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Policy discourse and broadcast practice: the FCC, the US broadcast networks and the discourse of the marketplace

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Introduction

The current enthusiasm in the USA for both the 'new technologies' in broadcasting and for a marketplace environment in which to develop those new technologies is not new. These themes, in various forms, have dominated the thought of policy makers since the birth of American broadcasting in the 1920s. Policy makers, however, have rarely if ever held that the existing system of network broadcasting conforms to the ideals of free market competition. The consensus among policy makers has always been that competition is a useful goal, but never that it is a reality. Historically, most would characterize American network broadcasting as the product of an integrated oligopolistic co-ordination between the major broadcast corporations and the government. The networks, in other words, owe their origins and continued existence to behavior that forms an antithesis to the common business vision of autonomous competition and the independent entrepreneurial spirit.

As this essay will show, the apparent gap between the stated goals and intentions of policy makers and the institutional reality of American network broadcasting is symptomatic of an oft-repeated historical pattern. The pattern has three stages. First, political and public dissatisfactions with broadcasting are reduced in policy discussions to complaints about the lack of market competition in the system. Second, regulatory attempts are made by the Federal Communications Commission (FCC) to somehow force the private corporations to compete, often in the face of loud complaints from the corporations. Third, the apparently noncompetitive, oligopolistic domination of the system by a few corporations continues, eventually leading to a repetition of the entire pattern.

The notion of the 'marketplace', it will be shown, plays a key rôle in sustaining this process. In the public eye, the FCC's investigations and rule makings concerning the dominance of the broadcast networks have appeared as battles between opposing forces with lively conflicts as the Commission combats monopolistic power in the name of the public interest. This image of struggle, in turn, blocks discussion of the regulatory process itself, discouraging inquiry into the commercialism that provides the terms in which both the struggle and the oligopoly system are articulated. The shared assumption that competition is both possible and desirable thus provides an arena for what appears to be lively struggles

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between the regulators and the regulatees, while precluding consideration of anything but a commercial system. The question of whether or not the conceptual framework of competition and private ownership adequately addresses our needs goes unasked.

According to Douglas Kellner: 'Of all major contemporary institutions, network television is the most neglected and mystified.' He has called for more critical study of network television, 'the structure which holds commercial television together' (Kellner, 1981: 31-32). However, most studies of television, including Kellner's have focused largely on the rôle of television in the production of culture and ideology. While this focus is undoubtedly important, it tends to neglect the nature of the institutional structure of network television itself, referring to it as simply 'commercial' or 'private', as though these terms were self-explanatory. It should not be forgotten that the networks exist in a context of complex interrelations with other private and public institutions. As Althusser has suggested, power in modern societies does not simply flow from a single source; it is constituted in a dynamic and 'sometimes teeth-gritting harmony' between dominant institutions (Althusser, 1971: 150). The following historical survey can be seen as a contribution to the understanding of the 'teeth-gritting harmony' between the FCC and the broadcast corporations in which the structure and power of network broadcasting is constituted.

The theory of competition

From the beginning, FCC network policy has presupposed first, that 'impersonal marketplace forces' tend to encourage competition, and second, that this competition is in the best public interest. Each of these assumptions is questionable. In broadcasting, marketplace forces have lead more often to centralization and a lack of competition than to diversification, and it is unclear that competition, even where it does exist, necessarily serves the variety of needs generally subsumed under the term 'the public interest'.

The contradiction of free market theory are many. In policy discussions the term 'monopoly' often refers to deliberate, unfair practices such as price fixing which artificially sets prices higher than they need be. It is often said that, given the absence of such practices, the only factor determining success in an unregulated marketplace is presumably the quality of the product. However, size alone can leave a company at a competitive advantage, especially in a field like broadcasting with its very high production and low distribution costs. Because of this, a large firm can out-compete a small firm without engaging in 'monopolistic practices' and without producing better programs. In a situation like broadcasting, therefore, 'impersonal marketplace forces' are more likely to lead towards firm expansion, the elimination of smaller competitors, and hence more concentration and less competition. In this case the marketplace works against competition, not for it.

In broadcasting, still another factor which calls into question the possibility of competition is the fixed, limited nature of networking. A study by R. E. Park on the economics of new network entry does not make it seem likely that a highly diverse and competitive national broadcasting network market will ever be a reality. Even if there were enough individuals willing and able to invest the $121 to $243 million Park estimates necessary to overcome the initial fixed costs of starting a network, the national economy and the broadcast spectrum, Park concludes,

allow for no more than six networks in an ideal situation, and no more than four in more realistic conditions (reprinted in FCC, 1980: I-67 to I-70).

The second assumption common to all three network investigations, that competition in the broadcast industry necessarily serves the public interest, can be challenged in several ways. Competition does not always get the consumers what they want. The phenomenon of 'second choice viewing' or 'least objectionable program' viewing is well known. In this practice, networks aim for the more homogeneous second choices and avoid the more diverse first choices in order to attract the largest audience possible. It has been argued that this problem would be solved by the introduction of more networks and thus more viewer options, but it seems unlikely that one or two more networks would be willing to produce first choice viewing for small audiences when they could compete with the other networks for larger audiences with 'second choice viewing'. Moreover, simple reflection on TV programming cycles belies the assumption that competition and diversity go hand in hand. In competing with each other, the American networks more often imitate each other's programs than they attempt to create something new and different.

Finally, the notion of competition applied to broadcasting invariably embodies a fundamental confusion between the economic interests of the advertiser and the much more ephemeral (but legally, the more important) interests of the audience.[1] Policy discussions often do this explicitly by equating the audience with the advertisers, indiscriminately using the word 'consumer', to refer to both. Of course, 'audience interests' in broadcasting are elusive and hard to define, but the frequent and varied complaints about programming which have often helped fuel the regulatory fire are based on understandings of the public interest which are often in direct opposition to the interests of the advertisers.

These arguments against competition, however, have been made before. The purpose of this essay is not merely to point out and criticize the contradictions and confusions of regulatory theory and practice. American telecommunications policy is rife with contradictions and confusions, to be sure, but the focus here will be on the practical effects of those confusions, not on their lack of correspondence to ideal types. Market-place philosophy, therefore, will not be analyzed on an abstract level, but as it appears in concrete instances of policy discourse and in its relations to telecommunications practice. Beginning with the birth of the networks in the 1920s and proceeding to the present, the essay will analyze the relations between the developing institution of network broadcasting and FCC investigations, rulings and hearings concerning the network corporations.

The FCC and the origins of the current network structure

The well-known story of the birth of network broadcasting in the USA is a classic example of a form of institutional behavior that describes the very antithesis of the ideal of market-place competition and the independent entreprenurial spirit. While the story has been described at length by Barnouw, it is worth pointing out some key aspects. The structure of network broadcasting in the USA was forged through a process of backroom bargaining, cooperatively negotiated deals and formal contractual arrangements—a process more resembling common conceptions of public sphere decision making than the model of independent competition often associated with the private sphere. In 1924, AT&T, RCA, Westinghouse and GE entered into a series of secret arbitrations, conducted very formally under the

guidance of a mutually agreed-upon referee who had all the power of a judge (Barnouw, 1966: 161). These extra-legal 'court proceedings' continued through 1926, when a final agreement was reached: AT&T would sell its broadcast stations in exchange for an exclusive right to own and operate the interconnections that would be necessary to form a network. RCA then formed the NBC network out of its own and AT&T's former stations, and began renting access to AT&T's hookups to connect the network. That agreement laid the foundation for network broadcasting as we know it today. NBC soon went on to create a system of stars, programs, studios, and advertising that has been gradually expanding ever since. CBS, which emerged a few years later, also relied on AT&T for hookups, as did every major new network that emerged over the next forty years.

It should be pointed out, however, that the government played a key and indispensable rôle in this process. Contrary to popular interpretations, the development of private ownership in US broadcasting is not simply the result of a lack of government involvement. The rôle of government regulation in legitimating AT&T's monopoly status, and hence the corporation's economic and technological advantage in establishing the technology of networking, is obvious. Government involvement in laying the foundation of commercial broadcasting is most evident, however, in the formation of RCA as a private monopoly corporation at the end of World War I. The formation of RCA involved close co-operation of several branches of the Federal government, especially the Navy, and a government representative originally sat on the board of directors. Without this federal blessing, it seems likely that RCA's formation and monopoly status would never have been acceptable to the public at large, or to anti-trust law enforcers.

The most important contribution of the state apparatus to the formation of commercial network broadcasting, however, may not be in overt government actions, but in areas where action was conspicuously absent. While the electronics corporations were secretly negotiating the commercial network structure, Congress was publicly debating the first comprehensive radio regulation. The 1927 Radio Act that emerged from the debate contains no mention of networks, and its successor, the 1934 Communication Act, only allows for 'special regulations applicable to radio stations engaged in chain broadcasting' without any authority for direct regulation of the networks themselves. The FCC was thus put in a quandary, on the one hand given the mandate to regulate radio in the 'public interest', but on the other given no direct authority over one of the dominant shaping forces in broadcasting, the networks. The FCC's quandary, however, need not be interpreted merely as a matter of weak or ineffectual regulatory laws. Had there been no highly publicized series of debates and rule makings concerning the regulation of broadcasting, or had there been no stated intention of regulating broadcasting for the 'public interest, convenience and necessity', it is highly unlikely that public acquiescence to the emergence of privately owned broadcast networks would have been so widespread: As vague and uncertain as the 1927 and 1934 Acts were, without them, the privately owned system as we know it today could not have survived. The vagueness and uncertainty of the early regulations, therefore, signify more than the confusion of the early regulators. Structurally, that vagueness made the current privately owned, oligopoly dominated system possible.

The 1941 Report on Chain Broadcasting

During the 1930s, the networks consolidated their dominant position in American broadcasting. By 1938, the total number of radio stations was no larger than it had been shortly after the beginning of broadcasting in 1927. The percentage of existing stations affiliated with the major networks, however, had climbed to 52 per cent, up from 32 per cent in 1934 (Sterling and Kittross, 1978: 512). Moreover, all but two of the thirty very profitable high-power broadcast stations in the country were owned by either NBC or CBS, and about half of the industry's net income went to the networks and their twenty-three controlled stations, leaving the other half to be divided among 637 independent and affiliated radio stations (FCC, 1941: 99).

Meanwhile, public criticism of the networks in Congress and the fledgling FCC followed what has by now become a predictable pattern. In Congress, liberal progressive anti-monopolistic sentiments were aroused and directed at the networks. The usual expressions of distaste and fear of program content served to further fuel the regulatory fire. The Mutual Broadcast Network and the Transcontinental Broadcasting System, CBS's and NBC's weak but principal competitors, also voiced loud complaints, often couched in the language used by the progressives and by those objecting to program content. Added to this chorus of criticisms were pressures on the FCC from its funding source: Congress, after legislatively directing the FCC to investigate AT&T, had hinted that it might do the same for network broadcasting. Moreoever, an investigation of the FCC by Congress appeared to be in the works as a response to charges of lack of action and collusion with the industry by the FCC. In effect, the FCC was being handed the task of responding to widespread and varied complaints about network radio.

The FCC response was to voluntarily initiate an investigation of what was then called 'chain broadcasting' in 1938. A long series of hearings accompanied by extensive research followed. During this process, the variety of moral, social, economic and self-interested objections to network broadcasting that had spurred the FCC to action gradually became subsumed under a single complaint: the lack of competition. Hence, while the resulting *Report on Chain Broadcasting* contained dramatic condemnations of the networks and recommended what were then thought to be drastic regulatory changes, both the condemnations and the recommendations were based solely on three assumptions: that competition was possible, that the networks had deliberately thwarted competition and that a competitive policy would best serve the public interest. Declaring the free market to be the 'essence of the American system of broadcasting', the report recommended regulations prohibiting the networks from engaging in specific 'practices or agreements in restraint of trade or furtherance of monopoly', such as restrictive contracts between networks and their affiliates and the exclusive network monopolization in certain parts of the country (FCC, 1941: 95).

There was some debate over whether competition was in fact a possibility in network broadcasting. In a dissenting minority opinion appended to the 1941 *Report,* two FCC commissioners argued that '[t]here is no open market condition in the business of broadcasting. . . . Nature has determined that' (FCC, 1941: 116). NBC, in arguing against the proposed regulations, similarly argued that physical limitations in radio networking made open market competition an

impossibility. No amount of regulations, it was claimed, could change that basic fact.

Some evidence at the time suggested that, in fact, network practices, not the nature of broadcasting, prevented competition in the industry. The *Report* revealed that, by means of one-sided, long-term affiliation contracts, territorial exclusivity contracts, 'option time' requirements, and network control over affiliates' advertising rates, the major networks had deliberately sought to prevent any would-be challengers from entering the market. Moreover, NBC's ownership of two networks (the 'Red' and the 'Blue') allowed it to thoroughly monopolize the airwaves in some areas. The networks' claim that these practices were not anti-competitive but simply necessary for business was belied by the history of the enactment of the practices, which showed that they were instituted as defenses against competition. CBS instituted restrictive contracts from the beginning, but NBC's president could claim in 1931 that NBC 'holds its network stations together only by the superiority of its network program service and by the demand of listeners for NBC programs'. When Mutual entered the market, however, NBC quickly reversed its position and instituted its own set of restrictive network-affiliate contracts. Similarly, Mutual remained without contractual restraints only until 1940, when a fourth network tried to enter, the Trans-continental Broadcasting System. 'The upshot of the whole business', concluded the 1941 *Report*, 'is that today only a negligible proportion of the Nation's total night-time broadcasting wattage is free to bargain in the network-station market' (FCC, 1941: 49). In light of this evidence, the Commission released with the *Report* a set of proposed regulations designed to prohibit these practices. Among these rules was one barring the ownership of more than one network, a provision directed particularly at NBC.

The network reaction was vociferous. CBS claimed that the regulations would 'cripple if . . . not paralyze, broadcasting as a national service' (Sterling and Kittross, 1978: 190). NBC agreed. Fears were expressed that the entire industry structure would collapse. The networks took the FCC to court, and a legal battle ensued, resulting in a Supreme Court ruling in favor of the Commission.

The 1941 regulations had less effect than either side had predicted. While they did force the divestment of a number of stations in duopoly markets and of NBC's second network, in the end the networks were neither 'crippled' nor challenged by fresh competition. The percentage of stations that were affiliated with the networks, at 61 per cent in the year of the *Report*, continued to climb after the regulations, reaching a high point of 97 per cent in 1947. The only change was where previously three organizations, NBC, CBS and Mutual, reigned over the continuing trend towards concentration in broadcasting now, with the addition of ABC operating the old 'Blue', there were four. The story of the 1941 *Report on Chain Broadcasting* and the resulting rulings, therefore, clearly illustrates the three-part pattern that has been repeated several times since: first, public dissatisfactions with broadcasting were reduced to the single issue of competition, then, with much fanfare, legal steps were taken to alter the situation, and finally, the structure of the system remained basically unchanged.

The 1950s and television

After the war, NBC, CBS and ABC shifted their attention away from radio to television, and the FCC extended its network regulations unchanged to the new

medium. A series of regulatory blunders and allocations limitations, principally associated with the FCC's 'freeze' of 1948-1952 and its 'Sixth Report and Order' of 1952, all coupled with the high cost of television programming, resulted in a limited, rigid TV broadcast structure which heavily favored nationally centralized production and distribution of programs and which made entry of competing networks virtually impossible.[2] Consequently American television was not simply dominated, but virtually under the complete control of NBC, CBS and ABC. By the mid-1950s network profits were soaring.

In public-sphere responses to commercial television, again a combination of social, moral, economic and political complaints were reduced in policy discussions to complaints about a lack of competition in the network-dominated new medium. Again, a series of hearings, inquiries and rule makings took place. And again, the situation remained basically unchanged.

The central stage for the first television version of this policy cycle was the 'Barrow Investigation', an FCC study of the networks begun in 1955, published in 1958 and named after its chief investigator. The study appeared as a response to a combination of Congressional concerns and complaints from the major networks' struggling competitors, especially the Dumont Television Network, whose significant attempt at forming a fourth network had collapsed in the same year. The resulting *Barrow Report*, while several times longer, more detailed, and more timid than its 1941 predecessor, still shared with the *Report on Chain Broadcasting* the presupposition of the possibility of competition in nationwide broadcasting, and the goal of determining the extent to which industry practices intentionally inhibited that competition. However, while the first investigation was willing to seriously address the effect of heavy industry concentration to the point of forcing the divestiture of NBC's Blue Network and the sale of a number of network stations, the Barrow Investigation accepted as given the even heavier concentration which characterized television in the 1950s. The structural factors which placed the networks in a privileged, noncompetitive position—the allocations problems and the economies of scale of TV production—while clearly the principal causes of undue network power, were simply ignored by *Barrow*. Committed to its presupposition of a competitive broadcast industry, the investigation ignored the evidence which clearly challenged that presupposition.

The glue which held this illusion of possible competition together was the ideology of 'localism', a concept which took root in the 1950s and is still widespread in policy discussions today. The *Barrow Report* claimed that it is in the public interest to pursue a 'policy of seeking to achieve for stations the character of local institutions with a "grassroots" interest in the service and program needs of the community'. The value of this policy is that it allows for 'a diversity of viewpoints and program services and a forum for community civic activities' (FCC, 1958: 6). In other words, TV stations in their ideal form were envisioned as a sort of modern substitute for the village green. National network broadcasting, from the perspective of localism, took on the image of an intruder into the community's independence and harmony.

Like competition, localism was seen, not as a present reality, but as a future goal. Also like competition, localism was sometimes envisioned as a lost ideal, a better state that belonged to an undefined and nebulous past. Consequently, noting the contrast between the overwhelmingly national and network dominated character of the television industry and the localist vision of community television, the *Barrow*

Report concluded that 'the community institution concept has been seriously eroded' (quoted in Bunce, 1976: 21). The solution to this problem was to be found in business pluralism, that is, a policy of encouraging competition and diversity of ownership among local stations. A 'grassroots interest in the community', therefore, was interpreted purely in terms of business ownership and control.

In the context of television in the 1950s, where the higher cost of production and the allocations problems assured the networks uncontested dominance, and where the 1943 rules could be recognized as ineffectual, the presupposition of competition was much less defensible than it was in 1941. The Barrow investigation's attempt to limit specific competition-restricting practices in the industry was in essence an attempt to create competition where the nature of the situation assured that there was none. The inability of the resulting rules to alter the fact of network dominance is hardly surprising.

The percentage of network-owned and affiliated television stations remained about 90 per cent for nearly a decade after the Barrow investigation and rule makings (Sterling and Kittross, 1978: 515). Local ownership of stations, of such importance to the Barrow study's thinking, continued to decrease, dropping from 28.8 per cent in the top twenty-five markets in 1956 to 23.9 per cent in 1966 (Bunce, 1976: 23). In 1965, a decade after the Barrow investigation began, another FCC report was forced to conclude that things were basically unchanged. 'The three network corporations', the report stated, 'not only in large measure determine what the American people may see and hear during the hours when most Americans view television, but also would appear to have unnecessarily and unduly foreclosed access to other sources of programs' (FCC, 1978: 126).

Analysis

The investigations and the regulations they produced caused neither the changes desired by the FCC nor the catastrophes envisioned by the networks. After both the *Chain Broadcasting* and the Barrow investigations, the major networks continued to dominate the airwaves. No new networks emerged, and the level of competition did not change substantially. The networks' vastly superior production capabilities ensured that the affiliates would remain dependent on the networks for programming regardless of the contractual arrangements between the two. This economic dependence, in turn, ensured that the networks would be the primary force in determining the character of broadcasting in the country. Therefore, provided one assumes that the investigations should have corrected the situation which inspired them—the inordinate power of the networks—the investigations were wholly ineffectual.

In another sense, however, the network inquiries were a success. In 1938, a polity ill at ease about the centralized power of the networks had made their fears known to the legislature, who then assigned the FCC the task of addressing those fears publicly. The FCC, in turn, produced the satisfying spectacle of a successful challenge to the networks, complete with aggressive inquiries, public tribunals, and condemnations of the self-serving actions of wealthy and powerful business executives. The loud complaints and struggles of the networks only served to reinforce the image of an antagonistic confrontation between the networks and the public as represented by the FCC. In the 1950s, the Barrow investigation repeated the same scenario, although with less fanfare from both sides. The network

investigations and rule makings, therefore, fulfilled what Edelman calls the 'expressive function' of government regulation: providing public dramas that serve to allay the fears of the suspicious polity, while continuing to further the interests of the parties being regulated, that is, the interests of the networks (Edelman, 1964: 56).

It could be argued that this is an overstatement of the case; to claim that the investigations were mere deceptive ploys, designed to take the heat off the networks while they continued to manipulate the FCC towards their own ends, is to simplify a complicated situation. After all, the first investigation did force the separation of ABC from NBC. The rule changes, although not substantially altering the structure of broadcasting, did take steps to prevent the networks from exercising excessive power over their outlets, and the nation is better off for these events. The FCC, in this view, is not simply bending to the whims of the networks, but is serving to strike a balance, to create as much diversity and competition as possible given the economic imperatives of the industry.

This less cynical view of the rôle of the FCC has its appeals, but it can be supported only by limiting one's vision to the few areas where conflict between the FCC and the networks has occured. If the perspective is expanded, however, to take in also those issues *not* dealt with by the FCC, then the characterization of the FCC as a servant of the broadcasting industry becomes hard to refute. From the passage of the 1927 Radio Act onwards, for example, the FCC has refused to actively question the fundamentally commercial, profit-driven basis of broadcasting. In spite of widespread interest in various forms of nonprofit broadcasting, in spite of frequent complaints about commecial advertising in broadcasting, the FCC has refused to even broach the issue of commercialism in any serious way. Since the popular sentiments against the commercial nature of American broadcasting are, if not universal, at least widespread, the FCC's silence on the issue belies any pretensions it may have for being a vehicle for allowing public input into the broadcasting system. The FCC, by its silence, has from the beginning served to uphold the interests of the networks by ensuring the corporate, profit-making structure of the broadcast system.

In light of the Commission's passive affirmation of the commercial nature of radio and TV, the subject matter and approach of the network investigations and regulations takes on new meanings. Both the *Chain Broadcasting* and *Barrow* inquiries took competition to be the basis of their evaluations of the situation. This belief that competition is crucial to broadcasting in the public interest necessarily implies an acceptance of a purely commercial, profit-based broadcasting system. In making competition the central issue, therefore, the FCC's network policies have simply eliminated consideration of anything but a commercial system, thus reinforcing the corporate broadcaster's controlling position in broadcasting. Moreover, the question of competition provides an arena for what seems to be lively conflict between the regulators and the regulatees, ensuring the FCC its expressive function.

In summary, the first two network investigations, while providing satisfying spectacles for those wary of network power, in fact merely reaffirmed the networks' status in the broadcast system. By focusing on questions of a mythical competition, the investigation provided an arena for ritualistic conflict that successfully avoided any treatment of the basic commercial structure. The source of the problems which gave rise to the investigations in the first place—the centralized profit-making structure of the broadcast system—was left untouched.

The 1960s

Throughout the 1960s and into the early 1970s, the issue of network dominance was pursued by the FCC largely under the auspices of the in-house Office of Network Study. A complex series of hearings, rules, and revisions eventually led to the adoption of the much debated Prime Time Access, Financial Interest and Syndication rules in the early 1970s. The Prime Time Access Rule in particular provides a clear illustration of mechanisms by which public complaints are subsumed under the question of competition, and by which the social aspects of 'the public interest' are supplanted by the interests of various members of the broadcast industry. In the 1960s, the rôle played earlier by first Mutual Broadcasting and then Dumont, was played by Westinghouse Broadcasting ('Group W'), at the time the largest broadcast corporation after the three networks. Group W not only owned five affiliated television stations, but had become active in program production; it knew that if the network stranglehold on prime time broadcasting were broken, Group W could expect to develop a much larger syndication market for its wares. In submitting the original draft of the Prime Time Access Rule to the FCC, however, Westinghouse predictably chose not to emphasize its own financial interests. Instead, the request for a rule barring the major networks from a portion of prime time took on the rhetoric of localism, emphasizing the inability of 'local' stations to gain access to prime time, which in turn eroded the 'community' nature of television. The hearings and procedures surrounding Westinghouse's proposed rule, therefore, successfully presented an image of a public debate in service of the public interest. Group W itself was also successful; its prime time program 'PM Magazine', which fit neatly into the nationwide slot opened up by the Prime Time Access Rule, became very lucrative. Most agree, however, that the Prime Time Access Rule has failed to further the cause of community programming.

A recent FCC review of the 1960s hearings process has said: '[t]he relative well-being of networks, stations, and syndicates became awkward surrogate measures for viewer satisfaction' (FCC, 1979: 59). The phrase 'network dominance' in this setting came largely to be used to refer to either a lack of competition or inequitable profit sharing, while the localist rhetoric became increasingly devoid of social content. In other words, the only interests being addressed by the hearings were those of the television industry, that is, the interests of the regulated. Meanwhile, all the trends associated with network dominance continued largely unabated.

Deregulation

In the 1970s, American broadcast policy experienced what many have interpreted as a reversal, adopting a belief that what was needed was not more, but less regulation. The FCC's most elaborate statement of the philosophy of deregulation appears in the 1980 *Final Report on New Television Networks*, the product of yet another investigation begun in 1978. The principle instigation for this latest study was again Westinghouse, which again submitted a petition complaining about the networks' dominance of broadcasting. While the financial self-interests of Westinghouse were clear to many involved, the petition, as could be expected, linked network dominance with many of the concerns that had been generating

public complaints over television in the early 1970s. Invoking localism, the petition argued that the networks maintained unfair economic dominance over their affiliates, with the result that '[e]ach year local affiliated stations have less involvement in and responsibility for the totality of the programming carried over *their facilities* to the public in *their communities*'. Moreover, the petition argued, the excess of crime, sex and violence in network programming was partly the result of the lack of affiliate input into programming decisions; if affiliates were given plenty of time to clear network programs and a chance to provide some 'grass roots reaction' to network decisions, the problem would be reduced (*Broadcasting*, 6 September 1976: 25, original emphasis).

Like the previous investigations, the recent inquiry worked from the assumption that the public interest is best served by economic competition. The recent inquiry has also continued the trends established by *Barrow*; it produced more material than either of the previous investigations (3750 pp.), is even less antagonistic towards the networks, and is even more hesitant about recommending strong regulations. However, there is a significant—and to some, a surprising—difference between the most recent inquiry and its predecessors. The inquiry's *Final Report* is very critical of past regulatory efforts and suggests that in many cases problems will be solved, not by more regulation, but by elimination of current rules.

The general dissatisfaction with past regulatory efforts plays a central rôle in the most recent inquiry's analysis. Existing rules, the *Report* concludes, 'do nothing to promote competition' (FCC, 1980: IV-47). This is because the primary determinants of network relations to affiliates and other industry members are not restrictive contracts or practices, but the economic efficiencies of networking. Since the cost of program reproduction and distribution are insignificant when compared with the high cost of production, and because sales of advertising time are greatly facilitated by the ability of simultaneous transmission through a nationwide network, a network dominated system of broadcasting is inevitable. In other words, the enormous bargaining power of the networks over their affiliates, the primary source of concern, is a product of what the networks are, not of what they do. This fact has been largely ignored by previous regulatory thinking. Hence, the longstanding assumption that restrictive network practices force affiliates to accept network programming forgets that affiliates tend to accept network programs simply because they are more profitable, regardless of whether or not the affiliates are contractually obligated to accept the programs. The Prime Time Access Rule, for example, 'ignores the fact that the programming incentives of the three affiliates are in general identical to those of the three networks' (FCC, 1980: IV-82). Similarly, 'the minimal impact of the rules on affiliate clearances is not surprising in light of the incentives both the networks and their affiliates have to maximize the joint profits from network exhibition and in light of the generally more profitable nature of network programs, attributable to the efficiencies of networking' (FCC, 1980: IV-47). 'The economic advantages of networking', observes the 1980 *Report*, 'are simply too great to expect economic concentration to be reduced through restrictions on network conduct' (FCC, 1980: I-3). From this perspective regulations such as the ban on option time and the Prime Time Access Rule are therefore basically pointless.

Given the nature of networks, the only thing that can compete with the power of a network is another network. If the FCC wishes to increase competition in nationwide broadcasting, the *Final Report* reasons, it should encourage the creation of

new networks. Past FCC actions, however, have prevented, rather than encouraged new network entry. The primary example of this (frequently cited in the report) is the Sixth Report and Order of 1952 which created the VHF-UHF allocations problem, giving the established networks an advantage which doomed from the start all efforts to form a fourth network. A similar frequently cited example is the FCC's regulation of cable TV in the period 1965-1972 which effectively restrained the development of cable until the rules were relaxed in the mid-1970s.

Since regulatory efforts have been generally either ineffective or counter-productive, the 1980 *Report* concludes that for the most part, they should be eliminated in favor of the 'systematic disciplining and eroding forces of competition' (FCC, 1980: I-29). In other words, since regulation does not work, deregulation will. The report sees no reason to extend network regulations to new technologies, for example. It suggests that the networks should be allowed to have their own cable or other secondary networks. Furthermore, mergers such as the proposed ITT-ABC merger of the sixties that was blocked by the Department of Justice should be left unopposed. In general, the nature of television broadcasting should be shaped 'by impersonal marketplace forces rather than by the desires of a centralized government agency' (FCC, 1980: I-29).

The FCC's latest inquiry into network dominance has been widely interpreted as representing a radical change in regulatory philosophy. *Broadcasting*, for example, reports that the recent inquiry took a position 180 degrees from that of the previous FCC investigations into the networks. Rather than recommending still further ways to hobble the networks, *Broadcasting* writes, the inquiry staff found 'that previous regulatory efforts at heading off the networks had not done so, and that similar efforts in the future were doomed to fail . . . [the inquiry co-directors] argued for an open market-place that would rely on competition rather than regulation to achieve the greatest benefits to the listening and viewing publics' (10 November 1980: 36).

In light of the history and philosophy of the previous investigations, however, the latest inquiry appears much less radical than is commonly assumed. While the inquiry's *Final Report* is more critical of previous regulations than its predecessors, it still performs the same function: on the one hand, it presents a dramatic image of gallant regulators taking bold and brilliant steps to serve the public interest in the face of violent opposition from self-serving special interests; on the other, it recommends actions that will serve to enhance the dominance of those very interests. Moreover, the mythology which supports this political sleight of hand is still the same; the mythology of naturally occuring competition.

The 1980 *Report* supplies ample evidence which subverts the report's own faith in market-place forces. The report goes to great lengths to demonstrate the unlikelihood of networks engaging in 'monopolistic practices', typically using the term 'monopoly' to refer only to deliberate, unfair practices. Elsewhere, however, the report mentions the added 'efficiency' engendered by a firm's expansion. In suggesting the viability of allowing the ownership of more than one network, for example, the report explains 'dual networking will only be undertaken as part of the competitive process of internal firm expansion and contraction that promotes network efficiency' (FCC, 1980: III-84). Regulation that robs consumers of the benefits of this efficiency is therefore counterproductive. A similar argument is used in defense of unregulated mergers and expansion among various branches of the broadcast industry. What is being vaguely referred to here is the obvious fact

that simple economies of scale can give a corporation a 'monopolistic' advantage, regardless of any intentional monopolistic practices. The inquiry's blindness to this potential conflict between the goals of 'efficiency' and of 'competition' results in some striking contradictions. The 1980 *Report's* advocacy of the proposed ITT–ABC merger of the 1960s, for example, ignores the fact that the Justice Department's reasons for opposing the merger were entirely consistent with the 1980 *Report*'s premise: the DOJ felt that ITT was the most likely candidate for the formation of a fourth network, and that a merger with ABC would thus prevent the creation of a new network (FCC, 1980: III-51).

Perhaps the most significant blind spot in the recent inquiry's analysis, however, concerns the possibility of publicly funded broadcasting. While the inquiry's *Final Report* devoted thousands of pages of text to bemoaning the numerous barriers to 'new network entry' that have existed in broadcasting since the 1950s, no mention was made of the only successful attempt to overcome those 'barriers' during the period in question, the creation of the PBS system. It is as if, for the market-structured mind, publicly funded broadcasting simply does not exist. The discourse of the market-place, it seems, generates its own definition of the 'public interest', a definition that excludes consideration of non-commercial systems altogether.

The new technologies

Unlike the *Barrow Report* and the proceedings of the Office of Network Study, the recent inquiry has not relied on localism to maintain its hope of competition in the face of the contradicting evidence of industry structure. The *Final Report* is in fact heavily critical of localism, largely for the reasons already mentioned. In place of localism, however, the *Final Report* has introduced a faith in new technologies. The multi-channel capabilities of cable and satellite technologies, it is argued, will open the door to numerous new networks, more diverse and specialized programming, and a generally more satisfactory broadcast system. The restrictions inherent in the limited broadcast system have been overcome, finally making a truly competitive situation in broadcasting a possibility. Because the previous attempts at regulation have failed, the best approch to the new technologies is one of *laissez-faire*.

There are numerous reasons to be doubtful of the faith in new technologies. While the *Final Report* is fond of pointing to the early VHF–UHF allocations problems as an example of the inadequacy of regulations, it fails to take note of the fact that, to this day, large numbers of UHF broadcast frequencies across the country are unused. As Richard Posner has pointed out, this fact casts serious doubts on the belief that cable's multi-channel capacity will substantially alter industry structure (1972: 102–103). Some argue that the unused UHF frequencies are the result of the added difficulties of transmitting and receiving in the UHF spectrum. The reception difficulties, however, have been largely eliminated by the introduction of click-stop UHF tuners, and the added cost of UHF transmission is relatively insignificant when compared to the costs of programming. Furthermore, McGowan, Noll and Peck state that the cost of broadcasting over the air is approximately the same as that of broadcasting over cable (Posner, 1972: 103). If, as seems to be the case, the reason for the large quantity of unused airspace is simply that the market is thin, and not that access is limited, then the hope that cable will introduce new levels of competition is a false one.

There are other reasons to be wary of new technologies. As one student of those developments points out, 'Euphoria over what appears to be the end of scarcity theory as a basis for regulation takes little account of the fact that nearly all cable cities are one-company operations' (Rimmer, 1981: 24). Further, although most new, large-city cable systems are being constructed with capacity for dozens of channels, fully two-thirds of the existing systems have only twelve channels or less. While the larger capacity, larger market systems will eventually change the limited channel conditions, the long-term industrial structure is being forged now in the current restricted environment. On a local level, therefore, cable companies may have even more potential for monopolistic control than did NBC when it was able to thoroughly dominate local markets with its Red and Blue networks. The potential effects of multiple ownership of such local monopolies have yet to be thoroughly explored.

Finally, regardless of whether or not competition will be a product of the new technologies, the dubious practice of equating economic with social concerns is still left unquestioned. Even though the distribution of ownership and profits within the industry might be shifted by the new technologies, the high cost of programming will inevitably generate centralizing tendencies. Moreover, the primary force behind programming and distribution decisions will be profits, and not the noneconomic terms of the 'public interest'.

In summary, although the 1980 *Report* appears on the surface to differ substantially from its predecessors, it operates from the same contradictory economic libertarian principles. Therefore, as far as broadcasting is concerned the outcome of the recent inquiry is most likely to resemble the outcome of the earlier investigations: oligopolistic corporate dominance will continue. Much evidence suggests that open competition in broadcast networking will always seem to be an exception and not the rule, and that economic interests do not necessarily coincide with audience interests. The FCC's recent investigation, however, has once again ignored this evidence.

Conclusion

In 1925 Herbert Hoover, while presiding over the creation of the first broadcast regulation, confidently predicted that, if the industry were left to fend for itself, mid-program advertising would never become a reality because of the nature of open competition (Hoover, 1925: 54). Since then, the history of broadcast regulation has been filled with countless examples of regulators hopefully relying on the market to serve the public, and then years later discovering that their hopes had been misguided. Nonetheless, most current public discourse about regulation accepts some version of economic libertarianism and proceeds to discuss the extent to which government should have a rôle in the market-place—the familiar government *vs* business arguments. The question of whether or not the market-place is a good determinant of the public interest in the first place goes unasked.

The suppression of this question in policy discourse is not a simple matter of short-sighted regulators. In fact, some policy makers suggested early on that it might be a question worth addressing. In the conclusion to the 1941 *Report*, for example, the authors wrote 'If the industry cannot go forward on a competitive basis . . . then we must frankly concede that broadcasting is not properly a competitive industry. If this be the case, we recommend that the Congress should

amend the Communications Act to authorize and direct regulations appropriate to a noncompetitive industry with adequate safeguards to protect listeners, advertisers, and consumers' (FCC, 1941: 89). If one were to assume that policy discourse were an independent rational process, it would seem the weight of forty years of evidence that calls the market theory into doubt might prompt some public explorations of the question. And yet, as we have seen, the policy cycle of high hopes in the market followed by disappointing results continues unabated.

The fact of this relation, however, does more than just undermine the claims of American market-minded policy makers. It sheds new light on social theories of network television as well. Both advocates and opponents of commercial television, for example, often contrast the USA with other nations by an imagined absence of government involvement in American broadcasting. With its powerful corporations and weak FCC, the system in the USA is often held up as being exemplary of a broadcast system free of public control or interference. While the FCC may be weak, however, its history demonstrates that it has played an indispensable rôle in forging and maintaining the current structure of American broadcasting. The US broadcasting system, therefore, is in a way as dependent on state institutions for its existence as the system of any other nation.

More generally, the recurrent policy cycle has important implications for our understanding of the relation of policy discussion to the behaviors of the broadcast industry, that is, of the relation of policy discourse to institutional practice. Many would agree that the policy has generally failed, and that the discourse does not accurately represent the practice. Most assume, however, that the problem is one of a poor fit between discourse and practice; most solutions are designed to somehow make the discourse and the practice more closely resemble each other. Attempts are made, for example, to develop theories and definitions that better represent the broadcast system, or to regulate or structure broadcasting to better conform to policy ideals.

The regularly repeated policy cycle in broadcasting, however, suggests that the principal relation of discourse to practice may not be one of 'representation' at all. In a paradoxical way, policy discourse does 'fit' institutional practice in American broadcasting. The discourse of the market-place, by providing an arena for apparent struggle that blocks discussion of the regulatory process itself, serves to shape and maintain the very system that it fails to describe.

Note added in proof

Professor Hoffman-Riem has brought to my attention an article of his similar to my own:

HOFFMAN-RIEM, W. (1981). Fernsehkontrolle als Ritual? Überlegungen zur staatlichen Kontrolle im amerikanischen Fernsehen, *Juristenzeitung*, Nr. 3

Interested readers are encouraged to consult Professor Hoffman-Riem's article.

Notes

1. In the famous 'Red Lion' case, it was declared 'It is the right of the viewers and listeners, not the right of the broadcasters, that is paramount'.

2. Because of technical interference problems, the FCC halted processing of television licenses in 1948, at which time all of the few stations on the air were network owned or affiliated. Free from competition, those few stations were able to consolidate their market positions during the following four-year 'freeze'. When the 'freeze' was finally lifted, moreover, most of the new licenses available were in the technically inferior UHF-band (see Sterling and Kittross, 1978: 295–296).

Bibliography

ALTHUSSER, L. (1971). Ideology and ideological state apparatuses, in *Lenin and Philosophy and Other Essays*, London, New Left Books

BARNOUW, E. (1966). *A Tower in Babel: A History of Broadcasting in the United States to 1933*, New York, Oxford University Press

BUNCE, R. (1976). *Television in the Corporate Interest*, New York, Praeger

EDELMAN, M. (1964). *The Symbolic Uses of Politics*, Urbana, Il, University of Illinois Press

FCC, (1941). *Report on Chain Broadcasting*, Docket 5060

FCC, (1958). *Barrow Report (Network Broadcasting: Report of the Network Study Staff to the Network Study Committee)*, Presented to the Committee on Interstate and Foreign Commerce, 85th Congress, 2nd Session, House Report 1297

FCC, (1978). The historical evolution of the commercial network broadcast system, Network Inquiry Special Staff, October

FCC, (1979). A review of the proceedings of the FCC leading to the adoption of the Prime Time Access Rule, The Financial Interest Rule, and The Syndication Rule, prepared by Mary Catherine Kilday, of the Network Inquiry Special Staff, October

FCC, (1980). *New Television Networks: Entry, Jurisdiction, Ownership and Regulation; Final Report*, Network Inquiry Special Staff, October

HOOVER, H. (1925). Address to the Fourth Radio Conference, printed in *Hearings, Committee on Interstate Commerce, U.S. Senate*, 69-1, 8–9 January 1926, pp. 49–58

KELLNER, D. (1981). Network television and American Society: introduction to a critical theory of television, *Theory and Society*, vol. 10

POSNER, R. A. (1972). The appropriate scope of regulation in the cable television industry, *Bell Journal of Economics and Management Science*, vol. 3

RIMMER, T. (1981). Videotex and teletext: regulation of the electronic publisher?, Paper presented to the Mass Communications Division, ICA Annual Convention, Minneapolis, MN, May

STERLING, C. H. and KITTROSS, J. M. (1978). *Stay Tuned: A Concise History of American Broadcasting*, Belmont, CA, Wadsworth