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Wrestling over media

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By Thomas Hazlett

"The regulation of the broadcasting industry by the Federal Communications Commission resembles a wrestling match," observed Ronald Coase, the Nobel-winning economist, in 1966. "The grunts and groans resound through the land, but no permanent injury seems to result." The FCC's ad hoc broadcast reforms, undertaken on June 2, and the noisy arena of jeering critics it played to, demonstrate that faked body blows are as popular as ever.

The media ownership rules relate to six sets of regulations governing radio and TV stations. The rules are complex (the FCC summary is seven pages, single-spaced); here are the "bullets":

1. A TV network can now own stations reaching 45 per cent of US households, up from 35 per cent.
2. In a given TV market, one company may own two stations if there are at least five in total, or may own three if there are least 18. Only one station, in either case, can be among the top four (by audience ratings). The previous ownership limit was two, allowed only if eight independent stations remained.
3. Newspapers were banned from owning stations in markets where they published; this ban was dropped where there are more than eight stations (with restrictions short of a total ban where less than eight).
4. Small businesses are subject to slightly more lenient ownership restrictions.
5. A ban restricting the top four broadcast TV networks from merging was retained.
6. Limits on radio station mergers were slightly tightened by new local market definitions.

Still breathing? The FCC was directed by the 1996 Telecommunications Act to re-evaluate these rules, and was under court order to produce justification for retaining them as they were. The Commission documented that many of the restrictions do not promote diverse information sources. Yet in relaxing existing constraints without unleashing competitive entrants now stymied by regulatory barriers, it has produced a Country Club deregulation that largely boosts incumbents.

Indeed, Chairman Michael Powell touts his efforts to save free, over-the-air television. Therein lies the problem: the FCC sees itself not as traffic cop but as media product manager. Its "public interest" determination is that the American people want today's radio and television broadcasting system, and (to paraphrase H.L. Mencken's line about democracy), deserve to get it, good and hard.

Yet the roar of disgust with what critics call Powell's "deregulation" is equally wrongheaded. It alludes to "democratic values" that trump "economic efficiency", and relies on the fantasy that the old rules actually protect the public's interest. The FCC has "opened the floodgates to a wave of media mergers," writes William Safire in The New York Times, and "a single media giant, up to now allowed to own television stations reaching slightly more than a third of the nation's viewers, will soon - thanks to Floodgate - be able to reach nearly half, a giant's giant step toward 100 per cent 'penetration'."

It is a luxury for our federal agencies to enjoy such little public oversight that editorialists think that the rules they craft actually protect consumers. It is a luxury the FCC does not deserve. Indeed, the effect of the creation of federal spectrum allocation in the 1927 Radio Act was to cartelize radio broadcasting, limiting upstart competitors and rewarding powerful commercial stations with enhanced

profits. "Public interest" licensing was first proposed not by the American Civil Liberties Union or consumer groups scurrying to head off RCA and AT&T, but by the newly-formed National Association of Broadcasters.

Radio and TV regulation is tidily explained by the "capture" theory (in which the agency is controlled by the entities it is supposed to regulate). Rules limit competitive entry, making licences more valuable. Those lucky enough to get a licence take this policy to the bank. Policymakers are happy because it puts them in the loop, yielding political clout in assigning and regulating licensees. But consumers are left out, as competition is reduced and innovative technologies blocked via too-tight spectrum allocations.

Free speech is another loser. Policymakers are adept at making speeches about monopolies thwarted, diversity gained, or localism empowered. But the history of FCC content regulation is a sad one. In fact, the ban on newspaper ownership of broadcast facilities first arose in the 1930s, when FDR was convinced that publishers were anti-New Deal. In 1940, the FCC actually banned radio stations from editorialising (the Mayflower Doctrine). In 1949, the FCC reversed course with the Fairness Doctrine, mandating that radio and TV outlets cover controversial issues from balanced perspectives. But the result was a "chilling effect", as broadcasters chose bland content rather than risking requests for (free) equal time. When the Doctrine was abolished in 1987, informational radio formats increased fourfold in just six years.

Economic restrictions may be even more deleterious than content regulation, however. By suppressing competition, regulators deprive the public of valuable new information sources and free choice in media markets. Take the TV Allocation Table of 1952. The plan killed the fourth network, DuMont, by dishing out insufficient licences to allow survival against the Big Three. DuMont protested strenuously but regulators acted on the public interest in "localism", denying additional stations in big city markets to scatter licences widely.

The emergence of just three national viewing choices was an appalling result that cable TV operators soon attempted to remedy by providing the additional channels consumers demanded. The FCC, despite Chairman Newton Minow’s headline-grabbing speech in 1961 railing against TV’s "vast wasteland", rushed to the broadcasters' defence. Cable's advance was crushed in a series of rulings beginning in1962, and broadcasting remained unchallenged until deregulation in the late 1970s.

The unleashing of cable triggered a monumental restructuring of American media. C-SPAN, the premier American public affairs network, was born in 1979 because cable was hungry for cuisine that broadcasters - with their precious tri-opoly franchises - could not afford to cater. The broadcast networks serve mass markets, pitching at the lowest common denominator. Station ownership rules did not solve this problem (the "vast wasteland" dates from when the TV station limit was just 7 per cent, as against more than 35 per cent allowed now), while the "100 per cent penetration" achieved by over 230 cable networks today helps solve it.

The campaign against relaxation is led by the National Association of Broadcasters, which joined FCC lawyers in defending the old rules in court, still arguing the "public interest" after all these years. But, as the D.C. Circuit Court of Appeals wrote in 2002: "the Commission has adduced not a single valid reason to believe the [National Television Station Ownership] rule is in the public interest."

Liberalising just a fraction of the TV band to allow deployment of high-speed broadband would swamp any possible kick from tweaking the TV station ownership rules. But neither the FCC nor its critics seems interested in producing more than grunts and groans in a show fit for pay-per-view.

Thomas W. Hazlett is a senior fellow at the Manhattan Institute for Policy Research

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