



## STATION BRAKES

### The government's campaign against cable television

By Thomas W. Hazlett

When you next settle into your cushy La-Z-Boy Recliner, hoisting a nice cool one after a trying day in the real world, try this: Aim your trusty remote and channel surf for some news, information, or public-affairs programming. Chances are that you will light upon *Crossfire* or *Capital Gang* on CNN, *Equal Time* or *Pozner & Donahue* on CNBC, a college course offering on ME/U, a history lesson on the Learning Channel, a biography on A&E, a sexual harassment trial on Court-TV, congressional hearings on C-SPAN, or a Noam Chomsky speech on C-SPAN2. Perhaps you will zero in on *Politically Incorrect* or *Women Aloud* on Comedy Central, or flick your way over to a "Rock the Vote" rally on MTV. Or you may just get briefed by *Headline News*.

Don't be alarmed, but you have just committed an incendiary political act of revolutionary import: Every one of those viewing choices was not so long ago a target of the U.S. government. If the regulatory policies crafted between 1959 and 1972 had continued, Americans wouldn't be able to indulge in such antisocial viewing choices. Cable programming was then officially judged a menace to society, and the Federal Communications Commission had launched a regulatory jihad against it. Like all holy wars, this offensive was undertaken in "the public interest."

And you thought you had First Amendment rights as an American patriot. You *have* been watching too much TV!

This episode is of more than historical significance. Because in today's world, hardly a millisecond lapses without yet another government or foundation report issued extolling the frightening challenges posed by the emergence of Information Superhighways. The theme of each policy analysis is strikingly symmetric: The explosion of competition threatens to divide America into information-rich and information-poor. Having divined a crisis, these policy entrepreneurs leap to the rescue. We will, they promise, enforce strict

universal access rules and save society from this horror-strewn high-tech future. We will intercept the destructive market forces, and mold the emerging technologies into our regulatory model. We will shape the new communications network to serve the public interest.

The FCC has been there, done that. In 1966, the high holy days of anti-cable rulemaking in Washington, the commission boldly premised its suppression of wired TV (then called CATV, for community antenna television) thusly: "CATV systems cannot serve many persons reached by television signals. [Today, cable passes more than 96 percent of U.S. homes.] Persons unable to obtain CATV service, and those who cannot afford it or who are unwilling to pay, are entirely dependent upon local or nearby stations for their television service. The Commission's statutory obligation is to make television service available, so far as possible, to all people of the United States on a fair, efficient, and equitable basis....This obligation is not met by primary reliance on a service which, technically, cannot be made available to many people and which, practically, will not be available to many others. Nor would it be compatible with our responsibilities to permit persons willing and able to pay for additional service to obtain it at the expense of those dependent on the growth of television facilities for an adequate choice of services."

Cable's indictable offense was that it threatened the revenue earned by UHF (ultrahigh frequency) television licensees. Cable operators were accused of "fragmenting" and "siphoning" the audiences needed by UHF. These stations, placed on the higher frequencies (then channels 14 to 83), had been given an almost impossible assignment by the FCC: to compete in local TV markets head-to-head with VHF (very high frequency) signals that can be far more easily received. An alternative licensing scheme, which would have made local TV markets either all-VHF or all-UHF (thereby making it easier for UHF to survive) was specifically rejected by the commission. But the FCC, having brutalized UHF on its own, certainly did not want cable competitors piling on. The success of UHF had been determined to be in the public interest.

To protect a universal service never actually provided by UHF, the FCC swatted down a cable industry which--when deregulated years later--would actually deliver the FCC's stated goals. In short, to save "universal service," the government elected to kill competition. It succeeded only in the latter, cheating the American public of the bountiful choices made possible by technology. Today, as new opportunities fly out of Silicon Valley at the pulse rate of light waves over fiber optics, they too must circle in public-policy holding patterns. Social planners, we are told once more, must carefully contemplate the ramifications of robust--and unsettling--competitive rivalry in advanced telecommunications networks. Today's Information Superhighway appears stymied by roadblocks remarkably similar to those used to thwart yesterday's television interstate.

### **Strangling Cable in the Crib**

The federal government's campaign against cable television began in the industry's earliest days. Although television was first demonstrated as technically viable in the 1920s and the British Broadcasting Corporation had begun regularly scheduled shows in

the 1930s, TV was slow in coming to the United States. By 1948, only 107 licenses had been issued, and only 16 stations were broadcasting. (Today, there are over 1,400 operating in the United States.) Even this was too speedy for the FCC, charged with regulating this market under the 1934 Communications Act. It froze its licensing actions in 1948 pending a grand master plan for the television marketplace, issued in 1952.

Cable television arose during this freeze, sprouting in places where the transmissions of then-licensed stations didn't reach. Cable systems offered no programming of their own; they just pulled down stations from the nearest available mountaintop or microwave link and ran them to homes. Because cable extended broadcast signals to greater numbers of viewers, the broadcasters loved it.

Twice during the 1950s the FCC staff recommended that the commission regulate cable; twice the commission declined. Why bother asserting jurisdiction over a technology that didn't even use the airwaves? By mid-1959, though, the commission began to change its mind. Broadcasters, coincidentally, had become less cable-friendly when a few daring entrepreneurs began inserting new, non-local signals on cable systems. This bold marketing move gave subscribers an actual choice between local broadcast fare and something different. Very uncool. The FCC swung into action; cable had stepped across a Regulatory Line of Death.

One major battleground was San Diego which, owing to its hills and valleys, was one of the first urban areas to be cabled in the United States, beginning in 1963. San Diegans could receive the three networks, but no independents. Los Angeles, on the other hand, enjoyed seven independent stations, and all seven were carried by four different CATV systems in San Diego by 1966. The arrival of L.A.'s indies, plump with sports at a time when San Diego had no big-time teams other than the Chargers of the American Football League, was a treat for viewers. Indeed, in a 1966 FCC proceeding the "smoking gun" evidence of cable's nefarious impact was that, in one small area where cable had been available for just three months, "Of the 159 homes in that area, 58 were wired for CATV--and this [a local broadcaster pointed out] 'is in an area where all three stations can be satisfactorily received.'"

Now that was a crisis. If allowed to go unchecked, viewers might have the ability to opt out of their government-licensed broadcast "choices." The alarm was sounded when the FCC certified that viewers did indeed like the L.A. stations' programming and appreciated the opportunity to watch it. The FCC wrote: "During the period 5 p.m. to 6 p.m., Monday through Friday, there was no duplication by any Los Angeles station of programs broadcast in San Diego and the cable subscriber could watch any one of 10 different programs. Among nonsubscribers interviewed, 95 percent of those who watched television during that hour watched one of the San Diego stations. Among cable subscribers the Los Angeles stations accounted for 52 percent and the San Diego stations 48 percent."

The commission was alarmed by this consumer choice thing and projected that allowing cable to bring extra signals into a market would fundamentally threaten the viability of

broadcasters. Since broadcasters had received airwave rights at no charge only because they had promised to abide by their obligations as public trustees, damaging broadcasters meant destroying the public interest itself.

Starting with the so-called *Carter Mountain* decision (1962) and continuing through rulemakings in 1965, 1966, 1968, and 1970, the FCC handed down a series of regulations that placed onerous burdens upon cable operators attempting to do business in the top 100 U.S. television markets (with about 90 percent of U.S. television households).

In 1966, the commission stated its cause for concern about marketplace competition in ominous bureaucratic tones: "We must thoroughly examine the question of CATV entry into the major markets, and authorize such entry only upon a hearing record giving reasonable assurance that the consequences of such entry will not thwart the achievement of the congressional goals. We cannot sit back and let CATV move signals about as it wishes, and then if the answer some years from now is that CATV can and does undermine the development of UHF, simply say, 'Oh well, so sorry that we didn't look into the matter.'"

That consumers might like to be "fragmented" or "siphoned"--indeed, that only willing channel-flippers could be fragmented or siphoned--was not a big concern. While the First Amendment might have looked slighted by this ham-handed government intervention in the workings of the electronic press, the scholars at the FCC had a handy explanation of how their scheme fit tidily under the Constitution. It furthered First Amendment *values* to have government provide for the goals sought by the Founding Fathers: diversity of expression, local control of the media, and fairness. This, after all, was how the commission and, generally, Congress defined the public interest.

By buying that line, the courts allowed the commission to go into the editorial business in a funny way: While the FCC couldn't directly tell broadcasters what to air, it certainly could hammer them with regulations in "the public interest." So it embarked on various schemes to encourage what the FCC dubbed non-entertainment programming--news, talk, and public affairs. In the commission's scheme, informational programming was inherently non-entertaining and, hence, unprofitable. Regulators had to force the market to supply this meritorious product--to uplift the public and improve our democracy--despite the financial interests of licensees in producing a steady stream of police dramas, sitcoms, movies, and sports.

The regulators' lament was that greedy licensees had to be carefully watched by publicly minded civil servants such as themselves. Left to their own devices, the vile private broadcasters would think only of their own profits and produce a shoddy product. In fact, we had already arrived in this video sewer, which Newton Minow, the greatest FCC regulator of all, famously decried as "the vast wasteland." Running the Kennedy administration's FCC, Minow beamed with regulatory pride in coercing broadcasters to do more of what they inevitably tried to stint on. "News, information, and public affairs programs are the heart of broadcasting in the public interest," he said in 1961. Indeed, a chapter in his 1964 book, *Equal Time*, is titled: "News, News, Never Enough."

Minow claimed that the FCC did not engage in censorship because that required *prior* restraint; all the FCC did was threaten to yank a broadcaster's license after the fact. Stalin would have loved this definition of censorship; it surely did not take long for the editors of *Pravda* to notice that the ability to write articles consistent with the views of the sovereign was a survival trait. Indeed, the most ruthless tyrant need engage in relatively little actual enforcement and perhaps no prior restraints whatever.

Minow claimed that licensees had been regulated far too loosely in the past, and that--thanks to the emergence of earnest and careful overseers imbued with the spirit of the New Frontier--a new ship of state was about to sail: the *S.S. Minow*. The Minow FCC would not kowtow to private profiteers. The new deal embarked upon in 1961 would, in Minow's words, encourage "local expression...the presentation of controversial issues ...educational and political shows, local news and programs for children." These were almost the precise words that the FCC had spoken for decades when describing its mission, but Minow really meant it. With new boldness and courage, the re-energized FCC immediately set out to make its point by dealing a near-fatal blow to cable competition. Cable was siphoning off audience share from FCC-regulated speakers and messing up the entire FCC plan.

That the vast wasteland was the logical and foreseeable product of just the industry structure that FCC policies had mandated merited no investigation in "the public interest." Sensationally, the very industrial arrangement that made lowest-common-denominator programming the order of the day was at that precise moment under attack from agents of creative destruction lurking in the competitive marketplace--an attack that Minow's regulatory warriors would gallantly fend off for two wasteland-infested decades. Greedy, bottom-line absorbed capitalists were champing at the bit to give the American public informational programming and localism and diversity; it was the FCC that resisted--to protect "First Amendment values."

### **Abandoning The Plan**

Give the FCC credit: They stuck to their story. They hummed it like a mantra: "diversity, localism, fairness; diversity, localism, fairness...." The federal courts even bought it for awhile, curiously allowing the commission to expand its regulatory reach over cable, which it had no statutory power to control, far beyond what it had been able to regulate in broadcasting, which it was explicitly created to control. But the economics of competition were too strong and the cable regulation palace crumbled in the deregulatory wave of the mid- to late-1970s.

And then a curious thing happened: Americans finally tuned into unlicensed, unregulated television.

It came to them via wires, and no FCC-regulated airspace was involved. The product was sold on a subscription basis; there was no "pervasiveness" involved. Hence, the courts finally struck down the FCC's attempt to regulate the speech that occurred over such wires. And, due to the deregulation of satellites under the "Open Skies" policy in the

early 1970s, it became possible to distribute new programming for cable systems on a cheap, nationwide basis. In 1975, Home Box Office took the opportunity; in 1976, Ted Turner's WTBS followed suit. Cable was still rather iffy, since federal regulation had the genie bottled up. But as the anti-cable regulations fell away in 1977, 1978, and 1980, massive new investments came in: New cable systems were built, new satellite networks launched.

It took 30 years for the cable industry to reach 18.7 percent of U.S. homes by 1978; by 1984, over 40 percent of Americans subscribed. Today, some 60 percent do. In 1978, there were only eight cable networks; by 1984 there were 47. (By 1993, there were 99.) Even during the worst recession since World War II, consumers were ravenous for video choices, and those avaricious, fast-buck television operators were eager to give those choices to them. The Information Superhighway was beginning to take shape in a field the FCC had so recently attempted to strip mine.

The rush to wire America's cities was on and, not surprisingly, city councils attempted to step into the shoes of the federal regulators. Municipal officials, feeling as New York Mayor John Lindsay had when he remarked that cable franchises were like "urban oil wells beneath our city streets," offered exclusive licenses to those companies willing to ante up most generously. Cable firms experienced a new-found interest in funding drug treatment centers, public television, local video productions, tree-planting efforts, and art museums. Cable executives became quite civic minded, regularly attending political luncheons and contributing eagerly to \$100-a-plate dinners. They enjoyed politics so much that they hired thousands of local government aides, officials, and ex-officials. And they invested in people, particularly people with municipal clout. "Rent-a-citizens" popped up everywhere--the cooperative folks who were given stock at preferential terms by cable companies aspiring to win local franchises. The ex-city councilman or the downtown lobbyist or the manager of the local PBS station were prime candidates. If their team won the franchise their stock would be worth zillions; if they lost, zip. It was an excellent incentive system, and large cable firms routinely dished out between 5 percent and 20 percent of the stock in local subsidiaries when engaged in tough franchise competitions.

Local pols did provide some drag on progress, but they were impotent to stem for long the ferocious public demand for the new technology. At first, the regulators were a nuisance. Then they were irrelevant. By the time the nation was wired--71 percent of the country had access to cable by 1984--Congress pre-empted local regulation of cable. The Cable Communications Policy Act of 1984 was essentially written by the cable industry, and the happy president of the National Cable Television Association posted a framed copy of the legislation on his wall as a sort of hunter's trophy.

The measure, sponsored by then-Rep. Timothy Wirth (D-Colo.), often called the congressman from TCI (Tele-Communications Inc., the largest U.S. cable operator, is headquartered in Denver), eliminated local rate controls and virtually ensured franchise renewals for cable companies. It also mandated that new competitors obtain a municipal cable franchise before leaping into the market, and it barred the likeliest cable

competitors--local telephone companies--from providing video service. This was "deregulation" the way corporate lobbyists believe it ought to be: Protected from competition, cable companies could exploit their local monopolies to the hilt.

How embarrassed the regulators must be to observe that even this worst-case scenario--franchise-protected monopolists offering unregulated service at free-market prices--produced a bounty for consumers when compared to the regulated alternative. The 1984 Act deregulated rates as of December 29, 1986. Even though real prices for cable service rose 36.5 percent from 1987 to April 1991, operators added new channels and higher-quality programming so rapidly that consumers were better off. The proof is in TV customers' response to the new higher-priced but meatier package. Consumers responded positively: Whereas only 56.5 percent of households passed by a cable subscribed in 1984, that percentage jumped to 59.2 in 1988. And whereas basic cable networks garnered but a 17 share of television viewers (looking only at households with cable) in 1983-84, they recorded a 35 share in 1990-91. The quality of cable, spurred by huge increases in programming investments--basic cable network spending by operators surged from \$325 million in 1984 to \$1.72 billion in 1991--was rising faster than prices. That judgment was rendered not by cable operators or government regulators, but by the consuming public.

And just what was the public tuning in to watch? More movies, sports, police dramas, and sitcom re-runs on USA and the superstations such as WTBS and WGN. Recently released movies over HBO and Showtime. Blue movies on Playboy and adult movie channels. And more sports on ESPN and regional sports networks.

But there was something more on cable. There was CNN, considered impossible at its inception in 1981. Everyone knew that news was too expensive to program for small audiences, particularly 24-hour, around-the-globe news. It could never be profitable--that's why you needed the government to force broadcast licensees to provide this kind of stuff. But Ted Turner, a quirky roll-the-dice risk taker, figured out that by paying newscasters less and by spinning off news clips to nonaffiliated outlets, he could make money. By 1985, he did.

He does it both with his Headline News, a rapid-fire capsule format of major domestic and international stories, and with the original Cable News Network. CNN, beginning inauspiciously, became the TV network of record with its dramatic coverage of the 1991 Gulf War. Its ability to cover a story for hours on end allows it to provide a news product unique in the history of broadcasting. CNN, more than any other network, shows how the economics of television have fundamentally changed. It is cheap and easy for CNN to stay with a breaking story: It doesn't need to appeal to a mass audience. Indeed, while the three broadcast networks were routinely able each to get 30 percent of U.S. viewers to watch their shows in the late 1970s, CNN's brass is delighted if it gets 2 percent. A 5 percent share, and watch out: Ted's going to kiss his TV set!

Once CNN gets a news story with widespread popular interest, it can stay with it virtually forever. It doesn't have the opportunity cost the networks have--20 million or 30 million

homes pining for some (Hollywood) cops-and-robbers. Suddenly it is Ted Turner's yacht--a brash, chaotic, and entrepreneurial vessel--setting the pace in the modern television market. The *S.S. Minnow*, a government-issue junk, was shipwrecked back on Gilligan's desolate island, victim of a failed voyage and now but a distant memory in the new Information Age.

CNN isn't just news--it's diversity of expression. *Evans & Novak*, *Capital Gang*, and *Both Sides with Jesse Jackson* allow an idiosyncratic group of pundits to go their merry way on politics. *Reliable Sources* examines the role of the media, bringing in liberal and conservative journalists and media critics to debate the performance of the press. *Larry King Live*, *Inside Politics*, and *Crossfire* are daily shows dealing with political and cultural issues from opposing viewpoints. *CNN & Company* typically presents the viewpoints of three women and has a female moderator. *Talk Back Live* is an experiment in interactive television, allowing citizens to call, fax, or e-mail their views on the issues of the day.

When *Larry King Live* hosted the historic Ross Perot/Al Gore debate on NAFTA in late 1993, it gave us a textbook application of how television could advance First Amendment values. Similarly, the show played an integral role in the 1992 presidential election, providing the platform on which Ross Perot announced his independent presidential candidacy, while giving both Bill Clinton and George Bush the opportunity to interact via call-ins with American voters. This was a "town-hall" forum that never existed under the regulated broadcast structure. It simply didn't make economic sense under "the public interest."

The 1992 elections were a watershed in the CNN experiment. This unlicensed network, with no obligation for informational programming, without any equal-time requirements, subject to no Fairness Doctrine, without any public trusteeship responsibilities whatever, was the network to: a) be judged the "most believable" by U.S. television viewers, according to the Times Mirror Center for the People & Press; b) be deemed "best news source" and "best campaign coverage" among electronic networks by the *American Journalism Review*; and c) receive a \$3.5 million grant from the Markle Foundation for news evaluation of presidential campaign advertising. This latter achievement was perhaps the most telling. The Markle Foundation is a very prestigious, nonpartisan, good-government institution that promotes research and public affairs to advance communications, particularly in the political realm. When setting about to fund an effort to monitor the claims made by candidates' ad spots, it attempted to do business with the Public Broadcasting Service. Talks broke down; Markle found PBS too political and bureaucratic.

The foundation then outraged many in the news business, and many more in the nonprofit sector, when it bestowed its generous grant upon a commercial enterprise--Turner Broadcasting. Rare is the foundation that tosses its cash around to profit-making businesses. But CNN performed beautifully, using the grant to create a weekly series during the 1992 presidential election cycle featuring objective analysis of the various campaign spots--CNN's "ad police." The underlying message was even more important:

According to the revealed preference of America's communications scholars, the unlicensed, unregulated network was outperforming both the commercial networks and the subsidized public broadcasters in its *public service*.

In the international realm, the liberation of America's wireline press has had enormous impact. CNN, the world's first unlicensed, unregulated electronic news network, has destroyed old barriers and erased traditional borders with its low-cost, round-the-clock, real-time access to global events. Not only does CNN bring international news events to millions of Americans, it has injected American influence into the far nether reaches. Boris Yeltsin himself credits CNN's worldwide telecast of his dramatic lecture to the tank commander in the August 1991 coup as the defining moment in the Soviet Union's monumental crash and burn. Now *there's* a First Amendment value.

Other cable nets have arisen to fill out the program schedule on your local cable television dial, and the diversity of choice is astounding. Try CNBC for a host of political talk shows, including *Equal Time*--curiously, found on a network with no equal-time requirement. *Pozner & Donahue*, *Tim Russert*, and *Cal Thomas* provide Americans with news analysis from the socialist to the fundamentalist, with a batch of arrogant inside-the-Beltway types tossed in the middle. (Averaging just 173,000 viewing homes per night, the network is run so economically that it will make its owners \$25 million this year.) Try Comedy Central for the clever and much-needed *Politically Incorrect*, Court TV for live coverage of a wide range of fascinating trials, complete with expert commentary. And check out C-SPAN and C-SPAN2 for a phenomenal plunge into wonk-heaven: nonstop, commercial-free public policy. Congressional sessions, think-tank conferences, political speeches, journalist roundtables--even re-enactments of all seven Lincoln-Douglas debates. And it is scrupulously bipartisan; indeed, the network makes repeated use of writers for such disparate think magazines as *The Nation* and *National Review*. On one November day, I switched from C-SPAN, televising an analysis of the GOP congressional sweep by political strategist William Kristol and noted political scientist Everett Carl Ladd, over to a hoary dismissal of everything American by the one-and-only Gore Vidal on C-SPAN2. To me, *that's* entertainment.

Beyond this rich mixture of information and public affairs, a broad range of special interests are also served by the unregulated media. Lifetime is a cable network devoted to women's perspectives, Black Entertainment Television to African Americans, Nickelodeon and the Cartoon Channel to children, Galavision and Telemundo to the Spanish-speaking, The Learning Channel and ME/U (Mind Extension University) to educational programs. Gay Entertainment Television is now available in 7 million of the 60 million U.S. cable homes, and scads of new specialty program services are on the launch pads.

The intellectual establishment in mass communications sees absolutely nothing to cheer about in this phenomenal new diversity. It furiously attacks the growth of the unregulated media, denounces the expansion of viewing choice on cable as so many sitcom reruns and home shopping bazaars, and pens diatribes against the alleged increasing concentration of media ownership. This is appallingly bad scholarship, as even the most

casual investigation will show. Indeed, it is on the unregulated media such as C-SPAN that a rabble rouser such as Noam Chomsky roams free to expose the evil conspiracies that lurk all about his world.

The ironies are too rich for my diet. How delicious to catch Jesse Jackson on his CNN show denouncing market competition as so much "Reagan-era deregulation." At long last, to find one man in this materialistic world who is willing to so completely ignore his own self-interest. After all, the Reverend's previous show biz effort fizzled on syndicated broadcast TV, canceled as a ratings flop. He was snatched from talk-show oblivion by CNN, a network whose niche audience was tailor-made for a political man with a minority point of view. But the Rev. Jackson is influenced not a whit by his career windfall: He stands up for what he believes in.

Not so courageous, Jeff Cohen. When I debated Mr. Cohen, director of a left-wing media watchdog group called Fairness and Accuracy in Reporting some three years back, he dismissed my paean to competition, totally unconvinced that deregulation of cable television had had any positive impact. He did concede that CNN was, indeed, the one network that allowed him a platform from which to spout his out-of-the-mainstream views. "But that is not because of any commitment to free speech," he emphatically insisted, "but only because they have so much time to fill."

I had never felt so hopelessly inept as a teacher of economics. Time to fill! Abundance! Low opportunity cost! Regulators were never able to overcome the basic laws of economics--that's the whole enchilada. Ted Turner is not a great thinker, a fine gentleman, or a saint committed spiritually to the oracle of free speech. He is a businessman. And in the age of channel abundance, his profiteering instincts are best satisfied by stuffing his two 24-hour all-news nets with as much informational programming as his cheap little soul can muster.

Economic myopia is not only a malady of the left. Perhaps the most paradoxical CNN mainstay is *Crossfire* co-host Patrick Buchanan. When he served as a presidential aide and speech writer in the Nixon White House, he was assigned to hurl complaints over perceived news bias not to the networks, but to the FCC. (Don't tell off the worker you're mad at. Scare 'im good: Tell his boss!)

Pat's sordid regulatory past is ever so juicy. Here is the man who is now able to enjoy national celebrity sufficient to mount a serious run for president of the United States owing to his perch upon the unregulated branch of the electronic media. Whereas he was once an ardent champion of the Fairness Doctrine, Buchanan today opposes it--quite frankly, he admits, because once he thought it would benefit conservatives to have government supervision of the press, where today (given the success of conservatives on radio and TV) he feels differently. Buchanan's ideology, such as it is, will not likely be confused with Voltaire's.

## **The Triumph of Cable and UHF**

Despite the huge gains made by cable, we haven't heard much lately about the nonviability of UHF. The whole premise of anti-cable regulation--to make the marketplace safe for UHF--was a sham. UHF *needed* cable to make its signal clear and friendly, and UHF stations became highly profitable in the era of cable's explosive growth.

In fact, it wasn't until 1986--31 years after the FCC's TV allocation scheme killed DuMont, a fourth broadcast network then operating--that a network to rival ABC, CBS, and NBC was financially viable. The arrival of Fox was directly linked to the enhancement of UHF stations over cable; another nationwide broadcast network was finally possible.

From its inception, the anti-cable policy was a product of intense lobbying from VHF licensees, which simply used the weakling UHF broadcasters as poster boys. Even at the time, a number of economic studies predicted that UHF would prosper as cable spread. (And you thought economists couldn't make successful predictions.)

So cable has gained the freedom to compete against broadcasters, and despite the collapse of the FCC's plan, the consumer's interests seem to be served. Unfortunately, cable interests quickly discovered that they could profit by employing against others some of the very same gimmicks used to keep them down (hey, go with what you know!). By the late 1980s, various cable competitors were being locked out of local video markets via a host of anticompetitive tricks. The local cable monopoly was a problem, and everything we had learned--about TV markets and about Washington--suggested that competition, not regulation, would serve consumers best. No matter. The failed policy of rate regulation was reintroduced in the Cable Act of 1992.

The chief backer of the law was none other than the National Association of Broadcasters. Why would broadcasters--long-time competitors of the cable industry--want to lower the price of cable programming? How lovely; at long last, an industry that altruistically wants to help the people, and cares not if it drains viewers--and, hence, revenue--from its own coffers. In truth, the NAB was convinced by the regulation evidence: Deregulation had actually spurred cable sales and ratings. Rate re-regulation would likely reverse the trend.

And so it did: 1993 was the first time in a decade that the ratings of the Broadcast Three rose while the combined ratings for basic cable were frozen. The scam worked.

Rate re-regulation has deterred investment in high-quality infrastructure, has prompted cable operators to furiously re-configure and divide their offerings into tiers, and has led to wholesale substitutions of low-quality programming for high-quality. For instance, while C-SPAN disappeared from more than 4 million homes, about one-tenth their subscribership, home shopping network stocks have been on fire. Cable systems, with per-channel prices capped by the 1992 Act, simply cut some stations and added others, leaning toward those with greatest financial reward. Cable systems don't even pay for home shopping nets --instead, they share a cut of the take.

But the regulatory drag, while delaying progress, cannot stop it. The cable industry is exploiting loopholes, both economic and political, which will allow it to make mincemeat of the rules. For a time, subscribers will suffer marginally worse viewing choices on the cable; over a few years, the constraints will drift away as so many old Washington lawyers riding off beyond the Beltway. And competition to cable--from "overbuilders," (the industry pejorative for competitors), direct broadcast satellites, wireless cable operators, and telephone companies--will crash down on the local monopolies, creating new and exciting options for customers.

Most important, they will offer choice. Choice, of course, is not something that the gung-ho regulators of broadcasting were ever comfortable with. They thought choice was too important to be left to the viewing public, that competition would only fragment and siphon the market shares of the regulated.

That was disastrous, so the policy geniuses told the courts, because greedy licensees were only concerned about profits, and there was little money in informational programming. So why not grant these small, narrowly interested men the opportunity to supply entertainment fare only on the promise that they deliver news and public affairs, political debate, educational information--above all, a diversity of viewpoints? This regulatory bargain was so fundamental to our democratic way of life that entire industries had to be rendered essentially illegal to protect the plan.

That plan failed. Not somewhat, or mostly, but abysmally, and for 20 years its sponsors fought tenaciously against the suppliers who would deliver the very product which the plan was ostensibly crafted to deliver. The lessons of this regulatory debacle have, sadly, not been popularly absorbed. Re-regulation was enacted in 1992 without a wisp of embarrassment.

And the construction crews erecting the Information Superhighway today stand idly by, while policy makers subject advanced telecommunications networks to the same regulatory hurdles they once imposed on cable. No one will be allowed to enter new markets, entrepreneurs are told, until it can be proven that no one will be hurt. The phantom risk of lost UHF has been replaced by horror stories about the "information have-nots."

We have seen the accuracy with which industrial planners pinpoint competitive fallout, and we should never forget the track record: Their aim stinks.

Yet the regulators were right about one very important matter. Popular access to diverse information sources is inherently democratic. As private, unregulated programmers have stormed the cable converter box, America's politics have been shaken and international despots have fallen. The tectonic plate shift wrought by cable deregulation of the 1970s showed that making information cheap by prying communications markets open was the one way government could in reality advance First Amendment values. This is a huge lesson for policy makers as we lurch toward the 21st century.

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(BROADCAST REGULATION, HISTORY)