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Tripping Up Big Media

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The angels of the public interest, with large pink wings and glittering halos, descended on Michael Powell this fall, five years after he had, somewhat sarcastically, first invoked them.

That was back in April 1998, when Powell was speaking to a Las Vegas gathering of lawyers. Only a few months had passed since his appointment to one of the five spots on the Federal Communications Commission, and the new commissioner had been invited to speak about a longstanding and contentious issue: Was it the FCC's responsibility to keep the media working toward the public good?

Powell made clear that he placed his faith in the invisible hand of the market: the business of the FCC, he said, was to resolve "matters that predominantly involve the competing interests of industry" and not some vague "public interest." The FCC had no role in deciding whether to give free airtime to presidential candidates, for example, or in forcing television channels to carry educational or children's programming. "Even if what is portrayed on television encourages or perpetuates some societal problem, we must be careful in invoking our regulatory powers," Powell insisted.

To highlight the point, Powell used biblical imagery. "The night after I was sworn in, I waited for a visit from the angel of the public interest," Powell said. "I waited all night but she did not come. And, in fact, five months into this job, I still have had no divine awakening."

This Sept. 4 the angels finally arrived.

Fifteen women dressed entirely in fluorescent pink and spreading frilly wings emblazoned with the words "Free Speech" stood on the sidewalk outside the large glass doors of the FCC. They banged on bongos and shouted chants, unfurling a large pink scroll containing their demands: full repeal of the new rules that Michael Powell had just shepherded into existence.

By this time, Powell had become FCC chairman and had overseen the biggest relaxation of

media ownership rules in over thirty years (see "Powell's Rules," below). But the day before, a federal appeals court in Philadelphia had granted an emergency stay barring the FCC from putting his new rules into effect. The court gave as one of its reasons "the magnitude of this matter and the public's interest in reaching the proper resolution." So the angels were celebrating, and they were not alone.

The massive public response to the rule changes, in fact, had been unprecedented. For months before and after the new rules were announced on June 2, 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.

Even more striking was the makeup of this opposition, what the New York Times called "an unusual alliance of liberal and conservative organizations." Together in the mix, along with Code Pink, the activists in angel wings, were the National Rifle Association, the National Organization for Women, the Parents Television Council (a conservative group focused on indecency in television), every major journalism association, labor groups like the Writers and Screen Actors Guilds, and a collection of liberal nonprofit organizations that had been focused on media issues for decades.

It is not every day that the ideological lines get redrawn over an issue, let alone an issue that had been destined to remain obscure and complex for all but telecommunications experts to debate. What's the glue that has held this unlikely coalition together?

Victoria Cunningham is the twenty-four-year-old national coordinator of Code Pink, a grass-roots women's organization that engages in wacky direct action. Code Pink has sung Christmas carols outside Donald Rumsfeld's home and arrived at Hillary Clinton's Senate office wearing underwear over their clothing to deliver her a "pink slip" of disapproval for her early support of the war in Iraq. I met with her a month after her group's boisterous visit to the FCC. Code Pink's office is little more than a broom closet on the fifth floor of a building a few blocks from the White House. Pink beads and rainbow flags cram the walls. Cunningham was wearing what else? a very pink shirt.

Why were her members, who number in the thousands, so interested in this issue? "Our people are informed enough that they understand what happens when there are only one or three or four companies that are controlling the information we get," Cunningham said. "A lot of our people would love to turn on the evening news and see a variety of opinions coming out."

Like everyone I talked to who was involved in the opposition to the FCC rules, Cunningham spoke of the intuitive understanding most people had of an issue that seems complex on the surface. Over and over, as I attempted to understand what it was that was holding together this diverse coalition, I heard the same phrase: "People just get it." And I heard this from groups both left and right. The oddest invitation Cunningham said she had received in the last few months was to appear on Oliver North's conservative radio talk show to debate the FCC issue. "And when we talked about that," she said, "we just couldn't say anything bad to each other."

Next, I made my way to a rather different scene, the headquarters of the United States Conference of Catholic Bishops, to talk with Monsignor Francis J. Maniscalco, its director of

communications. No broom closet, the conference's home is in a giant modern Washington building behind a large sculpture of Jesus pointing to the sky.

Monsignor Maniscalco, a clerical collar under his soft, round face, spoke like a weathered telecommunications professional about his opposition to the FCC's new rules. The bishops are concerned about the loss of religious shows, like Catholic mass on television but also the loss of a time when, he says, in order for broadcasters to keep their licenses they had to "prove they were being responsive to the local community." The further consolidation of the media that would be spurred by the new FCC rules, he said, would only increase the lack of responsiveness to community needs. "We see the media as being very formational of people, formational of a culture, formational of people's attitudes," he said, "and if certain strains of community life are not on television they are, by that very reason, considered less important, less vital to society."

Even though he and the conference had always opposed media consolidation, Maniscalco said, until recently they felt they were working in a vacuum. When the monsignor began talking about the current effort, though, he visibly brightened. His eyebrows, which are red, lifted, and he rolled forward in his chair. "The consumption of media is a passive consumption, it is a passive act in itself," he said. "And it is a passive audience that has said, 'We just have to take what they give us.' But interestingly enough, this seems to be something that has finally caught people's imagination, that they could make a difference in terms of turning back these rules and saying no, we don't see that as being very helpful to our situation."

Media industry insiders were taken by surprise at how fast these groups managed to come together and exercise political influence. In addition to the emergency stay issued by the Philadelphia federal appeals court on the day before Powell's six new rules were to go into effect, Congress has responded with zeal to their demands. Consider: on July 23, only a month after the rules were approved, the House of Representatives voted 400 to 21 to roll back the ownership cap to 35 percent. Then, on September 16, the coalition had an even greater success. The Senate used a parliamentary procedure, called a resolution of disapproval used only once before in history to pass a bill repealing all the new regulations. It passed 55 to 40, and was supported by twelve Republicans, and cosponsored, astonishingly, by none other than Trent Lott. Such quick legislative action has generated excitement, but it is unlikely that the coalition will find such easy victory in the future. The Senate bill must now face House Republican leaders who have vowed to prevent the measure from going to a vote, partly to keep this political hot potato away from the president during an election year. The court case that has put the new rules on hold, meanwhile, promises a complicated legal contest when it takes place next year.

But these challenges don't take away from what has been achieved. Such ideologically disparate groups rarely find common cause. As Powell himself has pointed out, the reasons behind most of these groups' opposition are parochial and narrow. The unions are worried that more consolidation will lead to fewer jobs; the left-leaning groups are still shivering from what they saw as nationalistic coverage of the war; groups like the Parents Television Council want less Buffy the Vampire Slayer and more Little House on the Prairie. Yet there they were, at countless public hearings over the last half-year, the bishop sitting next to the gun lobbyist sitting next to a woman from NOW, all united around some common denominator.

To get a better idea of what that common denominator might be, I went to visit Andrew Schwartzman, the fifty-seven-year-old president of the Media Access Project, a small public-

interest law firm that has been fighting big media and the FCC for more than three decades. Schwartzman was the lead lawyer in the case that led to the September 4 emergency stay.

A week after that triumph, he looked exhausted, his bloodshot eyes contrasting with his white hair and bushy moustache. He looked a little like Mark Twain a very tired Mark Twain. He spoke slowly and deliberately. "Michael Powell has significantly misunderstood what this is about, to his detriment," Schwartzman said. "He repeatedly says, somewhat disdainfully, that all the disparate organizations are unhappy about what they see on the air. The right-wingers think the media is liberal and the left-wingers think the media is a corporate conspiracy, and they all can't be right. This is a way of dismissing and trivializing their position. For me, what these groups have in common is that they represent people who are within the relatively small group of Americans who choose to be active participants in the political process, the people who exercise their First Amendment rights aggressively. And even where their principal areas of interest may be the Second Amendment or other things, they understand the importance of the electronic mass media in the democratic process. And Michael Powell hasn't understood that."

What unites these groups, he told me, is that they all generally believe that the media are limited, and that this limitation comes from the fact that there is too much control in too few hands. This leads to a lack of diversity of voices, to programming that is out of touch with local concerns, to increasingly commercial and homogenized news and entertainment. And this is what has triggered people's passions. It is not the fear that their own voice won't echo loud enough, he said, but that further consolidation will produce media in which only the powerful few will be heard at all.

But why now? Neither Schwartzman nor anyone else I talked to could explain why, coming from so many different directions, all these groups landed in the same place at the same time. After all, this is not the first time that free-market enthusiasts have smashed up against the defenders of the public interest.

The 1980s saw a major crack in the idea that the public interest was the top priority for the FCC. President Reagan's FCC chairman, Mark Fowler, presided over the death of the Fairness Doctrine, which required broadcast stations to provide airtime for opposing voices in controversial matters of public importance. Then in 1996 Congress passed, and President Clinton signed, a major overhaul of U.S. telecommunications law, permitting greater media concentration. Radio was significantly deregulated, leading to the growth of companies such as Clear Channel, which now operates more than 1,200 stations in more than 300 markets. It was in that period that the national ownership cap for television stations went from 25 percent to 35 percent.

Such developments happened away from the public eye, in a place where only members of Congress and lobbyists roam. According to Celia Wexler, director and researcher for Common Cause, the nonpartisan citizens' lobby, those past fights were "very much inside the Beltway. It was very complicated, and there were no groups able to tell the story in a way that really made people understand what was at stake. There were media reformers who understood, who wanted a discussion of the public-interest obligations of broadcasters. But it didn't really catch fire."

At a morning session on media issues at a Common Cause conference, I saw how dramatically

the situation had changed. Seats to the event were in hot demand. Next to me an elderly couple sat clutching newspaper clippings, one of which was headlined new fcc rules sap diversity in media owners.

Wexler, a small woman with the air of a librarian, was sitting on stage in a panel that included Gloria Tristani, a former FCC commissioner, who said of Michael Powell at one point: "I think he has lost touch with people or maybe never had touch with people in this country." The star of the morning, though, was John Nichols, a Nation Washington correspondent, who, together with Robert McChesney, another media reformer, this year started an organization called Free Press. Nichols has a professorial air, but he started his talk so dramatically that the couple next to me started nodding furiously.

He contended that, in the wake of September 11 and in the buildup to the war in Iraq, Americans had come to realize how shallow and narrow were their media. "People said maybe I support this war, maybe I oppose it, but I would like to know a little more about who we're going to bomb," Nichols said. "And I would like to know more about what came before and how this works -- not just cheerleading. And all of that churned, combined, to have a profound impact."

This was an explanation I had heard from other liberal groups involved in the media movement. But it still didn't explain why conservatives had chosen this particular moment to join this coalition. As with the liberals, there have always been conservative groups that have opposed media deregulation, most notably the Catholic Church, but the message never resonated widely.

That, too, has changed. Take, for example, the Parents Television Council, an organization with 800,000 members that monitors indecency. The group regularly sends letters to the FCC when a show contains what they call "foul language" or racy subject matter. In August, L. Brent Bozell, the council's president, joined Gene Kimmelman of Consumers Union, a longtime advocate of media reform, in an editorial that was published in the New York Daily News, writing that in spite of their ideological differences they "agree that by opening the door to more media and newspaper consolidation, the FCC has endangered something that reaches far beyond traditional politics: It has undermined the community-oriented communications critical to our democracy."

Conservatives see a link between the growth of big media and the amount of blood and skin they see on television. The smaller and more local that media are, the argument goes, the more attuned to community standards of decency. If local stations could preempt what was being fed from New York and Los Angeles, then programming could be more reflective of family values. Here again, the sense is that media have become too large and all-encompassing and lost touch with their audience.

Melissa Caldwell, director of research at the council, points out that the new ownership rules were a way for big media companies to buy up even more local stations. This is worrisome, she explained, because locally owned broadcast affiliates tend to be more responsive to community standards of decency. The council's surveys, Caldwell says, show that network-owned stations almost never preempt network shows, "whereas locally owned and operated stations were more likely to do so. We don't want to see the networks become even less responsive to community concerns than they already are."

By the end of September, with his rules in deep freeze, Powell, speaking to The New York Times, expressed exasperation with the effectiveness of the opposition. "Basically, people ran an outside political campaign against the commission," Powell was quoted as saying. "I've never seen that in six years."

At the core of this "campaign" were four groups Consumers Union, led by Kimmelman, and the Consumer's Federation of America, represented by Mark Cooper, as well as Andrew Schwartzman's Media Access Project and the Center for Digital Democracy, run by Jeffrey Chester. The four men (who often referred to themselves as the "four Jewish horsemen of the apocalypse") played the central role in translating the growing anger and frustration of the Left and the Right into a cohesive movement.

Early on, these groups realized that to fight the FCC they would need more political power than their dependable but small progressive base could offer. One of their first steps, in addition to beginning a conversation with conservative groups like Parents Television Council, was to call on labor organizations like the Writers Guild and AFTRA, which could provide the resources and the manpower to get the message out.

By the beginning of 2003, a loose coalition was in place. And at that point, Powell's personality, of all things, began to play a galvanizing role. In pronouncement after pronouncement, he trumpeted the importance of these new rules highlighted by his decision to vote on all of them in one shot. He insisted that their rewriting would be based purely on a scientific examination of the current broadcasting world.

It was true, as Powell claimed, that reexamining the rules was not his idea. The District of Columbia Court of Appeals, interpreting the 1996 Telecommunications Act, had ordered him to conduct a biennial assessment. But Powell had many chances to include the public in this review, and he did not. No public hearings were necessary, he said; the facts would do the talking, and would point to the rightness of his free-market convictions. "Michael Powell deserves a public-interest medal because he practically single-handedly created this enormous opposition," said Jeffrey Chester.

In December, Powell announced a single public hearing, to be held in what one opponent jokingly referred to as "the media capital" of Richmond, Virginia. Soon, groups who had been only peripherally involved in the loose coalition became increasingly angered by Powell's intransigence. One story often invoked to illustrate the unifying power of Powell's stubbornness involves a meeting that took place between members of the Hollywood creative community and labor groups, including producers and writers, and Kenneth Ferree, the chief of the media bureau at the FCC. According to several people present at the gathering, when a request for public hearings was made, Ferree was dismissive and rude, saying he was only interested in "facts," not "footstomping." "The sense of helplessness and anger that he generated by that meeting was enormous," said Mona Mangan, executive director of Writers Guild East.

If Powell's refusal to hold public hearings galvanized the opposition in one direction, the desire of another commissioner, Michael J. Copps, to engage with the public on this issue also played a key role. Copps, one of the two Democrats on the FCC, was unhappy with Powell's insistence on keeping the issue within the Beltway. When Powell finally announced that the number of public hearings would be limited to one, Copps issued a statement that read like the complaints of the

growing grass-roots opposition. "At stake in this proceeding are our core values of localism, diversity, competition, and maintaining the multiplicity of voices and choices that undergird our marketplace of ideas and that sustain American democracy," he said.

"The idea that you are changing the basic framework for media ownership and you don't really want to make this a public debate was a reflection of Powell's own sort of arrogant, narrow mind-set," said Chester. "He didn't understand that this is about journalism, this is about media. No matter what the outcome, you have to go the extra mile to encourage a serious national debate."

Through the winter and early spring, Copps organized unofficial hearings around the country in collaboration with groups like the Writers Guild, earning the nickname Paul Revere in some quarters. As media reform groups searched for a wide range of witnesses to speak at these hearings, the coalition grew to include groups like the National Rifle Association and the National Organization for Woman. Out of the meetings came the first sense that this issue could resonate.

In the spring, after Powell refused to delay the June vote for further discussion, the FCC was flooded with calls and letters. Petitions were signed with hundreds of thousands of names and comments. Something was happening. Despite the scant press coverage, citizens were responding. The Internet helped to make this response immediate and numerous, mostly through an Internet-based public interest group called MoveOn.org, which had been an organizing force against the Iraq war, capable of turning out thousands upon thousands of signatures and donations in a matter of days. Now it turned its attention to media reform, and the result surprised even its organizers.

"We thought it was just kind of a weird issue because it's this wonky regulatory thing, it's not a typical MoveOn issue like stopping the drilling in the Arctic," said Eli Pariser, MoveOn's young national campaigns director. "After we heard from a critical mass of people we decided to pursue it and see what happened. And when we went out with our petition we got this amazing response."

A few days before the Sept. 16 Senate vote on the resolution of disapproval, I accompanied lobbyists from Consumers Union and Free Press as they delivered a huge MoveOn petition. Lining one of the halls in the Hart Senate Office Building were stacks upon stacks of paper, 340,000 names in all. It was the quickest and largest turnover MoveOn had ever experienced, including its antiwar effort.

As the activists, young and in rumpled, ill-fitting suits, delivered these petitions to Senate aides, everyone was struck by the fact that they were more than just names printed on paper, more than a rubber-stamp petition drive. Many of the statements seemed heartfelt. Sometimes they were only a line, "I want more diversity and freedom of speech," and sometimes long letters, taking up whole pages. People expressed their personal dissatisfaction with what they saw when they turned on the TV. But mostly, they expressed passion. It popped off the page. People in Batesville, Arkansas, and Tekamah, Nebraska, were angry. Media had become a political issue, as deeply felt as the economy, health care, or education. Senate Republicans and Democrats alike understood this. A few days later, they voted to repeal all the new regulations.

When I asked the coalition partners how long their alliance could last beyond the battle over the

ownership rules, their answers were uniform: not long. If the Parents Television Council and the Writers Guild ever sat down and tried to figure out rules for TV, the decency monitors would demand stricter limits on sex and violence, and the screenwriters who make up the guild would recoil in horror, shouting about the First Amendment.

But on the question of what these groups' larger and long-term objectives were for the media, I did get some kind of consensus. At the most fundamental level, there is a demand for a forum, for a place where diverse ideas can be heard and contrasted. The ideal seemed to be media that better reflect America, with its diversity, its ideological contentiousness, its multitude of values and standards.

When I asked Monsignor Maniscalco how he would want broadcasters to act in an ideal world, I assumed he would posit some narrow vision of an all-Catholic twenty-four-hour news channel, but he didn't.

"We would like them to take a chance on things that are noncommercial, that are simply not on television," the monsignor said. "Not for the sake of how much money they can make, but because they represent significant aspects of the community. We would really like to see the concept of broadcasting in the public interest be recognized by these people as a legitimate aspect of their work."

When I posed the problem of whether he could eventually agree to share airtime with all the groups in this coalition, groups like NOW with which he had fundamental and deep disagreements, Monsignor Maniscalco had a simple answer: "You could say that the goal is for the media to give us access so we can finally have a space to argue amongst ourselves."

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