John F. Kennedy School of Government Harvard University, Cambridge, Massachusetts

Andrea Buffa*, Executive Director, The Media Alliance, San Francisco

Dr. Janette Dates*, Dean of Communications School, Howard University Washington, D.C.

Dr. Dorothy Kidd*, Professor of Media Studies, Univ. of San Francisco, Radio and television producer, and Area Representative, Campaign for Press and Broadcast Freedom

Prof. Robert W. McChesney, Professor of Communications, School of Journalism, University of Illinois, Urbana/Champaign

Daniel Schecter*, founder and President, GLOBALVISION, Inc. and MEDIACHANNEL internet news site. Author The More You Watch, The Less You Know. New York, NY

Dr. Nancy Snow*, Professor of Political Science, New England College, State Chair, Common Cause, New Hampshire

* Confirmation Pending

BUDGET PROJECTIONS

	July - Dec. 2000	Jan - Dec. 2001	Jan. - Dec. 2002
Staff			
Project Administrator	$ 15,000	$ 30,000	$ 35,000
Program Activity			
Legal Research and Brief Preparation	$ 20,000	$ 50,000	$ 55,000
Communications and Publications			
Website and Internet Development	$ 2,500	$ 1,500	$ 2,000
Brochure/Flier	$ 1,000	$ 500	$ 1,000
Press Release Service	$ 1,500	$ 2,000	$ 2,500
Support Services			
Fundraising Services	$ 2,500	$ 10,000	$ 15,000
Printing & Copying	$ 2,000	$ 6,000	$ 6,500
Travel (legal team)	$ 4,000	$ 5,000	$ 6,000
Office Rental	$ 1,600	$ 3,500	$ 4,000
Phone& FAX	$ 2,000	$ 5,000	$ 6,000
Postage	$ 1,000	$ 2,500	$ 3,000
Fed. Express	$ 250	$ 500	$ 500
Checking Account	$ 350	$ 120	$ 130
Bookkeeping	$ 250	$ 600	$ 720
Transfer Agency	$ 2,800	----------**	--------**
	$ 56,000	$ 117,220	$ 137,350

Project will incorporate as California Corporation and seek Tax Exempt IRS Status as a 501(c) 3 organization in 2001 thereby eliminating this budget item.

Sample Fiscal Sponsor Grant Agreement

On , Media Alliance (Grantor) decided that financial support of the project described in the cover letter accompanying this Agreement will further Grantor's tax-exempt purposes. Therefore, Grantor has created a restricted fund designated for such project, and had decided to grant all amounts that it may deposit to that fund, less any administrative charge as set forth below to (Grantee), subject to the following terms and conditions:

1. Grantee shall provide Grantor with a completed and filed IRS Form SS-4 or other documentation satisfactory to Grantor, showing Grantee's separate existence as an organization.

2. Grantee shall use the grant solely for the project described in the accompanying cover letter, and Grantee shall repay to Grantor any portion of the amount granted which is not used for that project. Any changes in the purposes for which grant funds are spent must be approved in writing by Grantor before implementation. Grantor retains the right, if Grantee breached this Agreement, to withhold, withdraw, or demand immediate return of grant funds, and to spend such funds so as to accomplish the purposes of the project as nearly as possible within Grantor's sole judgment. Grantor shall notify Grantee 14 days before taking such action.

3. Grantee may solicit gifts, contributions, and grants to Grantor, earmarked for Grantor's restricted fund for this project. Grantee's choice of funding sources to be approached, and the text of Grantee's fundraising materials, are subject to Grantor's prior written approval. All grant agreements, pledges, or other commitments with funding sources to support this project via Grantor's restricted fund shall be executed by Grantor. The cost of any reports or other compliance measures required by such funding sources shall be borne by Grantee.

4. An administrative charge of five percent (5%) of all amounts paid to Grantee from the restricted fund shall be deducted by Grantor to defray Grantor's costs of administering the restricted fund and this grant.

5. Nothing in this Agreement shall constitute the naming of Grantee as an agent or legal representative of Grantor for any purpose whatsoever except as specifically and to the extent set forth herein. This Agreement shall not be deemed to create any relationship of agency, partnership, or joint venture between the parties hereto, and Grantee shall make no such representation to anyone.

6. Grantee shall submit a full and complete report to Grantor at the end of Grantee's annual accounting period within which any portion of this grant is received or spent. The initial report shall be submitted by Grantee no later than 1995 , and subsequent reports, if any shall be due on the anniversary date of the initial report. The report shall describe the charitable programs conducted by the Grantee with the aid of this grant and the expenditures made with grant funds, and shall report on the Grantee's complaince with the terms of this grant.

7. This grant is not earmarked to be used in any attempt to influence legislation within the meaning of the Internal Revenue Code Section 501(c)(3). No agreement, oral or written, to that effect has been made between Grantor and Grantee.

8. Grantee shall not use any portion of the funds granted herein to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or

improper private benefit to occur, not to take any other action inconsistent with Section 501(c)(3) of the Internal Revenue Code.

9. Grantee shall notify Grantor immediately of any change in (a) Grantee's legal or tax status, or (b) Grantee's executive staff or key staff responsible for achieving the grant purposes.

10. Grantee hereby irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless Grantor, its officers, directors, trustees, employees and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of Grantee, its employees or agents, in applying for or accepting the grant, in expanding or applying the funds furnished pursuant to the grant or in carrying out the program or project to be funded or financed by the grant, except to the extent that such claims, liabilities, losses or expenses arise form or in connection with any act or omission of Grantor, its officers, directors, trustees, employees or agents.

12. This Agreement shall supersede any prior oral or written understandings or communications between the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Grant Agreement effective on the 1995.

Media Alliance--Grantor

by: ______________________ Dated: ______________

Print Name______________ Title: ______________

--Grantee

by: ______________________ Date: ______________

Print Name______________ Title:______________

Challenging theTelecom Act

11:00 am Saturday - Feb. 12,2000

Los Angeles Office: National Coalition of Concerned Legal Professionals
1286 So. Sycamore Street, Los Angeles, CA

Convenors:

Rev. Paul Sawyer, Minister, Throop Unitarian Church, UUJEC
Henry Kroll , Cultural Environment Movement (CEM)
Dan Fiske, National Coalition of Concerned Legal Professionals
Peter Franck, National Lawyers Guild
Jonathan Lubell, NCCLP & NLG

AGENDA

1. Welcome and Introductions: Dan Fiske, NCCLP

2. Why We Are Here: Rev. Sawyer, UUJEC
Brief statement of Purpose

3. How We Got Here: Henry Kroll, CEM
History of our Telecom Challenge Efforts to date;
Our Supporters: UUJEC, Alliance for Democracy, POCLAD, et al.

4. Constitutional Issues and Commercial Broadcasting
Peter Franck, NLG
First Amendment - Free Speech - Religion Clause

5. Fifth Amendment & Digital Giveway- Sawyer, Lubell,others

5. Anti-Trust Issues: Consolidation of Ownership
Sherman Act - Clayton Act - Robinson Patman Act

6. Immediate Short Term Actions - Digital Injunctions - Sawyer

7. Formation of Legal Team - Timetable for Research, Briefs

8. Formation of Support Organization - Steering Cte.; Advisory Cte.
Developing a Political Alliance & Fundraising Program

9. Next Steps - Agreements for Action

10. Adjournment

people for better tv

FACT SHEET

- Amount the NAB estimates TV station owners will spend to upgrade to digital -- $16 billion.
  Source: NAB99 On the Verge, March 1999, p. 24
- Amount the NAB estimates TV station owners will make in advertising 2000 -- $25 billion.
  Source: NAB99, Daily News, April 19, 1999
- Amount broadcasters spent on lobbying in Washington between 1/97 and 7/98 -- $10 million.
  Source: www.opensecrets.org/alerts/v5/alertv5_08.htm
- Amount of local programming in Nashville, Tennessee between 2/98 and 3/98 -- zero.
  Source: http://www.benton.org/Policy/TV/whatslocal.html
- Percent of Americans who consider the Internet the most trusted source of information -- 1%.
  Source: Roper
- Percent who consider the television the most trusted source of information -- 53%.
  Source: Roper
- Number of hours per week the average American child spends in front of television -- 28.
  Source: National Institute on Media and the Family
- Number of acts of violence an 18-year-old will have witnessed on TV -- 200,000.
  Source: National Institute on Media and the Family
- Percent who think broadcasters pay $100,000 of dollars or more for TV licenses -- 56%.
  Source: Lake, Snell, Perry
- Amount of money broadcasters pay for TV licenses--zero.
  Source: FCC
- Value of public airwaves given to broadcasters to transition to digital -- $70 billion.
  Source: FCC
- Date broadcasters in top ten markets are to begin broadcasting digital TV -- 5/1/99.
  Source: FCC
- Date broadcasters in top thirty markets are to begin broadcasting digital TV -- 11/1/99.
  Source: FCC
- Date scheduled to determine digital broadcasters public interest obligations -- none set.
  Source: FCC

Summary of Feb. 12 Steering Committee Meeting.
Task Force for Legal Challenge of Constitutionality of
Telecommunications Act 1996

The airwaves used by all broadcasters are a public asset, publicly owned.

Therefore the Congress has a responsibility to provide for their use in the public interest--to provide a system of broadcasting and dissemination of information with the broadest, diverse, "freedom of speech," "free expression," public access and dialogue consistent with our heritage of democracy, as expressed in our Declaration of Independence, Consitution, and the principles of the UN Declaration of Human Rights, adopted as a treaty of the USA. Democracy requires citizens informed by diverse viewpoints.

The commercial corporate domination of broadcasting as instituted in the Telecommunications Act of 1934 and expanded by the Act of 1996 and the regulations adopted by the Federal Communications Commission, permits and in effect has led to a broadcasting system dominated by several large corporate megalopolies with both horizontal monopolies over radio and TV broadcasting outlets, as well as vertical monopolies over program production sources. At the same time no adequate governmental funding of the public TV broadcasting system was provided for, unlike other nations that have national broadcasting services such as BBC, CBC, etc. Thus public TV in the USA is largely dependent on private corporate sponsership and advertising. The net effect is to create a broadcasting system which narrowly constricts access and free expression and the diversity of points of world view and values available to the American public which own the airwaves. In fact the one singular world view of American Corporate Business pervades all broadcasting--Buying is good for you; the more you own the more desirable and happy you become; the so called free enterprise system is the only succesful way of life and must be extended around the world.

This commercial system of broadcasting with its monolithic world view is itself a monopoly with only a narrow viewpoint allowed. It is a violation of the 1st Amendment protection of "freedom of speech" and "free expression," as guaranteed for the benefit of all citizens , not just for the few. Although the "Free expression" clause refers specifically to religion, the Supreme Court in (Ethical Culture Society, Md. vs. US) 195 , defined religion in the broad sense as "a way of life", hence world view and values. 195

In addition mass broadcasting is one of the most important socialization instruments, especially of our young people. The monopolistic corporate control of most TV and radio deluges our young with not only the monolithic world view already referred to, but also serves up a steady diet of violence and sexuality aimed at increasing viewership. Also minority cultures and viewpoints are not well represented. The situation is so inimicable in this regard that the American Pediatric Association has recommended parents limit TV watching to just a few hours a day and then under close parental supervision. Also the NAACP, La Raza and others have protested the lack of suitable African-

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American and Latino role models and life situations on American TV. This monopolistic broadcasting situation violates the !st Amendment protection of freedom of speech and free expression which calls for the widest range of view points and a diversity of cultural perspectives, reflective of American society. Also to allow a commercialized corporate broadcasting system that nearly monopolizes our publicly owned airwaves and contributes to a process of socialization inimicable to our young people violates the very intention of providing for the public interest expressed in the very first clause of our Constitution: "We the People of the United States, in order to form a more perfect union, establish justice.insure domestic Tranquility,..promote the general Welfare,.."

The Telecommunications Bill of 1996 was passed by the Congress with little or no imput from the public. The hearings were little or none at all, the bill is said to have been largely written by the lobbyists of the National Association of Broadcasters, one of the richest lobbying group in Washington, for the Commerce and Telecommunications Committees, whose members receive large contributions from the NAB. It was passed on by them to the Congress without having been presented in time for the lengthy Bill to have been read by its members. This may not be unusual for some legislation, however for a major bill allocating the use of the publicly owned airwaves with such enormous impact on the public and its right to know and be informed, it is unconscionable and contemptible behavior on the part of so-called representatives of the people. It has been called by Senators Dole amd McCain , "the biggest give away of public resources in our history." Moreover it violates the 5th Amendment which states that there can be no "taking away of property without due process of law." Although the legislative process can be construed as a "due process of law", in this instance it was decidedly pro forma and did not, by any stretch of the imagination, sufficiently involve the public in the disposition of their publicly-owned airwaves. Given the importance of this Act for the future of democracy in this republic, the mere appearance of due process without full public debate and partcipation, does not meet the constitutional protection of "due process of law." The fact that the use of the public's airwaves, worth 50 billion dollars/year by some accounts, was given away for nothing (not one dollar for the public in exchange for this valuable property) and without any prescribed public interest conditions for their use: on the face of it, this shows an unfair contractural process. When this give-away of public property involves one of the most important means of disseminating and controlling informatuion, knowledge, and the public's access to democratic dialogue, it can not be tolerated.

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This sums up the main constitutional challenge to the 1934, 1996 Telecommunications Acts as discussed by us in our meeting. As for relief, I believe we settled on the notion that 50% of the spectrum could be leased to commercial broadcasters with more modest rates for non profit broadcasters. The substantial revenue from this leasing would go directly to an independent public broadcasting system that is diverse, accountable, and independent of the commercial system and direct government control. It should not be a centralized system under one public agency, but a diverse independent public system whose governance is to be developed. It should however be publicly responsible in a democratic fashion--either by appointment of legislators, elected with under a reformed democratic campaign financing system or directly by the citizens.

A summary synopsis of the Telecommunications Acts of 34 & 96 as well as some history of the legislative process involved in their enactmen will be sent along with this summary of our legal challenge discussion to Peter Franck, Jonathan Lubell. Dan Fisk and others to be brought into the Steering Committee along with the Legal Team in formation.

Meeting Participants: February 12, 2000

Dan Fiske (NCCLP- Los Angeles); Peter Franck (NLG - Marin Co.
Henry Kroll (CEM) San Francisco; Jonathan Lubell, NCCLP - New York)
Paul Sawyer (UUJEC - Pasadena CA)

meeting synopsis by: Paul Sawyer

the monitor
cultural environment

cem cultural environment movement

Volume 2, Issue 2, Fall 1998

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Join CEM: Response Form

The CEM Monitor welcomes the submission of brief feature articles representing diverse perspectives on topical issues. Submission by email is appreciated. Please send Monitor submissions to:

CEM Monitor
P.O. Box 31847
Philadelphia, PA 19104
215-204-5823 (fax)
cem@libertynet.org

215-204-6434
http://www.cemnet.org

Antitrust Law and The Media Monopoly

How useful are the current United States Antitrust Laws when applied to ownership, production and distribution of mass media corporations? CEM called on a group of scholars and activists to investigate.

By Kate Duncan

On January 23 and 24, 1998, CEM brought together 22 people at Temple University's Sugarloaf Conference Center in Philadelphia, PA to examine whether antitrust legislation against the media monopoly is feasible at this time, and what other legal challenges, if any, exist.

The idea for the conference originated at the CEM Founding Convention, and was approved as a priority by the CEM Board of Directors in May of 1997.

Conference participants included antitrust and first amendment attorneys, academics, students and researchers, economists, labor representatives, and democratic-media advocates. The proceedings were moderated by Mark Crispin Miller, then Director of the Project on Media Ownership.

Laying the Groundwork

Two introductory speakers opened the conference, laying the groundwork for discussing antitrust law and tradition as it relates to media deconcentration. Antitrust attorney Carl E. Person gave examples of the profound length and cost of an antitrust lawsuit, in the event that such a case would be heard by the court.

He offered that government involvement in antitrust laws is in fact a deterrent to their enforcement, as it leads people to believe that antitrust law is in effect, when in fact it has fallen by the wayside in recent years. This is partially due to antitrust regulations being under the jurisdiction of the Federal Trade Commission, Person said.

Robert McChesney of the University of Wisconsin painted an equally dismal picture of current media concentration trends, using Ben Bagdikian's *The Media Monopoly* as a standard. In the book's 1984 edition, Bagdikian counted 50 dominating companies in the industry; by 1997 the number was 15. This makes the industry uncompetitive by even oligopolistic standards, said McChesney. But it is good business. Owning multiple media outlets and other businesses allows for product branding and increased loyalty; for example, ESPN now prints "ESPN Magazine" and serves food and cable at "ESPN Grill."

Since the 1996 Telecommunications Act, 4000 of 11,000 existing radio stations have changed hands. Since the mid-1980's, there has been a 50 percent increase in television advertising, and a sharp decline in public service in broadcast media.

Potential Solutions

Subsequent conversation among the group concluded that when discussing antitrust law in relation to media, we must think of it not only as the restraint of trade, but restraint of content and ideas. Even monopolies (or perhaps especially monopolies) have public service obligations to diversify programming.

The two antitrust laws that might apply to media (Section 2 of the Sherman Act and Section 7 of the Clayton Act) have not been enforced.

Three possibilities for solutions were discussed: (1) Observing the regulations of

Antitrust *continued on page 8*

Antitrust *from page 1*

other countries, where in some cases the concentration is even worse, (2) designing new and creative legislation in lieu of attempting to fit into old antitrust laws, and (3) fostering a popular movement to support the democratization of media.

Proposed Actions

On the second day of the conference, people split into three groups to consider the question: What might adequate legislation look like? The groups reported as follows:

- Group A agreed on two main goals of legislation or regulation: To reduce the amount of corporate power and to reduce the amount of noncorporate special-interest power in mass media.

The group decided not to rule out antitrust legislation as a means, and said it should still be considered with three questions: (1) Can something viable be drafted? (2) Could it be passed? and (3) Would the benefits be worth the cost of carrying out the first two? The group concluded such legislation should stress not economic efficiency, but information efficiency, and that diversity and democracy should be the principles of media antitrust judgment. They also said the legislation should be written to prohibit media entities to merge with or be sold to nonmedia entities.

The group also suggested organizing to maintain pressure on broadcast media and government regulators to improve the public interest standards of commercial broadcast media.

- Group B likewise proposed a law requiring simplification of media ownership, suggesting that the Robinson-Patman Act, which addresses price-fixing in bookselling, might apply to the specific problem of media antitrust.

In addition, Group B discussed digital technology and the broadcast spectrum giveaway. They said that leasing the spectrum would net funding for diverse local programming, and suggested using the argument that the broadcast spectrum is no longer a scarce resource with the advent of high-density television, or HDTV, which has the capability of splitting one frequency into six. However, they pointed out that the same argument was used about cable, but diversity of ownership or channels does not ensure diversity of content.

Group B thus recommended using rule making to promote diversity of content. Group B also suggested the use of the Freedom of Information Act to get information on the results of past policy decisions, such as media deregulation in 1991, and the cancellation of the Fairness Doctrine in 1996.

- Group C decided that the immediate goal of legislation should be maximum feasible limitation of further concentration, with the ideal goal being deconcentration. They stressed an emphasis on radio, since it has recently been the area of most prominent concentration.

The group also urged the divestment of news divisions by media companies, to allow news and information to be not-for-profit. To fund such endeavors, the group recommended a five percent tax on advertising, decreasing the amount of tax-deduction for advertising, and fining media companies for failing to satisfy the public interest. The fund would support local, independent, nonprofit, noncommercial media production, especially news and children's programs. It would also subsidize community monitoring of local broadcast media to ascertain if media are serving their public's interest. Community monitoring groups would report to the FCC. Shortening the term for which licenses are issued would empower the communities to have more weight in licensing decisions.

mediachannel.org

February 3, 2000

"The Whole Thing Stinks":

Mark Crispin Miller on the AOL-Time Warner union.

This first great media mega-merger of the new millennium came as a major shock to all—including the Time Warner journalists—and yet it really shouldn't have. First of all, the Giant Few that rule the media have all been buying heavily into cyber-space for quite some time. (Just to name a few: Disney owns Infoseek, and Viacom/CBS, once approved, will own about a half-billion dollars worth of prime Web sites.) The marriage of the world's biggest Internet company and the world's biggest media corporation represents no large departure from the norm. Rather, it is but the most humongous formal union of the powers of "old media" and "new media"—and there are surely more to come.

This marriage shouldn't really come as a surprise because the groundwork for it was laid hastily by the U.S. Congress and White House (working closely with the major media corporations' CEOs) four years ago, with the passage of the Telecommunications Act of 1996. This was the law that liberalized the rules governing how just how big a media company can be. Although promoted in the name of "competition" (a public claim that must have had a lot of politicians snickering up their sleeves), the Telecom Bill was meant to *stifle* competition, by enabling the assemblage of that mammoth culture trust which runs the show today.

(It was also this law that mandated the outright giveaway of the digital TV spectrum to the usual enormous suspects—a vast and crucial piece of public property, worth, by conservative estimate, some $70 billion, summarily donated to the likes of Murdoch, Disney and GE, for no money at all. This particular plum was handed to the major owners of TV stations, not to cable giants like Time Warner; but it's principle that's pertinent here; and, in any case, there is no reason to assume that AOL Time Warner will not end up merging with some other company that does own lots and lots of TV stations....)

And now we have the prospect of AOL Time Warner blitzing all of us—day in, day out, right where we live—with endless, dazzling come-ons for Time Warner's properties. That's all this is about: expanding AOL's consumer base, and smacking it eternally, ingeniously, and inescapably with hours and days and weeks of ultra-clever cyber-advertising for Time Warner's TV programs, movies, CDs, books and theme parks.

The whole thing, if I may speak bluntly, stinks—the anti-democratic deal rammed through by Congress and the White house, the hyper-commercialization of the Internet, this particular monopolistic merger, and the other, similar mergers that gave rise to AOL Time Warner's few huge rivals/partners. And there's another serious problem here, in a way worse still than all the rest: the concomitant decline—or maybe "disappearance" is a better word—of genuine journalism. For an unfettered journalism, operating in the interest of the people, would examine, critically, just how the Telecom Bill was passed and what it really signified, the gross mallification of the Net, and all of those monopolistic couplings. But such journalism is no longer there within the mainstream—where most Americans might learn from it, and thereby come to know enough to try to change the situation.

Things do look grim; but there is also hope—in the American people's evident and growing distaste for what the media now gives us. Equally important, there's also promise in the growing chagrin of journalists, who, more and more, see clearly that these mega-mergers are a real bad thing for them, and for the craft that they spent long years