US court sanctions further media monopolization

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A US court ruling issued February 19 means the effective end to any limitation on the drive by a handful of giant corporations to monopolize broadcasting and cable television.

A three-judge panel of the US Circuit Court of Appeals for the District of Columbia—the most important federal court below the Supreme Court—upheld a lawsuit brought by a group of media corporations, including AOL Time Warner, Viacom, and News Corporation, against two rules issued by the Federal Communications Commission, the broadcast industry regulator.

The court struck down outright an FCC regulation that barred cross-ownership of cable systems and local TV stations in the same media market. It voided and sent back for reconsideration by the FCC a regulation limiting television networks to the ownership of local TV stations covering no more than 35 percent of the US market.

Viacom and News Corporation filed suit because recent acquisitions have brought both conglomerates above the 35 percent mark. When Viacom acquired CBS two years ago, the combination of the network-owned stations and its existing local stations came to 41 percent. News Corporation, which owns Fox network, has access to 40 percent of the US market after its merger with Chris-Craft Corporation.

Local stations are frequently monopolies, and highly profitable, so that even a small group of stations constitutes a substantial property. Large chains, such as those assembled by the biggest media conglomerates, are among the most lucrative of businesses. News Corporation, for instance, owns 33 local stations. They took in $526 million in revenue in the last quarter of 2001, of which $259 million was earnings before taxes and interest, a gross profit margin of almost 50 percent.

It is a remarkable and revealing feature of the US legal landscape that giant corporations routinely take business decisions that flout existing laws and regulations, and then obtain retroactive sanction for their illegal actions by going to court. One can imagine the fate of a worker or a small businessman who tried the same thing. But the major media outlets—which are owned by these same corporations—take virtually no notice of corporate lawlessness.

The media ownership rules were reaffirmed by the FCC only two years ago, in a split vote in which the current FCC chairman, Michael Powell, son of Secretary of State Colin Powell, voted with the minority who favored loosening or eliminating the restrictions. Powell will now be responsible for deciding whether to raise the ownership limit, perhaps to 50 percent of the US market, or abolishing it entirely.

The regulation, called the National Television Station Ownership Rule, has been in place since the 1940s, when television broadcasting began. Its avowed purpose was to “prevent any undue concentration of economic power” in television broadcasting, in large measure because monopoly control of the media was seen as inimical to democracy. In the present world of American politics, such considerations no longer apply.

Gene Kimmelman, co-director of the Washington office of the Consumers Union, called the decision “earth-shattering.” He explained, “The end result could be the most massive consolidation in media this nation has ever seen. It’s a radical effort by the Court of Appeals to ... expand corporate free-speech rights at the expense of the public’s First Amendment rights.”

The monopolization of the television media is not a new phenomenon. The restrictions on station ownership have steadily eroded. The limit of three stations

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established in the 1940s had, by 1984, been raised to twelve stations and 25 percent of the national audience. The telecommunications deregulation bill sponsored by the Clinton administration—with Al Gore serving as the main cheerleader—ended the numerical limit of stations and raised the permitted proportion of the national audience to 35 percent. The latest court ruling completes the process.

In a basic sense, the FCC rules were never aimed at providing genuine public access to the broadcast media. That would require public ownership and making the media available to working class organizations and other groups without large financial resources. Rather, they sought to preserve a modicum of competition by restricting the ability of the largest media monopolies to gobble up their smaller rivals.

Hence the lineup in the case before the court, *Fox Television Stations v. Federal Communications Commission*, in which the National Association of Broadcasters, whose membership consists mainly of the owners of local television stations, was pitted against Viacom (CBS), AOL Time Warner, General Electric (NBC) and News Corporation (Fox).

Joining the "anti-monopoly" side of the lawsuit were corporations principally based in the newspaper industry, such as the Washington Post Co. and the New York Times Co., which also own considerable properties in local television. Both the *Post* and the *Times* published editorials critical of the ruling, with the *Times* in particular pointing to the danger to democracy from the ever-narrower concentration of media power.

But neither publication pointed to the clear connection between the anti-democratic policies of the Bush administration, and this government's origins in the theft of the 2000 presidential election and the suppression of vote counting in Florida by the Supreme Court. This is not surprising, since both the *Times* and the *Post* endorsed the political coup which placed Bush in the White House, at least after the fact, and urged the acceptance of his administration as legitimate.

The composition of the three-judge panel that issued the February 19 ruling is significant. Heading the panel was Judge Douglas Ginsburg, an unsuccessful nominee to the Supreme Court during the Reagan administration and a longtime advocate of right-wing causes. Joining him was Judge David Sentelle, a former aide to ultra-right Senator Jesse Helms, who gained notoriety as the chairman of the three-judge panel that installed Kenneth Starr as the independent counsel in the Whitewater investigation, and later approved the extension of his jurisdiction to cover Clinton's affair with Monica Lewinsky.

The anti-regulatory zealotry of the ruling stopped short of endorsing the argument of the networks and AOL Time Warner that the FCC rules violated their First Amendment rights to freedom of speech. Such a decision would have enshrined a right of monopolization in the US Constitution, but the Appeals Court held that promotion of diversity in ownership was a legitimate goal of government policy.

Instead of issuing a more sweeping opinion, the judges held that the FCC had not provided a "reasonable basis" for the ownership rules, in violation of the Administrative Procedure Act, by failing to show how ownership regulations would actually promote diversity. In effect, the failure of the existing setup to prevent monopolization was used as an argument for scrapping any regulation whatsoever.

The court ruling is widely expected to be upheld if appealed to the current Supreme Court. In any case, the decision means that Viacom and News Corporation will not be required to sell off a portion of their current television holdings, and it will encourage a new round of mergers and consolidation in the industry.

According to reports in the business press, a prime candidate for merger or takeover is Walt Disney Co., which owns ABC and several cable television networks. This huge company is considered somewhat undersized in comparison to such behemoths as News Corporation and Viacom. There is also speculation about a sale of NBC to AOL Time Warner.

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