

Media Regulation in the United States

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Background

- In the US, broadcasting refers to free-to-air (FTA) services using spectrum
 - ◆ Television and radio are broadcasting
 - ◆ Cable television and subscription Direct Broadcast Satellite (DBS) services are NOT broadcasting
- US law permits only very limited regulation of media content
 - ◆ Constitutional protections for freedom of speech and of the press
 - ◆ Broadcast services may legally be subject to a higher degree of content regulation than non-broadcast services
 - ◆ Not all speech has the same Constitutional protection
 - ☞ Obscenity is NOT protected on any medium
 - ☞ Commercial speech can be regulated, e.g., to prevent unfair or deceptive advertising



Broadcast Regulation: Goals and Techniques

■ Goals

- ◆ Competition
- ◆ Diversity
- ◆ Localism

■ Techniques

- ◆ Technical
- ◆ Structural
- ◆ Behavioral (content)

- Major premise is to regulate market structure in order to (indirectly) affect the range of content provided



Associated Press v. US (1945)

- “That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society.” [Justice Black in *Associated Press v. U.S.*, 326 U.S. 1, 20 (1945), referring to the First Amendment.]
- “The First Amendment...presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and will always be, folly; but we have staked upon it our all.” [From the prior Court of Appeals decision in the same case.]



Technical Regulation

- Transmission Standard
 - ◆ e.g., ATSC for US digital television
 - ◆ HDTV permitted but not required
 - ◆ Multicasting permitted

- Table of Allotments (List of permissible channel assignments and geographic locations)

- License Assignment
 - ◆ In the US, new commercial television and radio licenses are assigned by auction



Structural Regulation: Local Broadcast Ownership Limits

- Television stations in a market
- Radio stations in a market
- Radio-TV cross-ownership (limits common ownership of radio and TV stations in a market)
- Newspaper-broadcast cross-ownership (prohibition of common ownership of a radio OR television station and a daily newspaper in the same market
 - ◆ Some combinations exist due to “grandfathering” or waiver of rules.



Structural Regulation: National Broadcast Ownership Limits

■ National Ownership Limits

- ◆ No firm can own television stations reaching more than 39% of US television households
- ◆ No limit on number of television stations a firm can own
- ◆ “UHF Discount” counts UHF stations at 50% of households in a market. [Press accounts indicate FCC is considering revision of this in light of the transition to digital television.]

■ Dual-network Rule (prohibits mergers among the big 4 US commercial television networks—ABC, CBS, Fox, and NBC)



Structural Regulation: Enforcement and Review

- Attribution Rules
 - ◆ Define ownership interests that are “cognizable”
 - ◆ 5% stock threshold plus some other provisions
- FCC must approve all license transfers, making an affirmative finding that the transfer will serve the public interest, convenience, and necessity
- Congress has instructed the FCC to review its broadcast ownership rules every four years



Behavioral (Content) Regulation

■ Children

- ◆ Indecent programming (safe harbor 10 PM—6 AM) [Broadcast ONLY]
- ◆ Limits on advertising in children's programming [Broadcast AND cable]
- ◆ Children's educational programming requirement [Commercial TV licensees]

■ Politicians

- ◆ Requirement to sell advertising time (at lowest unit rate) to legally qualified candidates for Federal office (President, Vice President, US House of Representatives and US Senate)
 - ☞ During the run-up to primary and general elections
- ◆ Equal time requirements (apply to Federal AND state and local candidates)

■ General requirement to program in the public interest

- ◆ Quarterly Issues-programs lists
- ◆ Now available on-line



Multichannel Video Program Distributors (MVPDs)

- Cable television service
 - ◆ Regulatory authority shared with local franchise authorities
- Direct Broadcast Satellite (DBS) service
- Some telephone company provided services (e.g., Verizon FIOS, ATT U-Verse)



Cable Television Regulation

■ Franchise Authority

- ◆ Can require franchise (non-exclusive)
- ◆ Franchise fee
- ◆ Can require public, educational, and governmental channels
- ◆ Rate regulation for basic service tier of cable systems not subject to effective competition (pursuant to FCC methodology)

■ FCC

- ◆ Signal carriage—Must-Carry and Retransmission Consent
- ◆ Program access (applies to conduct of vertically-integrated satellite cable programmers)
- ◆ Program carriage (applies to cable operators in their dealings with content providers)
- ◆ Commercial leased access channels



Direct Broadcast Satellite Regulation

- License Orbital Slots
- Signal carriage: Must-Carry and Retransmission Consent
 - ◆ Must-carry is “carry one-carry all” on a market-by-market basis
- Public Interest Setaside—4% of channel capacity reserved for educational use



Other Considerations

■ Online Video Distributors (OVDs)

- ◆ entities that distribute video content to consumers over the Internet
- ◆ Examples include Netflix, Hulu
- ◆ Potential substitute for MVPD service
 - ☞ “Cord-cutters?”
- ◆ Generally unregulated, but FCC regulations have an impact on the Internet infrastructure over which these services are developed
 - ☞ *FCC Open Internet Order* (currently under appeal)

■ Copyright Law, including compulsory licenses, Digital Rights Management (DRM) is important but not an FCC responsibility



Media Market Structure (1)

- 1800 Full Power Television Stations
 - ◆ Licensed locally
 - ◆ 1400 commercial, 400 noncommercial educational
 - ◆ Many but not all provide local programming, including news
 - ◆ Many are affiliated with a national network from which they acquire a significant amount of their programming
- 9.7% of 115 million television households relied on over-the-air television only [June 2012]
 - ◆ Other sources differ on the magnitude



Media Market Structure (2)

- 57.3 million cable subscribers, 34 million DBS subscribers, and 8.6 million subscribers to the Verizon and ATT services (plus around 0.5 million subscribers to other telco services) [June 2012]
- 45% of US households subscribed to a broadband service meeting the FCC's "speed benchmark" (3 mbps down, 768 kbps up) [June 2012]
- 69% of US households subscribed to a broadband service [June 2012]



Sources of Information About the FCC

www.fcc.gov [FCC website]

<http://www.gpo.gov/fdsys/pkg/USCODE-2009-title47/html/USCODE-2009-title47-chap5.htm>
[link to the Communications Act of 1934]

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title47-vol1/content-detail.html> [link to Title 47 of the Code of Federal Regulations]



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THANK YOU