Impact of deregulation on marketplace diversity in the USA

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The current deregulatory mood sweeping Washington has changed the policy approach from one of government enforced diversity to one of marketplace-facilitated diversity. This is evidenced in the recent bills to revise the Communications Act of 1934, and the settlement of the AT&T antitrust suit. This article explores these public policy shifts as they relate to the information industries and suggests some impacts on the concept of diversity.

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US interest in diversity is grounded in the philosophical revolution that preceded the founding of the USA. Enlightenment thought of the seventeenth and eighteenth centuries was based on the assumption that the human race is capable, by its own power and without recourse to supernatural assistance, of comprehending the world and mastering it. The basic thrust of intellectual thought in this period was aimed at freeing human beings from all outside restrictions on their ability to use their reason to solve religious, social and political problems.

Translated into practice, the Enlightenment fostered certain characteristic notions of human beings, truth, the state and society. Within the Enlightenment vision of the universe, human beings were rational animals capable of organizing the world around them; truth was a discoverable entity capable of demonstration to all thinking people and no longer a province of a few 'wise men'; the state was viewed as a tool to provide individuals with a milieu in which they could realize their own potential.

Enlightenment thought became the basis for the US approach to freedom of expression. The fundamental assumption of this theory is that people are capable of separating truth from falsity, and that public enlightenment occurs only when people are exposed to a broad range of ideas. As in the classical economics of Adam Smith, wherein the marketplace, free of controls by government or monopolists, determines the quality and distribution of goods and services, this theory argues for a 'marketplace of ideas' in which as many points of view as possible are voiced. A diversity of opinions is expressed and rational people determine the ones to which they will subscribe.

The United States Supreme Court has articulated this philosophy on several occasions when dealing with media-related issues. In 1945 it pointed out that the 'First Amendment rests on the assumption that the widest possible determination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society'.[1] Again in 1969 it noted, 'It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail'.[2]

1Associated Press v United States, 326 US 1 (1945).

2Red lion Broadcasting Company v Federal Communications Commission, 395 US 367 (1969).

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The philosophy of diversity would argue that the public must have the opportunity to be exposed to many points of view via the communication media, and that neither the government nor private monopolies should restrict the number of voices available in the community. In 1956, the Supreme Court took the opportunity to reinforce this position:

> That radio and television broadcast stations play an important role in providing news and opinion is obvious. That it is important in a free society to prevent a concentration of controls of the sources of news and opinion and, particularly, that government should not create such a concentration, is equally apparent and well established.[3]

The Federal Communications Commission (FCC) is no less dedicated to a philosophy of diversity than is the Supreme Court. As the Commission pointed out in a 1965 policy statement, 'Diversification of control is a public good in a free society, and is additionally desirable where a government licensing system limits access by the public to the use of radio and television facilities'.[4]

Concentration of ownership

Although the philosophy of diversity argues for a wide-open and unrestrained 'marketplace of ideas', this, in fact, has not been the experience of the USA. Concentration of ownership in communication industries can be traced back at least as far as Benjamin Franklin, who financed new newspapers and retained a continuing financial interest in these enterprises. The modem era of media monopoly began with group ownership of newspapers in the late nineteenth century; by 1900 eight major newspaper chains existed, including those of Hearst, Pulitzer and *Dch.*

Broadcasting concentration is intimately related to the beginnings of the industry in this country. The dominance of the Radio Corporation of America, formed in 1919 by AT&T, Westinghouse and General Electric, and its subsidiary, the National Broadcasting Company (NBC), was so great that in 1934 the US Supreme Court felt compelled to uphold an FCC ruling requiring NBC to relax its contractual agreements with the network's affiliated stations.[5]

Likewise, ownership of more than one broadcast outlet in different markets by the same person or group is also as old as the industry itself. Westinghouse, the licensee of KDKA in Pittsburgh, made the station operational in 1920 and the following year acquired WBZ in Boston and WJZ in New York. General Electric, amazed by the Westinghouse success, quickly initiated WGY in Schenectady, followed by KGO in San Francisco and KOA in Denver. Two aspects of these early developments are particularly worthy of note here. First, monopolistic control of broadcasting existed from the beginning of the industry. Second, the companies that were dominant in the early years of the industry were ones with prior experience in the communication industries; interestingly, these same companies remain dominant today.

The forces that shaped the modem communication industries in the USA during the late 1800s and early 19008 - industrialization, mechanization and urbanization - also encouraged standardization and concentration.s Monopolies occurred originally as a result of technological constraints and the need to raise capital; as technological improvements made production more costly, and subsequently gave an advantage to

[3] *United States v Storer Broadcasting Company,* 351 US 192 (1956).
4policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393 (1965).
sNationaJ Broadcasting Company v United States, 319 US 190 (1943).
[6] Quoted in Erik Bamouw, *Tube of Plenty,* Oxford· University Press, Oxford, 1975, p 20.

early investors, concentration increased. One additional point: the exigencies of electronic communication and its use of a limited resource - spectrum space - have led some commentators to the conclusion that broadcasting particularly lends itself to monopolistic control. Indeed, during the 1918 Congressional hearings on radio, Secretary of the Navy Josephus Daniels noted:

> . . . it is my profound conviction and it is the conviction of every person I have talked with in this country and abroad who had studied this question that it (radio) must be a monopoly. It is up to the Congress to say whether it is a monopoly for the government or a monopoly for a company. . .[7]

Regulation of the electronic media was originally instituted because of technical problems resulting from limited spectrum space. However, once a unified regulatory approach was instituted through the establishment of the Federal Radio Commission in 1927, (replaced in 1934by the Federal Communications Commission) other aspects of the communication industries - including telephone - were brought under the auspices of the federal agency, and thus subject to its philosophical perspective. Throughout the fifty years of regulatory history, that perspective, voiced by both Congress and the Commission has included the need to enhance and protect diversity of information.

Models for regulation of communication

Regulation of communications has traditionally been based upon different views about the content of that communication and the media used in transmission. There are three general approaches to regulation. Based upon the characteristics of the particular information industries involved, the assumptions underlying each approach to regulation can be inferred.

One model of regulation derives from the fact that a single communication channel is involved. In the case of broadcasting, the channel - the radio spectrum - is limited. In the case of common carriers, a single medium - telephone wires - is used. For different reasons regulation of each has evolved. In the case of broadcast, the scarcity of the medium suggests the need for allocation and control. Thus, the FCC licenses and monitors the use made of this communication channel. .The intent of regulation is not control *per see* The intent is to guarantee diversity of the message - the content of broadcasts. The receivers of the messages are passive; that is, they merely select from the available content. The rationale for regulation is that an oversight body is needed to ensure that diversity of message content occurs. Further justification for regulation derives from the fact that the medium - the airways - is public property.

In the case of voice transmission through common carriers, the rationale for regulation has derived from .he assumption that the public would best be served by the economies of scale resulting from the offering of such services through a monopoly. Rather than a concern with diversity of content, the concern was that all citizens be provided with the availability of common carrier communication service. This would contribute to diversity of facilitating the free flow of messages. Again, the receiver and the sender of messages are passive in that they utilize the communications medium that is made available to them.

Another model of regulation is based upon the existence of a variety of communication channels. The activity of data communications fits into

7Edwin Emery, *The Press and America,* Prentice-HaJl, Englewood Cliffs, NJ, 1962, p20.

this category. Users can select from a number of media, both public and private, for the transmission of their messages. An organization might choose to transmit data internally via a local area network. It might choose to transmit data externally via broadcast, cable TV, telephone lines, microwave or satellites. Here, it can be argued, regulation is not needed. Since the users have a variety of media from which to choose, diversity of messages would best be served by the absence of regulation. A corollary to this view is that the providers of equipment and services should not be regulated either. Thus, in general, the information industries involved with computer equipment and services have been free from regulation. It is assumed that diversity will best result from an atmosphere of competition. This philosophy is consistent with the recent trend toward deregulation in other industries such as airlines and trucking. It can be concluded that the marketplace has been viewed as the regulatory tool for guaranteeing diversity where options exist.

However, the communications arena, today, is a hybrid form, It presents problems for both the information industries and the regulators. The dilemma results from the convergence of traditional communications with computer processing. Such services as videotex and value-added telecommunications services bring the assumption underlying the approaches of the first two models into conflict. The first model assumes that in the case of common carriers, a separation exists between the communications medium and the messages it carries. Here, the guarantee of diversity through adequate common carrier service is provided by regulation. Since common carriers are not involved with the content of transmissions, the existence of a monopoly should not, then, influence the potential for diversity as long as everyone has access to the transmission media. In the case of broadcast, the operator of the communication channel does influence the content of messages (ie the telecasts). Here, however, regulation is directly interjected to provide a guarantee of content diversity. It is enacted through such rules as the Fairness Doctrine, community ascertainment, and the prime time access rules.

The philosophy underlying the second model of regulation is that certain parts of the information industry are not involved at all in the mechanics of the actual transmission of messages. Rather, they are concerned only with the content or the provision of equipment. Because of this, there has been judged to be no reason to regulate the communication activities of such entities. An example would be a company providing terminal equipment or access to online databases. The problem, however, occurs when an entity regulated by the assumption of the first model engages in activities considered to be in the domain of the second sphere. An example would be AT&T becoming a supplier of teleprocessing equipment. The reverse is also true. Organizations traditionally seen strictly as providers of data processing equipment and services have begun to enter the regulated domain of the first model. An example of this is Satellite Business Systems, a venture owned in part by ffiM.

This dilemma was evident a decade ago when the FCC reported the findings of its *First Computer Inquiry.* [8] The report was motivated by the development of technology that had enabled remote access to computing. This inquiry sought to explore the computer/communications interface and its inherent regulatory problems. It concluded that data processing should not be regulated, but that there should be maximum separation between the activities of common carriers and the entities

828 FCC 2d 267 (1971).

providing computer services. The intent of each regulation was to avoid cross-subsidy and eliminate (or at least reduce) unfair advantage by established giants in the field. The basis for regulation was to derive from the definition ·of such terms as 'data processing', 'remote access data processing', and 'message switching'.

By 1976 the total convergence of the information industries was apparent. That computers were essential to communications and that communications was a vital aspect of data processing obviated regulation based upon the assumption that a distinction between the uses of the technology could be made. A *Second Computer Inquiry* was then inaugurated." A concurrent motivation ws the societal trend toward deregulation in general, evidenced in the communications area in the proposed bills to revise the Communications Act of 1934.

The conclusions of this second inquiry sought to base regulation upon the type of service being offered rather than on the type of technology involved. A three-way categorization of services involving common carriers was made. 'Voice' service refers to the electronic transmission of a human voice to another human. 'Basic non-voice' service refers to the transmission of subscriber inputted information where the carrier performs such functions as converting the signal for transmission, routing it through the network, and maintaining the signal integrity in the presence of noise. The information current is not altered by the carrier's use of a computer. In contrast, 'enhanced non-voice' service refers to a communication setting in which the computer acts upon the form and content of the information to change it in some way. Based upon such distinctions, it was concluded that: common carriers may directly provide only voice and basic non-voice services; such carriers may provide enhanced non-voice services only through a separate subsidiary; and, computer facilities associated with the first two types of services may not be used for the third type of service. [10]

Antitrust

Thus, a third type of regulation emerges. This approach expands the domain of the second model of regulation. The policy orientation toward new types of communication is quite clearly in the direction of deregulation. The structure of this marketplace regulation is being shaped on two fronts. On the one hand, policy is being formulated through the settlement of the antitrust suit against AT&T. The suit, filed in 1974, charged that AT&T had abused its monopoly over the telephone industry by keeping competitors from the markets for equipment and long distance telephone service. The proposed settlement (filed 8 January 1982) and the subsequent modifications imposed by Judge Harold Greene (11 August 1982) have resulted in a major restructuring of the telecommunications industry.

AT&T is required to divest itself of its local operating companies. The twenty-two Bell Operating Companies (HOCs) will provide exchange telecommunication services and exchange access functions. They are prohibited from engaging in the competitive markets of long-distance and information services-! and the manufacture of customer premises equipment. They are, however, permitted to engage in the marketing and sale of such equipment. These BOCs are not to discriminate among providers of long distance services (of which AT&T will be one), but are to provide equal access to all interexchange services. A modification to the original

977 FCC 2d 384 (1980).

lOThis decision was questioned by both proponents and opponents of deregulation. In March 1980, AT&T petitioned the US Court of Appeals for clarification in light of a 1956 consent decree. This decree, which resulted from an antitrust suit against AT&T prohibited it from entering the data processing realm. In a 4 September 1981 decision clarifying the consent decree, Judge Vincent Buinno of Newark, NJ, whose court had control over the decree, agreed with the reasoning of the FCC in its *Second Computer Inquiry:* if AT&T developed a separate subsidiary, then it should be allowed to offer enhanced services. The rationale that the court used was that since the offering of such services through a separate subsidiary would be subject to FCC review, there would be no contradiction of the consent decree. Opponents of this inquiry had argued that the FCC violated the 1956 consent decree in its decisions (See 'US court says AT&T may enter telecommunications business', *AFIPS Washington Report,* Vol 7, No 9, American Federation of Infonnation Processing Societies, Arlington, VA, September 1981). The *Second Computer Inquiry* itself was upheld by the DC Circuit Court of Appeals on 12 November 1982 *(Computer and Communications Industry Association, et ai,* v FCC, Nos 80-1471, et at).

I1fnformation services are defined as '... the offering of a capability for generating, acquiring, storing, transfonning, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications'. (8 *Media Law Reporter,* 2118,2119).

settlement enables the BOCs to produce, publish and distribute telephone directories.

The new AT&T will retain its long-distance operations and those of Western Electric and Bell Labs. In addition, it is now able to enter the data processing arena. The effect of the 1982 settlement is to void the restrictions imposed by the 1956 Consent Decree prohibiting AT&T from entering the unregulated domain of telecommunications. Specifically, the new AT&T will be able to manufacture and market telecommunications equipment, and patents obtained by Bell Labs will no longer have to be made available to the public. A significant modification to the original settlement prohibits AT&T from entering the field of electronic publishing'? for seven years. At the end of this period, AT&T may petition to enter this area by demonstrating that the risk of anti-competitive behaviour is significantly diminished. It is at present, however, able to provide electronic directory services such as telephone listings, time, weather and so on. Finally, Judge Greene required that the Court should oversee compliance with the settlement and that it must approve the reorganization plan, which is to be enacted within eighteen months of the settlement.

Policy is also being influenced by the Congress. Recent bills to revise the Communications Act of 1934 provide for a gradual deregulation of the telecommunications industries. Senate bill 898, introduced on 7 April 1981, would have enabled AT&T to compete through a separate subsidiary in unregulated telecommunications markets and to enter new areas such as data processing, as long as the new subsidiary had its own book, employees and facilities. The legislation also would have released AT&T from the 1956 Consent Decree that prohibited it from offering any equipment and services on an unregulated basis. The primary assumption underlying the Senate bill was that there could be competition in the telecommunications industry without breaking up AT&T. [13] No action on this bill had been taken by the close of the session.

While Senate-passed S 898 allowed AT&T to compete in unregulated areas, the House of Representatives introduced legislation on 10 December 1981 that would have imposed tougher divestiture requirements on AT&T. The rationale behind HR 5158 was that the telecommunications industry was not nearly as competitive as S 898 suggested. In light of the divestiture requirements of the antitrust settlement, this bill was subsequently abandoned. Some have suggested that this latter bill provided the necessary impetus for AT&T to settle the antitrust suit.

Future Congressional activity must now take into account the policy guidelines suggested by the antitrust settlement. One issue to be resolved centres around the offering by AT&T of unregulated services through a separate subsidiary. Both the *Second Computer Inquiry* and Congressional bills required AT&T to form a separate subsidiary for the offering of enhanced services. In light of the agreed-upon divestiture it could be argued that this stipulation should no longer hold. At the time of the proposed settlement, however, AT&T Chairman Charles L. Brown indicated that the company would create a separate subsidiary to provide customer equipment and unregulated services whether or not the FCC or Congress required it.

I think it's in our best interest, regardless of legislation, to assure the public, the legislators and the regulators that there is no cross-subsidy between the regulated and the unregulated businesses. From that standpoint, it seems important to us that we carry out the separate subsidiary requirements. [14]

[12] Electronic publishing is defined as 'the provision. of any information which a provider or publisher has, or has caused to be originated, authored, compiled, collected, or edited, or in which he has a direct or indirect financial or proprietary interest, and which is disseminated to an unaffiliated person through some electronic means'. (8 *Media Law Reporter, 2118,* 2120).

[13] *Broadcasting and Government: A Review' of* 1981 *and* a *Preview of 1982* National Association of Broadcasters, 1982, pp 10-11.

[14] Andrew Pollack, 'Bell chainnan explains strategy that moved company to agree', *New' York Times,* 10 January 1982, p 14.

Consequently, in June 1982, American Bell was established. This AT&T subsidiary will engage in unregulated activities. In addition to marketing key telephone and data terminal systems and servicing private branch exchanges, it will be the outlet for AT&T's enhanced services. One such service is Advanced Information Systems/Net 1. This data communications network is designed to neutralize incompatibilities among present data terminals and provide users of dumb terminals with many intelligent terminal functions.

Impact of deregulation on diversity

Given that the underlying rationale for regulation had been the enhancement of freedom - choice in the acquisition of transmission facilities and services, and diversity of message content - a question arises. Will the marketplace, the new regulatory mechanism, enhance or impede such diversity?

Observers of the information industry have questioned the viability of the marketplace approach on a number of grounds. Their concerns posit the potential for two types of dominance. The more prominent concern is that a greater monopoly over transmission facilities and services will develop. Some fear that while AT&T will be able to expand its scope by moving into data processing products and services, the reverse is not likely. While other entities would be legally able to move into the interexchange domain, in fact, they probably would not be able to do so for financial reasons. Huge capital investments are required to develop and install the facilities for message transmission. AT&T is currently established in this area; others are not. AT&T also has an already developed research, development and manufacturing network (Bell Labs and Western Electric). As noted earlier, those entities with the early lead have tended to retain a dominant position in the industry.

A related issue stems from the failure of Judge Greene to require continued compulsory licensing of patents by AT&T. Because of a long-standing pattern of patent and patent-licensing abuse, the 1956 Consent Decree required that AT&T license patents to other parties. The rationale was based in part upon the public subsidization of AT&T's research and development efforts because of the monopolistic setting in which it occurred. Because of the recent settlement, AT&T is no longer required to renew or sell patent licences. Such a practice, while consistent with the spirit of competition, does not reflect the reality of the competitors. If Bell Labs and Western Electric were just starting up, such an argument would make more sense than in the present situation where AT&T already has a significant advantage. The effect is that AT&T is in a position to withhold innovations from the public and thereby reinforce its position of technological strength.

Some have noted that by divesting itself of the local operating companies, AT&T is in an even better position to assert its dominance. This is because it is free from governmental control and, unencumbered, it can engage more fully in the lucrative data communications domain. In addition to the stiff competition AT&T will give to rivals in this area, it also poses a significant threat to other telecommunications industries as well. With the voiding of the 1956 Consent Decree, AT&T is no longer prohibited from providing mass media services such as broadcasting and cable television. Current FCC rules do not prohibit broadcast and common carrier cross-ownership.[15] In light of the emerging videotex

15National Association of Broadcasters, op cit, Ref 13, p 11.

market, this opportunity has far reaching significance for the traditional broadcast industry and the emerging cable industries.

Despite the fact that AT&T must divest itself completely of the local operating companies, it remains a threat to their existence. There was nothing in the agreement that prohibited AT&T from setting up rival local distribution by cable, microwave or cellular radio for its high-volume business customers.[16] In addition to invading a key source of revenue for the BOCs, the impact on the public would be the potential for much higher rates. Such a result would undercut the longstanding principle of supporting diversity through equality of access.

Further reservations about the impact of the deregulation on the telecommunications industry have come in the form of a report issued by the General Accounting Office. It was commissioned by the communications subcommittee of the House Commerce Committee.[17] The report suggested that the 'maximum separation' principle of the FCC's *Second Computer Inquiry* was not being met. This was because a single entity is allowed to be established for the offering of unregulated services. Thus, the dominant carrier is able to provide both enhanced services and customer premises equipment through a single, conglomerate subsidiary. Doing so appears to be endowing American Bell from its creation with 'massive size, pervasive dominance, and the potential for abuse of market power'.[18]

Another concern noted in the GAO report relates to the need for an industry analysis function on the part of the FCC. The FCC must be in a position to analyse information regarding market structure, barriers to entry and other aspects of the domestic common carrier industry. Pointing out that the intention of the deregulation is the fostering of competition, the report stated:

> . . . the regulatory constraints placed on a particular carrier should reflect the market power that the carrier possesses in the relevant markets and submarkets in which it operates. Where a carrier is dominant and the potential for abusing its market power exists, the [Federal Communications] Commission should continue to regulate . . . the assessment of the success of policy initiatives to promote competition must ultimately rest on an analysis of their effects on the industry's structure - has the industry become more competitive'r'"

This view has added significance in light of one of the key provisions of the settlement ordered by Judge Greene. According to the terms of the settlement, AT&T is barred from engaging in electronic publishing for seven years. After such time an assessment is to be made regarding the anticompetitive implications of removing this restriction. The judgment of the GAO is that the FCC is not currently in a position to conduct such analyses.

A second, and perhaps more subtle, type of dominance has been suggested by members of the information industry concerning the effect of deregulation on the messages themselves. Specifically, they see a potential for less rather than more diversity of information content. Previously, diversity of content had been guaranteed through a two-pronged regulatory approach. As noted earlier, strict separation between providers of transmission facilities and information services had been maintained. Where a member of the information industry was involved in the provision of both (ie with broadcaster) regulation was in place to guarantee the free flow of information. Policy articulated in both Congressional bills and the settlement of the antitrust suit, however,

16 Ernest Hoisendolph, 'Rate fears voiced', *New York Times*, 10 January 1982, p 14.
17 *Legislative and Regulatory Actions Needed to Deal With a Changing Domestic Telecommunications Industry*, US General Accounting Office, 24 September 1981.
18 *Ibid*, p 114.
19 *Ibid*, p 24.

allows for the first time the possibility for an unregulated entity to engage in the provision of both transmission facilities and information content.

While the *Second Computer Inquiry* requires that a separate subsidiary be established for the provision of enhanced services, critics point out that insufficient attention has been given to the structural separation of the unregulated activities. For example, proposed legislation would have permitted the separate subsidiary to engage in joint ventures and partnerships with the regulated entity. [20] In addition, since the unregulated entity would be permitted to own transmission facilities and offer 'cloned' services (services identical to those provided by the regulated entity), AT&T would be in a position to offer a service such as WATS through its deregulated entity and allow its regulated service to deteriorate, thereby forcing the use of the deregulated service.P Also, since separation does not apply to AT&T's operations in foreign countries, an anticompetitive advantage could accrue to the domestic offerings of the same services.

Such fears appear to have been realized, at least in print. Numerous charges have been levelled against AT&T for its procedures regarding the establishment of its unregulated entity, American Bell. [22] They focus on the fact that this new subsidiary is not quite as separate as the *Second Computer Inquiry* stipulates. Specifically, it has been charged that AT&T allowed American Bell to acquire physical assets at less than their true current value. By not charging enough pre-operation expense, American Bell was, in effect, given a hidden subsidy at the expense of regulated ratepayers. AT&T's decision to allow American Bell to service private branch exchanges and data terminals rather than the BOC's was also questioned.

Of special relevance to the present consideration is the modification to the original antitrust settlement excluding AT&T from electronic publishing for at least seven years. Judge Greene believed that AT&T would be able to use its control of the interexchange network to undermine competing publications ventures. Since electronic publishing is still in its infancy, the appearance of AT&T with its combined financial, technological, manufacturing and marketing resources would overshadow the efforts of others. It would be in a position to discriminate in interconnecting competitors to its network and in providing maintenance to their lines. It would have both the incentive and the opportunity to develop technology, facilities and services favouring its own operations rather than the public at large. The net effect of such actions, according to Greene, would be a restriction of the flow of information to the public. [23]

Underlying Greene's temporary ban on electronic publishing is the premise that the source of AT&T's power has been its control over local service. Thus, removing the BOCs from AT&T's domain is removing the basis for future monopoly. In keeping with this view, Greene allowed for the entrance of AT&T into electronic publishing once a sufficient number of competitors are firmly established.

What this view fails to acknowledge, however, is the tremendous power that results from control of both transmission facilities and message content. Additionally, AT&T is not diminished by its loss of the BOes if it is able to engage in alternative forms of local distribution. Elsewhere, a similar concern has been acknowledged and is responsible for the ban on ownership of both daily newspapers and broadcast stations in the same locality.> However, the principle was not extended to this new domain.

Thus, the potential for monopoly exists, not only of the market share of

2°'Amendments "similarly deficient"', *Computerworld,* 20 July 1982, pp 11-12.
21'S 898 goes to Senate floor for vote', *Computerworld,* 4 October 1981, P 2.
22Phil Hirsh, 'American Bell faces FCC audio in immediate future', *Computerworld,* 8 August 1982, P 13.
[23]*8 Media Law Reporter,* 2118, 2121.
24Federal Communications Commission v National Citizens Committee for Broadcasting, 436 US 775 (1978).

information services but also of the content of the information itself. Both the cable and newspaper industries have expressed fears in this regard. Newspaper publishers are concerned that if Bell is able to move into electronic publishing, the main source of revenue for their industry is threatened. This would happen if AT&T is allowed to provide such information as weather, time and sports information along with telephone directory advertisements in electronic form (ie on home TV screens).

The cable industry is concerned as well. Since the nation is currently 'wired' for telephone but not for cable TV, to allow AT&T to provide videotex-type services would seriously hinder cable's ability to compete viably in the future. Despite the seven-year ban on such endeavours, it is uncertain how the antitrust settlement will affect such joint ventures as those currently underway with CBS and Knight-Ridder to provide videotex services. Many analysts feel these ventures could be structured to get around Judge Greene's restrictions.[25]

With so much control held by a single entity, the potential impact on the public is a reduction in the range of ideas made available to it; the 'marketplace of ideas' would diminish. This result would be ironic in light of the philosophy guiding deregulation that greater competition stimulates innovation and results in greater diversity.

Conclusion

The premise underlying the national policy shift toward deregulation of telecommunications is that competition will foster greater diversity, including diversity of ideas. As this article has pointed out, however, enabling an entity, especially a powerful one like AT&T, to control both the medium and the message represents a significant change in policy. The separation between medium and message has traditionally been seen as a way of guaranteeing that diversity of opinions would be expressed. The potential now exists for less rather than more diversity.

If the underlying rationale for the regulation of telecommunications is still the guarantee of freedom of information - diversity of information content - then the control by a dominant carrier (resulting from marketplace regulation) of both the channel and the message itself speaks to the essence of the nation's communications policy. The potential impact of deregulation in its proposed form is to undercut this aspect of US policy. Deregulation is but one identified means intended to serve the end of diversity. Certain aspects of the present approach, however, would suggest that deregulation, itself, has become the goal. Deregulation should occur only where diversity can or does exist. If not, our current monopoly might well be replaced with an even greater and less controlled one.

2SAndrew Pollack, 'Bell is expected to go along: with the proposed changes', *New York Times,* 12 August 1982, P 14.