

The Spectrum Allocation System

By Thomas W. Hazlett

Posted: Friday, November 2, 2001

The problem with the spectrum allocation system is not that it is broken. There *is* an enormous pent-up demand for access to radio waves, and high barriers to entry imposed by regulators are stifling substantial economic growth. But this is because the spectrum allocation is working precisely as planned. Regulation serves to protect incumbent interests for a modest surcharge, a public interest tax that the tax collector more often than not forgets to collect. </O:P>

The 1927 Radio Act – still the prevailing statute guiding U.S. band management policy – was a creation of the then-emerging radio broadcasting cartel. With the assistance of a federal regulatory agency to dole out airwave rights according to “public interest, convenience, or necessity,” politically influential AM radio stations gained the right to exclude new competitors. Quickly, the relative strength of the larger commercial stations and networks were asserted in the political realm, and smaller stations as well as non-profit broadcasters were largely eliminated from the market in the short passage to the Communications Act, creating a Federal Communications Commission to supercede the Federal Radio Commission in 1934.

The FCC quickly assumed its designated burden, suppressing FM radio for some 20 years. When television was ready for the mass market, the Commission again chose to go with fewer choices rather than more competition; in 1952, assignments for TV stations were so parsimonious that they actually killed off a fourth broadcast network – DuMont – then operating on experimental licenses issued prior to 1948. DuMont argued strenuously that the Commission should allow four or more stations to reach the typical household; the Commission opted, instead, for “localism” -- a station for every congressional district, and just three (or fewer) networks for consumers. DuMont went dark in Sept. 1955.

The Commission allocated huge bandwidth for television – originally, some 82 channels –but it has never been allowed to deliver more than a paltry number of choices to the viewing public. The broadcasters were quite happy with this arrangement, public interest advocates claimed to be furthering the public good through participation in Byzantine FCC rule makings, and regulators could make a very nice career hectoring broadcasters for their poor performance while simultaneously thwarting the potential sources of competition broadcasters feared most. The classic demonstration of such regulatory acrobatics still belongs to the famed FCC Chair Newton Minow who, shortly after delivering his famous “Vast Wasteland” speech at the National Association of Broadcasters convention in 1961, returned to Washington DC to impose strict limits on the development of cable television in 1962. This reversal of Commission policy began a 15-year jihad against an emerging technology that threatened to “siphon” viewers from off-air television, thereby undermining what the FCC determined to be the public interest.

Progress in public policy has come slowly. Cable television was deregulated in the late 1970s; by the mid 1980s America was wired. We have now seen the video landscape

utterly transformed. Niche programming has undermined the “vast wasteland” by providing a “vast choice-land.” More of all types of content is available, the good, the bad, and the ugly. But that sums to a sweet picture from the consumer point of view.

Of course, the regulatory regime has not given up its interest in defending the status quo. Former FCC Chair Reed Hundt immodestly claimed: “We totally deregulated wireless.” He was wrong; sensationally wrong. Today, a host of new technologies – from Ultra Wide Band to Software Defined Radio – remain untapped sources of wealth because regulators will not let them buy, rent, or lease the radio spectrum rights they so dearly wish to pay for. Northpoint Technologies, a start-up firm with a patented system for sharing satellite TV spectrum, could offer a third consumer alternative in the DBS space, but has waited for an FCC license for seven years. In a brief I filed on behalf of Northpoint at the FCC earlier this year, I noted that the gains from increased competition with cable television systems would easily result in consumer savings of over \$1 billion annually. But despite finding that the Northpoint system works and should be licensed, the Commission is shackled by its own anti-competitive procedures that delay access to all new rivals.

The FCC’s continuing mismanagement of the TV Band is particularly impressive. Today we continue to devote 67 channels of prime bandwidth – 402 MHz, more than twice that allocated to all wireless telephone service – to the delivery of over-the-air television. The average TV market, however, features just 7 full-power TV stations. More importantly, Americans do not like “free” TV relative to the alternatives; by year-end 2001, some 87% of U.S. TV Households will subscribe to either cable or satellite service. The TV Band is being reduced to irrelevance.

But the airwaves walled off for broadcasting few are watching is more valuable than ever. A linear extrapolation of the prices paid for PCS licenses in a January 2001 FCC auction imply that the spectrum allocated to the TV Band would fetch up to \$470 billion – if they could be used for something other than TV. More importantly, consumer benefits are likely to easily exceed this number.

The Low Power FM proceeding also suggests the continuing social welfare costs of regulatory blockages in spectrum. While the high profile struggle between the FCC and Congress pitched a drama for journalists, and the NPR opposition to hippy dippy pirate radio entrepreneurs (not to mention Republican opposition to free markets) made for “strange bedfellows” boilerplate at virtually every beltway publication, the fact is that Low Power Radio had no chance anywhere. The titanic political struggle was over a miniscule number of stations – perhaps 600 or 1000 tiny 100 broadcast licenses – when examination of FCC interference standards reveals that tens of thousands of such low power licenses could be slotted into non-interference frequencies all across America’s 269 radio markets. Even their friends at the FCC gave Low Power FM radio no more than the tiniest crumbs of regulatory largesse.

What to do? Economists have grappled with this question since the Nobel prize winning inquiry on the subject conducted by Ronald Coase in 1959. A consensus has formed, seen in a Feb. 2001 filing by “37 Concerned Economists” filing a Comment in the FCC’s so-called Secondary Markets proceeding, that rules for spectrum use should be

dramatically relaxed. Regulation should become minimalist: Licensees should have full flexibility to provide whatever services do not interfere with neighboring spectrum users, and new entrants should have the right to expeditiously gain access to unoccupied radio waves. Interference disputes should be adjudicated as a matter of law, not as a strategic regulatory ploy to block competition. To expand on a simple notion of justice, entry delayed is competition denied.

The following papers are available at: www.aei.org/scholars/hazlett.htm

[Comment, Thirty-Seven Concerned Economists](#)

Federal Communications Commission Rulemaking on Secondary Markets
February 7, 2001

Thomas W. Hazlett, [*The U.S. Digital TV Transition: Time to Toss the Negroponte Switch*](#)
Paper presented to the International Telecommunications Society, Dublin, Ireland
(September 3, 2001)

Thomas W. Hazlett and Bruno Viani, [*Legislators v. Regulators: The Case of Low Power FM Radio*](#), Working Paper (Sept. 2001)

Thomas W. Hazlett, [*The Wireless Craze, The Unlimited Bandwidth Myth, The Spectrum Auction Faux Pas, and the Punchline to Ronald Coase's "Big Joke": An Essay on Airwave Allocation Policy*](#), AEI-Brookings Joint Center for Regulatory Studies Working Paper 01-02. January 2001. Forthcoming in the Harvard Journal of Law & Technology (Spring 2001)

Thomas W. Hazlett, [*Digitizing "Must-Carry" under Turner Broadcasting v. FCC \(1997\)*](#)
8 Supreme Court Economic Review (2000)

Thomas W. Hazlett and David W. Sosa, [*"Chilling" the Internet? Lessons from FCC Regulation of Radio Broadcasting*](#), 4 Michigan Telecommunications & Technology Law Review (1998)

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