

A Statement on Mass Telecomm Policy and Reform

Telemedia as Power:  
Democratizing American Television and Radio

for

Members and Staff  
The Progressive Caucus of the  
U.S. House of Representatives  
Washington, D.C.

by

Jerry M. Landay  
Honors Prof. Emeritus  
College of Communications  
The University of Illinois  
Urbana-Champaign

for 14 May 1997

"If One were permitted to write all the ballads, One need not care who makes the laws of a nation."

Scottish patriot Andrew Fletcher, 1655-1716

"I believe that television is going to be the test of the modern world...We shall discover a new and unbearable disturbance of the general peace, or a saving radiance in the sky. We shall stand or fall by television. Of that I am quite sure."

E.B. White on the dawn of the TV age, 1938

"Today, a country belongs to the persons who control its communications. "

Umberto Eco, Essays, 1986

"Government ...fosters liberty by doing something so obvious that it is little noticed: It insists that certain things cannot be bought and sold."

E. J. Dionne, 1995

Introduction:

Democratizing Telemedia: Policy and Reform

1 The United States is, in a wholly new sense, an occupied country, an increasingly closed society. Democracy depends on the free flow of ideas, the vigorous participation of the people in self-government, a Government that expresses the popular will through institutions responsive to that will.

The American Teleculture today is anti-democratic. It is largely governed by a corporate Mediarchy. Its closed telemedia system stifles the free flow of ideas and information. It offers tightly controlled program fare that poisons the cultural environment. It restricts political access to

telemedia to those with large amounts of money. This is oligarchy, not democracy.

Specific Proposals for Telemedia Reform

2 Legislative

The repeal of those sections on the telemedia side of the Telecommunications Act of 1996 that sanction and breed concentration of ownership; specifically those which disempower the public interest standard, encourage unprincipled vertical integration of telemedia, and unreasonably extend ownership caps, audience coverage, and duration of licenses. Also, the automatic postcard renewal process and the elimination of public challenges to license renewals must be reversed, and extended to cable franchise renewals.

2 Creation of a cabinet-level Department of Telecommunications, charged with developing and administering a coherent national policy encompassing all mass telemedia. It would absorb and direct all existing agencies involved in policy and regulation: the FCC, NTIA, the reinvigorated antitrust enforcement responsibilities in telemedia of Justice and the FTC.

3 Expanded and balanced membership on the Federal Communications Commission to include commissioners drawn from non-industry sectors. They would be charged

with representing public interests and concerns, viewers as well as activists. The President would be required to carry out these appointive requirements. Regional listeners and viewers councils, similar to those in Great Britain, would make nominations to these non-industry chairs, and meet quarterly for critical reviews of telemedia performance issues.

4 Strengthening of antitrust enforcement in media, overseen by the Department of Telecommunication, including:

a. an updated antitrust formula that adds non-economic criteria to a determination that a telemedia monopoly exists. The formula should recognize the telemedia's cultural as well as economic power. It should embrace both issues of vertical cross-ownership and disproportionate geographic dominance.

b. restrictions that statutorily separate content production from program distribution on both the air, cable and wireless (DBS), in part through the application of new fin-syn regulations: while telephone companies, broadcast networks and MSOs could own cable-TV pipelines, they could not own program properties displayed upon them, or the means of producing them.

c. reallocation of spectrum and cable channel space, creating a balance between commercial and public use ( see cable legislation and court tests below)

d. restoration of limits and coverage caps in radio and television station ownership that foster and protect true diversity at the local and national levels against ownerships that constitute "the only voice in town". Present duopoly restrictions would be retained.

5 e. rollback of digital channel awards to existing license-holders. The FCC would open a license application process, with awards subject to antitrust provisions above. They would be based in part on principles of balance, diversity of ownership and content, and service to the public interest. There would be full restitution of digital development costs to present licensees.

6 f. extension of must-carry provisions of commercial and public stations to DBS systems based on low-earth-orbit (LEO) satellites, in order to protect the principle of localism.

7. Restoration of a program ascertainment formula as a criterion for the renewal of commercial broadcast licensees. As it did prior to 1980, the FCC would administer the formula on a content-neutral basis. Specific percentages of time would be

allotted, by program categories, to news and public affairs, quality children's programs, cultural and community public-interest programming, discussion and documentaries, etc. Provision of free air time for political campaign purposes on a fair and equitable basis would also be a requirement of license renewal.

8. Imposition of annual leasing fees on all profit-making uses of air space, to be dedicated not to budget balancing but to development of the

public telecommunications sector. Such fees would extend to previously assigned auctioned spectrum ,on the termination of existing 10-year license terms. They would apply to all future auctions of new spectrum space. There must be a review of renewal terms for present licensees of PCS and related services, who presently assume that renewals will be automatic. Terms would make provision for minority license awards, and for the entry of municipalities who wish to maintain their own systems on competitive terms, or as non-profit cooperative utilities.

9. Banning of all political advertising, as commercial and not political speech, on the grounds of the national interest, and the substitution on all telemedia , air and cable, of a comprehensive system of free campaign air time. Public systems and stations would bear a special obligation in this regard.

10. Replacement of the 'fairness doctrine' with the Doctrine of Assured Democratic Access: requiring coverage of relevant issues of social importance, with major voices represented over time, and the establishment of licensed, low-power, community micro-radio stations on unused portions of the FM spectrum. There would be similar requirements for local cable systems through support for public access channels. ( see cable section below)

11. Statutory limits on advertising time per hour on commercial broadcasting stations, replacing the NAB's voluntary code, which was struck down by the federal courts. More restrictive limits would apply to children's programming. All shopping services would be banned from the public air and restricted to existing home-shopping cable channels.

12. Amendment of the Cable Communications Policy Act, reflecting cable as a public medium, operating on public franchise over public rights-of-way. Under this imprimatur, as franchises expired, cable systems would be subject to:

a. federal licensing of cable systems based on an applicable ascertainment formula for dedicated program service to the public interest, including local news and public affairs. At expiration of franchises,

renewal would be subject to challenge by local citizens and groups. Obstacles would be removed to cancellation and re-awarding of franchises by municipal authorities in the case of systems which fail to meet community public-interest requirements. A fiscal fairness formula would be devised for small town and rural systems.

b. revenues would be subject to annual telecommunications taxes, and dedicated in part to required fiscal and logistical support of local public access channels, as well as cable drops to schools, libraries, and other local social and governmental units. Balance of revenues would flow to the federal telecommunications fund. As with broadcasting, a Federal program would be available to communities wishing to own and operate their own non-profit or commercial cable systems.

c. similarly, a code of advertising would limit commercial time, and the provisions covering free political time cited above would be extended to cable.

13. Amendment of the Public Broadcasting Act, with provisions reflecting expansion of the non commercial broadcast spectrum and cable universe. It would encourage the creation of alternative program networks by states, collectives of local community stations, and other sponsoring organizations which are not arms of political parties. It would also encourage

expansion of public cable and broadcasting services into new sectors of masscomm technology. The updated bill would:

a. Public Broadcasting Authority--integrate the functions of the Corporation for Public Broadcasting into a single Public Broadcasting Authority that would include NPR and PBS, ending the inefficient and ineffective separation of fiscal management from program delivery.

b. provide for the creation of an expanded Board of Governors, with membership based not on political affiliation but personal and professional distinctions and reputations across a wide variety of creative , social and business sectors. Nominations to the Board would originate within the Board itself, and would not be subject to Congressional approval. Quarantined from political control and manipulation, the Board would have oversight of the public broadcasting trust fund, and serve as the ultimate authority in adjudicating all complaints about the service.

c. require and support an effective fully functioning and independent news and public affairs division for public television, journalists to be fully supported against political or ideological pressures

d. strengthen provisions designed to eliminate conflicts of interest from other

potential underwriting sources. Corporate underwriting would either be strictly controlled or eliminated.

Legal

The changes proposed above must be buttressed by enlightened legal opinion instructed both by the original intent of the Constitutional framers and the realities of a democratic teleculture.

These realities are:

the Constitution and its Bill of Rights have been subverted and inverted to justify the anti-democratic structure of the Mediarchy.

the free-speech provisions of the First Amendment were intended for citizens and for political and editorial freedom of expression, not corporate speech. In deciding questions involving claims to First-Amendment protection by corporations, courts must place the burden of their decisions on original intent. These rights should primarily apply to those seeking access to the electronic soapbox, not to those who own it. Constitutional principle must take precedence over laissez-faire principle.

In a market system, given to the bias of success by imitation, a multiplicity of channels have not produced a multiplicity of

perspectives. Rather, it's evident that the opposite is true. Government regulation of the telemedia was based on scarcity. True openness on the air and cable remains in scarce supply, justifying a return to content-neutral regulation by government in service to the public interest.

#### Court Tests

Based on these principles, a series of court tests must be framed and energetically pursued with the encouragement and proactive support of this Caucus.

Likely Constitutional grounds for such tests include:

a. FCC rules violate the First Amendment guarantee of free speech by prohibiting the licensing of low-power community micro-radio broadcasters, denying citizen access to the spectrum.

b. FCC rules violate the First Amendment guarantee of free speech by restricting awards of advanced digital spectrum to present license-holders.

Proposed statutory grounds for a suit include:

a. The FCC rules have favored for-profit enterprise, abrogating the public-interest requirements of the various communications acts, and resulting in

ownership concentrations in clear violation of those requirements.

b. FCC regulations limiting access to the electronic, public soap-box to those with the ability to pay are illegal. This issue embraces not only licensing and ownership, but also issues affecting a free and open political campaign process.

c. Specific provisions of the Telecommunications Act of 1996 that effectively conflict with statutory obligations of broadcast licensees to serve the "public interest, convenience and necessity" are patently illegal.

Political and Educational --A Citizen's Action Movement

[HERE SUMMARIZE ACTIVITY SUBMISSIONS]

An essential myth of Mediarchy is that the public is getting what it wants. This is patently not so:

The public is not monolithic. Diverse publics seek a diverse fare that goes well beyond sitcom, violence and chase, jock-talk, news-as-amusement, contact sports, and kiddy-consumerism. From history to art to high comedy and dance, religion to non-rock and non-country-western music, the larger portion of the broad spectrum of human affairs is not represented. The nation suffers cultural meltdown fed by

creative bankruptcy in commercial telemedia.

Rather than getting what it wants, the public settles for the limited programming it gets and expects to get, and has been conditioned to expect since the 1930s.

The public is not represented either in programming or policy decisions. Surveys make clear the profound public dissatisfaction with the telemedia fare it is offered. It is equally clear that an absence of coverage about telemedia issues and policies makes it impossible for members of the public either to address the specific nature of its discontent, or to act to make telemedia better.

#### National Citizens Movement

There is urgent need for a well-organized national citizens' media-democracy movement based at the local level and coordinated at the national level. Such a popular movement, rooted in local chapters, would operate on a multiple level:

- telemedia criticism and content analysis
- media literacy education and training
- political and cultural action and lobbying
- viewer and listener boycotts of stations, cable systems and sponsors
- sponsorship of local and national "Pulitzer" awards for excellence in telemedia programming

production of educational materials and publications on telemedia-democracy issues modeled on the format and function of the AARP's Modern Maturity.

Members of the Caucus should encourage supporters and other constituents at the Congressional district and community levels to establish such chapters, and to encourage funding sources to assist in establishing the national movement.

Local models exist. The Chicago Media Watch conducts teach-ins on media policy, and has organized local act-out demonstrations on a variety of telemedia-democracy issues. The Rocky Mountain Media Watch in Denver conducts annual content analyses of local television news across the country. Its published findings have received national attention. A protest movement against the removal of C-Span from TCI in

Seattle was organized by a housewife, and resulted in newspaper coverage that forced management to return the service to cable.

The New Mexico Media Literacy Project runs media literacy workshops, trains teachers, extends TV literacy education to parents, clergy, and high-risk youth, and publishes a media-literacy newsletter.

Other organizations exist in Asheville and San Francisco. Still others have not been identified, but surely exist. Many more need to exist.

Local parent-teacher associations, labor unions, healthcare consumers groups, as well as national civic-action groups stand ready to provide members, possible funding, and public information for media-literacy organization and activity. This is a wedge issue that cuts across the chasms of party or ideological divisions. It cuts to the heart of crises of education, "family values," child-rearing, crime, lack of interest in foreign concerns, political campaigning, racial harmony, economic inequities.

[INSERT STORY ON DIGCON]

Jerry M. Landay, a former news correspondent for ABC and CBS, is Honors Professor Emeritus at the University of Illinois. He is creator of Issues in Television, a course for Honors scholars. He is a former documentarian for PBS, a writer and researcher on media-democracy issues, and a contributor to The Christian Science Monitor and other journals.