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# The 2008 Election

IMPLICATIONS FOR THE  
MEDIA INDUSTRY

By Louis Chunovic

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## Executive Summary

The 2008 election is a likely watershed for the media business in the United States. A quarter century of consolidation and deregulation may be coming to an end.

With one year to go until Americans cast their votes, consensus opinion is that the presidency and control of Congress are the Democrats' to lose. But anyone who knows politics knows that the contentious and fractious Democratic party could do just that, that uncertainties (from the threat of another terrorist attack to a possible pandemic to a new war to a market crash) abound, and that one year is a long time for the conventional wisdom to hold.

Nonetheless, when it comes to media policy, change is in the air and there are stark differences between the parties. Current frontrunners for the Republican nomination include a former cable company lobbyist (former Senator Fred Thompson) and the cofounder of one of the two private equity firms that are taking Clear Channel Communications, the nation's largest radio-station owner, private (former Governor Mitt Romney). Republicans generally support the free market and deregulation, while top-tier Democratic presidential candidates are on the record in opposition to more media consolidation and to efforts to end so-called net neutrality.

Yes, media issues are "niche" issues, especially when compared to the war in Iraq and the battle over national health insurance, but they, too, directly affect tens of millions of Americans, and both consolidation and net neutrality, in particular, may yet become "wedge" issues, the kind that rally voters to the polls and to the banners of specific candidates and particular political parties.

If Democrats win in '08, a cycle that dates from the Reagan Administration and that created the present media landscape and put most major American media companies into the portfolios of larger corporations may come to an end; at the very least, countervailing influences, empowered by the Internet, will continue to grow stronger. And even if the Republi-

cans confound expectations and manage to retake Congress and hold on to the White House, don't expect media deregulation and consolidation to continue unabated: An unlikely Right-Left coalition, including social conservatives looking for more media local control, can be expected to oppose the further growth of Big Media and to pursue rollback, restriction and re-regulation.

Before making investments and placing expensive bets, financial and other interests considering moves predicated on more deregulation and greater consolidation would do well to ask themselves: In 2009 and after, what will Washington do?

## Introduction: The Media Capital of the United States

Ultimately, the true media capital of the United States is neither Hollywood, California, nor even New York City. Prudent show business executives, who have preached the defensive gospel of self-regulation for decades, have always known: the media capital of the United States is Washington, DC.

After all, the nation's capital is where the rules of the game are made. And they can be changed there with the stroke of a pen. It's happened many times before and in many ways.

In 1948, in a landmark antitrust case brought by the Truman administration's Justice department, the Supreme Court forced the five big, film-producing and theater-owning Hollywood studios of the time (including Paramount, Warner Bros. and Twentieth Century-Fox) to divest themselves of their theater chains and end the anti-competitive practice of "block booking" (in which studios used their production clout to force theaters that wanted to show one of their more popular films to also book one or more less desirable films).

In 1962, to cite another example, MCA, then widely understood to be the most powerful company in the entertainment world, and the preeminent supplier of programming to the fledgling medium of television

(even before it went on to acquire Universal Pictures), was forced by the antitrust division of the Kennedy Justice department to divest its core talent agency business, upon which the company had been founded.

And in 1970, before the rise of cable and other competitors to the Big Three networks, the FCC passed the Financial Interest and Syndication (Fin-Syn) and Primetime Access (PTAR) rules. Fin-Syn limited the three networks' ability to own their own programming, and to profit from it in the immensely lucrative syndication after-market. PTAR prohibited the networks from producing their own shows in what was then the first hour of primetime. A decade later, following the rapid expansion of cable and the creation of Fox Broadcasting, the fourth network, deregulation-minded Ronald Reagan was elected president, and that spelled the eventual end of both Fin-Syn and PTAR.

That led, in turn, to a round of consolidation and vertical integration in the media business, and the creation of a fifth and sixth broadcast network. Regulators were out of fashion, including censors, and that led, inadvertently, to the end of "family" fare as the only fare on television. "Edgy," "water-cooler" and "Must See TV" became the new buzzwords in an increasingly fragmented marketplace.

More recently, the 1996 Telecommunications Act, which also formally repealed both Fin-Syn and PTAR, memorialized a host of provisions that set the goal posts and boundary lines for current media, from the traditional broadcasters to the Internet. The '96 Telecom Act also had unintended consequences, at least according to the National Cable & Telecommunications Association (NCTA), cable's trade association.

The Telecom Act, among other provisions, mandated that security software be taken out of the inside of cable boxes, which subscribers presently lease, and put onto separate cable cards that can be inserted into a slot in new boxes or sets. The hope behind that provision, which didn't go into effect until mid-2007, was that "there would be a retail [sales] market for

digital boxes," according to Daniel Brenner, SVP for law and policy, NCTA.<sup>1</sup> "This little change is going to cost the cable industry and ultimately cable consumers maybe \$500-600 million a year."

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"The government says forcing us to do this will somehow trigger a retail marketplace," bringing new competitors for set-box stalwarts Motorola and Scientific Atlanta, Brenner said, but the result actually will be a "much more expensive [cable] box." And of course, said Brenner, that extra cost will end up being passed along to the consumer.

But that isn't all. Producers want to bring Fin-Syn back, media execs want to eliminate cross-ownership bans, cable and telecoms want to tier their services. In fact, basic, long-standing rules affecting newspapers, radio, television and the Internet will be in play throughout and after this election year.

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## 2008: The Redirection?

For the first time since 1928 no incumbent president or vice president from either party will be competing in the primaries; and (taking Vice President Cheney at his word that he will not run for the top office) for the first time since 1952, neither the Republicans nor the Democrats will field a candidate in the general election who is either the sitting president or vice president. Change, then, seems nearly inevitable, and in media, that change could easily upset the deregulation mindset and the center-right policies that have come to seem like conventional wisdom.

That conventional wisdom equates deregulation with free markets and free markets with democracy; furthermore, it holds as a corollary that the public simply is not interested in fundamental media issues, that it regards them (as observers once said about the legislative and regulatory battles over the Fin-Syn rules) as clashes between Mercedes owners and Rolls-Royce owners. Furthermore, that conventional wisdom holds that the last time the public was engaged by media issues was in the early 1930s, when the Communications Act of 1934, which defined the landscape of commercial broadcasting in the United States and remained in place until 1996, was crafted.

Not so. Conventional wisdom, like fundamental change, is cyclical. And increasingly, technology drives fundamental change. After all, when the Telecommunications Act was passed, Google, which, at

this writing, has a market capitalization greater than Time Warner, Disney and News Corp. combined, was still two years away from being incorporated.<sup>1</sup>

The rise of Internet culture, with its search engines and social networks, its ardent bloggers and its “long-tail” implications, means, among other things, that what happens in Washington no longer stays in Washington.

How important is the ubiquitous Internet? Another measurable metric of its influence comes from the bottom-line world of advertising: on approximately Labor Day 2007, the Internet surpassed radio as the fourth biggest advertising medium.<sup>2</sup> But the Web, still growing exponentially as an advertising medium, with the mobile Web and Web video just beginning to be tapped, is also the peer-to-peer information medium par excellence. Advertisers flock to the Web because it can change behavior, and that’s true whether that behavior is consumer or political.

Web-enabled, self-appointed watchdogs of both the left and right now spread the word and rouse “ordinary” folks at their computers to fire off letters and emails and, even, take to the streets, on issue after issue (and sometimes, as in the case of fun-loving “flash mobs,” for no reason at all).

In fact, as long ago as 2002 and 2003, an unlikely coalition of conservative and liberal interest groups, ranging from the National Rifle Association and the Parents Television Council on the right to the Consumers Union and the Media Access Project on the left, was roused in just this way. The unlikely allies banded together to stop what was at the time thought to be a slam dunk: namely, then-FCC Chairman Michael Powell’s attempt to sweep away decades-old regulatory constraints on media cross-ownership and consolidation. According to the *Columbia Journalism Review*, the public response in 2002 and 2003 opposing Chairman Powell’s proposed deregulation was “massive” and “unprecedented. For months before and after the new rules were announced ... opposition had been loud, passionate, and active. Hundreds of thousands of comments were sent to the FCC, almost all in opposition. It was the heaviest

outpouring of public sentiment the commission had ever experienced.”<sup>3</sup>

And according to FCC Commissioner Michael Copps, as many as three million people in opposition to consolidation contacted the FCC in 2003.<sup>4</sup> That surprising outpouring didn’t go unnoticed by Congress, and Powell’s proposed new rules eventually were overturned by a federal appeals court.

In fact, in media a fundamental redirection might have happened four years ago, if Senator John Kerry (D-Mass), the 2004 Democratic nominee, had been elected president. As he said during the campaign, “I’m against the ongoing push for media consolidation. It’s contrary to the stronger interests of the country.” If elected, he added in 2004, “I will appoint people to the FCC, and I will pursue a policy, that tries to have as diverse and broad an ownership as possible.”<sup>5</sup>

Of course he wasn’t elected. But two years later, at the end of 2006, the Democrats swept to power, albeit by narrow majorities, in both chambers of Congress. Major media advertisers on Madison Avenue, attuned to changes in public taste, were among the first to warn of a threat to media business as usual. At the beginning of 2007, the chief Washington lobbyist for the Association of National Advertisers, Daniel Jaffe, speaking at the organization’s Advertising Law and Business Affairs Conference, warned that the “marketing community faces a dramatically altered political landscape,” one with new dangers ahead.

For the first time in more than a dozen years, veteran Democratic satraps, including Iowa Senator Tom Harkin, a critic of advertising targeting children, and Massachusetts Senator Ted Kennedy, a critic of direct-to-consumer (DTC) drug advertising, chaired key committees. And many of those newly enfranchised policy makers “have a very negative view of the role of advertising in our society,” Jaffe said, adding that, for the first time, “major mainstream groups,” including the Institute of Medicine (IOM), the American Academy of Pediatrics (AAP) and the

American Psychological Association (APA) also have stepped forward with “attacks on advertising.”

Even the Jeremiahs of global warming, with their Oscar-winning cachet (courtesy of Al Gore’s *An Inconvenient Truth*), may make it hot for marketers, the ANA’s Jaffe warned, as the battle to contain greenhouse gas emissions leads to “calls for taxes or restrictions on marketing for a broad range of products, from light bulbs to automobiles to energy sources.”

Media hardware manufacturers, too, could be directly affected if politicians looking to take a stand against global warming target plasma-screen TVs. Just such a plan is under discussion in the United Kingdom, where the final report of the Tories’ Quality of Life Policy Group is expected, as *The Sun* newspaper put it, “to focus on plasma-screen TVs as particularly wasteful of electricity, and it is thought that many models would fall foul of [a] proposed energy cap unless dramatically more efficient technology is developed.”<sup>6</sup>

But the hottest of the hot button issues that Jaffe said could burn ANA members involve children’s and DTC advertising. Each is a multi-billion-dollar business. The IOM, for example, has called for congressional legislation if the industry doesn’t shift voluntarily within two years to marketing only “healthy” foods and beverages to children, Jaffe said, while the AAP has called for legislation to decrease the amount of children’s advertising by 50 percent. On the DTC front, the IOM called for a “moratorium on advertising new drugs for two or three years,” Jaffe said. In the decade that DTC drug advertising has been legal in the United States (one of only a few countries where it is), DTC drug ads on TV have increased some forty-fold; last year, drug manufacturers, spent nearly \$5 billion on DTC advertising.<sup>7</sup>

Jaffe called for that old standby -- more stringent self-regulation -- as one way to preempt legislative and regulatory bans and limitations. Another tactic Jaffe recommended was “becoming more active in the political process.”

In practice that will likely mean backing Republicans, because even so-called centrist Democrats, such as current frontrunner Senator Hillary Clinton, favor limitations on advertising that Madison Avenue opposes, and she is on the record opposing media consolidation, too.

“The market is a little bit different than the public airways,” Democratic FCC Commissioner Michael Copps said recently. Copps is one of five commissioners on the FCC, which by law, must have no more than three commissioners from any one party. All are appointed by the president to five year terms, which means in practice that presidents have the authority to shift the FCC’s political balance.

If a Democrat is elected president, querulous Copps, who has suggested that private equity is an unfit steward for the public airways, and who has expressed reservations about three of the highest-profile media transactions pending at this writing (i.e., the proposed merger between Sirius and XM, the proposed sale of Tribune Co. and the proposed acquisition of Dow Jones by News Corp),<sup>8</sup> might become spokesman for a new majority. His Democratic colleague on the commission, Jonathan Adelstein, also has said the FCC has the necessary legal authority to limit or roll back media consolidation. “Problem is, we have been under a relentless barrage of pressure from some of the largest media companies in America,” he said.<sup>9</sup>

Broadcasters, who have been acquired by non-broadcasters, are now held “captive to the unforgiving expectations of Wall Street and Madison Avenue,” Copps has said. The Internet is the future and needs to remain free and neutral; localism in media needs to be encouraged; programming needs to be diverse, not homogenized by a few corporate owners -- these are some of the strongly held beliefs that Copps, a Wisconsin Democrat whose current term runs through mid-2010, espouses.<sup>10</sup>

Changing the rules of the television business, at least, may be as simple as a philosophical change at the White House that results in one more like-

minded FCC commissioner joining Copps and Adelstein.

If that happens, the FCC will find allies aplenty in a Congress controlled by Democrats. As Representative Ed Markey (D-Mass.), chairman of the powerful House Telecommunications & Internet Subcommittee, put it: “Media ownership issues are still very relevant today. Let’s say in Providence, R.I., one company owns the only newspaper in town, the two biggest TV stations, five radio stations and the cable system. That is a very serious question that has not been reduced in its importance because of the advent of Webcasting or Web advertising. There still is a significant impact on local public issues that is still relevant and, as a result, media ownership issues remain relevant.”<sup>11</sup>

“Whether change comes will depend entirely on the next election. If a Democrat wins the Presidency after outlining his or her intentions as specifically as the leading contenders have done, and if the Democrats substantially increase their congressional majorities, then it will happen. If they don’t, it won’t.” *New Yorker* writer Hendrik Hertzberg was talking about health care when he made those remarks, but it’s true of the biggest media issues, the ones with the greatest potential financial impact, too.

Even *The Economist*, hardly a bulwark of liberal or progressive thinking, asked in a widely noticed editorial: Is America turning left? The respected conservative publication’s answer: “Probably.”<sup>12</sup>

Bill Bradley, the onetime basketball great and former New Jersey senator, who ran for and lost the Democratic nomination to Al Gore in 2000, is one of the politicians and pundits now predicting that a center-left coalition is coalescing in the United States. Recently, he called for several changes that would impact media bottom lines, among them the public financing of campaigns, the restoration of the Fairness Doctrine and the break-up of so-called media “monopolies.”<sup>13</sup>

The issues that roused the public in 2002 and 2003 never went away, and they have proliferated -- inde-

gency on broadcast television ... privacy and equal access in the Internet age ... the marginalization of minority interests by concentrated ownership of local media ... a general sense that news has become sensationalized entertainment, without a compelling public interest standard.

When it comes to those media issues, the country may be at or near a tipping point. Groups like First Tuesday Media, a Hollywood production company with a political agenda, are forming on both sides of the political spectrum, looking to influence the 2008 election. And the analog spectrum auction, scheduled for January 2008, and the digital transition, scheduled for February 2009, will raise public awareness about media issues in general, and may make it that much easier for politicians looking for potent wedge issues to target the rules governing media businesses.

Of course, there is no one "media industry." In the Digital Age, media are proliferating, and there are several, sometimes overlapping media industries, and players in them often have divergent interests. Case in point: the epic battle for the hearts, minds and wallets of media consumers (regardless of whether they're viewing the TV, computer or mobile-device screen) now unfolding between cable and phone companies; meanwhile, the long ground war between broadcast and cable television interests over such issues as digital must-carry continues.

On February 17, 2009, less than a month after the next President of the United States is inaugurated, the nation's TV stations, operating under an FCC mandate, will go all-digital, ending the era of analog signals. An estimated twenty million analog-only households will be left in the dark, without TV service, unless they buy \$60 converter boxes for which the Feds promise to offer \$40-off coupons. That much-vaunted Digital Transition is likely to occur regardless of who wins the presidency, simply because the analog spectrum is scheduled to be auctioned, raising perhaps as much as fifteen billion dollars for the U.S. Treasury, in January 2008. But after that, the media future could be very different from the media present, depending on which candidate

takes the oath of office and which party controls Congress.

The two political parties view the media future in starkly different terms. For example, no sooner did the FCC release a group of ten studies on its proposed lifting of a decades-long cross-ownership ban, than a group of Democratic congressmen criticized the studies -- and the FCC -- in unusually strong terms: The studies were "totally lacking in transparency," the congressmen wrote in a letter to the FCC chairman. Said one, New York Democrat Maurice Hinchey: "It's clear from the manner in which the FCC handled these studies that the conclusions were pre-determined: this administration is ideologically motivated to encourage the consolidation of the American media into the hands of a few, so the FCC purchased the research that would support its agenda."<sup>14</sup> Of course, with a new president picking new FCC commissioners, that agenda could undergo a 180 degree change.

But if the present FCC succeeds in lifting the present cross-ownership ban, which is exactly what Chairman Kevin Martin has declared he will do, a single company will be able to own -- in each city -- the major daily newspaper, the major cable provider, eight radio stations and three television stations. If after the 2008 election the Democrats control the levers of the executive branch and Congress, the great likelihood is that the cross-ownership ban will remain in place or, if need be, will be reinstated. Given the populist language of the major Democratic presidential candidates, that ban may even be tightened, forcing asset sales at major media companies.

"We have way too much concentration of media ownership in the United States," North Dakota Democratic Senator Byron Dorgan declared during a mid-October congressional hearing. "If the [FCC] chairman intends to do something [about eliminating the rules] by the end of the year," said Dorgan, "there will be a firestorm of protest and I'm going to be carrying the wood."

As FCC Commissioner Copps put it recently, "We've got issues of peace and war. We've got is-

sues of how do we insure our kids and insure our families? How do we find jobs? How do we educate our kids? Those are all important. And one of those may be your number one issue. All I'm saying is, if that's your number one issue, you better make this media consolidation issue your second most important issue. Because all those big issues get filtered and funneled through big media."<sup>15</sup>

## The Issues: What They Are

### A La Carte Cable

Cable and satellite providers “bundle” their programming, so subscribers pay for multi-network packages or “tiers,” rather than single networks. So-called “a la carte” would do away with mandatory tiers.

One proponent of a la carte: Kevin Martin, the chairman of the FCC, who says the agency needs more legislative authority to change the rules. Also in favor: consumer groups and family-centric activists, particularly those on the Christian Right, who want to receive, and pay for, family-friendly networks, and nothing else.

Against a la carte: the cable industry itself, which contends that, if a la carte is instituted, “minority-taste networks would disappear at once,” as Daniel Brenner, SVP, NCTA, put it recently, citing A&E, HGTV and Food Network as examples of at-risk networks, while networks that survived in an a la carte world would shrink programming budgets and expand marketing budgets to woo subscribers. “Most consumers would wind up spending more money and get less programming,” he told a recent industry panel.<sup>1</sup>

Also against a la carte: several civil rights and minority interest groups, including the Black Leadership Forum, the Hispanic Federation, the Labor Council for Latin American Advancement, the League of United Latin American Citizens, the National Black Chamber of Commerce, the National Congress of Black Women and the Hispanic Tele-

communications and Technology Partnership, all of which signed a letter to FCC Chairman Martin, criticizing his a la carte proposals and contending that a la carte would harm the “cause of greater diversity in cable-television programming.”<sup>2</sup>

During what was a short, but particularly nasty public spat between the chairman and the minority groups, Martin released a public letter saying, “The ‘grass roots’ opposition to a la carte is actually a sophisticated lobbying campaign where seemingly disinterested third parties—like nonprofits and legislators—are spreading the anti-a la carte message using minority programming as the key issue. In fact, rather than being disinterested, these third parties have much to gain.... [H]undreds of thousands of dollars in donations and other benefits [were] showered by cable companies on some of these nonprofits.”<sup>3</sup>

Currently, the campaign against bundling is being waged in Congress, where a bill has been introduced to give the FCC the specific authority to eliminate it, and in federal court, where a class-action lawsuit has been filed against the major cable and satellite programming services providers by well-known Los Angeles antitrust attorney Maxwell Blecher, founding partner of Blecher & Collins.<sup>4</sup>

The companies named in the Blecher suit include NBC Universal, Viacom, The Walt Disney Co., Fox Entertainment Group, Time Warner, Comcast Cable Communications, Cox Communications, DirecTV, Echostar Satellite, Charter Communications and Cablevision Systems Corp.

Pay TV providers comprise a “cartel,” according to Blecher. “The antitrust laws protect the right of choice.... Here the customer is denied that choice.”<sup>5</sup>

If the class-action suit goes forward, and if Blecher prevails, some 80 million U.S. cable and satellite subscribers could become parties to the suit, with eventual damages conceivably reaching astronomical totals.

## Commercial Speech and the First Amendment

Should a satellite TV provider be prohibited from claiming in its advertisements that its high-definition picture quality is superior to a cable competitor's? Earlier this year, the U.S. Court of Appeals for the Second Circuit said yes, enjoining DirecTV from airing commercials with celebrities William Shatner and Jessica Simpson, among others, that made precisely that claim in comparison to picture quality from cable. The court found the satellite company's claims to be "false" and "misleading."<sup>6</sup>

More consequentially, should DTC pharmaceutical-company drug advertising -- a more than \$4.5 billion per year business and, after automobiles, the second-largest TV advertising category -- face stringent new limits? The Food and Drug Administration has begun to consider the issue, ordering up a study to see whether "positive visual images [in ads] override in consumers' minds the discussion of risks and possible side effects."<sup>7</sup> And a recent House-passed bill gives the FDA new powers to fine drug marketers who make misleading claims, with levies of up to \$250,000 per day.

But, actually, that bill was considered a win for Big Pharma and Madison Avenue marketers, because they beat back an attempt to include provisions that would have banned *any* ads for new drugs in their first three years on the market. All in all, the legislation was "one of the most significant victories for advertising and commercial speech in the past two decades," according to a lobbyist for advertising and media interests.<sup>8</sup> At this writing, that legislation was expected to pass the Senate and be signed by President George Bush.

How far can advertisers go? In Nevada, owners of legal brothels recently won the right to advertise in local newspapers, with a U.S. District Court judge declaring that state laws banning such ads were "overly broad" and unconstitutional.<sup>9</sup> But the concept of if-it's-a-legal-product-then-advertising-it-is-legal-too only goes so far in today's America. Con-

sider tobacco and alcohol. Consider, too, advertising aimed at children.

The obesity epidemic, in both adults and children, has been well-documented, with fat-laden fast foods and sugary breakfast cereals often singled out for their contributions to the problem. In fact, with multi-billion-dollar lawsuits targeting both the kids' food manufacturers and the children's television programmers who take their advertising dollars, and with politicians and regulators threatening new restrictions, the TV industry has rushed to toughen its self-regulation in self-defense.

Cartoon Network, Discovery Kids and Nickelodeon all have vowed to stop licensing their popular TV characters, such as SpongeBob SquarePants, for advertising and promotion of products that do not meet stringent health guidelines.<sup>10</sup>

How stringently do television networks need to police their own airwaves for false or deceptive advertising? In fact, the Federal Trade Commission is looking into holding TV and radio networks responsible for any deceptive ads they air.<sup>11</sup>

That could lead to sharply increased monitoring costs for networks as they try to verify all manner of advertising claims.

Yes, so-called "commercial" speech is protected by the First Amendment, according to long-standing federal legal doctrine, though many legal scholars say its protections are at only a so-called "intermediate level," compared to non-commercial political and social speech. The Supreme Court may be a bulwark for commercial speech protections; when the issue arrives there, as it surely will, the court's new conservative majority is likely to be sympathetic to Justice Clarence Thomas's "unapologetically dubious" view that "commercial speech has lesser value than noncommercial speech."<sup>12</sup>

## Consolidation

The last quarter century has seen the rise of ever-larger, ever-more-vertically integrated global media

conglomerates -- Time Warner, Viacom/CBS, News Corporation, The Walt Disney Company, General Electric/NBC/Universal et al -- that dominate media production and distribution in the United States, and have media interests around the world.

Despite the broadcast-newspaper cross-ownership ban, which the FCC may again try to lift, there are significant waivers and exemptions: Rupert Murdoch's News Corp., for example, owns both the *New York Post* and two television stations in the nation's largest market, and by the end of 2007, is expected to formally add the *Wall Street Journal* to the fold. And in Los Angeles, the Tribune Company owns both a television station, KTLA, and the *Los Angeles Times*. Since the mid-1970s, two-thirds of all independently owned newspapers in the United States have disappeared.<sup>13</sup> And in radio, one company, Clear Channel Communications, owns more than 1,100 stations around the United States. Local ownership, once a hallmark of American media, is all but gone.

As new choices and new media proliferate in cyberspace, should Big Media grow even bigger? That is the question that subsumes most other media issues.

The market power of just one New Media firm, Google, has raised both antitrust and privacy concerns. At this writing, its intention to purchase DoubleClick, the ad-placement company, is expected to face strong, and skeptical, regulatory and legislative inquiries, both in the United States and the European Union.<sup>14</sup> And while the combination is likely to pass muster in the U.S., the E.U. is expected to be a much harder sell.

Consolidation is the premiere media issue north of the border, too. Canada's regulatory Radio-television and Telecommunications Commission recently held hearings prompted by a wave of mergers and acquisitions there, mirroring those in the U.S., and the likelihood is that it will put an end to an era of unfettered growth. While big broadcasters and cable and satellite company executives testified that no new rules were needed, the commission's chairman signaled the likely new direction, saying "We

are very concerned about concentration, because it could lead to undue market power and so few voices. And that may affect our democratic system."<sup>15</sup>

In a recent opinion piece in the *Seattle Times*, one of the few papers in the country that supports the current ban against newspaper and broadcast cross-ownership in a single market, FCC Commissioner Copps said: "We have a system that has been buffeted by an endless cycle of consolidation, budget-cutting, and bureau-closing. We have witnessed the number of statehouse and city hall reporters declining decade after decade, despite an explosion in state and local lobbying. As the number of channels has multiplied, there is far less total local programming and reporting being produced. These days, if it bleeds, it leads."<sup>16</sup>

And Copps's Democratic colleague on the commission, Jonathan Adelstein, has called for increasing minority media ownership as a way to decrease consolidation, a call echoed by Congressman John Conyers, the influential Democratic chairman of the House Judiciary Committee, who sent an open letter to the FCC in which he said, "It is unacceptable for the FCC to move ahead with plans to allow for more media consolidation without first addressing how to increase minority ownership."<sup>17</sup>

At a public FCC hearing held in Chicago on the subject of media ownership, a meeting lasted some eight-and-a-half hours, where approximately 200 persons spoke, "people were passionate, even raucous -- and they were deeply skeptical of Big Media and the FCC itself," according to a report in *Editor & Publisher*. The idea of additional consolidation by Big Media was "plainly anathema to most of the attendees."<sup>18</sup> In all, approximately 1,000 persons attended the hearing. The consolidation issue has particular local resonance in Chicago, where the hometown-based Tribune Company is being taken private in a complex plan that would require additional cross-ownership waivers from the FCC.

At this writing, a proposed merger between the Sirius and XM Satellite Radio companies is under examination by regulatory and legislative interests, too.

Will it be permitted? Will it create a monopoly or, as the heads of the companies involved maintain, should the satellite radio business be examined in the larger context of iPods, Internet radio and other audio choices?

The National Association of Broadcasters, the industry trade association, is vehemently opposed to the merger, and no less an authority than XM's chairman Gary Parsons says he knows why: "They clearly view it as competition and, candidly, they should," Parsons said, at a media analysts' conference in New York. Among those in favor of the merger, according to Parsons, are minority and Christian interest groups, who see a stronger satellite radio industry as a better outlet for the kind of niche and local programming they represent.<sup>19</sup>

Media-related M&A remained at record levels in Q3 2007, though the rate of increase is slowing somewhat, but countervailing forces across the political spectrum are stirring. Three million persons in opposition to consolidation and deregulation contacted the FCC five years ago, according to Commissioner Copps. They are still out there, available to be mobilized, perhaps by populist rhetoric and a presidential candidate, again.

## **Digital Transition/Spectrum Auction**

Approximately one month after the next president of the United States takes the oath of office, the long-awaited and much-delayed Digital Transition will happen, with over-the-air television broadcasters ending more than six decades of analog service and, at a stroke, making approximately 20 million television sets in the country obsolete (unless their owners buy special converter boxes, which are expected to retail for around \$60 each, with the federal government offering \$40 vouchers to defray the cost). In the meantime, the government is planning a January 2008 auction of the valuable, 700 megahertz, "beachfront" analog portion of the spectrum; that auction is expected to put at least \$10 billion, and perhaps as much as \$15 billion, into U.S. coffers. At least, that's the plan.

Recently, Verizon Wireless went to court, looking to overturn open-network rules governing the auction. Those rules, sought by Google and accepted by the FCC, will allow wireless customers to use the mobile phones and software of their choice in accessing the new networks made possible by the newly available spectrum. And though Verizon has not, as of this writing, sought a stay of the auction itself, it's now possible that it could be pushed back -- and even more directly impact the 2008 election debate.

One candidate, former Senator John Edwards, is on record, in an open letter to the chairman of the FCC, supporting the open-network spectrum-auction rules.

## **The Fairness Doctrine**

Should media be required to present all sides of controversial public issues? That the answer is "yes" once was not only taken for granted, it was enshrined in an FCC regulation. For the first four decades of television history some version of the Fairness Doctrine was in place. Then, in 1987, the commission abolished it, calling it both unconstitutional and unnecessary in an environment of burgeoning media choices.

Following the FCC's move, Congress voted to make the Fairness Doctrine's provisions law, but the new legislation was vetoed by President Reagan. In the years since, other attempts to reinstate the Fairness Doctrine have failed, and in its absence, conservative-oriented talk radio has prospered; most recently, opponents of talk radio's dominant conservative voices, such as Rush Limbaugh and Bill O'Reilly, have seized on the issue as a way of restoring so-called "balance" to the airwaves.

The Bush White House has called the Fairness Doctrine "unnecessary." According to many conservatives, the so-called "hard left" doesn't want to restore the Fairness Doctrine because they "want diversity -- they want conservatives to SHUT UP!" -- as Jeffrey Lord, the co-founder of QubeTV, an online user-generated conservative video site, put it.<sup>20</sup> And as Cliff Kincaid, editor of the AIM Report, published by Accuracy In Media, a non-profit with a generally

pro-Republican orientation, said, re-instating the Fairness Doctrine is simply a “plan to silence conservatives.”<sup>21</sup>

At this writing, Republicans have called for the passage instead of The Broadcaster Freedom Act, which would prohibit the FCC from reinstating the Fairness Doctrine. Pushing the proposed legislation forward against Democratic opposition are two Republican legislators with ties to the radio industry -- Indiana Representative Mike Pence, a former talk radio host, and Oregon Representative Greg Walden, a radio station owner.<sup>22</sup>

Because they would have to accommodate equal-time demands, broadcasters in general, and not just those that are conservative, oppose any revived Fairness Doctrine. In the first half of 2007, News Corp., which owns the right-leaning Fox News Channel, paid a well-connected lobbyist \$160,000 to lobby the Congress and the FCC to prevent the return of the Fairness Doctrine, among other proposed media-related legislation.<sup>23</sup>

## **Indecency, Violence and Values**

In any election year, you can be sure, politicians will rise to protect children from the untoward effects of media and to support “decency” and all-American values, and they will condemn “Hollywood values.” It’s happened many times before, and 2008 will be no exception.

The current Republican-dominated FCC has waged a “zero tolerance”-of-indecency campaign against “fleeting” expletives and images that goes far beyond the limits of previous FCC purview. Whether it’s Janet Jackson’s exposed breast at the 2004 Super Bowl or Cher cursing on live television at an awards show a few years before, the FCC’s zero tolerance stance and willingness to impose substantial fines has had a demonstrable chilling effect on TV programmers.

For example, after the FCC began its zero tolerance campaign, and after it fined CBS \$550,000 for the Jackson incident, fully 20 percent of the network’s

affiliates declined to air a much-lauded 9/11 documentary, because the inclusion of passing expletives uttered by first responders on the scene that day could have resulted in substantial monetary fines under the new policy.

At this writing, the Third U.S. Circuit Court of Appeals is considering whether or not to reverse the \$550,000 fine levied by the FCC against CBS for Jackson’s publicity stunt.

And in Congress, a bill, the Protecting Children from Indecent Programming Act, has been introduced that would codify the FCC’s ability to fine broadcasters for the kinds of “fleeting” expletives that heretofore were not prosecuted. “We deserve a peace of mind when watching television with our family and expect a level of decency in our programming,” said Mississippi Republican Congressman Chip Pickering, who introduced the legislation.<sup>24</sup> Under the proposed new legislation, the FCC could levy fines up to ten times larger than the previous upper limit. Of course, those fines and the FCC’s zero tolerance policy are vehemently opposed by broadcasters.

## **Intellectual Property, Copyright Protection and the Internet**

Content copyright holders, often the so-called Old Media, tend to view the Internet as if it was the lawless Wild West, where brazen New Media robbers steal their hard-earned intellectual property.

New Media proponents often refer to the so-called Fair Use Doctrine, which allows limited use of copyrighted material for artistic, journalistic and scholarly purposes, as the legal justification for their unauthorized video and audio postings. According to one recent report from the Computer and Communications Industry Association, a pro-fair-use organization that counts Google among its members, the fair use industries contributed more to the American economy in the past decade than did the traditional copyright industries (\$2.2 trillion compared to \$1.3 trillion).<sup>25</sup>

That report and its assertions have been hotly challenged by the copyright holders, and Viacom, for one, has filed a \$1 billion suit against Google and its YouTube subsidiary over unauthorized posting of videos of popular Viacom shows, whether on CBS, Comedy Central, MTV or any of the other programming brands under the company's corporate umbrella.

One measure of the magnitude of the problem: The FCC sent out 573,000 copyright violation notices to the ten largest U.S. Internet service providers, in the month of January 2007 alone.<sup>26</sup>

One measure of the magnitude of what is at stake: By mid-2007, the Internet's aggregate advertising revenues, had surpassed those of radio's, \$21.7 billion compared to \$20.4 billion, according to a study by EMarketer, while a report from Veronis Suhler Stevenson predicted that the Internet will become the premiere advertising medium, displacing television, by 2011.<sup>27</sup>

## **Low Power FM Radio**

LPFM is the congressionally mandated local broadcast medium that few people have heard about.

It is intended to provide non-commercial broadcasting capabilities for a limited geographical area, within 3.5 miles of the station. Not insignificantly, an LPFM transmitter and facilities are relatively inexpensive to set up. And traditional broadcasters and newspapers are forbidden from setting up or buying an LPFM station of their own, which leaves the nascent medium as the province of colleges, churches, public interest groups and others who want to reach out and communicate to their immediate community.

Those groups want to see an expansion of LPFM licensing, opening up FM radio not only to traditionally under-served voices of hyper-local groups, but to the big city neighborhoods where it is generally not yet a presence. A bill that would do that, the Local Community Radio Act of 2007, co-sponsored by Senator John McCain, is moving through Congress. It faces opposition from the National Association of

Broadcasters, which opposes any expansion, especially into the cities, saying that that LPFM will interfere with existing stations' signals.

## **Net Neutrality**

In general, the principle that Internet service providers (ISPs) should provide equal -- not "tiered" -- services to all applications and all subscribers, known as network or Internet neutrality, is opposed by Republicans and supported by Democrats. Opponents say a policy of strict net neutrality will stifle incentives for innovation and network upgrades; supporters say it's necessary to prevent Internet gatekeepers from discriminating, whether against potential competitors or against viewpoints they don't favor.

Until recently, the debate over net neutrality was conducted mostly away from the larger media spotlight, during insider industry forums and on legislative and regulatory committees. For example, when the man widely regarded as at the forefront of the development of the World Wide Web, Tim Berners-Lee, testified on the future of the Internet before the House Commerce Subcommittee on Telecommunications and the Internet, even many committee members were absent from the hearing, having left to vote on the House floor, as Berners-Lee pronounced net neutrality necessary. "A nondiscriminatory Internet provision is very important for a society," he said, adding that in other countries net neutrality is "assumed."<sup>28</sup>

Recently, the anti-trust division of the Department of Justice surprised many observers by jumping into the fray, cautioning the FCC against implementing net neutrality regulations that, it said, could "shift the entire burden" for costly network upgrades to consumers.<sup>29</sup> In its statement, the DoJ compared the Internet to the U.S. Postal Service, which has a tiered rate structure under which customers can pay more for faster delivery.

Another federal agency with authority over media and telecommunications issues, the Federal Trade Commission, also went on the record against net neutrality, with its chairperson, Deborah Platt Majoras,

ras, a long-time advocate of self-regulation, saying, "No way is Verizon or any of these other companies powerful enough to disrupt the amount of consumer-generated content that's out there.... If they suddenly put a stop to that, there will be a hue and cry across this nation like no tomorrow, and they will lose a lot of customers."<sup>30</sup>

When she appeared recently before a Senate subcommittee, its Democratic chairman, North Dakota Senator Byron Dorgan, skeptical of the FTC chairwoman's laissez faire attitude, said, "We're headed toward a circumstance where big providers that have a lot of muscle ... will set up different lanes and freeways," depending on users' abilities to pay.<sup>31</sup>

Despite the stakes, and despite the stark differences, the issue remained firmly inside the Beltway. Then, approximately six months after Berners-Lee testified before a nearly empty subcommittee dais, Verizon Wireless turned down Naral Pro-Choice America, an abortion rights group, that wanted to employ its network for the kind of opt-in text-messaging program that, increasingly, is being used by politicians and activists of all persuasions. Under the program, Naral text messages -- about issues, meetings and so forth -- would go only to people who had signed up to receive them.

However, a spokesperson said, Verizon had a right to reject messages that were controversial. The rejection, countered Naral's president, blocked free political speech. "Regardless of people's political views, Verizon customers should decide what action to take on their phones," she said. "Why does Verizon get to make that choice for them?"<sup>32</sup>

Within a day, the telecom giant had reversed itself, saying the Naral texting program would be allowed to proceed. But, arguably, the damage was done. And Verizon continued to maintain that it had a right to decide whether or not to transmit similar messages in the future.<sup>33</sup>

In fact, as it turned out, Verizon's assertion was enshrined in the service contract its broadband subscribers sign, which also is the case for AT&T sub-

scribers. Both AT&T, which also had faced a brief flurry of criticism when it censored political comments by a rock singer during a concert Webcast, and Verizon include language in their lengthy contracts warning that customers who "damage the name or reputation" of the company or its subsidiaries and partners may face suspension or termination of service. After the *Los Angeles Times* first reported on the provisions, an AT&T spokesperson said the contract's language would be revised and a Verizon spokesperson said the provision had never been used against persons who disparaged the company.<sup>34</sup>

In New York, as in other states, Verizon is beginning to roll out broadband television and Internet services that rival those of the established cable companies. Unlike the cable companies though, which were obliged to negotiate licenses with each community they serve, the phone giant is looking for a statewide license in the Empire State, even as it's negotiating with New York City itself to provide competition for the incumbent Time Warner and Cablevision cable franchises there.

One proposed bill in the state legislature, that Verizon opposes, would give Verizon that statewide license, but only in return for a pledge of net neutrality. While negotiations between Verizon and the New York City government continue, officials in the administration of Mayor Michael Bloomberg, the billionaire politician/media entrepreneur who is widely regarded as a possible independent candidate for president in 2008, "have yet to reveal where they stand" on net neutrality and related issues, according to a recent *New York Daily News* editorial.<sup>35</sup>

Around the same time as the Verizon-Naral controversy, Comcast, the nation's largest cable provider, was raising net neutrality concerns itself with a murky policy that summarily cut Internet service to so-called "bandwidth hogs," high-speed Internet subscribers who used movie and music download services too often. Questioned by the *Washington Post*, a Comcast spokesperson declined to say what specific amount of bandwidth usage triggered the service cuts. "It's our responsibility to make sure everyone has the best service possible," the spokes-

person said, "so we have to address abusive activities so they won't damage the experience for other customers."<sup>36</sup>

While the net neutrality debate continues in the United States, one country, Japan, that in 2000 passed regulations opening telephone company DSL lines to competitors, saw its broadband usage rates and downloading speeds explode, while subscriber costs plummeted. Unlike in the United States, broadband service in Japan means broadcast-television-quality video. In Japan, broadband service is "eight to 30 times as fast as in the United States -- and considerably cheaper."<sup>37</sup> Part of the reason, according to observers, is a generally newer network infrastructure. Another part: The net neutrality rules that opened Japanese networks to competition, and mandated low rates for companies wanting to "rent" bandwidth from established telco DSL providers, which spurred innovation and competition in which faster speeds and lower costs became selling points.

## A Note on Method

At this writing, these are the major party candidates for president: For the Democrats, Joseph R. Biden Jr., Hillary Rodham Clinton, Christopher J. Dodd, John Edwards, Mike Gravel, Dennis J. Kucinich, Barack Obama and Bill Richardson. For the Republicans, Rudolph W. Giuliani, Mike Huckabee, Duncan Hunter, John McCain, Ron Paul, Mitt Romney, Tom Tancredo and Fred Thompson. Odds are that most voters will not be familiar with every name on this list.

Will Representative Ron Paul become President of the United States? For that matter, will former Senator Mike Gravel? Or will former Governor Mike Huckabee, who five years ago paid \$15,000 to settle a lawsuit by the Arkansas Educational Television Network, which accused him of pressuring the network to cancel a talk show hosted by a Democratic political opponent<sup>1</sup>; or will Representative Dennis Kucinich, who was once a Cleveland Plain Dealer copy boy and a copy editor at the Wall Street Jour-

nal, and who has strong opinions about "reforming" the media?

Each has passionate partisans, perhaps particularly on the Internet. While their chances are slim, the possibility that they could have a substantive policy impact on their parties is greater. Nonetheless, this report examines the candidates who could conceivably win their party's nomination. For the Republicans, Giuliani, McCain, Romney and Thompson; for the Democrats, Biden, Clinton, Dodd, Edwards, Obama and Richardson.

Also, this report is a snapshot of the race at a moment in time, with approximately one year to go until election day, and with the race, already nearly a year long, entering a furious four month period at the end of which, on what is being called Super Duper Tuesday, February 5, 2008, when some 20 states will hold primary elections, the two major party nominees may well be decided.

Once again, voters in Iowa and New Hampshire are expected to have disproportionate voices in picking the nominees. Right now, Iowa for the Democrats is essentially a tight three-person race -- Clinton, Obama, Edwards -- while New Hampshire for the Republicans is a two-man race -- Romney and Giuliani -- with polling numbers for John McCain, who won the New Hampshire primary in 2000, beginning to tick upward.

Meanwhile, sizable parts of the electorate have favorable opinions of Al Gore and Michael Bloomberg, and a minority of the punditocracy is convinced that at least Bloomberg, a billionaire media magnate with the personal resources to make the race, will enter the campaign, but only after the major party nominees are established, as an independent. (Of course, the multi-billionaire New York mayor has said he isn't running, but he has yet to issue the kind of Shermanesque statement that would preclude a self-financed 2008 campaign.)

On media issues, and in particular on media consolidation and network neutrality, the differences between the two parties are stark, and media issues

could easily become a rallying cry for either party to rouse its base. At this point, of course, compared to the Iraq war and health care, media-related matters are still “niche” issues, as Evan Tracey, chief operating officer of Campaign Media Analysis Group, which tracks political advertising, characterized them recently. But, with the Teamsters and other big unions, along with activists all across the political spectrum, taking stands on net neutrality and media consolidation, that could certainly change.

Net neutrality, or its absence, has the potential to affect tens of millions of voters where it counts -- in their pocketbooks and in their ability to access the broadband Internet. And media consolidation -- the issue that galvanized hundreds of thousands, and perhaps as many as three million, potential voters to contact a single regulatory agency five years ago -- could yet be seized upon by a presidential candidate, who will take it from a niche concern and make it into a battering-ram wedge issue. And if that happens, for media after Inauguration Day, the rules of the game may very well change.

## Candidates on the Issues

### Joe Biden (D)

#### *net neutrality ...*

The Democratic Senator from Delaware, a long-shot presidential contender, breaks ranks with the other candidates in his party when it comes to supporting net neutrality. During a 2006 Judiciary Committee hearing on a bill with a net neutrality provision, he voiced skepticism, not convinced that a problem existed at all, saying that if providers began to discriminate among users, there would be such a public outcry that “the chairman will be required to hold this meeting in this largest room in the Capitol, and there will be lines wandering all the way down to the White House.”<sup>1</sup>

**What to expect:** We believe that, if elected, Senator Biden will pursue the kind of so-called centrist policies favored by media incumbents.

### Hillary Clinton (D)

#### *net neutrality ...*

“We have to have more competition, more voices and [keep] the Internet open so that we don't put it in the domain of any one or a couple of the media or utility owners.”<sup>2</sup>

#### *media consolidation ...*

With the election a year away, pollsters and prognosticators have all but crowned the New York senator as the Democratic nominee apparent. In 2006, Rupert Murdoch, the media baron who controls News Corp., held a fundraiser for her, raising questions about her possible support for and alliance with the kind of corporate media that Murdoch exemplifies; a decade earlier, during her husband's administration, the Telecommunications Act of 1996 was passed, enabling media consolidation by Clear Channel and others, and allowing a single company for the first time to own television stations reaching more than one-third of the American public. At this writing, Senator Clinton has not said publicly (nor, in fairness, has she been asked by the press)<sup>3</sup> whether she supports the 1996 Telecommunications Act or would seek reform of its consolidation-friendly provisions. The closest she has come to a position on consolidation was when she said: “I think that we have got to do everything we can to open up our media environment. ... We have to have more competition, more voices and [keep] the Internet open so that we don't put it in the domain of any one or a couple of the media or utility owners.”<sup>4</sup>

**What to expect:** We believe that, if elected, Senator Clinton will pursue the kind of so-called centrist policies favored by media incumbents.

## Christopher Dodd (D)

### *media consolidation ...*

“Consolidation ought to be one of the great concerns of every person in this country — denying us the kind of free access and information,” said Connecticut Democratic Senator Chris Dodd at the YearlyKos blogger convention, August 2007. “I’ll do everything I can to see that that is broken up, as President of the United States.”<sup>5</sup>

**What to expect:** We believe that, if elected, Senator Dodd will pursue the kind of so-called populist policies that will lead to new limits on media consolidation. Furthermore, he has said that he opposes retroactive immunity for telcos that participated in the federal government’s warrant-less wiretap program.

## John Edwards (D)

### *media consolidation ...*

“I don’t want to see Rupert Murdoch -- or anybody else for that matter -- owning every newspaper in America. What we have seen with consolidation of the media is not healthy for this country. We need divergent opinion expressed in this country and if the media is consolidated that runs completely contrary to that.”<sup>6</sup>

### *net neutrality ...*

At midyear, Edwards became the first candidate to call on the FCC to build a net neutrality provision into the proposed 700 megahertz, or “analog,” spectrum auction, scheduled for January 2008, as well as to add other provisions that would bring new players into the burgeoning mobile communications world. “Anyone winning rights to this valuable public resource should be required not to discriminate among data and services and to allow any device to be attached to their service,” he said in a letter to the chairman of the FCC. “As much as half of the spectrum should be set aside for wholesalers who can lease access to smaller start-ups, which has the po-

tential to improve service to rural and underserved areas,” he said. “Finally, bidding should be anonymous to avoid collusion and retaliatory bids.”<sup>7</sup>

**What to expect:** We believe that, if elected, former Senator Edwards will pursue the kind of so-called populist policies that will lead both to the establishment of net neutrality and to new limits on media consolidation.

## Rudolph Giuliani (R)

### *media consolidation ...*

A decade ago, when newly launched Fox News was being blocked by Time Warner Cable, CNN’s corporate sibling, from access to a channel position on its New York area cable provider, which then had more than one million subscribers, then-Mayor Giuliani intervened, offering to telecast it on a city-owned channel in the number-one market. Although that never transpired (a judge blocked the attempt), Giuliani has ever since been viewed as a Fox partisan and, in turn, Murdoch’s media outlets are generally viewed as pro-Giuliani.

**What to expect:** We believe that, if elected, former Mayor Giuliani will pursue the kind of so-called centrist policies favored by media incumbents.

## John McCain (R)

### *media consolidation ...*

The campaign of the Arizona senator, Vietnam war hero and one-time Republican frontrunner apparently derailed in mid-2007 over his stay-the-course support of President George Bush and the conduct of the Iraq War. But in earlier days, and in previous campaigns, voters rallied to his reputation for plain speaking. Before the turn of the century that reputation was on display in his antipathy to the Telecommunications Act of 1996, which he called “nothing less than an elaborate influence-peddling scheme in which both parties conspire to stay in office by selling the country to the highest bidder.”<sup>8</sup> And in 2000,

during his first run for the Republican presidential nomination, McCain said that media concentration "is the reason we broke up Ma Bell.... At some point there is so much consolidation in an industry, particularly in vertical integration, that it becomes anti-competitive.... If we continue to see these mergers and consolidations within this industry, it should be a matter of concern.... Radio may be bothersome if one company owns 40%, but far more disturbing is if one company owns the programming, the station, the producers of the information. I'm worried about vertical consolidation, not just horizontal consolidation."<sup>9</sup>

#### *deregulation ...*

"My philosophy is the less regulation and the less government there is, the better off the American people are."<sup>10</sup>

#### *low power FM radio ...*

The Arizona senator is one of the co-sponsors of the Local Community Radio Act of 2007, which, among other provisions, would facilitate a national surge of non-profit, locally owned FM low-power radio stations throughout the United States -- not only in the rural and suburban locations where most LPFM stations now broadcasting are located, but also in the urban areas where most existing terrestrial radio broadcasters oppose them, on grounds that their limited signals will interfere with their own broadcasts.

**What to expect:** We believe that, if elected, Senator McCain will pursue the kind of so-called populist policies that will lead to new limits on media consolidation. While he is an avowed deregulator, McCain also is an opponent of the kind of vertical integration that stifles new competition; as such, he can also be expected to favor net neutrality.

## **Barack Obama (D)**

#### *media consolidation ...*

FCC policies promote "consolidation over diversity.... Fortunately the commission's attempt to relax the regulations [in 2003] was rejected."<sup>11</sup>

#### *media cross-ownership ...*

"I believe the FCC media-ownership rules remain necessary and are critical to the public interest.... We should be doing more to encourage diversity in ownership in broadcast media, promote the development of new media outlets and the expression of diverse viewpoints....I also believe that broadcasters' license-renewal requests ... should require greater FCC scrutiny and public input should occur more frequently."<sup>12</sup>

#### *net neutrality ...*

The first term senator from Illinois has made the generational shift a fulcrum of his campaign. If there's a Web 2.0 candidate in the field, Obama, who says the U.S.A. is lagging other countries in its Internet infrastructure, is it.

**What to expect:** We believe that, if elected, Senator Obama will pursue the kind of so-called populist policies that will lead both to the establishment of net neutrality and to new limits on media consolidation.

## **Bill Richardson (D)**

#### *net neutrality ...*

"The Internet community has big stakes in the next election ... because the telecoms want to take you over. They want to take broadband over. We shouldn't let them."<sup>13</sup>

**What to expect:** We believe that, if elected, Governor Richardson will pursue the kind of so-called po-

pulist policies that will lead both to the establishment of net neutrality and to new limits on media consolidation.

## **Mitt Romney (R)**

### *media consolidation ...*

While the Republican former Governor of Massachusetts's record of public comments about media consolidation and deregulation is sparse to non-existent, it's safe to assume that he's not opposed to either. Critics of consolidation and deregulation often point to Clear Channel Communications as Exhibit A in the case against further media consolidation, noting that the company went from being a small radio-station group owner, with approximately 43 radio stations, before passage of the Telecommunications Act of 1996, which lifted limits on station ownership, to the medium's biggest player, with approximately 1,100 radio stations. Often, critics say, Clear Channel's savings of scale amount to doing away with local station news and DJ staff and replacing local news (and local play lists) with "homogenized" material produced at the company's headquarters. Clear Channel is slated to be taken private by Bain Capital and Thomas Lee Partners by year's end in a nearly \$19.5 billion deal. Governor Romney is one of Bain's three founding partners.

### *indecentcy, violence and values ...*

"I'm deeply troubled about the culture that surrounds our kids today," Governor Romney said recently. "Following the Columbine shootings, Peggy Noonan [a well-known former Reagan speech writer] described our world as the ocean in which our kids now swim. She described a cesspool of violence and sex and drugs and indolence and perversions .... I'd like to see us clean up the water in which our kids are swimming. I'd like to keep pornography from coming up on their computers. I'd like to keep drugs off the street. I'd like to see less violence and sex on TV and in video games and in movies. And if we get serious about this we can ac-

tually do a great deal to clean up the water in which our kids and grandkids are swimming."<sup>14</sup>

**What to expect:** We believe that, if elected, former Governor Romney will pursue the kind of so-called centrist policies favored by media incumbents, and will be a strong proponent of "family values" and family-friendly fare in the media.

## **Fred Thompson (R)**

### *fairness doctrine ...*

Not surprisingly the former senator comes down squarely on the conservatives' side in the debate over the Fairness Doctrine, saying "giving the government veto power over radio stations' programming decisions is wrong. I don't think forcing the one sector of the media where conservatives have a clear voice to provide equal time to liberals is the American way. At the very least, it has a chilling effect on station owners."<sup>15</sup>

### *net neutrality ...*

Thompson also is a former lobbyist, who once represented two Canadian cable companies. Although he's taken pains to point out that his actions as a lobbyist shouldn't be equated with his beliefs as a legislator (or erstwhile executive), he is on the record as an opponent of the concept of network neutrality.

### *regulatory environment ...*

"Keep regulation moderate."<sup>16</sup>

**What to expect:** We believe that, if elected, former Senator Thompson will pursue the kind of so-called centrist policies favored by media incumbents.

*November 4, 2007*

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## About the Author

**Louis Chunovic**, a Senior Fellow at TransMedia Institute, is a veteran journalist and a published author. He has reported on the businesses of media for more than two decades, and during that time has covered national political conventions, media mergers and acquisitions and new media technologies.

His byline has appeared in *Advertising Age*, *The Advocate*, *American Film*, *Automotive News*, *Boston Metro*, *Broadcasting & Cable*, *Broadcast Week*, *Cablevision*, *Electronic Media*, *Entertainment Weekly*, *The South Florida Sun-Sentinel*, *The Hollywood Reporter*, *The Journal of the Writers Guild of America*, *The Las Vegas Sun*, *The Los Angeles Business Journal*, *The Los Angeles Times*, *MovieLine*, *PC World*, *Pulse Magazine*, *The Saint Paul Pioneer Press*, *The San Francisco Examiner*, *Screen Magazine*, *Score Magazine*, *The Torrance Daily Breeze*, *TV Guide*, *US Weekly*, *Weekly Variety* and others.

His books include *Why Do People Love America?* (Sanctuary Publishing, 2005), *One Foot on the Floor* (TV Books, 2000), *True Tales of American Justice* (TV Books, 2000) and *Bruce Lee: The Tao of the Dragon Warrior* (St. Martin's Press, 1996).

Chunovic also is the former on-air Entertainment Reporter for KTTV, Fox Broadcasting, in Los Angeles. He has appeared on CNBC, CNN and NPR, as well as on many other television and radio outlets, and has been quoted by *The New York Times* and *Congressional Quarterly*, among others. He lives in the New York City area with his wife.