DEREGULATION TRENDS IN INTERNATIONAL BROADCASTING

A Research Project Conducted for the
Federal Department of Communications
Ottawa, Ontario

Dr. T.L. McPhail, Director & Professor
Graduate Programme in Communications Studies
The University of Calgary
Calgary, Alberta

and

Dr. P. Mercer, Associate Dean
Faculty of Law
The University of Western Ontario
London, Ontario

ACKNOWLEDGEMENTS

This research project was undertaken as part of the university-based research contract awarded jointly to T.L. McPhail, Director & Professor, Communications Studies Programme, The University of Calgary, and P. Mercer, Associate Dean, Faculty of Law, University of Western Ontario, by the Department of Communications (DOC). In addition, the Graduate Programme in Communications Studies, at The University of Calgary provided financial assistance. In particular, the authors are grateful to Mr. Richard Matthews, Broadcast Policy Division (DOC), for his advice and assistance throughout the project. The authors are grateful for the research assistance of Robin Mansell, Charu Sahney and Cydna Mercer, and the numerous individuals who assisted by supplying bakground information for a number of studies.

Opinions expressed are solely those of the authors. All errors of omission or commission are the sole responsibility of the authors.

INTERNATIONAL DEREGULATORY TRENDS IN BROADCASTING

Contents

CHAPTER 1

THE HISTORICAL DEVELOPMENT OF BROADCASTING REGULATION IN CANADA

A. INTRODUCTION

Broadcasting has played a major role in industrialized societies for most of this century. Currently, its roles include entertaining, transmitting cultural values, supporting advertising and the sale of goods and services, and presenting public messages and programming. Although broadcasting systems traditionally existed under the auspices of responsible regulatory authorities, deregulatory trends are evident in many nations, particularly the United States.

Significantly influenced by the American broadcasting industry and its national regulatory agency, the Federal Communications Commission (FCC) the Canadian industry faces increasing pressure to reconsider and review its regulatory situation. In addition, new technologies, ranging from VCRs to TVROs, place additional emphasis on the need to re-examine regulation. Although, these new systems create competition for Canadian broadcast undertakings, they fall outside the traditional regulatory umbrella of both provincial or federal agencies.

This report details the issues arising in international broadcasting and deregulation. It systematically examines deregulatory trends in the United States, Australia, and countries in the European Economic Community (EEC). The study attempts to identify the forces responsible for deregulation internationally, and to

delineate some of the resulting trends, particularly those created by legal challenges and sensitivity to the First Amendment to the U.S. Constitution and the Canadian Charter of Rights & Freedoms. It concludes with a section which details some of the implications of international factors that ultimately may influence the public policy options pursued by Canadian federal agencies or departments.

Historically, the Canadian broadcasting system has faced two fundamental challenges which have led to structural difficulties. The first is the conflict between economic and cultural values and priorities which are elaborated upon in the following historical analysis. The second is a desire to develop a unique, indigenous Canadian broadcast system while maintaining an appreciation of international systems and services.

For example, in 1928, the first Canadian Royal Commission into broadcasting (Aird) travelled to Europe and the U.S. in its attempt to gather information and insights which might be applied to the emerging Canadian broadcasting system. Moreover, this current examination of international broadcasting trends also represents an effort to learn from the experience of others in order to determine the future direction of broadcasting in Canada. However, in the final analysis, a "Made in Canada" approach to the regulatory and broadcasting systems, is necessary. Only a national policy can reflect Canadian cultural priorities and initiatives.

B. THE ORIGINS AND DEVELOPMENT OF THE CANADIAN BROADCASTING SYSTEM.

B:1 Defensive Expansionism

Prior to the establishment of public broadcasting by the Broadcasting Act of 1932,[1] four major deficiencies in the Canadian broadcasting system existed:[2] (1) interference from foreign stations resulted in a shortage of usable frequencies; (2) many Canadians had no access to broadcasting service; (3) programs were of poor or questionable quality; and, (4) American broadcast stations and programming dominated the Canadian broadcast environment. The concept of "defensive expansionism"[3] provided the rationale for a legislative response.

The state had a two-fold objective in assuming an active role: first, to ensure the maintenance of Canadian political sovereignty, and second, "to build a nation state that could assert its independence from both the mother country and the United States."[4] Broadcasting policy and legislation thus were seen as a means of resolving larger problems of national identity and self-determination.

---

[1] The Canadian Radio Broadcasting Act, 1932, S.C. 1932, c. 51.

[2] J. Beke, "Government Regulation of Broadcasting in Canada" (1970), 2 Can. Comm. Law Rev. 104 at 106-107.

[3] See: Norman Spector, "The Canadian Broadcasting System within the Minature Replica Economy", unpublished paper delivered at conference on The Crisis of Canadian Broadcasting at St. Mary's University, Halifax in 1976; and, Margaret Prang, "The Origins of Public Broadcasting in Canada" (1965), 46 Can. Hist. Rev. 1.

[4] Aitken, quoted in Spector, supra n. 3.

B:2 Nationalism: Nationhood, National Consciousness and Unity

Although the "defensive expansionism" explanation is tidy and credible, there are reasons for denying its exclusivity as a key to understanding how the Canadian broadcasting system began and developed. The "emerging sense of national unity and purpose"[5] which, according to Aitken, sustained the policy of defensive expansionism, is worthy of recognition in its own right. The distinction between the two concepts is alluded to in Spry's description of the mood which prevailed in the 1930's:

> The period in Canada after the recovery from the first World War ... was a period not of nationalism in any narrow sense but of nationhood ... not in opposition to or separation from others but in the realization of a national self.[6]

If the development of Canadian broadcasting is to be judged by accurate and reasonable standards, one must recognize that early expansionist policy was not merely "defensive" but, in the broad and literal sense, "nationalistic."

Moreover, Canadian broadcasting policy and legislation has been influenced by two types of nationalism -- cultural and economic -- the combination of which has produced conflicts which largely account for the present state of the Canadian system. Nationalist sentiment underlies many of the attitudes towards broadcasting. Most prevalent is the traditional and almost universal agreement on the part of

---

[5] Aitken, quoted id.

[6] Graham Spry, "The Origins of Public Broadcasting in Canada: A Comment" (1965), 46 Can. Hist. Rev. 138.

politicians and pundits that broadcasting holds great significance for Canada's future. This is based on the assumption of an inter-relationship among broadcasting, political sovereignty and the maintenance and expansion of a distinctive Canadian culture, itself seen as "a weak, fragile creature in need of stimulation from within and protection from without."[7] The choice of public over private enterprise as a vehicle for Canadian broadcasting was not a consequence of the prevailing political philosophy but of this notion of nationalism.[8]

Even before analyzing these nationalistic assumptions, one may recognize the highly subjective nature of the concepts used to justify them. One of the reasons elicited by Prime Minister R.B. Bennett for placing radio broadcasting under government control was to ensure that "national consciousness may be fostered and sustained and national unity still further strengthened."[9] Phrases such as "national consciousness" and "national unity" have been used for decades but,

---

[7]Edwin R. Black, "Canadian Public Policy and the Mass Media" (1968), 1 Can. Journal of Economics 376.

[8]Note the words of Dr. Augustine Frigon, a member of the Aird Commission, speaking in 1932 before a Parliamentary Committee appointed by Prime Minister R.B. Bennett:

> ... we came to this conclusion, that if you want to accept the point of view of broadcasting in the interests of the nation, it cannot be left to private enterprise.

P.C.B. 1932 at p. 67, quoted in E. Austin Weir, The Struggle for National Broadcasting in Canada (Toronto: McClelland, 1965) at 111.

[9]House of Commons, Debates, 1932, p. 3035.

one suspects, without any shared or definite idea of their meaning. The realization of any goal is greatly impeded if there is no common idea of what is being sought.

Although public broadcasting began during a period of strong nationalistic sentiment,[10] the nebulous character of cultural nationalism proved to be particularly vulnerable. An awareness of Canada's inevitable involvement in international affairs and an increasing recognition of private enterprise as the dominant ethos began to dominate. Private broadcasters persisted in their complaints of unfair competition from the CBC until 1958, when new legislation giving them equality of status within the system was enacted. However, by severely restricting foreign ownership or control of Canadian stations the 1958 Broadcasting Act also marked the resurgence of nationalism, but its practical emphasis was economic rather than cultural.

It is significant that while curbing foreign ownership of the broadcasting market, the legislation did not include any restriction on the importation of U.S. programs. Private broadcasters relied heavily on relatively inexpensive U.S. programs, and the CBC increasingly followed suit. Just as the establishment of tariff barriers to free trade arguably fostered Canada's development into a branch plant economy; so Canadian broadcast programming replicated many features of the system in the United States. As Norman Spector

---

[10] See Spry, supra n. 8.

points out, "commercial broadcasting is functional to the needs of a branch plant economy; branch plants require commercial time in which to push the consumerist ethic of variety and choice."[11]

One of the reasons behind the ineffectiveness of nationalism as a motivating force in Canadian broadcasting has been the failure to give equal and concerted support to both its cultural and economic elements. There is, however, one area which the late economist Harry Johnson has described as "a natural consilience of the strictly economic interests in nationalism and the cultural interests in nationalism."[12] Canadians engaged in cultural activities and the owners of Canadian broadcasting stations have an interest in nationalism. To the extent that nationalism creates a barrier to competition from foreign broadcasting stations, certain Canadians benefit:

> Thus cultural nationalism complements economic nationalism, both involving tangible benefits in the form of protection of the market for the services of individuals. This consideration suggests also that the strength of economic and cultural interests in nationalism will vary with the threat of competition and the need for protection of the market. One would expect to find nationalist sentiment strongest where the individuals concerned are most vulnerable to competition from foreign culture or from foreign economic activities; conversely you would expect to find that the nations that are leading culturally and economically will tend to be internationalist and

---

[11] See Spector, supra n. 3.

[12] Harry G. Johnson, "A Theoretical Model of Economic Nationalism in New and Developing States" (1965), 80 Political Science Quarterly 169 at 178-179.

> cosmopolitan in outlook, because this would tend to extend the market area for their cultural and economic products.[13]

The relationship between cultural and economic nationalism and the political control of broadcasting is not direct but spurious. Though lip service has been paid to nationalist ideals, broadcasting in Canada remains under tighter political control than in the United States. Nonetheless, the domination of the system by private commercial broadcasting and American programming has increased.

B:3 The Aird Report and the Initial Legislation

The history of Canadian broadcasting regulation begins with the Report of the Royal Commission on Radio Broadcasting,[14] otherwise known as the Aird Report, after the chairman Sir John Aird. According to the terms of reference of the Order in Council appointing the Commission, it was required "to examine into the broadcasting situation in the Dominion of Canada and to make recommendations to the Government as to the future administration, management, control and financing thereof."[15] Before holding any meetings in Canada, however, the Commission travelled to New York and to several major capitals in Western Europe where broadcasting was already well-organized or in the process of organization. The members found broadcasting to be especially well developed in Great Britain and Germany, where radio services were publicly owned and operated. In Canada, radio

---

[13] Id.

[14] Queen's Printer, Ottawa 1929.

[15] Ibid., p. 6.

broadcasting was the subject of "considerable diversity of opinion"; however, there was unanimity on one fundamental issue: Canadian radio listeners wanted Canadian broadcasting.[16]

The recommendations contained in the Commission report were straightforward: in the best interest of the nation, broadcasting should be seen as a public service, and the stations providing such services should be owned and operated by a single national company.[17] The funds required to operate and maintain the proposed broadcasting service were to be met out of revenue produced by licence fees, a subsidy from the federal government and rental of station time for programs employing indirect advertising.[18] The report recommended against any form of broadcasting employing direct advertising, and station time was to be made available for programs employing a limited amount of indirect advertising only until such time as broadcasting could be put on a self-supporting basis.

Although supporters of public broadcasting were heartened by the Report of the Aird Commission, there remained several obstacles to the implementation of its recommendations. The victory of the Conservatives under R.B. Bennett in the general election of 1930

---

[16] Id.

[17] The principal recommendations of the Commission are summarized ibid., at 12-13.

[18] Direct advertising was defined by the Commission as "extolling the merits of some particular article of merchandise or commercial service ..." An example of indirect advertising would be an announcement before and after a program that it was being presented by a specified firm.

raised doubts whether private commercial broadcasting, which had already existed without restriction in Canada for close to a decade, would be eradicated. After losing the election, Liberals, who had previously been in favour of a public system, tended to become more worried about the dangers of government control of radio. Finally, the government was reluctant to embark on new expenditures of public funds during a depression.[19]

In 1930, the Canadian Radio League was formed to combat these exigencies. Its success in rallying support for a public broadcasting system from diverse sectors of the Canadian public has been well-documented.[20] Less than four months after the decision of the Privy Council[21] that exclusive control of radio lay with the federal government, new legislation respecting radio broadcasting was enacted.[22] The 1932 Act created the Canadian Radio Broadcasting Commission (s. 3) to which it allocated power "to regulate and control broadcasting in Canada carried on by any person whatever" (s. 8). The Commission was also given the power to carry on the business of broadcasting in Canada. To that end, it was authorized to acquire existing private stations, either with the consent of the owner by lease or purchase (s. 9(b)), or without that consent under the

---

[19] See Prang, supra n. 4.

[20] Id.

[21] In Re Regulation and Control of Radio Communication in Canada (1932) A.C. 304; (1931) S.C.R. 541.

[22] The Canadian Radio Broadcasting Act 1932, 22-23 George V., c. 51 (assented to 26 May 1932).

provisions of the Expropriation Act (s. 11(i)). Provision was made for financing by Parliamentary appropriations not exceeding the estimated revenue from receiving license, private commercial broadcasting licenses and amateur broadcasting licenses (s. 14(2)). In Prang's words, "the act provided a potential framework for a genuine public system."

Nevertheless, certain other features of the new legislation, seemingly less important at the time, prevented this potential from being realized. Insofar as these factors represent deviations from or denials of the recommendations of the Aird Commission, it is not possible to accept Beke's conclusion that "the fundamental goals of the Commission were achieved."[23] Even though the Aird Commission and the Radio League "considered it indispensable to the successful functioning of a public broadcasting system",[24] the Act did not create a public corporation with independent responsibility for the management of broadcasting; nor did it provide for the appointment of a voluntary Board of Governors with general responsibility for policy. The Canadian Radio Broadcasting Commission, consisting of three full-time members, was actually a department of government appointed directly by the government, with responsibility for both management of the system and policy determination. Furthermore, the removal of the $2.00 license fee left the system without adequate financing. This lack of financial means effectively prevented the Commission from

---

[23] Beke, supra n. 2. at 108.

[24] Id.

nationalizing private broadcasters. Finally, the Act failed to abolish direct advertising -- presumably in deference to manufacturers' claims (duly considered by the Aird Commission) that they would be unfairly disadvantaged through being unable to compete with advertising carried on American stations and received in Canada.

Whether by inadvertance or design, the failure of the 1932 Act to preserve the integrity of the Aird Report proved deleterious to the development of public broadcasting. Although certain deficiencies were remedied in subsequent legislation, the long term, continuing existence of major internal contradictions had the effect of keeping a major question alive: How might broadcasting be better regulated?[25] Private broadcasters, who were originally to be withdrawn from the system, pursued this question until they were given legitimate and equal status a quarter of a century later.

C. SUBSEQUENT POLITICAL INFLUENCE AND CONTROL

Even before the appointment of the Aird Commission, the manner in which the Liberal government exercised discretionary power over broadcasting caused political controversy.[26] Fears that the medium

---

[25]Frank W. Peers, Canadian Media Regulation, p. 76.

[26]The increasing controversy over licensing moved the Minister of Marine to exclaim in the House that each exercise of the discretionary power over broadcasting created a "political football". In particular, public anger arose over the Minister's cancellation of four broadcasting licenses held by a religious group (one of many such groups owning radio stations at the time) after complaints were received about broadcasting attacking other religious bodies.

(Footnote Continued)

might be sullied by partisan politics gave rise to serious reservations about the efficiency of public broadcasting, even among its proponents. These fears proved to be well-founded, and a large part of the history of public broadcasting in Canada is concerned with the broad problem of political interference, the scope of which was succinctly outlined in the Fowler Report of 1957:

> The dilemma is between the danger of political interference with an agency of public information and communications and the need to retain sufficient supervision and control to ensure that public moneys are wisely spent ... there is danger in having it run by a department of government where partisan interests could have an influence or might be thought to have an influence.[27]

The principles on which the Broadcasting Act of 1932 was ostensibly based were violated almost immediately, as men who had been known for their political activity were appointed to the Canadian Radio Broadcasting Commission.[28] A scant four years later, irregularities in the 1935 election campaign prompted the appointment

---

(Footnote Continued)

See R.G. Penny, "Telecommunications Policy and Ministerial Control" (1970), 2 Can. Comm. Law Rev. 3 at 10.

Also, the question of political abuse was raised by the granting of the only clear channel in Toronto to a well-known Liberal supporter whose radio station, with only one hundred watts, was the weakest in the city. Four other stations, one of which generated five thousand watts, were forced to share four channels with American stations.

See Prang, supra n. 4 at 5.

[27] Report of the Royal Commission on Broadcasting (The Fowler Report) 1957, Queen's Printer, Ottawa, p. 88.

[28] See H.C. Debates of May 1933, W.L.M. King at p. 5086, cited in Beke, supra n. 2 at 111.

of a Parliamentary Committee to inquire into the administration of the 1933 Act.

> Your committee finds that during the last election there was serious abuse of broadcasting for political purposes and that lack of a proper control by the commission was apparent. The most glaring instance brought before the committee relates to the "Mr. Sage" broadcasts in which offensive personal references were frequent and to which no proper or adequate political sponsorship was given. Some of these offensive broadcasts originated in the Toronto studios of the radio commission.
>
> We also find that credit was issued to political parties in direct violation of the rules of the commission, which rules prescribe that all political broadcasts must be paid for in advance. Generally speaking from the evidence presented before your committee we are forced to the conclusion that there was a loose administration of commission affairs.[29]

The committee recommended that a new act be substituted, and that the direction of broadcasting placed in the hands of a corporation with full control over "the character of all programs, political and otherwise, broadcast by private stations, and the advertising content thereof." The ideals which founded the Aird Commission recommendations are starkly contrasted with the Parliamentary Committee's paramount concern to wrest broadcasting from the control of unwarranted political influences.[30] The Canadian Broadcasting

---

[29] Report of the Special Committee To Inquire into the Administration of the Canadian Radio Broadcating Act 1932, Official Reports of Debates of the House of Commons, 1936, Vol. III, p. 3077.

[30] This view is supported by Hodgetts' statement that while each public corporation had its own reasons for leaving the departmental fold, the determining factor with respect to the CBC was the concern to create a politically neutralized administrative agency.

J.E. Hodgetts, "The Public Corporation in Canada" in

(Footnote Continued)

Corporation was established when new Broadcasting Act came into effect on June 23, 1936.[31]

This new legislation was more effective than its predecessor. It gave the CBC a credibility and authority which the Canadian Radio Broadcasting Corporation had lacked, and provided for the insulation of management from partisan pressure by the creation of a Board of Governors standing between the CBC and Parliament. Nonetheless, there was no magic in the mere act of creating a well-insulated public corporation. The extent and effect of political pressure on the administration, no less than the vitality of the public corporate form as a whole, depended on the individuals whose ideals, efforts and abilities formed the substance and "personality" of the CBC.

In fact, the controls contained in the 1936 Act were more structured than those of the earlier legislation, firmly investing Parliament with ultimate supervisory powers. While it might be said, in this instance, that these controls gave greater independence to the newly created CBC by clearly defining the ambit of its powers, the continuous close supervision of CBC operations by Parliament over subsequent years is recognized as having badly hampered its effectiveness. CBC officials currently spend a disproportionate amount of time responding to cumbersome and often ill-informed inquiries emanating not only from Parliament, but also from the

---

(Footnote Continued)
Government Enterprise: A Comparative Study (London: Stevens, 1970) at 209.

[31] The Canadian Broadcasting Act 1936, 1 Edward VIII, c. 24, s. 3.

relevant ministry, the Governor-in-Council, public hearings and specially-appointed Royal Commissions.

The first Royal Commission to study the CBC was the Royal Commission on National Development in the Arts, Letters and Sciences, otherwise known as the Massey Commission. The Commission's investigation revealed that the CBC was "performing its duty satisfactorily, sometimes even admirably, in providing appropriate and varied programs", but less admirably in exercising its responsibilities of control.[32] In particular, there were two major criticisms of CBC administration.

The first had to do with the obligations of private stations. As noted in the Commission's Report:

> ... the original intention to expropriate these stations was not carried out. It was thought that they could render an important service to the public in providing a medium for local broadcasting in giving local news and in other ways, including the development of local talent.[33]

The proper function of a local station as the Commission understood it was "to reflect the life and interests of the community, and to use and develop the local talent available." Many of the private stations made little effort to fulfill this function, and the CBC was

---

[32] Report of the Royal Commission on National Development in the Arts, Letters & Sciences, 1949-51 (The Massey Report), Queen's Printer, Ottawa, 1951 at p. 40.

[33] F.W. Peers, The Politics of Canadian Broadcasting: 1920-1951 (Toronto: University of Toronto Press, 1969), p. 447.

criticized for not seeing that they lived up to their license obligations in accordance with regulations.

The second criticism alleged that the CBC was doing too little to enlighten the public adequately and properly about its policies, plans and methods of operation.

This failure of the CBC to further and protect its own interests in two vital respects is of great significance when compared with simultaneous developments in the private sector. In the early years, private broadcasting was relatively disorganized and lacked financial stability. However, by the end of 1948, the assets of private broadcasters had grown to three times that of the public sector in an increasingly lucrative commercial market. With the organization of the Canadian Association of Broadcasters (CAB), the private broadcasters began to seek and gain the support of certain important elements of the community, such as the Canadian Chamber of Commerce and its local counterparts.[34]

From its inception, the CAB complained of unfair treatment at the hands of the CBC. Twice during the Massey Commission hearings the CAB appeared to argue that since the CBC had not taken over the private stations, as had been envisioned in 1932, and since many new private stations had been licensed, it could reasonably be contended that there was not one exclusive national system, but a new public system

---

[34] Ibid.

in addition to the private one. They protested against the regulation of private stations by the CBC, which they referred to as their "commercial rival"; and without any complaint of unjust treatment, demanded that the Act be rewritten "to provide for the regulation of all radio broadcasting stations, whether CBC or private owned, by a separate and completely impartial authority not associated in any way with the CBC."[35]

The Massey Commission's reply to the CAB was strongly on the side of public service:

> We cannot agree with their conclusions. The principal grievance of the private broadcasters is based, it seems to us, on a false assumption that broadcasting in Canada is an industry. Broadcasting in Canada, in our view, is a public service directed and controlled in the public interest by a body responsible to Parliament... That they may enjoy any vested right to engage in broadcasting as an industry, or that they have any status except as part of the national broadcasting system, is inadmissible.[36]

The Commission Report recommended that the control of the national broadcasting system continue to be vested in the CBC as a single body responsible to Parliament. The CAB, however, were undeterred in their efforts to bring about the creation of a separate regulatory body.

Many important changes took place during the later 1940's and early 1950's. The Conservative and Social Credit parties abandoned the position which they had adopted in 1932, and began supporting the

---

[35] E.A. Weir, The Struggle for National Broadcasting in Canada (Toronto: McClelland and Stewart, 1965), p. 251.

[36] Quoted ibid., at 252.

concept of a separate regulatory board.[37] This change in political philosophy was undoubtedly fostered in part by the government's practice of broadcasting "non-partisan messages" to the Canadian public during the war; and was compounded by the subsequent unwillingness of the Liberal party to extend political time to the opposition after the 1940 election. By a similar philosophical change, private broadcasters began to receive growing support from the press. Initially, the newspapers feared competition from broadcasting for advertising revenues, and thus had supported a non-commercial system. However, public broadcasting came into disrepute as newspaper interests gradually became involved in broadcasting. By 1950, they owned, in whole or in part, 41 of the 119 private radio stations in Canada.[38]

In contrast with the private sector's expanding revenue on the one hand, and low programming costs on the other, CBC revenues remained tightly controlled even though the demands on its expenditures increased.[39] For example, the CBC as the provider of

---

[37] According to Peers, the enlistment of party support for the private broadcasters came about partly through the efforts of local stations whose easy access to local constituents won over may M.P.s. supra n. 39 at 447.

[38] Id.

[39] Spry makes the important point that it was at the behest of the government that the Canadian Broadcasting Corporation withdrew from local and national spot radio advertising, leaving these two largest sources of revenue exclusively to competing radio stations. Their importance is shown by the fact that in the years 1956-1958, in radio alone, they totalled over $113 million, or nearly 2 1/2 times the entire expenditure of the CBC on its own 35 radio stations, live

(Footnote Continued)

public service in national broadcasting was required to relieve the pressure being exerted on small community stations. The tightening of radio budgets with the growth of television led to the development of large, regional private concerns.[40] Because advertisers tended only to patronize the top twenty stations, smaller operations began to be squeezed out. The owners of the regional stations, whose interests lay in maximizing their coverage and earnings,[41] proceeded to reap an increasing proportion of revenues that would otherwise have been used to support community stations. Nonetheless, the CBC was left to shoulder the responsibility of local service.

Again, it is clear that the CBC allowed the irresponsibility of many of the private stations to continue unchecked. Even though some stations failed to supply statements of their proposed program content and plan of operations,[42] their licenses were renewed, subject only to a notification that their failure to cooperate would be taken into account in making recommendations for the ensuing year:

(Footnote Continued)
programs, talent and three nationwide networks. In North America, compared with the revenues generated by station operation, network and live programming are costly and usually unprofitable. The main task of the CBC was largely confined to these two fields.

See Graham Spry, "The Decline and Fall of Canadian Broadcasting" (1961), 68 Queen's Quarterly 219 at 222.

[40] Weir treats this development in detail; supra n. 41 at 335 ff.

[41] The Canadian Bank of Commerce Letter of 6 June 1960, placed private broadcasting third in profitability among 140 leading industries in 1957; see supra n. 45.

[42] The Corporation was empowered by s. 22 (1)(c) of the 1936 Act to make regulations "to control the character of any and all programmes broadcast by Corporation or private stations".

> It was always the next time. Indeed for forty years all licenses have invariably been renewed, until possession of licenses has become synonymous with a vested interest in fixed properties, that are now bought and sold and traded ... If a single license was cancelled for non-fulfillment of obligations, the fact has yet to be revealed.[43]

The CBC, as a public corporation with certain vested powers, was again criticized in 1957 by the Fowler Commission, which emphasized that its regulations[44] had been inadequately enforced.

Upon its appointment in 1955, the Fowler Commission became the third Royal Commission to review broadcasting. Its terms of reference were to examine and make recommendations on CBC policies, programming and financial requirements, as well as on the licensing and control of private stations.[45] The private broadcasters' lobby had increased in

---

[43] Weir, supra n. at 246.

[44] The general power of the Corporation to make regulations was conferred by The Broadcasting Act 1936, s. 22.

[45] The Report of the Royal Commission on Broadcasting (Fowler Commission), 1957 expressed optimism which seems to have been based on analysis that was result-oriented and tended to beg the question at issue:

> In the combination of public and private enterprise, Canadian broadcasting has had variety and flexibility which an all-public or all-private system could not have achieved. There are things that the public agency can do that the private stations could not and would not do; there are other services that the private stations can provide that the public agency could only supply with difficulty and less effectively. If the union of public and private elements produces clashes of opinion and controversy within the system, it is all to the good in an institution engaged in public information and the formation of public opinion. Our broadcasting system is a distinctive and valuable achievement in which Canadians can take pride.
> Perhaps because of the failure to state the objectives and

(Footnote Continued)

strength, and the CAB again made several presentations in an attempt to convince the Commission of the need for a separate regulatory body.[46] The Commission declared that the overwhelming weight of evidence established a need in Canada for government control and regulation of broadcasting,[47] and castigated the CAB for its "mercenary motives" in issuing much one-sided or misleading information. The Report also said that there was no clear distinction either in the public mind, or in the actual organization of broadcasting, between the two types of regulation for which the CBC was responsible -- the general regulation of broadcasting, and the operational control of the national network. The Report therefore suggested that the regulatory and operational aspects of public broadcasting be divided through the appointment of a new body entitled the Board of Broadcast Governors, which would regulate broadcasting. It was to have direct involvement in the management of the CBC's operations, although the corporation would continue to report through it to Parliament. Within a year, however, a newly-elected

---

(Footnote Continued)

> purposes of our broadcasting system clearly and simply, the positive values of our achievement have not always been recognized.
>
> (Vol. I, p. 13)

[46] Although the Canadian Association of Broadcasters could not show any evidence of unfair treatment or any clear conflict of interest and duty in the operations of the CBC Board of Governors or even suggest how the form and content of broadcasting should be changed, the CBC seemingly failed to offset even their feeble arguments through neglecting to provide sufficient information, both to the public and to the Commission.

See Weir, supra n. 41 at 291.

[47] Supra n. 51 at 82.

Conservative Government enacted legislation which went beyond the recommendations of the Fowler Report to the point of departing from the concept of a single unified system.

1. The Legitimizing of the Private Sector

Lester Pearson, speaking to the new Bill before the House of Commons, recalled how the position of the Aird Commission towards private broadcasters, subsequently established by the early legislation, had been superseded:

> We must bear in mind that an essential and clearly recognizable feature of that system was that these private stations had no special rights of their own. They had a privilege granted to them .... over the years we have perhaps begun to lose sight of the initially accepted doctrines of public control through a national system and of the vital necessity of maintaining and strengthing that system ... what was once a privilege for private broadcasters has gradually become a vested interest and eventually has been invoked as a right, which, of course, it was not. [T]hen the position of the CBC, the public corporation, could be attacked on the grounds that the public agency was at the same time a judge and a competitor...[48]

The implementation of the Broadcasting Act of 1958[49] marked the culmination of the evolutionary process by which the status of private broadcasting finally came to be acknowledged. Two entirely separate bodies were created: 1) the Board of Broadcast Governors, a newly-formed body of fifteen members charged with the regulatory responsibility over all broadcasting stations both public and

---

[48] Hansard, August 25, 1958, pp. 4048-9.

[49] The Broadcasting Act, 1958, 7 Elizabeth II, c. 22.

private;[50] and 2) the CBC, with its own board of eleven directors with the power to operate and maintain broadcasting stations and networks.[51]

The effect of the new legislation went beyond the mere creation of a dual system. Several forces combined to bring about the isolation of the CBC as the relatively static element within the system. In his speech to the House of Commons, Pearson presaged one of the dangers of the new arrangement when he added, prophetically:

> This new BBG, because CBC program standards will likely be above the minimum prescribed, will tend to become a regulatory body for private stations only, if influenced increasingly by the financial situation of these private stations. More and more then, this board may be concerned with private systems rather than the control and regulation of a national system.[52]

The 1968 Act gave the private broadcasters new momentum while putting the CBC on the defensive.[53] Now the private broadcasters were "to

---

[50] Ibid., s. 3.

[51] Ibid., s. 22.

[52] Supra n. 54 at 4049.

[53] Although the 1958 legislation appeared to give greater autonomy to the CBC, as an operational body, over its own planning and administration, there were underlying much tighter controls tied directly to the purse strings of the CBC. For example, an annual capital budget having the approval of the Governor-In-Council, on the recommendation of the Ministers of Transport and Finance, was to be laid before Parliament and, further, a five year capital program was to be submitted to the Governor-In-Council (s. 35). Furthermore, money appropriated by Parliament to the CBC had to be kept in a separate acocunt called the Proprietor's Equity Account (s. 33(4)). These stringent controls indicate a comparative loss of independence by the CBC.

take 'the upper hand' in defining the content and character of Canadian broadcasting."[54]

D. RECENT DEVELOPMENTS

In 1965, another Committee on Broadcasting found that there was no economic justification for developing a completely separate publicly-owned system to provide full national coverage.[55] Accordingly, the CBC continued to depend on privately owned affiliates to distribute its network program services. The mixture of public and private broadcasters was then inextricable, and the belief persisted that all shared a common purpose "to inform, enlighten and entertain the Canadian people and promote their national unity." To accomplish this "single national purpose", the Report recommended that the entire system be placed under the direction and control of a single government agency.

Control of national broadcasting by a single board had been recommended by the 1957 Royal Commission, which had warned against the course taken by the 1958 Act in creating two boards. The Royal Commission's predictions were borne out in the succeeding years, as serious conflicts arose between the Board of Broadcast Governors and the Board of Directors of the CBC. A more serious shortcoming, and one that was not anticipated by the 1957 Royal Commission, was that

---

[54] See generally Crean at pp. 26-58.

[55] See Report of the Committee on Broadcasting, 1965 (Second Fowler Report) at pp. 95 ff.

the two boards "tended to negate each other." As Pearson had predicted, the BBG restricted its regulation to the private sector, and the board of directors of the CBC confined its attention to the public sector.

The resulting model operated frequently on a competitive basis. Licenses were issued to new private stations and power increases granted to existing private stations in significant part on the rationale of balance with the CBC. Furthermore, while the operation of this model favoured the growth of private commercial broadcasters, susceptibility to BBG attempts at regulation could at the same time be limited by the terms of statutory authority granted to the BBG.[56] By 1961, the year in which the BBG approved formation of the private CTV network, Graham Spry took this view of the Canadian Broadcasting System:

> It is not a system of national public ownership with local private stations, but a system of local private stations with a lesser public sector serving and subsidying private stations. The private advertising sector is the dominant sector. The public service sector is the subordinate.[57]

Together with the fact that the greater percentage of Canadian viewers are attracted to American private stations, the dominant

---

[56]For example, B.P. Feldthusen in "Awakening From the National Broadcasting Dream: Rethinking Television Regulation for National Cultural Goals" (Draft, published, p. 93, note 37) refers to the BBG's refusal, in 1959, to allow a stock transfer from Baton Broadcasting to ABC; the transaction was rearranged as a purchase of debentures, a form of transfer beyond the purview of the Broadcasting Act of 1958.

[57]Spry, "The Decline and Fall of Canadian Broadcasting" (1961), 68 Queen's Quarterly 213 at 225.

reality of Canadian television is the pre-eminent position of commercially sponsored broadcasting.[58] This position is described in considerable detail in both the Report of the Federal Cultural Policy Review Committee (1982; referred to as the Applebaum-Hebert Report) and the Report of the Task Force on Broadcasting Policy (1986; referred to as the Caplan-Sauvageau Report).[59] The regulatory response to this reality has been modest, largely because there is little regulatory scope for affecting either the supply of American stations or the Canadian demand for American programming. Indeed, the CRTC has understandably responded to the phenomenon of technological availability by allowing cable television companies in Canada to carry American stations. As would be expected, American stations command an appreciably greater share of the audience as a result.[60]

Cable television provides the backdrop for many issues of regulation and deregulation because of the many cultural and economic factors which must be considered. Sometimes these are not clear. For example, cable companies have been given limited program production opportunities which might have been attributed to regulatory concern over potential conflicts of interest. However, this has been

---

[58] See, generally, Feldthusen, supra n. at pp. 19-45.

[59] Among English speaking viewers, for example, the CTV network attracts 30 percent of the audience whereas the CBC attracts only 18 percent. Public stations are much fewer in number, command a much smaller audience and still carry commercial messages themselves. See the Applebaum-Hebert Report at pp. 273-80 and Caplan-Sauvageau Report at p. 99.

[60] The Caplan-Sauvageau Report at pp. 104-105.

alternately described as arising out of the CRTC's desire to protect on-air broadcasters, and especially local on-air broadcasters, from competition.[61] Other regulatory powers, such as the CRTC's power to authorize alteration of signals, can be used to further economic or cultural policies or both.

The realities of commercial broadcasting and American programming are no less real on the international scene than in Canada. By 1966, over 50 countries had television systems controlled in whole or in part by private interests under state supervision and commercial advertising was carried by the vast majority of the world's 95 television systems.[62] In 1985, the following observations were made concerning the situation in Western Europe:

> American and local commercial interests form a temporary alliance which is well financed and relentless in its lobbying efforts. Success in one country immediately jeopardizes a state monopoly in a bordering country. Pirate stations are financed. Satellite broadcasting, itself a part of the planned operation discussed above, is introduced. The British commercial satellite channel, Sky Channel, reaches two million viewers through 106 cable systems in Europe. It broadcasts primarily American programs, exclusively in English.[63]

---

[61] See Babe, "Regulation of Private Television Broadcasting by the Canadian Radio-Television and Telecommunications Commission: A Critique of Ends and Means" (1976), 19 Can. Pub. Admin. 552.

[62] See the discussion in Schiller, Mass Communications and American Empire (1970) at 94.

[63] See Macdonald, "Sky Channel and the Coca Cola Bird", Broadcaster, March, 1985.

The plethora of American programming as compared to domestic, is one of the inevitable results of commercial broadcasting. To increase the quantity and quality of domestic programming on Canadian stations, the regulatory strategy has been to impose Canadian content quotas on domestic broadcasters. As more than one commentator has noted, "these quotas have constituted the foundation upon which virtually all other non-technical television regulatory policies depend."[64] First introduced by the BBG in 1959, they have been implemented gradually as their efficacy in promoting the Broadcasting Act goal of programming "using predominantly Canadian creative and other resources"[65] has been much debated. Because the CBC has regularly exceeded these quotas,[66] they have effectively been directed to private commercial broadcasters who will, for economic reasons, nevertheless schedule American programming during peak viewing periods and fill the required Canadian content quota with types of programming that are relatively inexpensive. It is doubtful that these impulses can be overcome by regulatory initiatives despite the CRTC's recent proposal to require minimum spending levels in specific program categories as a condition of renewing private broadcasting licenses.[67]

---

[64]Feldthusen, supra n. at 74 and see Babe, "Regulation of Private Television Broadcasting by the CRTC: A Critique of Ends and Means" (1976), 19 Can. Pub. Admin. 552 at 555.

[65]R.S.C. 1970, C. B-11, S. 3(d).

[66]Although a proposed $50 million shortfall for next year will mean more repeats of Canadian programs to maintain the present level; Globe & Mail, February 20, 1987 at B1.

[67]Globe and Mail, November 15, 1986 at p. 1.

On the other hand, the CRTC appears to believe that a flourishing private broadcasting industry will generate Canadian programming. Commentators have noted the extent to which private broadcasters continue to earn excellent profits[68] while they are protected from foreign and domestic competition.[69] The Caplan-Sauvageau Report was remarkably explicit:

> ... the CRTC protects the industry for its own sake, as an end in itself .... The CRTC believes that broadasting renders a legitimate benefit to the domestic economy with respect to employment, trade balances and foreign exchange investment, benefits which would naturally end were the Canadian system destroyed in head-to-head competition with the Americans.[70]

The "capture theory" of regulation holds that incumbent broadcasters can be expected to emerge as prime beneficiaries of commercial broadcast regulation policy.[71] The regulatory mechanism can be seen as having certain inherent limitations. Therefore, in any study of deregulation, one must continually ask what results are capable of being generated by a regulatory structure. If regulation cannot generate high quality Canadian programming or a large Canadian

---

[68] According to the Caplan-Sauvageau Report at 448, pre-tax profits have ranged between seventeen and twenty percent during the last ten years.

[69] See, generally, Beke, "Government Regulation of Broadcasting in Canada: (1970), 2 Can. Comm. L. Rev. 105.

[70] The Caplan-Sauvageau Report at 38-39.

[71] See Posner, "Theories of Economic Regulation" (1974), 5 Bell J. of Econ. 335 and Chapter 2 C.2., infra.

audience for it, and evidence to date shows that it cannot,[72] then the implications for deregulation are clear.

In 1967, at the time of the creation of the Canadian Radio Television Commission, the Secretary of State remarked:

> There is, I believe, generally widespread agreement that the regulation and supervision of the broadcasting system should be delegated to an independent regulatory authority, and that this body and its decisions should be as free as possible from partisan political influence and the pressures of vested interests.[73]

As Janisch puts it, "political realism and political idealism thus, conveniently, both favour an independent regulatory authority for broadcasting."[74] In turning to the modern debate over deregulation, however, political realism and political idealism do not always favour the same trends, prospects and values.[75]

---

[72]According to the Globe and Mail, May 22, 1984, p. 1., "four of five Canadians think they should be allowed access to any U.S. television stations they wish ..."

[73]H.C. Debates, November 1, 1967 at p. 3747 (Judy LaMarsh).

[74]H. Janisch, "The Role of the Independent Regulatory Agency in Canada" (1978), 27 Univ. New Brunswick L.J. 83 at 93.

[75]See generally, R. Liora Salter, "The Value Debate in Regulation" (1982), 20 Osgoode Hall L.J. 484.

CHAPTER 2

LITERATURE REVIEW

Literature on recent trends in the field of broadcast deregulation is relatively new and somewhat sparse. Nonetheless, what literature there is clearly points to trends that are emerging worldwide. This chapter considers the review methodology used in this study, identifies these emerging trends, and analyzes the concerns, questions and answers which lie behind them.

The emerging trends can be broadly categorized into four major areas; 1) deregulation of programming, 2) deregulation of ownership, 3) deregulation of technical standards and 4) structural deregulation.

A. METHODOLOGY

Since the recency of the deregulation debate made books of limited use, the main sources of information for this literature review were journal and magazine articles. Once again, due to the newness of information, retrieval of this information was performed by computer search. There were three such searches: two of North American indexes, and one of data bases in the United Kingdom containing European material. Some sections of the report for which information was scarce were contracted out to individual experts in these areas.

B. DEREGULATION OF PROGRAMMING

Deregulation of programming, or "content regulation" is currently being debated with some concern. Essentially, there are two issues:

one is whether content should be regulated at all, and the other is whether the programming content on different services should be regulated differently.

The first view, should content be regulated, suggests a laissez-faire attitude towards programming, giving the consumers what they want. The other view is that content regulation serves the public interest by protecting those who cannot influence program content for lack of buying power. This includes children, senior citizens and some minority groups.

Apart from this general debate, there are more specific issues including: 1. children's programming on television, 2. format duplication on radio and 3. the fairness doctrine.

1. Children's Programming

One of the major concerns about deregulated program content is the effect on children, especially with respect to advertising. The arguments for regulation are straightforward. Because of limited education and experience, children require special programming that provides education, health, nutrition instruction and information about familial and societal problems.[1] Children's sensitivity and impressionability to violent or obscene programming necessitates greater control over commercial television.[2] Deregulation may mean

---

[1]Henry John Vscinski, "Deregulating Commercial Television: Will the Marketplace Watch Out for Children? American University Law Review, 34 Fall 1984, p. 142.

[2]Vscinski at p. 143.

that programmers will ignore this segment of the population because children possesses little buying power and are a marginal audience.

To some extent the problems of programming for children are analagous to potential problems of the French language service outside Quebec or the English language service within Quebec. Any general move towards deregulation fails to account for special interest programs because the aggregate purchasing power of minority groups is not sufficient to generate enough advertising revenue to support the special programming or linguistic service. Another current example is the Chinavision pay television service.[3]

In the U.S. for example, the FCC has decided not to promulgate a mandatory children's programming rule. A task force set up to determine the effect of deregulation compared the amount of children's programming in 1973-1974 with that in 1978. The amount of youth programming neither decreased nor increased.[4]

Naturally, it is not just the quantity of programming that is causing concern, but also the quality. For example, a relatively new issue facing the Americans is children's advertising. New 20-minute cartoon programs which feature toys as the main characters in the

---

[3]Target marketed at the Chinese community, the pay service is not yet profitable because of Canada's small Chinese community. The founder expects to need to expand service through to the United States before returns will materialize. This may be the only way this type of specialized programming can become profitable, aiming at a larger target market - the continent rather than just Canada. With broadcast satellites, covering the continent is not an unreasonable expectation.

[4]Vscinski at p. 163.

action are considered by many to be advertising rather than programming, since they hold that the cartoons serve as advertising support for the product being marketed. The Action for Children's Television (ACT) argues such programs displace other non-commercial children's programming and should be regulated. This is an unanticipated development that the FCC could not have forseeen when it decided not to regulate children's programming. How the FCC deals with this qualitative question will prove interesting.

2. Format Diversity

A second concern raised when discussing whether to control program content is the contention that deregulation discourages format diversity. The argument is that the marketplace for broadcasting may not yield a sufficiently heterogenous mix of programming if left to its own devices. The advocates of regulation cite Steiner's proposition - a station will duplicate an existing format rather than produce a unique format if its share of the audience for a duplicated format yields higher profits than the profits generated by the entire audience for a unique format.[5]

The debate has centered around diversification of programming on American radio stations. Format duplication among the most profitable radio stations in the larger markets is often as high as forty percent; format diversity exists, but only to the extent that consumer

---

[5]Peter O. Steiner, "Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting," Quarterly Journal of Economics, 66: (May 1952), 194-223.

preferences cluster in large and profitable audiences.[6] Electronic Media reports that format diversity is decreasing.[7] The "adult contemporary" format has increased on both AM and FM stations and is currently the format leader. The "country" format has also increased, whereas "easy listening", "news talk" and "oldies" formats have all decreased in terms of both AM and FM stations' offerings. This is a clear move towards Steiner's proposition.

An analogy may also be drawn to television where diversity has decreased. One only needs examine the number of spin offs from Dallas which revolve around similar themes, plots,incidents and situations. The 1986-7 season's proliferation of situation comedies after the successful The Cosby Show of 1985-6 is another example.

3. Fairness Doctrine

The third issue regarding program regulation is the fairness doctrine debate that has erupted in the United States. The fairness doctrine requires television and radio stations to give controversial issues of local importance sufficient air time to ensure that both sides of the argument are heard -- even if this means giving free air time. Those advocating such regulation maintain that the scarcity of broadcast frequencies (i.e in terms of access, rather than physical scarcity) is still a viable rationale for the doctrine. The argument

---

[6]Theodore L. Glasser, "Competition and Diversity Among Radio Format: Legal and Structural Issues" Journal of Broadcasting, 28:2 (Spring 1984) p. 128.

[7]Elizabeth, Jensen "Adult Contemporary top format in Study" Electronic Media, May 23, 1985, p. 16.

is that public feedback will not be sufficient to deter broadcasters from using their stations as a forum for their personal, social and political views. This involves a distinction between the print media and the electronic media. Those who argue against the fairness doctrine contend it is unconstitutional, and that no real distinction can be made between the print media and the electronic media. In their view the latter should not be subject to controls that do not apply to the former. (This is a major issue and will be dealt with in greater detail later in this research report.)

An example cited is the station in New York State which was recently found to have violated the doctrine by accepting hundred of advertisements urging the construction of a nuclear power plant without also offering roughly equal time to a citizen's group which opposed the plant.[8]

At the moment, it does not appear as if the U.S. Congress will actually retract the doctrine. It is possible that Congress will wait for the next wave of deregulation before striking the doctrine from the statutes.

These three issues: childrens programming, format diversity and the fairness doctrine dominate the debate over content regulation.

The last few pages have attempted to highlight the issues in the debate on programme standards. There are two questions: 1. should

---

[8]"American Television's Fairness Doctrine, Fair Enough" Connections.

program content be regulated? And if so, should all service media be regulated equally?

A second question raised regarding content regulation is whether all types of services should be regulated equally. For example, should, cable television be regulated equally with commercial television or DBS? Many people are now arguing that cable television is almost identical to publishing, and therefore should be subject only to the laws governing newspaper reporting. One may build a strong case for programming standards promoting diversity in an advertiser-supported TV system, but the same is not true for pay-cable. By definition, Pay-TV encourages program diversity, ensuring that a match exists between programs aired and consumer preferences. Arguably, it should therefore not be as heavily regulated. In other words, the rationale for the existence of such services is the matching of programming with consumer needs, which automatically implies variety. The evolution of the adult entertainment channel ("Playboy Channel") and the Children's Channel ("Disney Channel") may be cited as examples. This is in contrast to commercial television, where the standard for diversity is simply whatever appeals to the largest group with the largest buying power.

In the United Kingdom the Cable and Broadcasting Act (1984) imposed programming standards on cable operators that were similar to those required of broadcasters. Section 11 of the Act requires the Authority to draw up a code giving guidance for programming practices. For example, the Cable Authority is required to take the following matters into account when awarding a franchise: range and diversity of programmes; proportion of EEC (European Economic Community)

material, educational, local interest and community programmes; plus the usual range of taste, decency and impartially requirements that currently attach to commercial broadcasting in the U.K.[9]

C. DEREGULATION OF TECHNICAL STANDARDS

1. Introduction

There are serious technical reservations about spectrum availability which are documented elsewhere in this report. However, this fact may have little consequence, since both regulators and investors are predisposed to act as if there is considerable spectrum/licence availability. In addition, there are potential broadcasters (for both radio and television) with considerable investor interest and financial backing, willing to apply for new licences or for take-overs of existing ones. As a net result, the pressure for movement toward a deregulatory environment may well occur despite the contrary opinion of technical and engineering expertise about the feasibility of such a movement. The current issue is not whether to deregulate, but rather, how much; and although in major Canadian cities there may be spectra saturation, this is not the case in many of the medium-sized and smaller Canadian cities where a number of entrepreneurs are likely to come forward demanding an opportunity to become part of the Canadian broadcasting corporate scene.

---

[9] Cento Veljanovski, "Regulatory Options for Cable TV in the U.K." Telecommunications Policy, Dec. 1984, p. 295.

The broadcasting industry is at the forefront of changes in communication technology, because one of the major purposes of broadcasting (to reach the mass of population) makes technical standards for equipment necessary. Once again, the regulation/deregulation arguments rest on whether industries are better equipped than government to set these technical standards. The costs in time and money will undoubtedly be very high for industry itself to agree on such standards. There will be competition, and whichever product survives the marketing process will eventually become the market leader and eventually the de facto technical standard. Government can probably coordinate an industry more cheaply and be entrusted to decide the issues in a way which properly balances the major relevant economic considerations. However, government standard-setting may also have anti-competitive consequences. It is one of the realities of regulation that existing firms have more influence with government, usually gaining protection to the disadvantage of new enterprises, potential competition and new products.[10]

2. Government Regulation and the Capture Theory

The so-called "capture theory" of regulation does not necessarily imply any bad faith on either the regulator's part or that of the incumbent players in the marketplace. It simply recognizes that the influences and demands of interested industry groups will capture the protection of a government regulator seeking to co-ordinate an

---

[10] Jason B. Meyer, "The FCC and AM Stereo: A Deregulatory Breach of Duty", University of Pennsylvania Law Review, Dec. 1984.

industry at least partly on a co-operative basis.[11] As indicated above, this may be because industry simply has the requisite level of technical expertise which government lacks.

A particular version of the capture theory, drawn from economic theory,[12] suggests that regulation can be a "product" that is traded in a political market. This theory typically holds that interest groups will make demands for regulation in their particular interest and government will provide the requested regulatory framework because these groups will change their behaviour, including their "political" support, according to how the regulatory issue is resolved. This theory is particularly viable in the broadcasting field where the greatest level of response to technical regulation initiatives is likely to come from the incumbent broadcasters themselves.

The process by which the "regulated" attempt and manage to bring the "regulators" to view the particular environment from their perspective, has been the subject of much discussion.[13] Generally, an interest group is formed to "promote, oppose or seek modifications in enabling legislation in a policy area that involves a regulatory agency; to provide specialized information to the regulatory agency;

---

[11] See Babe, "Regulation of Private Television Broadcasting by the CRTC: A Critique of Ends and Means" (1976), 19 Can. Pub. Admin. 552 at 585-86.

[12] See Posner, "Theories of Economic Regulation: (1974), 5 Bell J. of Econ. 335.

[13] See e.g., G. Bruce Doern "Regulatory Processes and Regulatory Agencies" in Doern (ed.) Public Policy in Canada (Toronto: Macmillan, 1979).

to represent its specific interests as required by an agency on individual occasion; and to liaise with the interest or pressure group members thereby legitimizing the regulatory agency's role..."[14] It is perhaps sufficient to note at this point that deregulation can only be effected and sustained as a matter of the political will and, in that regard, may be expected to respond to the pressures of special interest groups in the same way that a political structure of regulation does.[15]

The above constitutes only one part of the technical debate, the other question is whether uniformity should be a goal at all. Uniform standards reduce coordination costs given a particular technology but there may be new technologies that reduce production costs even further. Government standard setting discourages technical innovation by precluding the use of the market as a testing ground to see which system design is best.[16] Changing a government standard is a long, laborious process and in the end overprotects those who have invested in the old technology. The pace of technical innovation and change make our state of affairs dangerous.

---

[14] C.L. Brown-John, Canadian Regulatory Agencies (Toronto: Butterworth, 1981), at p. 62.

[15] See Richard Carter, "Le Canada Est-Il Entraine Dans La Dereglementation: Le Cas Des Communications" (1984), 10 Canadian Public Policy 10.

[16] See Jason B. Meyer, "The FCC and AM Stereo: A Deregulatory Breach of Duty", University of Pennsylvania Law Review, Dec. 1984.

Over the past few years several instances in the U.S. broadcasting industry have vividly illustrated both pros and cons of 'non-regulation' of technical standards. A few are discussed below.

3. AM Stereo

The experience of AM stereo can be considered a 'non-regulation' disaster. After considerable study into the matter, the FCC refused to choose one of six available AM stereo technologies. Instead, they left it to the marketplace to decide, believing that the final decision would favour the most efficient, result in the best allocation of resources and be the best market-based incentive for technological growth. However, because AM stereo has not been widely adapted, consumers and station owners are waiting for a market leader to appear before committing funds to purchase. The strategy of leaving the market to decide a technical standard has been a long, expensive and inconclusive process.

4. Direct Broadcast Satellite (DBS)

A similar approach has been argued for the non-regulation of direct broadcasting satellites. The FCC argues that a flexible approach is the best way to encourage operators to respond to advances in technology and to encourage new entrants and new services. However, given entrenched competition by terrestrial distribution systems, the high costs, the lack of an adequate reception facilities available at attractive prices, similar programming fare, and the immense logistical problems of marketing, selling, installing, billing and maintaining the five million homes deemed necessary for break even operations, any single DBS system faces formidable obstacles to its

initiation, let alone its survival.[17] Charles Helein argues that had the policies of deregulation and the adherence to the principles of competition been less rigid, and the obstacles of DBS systems properly considered, it might have been possible to establish any kind of viable DBS service.[18] Further, the unforeseen result of easy entry may well have been to actually prevent earlier development of DBS systems and the introduction of viable competition between DBS and the existing media.

Clearly, the expections of those who argued for non-regulation have not been fulfilled in the cases of AM stereo and DBS. Perhaps the following comment may identify the problems involved:

> How did we get into this shape? We did away with the engineer on the commission, we replaced everybody over with attorneys, or worse yet, with economists. I really think we have to get an engineer back on there, to tell them which are the laws of physics.[19]

D. DEREGULATION OF OWNERSHIP

1. Introduction

Ownership is one of the major issues which arises when deregulation in general is discussed. How many television stations, radio stations and/or presses should one individual or

---

[17] Charles H. Helein, "FCC Deregulation: Friend or Foe" Broadcasting, January 6, 1986, pg. 54.

[18] See Helein at 54.

[19] "Survival of the Fittest Among Equipment Makers" Broadcasting, October 28, 1985, pg. 52.

organization/conglomerate be able to own and control? In the U.S., FCC Chairman, Mark Fowler, argues

> the FCC's accommodation of takeover efforts had been aimed at increasing competitive opportunities. He said he believed that deregulation was right for this country's communications system, it leads to more choice, it gives way to greater diversity. Dealing with all the new choice is daunting, but it's not impossible and its a policy that keeps government from controlling, what is said or who says it even if its wrong. The most obvious argument against concentration of ownership is the powerful effect the media could play in influencing us to think or act in certain ways.[20]

Nicholas Johnson, a former FCC commissioner, illustrated this problem most succinctly.[21] In discussing the 1966 attempted merger of ITT and ABC he highlighted the concerns of those who believe concentration of media ownership is to be avoided.

> ITT was a sprawling conglomerate of 433 separate boards of directors that derived 60% of its income from holding in foreign countries. It was the ninth largest corporation in the world. In 1966 ABC owned 399 theatres in 34 states, 5 VHF television stations, 6 AM and 6 FM stations (all in the top 10 broadcasting markets), one of the 3 major television networks and one of the 4 major radio networks in the world. Its 137 network affiliates could reach 93 percent of the television homes in the country. The merger would have placed this accumulation of mass media under the control of one of the largest corporations in the world. ITT was continually concerned with political and economic development in foreign countries as a result of its economic interests.[22]

---

[20] Broadcasting, Sep. 30.

[21] Nicholas Johnson, "The Media Barons and the Public Interest, An FCC Commissioner's Warning" The Atlantic, June 1968.

[22] "Deregulation Architect finds the Structure Study" Broadcasting, Dec. 23, 1985, pg. 50.

Capital Cities has acquired ABC and a different set of problems, mostly financial, have emerged.

Naturally, situations involving concentration of media ownership are seldom as potentially serious as the ITT-ABC merger; nonetheless, but the underlying principles and potential dangers are well-known. Other, not-so-obvious issues are also present. For example: the effects of inflated increases in station prices as a result of deregulation, and the effects of takeover battles as a result of deregulation and duopoly rules.

2. Escalation of Station Prices

It appears that the relaxation of ownership rules has led to an escalation of station prices. Those who buy them now seek to be compensated in the short run. There is concern that the compensation will be achieved by cutbacks in services and original programming fare. For example, the price for KTLA, a Los Angeles station, left the industry reeling. The Tribune Companny bought KTLA from Kohlberg, Kravis Roberts in 1985 for $510m. Only two years before, Kohlbert, Kravis bought the station for $245m. As a result, an American television station can be considered to be fairly priced if it sells for 12 to 14 times its annual cash flow. If this is generally true, the value of practically every television station in America far exceeds previous estimates.[23] By the end of 1985, two television networks had been sold, dozens of major broadcast stations had new owners, and many of the leading cable operators, cable networks and television programmers had found themselves with major new operations

---

[23]Connectors.

and sharply increased debt.[24] The financial implications are clear: the price paid for a station has to come from somewhere, and the obvious first place to find money is by cutting services.

3. Takeover Battles and their Negative Effects

Another not so obvious effect has been the number of hostile takeover battles (eg. General Electric and RCA, Ted Turner and CBS). One author argues that in the CBS example, CBS had to fight off the takeover effort using new debt and is now dismembering itself to service that debt and is having to cut back on funds for programming and news.[25] Banks, stock market investors, limited partners, institutional investors and leveraged buyout groups have all been eager to supply funds, and especially debt, to the industry.[26] Once again the money must come from somewhere.

A further concern arising out of the recent takeover battles is that they are essentially unproductive. Where the takeover is hostile, the debilitating results have already been described. Even where it is not, there is a noticeable trend towards leveraged buyouts.

In the case of leveraged buy-out, the source of the money is clear: the assets of the acquired company are liquidated to pay the cost of its acquisition. As one commentator has noted:

---

[24]Jeff Epstein, "Media Prices: What's Next?" Broadcasting, Feb. 10, 1986. p. 22.

[25]See "Deregulation Architect finds the Structure Study".

[26]See Epstein at p. 22.

> The deals almost invariably result in the contraction rather than the expansion of the enterprise. The earnings of the new company service its debt to the past instead of its development into the future.[27]

In other takeover situations, the frequent result is simply that one gigantic corporation acquires another. The price paid by General Electric for R.C.A. was $6.3 billion, a figure which can only hint at the magnitude of the transaction and the resulting corporate entity. If one of the theoretical bases of deregulation is that government regulation can be replaced by fierce competition in the marketplace,[28] the existence and extent of that competition must be carefully determined. Government concerns over cross media ownership have been motivated by similar concerns in the past.[29]

4. Duopoly Rules

The FCC is being lobbied about easing duopoly rules which now prohibit a single broadcaster from owning two stations with overlapping signals in the same market area. The easing may be necessary; for the past two decades AM stations have watched their share of listeners slip away with ever-increasing speed to the newer, better quality sound of FM stations. At the moment, if two stations are failing, the FCC would have to allow them to go bankrupt. The idea is that a broadcaster could operate two AM stations with

---

[27] Harper's Notebook, January 1986 at p. 13.

[28] But see "Why Deregulation Won't Last" in Channels, Sept./Oct. 1984 at p. 61.

[29] See "Media Ownership No longer An Issue" in Marketing, June 10, 1985 and David Townsend, "Regulation of Newspaper/Broadcasting, Media Cross-Ownership in Canada" (1984), 33 U.N.B.L.J. 261.

overlapping signals, using the same staff, studio and programming to achieve the benefits of economics of scale. If the FCC does ease the duopoly rules, it may be the saving act for many AM stations.

E. STRUCTURAL DEREGULATION

There are trends in deregulation which do not clearly fall into any of the foregoing three categories. These involve structural changes which affect several broadcasting media simultaneously. Their importance lies in the issues they raise, especially including the difficulties of making distinctions between the different types broadcasting media, balancing the needs and desires of one medium against those of another and promoting the economic feasibility of the different media. The media under debate are AM radio vs. FM radio and commercial television versus new delivery technology. The latter is the larger debate and deserves close consideration.

1. Commercial Television Versus New Television Delivery Technology

The impact on commercial television of new television services has been of concern to broadcasters in most industrialized countries. When the problems of deregulation are thrown in, this concern assumes great importance. What are the effects on advertising revenues and audience shares of commercial television stations when increasingly specialized programming appears? To what extent do these technologies compete or complement each other? What are the long term economics of each medium in light of the deregulatory trends present? Can they all be expected to survive? Some of these questions are answered below.

2. Fragmentation of Revenue and Market Share

a. The U.S. "must carry" rules

Clearly, the most spirited debate has been over the effects on commercial broadcasting in the U.S. of deregulating cable. The issues centre around the balance which has been tipping in cable's favour ever since the FCC undertook deregulation.

Until recently, the must-carry rule was one of a group that were not affected by the swing to deregulation. The rule was quite clearly protective of television stations over cable, because it forced cable operators to carry the signals of local broadcasting stations in the same market. Specifically, the rule required that each cable system carry all commercial, public and religious television stations within 35 miles of its cabled area. The Federal Communications Commission repeatedly refused petitions to have the must-carry rule repealed.

The primary antagonists in the debate over the must-carry rule have been The National Cable Television Association, which represents cable television operators, and the National Association of Broadcasters, which is composed of approximately 680 television stations and the three major networks. The NCTA resented being forced to carry what they describe as "duplicate material" -- local stations in which their subscribers had little or no interest.[30] Despite the NAB's claim that the national broadcasting system in the United States was properly a localized one through the maintenance of the must-carry

---

[30]"Court Voids Rule on Local TV" in Washington Post, July 20, 1985.

rule, it was inevitable that legal action would be brought against it on constitutional grounds. In this instance, the form of the challenge was that the rule violated "guarantees of free speech in the First Amendment to the Constitution - without sufficient justification that it is needed to protect diversity in local broadcasting."[31]

i) The Quincy Discussion

In 1985, the U.S. Federal Appeals Court decided that cable companies can no longer be required to carry any broadcast signal. The must carry issue has dominated the debate throughout 1986. Traditional broadcasters argue that the requirement upon cable companies to carry all local over-the-air stations is necessary to promote diversity of programming. They believe this is also fair, because they were stuck with the compulsory license fee which gave cable operators the right to carry broadcast signals without having to negotiate with individual broadcasters and program suppliers for copyright. The cable operators contend that "must carry" violates their first amendment rights and forces them to carry stations with few viewers. The decision in Quincy Cable TV Inc. supports the cable operators position, allowing cable operators to drop local stations if they wish. This deregulatory move in favour of cable will have reverberations throughout the local commercial television industry. Any areas with heavy cable penetration will see casualties. NATPE president, Robert Jones, conducted a survey of 500 affiliated stations

---

[31] Id.

on what they perceived the effects of the Quincy decision would be.[32] The results show that stations will suffer reduced income from deletion of the must carry rule, that program budgets will be squeezed and that educational public broadcasting and religious broadcasting will suffer.[33] A case in point is the situation faced by WTGS(TV), an independent that went on the air on September 1 to serve the Savannah, Ga. television market as its only independent:

> "Making it as an independent in the 108th largest market is tough", J. Baillie, the owner says. Cable operators feel they should be compensated to carry the station. WTGS has managed to secure carriage on six of the 11 systems in his primary service areas, but it had to pay the price. To get carried, Baillie has bought equipment for the cable operator, given them advertising time to promote their services and, in the case of the largest cable system, agreed to pay it $2000 a month. So far the terms have been reasonable but some other systems have set terms so onerous as to make the deal impossible. Plantation Cablevision, which serves most of the homes on exclusive Hilton Head Island, S.C. is demanding $27,000 a month to carry the signal. The additional expenses and loss of cable households caused by the loss of must carry, will be felt on WGTS bottom line - if it survives.[34]

After the FCC announced it would not appeal the Quincy decision, there was barrage of requests to do something. At the end of September, FCC Chairman Mark Fowler said the Commission would launch a combined notice of inquiry and notice of proposed rulemaking to seek comment on any proposal that included "a set of carefully crafted

---

[32]"Loss of Must Carry Will Hurt TV Stations, say NATPE members" Broadcasting, November 11, 1985, p. 74.

[33]Ibid.

[34]Broadcasting, September 16, 1985, p. 35.

mandatory carriage rules, and a clear justification of the policy aims and constitutionality of such aims."[35]

Fowler has indicated that any inquiry would include a look at the compulsory license, which gives cable operators the right to carry broadcast signals without having to negotiate with individual broadcasters and program suppliers for copyright.[36] The FCC majority has publicly stated that the better course would be to get rid of compulsory license[37] to bring a market thrown out of balance by the elimination of must carry into equilibruim.

In August 1986, the FCC reached a unanimous agreement on the must carry rules. The new policy, which Commissioners believe will satisfy First Amendment requirements, provides for a five year transition period to facilitate the shift to complete deregulation. Until 15 January, 1992, cable operators are obligated, to varying degrees, to carry local broadcast signals. The number of must carry stations is determined by the channel capacity of the cable operator (a must carry maximum of 33% of capacity). Moreover, non-commercial broadcasters have been awarded preferrential access to cable availability.

The most important aspect of the FCC's new policy concerns A/B switches. These switches permit the user to alternate between off-air and cable-delivered signals, thereby allowing the viewer access to

---

[35] Sept. 30/85.

[36] Ibid.

[37] Broadcasting. Aug. 5.

local off-air signals provided an antenna which is capable of picking up these signals is installed. Cable companies are obligated to install A/B switches for new subscribers in perpetuity; and within the next five years to provide and install the switches at no cost, for all current subscribers who want one. The FCC ruling is designed to equip all cable subscribers with the capacity to access local off-air signals by the time the must carry provisions run out.

However, there remains a number of unresolved issues. Cable has traditionally marketed itself as an alternative to roof top antennas, many municipalities have zoning regulations which prohibit installation of antennas, two-thirds of all new television sets sold are "cable-ready" and A/B switches don't work on these sets. Public reaction to these changes can be expected. Moreover, the FCC has opened the door to further deregulation of the cable industry. It plans to review the compulsory licence and cable monopoly issues in future. The Quincy case may have more far-reaching consequences for both the broadcasting and cable industries than anyone every expected.

ii) Copyright and First Amendment Issues

An interesting feature of the Quincy decision is its implications for First Amendment protection for cable operators. Prior to Quincy, there was speculation as to whether protection afforded to cable would be virtually akin to that provided for broadcasting. In 1978, in Federal Communications Commission v. Pacifica Foundation,[38] the United States Supreme Court stated that "of all forms of communication, it is

---

[38](1978), 438 U.S. 726.

broadcasting that has received the most limited First Amendment protection."[39] The broadcaster, for example, is subject to the Fairness Doctrine and therefore required to give voice to both sides of controversial issues. In Red Lion Broadcasting Co. v. Federal Communications Commission,[40] the United States Supreme Court determined that this aspect of government regulation of broadcasting did not violate the First Amendment.

The First Amendment right granted to broadcasters may be contrasted with the nearly absolute right given to the print media. In Miami Herald Publishing Co. v. Tornillo,[41] the United States Supreme Court overturned a Florida statute requiring newspapers to publish letters of reply from candidates for public office. This was held to be an unconstitutional intrusion on the exercise of editorial judgement and control. The arguments supporting these contrasting positions are well-documented;[42] the interesting feature of Quincy is that it may be seen as "part of an emerging trend of rulings in the Federal appeals courts that cable operators are entitled to full First Amendment protections more similar to those of the print media than of

---

[39] Ibid., at 748.

[40] (1969) 395 U.S. 367.

[41] (1974), 418 U.S. 241.

[42] See D.R. Patrick and D.L. Silberstein, "Red Lion Still Has Broadcasters Singing the Blues" (1985), 3 Communications Lawyer 1; also see R.A. Kreiss, "Deregulation of Cable Television and the Problem of Access under the First Amendment" (1981), 54 So. Cal. L. Rev. 1001.

broadcasters".[43] Ultimately, the United States Supreme Court will be required to rule on one of these cases.

An ancillary point is the effect of copyright law on cable operators who to this point have been able to argue that they are not copying programs by retransmitting them. As cable operators are allowed to slip the yoke of must-carry rules, they may also expect to be made more susceptible to the normal application of the laws of copyright. In Canada, the House of Commons Standing Committee on Communications and Culture struck a sub-committee whose report, A Charter of Rights for Creators,[44] recommends creation of copyright in retransmission.

U.S. broadcasters finally came up with a deal on must carry in the first week of March, 1986. The announcement ended months of negotiation and the spotlight came on the FCC to approve the compromise.

The specifics of the deal are as follows:

- Cable systems with 20 or fewer activated channels would be exempt from any must carry obligations.
- Systems with 21 to 26 activated channels are not required to carry more than seven qualified local channels. Systems with more than 26 activated channels are not required to

---

[43] "Cable-TV Rules Are Overturned in Federal Court", The New York Times, July 20, 1985.

[44] Queen's Printer, Ottawa, 1985.

devote more than 25% of those channels to carriage of qualified local stations.

- Cable systems with more than 20 activated channels must carry all qualified local television stations. To qualify, a stations must pass a two part test. The first would be geographical; stations must be located within 50 miles, as measured from the principal cable head end to the broadcast stations reference point. The second part of the test requires a broadcasting station to have a viewing share of 2% and a 5% net weekly circulation in noncable homes, by country.
- Qualified local stations that were classified as distant signals under the old must carry rules do not have to be carried where copyright obligations continue to require treatment as distant signals.
- New stations may demonstrate at any time after signing on that they meet the 2% - 5% viewing standard by presenting survey evidence gathered by a recognized ratings service.
- There is no requirement that gives preference to one class of broadcast stations over another. When the number of qualified local stations exceed the seven-stations or 25% caps, the system selects the stations to be carried.
- Cable systems do not have to carry more than one qualified local network affiliate station of the same commercial or public network, no matter how many qualify. The system makes the selection.

- When a station chooses to carry more than one station affiliated with the same commercial or pubolic network, it does not have to afford non-duplication protection.
- Cable operators cannot charge broadcasters a fee for carriage for a non-distant signal covered by the compulsory license. Stations that qualify, or would have qualified for must carry under the old rules, and no longer qualify for mandatory carriage, are to have may-carry status, which means that the cable operator may carry them for free. The system is not obligated to carry them, but may charge them for carriage.
- There is no must carry requirement for teletext, multichannel sound or any signal carried in the vertical blanking interval.
- Systems are not required to carry stations on their channel positions, but must carry all qualified local stations in their entirety on the lowest priced tier.
- Must carry will only be accorded to primary, full power television stations. Translators, low power, and other passive signal repeaters do not have to be carried.
- Must carry is conditional upon delivery of a good signal by the broadcast station to the cable headend. A "good signal" is to be defined by engineering criteria.
- Broadcasters agree not to seek repeal of cable's compulsory license fees.

The agreement has received very mixed reviews. The two major parties to the agreement, the commercial broadcasters and the NCTA,

appear to agree that the solution is the best in a difficult situation. The NCTA likes the idea of not being required to carry duplicative network signals and stations nobody wants to watch. Broadcasters are provided with the assurance of local signal carriage and the guarantee that cable operators won't charge fees for local carriage.

Non-commercial broadcasters were not so happy. They were not party to the negotiations, and were not included in the must carry quotas. Whether or not they are carried is at the sole discretion of system.

There was also some concern whether the FCC would approve the industry's compromise. Chairman Fowler indicated he will not support any compromise which might run contrary to the Quincy case. The constitutionality of the compromise in light of the first amendment must be considered. Fowler has also declared he would want to focus on how an industry compromise would advance the interests of cable subscribers while keeping in mind the overriding public interest.

Other FCC officials wondered whether the proposed rule would not exclude broadcasters most likely to need government protection; for example: start-up UHF operations; religious and noncommercial stations.

New broadcasters or would be broadcasters who are planning to put new stations on the air are likely to be hurt most by the proposed rules. Without guaranteed carriage on cable systems, it would be difficult for new stations to establish themselves and to obtain the 2% share of audience necessary to become eligible for must carry.

Even if the new stations reached a 2% share it might not be carried if the system had already fulfilled its limited allotment of must carry channels with existing stations.

Another issue is American cable's push for first amendment rights. In a recently published White Paper, the Media Institute argues that if cable television is to become an electronic publisher, it should give up municipal franchises and the de facto monopolies that go with them.[45] Further, it argues that the cable industry has to decide what it wants to become: an unregulated 'electronic publisher' with full First Amendment rights, free to compete in the marketplace, or a government-regulated patchwork of monopolies.[46] Clearly, both have advantages, but present status complete with full first amendment rights would be the best of both worlds for cable.

b) Public Service Broadcasting in the United Kindgom.

In the United Kingdom the debate has centered around the effects of cable on the Public Broadcasting Service. (The Public Service itself is discussed more fully in the Appendix. What follows touches on the intermedia aspects of the debate.)

The debate in the U.K. on the future of the cable television industry, the regulatory climate in which it is to develop, and the impact of increasing broadcast distribution capacity continues to reflect these conflicting views that follow:

---

[45] Broadcasting, Nov. 25, 1985.

[46] Ibid.

> "None of the potential benefits of cable expansion will compensate the community for the damage to public service broadcasting if the new system is not controlled and its social effects carefully monitored." Milne et al. BBC, 1982.
>
> "Cable can help both business and the individual by providing new methods for working, buying and selling direct from the home, increased facilities for education and training in the home; services like electronic mail and tele-banking; and a greatly increased and enriched choice of home entertainment." Hunt Report, 1982, p.2.

On the one hand, the BBC and the Independent Television broadcasters seek to protect their oligopolistic control of the broadcast market-place and to promote the concept and implementation of public service broadcasting. On the other hand, the government seeks to provide a relatively open market environment providing a diversity of broadcast entertainment, as well as non-entertainment services to U.K. businesses and households.

c) The Impact of New Technologies

As mentioned earlier, the advent of pay television introduced competition for scarce advertising revenues and audience shares. Cable operators compete directly for advertising revenue. As it is considered unlikely that advertising will expand in proportion to the extra advertising time available, competition will become more intense. If cable attracts sufficient audiences, there will be pressure on broadcasters and cable operators to offer lower rates. Less advertising and lower rates could, in turn, threaten programme standards, working conditions and employment levels. In addition, cable operations face competition from the video recording industry. These new technologies are much less regulated than the traditional broadcasters and represent a real threat.

In the U.S., there is little disagreement concerning the impact of cable on the information and entertainment side of local television stations and the television networks: it is negative, significant and appears to be increasing over time.[47] Wirth and Block hypothesize that as new forms of video delivery technology become available, increasing the number of channels from which consumers can choose, this negative impact will also be felt on broadcast audiences and profitability.[48]

Several studies have considered the impact of new technology on audience shares. Fisher, McGowan and Evans in 1980, Schink and Thanawala in 1978 and Webster in 1983 all empirically established that cable television has a significant negative impact on the audience levels achieved by over-the-air commercial television stations.

Wirth and Block concluded that in attempt to retain audience share, stations were spending increased amounts on programming, which in turn squeezed profit margins, even though revenues were based on the premise that local over-the-air television continues to be the best medium by which the advertiser can reach the mass of population. Thus in terms of the scramble for advertising revenue, cable television did not represent competition. Therefore total advertising revenues will not decline, but broadcasters will up spending on programming in order recoup audience share which will lower net

---

[47]Michael O. Wirth and Harry Block, "The Broadcasters: The Future Role of Local Stations and the Three Networks", Video Media Competitions, ed. E. Naom, p. 122.

[48]See Wirth and Block, p. 122.

profitability. These conclusions seem to be supported by previous studies as well. In a 1984 study, Veronis, Shuler and Associates found that "pre-tax operating profit margins among 'typically' traded broadcasting companies shrunk nearly 20% between 1978 and 1981" in spite of a 13% revenue growth during the same period.[49] Increased program expenditures in order to retain audience shares were cited as the main reason. Wirth and Block also quote Bortz, Pottle and Wycne whose results lend support to this argument. Drawing from FCC data, they found that television networks experienced an average annual compound increase in advertising revenue of 13.7% from 1978 to 1980, while program expenses increased at an average annual compound rate of 17% over this same period.[50]

In the United Kingdom similar concerns arise. Alternate media development introduces competition for scarce advertising revenues. Traditionally, the broadcasting networks have relied on different sources of revenue: the BBC on the licence fee and ITV on advertising. Cable has been introduced as a third player into the scramble for advertising, while the video recording industry is a fourth. The U.K. has the second highest proportion of television homes with VCRs in the world, with a penetration rate of 46% in 1985 (Japan 56%, U.S. 33%).[51] Cable must also compete for audiences with

---

[49]Veronis, Shuler and Associates, "Broadcasters Show Profit Margin Drop", 1984, quoted in Wirth and Block, p. 134.

[50]Ibid.

[51]"World VCR sales set to rise 43%." Financial Times, 21 November 1985.

the new Channel 4 ("breakfast television"), and direct broadcasting satellite channels.

In households that subscribe to cable, channels distributed by satellite are taking a significant share of the audience from BBC1, BBC2, ITV and Channel 4. Recent analysis of viewing patterns show that viewing shares in 145,000 U.K. cable households as a percentage of total viewing time are: broadcast television, 71%; Basic cable, 17%; and film channels, 12%. During the first half of 1985, four advertising supported basic cable channels, comprised the basic cable share (Music Box, Screen Sport, Sky Channel and the Children's Channel). Two film channels, Premier and TEN-The Movie Channel, accounted for the remaining 12%.

3. Complement or Competition?

A second question is the extent to which new technologies compete with or complement existing broadcasting. The importance of the question is twofold.

First, if consumers turn to close substitutes of television such as cable or VCR, then the imposition of ownership and program content restrictions becomes unnecessary. Such restrictions are imposed in the public interest; however, with an increasing array of media delivery methods the likelihood that broadcasters will have significant market powers becomes remote. This argument that the removal of regulation because the public interest is served by virtue of the diversity of television is just one aspect of the question.

Second, there is lack of equity in regulating one delivery medium while allowing its competition to grow unhindered. For example, why

should cable be subject to many licensing requirements if its competitor VCRs are not regulated at all? Availability of inexpensive cassettes provides viewers with an alternative which will become increasingly important as VCR penetration increases. The nature of commercial television gears it towards the mass market; nonetheless, specialized programming provided by a medium such as cable may be direct competition. Critics claim there has been regulatory confusion, crying "foul", because of what they describe as the absence of a "level playing field".

Johnathan Levy and Peter Pitsch, in a paper entitled "Statistical Evidence of Substitutability Among Video Delivery Systems", attempt to determine to what extent VCR's and cable television are substitutes for traditional commercial television.[52] Their results suggest that pay-cable and broadcast television are substitutes, but VCR and broadcast television are complements. Thus, VCR's may serve as a complement to broadcast television when used to time shift broadcast programming, and serve as a substitute for cable when used to play pre-recorded cassettes in place of some pay-cable programming.[53]

Pre-recorded home video cassettes compete very successfully by offering distributors more efficient, "unbundled" methods of pricing programs to consumers.[54] In important respects, this direct,

---

[52]Johnathan Levy & Peter Pitisch, "Statistical Evidence of Substitutability Among Video Delivery Systems".

[53]See Levy and Pitsch, p. 84.

[54]David Waterman, "Prerecorded Home Video and the Distribution of
(Footnote Continued)

"unbundled" pricing is superior to the "bundled" pricing of pay television and advertiser-supported broadcasting. As a result, its main impact on advertiser-supported broadcasting is likely to be not only the direct diversion of viewer's time, but also the indirect effect of increased competition and inflation in the program supply market.[55]

These results are supported by David Waterman, whose study found that the main impact of pre-recorded home video is likely to be on its downstream neighbor in the release sequence, pay-TV. Because of its "unbundled" pricing, home video rental sales can undermine pay-TV's revenue base by skimming of its higher-value subscribers.[56] The study confirms the complementary relationship between VCR and broadcast television in that the degree to which pre-recorded programming actually diverts viewer's time from broadcasting appears minor.[57]

These results have implications in terms of the reduced need for content and ownership regulation, but also point to what may be an inequity. VCR and pay-cable are substitutes; in other words, direct competition is regulated, but to a different extent.

A similar situation exists between cable operators and Satellite Master Antenna Television (SMATV) operators in the U.S. The latter

---

(Footnote Continued)
Theatrical Feature Films", Video Media Competition, ed. E-Naom, p. 223.

[55] Ibid.

[56] See Waterman, p. 238.

[57] See Waterman, p. 238.

can obtain service from one of many common carrier satellites to distribute TV programming to rooftop dishes. Municipalities and cable operators are finding this to be of great concern because SMATV can "skim the cream" off the market by making deals with large apartment owners, leaving cable operators with huge sunk costs and diminished business.[58] The problem is essentially that the unregulated SMATV operators are in direct competition with the more regulated cable operations. Once again there is an absence of a level playing field.

Thus far we have considered the inequities created by uneven regulation of pay-television and pre-recorded video programmes advertiser supported television and pre-recorded videos, and lastly SMATV and cable. These all represent an "old" technology versus a "new" technology. Inconsistencies in regulation could be attributed to the historical development of regulation in the case of the "old" technology and the "newness" of the regulation in the case of the other. It is not surprising in light of case law and statutory development that a level playing field has not been achieved. However, the FCC's inconsistent regulation between new technologies is remarkable. DBS, MMDS, LPTV, STV are all relative newcomers on the scene, but are regulated in a haphazard way.

Michael Botein's paper considers the regulation of these competing new technologies comparatively.[59] The FCC has proposed

---

[58]Henry Geller, "The Role of Future Regulation", Video Media Competition, ed. E. Naom, p. 285.

[59]Michael Botein, "FCC's Regulation of New Technologies" in Video Media Competition, p. 313.

eliminating the traditional requirement of a construction permit in processing applications for MMDS stations while applicants for conventional broadcast, STV facilities, and LPTV stations, must still secure a construction permit before applying for a license.[60] Those wishing to construct DBS facilities must obtain a construction permit, launch authority and a covering license. A second area of regulation in which these inconsistency in approach can be seen in how these media are classified. Single-Channel MDS is a loosely-regulated common carrier; although it must file tariffs, it is not subejct to rate-of-return regulation.[61] In a counter-distinction to MDS, both STV and LPTV are broadcasters; but LPTV is subject to few conventional broadcasting rules, need not provide community service, and realistically may be exempt from the fairness and equal opportunities doctrines.[62]

All three provide nearly identical pay programming, often from the same sources. In the context of DBS and MMDS, the FCC has abstained from imposing any classification at all. DBS and MMDS operators may equally end up being regulated as broadcasters, common carriers or private radio services.

Although it is impossible to estimate the impact of these problems on the new video media, the inconsistencies may change the way these media evolve and possibly survive. The need is not only to

---

[60] See Botein at 315.

[61] FCC 1983V:47 21.900. See Botein at 323.

[62] FCC 1982d:518-20. See Botein at 323.

embrace the concept of a level playing field, but also to attend to regulatory details.

4. Long Term Expectation

The third question mentioned at the beginning of this chapter is the economic viability of media as a result of deregulation. What are the long term economics of each in light of the deregulatory trends present, and can they all be expected to survive?

If the continued trend towards deregulation continues in the U.S., and there is no reason to suspect it will not, then at some point the marketplace will weed out its less competitive components. This raises certain issues which are important to consider in light of maintaining the public interest and determining the direction of future regulation. As discussed earlier, a level playing field does not exist, and some video delivery technologies have an entrenched regulatory position. If it is in the public interest to preserve, foster, or at least give a fighting change to those technologies which are not favored by the regulatory environment, then deregulation must be more selective.

This chapter draws upon empirical research which has projected the types and extent of video services that will be available in the 1990's.[63] Jane Henry sees a slowing in the growth of cable television, but believes it will dominate wherever it is provided.

---

[63]Jane B. Henry, "Economics of Pay TV Media" in Video Media Competition, ed. E. Naom.

Growth will come from non-cable pay-TV services where cable is not wired, and multi-channel MDS, DBS and SMATV will dominate this growth.

The author considered the market advantages of each media and their economics in reaching her conclusions. Henry estimates that of the 14 million subscribers expected of non cable pay-TV services in the early 1990's, 8.5 million will go to MMDS.[64] MMDS is probably the strongest contender in urban areas which are expensive to wire. It is also a more likely alternative than DBS, because transmission and installation station costs are under $1 million; whereas DBS capital costs range around $70 million to $500 million. Installation costs for DBS are estimated at $380 to $480 compared to $150 to $175 for MMDS.[65] DBS will have difficulty competing head on with MMDS.

Estimates for penetration of SMATV in the U.S. are around 2 to 3 million subscribers. Multidwelling units will be served using cheap DBS and MMDS feeds. LPTV, with a singal range of only 6 to 10 miles, faces difficulties in selling and creating advertising because of its small scale.[66] Henry estimates subscribers will reach only between 500,000 to 750,000 subscribers.

---

[64] See Henry at 52.

[65] See Henry at 53.

[66] See Henry at 55.

TABLE 1.14. Comparison of Pay-TV Services

	Transmission Capital Investment	Cost Of Equipment and Installation Per Subscriber	Likely Number of Channels Offerred	Estimated Reach Of Potential Subscriber Households	Average Transmission Investment Per Potential Subscriber Reached	Average Transmission Investment Per Potential Subscriber	Average Capital Investme Per Potential Subscrib and Vide Channel Offerred
DBS (high power)	$400 million[a]	$380-480	5- 7	50 million[d]	$ 8	$440	$ 75
Cable Television (700,000 city)	$75-100 million	$150-175	35-54	150,000	$600	$765	$ 17.20
STV[b]	$1-2 million	$175-250	1	120,000[b]	$12.50	$200	$200
MDS[B]	$1 million	$175-250	10-20	100,000[b,d]	$10.00	$220	$ 14.6
SMATV[c]	$30-40 million	$150-170	10-30	500[c]	$70	$230	$ 11.5
LPTV[b] (pay)	$200 thousand	$175-200	1	60,000[b]	$ 3.50	$190	$190

Note: This table was compiled and estimated by Eli Noam from various economic and technical information in Jane Henry's paper, in order to compare the order to magnitudes in question.

[a] $400 million assumes building a high-powered system.

[b] Assumes broadcasting in a 700,000 metropolitan area.

[c] Assumes 500-unit building, addressable system, direct satellite feed. Building not rewired.

[d] Not including feed to SMATV system.

The long term economics of the various media should affect the type of regulation to which each medium should be subject. For example, had DBS regulation in the U.S. been more stringent and the economics more closely studied, then the $70 million which was invested in the now defunct United Satellites might not have been lost.

5. AM/FM Radio

As mentioned earlier, the second area where structural changes are being discussed and may come about is between AM and FM radio. FM stations have, continually taken market share from their predecessors

- AM stations over the past two decades. The survival of AM may hinge upon changing the regulatory relationships between these two types of medium. The AM-FM non-duplication rule is one of the issues under consideration.

It may be that AM-FM non-duplication rules may be changed so that AM stations have more freedom to duplicate the programming of co-owned FM stations in the same market. McKinney says it is logical for the profitable FM to support the faltering AM, since the AM service supported the developing FM service forty years ago.[67] The NAB agrees. "Indeed were AM - FM combinations encountering difficult times allowed to duplicate programming completely, regardless of market size, the potential for these stations to improve their financial condition and subsequently choose to offer independent programming would be enhanced."[68]

Permitting the use of synchronous transmitters and FM translators to fill in or extend AM coverage may be a second structural change. The FCC argues that allowing AM stations to fill in or extend their service areas via FM translators would be an improvement to the medium. The NAB argues that allowing the use of synchronous transmitters would result in a diminution of service by other AM stations not using them.[69]

---

[67]Broadcasting, Sept. 30, 1985.

[68]Broadcasting, Oct. 14, 1985.

[69]Broadcasting, Oct. 14, 1985.

CHAPTER 3

THE AMERICAN EXPERIENCE *

A. Introduction: The FCC

The regulatory philosophy that created federal agencies such as the Federal Communications Commission has changed vastly since its origins during the Depression of the 1930s. The primary responsibility of the officials of those agencies was simple: to assure through extensive regulation that the Depression would never recur.

In the case of the FCC, this was achieved by protecting the interests of entrenched players. Regulations were devised to impose high barriers while maintaining the competitive balance of existing broadcasters. The regulations cut both ways: while broadcasters could be assured that if they acted reasonably, their place in the industry was secure, however, they would not be permitted to dominate the field.

The FCC no longer envisions itself as the defender of entrenched interests. In effect, the gloves are off on the competitive battlefield. Entry barriers have been eliminated, limits on ownership concentration have been relaxed so that domination by a handful of large broadcasters is possible, and broadcasters are being permitted to use their frequencies for a host of ancillary-to-broadcasting services.

* Major portions of this chapter were provided by the Telecom Publishing Group (Arlington, Virginia).

The economic and political ramifications of this change have been enormous. Critics charge that the changes have made broadcasters less responsive to local needs, and that the balance between the traditional twin goals of broadcasting -- diversity of voices and economic competition -- have been irrevocably altered.

Under the tenure of Chairman Mark Fowler, these changes have been particularly pronounced. According to his supporters, Fowler's agenda is "pro-market"; according to his detractors, Fowler is a "regulatory nihilist."

The American experience has had both adverse effects and benefits. It should be looked upon by other countries as a learning experience.

This chapter examines four critical areas of broadcast deregulation -- 1. programming rules, 2. ownership restrictions, 3. character qualifications, and 4. licensing procedures. It also considers the implications of this deregulation on individual media.

1. Programming Rules

Most regulations that went to the heart of genuine program oversight fell out of favour years ago. Sensitivity to a broadcaster's First Amendment right to free speech has served to distinguish American broadcasting from its international counterparts for years. Some of those early regulations that did attempt to directly control programming are in retrospect genuinely amusing.

In the summer of 1984, the FCC reviewed its rules and regulations in an effort to eliminate superfluous programming restrictions.

Commission staffers discovered regulations proscribing the "bucolic humour," that stemmed from a long-forgotten attempt to revoke the license of a broadcaster who made jokes about cow flatulence on the air; another that prohibited a broadcaster from sponsoring contests that result in "vast accumulations of scrap metal placed in front of a retailer's place of business"; another that made it illegal for a newscaster to say excitedly, "the amoebas are coming" (an apparent effort to craft a generic rule that would outlaw broadcasts like the Mercury Theater's legendary "War of the Worlds" radio show).

But if such regulations now elicit guffaws, they served the FCC's purposes well, in that they underscored the frivolity of content regulations.

In June of 1984, the FCC adopted an ambitious proceeding aimed at excusing the FCC from ever again "acting as programming director," in the words of Chairman Mark Fowler. The ruling eliminated the commission's restrictions on programming guidelines and commercial rules (docket no. MM 83-670).

"What's at issue here is the common man's ability to determine what he wants to watch," Fowler said. Among the rules deleted were regulations, commonly known as the "five-five-ten" rules, that required broadcasters to devote five percent of their programming to informational shows such as news and public affairs; five percent to local programming; and a total of ten percent of its programming to non-entertainment matter, to which the first two categories contributed.

In explaining its rationale, the commission stated that it was no longer sufficient to "operationally define programming in terms of quantity. It is incorrect to say that a particular quantity is enough to fulfill the (programming) obligations." The FCC's order added, "The requirements are no longer necessary to achieve our objectives" because broadcasters have historically performed in excess of the standards.

The FCC cautioned against interpreting the ruling as granting a broadcaster total freedom to ignore traditional broadcast responsibility. An FCC staffer who worked on the commission's order noted "a substantial programming obligation remains," and defined that obligation as a requirement to "add to the mix."

Critics charged that in removing the standard against which to measure a broadcaster's performance, regulators and the viewing public would have difficulty determining if a broadcaster is meeting its obligation. An official of a Washington-based public interest group, the Telecommunications Research and Action Committee, assailed the FCC "for once again, not changing its regulations to meet specific goals, but of abandoning those regulations." Rep. Timothy Wirth, chairman of the House telecommunication subcommittee bolstered that criticism, charging that the commission's action "assures us that the FCC's licensing process is even more arbitrary than ever."

Commissioner Henry Rivera took the view that in the long run, the FCC's action could be a disservice to broadcasters. In providing them with guidelines against which to calculate their performance during license renewals, "We gave licensees a safe harbor. [This decision]

makes the renewal process more perilous, and I think broadcasters may come to rue the day that we took away these guidelines."

In this case, no real harm appears to have been done by removing the five-five-ten rules. According to Vernon Stone, deregulation has caused no great changes in news or public affairs staffing or programming at the great majority of stations.[1] The author sampled 327 radio stations and asked news directors what effect deregulation has on a variety of factors. Table 1 summarizes the results.

Table 1: Effects of Deregulation on News and Public Affairs

	Radio Effect			TV Effect Expected		
	Same	Up	Down	Same	Up	Down
News						
Staff Size	84%	8	8	85%	14	1
Total News Air Time	81%	10	9	89%	10	1
Local News Air Time	81%	12	7	85%	13	2
News Quality	79%	16	5	82%	18	1
Public Affairs						
Staff Size	92%	2	6	92%	4	4
Local PA Air Time	78%	7	16	84%	8	8
Other PA Air Time	80%	4	16	88%	3	9
PA Quality	82%	10	7	82%	14	4

As shown, eighty-four percent of the directors said deregulation had no effect on the size of their staffs. Eighty percent of the stations indicated the FCC action had not changed the amount of air time for locally-originated news or news programming overall. A different survey, one done by the National Association of Broadcasters, found FM

[1]Vernon A. Stone, "Survey Finds Little Effect From Deregulation" RTNDA Communicator, May 1985, pg. 14.

stations averaged 4:05 minutes of news per hour in 1984 compared with 4:00 minutes in 1983.[2] AM stations also increased their news programming to an average of 5:48 minutes per hour from 5:15 in 1983.

Ninety-two percent of radio stations reported no effect on the size of staff for public affairs programs. Although there was a marked decline in local and other public affairs time, the quality does not appear to have suffered greatly as a result of deregulation.

Table 2 shows a decline in public affairs and news air time over all sizes of markets, especially in major markets and large markets. Deregulation had little effect on small market situations, and a few small market news directors said they did not even know about deregulation.[3]

Table 2: Radio Deregulation Effects, By Market Size

	Major Markets			Large Markets			Medium Markets			Small Markets		
	Same	Up	Down	Same	Up	Down	Same	Up	Down	Same	Up	Down
News												
Staff Size	67%	15	18	81%	6	13	84%	7	8	91%	6	3
Total News Air Time	69%	8	23	66%	21	13	82%	9	9	92%	6	1
Local News Air Time	74%	10	15	70%	23	6	84%	9	7	86%	11	3
News Quality	71%	13	16	76%	17	6	80%	16	4	83%	14	3
Public Affairs												
Staff Size	84%	3	13	89%	0	11	93%	4	4	96%	0	4
Local PA Air Time	74%	0	26	70%	8	21	76%	7	16	84%	8	8
Other PA Air Time	76%	3	21	80%	0	20	76%	6	18	85%	5	10
PA Quality	79%	8	13	77%	11	13	81%	12	7	88%	9	3

[2]Elizabeth Jensen, "Adult Contemporary Top Format in Study" Electronic Media, May 23, 1985, p. 16.

[3]See Note 1 at 15.

News quality did improve in a significant number of cases. One director commented that since deregulation, the news staff can devote more to the news itself by digging up public issues for airing, rather than by racking up hours of weekly programmes to be dumped in the Sunday graveyard.[4] However, in many cases the respondents were not sure if the changes they experienced could be attributed to deregulation, and many felt the changes were simply a result of economics.

As far as deregulation in areas such as formatting and commercial airing times is concerned, there are visible changes. The National Radio Broadcasting Association programming survey indicates the most popular format is "adult contemporary". On the AM band, 34% of the full-time stations reported an AC format, up from 28% in 1983. On the FM band, 28% reported an AC format, up from 27% in 1983. Country was the second most popular broadcasting format, increasing 4% to 25% on the FM band and increasing 2% to 30% on the AM band. A successful formula rather than programming diversity is clearly the key.

The average number of minutes of commercials per hour on FM stations increased by 30 seconds to 9:54 in 1984 compared to 9:25 in 1983. However, on AM stations, commercials decreased from 11:35 in the previous year to 10:52 minutes per hour in 1984. The effects of deregulation on commercial air time are not clear.

---

[4] See Note 2 at 16.

In the same broad-brush deregulatory proceeding, the FCC eliminated two additional requirements: ascertainment, a reporting process that evidenced a broadcaster's efforts to determine and respond to issues of community interest; and logging, a list of community interest programs aired by the station that is filed with the FCC. Fowler noted that the two regulations required almost eight million "burden-hours" for licensees. The decision to eliminate ascertainment and logging met with almost unanimous approval. "It's appropriate to kill a bunch of paper-pushing exercises," one of the FCC's frequent critics agreed.

In reaching its decision, the commission once again tipped its hat to competitive concerns, stating that the ruling opened the door to broadcasters who "narrowcast" programming of special interest to distinct segments of the community rather than the community at large -- a programming strategy popularized by cable television. The FCC decision stated, "Licensees may look to the programming of other stations, both commercial and noncommercial, in selecting those issues they will address in their programming."

The ruling represented one of the FCC's first formal acknowledgements of the influence of alternative media in its broadcasting rule-making proceedings. Despite the success of cable television and other new media, the FCC considered only the performance of other radio broadcasters in licensing decisions. (Such considerations are essential in some licensing proceedings. For instance, under the FCC's competitive hearing procedures for awarding licenses, an applicant proposing to bring the first FM station to a community has a

better chance of winning a license for an area than an applicant proposing to add another station to a nearby community that already has a license attributed to it, even if the proximity of the two communities makes the area of service virtually identical.)

The commission furthered this consideration of alternative media early in 1985. The FCC instructed its review boards, which evaluate license applications, to consider the impact of alternative video sources when a broadcaster asks the commission for permission to relocate a transmitter. Specifically, the FCC's decision dealt with two separate requests from TV licensees, both located in Missouri, which asked the FCC for permission to change transmitter sites. Both moves would have created large new "white areas" -- areas not served by any quality television signal. In one instance, 4,000 homes would have lost television service.

The applicants argued that those homes would be served by alternative video services, including cable television systems operating in their communities. Although the review board initially had denied the application, that decision was overridden by the FCC on reconsideration. "In evaluating the service needs of populations on the fringe of a primary television station's service area, the public interest is best served by treating the various forms of alternative service as a single video marketplace," the FCC ruled. As in the TV deregulation proceeding, the FCC did not outline a standard of viable alternative service.

Critics of the decision contended that the ruling could promote the sort of elitism in television viewing that has not been seen since

the early days of broadcasting. In the worst case, broadcasters could select the most desirable service area -- i.e., tailoring service to the wealthy, highly educated audiences sought by advertisers, while depriving low income communities of television service.

2. Ownership Restrictions

The question of how many broadcast outlets a single owner can control was discussed in the literature review. It has also been a central tenet of two of the FCC's most oft-stated goals: promoting diversity of opinion in a market, and economic competition between stations. The lynchpin of these goals has been identified as the local marketplace: no owners should control more than one means of disseminating opinion in the marketplace.

There has been little deviation from this principle since the outset of broadcast regulation, and the current FCC has pledged unequivocal support of this rule. However, outside of local ownership restrictions, no other rules have been deemed sacrosanct; and the FCC has undertaken an ambitious program aimed at updating or eliminating most of the remaining multiple ownership regulations. The underlying rationale for these changes has been the recognition of criteria decidedly different from traditional thinking. The commission has subverted the diversity of opinion considerations in favor of economic competition concerns, a move that obviously is in keeping with the FCC's "competition" rationale. FCC Chairman Mark Fowler articulated the new economic standards in a hearing in 1984 before the Senate Judiciary Committee. Fowler told the committee that the FCC had isolated "three TV product markets relevant to a competitive analysis

of [ownership] rules: the TV advertising market, the TV program distribution market and the TV program acquisition market."

The commission derived considerable latitude in liberalizing the ownership regulations, by using only this criterion as a yardstick against which to measure the efficacy of multiple ownership rules, although these changes have not come without considerable debate. For instance, the FCC in 1984 eliminated its regional concentration of control regulations (MM 84-19) -- rules that prohibited common ownership, operation or control of three commercial broadcasting stations where any two were located within 100 miles of the third and where there was a service area overlap between any of the stations -- because, the FCC determined, the advertising market divided into two segments: "spot" or local advertising and national advertising. The FCC stated, "Although this rule was designed to promote the dual goals of greater diversity of viewpoints and economic competition, the commission found that substantial growth in the media marketplace had considerably attenuated the need for the rule to achieve these goals. The commission also considered the substantial administrative and opportunity costs imposed by the rule, concluding that such costs are no longer warranted."

Critics countered that the number of broadcasting outlets is not synonymous with the number of voices. Additionally, critics invoked the familiar theme of chastising the FCC for eliminating regulations without considering alternative measures. In dissenting from the decision, Commissioner Henry Rivera upbraided his colleagues for what he called its "current-rule-or-nothing approach," charging that, in

discounting other options without fully developing them, the commission was effectively "erecting straw men and blowing them away."

The elimination of the regional concentration rules provided at best a temperate preview for the FCC's biggest confrontation over ownership rules with its critics. In July of 1984, the FCC undertook the first widescale revision of the multiple ownership rules in over 30 years. The old rules, adopted in 1953 when there were fewer than 200 TV stations in the country, held that no company could own more than seven AM, seven FM and seven TV stations, and that only five of the TV stations could be in the VHF band.

In its revision, the FCC raised the ceiling to 12 stations in each of the three categories, and made no distinction between VHF and UHF stations. In addition, the commission provoked more controversy when it announced that the new ceilings were intended as an interim measure. Under the ruling, all multiple ownership rules would end in 1990.

In defending the ruling, the commission concluded that the seven-station ceiling was an arbitrary figure adopted thirty years previously and unchanged since, despite the enormous growth of the marketplace. Fowler called the old rules "an artificial principle that left the industry in a freeze frame for 30 years."

However, the new rules seemed to invite dispute. The FCC could not defend the new 12-station limit as being any more or less arbitrary than the previous rules, while ignoring alternative suggestions that avoided capricious ceilings based on a number of

stations. Commissioner Mimi Dawson argued, "The 12-station rule does not depart from the arbitrary, irrational restrictions of the past."

The reason they settled on the number 12, commission staffers said, was that it represented a rough approximation of the ratio of the old seven-station limit to the number of stations that existed when the rule was promulgated in 1953. However, elementary arithmetic proves the commission wrong on this point. As Commissioner Dawson pointed out, "If the commission is concerned about maintaining a numerical limit based on the relative growth of stations, then the correct number for television stations would be 14, and the correct number for radio would be 36."

Critics charged that the FCC, in replacing a rule that has been assailed as arbitrary with another rule that is just as arbitrary, was attempting to place all multiple ownership rules in a foolish light, while deflecting attention from its ultimate aim of eliminating the multiple ownership ceiling within a few years.

What became increasingly apparent during the commission's discussion of the issue was that the FCC was not attempting to strike a balance between the maintenance of its goals -- the diversity of voices and economic competition -- and a sensible attempt to update the regulations. Rather, the commission argued that wholesale elimination of the rules would not undermine these goals.

As in other deregulatory efforts that were the results of the specific agendas of individual FCC officials, the revision of the multiple ownership regulations was attributed to then-FCC General

Counsel Bruce Fein. The General Counsel's view closely matched the most pro-market initiatives of Chairman Fowler; and, as architect of the new multiple ownership rules, Fein spearheaded the debate over the rulings. (As an aside, it should be noted that Fein was accused of expanding the scope of the general counsel's purview into areas in which he did not belong. The general counsel position is the FCC's litigation arm, not its policy-making branch -- a point that was underscored when Fein's successor shifted all policy-making proceedings away from his office. However, in fairness to Fein, it must also be noted that, as Fowler's ideological kindred spirit at the commission, he undoubtedly did not make these moves without the invitation of the chairman.) Fein argued that in assessing the current state of the broadcast industry, the commission concluded that group owners "do not impose monolithic views on their stations."

That supposition seemed to fly in the face of many of the most oft-articulated criticisms of broadcasting, especially those aimed at TV networks. The networks grant little autonomy to their local stations, pressuring them to run all of the programming scheduled by the network. Critics have pointed out that granting a handful of New York-based programming executives the authority to determine the schedule of stations in other markets represents the embodiment of "monolithic views."

To counter these arguments, the FCC advanced the notion that in liberalizing the multiple ownership rules, it was abetting the cause of independent television stations, which are not affiliated with any network. But the FCC was taken to task on this point by several

critics, including members of Congress. In his appearance before the Senate Judiciary Committee, Fowler was asked why, if the FCC's aim was to bolster the power of independents, the commission didn't adopt separate, higher ownership ceilings for independents. A committee member pointed out, "It seems the efficiencies the FCC is pursuing would be achieved by keeping the networks back."

Other appraisals of the FCC's decision were more direct. The Motion Picture Association of America, the trade association of programming producers, asked the FCC to reconsider the order, charging, "The commission's projection overlooks the fact that allowing greater network station ownership could hinder or preclude the development of the new technologies by enabling the networks to secure greater market control, thus permitting network foreclosure of alternative programming."

Almost immediately, the force of the FCC's initiative was blunted by Congress. Less than a week after the FCC adopted its ruling, the Senate voted to cut off funding for the processing of new applications. The maneuver made the FCC reconsider its decision, and forced negotiations between Fowler and Congressional leaders. The talks produced a compromise that permitted the FCC to retain the 12-station ceiling, but added a second restriction: the combined reach of a single owner's holdings could not exceed 15% of the nation's television households. (Such a rule had been crafted and proposed by Commissioner Dawson, but her proposal originally was rejected by commission leadership.) The compromise did not place an audience limit on radio stations.

In another concession to congressional pressure, the commission deleted its plan to totally deregulate multiple ownership at the end of the decade.

Despite having its original proposals curbed by Congress, the effect of the FCC's changes to the multiple ownership rules was enormous. An official of the Telecommunications Research and Action Committee charged, "Billions of dollars in acquisitions will result in windfall profits to owners of the stations that are bought up in the aftermath of today's decision." The comment proved prophetic.

A member of the commission staff compared the decision to raise the multiple ownership ceiling to "firing the starter's gun at a track meet." As group owners sought to increase their holdings, the value of broadcast stock skyrocketed. A station in the critical Los Angeles market sold for $460 million, roughly three times the price paid for the station just three years earlier.

The ruling precipitated a rapid erosion of the industry's tradition of stable ownership and stable stock value. The control of publicly held broadcast companies became imperilled, as outside forces took advantage of the new interest in broadcasting and the ready availability of stock to traffic in broadcast properties.

In many cases, the speculation was prompted by economic motives, as exemplified by Storer Communications. In other cases, ideological opponents of the perceived "liberal bias" in the media capitalized on the ready availability of financing for broadcast acquisitions to make a run at entrenched players. This ideological antagonism fuelled the

run by the conservative organization, Fairness In Media at CBS. While ill-fated, FIM's attempt, coupled with maverick broadcaster/cable programmer Ted Turner's effort to take over CBS, forced that network into an expensive defensive initiative that had far-reaching implications on the network's budget for proramming.

The FCC certainly didn't apologize for the tumult that its ruling precipitated. Adhering to its ideological belief that economic, rather than regulatory forces should drive the industry, the FCC revised more of its regulations, adding fuel to the merger mania. Despite its assertion that regulation should not interfere with natural economic forces, the FCC was drawn inexorably into the fray.

The debate centered around the FCC's regulations governing applications to transfer licenses. The Communication Act requires the FCC to grant consent before a license is transferred. Specifically, the laws state that the commission must determine that the transfer will serve the "public interest, convenience and necessity" before approving a transfer.

Such regulatory reviews are by their nature time-consuming and demanding. In the past, they served as a means of protecting the interest of entrenched broadcasters in battles with hostile license aspirants who rely on the element of surprise in stock proxy fights.

Traditionally, the FCC followed two processes in applications to transfer licenses. In cases of minor changes with little regulatory significance (such as corporate reorganizations where the licensee remains essentially the same) transfer applicants were permitted to

use "short-form" applications. In cases of major changes, such as the sale of an outlet, licensees were required to use "long-form" applications.

Because of the extent of regulatory scrutiny, the distinction between the two forms, and when they are used, is critical. (In days when the FCC demanded a more onerous public interest standard of its licensees, the commission was not above using its procedures as a means of discouraging aspiring broadcasters that it considered unfit to hold a license. In the 1960's, when billionaire Howard Hughes proposed a takeover of the ABC network, the commission demanded that Hughes appear at a public hearing, guessing -- correctly -- that the noted recluse would not appear in public.) Where short-form applications become effective immediately, long-form transfers carry a 30-day waiting period for public review. In addition, long-form transfers are subject to petitions by opponents. If the opposition has merit, the FCC conducts a hearing on the disputed application, which is a process that could take more than a year.

The FCC noted its sensitivity to the obstacles to a takeover which could be posed by the extended process. Explaining the commission's stance to Congress, Chairman Fowler said that the FCC was dedicated to "remaining scrupulously neutral in these shareholder contests," adding that the commission's policies should be used "neither as a sword nor a weapon" in transfer battles.

The FCC revised its traditional procedures to effect this neutrality, often tailoring its rules to fit the circumstances. One such case involved Storer Communications, a licensee of seven television

stations. In the spring of 1985, a faction of stockholders in the publicly-traded company informed the commission that they intended to garner the support of other stockholders to elect a new slate of directors. The new management would then be charged with the task of liquidating the company's assets to take advantage of the inflated value of broadcast properties.

The dissident stockholders group, The Committee for Full Value of Storer Communications, filed a short-form application for transfer of control of the company, "to apprise the commission of its efforts as stockholders to seek the votes of other shareholders in order to elect a new slate of directors." Despite their willingness to fulfill the informal transfer procedures, the committee took the view that the filing was unnecessary. "No regulatory filing or approval is necessary for the election (of new directors) to proceed," the filing stated. The committee took the position that, since existing stockholders were effecting the takeover, no change in control was taking place. The committee asserted that stockholders, not the board of directors or company officials, constituted the locus of control in a publicly held company.

Storer's management labelled the assertion "plainly and simply a fiction." In a petition asking the FCC to dismiss the committee's transfer application, Storer management stated, "Any displacement of the existing Storer management by a new group with radically different operating objectives -- in this case to sell off all of STorer's assets -- would clearly constitute a transfer of de facto control." In a later filing, Storer management added that accepting a short-form

transfer application "is contrary to the Communications Act and a reversal of consistent commission policy established over a period of more than 30 years." In the worst case, Storer's management said, "officials and directors under the control of foreign governments, or under the control of organized crime, or with existing media interest which could create violation of the multiple ownership rules would be able to assume office without any question from the FCC."

In its decision (85-161), the FCC found that the committee's actions represented a transfer of control. However, in a hotly disputed ruling, the FCC held that the transfer was "unsubstantial", and could be effected with a modified short-form that included information on the character, background and other media holdings of the new management. The process, however, excluded public comment, a provision that irked several commissioners. "Logic, facts and precedent are to the contrary," charged Commissioner Henry Rivera.

Adding to the dissent, Commissioner James Quello, himself a former broadcaster, charged, "The majority (of the commissioners) is elevating a policy goal -- remaining neutral in corporate disputes -- to a higher plane that the statutory directions contained in Section 309 (of the Communications Act). This is impermissible. The Communications Act does not express a concern about commission neutrality in proxy fights or hostile takeovers. It does expressly order the commission to follow strict procedures -- including providing for a 30-day waiting period and an opportunity for interested persons to file petitions to deny -- when a substantial change in ownership is proposed."

In the wake of the merger mania, the FCC generated additional controversy by granting several waivers of its local ownership rules. On a case-by-case basis, the FCC evaluated and granted requests from Capital Cities, the new owner of ABC, and from Rupert Murdoch, the Australian-turned-American press baron who purchased Metromedia's chain of television stations. Such grants undermined to a considerable degree the credibility that the FCC developed when, in the wake of the new national ownership limits, it said it would not alter local ownership restrictions. However, the FCC dodged another Congressional backlash by indicating that it was reviewing the applications scrupulously, and was not approving such waivers routinely.

3. Character Qualifications in Licensing Decisions

In its first major overhaul of the rules governing character qualifications for broadcast license applicants since the 1950s, the FCC in January of 1986 reached a decision that effectively exempts the FCC from considering violations of any laws except the Communications Act when awarding broadcast licenses. The ruling (Gen. 81-500) marked a substantial departure from previous rulings that stressed the importance of a broadcaster's character and conduct in licensing decisions. In the new ruling, the FCC "whittled away the character issues that are not predictive of an applicant's behaviour as a broadcaster," according to an FCC staffer. What is left in what the commission calls a "more relevant, less value-laden character inquiry," are the "cardinal sins" of broadcast behaviour: lying to the FCC and anticompetitive practices that directly violate the Communications Act.

In the worst case, the commission's decision could permit "known murderers and drug addicts to act as public fiduciaries," said Henry Geller, director of the Washington Center for Public Policy Research. While Geller concedes that it is unlikely that anyone with such a background could survive the rigorous licensing hearings that are conducted to award broadcast licenses, he is distressed that the commission's rules would not reject such an applicant out of hand. (Such considerations could become more integral if FCC streamlines its licensing procedures to eliminate the comparative hearing, as discussed in the next section of the report.)

The commission seems to support Geller's conclusion, saying in the order, "We are of the view that criminal convictions not involving fraudulent conduct are generally not relevant to an applicant's propensity for truthfulness and reliability unless it can be demonstrated that there is a substantial relationship between the criminal conviction and the applicant's proclivity to be truthful or comply with the commission's rules and policies."

Geller argued that, "Given its deregulation, the FCC can't police broadcasters, and the public can't do it, so more than ever we have to rely on the responsibility of broadcasters. That's what this (deregulated) system was supposed to be about."

"But to offer such responsibility to someone with a criminal background -- how can he be a public trustee?" Geller asked.

Geller's concerns do go to the heart of one of the most frequent criticisms of the way the FCC undertakes deregulation. By altering or

eliminating rules one by one, rather than undertaking a comprehensive review of the rules, new policies can be inconsistent and sometimes in direct conflict. For instance, when the FCC eliminated the programming content regulations, it was motivated by the good conduct of broadcasters, who historically exceeded the FCC's requirements. By eliminating the character rules, many critics believed the FCC was sending broadcasters a clear signal that such good conduct no longer mattered to the FCC.

The FCC's action represented the first time in 35 years that the commission overhauled the character qualifications requirements. However, modifications to the rules had been conducted informally over the course of years, FCC staffers said. "In terms of scope, it's not too far afield from what has become the accepted practice," an FCC staffer explained, which does not make everyone happy. One frequent critic of the FCC in Congress winced at the thought. "I'm not sure I'm willing to trust this FCC to formalize things they've been doing on an ad hoc basis."

The FCC launched the proceeding because it "questioned whether we should continue to attempt to forecast an applicant's reliability as a licensee by examining its character as such," according to the written order. "Would it not be more appropriate, we asked, for the commission to evaluate directly the relevance of the applicant's past misbehaviour to its capacity to use the requested radio authorization in the public interset." Or, as the FCC staffer, said, "We whittled away the character issues that are not predictive of a broadcaster's behaviour, and we crystallized what is predictive."

What has critics upset is that the FCC has exhibited a threshold for what constitutes "dispositive" behaviour. If an applicant's "past-misbehaviour" includes anticompetitive or antitrust activities, they may not hinder their chances for a license, so long as those activities took place outside the broadcasting arena.

"Antitrust transgressions in other industries are not predictive of behaviour in broadcasting," according to the staffer.

The FCC's previous ruling on this subject, the 1951 "Report on Uniform Policy as to Violation by Applicants of Laws of the United States," seemed to anticipate this view. "It has been urged upon us that the violation of a U.S. law per se raises no presumption adverse to an applicant. With this point of view we do not agree. Violations of Federal Laws, whether deliberate or inadvertent, raise sufficient question regarding character to merit further examination."

In its recent ruling, the FCC responded to this view. The commission said, "Critics contend that licensees involved in fraudulent commercial practices such as double billing are not living up to the higher standards expected of 'fiduciaries of the public.' Although we once believed that the public interest standard warranted imposition of standards more stringent than those imposed by the antitrust laws, we no longer believe it is necessary to pursue matters that the Congress itself has not seen fit to prohibit."

The "lack of direction" defense is a blind, according to critics in Congress. Noting that no broadcast legislation bills have been passed in several years, one Congressman's aide said, "We have so many

things we want to beat up on Fowler for that this has slipped through the cracks. But eventually we'll have a say on this."

While the FCC formerly held its licensees to the high 'public interest' standard, the running joke these days, both inside and outside the commission, is that the only bad broadcaster is one who is not making money. While not particularly funny, the joke reflects the changes that have taken place under Fowler's tenure. The number of staffers in the division that investigates broadcaster's conduct has dropped to a quarter of the size it was in the early 1970s, and it follows that the number of investigations has declined.

However, current staffers said this is not necessarily an indiction of the laissez faire attitude toward misconduct as it is evidence of a shift in policy. According to an official in the FCC's Enforcement Bureau, the division charged with investigating allegations of broadcast misconduct, "In the past, there was an idea that the hearing itself would be the penalty. In other words, the designation (for a hearing) is sort of loosely connected. The idea was, put them in a hearing, and that'll teach them a lesson. And the lesson was an expensive one. It could cost several thousand dollars to defend your license in a hearing. Some commissioners felt that, at the end of the road, these guys had learned their lesson; and you didn't necessarily want to take away the license when you put them in the hearing, and they were still of that mind after the case was over."

The commission's attitude today is different: "Don't just throw a lot of bad broadcasters up against the wall and see how many stick.

Throw the ones up against the wall that you want to stick, and then throw them hard enough to make them stick."

While the notion is certainly more cost effective, critics contend that the FCC simply doesn't want any broadcasters to "stick", which is why they instituted the relaxation of the character qualifications. Said Geller, who wants to appeal the decision, "This is just outrageous. The FCC is sloughing off its responsibilities."

The FCC's decision was released against the backdrop of the 20-year effort to force RKO General out of broadcasting for its violations of the old character standards. RKO, which holds 14 broadcast licenses, has been charged with myriad violations, including fraudulent billing, failure to disclose pertinent financial information, and flat-out lying to the FCC. The irony of the character proceeding, critics said, is that the new license holders of RKO stations (and more than 160 companies have filed applications for those licenses) could repeat many of RKO's transgressions such as fraudulent billing without running afoul of the FCC.

4. Licensing Procedures

The issue of how the FCC allocates broadcast licenses may not represent a critical policy decision. But deregulatory actions that lowered the threshold for broadcasters, and the rapidly escalating value of broadcast properties, has brought licensing procedures under increased scrutiny from aspirants outside the broadcast ranks. And, from the regulator's standpoint, the decision in the summer of 1985 to allow establishment of more than 600 new FM radio stations prompted a renewed interest in the existing licensing procedures.

It has generally been acknowledged that the traditional allocation methods were time-consuming and costly, both for applicants and for the FCC. The old procedures included several layers of filing requirements. First, a "cut-off" list was established any time that somebody expressed an interest in a vacant availability. If more than one applicant was received, the applications were entered in a comparative hearing process to determine the most suitable licensee.

Those rules engendered systematic abuses, most notably the filing of speculative applications. Such applicants had no desire to hold a license, but wanted only to be paid by sincere applicants to drop their application.

In an effort both to curb such abuses and to streamline the lengthy expensive process, the FCC in July of 1985 said it intended to replace the cut-off procedures with a 45-day "filing window" (MM 84-750). If several applicants filed for the same station, all applications would be placed in a comparative hearing. However, if only one applicant filed for a license, the license would automatically be granted. In addition, any license availabilities that failed to garner an application would be granted automatically to the first applicant.

In defending the proposal, the FCC said it aimed to cut down on the excessive costs of unnecessary comparative hearings. However, skeptics challenged this rationale, saying that the proposal would result in even more unnecessary hearings. The National Association of Broadcasters stated that the proposal "would create such a grave degree of uncertainty and fear among potential and existing

broadcasters that the end result would be an artificial increase in the filing of 'defensive' applications by existing broadcasters to protect themselves against threats to their current and future interests."

Critics also distrusted the FCC's motives. A broadcast attorney familiar with the licensing procedures stated at that time that "I believe the commission may be trying to establish a record that would justify the use of a lottery for broadcasting." Such speculation was not unjustified. When the FCC inaugurated the cellular radio service several years earlier, interest in gaining a license was overwhelming, with thousands of applications filed for a limited number of licenses. In desperation, the commission instituted a lottery proceeding to deal with the backlog. In addition, commission officials had hinted that the use of lotteries was "under consideration". At a broadcasting convention several months before the new FM filing procedures were proposed, Commissioner Mimi Dawson said she "wouldn't be surprised" if the FCC adopted a lottery for broadcasting.

A year later, the FCC moved even closer to such a scheme. The commission adopted a new licensing procedure for the Instructional Television Fixed Service (ITFS), which uses microwave frequencies to deliver educational video programming to schools. The new procedures included a point system to replace comparative hearings. Officials of the Mass Media Bureau announced at the time, "To the extent that the system works, it's the kind of system we'd like to use for full-power television." The proposal generated a vitriolic response from

broadcasters, who said they opposed any scheme that included lottery procedures.

Critics see two major faults with lotteries. The first is that they could circumvent congressionally mandated initiatives aimed at bringing more minorities into the broadcast ranks. Congress and the FCC have long been at odds over the question of minorities in broadcasting. Congress believes that introducing more minority ownership helps to increase the diversity of voices in the media. FCC officials, led by Chairman Fowler, oppose any plans that consider "the color of an applicant's skin."

The second rationale behind the opposition to lotteries is that such a system could mask the comparative differences of applicants, and would distance the FCC's evaluation of the character and fitness of broadcasters. Given the obstacles that deregulation has placed on monitoring a broadcaster's performance, critics believe that it is even more crucial today to scrutinize applicants closely before they are granted a license.

5. Conclusion

The deregulatory initiatives of the FCC have had a substantial impact on broadcasting in recent years. The changes have altered irrevocably the balance between the traditional goals of diversity of opinion and economic competition. The business of broadcasting has superseded the traditional concept that broadcasters serve as "fiduciaries of the public interest."

The comment of an FCC official to whom Telecom Publishing Group spoke exemplifies this shift. "Whether the broadcasters have led the commission, or the commission led the broadcasters, or together they've gone down the garden path is irrelevant. Regardless of who initiated the changes, the public interest concerns have been reduced to the bottom line, the profit and loss statement. There is no legitimate argument to be made about who controls these licenses other than who can make money. And, even there, we don't worry about who makes the money."

This point -- that the commission does not worry about who makes money -- shows why the FCC's deregulatory initiatives have survived, despite frequent criticisms from public interest groups, members of Congress and, to a lesser extent, the viewing public. Although the momentum in the industry has shifted substantially in the broadcasters' favor, the FCC has not favored one group of broadcasters over another.

The FCC official said, "Deregulation is a two-edged sword. It serves not only to let broadcasters get away with things, but no longer protects them from the tender mercies of the state."

B. Cable Television in the U.S.

The FCC's regulation of cable television was based on a set of five basic rules developed in 1965.[5]

1. The mandatory carriage rules required cable systems to carry all of the local broadcast stations in their service area.

2. The non-duplication rules forced cable operators to black out programs imported from distant markets if the programs were shown simultaneously or near simultaneously on a local-over-the-air-station.

3. The distant-signal carriage rules placed numerical limits on the number of nonlocal stations cable systems could import, based upon the size of the local market, and the number of network and independent stations already broadcasting these.

4. The syndicated-exclusivity rules afforded non-network programming the same protection that non-duplication rules give network programmes.

5. Finally, sports carriage rules required the blacking out of certain local sports events on imported stations.

---

[5] Simon, Jules F. "The Collapse of Consensus: Effects of the Deregulation of Cable Television", Columbia Law Review, April 1981, (81), pg. 616.

Since then these rules have been slowly eroded away as the FCC has made a policy change and moved towards deregulation of the cable industry. The first rules to be eliminated were the syndicate-program exclusivity rule and the distant signal rule. In 1980, the FCC removed these restrictions and opened up competition between cable-television systems and local television broadcasters. The right to sell programs to a local broadcast station on an exclusive basis and the restriction on the number of unreceivable cable stations a cable company could bring in to a local broadcast area were lifted.

The elimination of these rules upset local broadcasters because the balance was now tipped in favour of cable and they would have difficulty competing for local viewers. Originally, these rules were in return for a low rate of copyright liability. Negotiations between cable and local operators had led to a compromise known as the "consensus agreement." The cable industry agreed to accept syndicated exclusivity in exchange for the support of broadcasters and programs suppliers for limitations on its copyright burden. This limited liability was accomplished by means of a "compulsory license" under which the payment of a statutory royalty would allow cable retransmission of any copyrighted program without the permission of the copyright owner.[6] Local broadcasters had little revenue from copyright agreements and were now facing difficulty in generating programming interest as well.

---

[6]See Note 1 at p. 620.

1984 saw further deregulation of the industry as the Cable Television Deregulation bill was passed. Municipalities could no longer ask cable operators to improve their systems with uneconomic two-way technology and improved channel capacity as a condition to renewing their franchise.[7] The bill also ruled out any regulation of content programming, prescribed cross-ownership, prescribed leasing capacity, permitted franchising to insist channels be provided for public educational and governmental use and specified that the cable operator has no editorial content over leased channels.[8]

More recently, the debate has been over the must carry provisions contained in the original set of five rules. In July 1985, the U.S. Circuit Court of Appeals, in a decision subsequently confirmed by the Supreme Court, toppled the FCC's must carry rule for cable operators. However, a recent agreement has been reached among the interested parties.

The debate was fierce, because the National Association of Broadcasters thought the must carry rule necessary for protecting the diversity and market of local broadcasters. There were fears were that local stations in heavily-cabled areas would lose a large portion of their audiences. Critics of the rule, namely cable system operators and new cable television services, felt the rule led to

---

[7]"American Cable Law", Connections, 3 November 1984, p. 7.

[8]"American Cable Law - What About the Public", Connections, 19 November 1984, p. 2.

duplicate broadcasting of network affiliates and reduced the number of channels available for other services such as pay television.

The FCC does not appear too disappointed. They have publicly said that the rules violate the First Amendment, and although proposals are in to have the FCC change the rules to bring them in line with the court decisions, this will take time. This represents a major victory for cable operators who are now free to carry stations they feel people will watch.

The other aspect of deregulation currently gaining attention is the attempt to counter the threat from dropping the must carry rules. The NAB wants a law to lift the compulsory copyright license that puts a ceiling on the royalties cable operators pay to broadcasters. Negotiations are under way between the MPA of America and the cable operators for a flat fee arrangement. However, with the absence of the must carry rule, it is the local broadcasters who are left with little bargaining power.

CHAPTER 4

DEREGULATION TRENDS IN EUROPE

A. Introduction

This chapter considers the deregulatory developments which have taken place in Europe. The focus of attention is the United Kingdom, where the "mismanagement" of the introduction of cable could actually bring the downfall of the industry. The radio spectrum and the deregulation debate surrounding it are also discussed. The second section of the chapter devotes itself to the European Economic Community and those developments which may result in the EEC becoming an open European market. The last part of the chapter briefly considers individual European nations where deregulation has raised concerns and brought new developments.

B. THE UNITED KINGDOM EXPERIENCE

In keeping with worldwide trends, the British have also seen movement towards deregulation of the broadcasting industry. This section presents an overview of the changing structures, functions and interrelationships among the institutions that operate in the broadcast environment in the United Kingdom. Although many aspects of broadcasting regulation have undergone considerable change in recent years, it is difficult to describe these changes in terms of "deregulation". Rather, changes have been introduced to encourage greater competition among the various components of the traditional public service broadcast system, the cable operators, and suppliers of satellite programme channels.

The introduction of competition has been subject to considerable direction by various agents of Government. Where regulations have been changed to stimulate the growth of, for example, the cable industry, they have been more flexible and reliant on market forces than the corresponding regulations in the North American context during the 1960s and 1970s. It may be that the economic incentives created by the new, more fragmented broadcast structure in the U.K. will ultimately lead to deregulation of public service broadcasting. However, it should be borne in mind that the existing institutional structures that control broadcasting in the U.K. differ considerably in their methods of implementing government authority from those familiar to Canadians.

The broadcasting order in the U.K. is complicated, evolving historically as a succession of adaptations to demands for new services, technological initiatives and political forces. Its public service ethos is pervasive and distinctive. It derives from a structural principle whereby broadcasters do not compete for revenues, and are not directly controlled or funded by government.[1] However, although no "deregulation" of broadcasting has been performed in the U.K., a consistent motif of the communication policy of the current Thatcher government has been the assumption that market-determined resource allocation is superior to administrative allocation.

---

[1] An exception takes the form of direct Government licensing of new community radio stations in 1986.

As mentioned earlier, even though no "deregulation" of broadcasting has been performed, it is useful to outline the state of regulation on issues which arise in the deregulation debate. Neither the Broadcasting Act nor the Charter and Licence of the BBC prescribe specific quotas for programming content, either by programme type or national origin. The BBC does not state the proportion of its programmes which are of non-U.K. origin. But in its analysis of hours of output for 1984/85 television, the category "British and Foreign Feature Films and Series" accounted for 12.5% of output. The categories, "Programmes Produced in London and in the Regions" is 79.4%, and "Open University" programmes, 8.1%. Therefore, it is likely that the BBC does not exceed the quotas publicly stated by the IBA for commercial broadcasting.

The IBA requires an 84.5% quota of British and European Economic Community (EEC) material. It calls for an additional quota of 1.5% for Commonwealth material. It also excludes from quota requirements a variety of other categories of programs, notably those that are deemed to be of informational, cultural or educational value and those made before 1945. There are further specific requirements for peak time screenings, feature films and other categories of programmes.

The IBA Annual Report and Accounts, 1984-85 indicates program origins for ITV and Channel 4. The BBC Annual Report and Handbook 1986 provides figures which are not readily reconcilable or comparable with IBA figures. The BBC/IBA data indicate that British television, taken as a whole, has substantially British programming content. However, there is a disproportionate concentration of U.S. programming in peak time.

Deregulation of cable in the U.K. may provide a lesson in bad planning for other countries not to follow.

1. Historical Development

Cable networks were constructed in the U.K.during the early 1920s for the relay of sound radio broadcasts. After the second World War, these systems were converted to carry broadcast signals. The first U.K. cable television network was installed by Link Sound and Vision Ltd. in Gloucester in 1951. Basic cable systems were limited to carriage of network broadcast signals. By 1966, over 1 million people received cable signals. By 1972, this figure had grown to 2.3 million.

Cable operators were limited to signal enhancement. They were required to relay BBC (and later ITV) programs, and prohibited from program origination and from receiving payment for the distribution of programs. The Copyright Act of 1955 prohibited cable operators from providing signals not readily available off-air. In 1960, the Pilkington Committee,[2] rejected the idea of program origination on cable. In 1963, with the introduction of UHF-625 line transmission and low-power UHF repeaters in rural areas, over 2,200 cable systems become redundant.

Prior to 1972, permission was granted to offer limited pay-television service, but it was not until 1972 that the Cable Television Association was successful in lobbying the government to

---

[2]"Report of the Committee on Broadcasting 1962" Cmnd. 1753, London: HMSO, 1962.

permit the use of spare cable capacity. The Minister of Posts and Telecommunications announced licensing of services in January 1972. Licences were granted to Greenwich Cablevision (a Canadian-backed company), Redifussion in Bristol, British Relay in Scheffield, EMI in Swindon and the Wellingborough Traders Relay. Licensees were to provide community cable services. The terms of the licences required that financing be from local television rental revenues. Operators were limited to restricted catchment areas, and to providing cinema films. Sponsorship and advertising were forbidden. By August 1979, most of these cable experiments had been closed.

In 1984, approximately 2.6 million households or 12.8% of those with television received cable. The Home Office licensed 2,300 systems, but 72% of the commercial companies operated using twisted-pair wires capable of carrying only four to six channels.

Pressure from the Cable Television Association led to the inclusion of cable issues in the broadcast inquiry chaired by Lord Annan.[3] However, the report of that committee regarded cable as a technology that would develop gradually as a community service, not as a commercial operation.[4] The government's response to the Annan Committee report took the form of a white paper. It argued in favour of pay-television services, but required regulation such that no harm

---

[3]"Report of the Committee on the Future of Broadcasting (Annan Report)." Cmnd. 6753. London: HMSO, 1977.

[4]Ibid., para. 14.55.

should come to existing broadcasters.[5] In 1980, 13 subscription or pay-television licenses were issued by the Home Office. Cable operators were permitted to offer programming features separate from those provided by existing broadcast networks.[6] However, the licencee was required to continue to provide network broadcast services. Given the four-to-six channel capacity of existing systems, cable operators were ordered to supply subscribers with television aerials capable of receiving signals off-air. A total of 330,000 households were in reach of these systems. Only 107,000 subscribers were connected by January 1983.

2. Pressures for Regulatory Change in the Cable Industry

In 1980, the Advisory Council for Applied Research and Development (ACARD) reported to the government.[7] The report made little mention of cable technology, but it did emphasize the need to provide market opportunities for new technologies as a means of strengthening U.K. high-technology hardware production capability, as well as international competitiveness. One reflection of the emphasis on hardware production and market growth was the Government's 1981 decision to promote the launch of a U.K. Direct Broadcast Satellite.[8]

---

[5]"Broadcasting," White Paper. Cmnd. 7924. London: MHSO, 1978, para. 175.

[6]Hansard, 18 February 1980, Written Answers, Cols. 18, 19.

[7]Advisory Council for Applied Research and Development. Information Technology. London: HMSO, 1980.

[8]See, Home Office. Direct Broadcasting by Satellite. London: HMSO, 1981.

The desire to promote the development of the U.K. market was given further support by the Information Technology Advisory Panel (ITAP) report, Cable Systems (1982).[9] The report contained two major recommendations: 1) the government should allow the rapid development of local commercial cable systems; and, 2) the government should rely on voluntary self-regulation. The main role for cable was envisioned as the delivery of information, financial and other services. The report argued that there was a direct correlation between the degree of "liberalization" of cable and the enthusiasm for investment in cable networks.[10] Although cable service was to be viewed as a luxury rather than a universally available public service, there was thought to be a need for regulatory review of the question of ownership, monopoly, licensing and penalties for non-compliance.

In response to the ITAP report, the Home Office set up an Inquiry into Cable Expansion and Broadcasting Policy under Lord Hunt. The terms of reference of the Hunt Inquiry which reported in October 1982,[11] were "to take as its frame of reference the Government's wish to secure the benefits for the United Kingdom which cable technology can offer and its willingness to consider an expansion of cable systems which would permit cable to carry a wider range of

---

[9]Information Technology Advisory Panel. Cable Systems. HMSO, February 1982.

[10]Ibid., p. 5.18.

[11]"Report of the Inquiry into Cable Expansion and Broadcasting Policy." Cmnd 8679. London: HMSO, October 1982.

entertainment and other services ..."[12] The Hunt Report advocated a series of commercial cable systems, each having a local monopoly and offering a package of 25-30 channels, including some interactive channels. Cable operators would be licensed by a Cable Authority, and no separation between cable operators, cable providers and programme suppliers would be required. The Cable Authority was to subsume the existing powers of the Home Secretary under Section 89 of the Post Office Act 1969.

The Cable Authority was to have "reactive" powers, unlike the IBA which has planned and directed the development of commercial broadcasting in the U.K. Financing was to be derived from subscriptions, advertising and sponsorship. There were to be no requirements on "content and quality" or "balance or range", though impartiality was to be required of a cable system as a whole. There was to be no restriction on foreign material or on showing feature films. Cable operators were to be required to carry existing networks, and were not to be permitted to obtain exclusive rights to national sporting events. Cable operators were not to be required to carry community, access, educational or local government channels. However, it was expected that competition for franchises within geographic areas would provide incentives to offer community and other public access services. Thus, the public interest was to be met through incentives created by the process of licence competition. The perceived future profitability of interactive non-entertainment

---

[12] Hansard, 22 March 1982, c. 237.

service was considered a sufficient inducement to private investors to undertake construction of large capacity interactive cable networks. Over 189 submissions were received by the Hunt Committee, many of which questioned the reality of an entertainment-led expansion of information services markets.

In April 1983, the government responded with a White Paper.[13] The discussion paper broadly supported the recommendations of the Hunt Report. It called for privately funded, market-led development of cable "unfettered by unnecessary restrictions." Newly franchised operators would be subject to "light" regulation and investors would be free to develop a wide range of services and facilities. The Cable Authority would be responsible for "monitoring the performance of cable operators to ensure that promises made are promises kept, and that the regulations for cable are observed and the public interest served."[14]

Prior to the establishment of the Cable Authority, the government authorized eleven interim licencees for new pilot cable systems covering areas of not more than 100,000 homes. Existing operators also were permitted to offer additional services.

Cable system operators were required to obtain a licence from DTI. DTI was to consult with British Telecom (BT) to ensure that cable plans would not infringe on BT's plans for telecommunication

---

[13]"The Development of Cable Systems and Services." Cmnd. 8866. London: HMSO, April 1983.

[14]Ibid., para. 43.

network development and particularly the installation of a broadband interactive Integrated Services Digital Network. New cable systems, whether of tree or star (switched) configuration, were required to be compatible with BT and Mercury telecommunication networks. The White Paper suggested that the Cable Authority would judge franchise applications against a number of criteria including: whether ownership arrangements of the operating company were satisfactory; whether the services to be offered covered a reasonable geographic size; whether the financial provisions of the company were realistic; whether the applicant offered a range and diversity of television and sound channels; the extent to which the operator proposed to draw on programme material and generate original material in the U.K.; the arrangements for educational, community and local access channels; the range of interactive services; and provisions for leasing channels to other users.[15]

The Cable and Broadcasting Bill established the Cable Authority in 1984.[16]

3. The Future of Cable Television in the U.K.

Cable operators have experienced financing difficulties and take-up rates have not been as rapid as expected. Several of the initial licencees are on the verge of bankruptcy. The construction

---

[15] Ibid., para. 65.

[16] Cable and Broadcasting Act 1984. London: HMSO, 1984.

plans of franchises granted in November 1983 are thought to be a year behind schedule.[17] In October 1985, Greenwich Cable announced a 50% reduction in staff and the abandonment of all local television and radio production.[18] The cable franchise in the Wandsworth area of London, Shaw Cable, was unable to attract investors for network construction and has gone into liquidation.[19]

One prediction (by the advertising agents Young and Rubicam) estimates that cable will achieve only a 30% penetration rate by 1995, and that the impact on audience shares will be limited to features, sports and news. As of January 1985, there were 884,214 homes passed by cable and 140,685 homes connected (15.9%).[20] The Cable Television Association has called for Government to introduce even greater flexibility in licence fees and rates. Government support for cable development in the form of a £5 million grant over 5 years, which is barely sufficient to cable 16,000 homes, has been regarded as an insufficient incentive to investors, given realistic estimates of market demand for services.[21]

---

[17]"Cable Television, Cautiously Uncoiling." The Economist, 28 September 1985.

[18]"Greenwich Cable Control Changes Hands." Financial Times, 24 October 1985.

[19]"Cable Television Company Call's Creditors." Financial Times, 23 October 1985.

[20]Garnham, Nicholas. "Cable in the U.K." le bulletin de l'IDATE No. 21, November 1985, pp. 234-239.

[21]"Government Urged to Step up Aid to Cable TV." Financial Times, 13 November 1985.

Regarding the future development of community television, the 1977 Annan Committee Report stated that community television "seems to most of us to have two advantages. It extends the number of programme makers and takes programming out of the charmed professional circle; this in turn creates a more alert and selective television audience ... Cable television is one of the best ways in which a local community is able to communicate with itself."[22] The Annan Report made no comment on options for financing community television, though there was an implication that public funds might be used.

In 1977, the Community Communications Group (COMCOM) was formed to assist communication between people and groups using film, video and print in community development work. Most of the cable franchise applicants proposed to offer a single combined community and access channel. Some have offered technical facilities including a colour studio, camera and video equipment, and between £60,000 and £100,000 in annual operating expenses. However, very few new cable systems have been constructed.

As new cable licencees have failed to reach projected penetration levels, they have lobbied the Government to permit satellite master antenna television (SMATV) as a means of keeping the programming industry alive. As of May 1985, single dwellings, e.g., hotels, clubs, have been permitted a licence for satellite receive-only earth stations from DTI. But multiple dwellings require a licence from the

---

[22]"Report of the Committee on the Future of Broadcasting." Cmnd. 6753. London: HMSO, 1977, para. 14.54.

Cable Authority and from DTI. The CTA is in a dilemma, because who would want to wire an area only to find that all multi-dwelling places had a satellite dish? Also, once an area was wired, what would happen if the cable operator chose not to invest in a dish? In this case, the residents would go without SMATV.

The market environment for cable television in the U.K. is characterized by confusion as to the best way to promote a new industry. In 1986, the British government, realized that its policy of trying to wire the country for cable has been a failure. With the popularity of satellite television the CTA has to ease up on SMATV and MDS unless it wants to lose a very lucrative program and dish market developing on the continent.

> "... one can say that U.K. cable policy and development since 1982 exhibits high levels of contradiction, confusion and even delusion. Perhaps some of that is inevitable in the introduction of new technological systems and new consumer services. But what is clear is that the market was over-estimated, at least by the technologists, and that market forces are not good at determining necessarily complex, long-term interactive strategies and that government financial and economic policy has to be coordinated with technology policy."[23]

4. Satellite Broadcast Distribution in the U.K.

Since 1981, the Government has sought to stimulate interest in satellite delivered programming, and in the construction and operation of a U.K. Direct Broadcast Satellite (DBS).

---

[23] Ibid., p. 239.

The ITV companies have agreed to launch "Superchannel", to be distributed by satellite to European markets. The BBC will participate by making programming available for partial payment and a share of future profits.[24] At least one company has begun renting satellite earth station receivers in the U.K. DER offers antennae that receive 12 channels for an installation fee of <50, and a <12 per month per channel charge.[25] The earth stations provided by NEC of Japan, at a cost of <1,500 per station, are capable of receiving signals from lower-powered satellites, but require manual adjustment to switch from one satellite to another. The distribution of advertising revenues for U.K. satellite distributed channels reaching a European market has been reported by the U.K-based Sky Channel as U.S. 33%, Japan 33%, Mainland Europe 22% and the U.K. 14%. Sky's total advertising revenue for 1984/85 was <2.5 million, for a channel that is estimated to reach 10% of all television viewers in the 4.7 million homes in countries were it is received.[26]

In May 1981, the Home Office Report, Direct Broadcasting By Satellite presented a plan for the use of five channels allocated to the U.K. in the 11.7-12.5 GHz band at the 1977 WARC-BS Conference. The Home Office recommended that the BBC develop two channels, but

---

[24]"European Cable TV Channel Set to Proceed." Financial Times, 11 November 1985.

[25]"Satellite TV Rental Launched." Financial Times, 14 November 1985.

[26]"Advertising Potential Elevated by Satellite." Financial Times, 14 November 1985. Sky Channel loses in 1985 amounted to <8.6 million.

that satellite service would be developed "in a way consistent with our existing broadcasting arrangement."[27]

Part of the motivation for encouraging an operational Direct Broadcasting Satellite system was the desire to stimulate the aerospace and electronics industries and to create a demonstration project that would be useful in selling DBS technology and equipment abroad.[28]

The Secretary of the Home Office commented that any new DBS services would be subject to supervision by the Broadcast Authority, and subject to the same programming standards as applied to existing broadcasters.[29]

Evidence taken at the time of the Home Office report indicated that a consortium of British companies would be prepared to invest private venture capital into the construction and operation of U.K. DBS system.[30] However, by 1986, it had become clear that no private interests perceived demand for DBS services as sufficient to justify investment in a private DBS system.

---

[27]House of Commons, 20 April 1982, Debate on DBS and Cable Broadcasting at cols 176 ff.

[28]Ibid., p. 1.

[29]The Cable and Broadcasting Act 1984 calls for the establishment of a Satellite Broadcsting Board. (Section 42) Three members were to be appointed from the BBC Board of Governors, and three from the members of the IBA.

[30]Ibid., p. 42.

In February of 1986, the Home Office announced that prospective operators of a British DBS system would be free to buy a foreign satellite system. The IBA was to advertise the franchise for a service that would provide an initial three channels. The service would be a commercial service dependent on advertising and subscription revenues. The service was not expected to start for three to four years and the prospective franchise operator will need to show that its plans will benefit the U.K. in economic terms. That is, despite the opportunity to buy a foreign satellite, there must be opportunities for the space equipment and consumer electronics industries. One contender to supply a DBS system, Britsat backed by Ferranti, hopes to purchase American satellites.[31]

Community Radio

Community radio proposals can be traced back at last as far as 1965. According to the Annan Report of 1977, "Local broadcasting is a different kind of relationship with its community, and the community has, and should have, an almost proprietary feeling about its local station that it cannot have about a national network."[32] In 1979, the Home Office undertook to "examine in due course the scope for low power services within the context of plans for the development of local radio." The resulting Home Office Local Radio Working Party proposed development independently of Government, through the IBA and

---

[31]"Satellite TV groups free to buy abroad." Financial Times, 21 February 1986.

[32]"Report to the Committee on the Future of Broadcasting." Cmnd. 6753. London: HMSO, 1977, 14.4.

BBC. The IBA and the BBC claim to provide "community radio" at the local level. Independent Local Radio (ILR) stations cover 85% of the U.K. population and are funded by advertising revenue and licensed by the IBA. BBC local stations receive funding from the central allocation of the BBC's budget.

In July 1985, the Home Secretary, Leon Brittan, announced that the Home Office would license 21 new radio stations each with a service area of five or ten kilometres; each station being licensed on the basis of it offering the community an additional service distinction in character and broadening the diversity of listener choices. Most licenses are for small neighbourhood stations, but three will be for larger (500,000+) "community of interest" stations. There will be a minimum of restrictions. "There will be no obligation to observe political balance, and stations will be free to raise money from advertising, grants, listener subscriptions - and sponsored programs.[33] Purely religious or political stations will not be permitted. There are two unprecedented features to this initiative; first, Government is directly responsible for the supervision and licensing of broadcasting; and second, the services compete with existing broadcasting services (ILR stations) for a source of revenue. However, the IBA and ILR seem untroubled by possible loss of advertising revenue, believing that the advertisers on community radio are likely to be very localized and drawn from providers of goods and services who are uninterested in advertising on ILR.

---

[33]Highan, Nick, "Branching Out", Connections.

Stations own their own transmitters, thereby keeping costs down. Problems have arisen in licensing as a result of rigid technical standards that are difficult for small under-funded community groups to meet. The one snag is that these stations cannot easily broadcast in FM stereo, yet it was the wish to thwart the radio pirates who broadcast mostly in FM stereo that brought about the community radio concept. In January 1986, the formation of the Community Broadcast Trust was announced.[34] It will have a general objective of fostering the development of community radio, community cable television and other electronic information services. The Trust hopes to be operational by the time the new community radio franchises are awarded in 1986.

5. Options for U.K. Broadcasting Policy

The policy initiatives in the broadcasting sector that will be taken by the U.K. Government in the short and medium-term will depend on a number of factors. Most significantly, the relative priority given to industrial policy over cultural policy will influence changes in the broadcast sector. Increasing emphasis has been given to the promotion of communication networks. Microwave, switching, fibre optic and satellite technologies continue to be regarded by the Government as industry sectors in which the U.K. can specialize. As a result, the capacity for programme and information service distribution can be expected to increase.

---

[34] "Trust plan to aid new stations." Broadcast, 17 January 1986.

Cultural policy may begin to take a secondary position, and increasingly be implemented at the margins of decision-making. While the desire to protect the concept and practice of public service broadcasting will not fade quickly, it may be superseded by policies that introduce greater competition into the broadcast marketplace. Within the context of industrial policy there are likely to be trade-offs between the hardware and software sectors. Expansion of distribution capacity, whether through cable, satellite or terrestrial broadcasting favouring the hardware sector, is likely to have a negative impact on the software sector: limiting distribution capacity in order to favour software producers will deny opportunities to the hardware sector.

Deregulation is unlikely to be implemented explicitly. Rather, increasing pressure is being exerted on existing broadcast institutions and provisions are being made for a variety of new entrants. It would appear that if the Peacock Committee were to recommend that advertising be introduced as a means of supporting the BBC, the Government would respond with a continuation of its policy of gradual attrition. This policy is reflected in its reluctance to increase the licence fee. Pressures on ITCA companies have taken the form of the application of the levy to profits from sales of programming in foreign markets. Greater competition for audiences and advertising revenues already has been sanctioned by licensing of cable operators and support for direct satellite broadcast distribution. In addition, the Peacock Committee has announced that it will consider the feasibility of a fifth channel supported by advertising.

Several factors will limit the speed with which more competition is introduced in the U.K. broadcast market. First, the considerable rivalry among Government Ministries, (e.g., the Department of Trade and Industry and the Home Office, which have different policy agendas) will create confusion in the policy-making arena. Second, it is unlikely that public funding will be used to stimulate the private venture capital markets into greater enthusiasm for investment in new cable networks. Third, the limited availability of spectra that can be allocated to services will create pressures for priorities to be placed on the development of some services, possibly at the expense of others. For example, a fifth over-the-air broadcast channel may not be feasible in the light of spectrum congestion in the spectra allocated to mobile radio. This may prove a greater stimulus to cable growth.

It is difficult to predict the specific form of the emerging regulatory and market environment in the broadcast industry. One scenario would see a renewed initiative on the part of the UK Government to stimulate interest in satellite distribution of entertainment and non-entertainment programming. This course of action would meet demands from U.K. program producers for a vehicle to access the larger European market. It would give the appearance of supporting the aerospace and electronic industries, even if the benefits were reduced by a foreign satellite purchasing policy. It would show that the government is attempting to implement policies that support high technology development and the information sector.

These developments suggest that the process of re-evaluating the type and quality of programming that meets the criteria for public

service broadcasting will continue. The traditional broadcasting environment will inevitably be transformed as a result of international competitive pressures over which the Government can exert little influence. Change also will be attributable to the government's use of the transmission hardware that supports broadcast distribution as an important component of its drive to provide a stimulus for the regeneration of the U.K. industrial structure.

C. THE EUROPEAN ECONOMIC COMMUNITY (EEC)[35]

1. Overview

The opportunities for multiple distribution outlets for broadcast and non-broadcast programming on a European-wide basis are causing a rethinking of existing broadcast legislation and regulation at the national and European Community level. This rethinking has largely been as a result of the impetus created by the attempt of the Commission of the European Communities to set the stage for the evolution of an open European-wide broadcast market.

In a technical sense, national boundaries are irrelevant to satellite-distributed programming, as well as to programming produced in the form of video cassettes. The terrestrial microwave networks controlled by European PTTs no longer provide the dominant method of distribution for broadcast programming on a national basis. In the near future, and even today, the number of potential avenues for access to a variety of programming, foreign and domestic, is on the

---

[35]This section was prepared by Dr. Robin Mansell.

order of 30 or more cable channels and five or more satellite channels. This increase in capacity requires an increase in content at a rate that is generally regarded as exceeding the production capacity of each European nation. The incorporation of larger numbers of foreign-produced programs in the package of alternatives available to national viewers is believed to be inevitable.

For the European Community as a whole, this reality has stimulated attempts to create an open European market to increase the demand for 'foreign' European programming. The objective is to create economic incentives that encourage purchasing of non-American program content. Inter-governmental agreements facilitating co-production and co-financing arrangements for film production are one reflection of this policy.

A more publicly visible expression of this policy is found in documents published by the Commission of European Communities. In March 1982, the European Parliament passed a resolution that called for "outline rules ... on European radio and television broadcasting, inter alia with a view to protecting young people and establishing a code of practice for advertising at Community level."[36]

The initial response took the form of an interim report, Realities and Tendencies in European Television: Perspectives and Options in May 1983.[37] This was followed in July 1984 with a

---

[36] See, EEC Commission. Television Without Frontiers, COM84/3000, final, 14/7/84.

[37] EEC Commission. COM83/229 final, 25/5/83.

discussion or Green Paper, Television Without Frontiers.[38] The Green Paper made recommendations on a wide number of issues including the treatment of copyrighted material, the responsibilities of private sector broadcasters, the maximum amount of advertising permitted, the "harmonisation" of legislation, and the applicability of the Treaty of Rome provisions (which governs the EEC) provisions requiring non-discriminatory treatment of trade in goods and services throughout the Community. (Part IV of this document provides a summary of the broadcast structures in Community member states.)

An important form of regulation of broadcasting at the Community level takes the form of interpretation of legal statutes by the European Court of Justice. In 1974, the Court ruled that broadcast is "not a material, tangible asset but a set of activities. As a result it is not a product but the provision of services." (Sacchi case (155/73(1974)409))[39] It is, therefore, subject to Title III "Free Movement of Persons, Services and Capital", of the Treaty of Rome. In the Green Paper, the Commission interpreted this to mean that "restrictions on freedom to provide services within the Community shall be progressively abolished..." and there may be no protectionist restrictions on the providers and recipients of cable or satellite services other than for public policy security or health reasons.[40]

---

[38] Ibid., COM84/3000.

[39] Ibid., p. 105.

[40] Ibid., p. 121.

Part VI of the Green Paper dealt with the aspects of national legislation and regulation that will need to change to achieve an open market. These include the "harmonisation" of rules on advertising, rules governing public order and safety including the protection of minors and the protection of personal rights, and copyright.

The Green Paper proposed a relatively high upper limit on advertising time (20% of total daily broadcast time), and called for agreed standards that would permit advertising to be acceptable in each country. Broadcasting was treated much like any other service industry. This position has led many to believe that a commercial broadcast sector is expected to evolve throughout Europe which would ultimately come to take precedence over the tradition of public service broadcasting.

The current status of these issues before the European Parliament is reflected in a statement by the President, Mr. Pieter Dankert.

> "For various reasons, an increasing need for European programmes exists. For European politics it is of enormous importance to be represented by journalists on (the) European level and also to be able to present oneself direct to national audiences. But there are so many more interests - social and cultural - that are from a European standpoint, crying for more intensive and more extensive communication. However, getting this organized is extremely complicated because Europe has very complicated problems. All sorts of legal problems have to be considered if one seriously looks at in what kind of context or structure such a European programme could be implemented, or what kind of framework you need ... Europe does not exist yet in the national publicity."[41]

---

[41]Quoted in Televizio AVRO Broadcast Company, Hilversum, 25-31 October 1982, p. 4.

The response to the position taken by the Green Paper by program providers who seek a European-wide market has been supportive, but unsurprisingly critical of the slow speed at which intergovernmental bodies are capable of implementing policy. For example, Sky Channel, a satellite broadcast service owned by Rupert Murdoch's News International now reaches 4.2 million homes in Europe. It delivers English language programming and advertising under agreements worked out with national authorities. The service is subject to the Council of Europe on Advertising and Satellite Broadcasting Standards adopted in 1984, that require advertisers to respect the laws applicable in each country. It also is subject to the rules promulgated by Eutelsat which carries the broadcast signals. Murdoch and others have argued that they cannot concede to idiosyncratic national practices and expect to generate revenues to cover costs of program origination and distribution.[42]

The estimated number of low or medium power satellite transponders available for broadcast service in Europe by 1990 will be approximately 85.[43] The European Telecommunications Satellite Organization (Eutelsat) is carrying out feasibility studies for a $500 million Direct Broadcast Satellite that would carry 18 television channels in 1990. However, the West German TV-SAT and Frances TDF-1

---

[42]See, Cox, P.T.S. "Sky Channel - The Reality of European Television." le bulletin de l'IDATE, No. 21, November 1985, pp. 536-541.

[43]Connell, S. "Information Dissemination by Satellite." le bulletin de l'IDATE. No. 21, November 1985, pp. 216-221.

have been subject to technical difficulties and commercial uncertainties.[44]

Of 16 satellite channels broadcasting over Europe, 11 carry advertising, but only two are major channels (Sky Channel owned by Rupert Murdoch and Music Box owned by Thorn EMI Screen Entertainment). Sky carries advertising from major companies including Cannon, NEC, Mattel, Ford, Xerox, Colgate, etc. However, the advertising market is restricted by funding, creative differences between countries, and the lack of a central advertising agency. Revenues from Sky Channel advertising in 1984/85 reached £2.6 million, Music Channel raised approximately £1.5 million.

At the same time, the development of broadband cable and satellite distribution of television has been slower than many entrepreneurial groups had hoped. Approximately 8.5% of West European homes are linked to cable. However, cable television is localized, since Belgium, the Netherlands, and Switzerland account for 66% of cable households. There are only 200 networks in Europe with more than 10,000 subscribers.

For further services to appeal to European subscribers they will need to offer a perceptible improvement over existing systems. They will need to be packaged originally, and they will need to be

---

[44]"West European groups study satellite broadcasting project." Financial Times, 3 October 1985.

inexpensive.[45] Even in ten years time, it is estimated that only 13% of West European households will be connected to basic cable services. European subscriber revenue is approximately £400 million per year, but has been estimated to grow to $2.2 billion by 1995.

2. Ireland

Cable is already well established in Ireland and set for new expansion to be funded by private investment. This experience emphasizes the worth of extending and upgrading existing cable systems as well as reserving the possibility of two-way interactive services. No mandatory programming requirements are laid down for broadcasting to special interest groups.

3. Norwegian Cable

The Norwegian government's royal commission on advertising in the electronic media proposed that all future television, cable or not, carry advertising. Commercial local radio may also be introduced. The possibility of commercial television has the newspapers worried about the scramble for advertising dollars.

A royal commission established in 1985 will consider the future structure of cable and television. High on the agenda are where new channels will go and who should control them.

---

[45] Whitten, P. "The Prospects for Cable and Satellite Development Over the Next Ten Years." le bulletin de l'IDATE, No. 21, November 1985, 240-243.

More deregulation can be expected from this government, which is decidedly pro-deregulation.

4. Holland

Pay television and private industry are allowed into Dutch broadcasting. The former will be confined to Dutch Cable Networks; however, with 70% of homes wired, this is already a significant penetration, and the economic base of support for additional pay services may not exist.

The Dutch are also cracking open the telecommunication monopoly by allowing private competitors into equipment markets. Peripheral equipment will now be available on the market. Dutch PTT will be able to join in private ventures and the present cable network could integrate with the public telecommunication network.

5. Hungary

Hungarian pay television is independent of national television and aims at providing local information and an outlet for public opinion.

6. Belgium Cable

Commercial satellite television companies are interested in Belgium. Nonetheless, inroads will be difficult for three reasons. First, because of the number of cable channels already in place, and the fact that the country has a high rate of penetration. Second, there is an absence of any legislation covering commercially-owned foreign stations. Program content will be a difficulty because of the autonomy enjoyed by the country's French and Flemish communities and the fragementation which results. Third, cable operators are asking

for a fee to carry local operators, a move which will no doubt be resisted.

7. Luxemberg

Luxemberg's decision to launch three American-made, medium-powered, multi-purpose satellites in 1984 has upset the plans of the French, West German and British government to launch high-powered satellites. The Luxemberg satellites are cheaper and will be able to deliver DBS programming more efficiently. The Grand Duchy has an opportunity to play the same joker role in European satellites as it has for years in European Broadcasting.[46]

8. Spanish Television

Private television may by 1987 become reality in Spain when the ruling socialist government proposes to introduce a bill into parliament to legalize private stations. In 1986, State television, Radio television Espanola SA (RTVE) runs two nationwide channels, and the autonomous regional governments of Catalonia, the Basque Country and Galicia each run their own television stations with the help of advertising.[47]

It is likely that the private television bill will be approved. It will provide for two new nationwide TV channels to be operational from January 1, 1987. At present, since only 3 out of the 17

---

[46]"Luxemberg Satellites, They're Coming" Connection, 9 April 1984.

[47]Mike Gore, "Private TV in the Wings" Connections, February 10, 1986.

autonomous regional governments can run programs, new regional television stations are likely to be created. There will probably be some limitations on the amount of foreign programming. Limited cable TV will be authorized and a future satellite channel will be considered.

The economic viability of private television in Spain is still in question. Spain enjoys a Mediterranean climate and way of life; people spend much more of their time out of home than is the case in Northern Europe; and the overall unemployment is 20% with not many hopeful signs that the long-stagnant economy will improve in the short term.[48] On the other hand, advertisers claim that the state television's lack of flexibility in pricing spots, together with the small or regional advertisers who cannot afford nationwide coverage should make private television economic.

9. Broadcasting Deregulation in France

Deregulation in France, especially in television, has presented a quickly changing environment over the past few years.

The fourth new French channel "Canal Plus", launched in 1984, is formatted much like a North American pay television channel. It is a subscription service, funded two-thirds by capital and benefits from public service concessions. The signal is broadcast scrambled, and homes with a proper ariel and decoder can receive it. The service has

---

[48] Ibid.

already made it necessary for the two national channels to develop new formats.

In 1986 the French government also launched privately/publicly owned television stations, two more network channels and forty to fifty local television stations. The two network channels are allowed only restricted program and beginning advertising to preserve the press' advertising revenues. Ownership of local stations will be distributed in order to prevent controlling interests, but will be under advertising regulations similar to the network stations.

In 1986, after three years of the nationwide "Plan Cable", cable television in France is gathering steam. The PTT's investment will almost double in 1986, with 2.8 billion francs budgeted.[49] One million homes should be connected by the end of 1986 and five million by 1990.

In 1986, the French President awarded the franchises for two new stations to premiere in March, 1987. This is the first foothold by foreign media companies in France's once protected broadcasting market.[50] The stations promise to change French television with more American-style programming, featuring films heavily cut with ads, as well as programming for the youth audience and foreign programs.

---

[49]Meg. Morley, "Cable Cable" Connections, pg. 5, February 10, 1986.

[50]John Rossant, "En Garde: The Battle of French Television has Begun" Business Week, Feb. 24, 1986, p. 50.

Advertisers are enthusiastic, since France is Europe's largest consumer market.

In the field of radio broadcasting, the legitimization of private radio stations in 1981 has led to a proliferation of privately-run stations. These stations came into being out of a particular cause as opposed to simply for commercial gain, since they attempt to be different from the major commercial radio stations by aiming at specific linguistic, cultural and other minority audiences. By the end of 1984, the government had authorized over 1000 of such stations. Their future remains uncertain due to the difficulty of keeping such stations solvent.

CHAPTER 5

BROADCASTING IN AUSTRALIA

1. Introduction

By far the biggest issue in Australian broadcasting has been the introduction of satellite television. Australia's first two satellites were launched last year in August and November. The third is scheduled to be launched this July. In settling issues concerning the satellites the Government is directed by a five part broadcasting policy.

2. Current Policy Emphasis

The policy's objectives as set out by the Australian Minister of Communications are (for complete text see Appendix 3):

1. To maximize diversity of choice in radio and television services, so that all Australians have access to as wide a range of services as possible; to bring a similar range of entertainment and information through broadcasting services to all Australians, especially those currently without any or inadequate services.

2. To maintain the viability of the broadcasting system.

3. To encourage an Australian to look for television and radio by maintenance of an appropriate Australian content level and fostering of an Australian production industry.

4. To provide broadcasting services relevant and responsive to local needs, and

5. To discourage concentration of media ownership and control of stations.[1]

The major concern has been with the equalization of commercial television services in regional areas of Australia. Approximately one third of Australia's 15.5 million people live in non-metropolitan centres; these, together with those living in the remote outback, are of considerable electral interest to the government. Accordingly, the final decision governing utilization was influenced by largely political concerns.

Originally the satellites were designed to deliver programming on a regional basis for commercial television services and for the Australian Broadcasting Corporation (ABC). The ABC is similar to the CBC but does not carry commercial advertising.

With these plans still in the works, the "networks", the three commercial stations in the four major cities which operate as a loose program producing and buying consortium, lobbied for changes. They would rather see the set of high power transponders designed for regional commercial television be switched to national beams for "program distribution." They planned to beam exactly what Sydney viewers got on their three commercial channels via satellite across Australia, making some allowance for local news and advertising. The

---

[1] P. 2, Address by the Hon. Michael Duffy, MP to the Conference on Australian Commerical Television: The Future, Sydney, 30 September 1985. Part of this section is from background materials prepared by Mr. Bruce Allen, Media Consultant, Ottawa.

country's system of regional stations saw little merit in this, arguing that national beams would destroy them and any real localism in regional television.

At the same time, an independent company, Television Australia Satellite Systems Limited proposed a satellite delivered subscription service for the 650,000 people who get no commercial television at all.

The plan that Michael Duffy, Minister of Communication, finally chose was one recommended in 1984 by the Australian Broadcasting Tribunal (ABT). As mentioned earlier, political considerations figured highly in the decision. The strategy ultimately accepted concentrated on the development of regional programming.

3. Regional Television

Regional television in Australia was described by the ABT as inferior to the service provided by the three commercial stations in the major metropolitan markets. They found that there was only one service available; transmission hours were relatively short; some of the most popular programs shown in major markets were not broadcast in regional areas or were shown much later in a small percentage of transmission time. Development of the regional television industry would then have the benefits of improving the television service for key electorates in the country, and also block the three commercial networks from extending their influence in a way which could harm the viability of the regional stations.

The actual ABT proposal recommends that people living in remote areas be provided with a commercial television service without being expected to pay a subscription. The minister then asked the ABT to hold an inquiry to determine who they would recommend to hold Remote Commercial Television Service (RCTS) for each of the four zones. The first RCTS licensee will only go ahead with financial assistance of the West Australian State Government. Although it is too early to say how much the states will have to subsidize the RCTS service, there may be pressure to convert to a subscription-based service as originally proposed by Television Australia.

The first two satellites are now in orbit, and some users were able to start operations in mid-October 1985. They include:

- Australian Broadcasting Corporation delivers television and radio programs in four zones, and use one transponder for program exchange.
- The Department of Aviation is the second biggest user of the satellites with four transponders booked.
- The Australian Associated Press has a data news network.
- The Special Broadcasting Service deliver multi-cultural programs to their expanding non-commercial network. They started with one transponder and will use two within two years.
- The Queensland Government has booked transponders to deliver television, slow scan, data and radio services for state departments including Health, Education, Police and Water Resources.

- Telecom Australia is the national common carrier for telephone data and telex services. As a partner in Aussat Pty. Ltd., they will be delivering a range of business packages.
- Channel 9 and 10 have not yet reached full agreements for transponder use, and Channel 7 is still reluctant to be involved.

The real winners thus far are the regional station operators whose share values have soared with the prospect of a restructured industry, and the people living in these regions who can now look forward to a better television service. The losers are the networks.

CHAPTER 6

THE TECHNICAL CAPACITY TO SUPPORT LIBERALIZED ENTRY OF NEW BROADCAST SERVICES *

1. Introduction

Under the current regulatory regime in Canada, broadcasters are defined either as Broadcast Transmitting Undertakings or Broadcast Receiving Undertakings. The former are the traditional radio and television stations, while the latter are what is commonly known as Cable Television or Community Antenna TV (CATV) companies.

Broadcast Transmitting Undertakings, by definition, make use of the electro-magnetic spectrum to broadcast their programming. While cable television operators distribute their signals over a coaxial cable network, thus not making direct use of the electro-magnetic spectrum, the network is less than perfect, and radiation does take place particularly in a malfunction condition of the network.

In any consideration of broadcast deregulation trends, two implications of such deregulation on the use of the electro-magnetic spectrum should be considered. The first is the expansion of current broadcast services that can be validly expected with any move to deregulation, and the second is the potential offering of new and innovative broadcast services as a result of any deregulatory trends for broadcasting.

* This chapter was prepared by Lapp-Hancock Associates Limited, Ottawa, Canada.

The purpose of this chapter is to examine the technical capacity of the electro-magnetic spectrum to support such potential new services. It is divided into two parts. The consideration of services making direct use of the impact on the spectrum of potential new services carried over cable television systems.

2. Spectrum Management

The electro-magnetic spectrum, or is more common terminology, radio waves, is a fixed and non-renewable resource. In theory, it consists of the whole spectrum of possible electrical frequencies from one cycle per second (1 Hz) through voice frequencies, radio waves, heat, light waves and x-rays through to the highest frequencies yet detected, cosmic rays. However in terms of radio regulations in Canada the electro-magnetic spectrum extends from 9 KHz to 275 GHz.

Canada, in common with all other countries, belongs to the International Telecommunications Union (ITU), a body of United Nations that ensures international agreement for the use of all radio frequencies. It has a mandate for regulating the use of all radio frequency transmissions in all parts of the world in such a manner that transmissions in, say Canada, do not interfere with transmissions in the United States, Greenland or indeed any other country. The agreements of the ITU have the impact of international treaties, and the mechanism has operated in an extraordinarily efficient manner for approximately seventy-five years.

Within the basic ITU frequency allocations for a given region of the world (both Canada and the United States being in Region 2), individual countries have the right to allocate frequencies to

specific users, or to decide priorities between shared uses of a particular frequency band.

The responsibility for such frequency allocations within Canada, and for the regulation, licencing and control of the radio frequency portion of the electro-magnetic spectrum, falls with the Department of Communications (DOC). Under the Radio and Broadcasting acts, the DOC has the right to regulate the use of the radio spectrum, and to licence all transmitting and receiving apparatus for any part of the radio spectrum to enforce such regulation. The spectrum control function of the Department is carried out under the Assistant Deputy Minister, Spectrum Management.

In considering the broadcast use of the radio spectrum, the DOC, with a few exceptions, foregoes the right to licence receiving apparatus. It does, however, strictly enforce regulation and licencing for all transmitters.

The allocations of radio spectrum to broadcasting are in general terms fairly well known. They consist of the AM radio band, the FM radio band and VHF and UHF television frequencies. In detail, however, the matter is somewhat more complex, and it is perhaps appropriate at this point to detail the Canadian broadcast allocations within the overall radio spectrum as follows:

525 KHz to 535 KHz - AM Radio (Shared with Aeronautical Radio Navigation)

535 KHz to 1625 KHz - AM Radio

1625 KHz to 1705 KHz - AM Radio (shared with fixed, mobile and radio location)

5950 KHz to 6200 KHz - Short Wave Radio (AM)

9500 KHz to 9900 KHz - Short Wave Radio (AM)

11650 KHz to 12050 KHz - Short Wave Radio (AM)

13600 KHz to 13800 KHz - Short Wave Radio (AM)

15100 KHz to 15600 KHz - Short Wave Radio (AM)

17550 KHz to 17900 KHz - Short Wave Radio (AM)

21450 KHz to 21850 KHz - Short Wave Radio (AM)

25600 KHz to 25670 KHz - Short Wave Radio (AM)

54 MHz to 72 MHz - Television (VHF)

76 MHz to 108 MHz - FM Radio

174 MHz to 216 MHz - Television (VHF)

470 MHz to 608 MHz - Television (UHF)

614 MHz to 806 MHz - Television (UHF)

2500 MHz to 2550 MHz - Broadcast satellites (shared with fixed radio, fixed satellite and radio location)

2550 MHz to 2655 MHz - Broadcast satellites (shared with fixed terrestrial service and fixed satellite)

2655 MHz to 2690 MHz - Broadcast satellites (shared with fixed service, fixed satellite, passive earth exploration satellites, radio astronomy and passive space research)

12.2 GHz to 12.7 GHz - Terrestrial television and direct broadcast satellites

22.5 GHz to 22.55 GHz - Direct broadcast satellites (shared with fixed and mobile terrestrial services)

22.55 GHz to 23 GHz - Direct broadcast satellites (shared with terrestrial fixed and mobile services, and with intersatellite services)

40.5 GHz to 42.5 GHz - Television broadcasting and direct broadcast satellites (shared with terrestrial fixed and mobile service)

84 GHz to 86 GHz - Television broadcasting and direct broadcast satellite (shared with fixed and mobile terrestrial service)

It should be mentioned that there is very considerable competition for the allocation of radio spectra, and the DOC is continually investigating the needs of various users, and on occasion reallocating frequencies between broadcasters and other users. Thus the frequency allocations tabulated above should be taken as for guidance only, and prior to any proposed action affecting such frequency allocations, contact should be made with the Spectrum Management Branch, and the Spectrum Policy Directorate of the Telecommunications Policy Branch, to ascertain current allocations and any proposed modifications to those applications.

When implementing frequency allocations, various constraints are laid on licencees by the Department. For example, maximum transmitted power is specified, the type of antenna and its height is specified, both of these leading to a defined service area. The technical details of the transmitted signal, such as modulation methods, and the

type of signal that may be transmitted are also strictly controlled. Thus a television signal cannot be transmitted over an FM radio channel. Within this type of limitation however, new technology has permitted certain additional uses of the spectrum such as the ability to transmit data within an FM channel in a manner unheard by the listener. These matters will be dealt with in detail in the next section of this chapter.

It will be noted that the listing of frequency allocations given above include those for Direct Broadcast Satellites, or DBS. This allocation is a comparatively newcomer to the broadcast scene. It permits users to receive television and other programming direct at the home by the use of small satellite earth stations or dishes. In Canada, both the Anik C and Anik D series of satellites are used for this purpose, paradoxically both operating in non-broadcast bands. This will be discussed in detail later.

3. Broadcast Transmitting Undertakings

As mentioned above, Broadcast Transmitting Undertaking is the formal term for broadcasters of both radio and television programming. Beside the publication the general allocations tabulated above, the DOC controls the licensing of broadcasters through a series of technical documents termed Broadcast Procedures, Broadcast Specifications and Notices to Broadcast Consultants. A number of other general radio regulatory documents also apply to broadcasters. It should be strongly emphasized that any consideration of the deregulation of broadcasting must still comply with the specified use of the electro-magnetic spectrum laid down in these and other

documents. The use of the electro-magnetic spectrum is not amenable to deregulation, as uncontrolled transmissions would not only cause chaos to all users, it would also be contrary to Canada's treaty obligations under its ITU agreements. Thus the mechanisms for deregulation of broadcast transmitting undertakings face severe technical restraints and to a lesser extent, restraints which may be part of ITU agreements.

For example, radio frequencies are currently allocated on a geographic coverage basis to ensure that there is no interference between broadcast stations and concurrently ensure that the maximum use of the spectrum is made, permitting the largest number of broadcasters to operate at one time. Thus it is extremely difficult to licence additional television stations in an urban area such as Toronto which currently supports a large number of TV stations in both the VHF and UHF band. On the other hand, it is comparatively simple to find allocations for low-power rebroadcast television stations in a remote area such as, for example, Moosonee. Detailed information as to specific current licences, and frequencies still available for any broadcast frequency band in any particular geographic region, may be obtained from the Broadcast Directorate of the Regulatory Branch of DOC.

Notwithstanding the difficulty of obtaining new broadcast licences in major urban areas, there is still considerable technical ability to support and new and innovative services within broadcast signals already carrying other programming such as FM radio or TV. In

particular, there are mechanisms to support the broadcasting of additional voice channels and low and medium speed data channels.

There are currently three technical mechanisms of this type permitted by the Department namely Subsiduary Carrier Multiplex Operation (SCMO), carriage in the Vertical Blanking Interval (VBI), and Satellite Video Channel Sub-carrier Operation. In addition there are mechanisms for carrying a second audio channel to provide stereo service in standard television channels, in FM radio channels, and more recently in AM radio channels.

Subsidiary Carrier Multiplex Operation (SCMO). This is a technical approach whereby an additional voice channel, or a data stream of up to 56 kbps, can be carried within a standard FM channel and broadcast without interfering in any noticeable way with the prime programming being carried out over that channel. The additional broadcast information, be it voice or data, requires special equipment at the receiver to extract and present it.

Vertical Blanking Interval Transmission (VBI). This is a method of broadcasting additional audio, voice or data signals within a television signal, without the additional information noticably affecting the television program seen and heard by the viewer. Currently this transmission method is used for text captions for the hearing impaired, Telidon text information, and similar data signals. It has the capability of carrying a second audio channel, for example in the second official language. Data streams up to 19.2 kbps data streams have been successfully carried by this method.

Satellite Television Signal Subcarriers. When television is distributed via either the Anik C or Anik D series of satellites, a limited amount of additional spectrum is available in the channel associated with the television signal. This additional spectrum can be used for the distribution of a number of audio, voice or data channels by the use of subcarriers associated with the primary carrier of the television signal. This means that these additional signals must be originated from the same point as the main television channel, but can be received anywhere within the coverage of the satellite in question. These subcarriers are currently used for the transmission of the second audio channel for stereo transmission, for the transmission of a number of radio network programs, and for the transmission of data up to 56 kbps. The use of these subcarriers is controlled by the lessee of the satellite channel, but they are normally available for lease.

Multichannel Television Sound (MTS). This approach to carrying additional signals within a normal broadcast television signal involves the addition of subcarriers to the aural baseband. It is used for stereographic, biphonic and multi-phonic sound programs, cueing and control information, the carriage of data for services unrelated to the television signal, and for subsidiary communications services such as functional music, second language sound track, radio reading, and the like. This approach has only recently come into use, and there is still considerable scope for the use of this medium for the carriage of new services within an existing television channel.

FM and AM Radio Stereo Signals. For many years there have been mechanisms for carrying a second, or stereo signal within a standard FM signal. On occasion, this additional capacity has been used for new services such as the carriage of functional sound (for example Musac) for distribution to commercial users. More recently, regulations have been modified to permit the addition of a second audio channel for stereo within a standard AM signal. Due to the extreme frequency congestion of the AM band, this concept is more difficult to implement, and provides a service of limited quality.

In addition to these specific mechanisms that make more efficient use of the broadcast spectrum for new services, there is a trend towards the use of spectrum conservation techniques. These are particularly applicable to the transmission of data signals, and to voice and video transmitted in digital form. These so called "compression techniques" can reduce the spectrum occupancy of a given signal very significantly. Another approach to spectrum conservation is the introduction of spectrum-efficient modulation techniques. In general terms these techniques permit the transmission of, a voice channel in approximately one fifth of the spectrum that it would normally occupy. However, it should be noted that these spectrum-efficient modulation techniques require different types of receiver from the normal domestic radio or television set, and thus are not directly applicable to normal broadcasting.

In the section above it was mentioned that in Canada both the Anik C and Anik D series of satellites were used for direct-to-home broadcasting.

As both of these series of satellites use spectrum allocated to the fixed satellite service, rather than the broadcast satellite service, it is perhaps appropriate to expand on this point. While Canada's domestic satellite services are designed and licenced for fixed satellite service, (that is, the transmission of signals from one specific user to another) by the very nature of the system, any signal transmitted from an Anik D satellite can be received anywhere in Canada (except the very far North), and any signal transmitted from an Anik C satellite can be received in either the Eastern half or the Western half of the country. Thus in practice the signals are "broadcast" in a manner such that they can be received by a large proportion of the population. This is also true of the American satellites transmitting pay TV. These factors have lead to the proliferation of domestic satellite dishes receiving such services. The main difference between signals received from Anik C and D, and those would be received from Direct Broadcast Satellites is power, and also a slight difference in frequency. The DBS satellites are designed to transmit at very high power levels, thus requiring only small dishes for domestic receivers. Canada has decided not to implement a full-scale DBS service, but instead permits direct home reception of television and FM signals carried on the Anik C and D satellites. For this purpose Telesat Canada and Canadian Satellite Communications Inc. (CANCOM) are authorized to provide direct-to-home services on Aniks C and D respectively.

4. Broadcast Receiving Undertakings

Broadcast Receiving Undertaking is the formal term for a cable television company. The reception of broadcast signals for further

distribution and resale is a situation where a licence is required for broadcast reception. The general regulatory authority for cable television companies is the CRTC. However, the technical regulation of cable companies, including the imposition of restriction on radiation from cable television networks, is the responsibility of DOC.

Once more, the technical quality of the undertaking is controlled by the Regulatory Branch of the Department through its broadcast procedures and specifications. The key document regulating technical standards for cable television networks is Broadcast Procedure 23.

While in its early days cable television was essentially limited to the distribution of off-air programming, more recently the advent of satellite distribution, pay TV, security services, local programming and other services has considerably expanded the number of channels normally distributed by a cable television network. In turn this has meant that to receive these programs a distribution spectrum greater than that allocated to broadcast transmitting undertakings is required.

Cable television companies in Canada use coaxial cable distribution virtually universally. Such a distribution system using high-quality, solid-sheath, coaxial cable for its main trunking is capable of carrying signals ranging from a few MHz up to approximately 500 MHz over long distances with an economically and technically acceptable number of amplifiers. From a technical feasibility viewpoint, coaxial cable can carry signals up to a few GHz, but this requires economically unacceptable spacing of amplifiers. Most new

and renovated Canadian cable television systems have a spectrum capacity up to 450 MHz and can thus carry around 35 television channels plus FM radio signals and the like.

Very few if any, Canadian cable television networks are currently working at full capacity. Thus they have the potential to carry many new services that are likely to provide revenue. As well as the distribution of entertainment and other services to all subscribers, the systems are (or can be made to be) capable of carrying non-entertainment services to specialized groups of users such as stockbrokers or real-estate agents. In addition, most of the larger cable television companies have the capability of two-way transmission.

As a cable television network is designed to be non-radiating, cable television companies are permitted to use frequencies outside of the normal broadcast spectrum for the transmission of its wide range of signals. To ensure that there is no interference either with off-air broadcasters or with users of other services, severe restrictions are placed upon the levels of unwanted radiation that can inadvertently be transmitted from cable television networks. Such radiation can be caused by corroding or loose connectors or by a major malfunction such as the breaking of the cable when a pole is knocked down in a traffic accident. Cable companies are required to monitor for the presence of such inadvertent radiation on a routine and continuous basis.

CHAPTER 7

SUMMARY AND CONCLUSIONS

The purpose of this report is to outline the issues in the deregulation debate and to trace international developments. The report is divided into a number of chapters.

The first chapter provides an introduction to the Canadian broadcasting scene.

The literature review discusses the issues arising when deregulation of broadcasting is considered in any country. These issues may be broadly grouped into four categories; deregulation of programming, deregulation of ownership, deregulation of technical standards and structural deregulation. Considering deregulation of programming, one of the major arguments centers around the market's reluctance to cater to the programming needs of minority groups such as children and the elderly, since these groups lack the buying power necessary to convince programmers of their special needs. Format diversity is also a concern in a deregulated environment. Past experience has clearly demonstrated the Steiner proposition -- a station will duplicate an existing format rather than produce a unique format if its share of the audience for a duplicated format yields higher profits than the profits generated by the entire audience for a unique format. On the subject of content regulation there are two main issues: fairness and equal regulation. The debate over the fairness doctrine in the U.S. involves broadcasters maintaining that the doctrine is unconstitutional, and that broadcasting should not be restricted more than print media. The second issue in discussing

content regulation is the equal regulation of all media. A strong case for the necessity of programming standards in an advertiser-supported medium may be made, because such programming is directed at those with buying power. Pay services on the other hand, encourage programming diversity as they attempt to match programs with consumer preferences.

A second group of issues concern the effects of deregulation on ownership. The primary issue is the preservation of the public interest, since concentration of ownership can have a powerful effect in influencing the public to act or think in a particular way. Other effects of deregulation, which American deregulators did not foresee, include the escalation of station prices and the sharp increase in the number of attempted takeovers. Both effects have implications for the quality of programming. An American station is now fairly priced if it sells for between 12 and 14 times its annual cash flow, and the price paid for a station has to come from somewhere. Takeovers are often fought by making the victim more unattractive (eg. taking on debt), causing a debt that must be serviced. Additionally, the easing of ownership rules may actually save AM stations in the U.S., since at the moment, if two stations are failing, the FCC allows them to go bankrupt. The solution is that a broadcaster could operate two AM stations with overlapping signals, using the same staff, studio and programming.

When discussing deregulation of technical standards, the question is whether the industries are better equipped than governments to set standards. Deregulatory standard setting can result in situations

such as those found in the case of AM stereo in the U.S., where the FCC refused to choose one of six available AM stereo technologies, and left the market to decide. The result has been slow adoption of the technology while consumers wait for a market leader to emerge. In the case of DBS, the FCC adhered strictly to the principles of free competition by lowering entry requirements to allow almost any operator to obtain a license without considering the operator's ability to market a DBS. The result has been that there is no true DBS service in the States thus far.

Finally, there are issues which arise out of changes affecting several broadcasting media at once. Their importance lies in the difficulty of making distinctions between the different types of broadcasting media, balancing the needs and desires of one medium against those of another, and promoting the economic feasibility of the different media. Without question, the most difficult issues arise when considering the effects of pay television on local over-the-air service. The first concern centers around the fragmentation of revenue and market shares. In the U.S., the implications of dropping the must-carry requirements are that the local commercial television stations feel the effects. In the United Kingdom, the debate has centered around the effects of cable on the overall existing broadcasting system. In both cases, it is fairly well documented that advertiser-supported television suffers audience losses when pay TV is introduced. Advertising revenues do not, however, appear to suffer.

The question whether new television technologies are complements or competition affects how they should be regulated. It is unequitable to regulate one media and to let its competition grow unhindered. The economic viability of different media and the type of regulation each medium should be subject to in order to ensure its future requires detailed consideration.

The third chapter considers the deregulatory developments in the United States. The first section of the chapter examines four critical areas: programming rules, ownership restrictions, character qualifications and licensing procedures. In abolishing programming rules, the Commission tipped its hat to competitive concerns by stating that the ruling opened the door to broadcasters who "narrowcast" programming of special interest to distinct segments of the community, rather than the community at large. This is the programming strategy popularized by cable television. In reviewing ownership restrictions, the FCC has updated or eliminated most multiple ownership regulations, except those local ownership restrictions which it still considers sacrosanct. The new laws, or lack thereof, that govern character qualifications for broadcast licenses exempt the FCC from considering violations of any laws except the Communications Act. Lastly, the FCC's review of licensing procedures are aimed at streamlining the operation in time and money. Present indications point to a situation where lotteries may be used to grant broadcast licenses.

In regard to cable television, the deregulatory developments require a background for some of the issues discussed in the literature review.

Chapter four examines the trends in broadcasting in Europe, especially the United Kingdom. The discussion of the U.K. focuses on community radio, public service broadcasting and especially cable television, which has recently taken the spotlight. Cable systems in Britain have found it increasingly difficult to continue operations because of low hookup rates, competition from satellite pay television and increasingly confused policy directions from the British government. Part of the chapter considers the developments towards an open European broadcast market outlining nations' concerns which include harmonization of advertising and the rules governing public order and safety. Specific countries are also discussed insofar as they highlight trends, developments and debates.

Chapter five discusses the Australian experience, where the deregulation debate has centered on the introduction of direct broadcast satellites and the structure of their ownership. There are conflicting goals between the government and the private sector. While the former would like to see equalization of commercial television services in regional areas of Australia, the latter would prefer high powered transponders designed for wide programming.

Chapter six discusses the technical aspects of liberalization of entry for new or enlarged broadcast undertakings.

It should be emphasized that the licencing and allocation of broadcast spectrum is a complex matter impacting on many outside organizations both nationally and internationally. It is therefore imperative when considering any specific approaches to deregulation that the technical impact of such deregulation should be thoroughly investigated.

Ultimately, a host of factors may be jumbled together to make the whole question of broadcast deregulation particularly complicated. One need only look to the more important decisions of the United States and Canadian courts in the last two years to gain some sense of the extent to which matters of technology, market economics and constitutional authority under law can be intertwined.

In 1985, the United States Court of Appeals for the Ninth Circuit rejected the view that cable television was simply another form of broadcast television. The facts of Preferred Communications v. Los Angeles (1985) 754 F2d 1396 began in 1982 when the city of Los Angeles awarded an exclusive cable franchise to Sun Cable which was a subsidiary of a real estate firm. In the United States, the Cable Communications Policy Act (Pub L 19-549, 98 Stat 2779), attempts to establish a comprehensive national policy on the operation of cable television. This act requires cable operators to hold a franchise before providing cable services and allows local authorities to require franchise holders to dedicate channel capacity to public, educational or governmental use without compensation. This law also requires that the successful franchise bidder dedicate channel capacity for commercial use by non-affiliated groups or entities.

This was all required by the city of Los Angeles in the Preferred case. Subsequent to the city's award of a franchise to the Sun Cable group, the Preferred Communications Group, another cable company, sought permission to attach its cable to public utility facilities already in existence (poles and underground conduits). The city refused because Preferred Communications had not been awarded a franchise and had not even participated in the auction process under which the franchise was awarded. Preferred responded by maintaining that the franchising regulations were a violation of its First Amendment rights as a publisher and were successful in the Ninth Circuit Court of Appeal which indeed found that the Los Angeles cable franchising scheme did deprive Preferred of its rights under the First Amendment.

The interesting feature of this dispute is the underlying difficulty of applying the regulatory system to a hybrid communications medium. Cable broadcasting may look very much like typical broadcast television, but its regulation can hardly be justified on the rationale set out in the Red Lion Broadcasting Company case (1969) 395 US 367, that of physical scarcity of airwave channels, because cable channels are plentiful. However, cable also is brought into the home over lines which resemble telephone lines and consumers typically expect such utilities to be regulated. Again cable operators will counter by arguing that cable is most like the print media and, consequently, that government regulation should be limited to the confines established for print media regulation in such cases as Miami Herald Publishing Company v. Tornillo (1974 418 US 241).

The Ninth Circuit Court of Appeal held that "despite the superficial similarity between broadcasting and cable television, three are signficant differences between the two media that have First Amendment consequences". The court therefore rejected the analogy with typical broadcasting as a justification for regulating the cable industry and concluded that the Los Angeles franchising regulations violated the test established in a number of earlier cases; for example, in the decision of Home Box Office v. FCC (567 F2d 9), the United States Court of Appeals for the District of Columbia ruled that federal regulation of cable could only be justified under the First Amendment if it could be shown that such regulation interfered with speech only incidentally and otherwise served important public interests. In the Preferred case the court found that the "incidental restriction" test established by the Home Box Office case had been violated. The court in the Preferred case went on to say that "allowing a procedure such as the City's would be akin to allowing the government discretion to grant a permit for the operation of newspaper vending machines located on public streets only to the newspaper that the government believes 'best' serves the community, a practice which we find clearly invalid".

This reasoning is similar to that employed by the Court of Appeals for the District of Columbia in the case of Quincy Cable TV, Inc. v. FCC (1985) 768 F2d 1434. The Quincy court also commenced its judgement by rejecting the scarcity rationale typically applied to broadcast television as a justification for the regulation of cable. Mr. Justice Wright said "cable television and ordinary commercial broadcast television operate on the basis of wholly different

technical and entrepreneurial principles". In invalidating the FCC's "must-carry" rules, the Quincy court also rejected the broadcast model as justification for regulating cable television and also did not go so far as to say that cable must be treated the same as the print media for purposes of First Amendment protection. Thus there may still be room for cable regulation in the United States, but the ambit has been left unclear until such time as the United States Supreme Court provides an authoritative statement. However, one may question whether the United States Supreme Court will be able to do this in a comprehensive manner. As one commentator has noted:

> "What kind of medium is cable television? If it is a unique medium, do its technological and economic properties require new legal rationales in order to justify regulation?"[1]

These questions are not easily answered and one indeed may question whether it is possible for the courts to anticipate technological developments in a way which allows them to provide adequate guidance on the question of regulatory scope.

The preceding review of recent United States' decisions is a useful back drop to the situation in Canada. We have also recently been preoccupied with the question of the constitutional authority to regulate broadcasting. In the Lount Corporation case (1983, 77, C.P.R. (2d) 35 (fed. Ct. T.D.)) the question was one of the right to control satellite transmissions. In that case, the Holiday Inn

---

[1] J. Kotter, "TV or not "TV" 1986, 6 California Lawyer (No. 4) 45 at 67.

provided free satellite television to its customers together with local signals delivered by way of a conventional antenna. These signals were carried to the Holiday Inn's rooms on the same coaxial cable; however, Mr. Justice Muldoon found that the systems were distinct and separate. The satellite reception system was held not to require a license because it was not a broadcast receiving undertaking or, alternatively, if it was, it was nonetheless exempt under the criteria set out in the M.A.T.V. policy. Two crucial points of the decision were that there was no undertaking on the part of the plaintiff which was merely providing the signal as an incidental feature of the hotel business and furthermore that possession of the receiving apparatus was not required to be licenced under section 3(3) of the Radio Act since it was for reception only.

Again, the most interesting feature of the decision from a regulatory prospective, is that it dealt a severe setback to the M.A.T.V. policy and will apparently require an amendment to the Broadcasting Act to delineate the uses that may be made of satellite signals. In the result, one may look to the United States and Canadian experience and conclude that one of the most difficult features of regulation is the ability of the legislative and judicial branches of government to provide clear guidance on the scope of regulation in a rapidly changing technological broadcast environment.

In final overview, and at the risk of oversimplifying the body of the text, there are a limited number of interacting forces at work in the deregulation process. This report has shown that currently deregulation is internationally fashionable, but that no one country

has resolved all the difficulties involved in this process. The forces involved in deregulation include governments, and their policies and resulting laws (or the repeal of those laws); technology, and the pace with which it is developing; and economics, and the constantly changing marketplace. Though these factors have been examined independently as separate logical divisions, they are in reality both closely intertwined and in a state of constant flux.

New technologies have undermined the assumption that broadcasting is a "scarce resource", and as a result, broadcasting has become increasingly technology driven -- that is, the search to find a commercial use for technology lags the invention of new technologies that overlap, duplicate and compete with each other. In the past, governments have adjudicated, controlled and licensed each successive technology, often exercising control over content (in the sense of what is said over or through the media), and over who should receive the right to broadcast. As new technologies cut across existing legislation increasingly frequently and contentiously, deregulation became more attractive to government. As a consequence of deregulation, there is a loss (or at least diminution) of control over content because of the difficulties of creating unambiguous criteria for programming, and of applying sanctions convincingly. Nonetheless, cultural considerations and associated pressures from minority groups keep a continuing pressure on governments to maintain (or even to increase) their role as arbitors of messages as well as the media that carry them.

With respect to new media, governments are increasingly aware that their attempts to control or influence the development of these media are inevitably suspect from the broadcast industry, whose many different members all attempt to gain special status from any existing legislation or changes thereto. Total deregulation "at the stroke of a pen" has been touted as a means of allowing market forces to distinguish among technologies, thereby bringing efficiency through competition. However, government's role as "public trustee" cannot wholly be abandoned, if only at the level of the allocation and enforcement of broadcasting frequencies under the international agreements that divide up the spectrum. In other words, there can never be "total" deregulation, and as a consequence there will always be debate over the degree of control to be exercised by government.

In practice, as this document has shown, deregulation is never achieved simply. Each nation has different cultural, historic and ideological biases, all of which find different expressions through the marketplaces of ideas, economics and technological advance. It is our hope that this report indicates some of the pitfalls and complexities of deregulation as it has been experienced by different jurisdictions, so that even if we cannot manipulate the future with certainty, we may at least avoid repeating the difficulties of the past.

APPENDIX 1

PUBLIC BROADCASTING IN THE U.K.

In 1985, the Peacock Committee on Financing the BBC was established by the U.K. Government. The Committee anticipates publishing its report in the summer of 1986. The considerable financial pressure on public service broadcasting arising from the Government's reluctance to raise the license fee and the BBC's escalating costs occasioned the inquiry. In 1986, the existing licence fee will generate approximately £895 million for the BBC, from which it must support two television channels and its radio channels.[1] It is widely believed that the inquiry also stems from a policy commitment to promoting competition and critically examining public sector institutions, and perhaps also to a desire to chastise the BBC for its "disloyalty" during the Falklands Crisis.

The Committee Chairman, Professor Alan Peacock, is a member of the advisory council of the Institute of Economic Affairs, which although "independent of any political party or group", has consistently been associated with advocacy of the market as a system "for registering preferences and apportioning resources", as well as the private market-oriented policies of the present Government.

The position of the Institute of Economic Affairs is reflected in the work of another of its members, Professor Stephen Littlechild, who

---

[1] "Paying for Television Advertisers Dominate the Picture." Financial Times, 3 December 1985.

was commissioned to produce the paper Regulation of British Telecommunications Profitability, (1983)[2] on which the regulatory structure of the privatised British Telecom (BT) is based. His recommendations, following the Secretary of State's stated "desire for regulation with a light rein," were for:

> ... facilitating the entry of new competitors, inserting clauses in BT's licence to extend the benefits of existing competition and introducing a local tariff reduction scheme.[3]

In November 1985, the Home Office published a report, commissioned by the Peacock Committee, The Effects on Other Media of the Introduction of Advertising on the BBC.[4] The report reflects the work of the National Economic Research Associates (NERA, U.S.). The conclusions of this report have commanded by no means universal assent; however, they may point to some of the concerns, preoccupations and possible recommendations of the Peacock Committee. Among the conclusions contained in the report are statements that:

> ... introducing advertising to the BBC will reduce the size of the advertising 'pie' ... this conclusion follows from our finding that the demand for television advertising is inelastic... The negative growth on advertising expenditure is mitigated and may be outweighed, by growth over time in the demand for advertising ... assuming that the ITV companies will cut costs if they face possible losses, we conclude that the ITV companies as a group can withstand

---

[2]Littlechild. S. Regulation of British Telecommunications Profitability. London: Department of Industry, 1983.

[3]Ibid., para. 14.9.

[4]National Economic Research Associates (NERA). The Effects on Other Media of the Introduction of Advertising on the BBC. London: Home Office, 1985.

> more BBC advertising companies would remain in profit ... if advertising on the BBC grew by an average 13 minutes a day each year (91 minutes by 1992) provided these companies cut costs in 1991 by 20%.[5]

and,

> The regulatory framework ... is an important reason for the vulnerability of the ITV and ILR companies. That framework should be reviewed in the context of a potentially difficult transition when and if the BBC takes advertising,[6]

and,

> The existing cost structure, like advertising revenue, will respond to competition and in a predictable fashion. One would expect to see efforts taken to reduce costs. This needs to be taken into account in considering the argument that if ITV revenues fall so also must programme quality.[7]

The report outlines the basis for a broadcasting policy in which at least partial funding of the BBC through advertising initiates a "virtuous circle" abolishing expensive regulation, maintaining programme quality, and reducting the cost of providing broadcasting services. This analysis has been powerfully challenged. Other than those of the advertising industry, there are few voices in the weight of evidence submitted to the Peacock Committee that envisage the introduction of advertising on the BBC and the maintenance of a generally high level of public satisfaction with broadcasting in the U.K.

---

[5] Ibid., pp. 1-2.

[6] Ibid., p. 17.

[7] Ibid., p. 40.

A report commissioned by the BBC for submission to the Peacock Committee, Advertisers or Viewers Paying?,[8] states bluntly that "having the BBC subsidized by advertising might be all right if there were enough advertising money to go round ... But there isn't."[9]

> A common assertion is that advertising on the BBC would reduce the range and quality of its programmes. Yet ITV and Channel 4 provide programmes that are often broadly comparable to the BBC's. The squeeze on range would arise not because of advertising as such, but only when different channels have to compete directly for the same insufficient pot of gold ... The squeeze on range would occur because the appropriate aim for advertisers is to use breaks in programmes with potentially high ratings. Yet programmes with ratings of only two or three still pull in a million viewers. This gives them a highly acceptable cost of only a few pence per viewer. And such programmes are neither elitist nor paternalistic: they are watched by different millions for different programmes, and with four channels viewers have choice.[10]

It seems unlikely that radical change, i.e. "deregulation" and/or the introduction of advertising on the BBC will be implemented prior to the next general election, which must take place before 1989. However, the appointment of Professor Peacock to the chair of the committee of inquiry and the publication of the NERA Report suggest that a more competitive "deregulated" broadcasting order may emerge in the U.K.

---

[8] Ehrenberg, A.S.C. (Professor London Business School) Advertisers or Viewers Paying? A working paper prepared for the Wenham Steering Group at the BBC. London: ADMAP Publications, February 1986.

[9] Ibid., News Release, BBC, 18 February 1986.

[10] Ibid., p. 3.

APPENDIX 2

THE BRITISH BROADCASTING CORPORATION (BBC)

The BBC exists as an organization under Royal Charter.[1] It is formally accountable only to its Governors who are appointed by the Queen in Council. The Corporation's Charter (Clause 3c) provides that the Corporation be permitted to acquire:

> ... from time to time from Our Secretary of State a licence or licences for such period and subject to such terms, provisions and limitations as he may prescribe.

The Licence and Agreement between the Home Secretary and the BBC forms, with the Charter, the basis of operation of the BBC and (together with a variety of other undertakings, resolutions of the Board of Governors of the BBC and aide memoires) the constitutional framework within which it conducts its business.

In spite of the nominal independence of the BBC, the Charter provides for considerable powers of regulation and direction by the Secretary of State. For example, Clause 18.4 provides that:

> The Corporation shall at all reasonable times on demand give to Our Secretary of State and all other persons nominated by him full liberty to examine the accounts of the Corporation and furnish him with all forecasts, estimates, information and documents which he or they may require with regard to the financial transactions and engagements of the Corporation.

---

[1] In 1981 a new Royal Charter was granted for the period ending on 31 December 1996. A new Licence and Agreement came into force at the same time and for the same period. The first Charter was granted in 1927. BBC. Annaul Report and Handbook 1986. London: BBC, 1985, p. 197-8.

And in Clause 20.2:

> If it is made to appear or appears to Our Secretary of State either on the representation of any person or body politic or corporate appearing to be interested or, in any other manner howsoever, that there is reasonable cause to suppose that any of the provisions prescribed in or under this Our Charter or in or under any such licence or in or under any such agreement (including any stipulations, directions or instructions of Our Secretary of State) have not been observed, performed or given effort to or complied with by the Corporation, Our Secretary of State may require the Corporation to satisfy him that such provisions have been observed, performed, given effect to or complied with, and if within a time specified by him, the Corporation shall fail to do so Our Secretary of State may, if he thinks it fit, certify the same order his hand to Us, Our Heirs or Successors, if we or they shall be so minded, by letters made Patent under the Great Seal, absolutely to revoke and make void this Our Charter.

The Licence is a broadly permissive document enabling the Corporation to (Clause 3c, d):

> ... use the stations and apparatus aforesaid for emitting, sending, reflecting or receiving wireless telegraphy by the method of telephony for the purpose of providing broadcasting services for general reception,

but reserves to Government powers either to initiate or suppress transmissions (Clause 13.3, 4).

> The Corporation shall ... send from all or any of the stations any announcement ... which such Minister may request the Corporation to broadcast,

and provides that:

> The Secretary of State may ... require the Corporation to refrain ... from sending any matter or matters of any class.

Chief among other provisions governing the conduct of the BBC are the undertakings of the Chairman of the BBC Board of Governors (in

1964) to ensure that the BBC adheres to principles of conduct similar to those prescribed for commercial broadcasters in the Broadcasting Act:

> The Board reaffirm their recognition of a duty to ensure that programmes maintain a high general standard ... and ... provide a properly balanced service ... The Board recall that it has always been their object to treat controversial subjects with due impartiality and they intend to continue this policy... The Board accept that ... programmes ... should not offend against good taste or decency or be likely to encourage or incite to crime or lead to disorder, or be offensive to public feeling ... the Board take note of the need to ensure that proper proportions of the ... programmes are of British origin.

The BBC is not established by statute or regulated by any government agency. Important elements in its practices are those that it has voluntarily defined for itself. Its formal independence of Government is circumscribed by the provisions of the Charter and Licence, but is sufficient to ensure that it is able, on occasion, to embarrass government. However, its independence is far from complete. Its governors are appointed on the recommendation of the Prime Minister. Given that their tenure of office is ordinarily five years, any Prime Minister who is re-elected for a second term of office is able, should she or he be so minded, to considerably influence the composition of the Board. In addition, the level and percentage of monies collected by the Broadcasting Receiving Licence fee that finance the BBC is prescribed by Government. The relationship between the Corporation and Government is complex and contradictory. But, in the long run, it is one of the Corporation's dependence on Government. The BBC's room for manoeuvre and possibility for criticizing Government depend on a number of factors: the resolution of its

Director General and Board of Governors; its finances, in particular whether it has recently had the licence raised or has been existing on a level of fee established for some time; and the state of British political culture, in particular its level of support for dissent.

From its licence fee revenue, £58 annually for colour television and £18 for monochrome, the BBC currently supports two national television channels (with variations in programming for the three national regions); Ceefax, a teletext service of more than 600 pages; four national radio channels and 41 local and community radio stations. Its external services are financed by a grant-in-aid from the Foreign Commonwealth Office.

In 1984/85, BBC income from licence fees was £723.1 million. Adjustments for taxation and other income gave the Corporation a net income of £731.8 million. Its expenditure was £774.8 million resulting in a deficit of £43 million. This was offset by £66.4 million brought forward as surplus, leaving a net retained balance of £23.4 million, carried forward. The Corporation's net assets were valued at the end of 1984/85 at £307.1 million. The assets are clearly undervalued as, for example, BBC's 33 percent holding in Visnews was valued at £0.1 million. Visnews was valued at the end of 1983/84 at £2.6 million, this itself probably an underestimate of real value.

II. Independent Broadcasting

Independent broadcasting in the U.K. that is legal and not performed by the BBC, is undertaken by a range of institutions that

are licenced[2] by the Independent Authority (IBA) which, in turn, owes its existence as a QUANGO (Quasi-Autonomous Non-Government Organization) to successive Broadcasting Acts. The most recent, the Broadcasting Act 1981[3] charges the IBA with:

> "The function ... to provide ... television and local sound broadcasting services, additional in each case to those of the BBC."

The Governors of the IBA are appointed by the Home Secretary.

The IBA licensees are privately owned companies which sell broadcast advertising time and transmit radio and television programmes in distinct geographical locations in the United Kingdom. Characteristically, the IBA licenses contractors such that each enjoys a monopoly in the sale of either television or radio advertising in its franchise area. There are exceptions. For example, London Broadcasting Company (LBC) and Capital Radio compete in the Greater London radio market. And at the margins of franchise areas the overlap of reception of the signals of neighbouring broadcasters offers alternative means for advertisers to reach audiences that are able to receive more than one signal.

The IBA is financed largely by rentals levied on the Independent Television (ITV) and Independent Local Radio (ILR) franchises. The cost of television transmission (towers and transmission equipment,

---

[2]Except S4C which is licensed by the Welsh 4th Channel Authority.

[3]Broadcasting Act 1981. London: HMSO, 1981 reprinted 1984.

etc., are owned by the IBA not the franchises) and regulation in 1984/85 were £55.4 million, and for radio £5.3 million. The total IBA income from television in 1984/85 was £218 million and for radio £7.16 million. Surpluses were applied to a variety of purposes, principally to Channel 4, £111 million; the Welsh Fourth Channel Authority, £28 million; and servicing of debt, £24 million.

The IBA is required, by the Broadcasting Act 1981 to permit Government either to initiate or to suppress transmission. Clause 29 of the Act reserves to the Secretary of State powers similar to those in the BBC's licence. The general principle that:

> television in this country has always operated in a climate without competition for revenue,[4]

whereby the BBC is financed by broadcast receiving licence revenue, and commercial television and radio from advertising revenue, has been applied to the two advertising financed television channels in the U.K. Channel 4 is financed by an appropriation of between 14-18 percent of the net advertising revenue of ITV and Channel 4 in the previous year (currently set at 17 percent). The advertising on Channel 4 is sold by the companies licensed by the IBA which combine to form the ITV network. Thus, TV-AM has a national monopoly for the sale of advertising in the breakfast time market, though it competes with the BBC breakfast time service. Each of the fifteen regional

---

[4]Dell, E. "Channel Four Television Company, Limited Accounts, Chairman's Statement." in IBA. Annual Report and Accounts 1984-85. London, 1985.

Independent Television Contractors Association (ITCA) companies enjoys a local monopoly in the sale of television advertising on ITV and Channel 4, except for Thames and London Weekend Television (LWT) which share the London market but which have no simultaneous and competitive transmissions. The latter compete with the BBC (and between ITV and Channel 4) for audience attention.

The IBA licenses Oracle, a teletext service of about 300 pages which is transmitted using the vertical blanking interval on Channel 4, and ITV is partially financed by the sale of advertising.

The ITV network is organized in such a way that each franchise has the power and responsibility to determine what programs are transmitted in the franchised area (subject to the requirements of the IBA). However, there is substantial national commonality to the programme schedules of the ITCA companies. The network is dominated by five companies (often known as the network companies), Central Television, Granada Television, London Weekend Television, Thames Television and Yorkshire Television. These produce most of the British programmes shown nationally on ITV. The ITCA companies may also produce programmes for exhibition on Channel 4 and programmes first shown on one channel may be repeated on the other. Channel 4 acquires programmes from ITCA producers and from independent producers. The ITCA companies jointly own a number of organizations the most important of which is Independent Television News (ITN). ITN provides news to ITV and Channel 4. Channel 4 is the agent licensed by the IBA to provide a second commercial television channel throughout the U.K. (except Wales).

Channel 4 began in November 1982, "to encourage innovation and experiment in the form and content of programmes."[5] Unlike the ITV and BBC television broadcasters which produce much of their own programming output, Channel 4 is principally a distributor of programs. The IBA is charged with ensuring:

> that the programmes contain a suitable proportion of matter calculated to appeal to tastes and interests not generally catered for by ITV.[6]

In Wales the 4th Channel is regulated by the Welsh Fourth Channel Authority to which the IBA pays:

> "Such sum or sums as may be agreed ... enabling the Welsh Authority to meet their reasonable outgoings,"[7]

which in 1984/85 amounted to £28 million. The Welsh 4th Channel, S4C (Sianel Pedwar Cymru) is required to have a "substantial proportion" of its programs in Welsh, and draws its programming principally from the BBC and the ITV contractor, currently Harlech Television (HTV), for Wales. The BBC and HTV are required by the Broadcasting Act to provide programmes to meet the "reasonable requirements" of the Welsh Authority. S4C is, therefore, unique in British broadcasting in that a single channel transmits programming from both the BBC and ITV.

---

[5] Broadcasting Act 1981. para. 11.1.c.

[6] Ibid., para. 11.1.a.

[7] Ibid., para. 39.1.

In addition to rentals and subscriptions payable to the IBA and the Corporation taxes applied to all U.K. enterprises, ITV and Independent Local Radio (ILR) contractors are subject to "additional payments" usually known as the Levy. The Broadcasting Act 1981 provides that annual profit exceeding £250,000 or 2 percent of advertising receipts is subject to levy at the rate of 66.7 percent for television and 40 percent for radio.[8]

Until 1986, the Levy was not imposed on profits from foreign programme sales. From February 1986, the Levy applies to profits from foreign programme sales at a rate of 25 percent.

---

[8] Broadcasting Act 1981, para. 32.

APPENDIX 3

UNITED STATES CONSIDERATIONS

There have been major changes in the broadcasting industry in the past two decades. Television services were provided by two well-established and one less successful network. Cable television services were available to only a small fraction of U.S. households and VCR's were unheard of. Now, three major networks plus a number of pay cable television networks provide national coverage. The number of unaffiliated, independent television stations and the breadth of service they provide has substantially increased.

Cable television, which twenty years ago had less than six million subscribers, today serves over forty percent of the nation's households.

The National Telecommunications and Information Administration in the U.S. Department of Commerce is keen to promote the success of the developments in broadcasting and telecommunications in the U.S. and stresses the part played by "competition and the maximum possible reliance on private enterprise."

They note a number of countries are moving to "privatization" in broadcasting, principally Britain and Japan. Other countries giving serious consideration to liberalization of their communications regulatory systems include Canada, Norway, Sweden, West Germany, Belgium, Malaysia and Sri Lanka.

There remains, they say, a widespread view that U.S. style free market competition is not such a good idea. Much of this skepticism

seems to reflect adverse publicity from transitional difficulties the U.S. has experienced in the common carrier field, noteably with the 1984 AT&T divestiture. They argue that too little emphasis has been given to the substantial gains that have been achieved in communications and related fields, the entire new industries which have emerged as a consequence of competitive government policies, and the new choices which have been made available to the public.

In assessing the growth of communications in the U.S. the Department of Commerce notes:

a) Most of the changes are fundamentally the consequence of interrelated technical and other factors and forces. This implies, they argue, that communication policy makers in other countries, may not really have a choice between sanctioning competition and prohibiting competition altogether.

Competition may, in fact, be inevitable and policy makers might be better served focusing on the development of reasonable means of easing the necessary transition from monopoly towards a more pluralistic and competitive marketplace condition.

b) Most communications authorities worldwide share the same fundamental goals:

- ensuring that firms and individual customers continue to receive reasonable service at reasonable prices
- ensuring that services necessary to emergency preparedness and national security are available
- maintaining a strong and up-to-date national telecommunications industry.

c) The competitive and deregulatory developments in the United States, on balance, have demonstrably proven of considerable benefit both to ordinary American consumers and U.S. industry as well.

Further advantages include:

- new enterprises have been made possible
- aggregate demand for communications services has been stimulated
- innovation and research have been fostered
- the range of reasonable priced communications options has greatly increased
- American industry has "leaned-down" to adapt to a more competitive and challenging world market-place environment and has become more export oriented.

In summary, the conclude that the competitive developments have had some adverse effects and that given the benefit of hindsight U.S. communications policy makers might have been able to avoid some errors. The American experience, they say, should not be rejected out of hand and rather other countries should endeavor to learn from it.

REGULATION

The regulatory system for broadcasting dates back more than fifty years but since the early seventies the new video delivery systems involve differing regulatory approaches:

- some face the traditional pattern of television broadcasting
- some come under a different or hybrid regulatory scheme
- some essentially escape all regulation

Yet all are engaged in essentially the same process -- the delivery of entertainment and information to the home for commercial gain. Amongst attempts to fashion a new regulatory system, critics claim there has been regulatory confusion and cries of "foul" because of what they describe as the absence of a "level playing field".

1) New Media Licences

The largest barrier of entry to the new media is the need to obtain a government authorization.

With the exception of cable television, the new video media are subject to virtually exclusive federal regulation and new media have an inherent preference for federal regulation.

There is, however, no such barrier for VCR distribution but when ABC's Telefirst project delivered programmes to specially adapted VCR's, FCC authorization was required.

A videotext entrepreneur does not need a licence, however the transmission or delivery company (telephone or cable) does require government authorization to operate.

Satellite Master Antenna Television (SMATV) operators can distribute television programmes to appartment buildings from signals received from any common carrier satellite carrier. However, cities who value the franchise given to their cable operators see SMATV as a threat to the profitability of the cable companies and have sought to bring SMATV within their franchising ambit. In 1983 the FCC pre-empted local regulation of SMATV.

A Multi Point Distribution Service (MDS) licencee and a Multi Channel, Multi Point Service (MMDS) licencee, using both MDS and Instructional Television Fixed Frequency Service (ITFS) can provide an outlet for a pay television operator without a licence being required for the pay television operator because customers of common carriers are not licenced or regulated by the FCC. Similarly a Direct Broadcast Satellite (DBS) programmer can provide a service directly to the public through facilities of a licenced common carrier.

Broadcasting licences are required for commercial television stations; Subscription Television (STV); or Low-Power TV (LPTV) operators.

Cable television operators require a franchise from a local (or state) governmental body in order to string its wires over the streets or in ducts beneath the streets.

All other video transmission will continue to require an FCC licence. In summary:

- a video programmer who wants his own transmission facilities (e.g. a commercial TV or LPTV station or DBS) will obtain a broadcast licence
- alternatively a video programmer can obtain facilities from a licenced common carrier (e.g. DBS or MDS) or enter a contract with a broadcaster (e.g. UHF for STV) and so avoid a licence for himself
- hybrids will increase and include a DBS licencee as both broadcaster and common carrier, a TV broadcaster who also uses sub-carriers for data transmissions.

The programmers choice is most often dictated by practical considerations such as start-up capital requirements, reducing risk and early entry to obtain entrenchment against rivals.

The FCC's laissez-faire policy of allowing applicants to choose their desired route is considered likely to continue.

Both the cable television industry and large private business systems rely heavily on satellite communications for distribution of programming and other information.

The FCC ruled in 1972 that domestic satellite services in the U.S. should be developed on a competitive basis.

This 'open skies' policy led to major developments and domestic satellites now offer:

- traditional common carrier routes
- high speed data transmission
- teleconferencing
- other commercial services.

The FCC, under Chairman Mark Fowler, appears determined not to permit the regulatory process to impede the introduction of consumer electronics and has repeatedly sought to avoid FCC intervention in place of marketplace development.

Congress has largely supported the FCC's actions, declaring it "shall be the policy of the United States to encourage the provision of new technologies and services to the public."

2. Program Content

The FCC has traditionally regulated programming only on broadcast services, on the theory that a common carrier cannot control and so be responsible for the content and messages it transmits.

The extent of program content control for each of the new media depends on whether it is the user of over-the-air transmissions (e.g. MMDS), or is a conventional broadcaster.

Although cable television is neither, the FCC imposed content controls only to programs "originated" by the cable station. These rules, however, have not been enforced.

The FCC has increasingly relaxed content regulations and the Department of Justice has contended that a basic principle of broadcast regulation is that competition should be fostered and outside the criminal code, the marketplace should decide.

3. Cross-Media Ownership

By encouraging diversity of ownership the FCC has emphasized the goal of developing diversity of viewpoints expressed on radio and television.

To that end the FCC regulates the structure of the television industry and a newspaper owner generally may not acquire control of a radio and television station serving the newspaper's market; the rules also bar cross-ownership of radio and television properties in the same market.

In cable television cross-ownership is evolving. Cable operators wanted to keep that medium out of the hands of broadcasters and phone companies. In 1970 the FCC banned phone companies owning cable

systems in their geographic area and banned television networks from owning cable systems anywhere. The FCC also banned television stations from owning cable systems within their reception area.

4. Foreign Ownership

The U.S. Communications Act prohibits foreign interests from owning more than 20% of a U.S. broadcaster or common carrier.

THE REGULATED SYSTEMS

1. Major Participants

a) Commercial Television Networks

The three programme netowrks, ABC, NBC and CBS own and operate stations in the largest markets in the United States.

The FCC recently increased the number of broadcast stations which could be owned by one entity from seven television stations, seven AM and seven FM radion stations to twelve television stations, twelve AM and twelve FM radio nstations throughout the country. This is so long as the audience covered by the television stations does not exceed 25% of the U.S. population and is subject to cross-ownership rules discussed in Section B3 above.

i) Affiliation Agreements

Generally advertiser supported stations affiliate on a de-facto exclusive basis with one of the three major programme networks, ABC, CBS and NBC.

The networks sell advertising time to national advertisers at varying rates. Affiliated stations recieve

compensation fees from the networks for carrying the programmes.

The rules regulating network practices include:

- a two-year limit on the term of an affiliations agreements
- prohibition of exclusive affiliation agreements
- prohibition of territorial exclusivity
- prohibition of a network obtaining options to program enumerated portions of affiliate's time
- an affiliate must have a right to reject carriage of network programs
- networks are barred from control of stations rates for non-network time
- networks are prohibited from representing their affiliates for the sale of spot advertisements

ii) Vertical Integration

In 1970 the FCC adopted three rules aimed at curbing network control over programme acquisition, with the intent to stimulate production sources.

- The Prime Time Access Rule (PTAR) limits affiliated stations to airing three hours of network programmes during prime time hours of 7 - 11 p.m.
- Networks are prohibited from entering the domestic syndication market for any programme, or from

entering foreign syndications for programmes produced by non-network suppliers.

- Networks are prohibited from holding other financial interests in programmes produced by non-network sources.

The FCC has reaffirmed a 1940 view that "licencees have an affirmative, nondelegable duty to choose independently all programming" they broadcast.

iii) Impact of New Television Services

The size of independent stations, cable networks and VCR's have evidently cut into the network's share of the viewing audience. From a high of 91% fifteen years ago, (estimated by CBS), the three networks held 76.6% of the primetime viewing shares for the 1984-85 season.

More significantly the networks' combined primetime rating for an average week dropped below 50%.

CBS predicts an end to network erosion because it foresees that cable is peaking and may even decline. By 1990 they see the three networks with a combined 70% audience share and will be viewed by 39.4 million homes. Independent over-the-air TV stations will have a 20% share (11.3 million homes), pay-cable 8% (4.4 million homes) and basic cable 9% (5.1 million homes).

"Share" means percentage of television sets in use during a particular period; a "rating" is the percentage of all sets.

In 1983, 98 percent of homes in the United States had television sets and over half had more than one set. There were 85 million households using television during prime time (7 p.m. - 11 p.m.).

iv) Networks and New Media

The networks are not prohibited from taking part in new media ventures. However, one view at CBS is that cross-ownership rules preventing ownership of cable companies by network operators prevents them competing effectively with their competitors in the new media.

Each network has been involved with new media:

CBS - launched then scrapped a Pay TV arts channel
- have said they see DBS as the medium for High Definition Television (HDTV)

NBC - have proposed a cable news network using NBC's news gathering operations.

ABC - experimented with VCR downloading in their Telefirst project. Programming was delivered in broadcast stations down-time, in code, to specially adapted home VCR's.

CBS have been hard hit by the Ted Turner take-over attempt and are selling one station, laying off 1,000 staff and have announced they may sell their shares in Tri-Star, the only movie studio in Hollywood that cannot produce 'or own television programs because its parent company is a TV network.

b) Independent Television Stations

The FCC's changes in station ownership limits is attributed in large part to important changes in television station ownership. In a short time in early 1985

- Capital Cities, a group owner with seven television stations in large markets announced its intention to buy the ABC network.
- Taft broadcasting purchased the television stations of Gulf Broadcasting for $755 million.
- Rupert Murdoch announced plans to buy six Metro-media television stations in the largest markets for $2 billion.
- The Tribune Company announced acquisition of KTLA, a VHF station in Los Angeles for $510 million.
- Ted Turner launched an unsuccessful takeover bid for CBS, followed by an effort to acquire MGM/UA Studios.

Financial analysts predict these enlarged companies will have a new strength to produce programming competitive with the major studios and some of those owning several independent stations may be more likely to launch new programme distribution networks which could compete with ABC, NBC and CBS.

Growth of independents will be assisted by the development of "spot television" advertisements. Advertising research has become more detailed and reliable and advertisers may not need the large audiences traditionally delivered by over-the-air television, particularly network prime time television. To get efficient placement of commercials on a regional basis is possible now and is increasingly favoured by senior advertising executives in the U.S.

c) Superstations

Advertiser supported "superstations" such as WTBS (Atlanta) WOR (New York) and WGN (Chicago) have been made possible chiefly through satellite delivery and also in part to FCC repeal of limitations on "imported distant signals".

Ted Turner's WTBS was the first superstation and is set up especially to deliver its signals to cable head-ends around the country. Other superstations are informal insofar as their signal is satellite delivered by a separate company. The originating stations reportedly have two ways of looking at their business. As a seller of advertising space they can claim an increased market beyond their local broadcast market. As a buyer of programmes they argue that their superstation activity is handled by another company and is not in their control.

The key to a successful superstation operation is delivery of programming not already available in the extra markets.

d) Pay Television

Pay television services were stimulated by the elimination of FCC rules which:

- required cable companies to create and maintain public access channels
- prohibited the importation of distant signals.

This gave cable companies greater flexibility to select and tier programming.

In 1975 Home Box Office (HBO) began delivering uncut long-form programming via satellite to cable head-ends on a per-subscriber basis and this service expanded rapidly following deregulatory court rulings in 1977.

Many Pay TV services carry advertising as well as gaining revenue from subscriptions. To attract national advertisers they generally must have a minimum of 20 million subscribers.

Pay channels are beginning to drop in popularity and the firms are experiencing increasing "churn" (disconnection rate). In 1982 new pay subscriptions increased by 32%, 21% in 1983 and 10% in 1984.

Their response to this levelling off of interest is to produce and finance new programmes and experiment with pay-per-view (PPV) programming by promoting the delivery of a single movie or special event at a set date or time for a modest price $4 - $10).

Major pay operators have also announced they will be scrambling their satellite delivered signals. Their aim is to collect revenue from the estimated one million private home satellite dishes in the U.S. of which, one third are in cabled area. They are under pressure too, from copyright owners to collect revenues from their untaped market.

Home Box Office Inc. (HBO and Cinemax) propose to sell their services to private dish owners at $12.95 for each movie service when encryption begins in 1986.

The Entertainment Sports Network (ESPN) plan to encrypt soon and in the meantime are offering a "home licence" for existing TVRO owners at $19.95 for 13 months service or until encryption begins. The "home licencee" will have preference for decoders as they become available.

Turner Broadcasting System (CNN and CNN Headline News) They have similar plans to ESPN.

The Disney Channel and other premium pay television services also plan to encrypt soon.

There is no encryption standard set as yet, by the FCC.

HBO have been installing and testing a M/A-COM Videocypher II encryption system since the beginning of 1985. The unit cost of their descrambler is currently estimated at $395 for existing TVRO owners.

The other major encryption system under consideration is Scientific Atlanta's MAC format and General Instrument Corporation's NTSC format.

e) Subscription Television (STV)

The FCC has proposed a deregulatory course for STV, concluding that it really is a hybrid, having qualitites of both broadasting and point-to-point delivery. The FCC was influenced by the consideration that STV competes directly with other pay services which are not within the broadcast regulatory ambit.

STV is not considered to have been very successful because:

- the only stations generally available in major markets were UHF, which has reception difficulties
- the cost of this single channel pay television service was too high
- increasing penetration of cable television in STV markets made it uncompetitive

The window of opportunity for STV is now considered to have passed in the U.S.

f) Low Power Television (LPTV)

The FCC recently authorized an estimated 4,000 "low power" broadcasting stations on VHF and UHF frequencies. They operate on a maximum of 10 watts VHF and 1,000 watts UHF. Few are on the air yet; most will operate as independents because the networks have affiliation agreements with existing stations in almost all of the 211 television markets throughout the United States.

g) Cable Systems

Cable television in the United States is now regulated at both local and federal levels of government. In addition eleven states provide for some degree of regulation. Primary focus has however traditionally been with the local municipality which typically establishes the framework for a cable franchise, selects the local operator and is responsible for renewal of his franchise.

The FCC provides a framework for local cable regulation and system operation.

Deregulation and court decisions in the late 1970's together with comprehensive deregulatory legislation enacted in 1984 have resulted in minimal FCC regulation of cable.

Under the new law, most cable systems will be free of rate reglation of basic service in two years and franchise fees charged by the cities cannot exceed 5 percent of gross revenues from basic service.

Among other provisions of the new cable law, operators will have a reasonable expectancy that their franchise will be renewed.

Bidding competition for large urban systems has led to the expectation and even demand by some cities for state-of-the-art, sophisticated cable systems regardless of whether their city would economically support such a system. Overbidding is easing, and New York, for example, has agreed to accept single cable 70

channel system for new construction instead of the 108 channel dual cable system originally agreed to.

In the 1976 Copyright Act Revision, Congress defined cable retransmission as a "performance" and created a compulsory licence permitting cable systems to carry broadcast signals without having to seek authorization. They established a statutory royalty scheme and a Copyright Royalty Tribunal with the power to determine royalty fees for re-transmission rights.

"Must carry" rules which required cable operators to carry local broadcast television services have recently been determined unconstitutional. Cable operators are however still expected to carry network affiliates in their areas but it is likely that some independent and public television stations may not be carried by many systems.

Approximately 35 million American households representing over 95 million people pay an average of $7.94 per month for a basic cable service.

"Premium pay channels, HBO etc., cost an average of $10/month each.

Approximately 5,800 systems serve more than 15,000 communitites in all 50 states. Cable penetration is more than 43% of U.S. households and is expected to reach between 55 and 65 percent penetration by the end of the decade.

h) Program Supply

The program supply business has three basic segments:

- program producers; traditionally television networks, independent producers and movie studios, but now also including television group owners in ad hoc consortiums, advertisers, advertising agents, television syndicators and cable satellite networks.
- distributors; often wholly owned subsidiaries of production companies, which sell product to movie theatres, home video retailers, cable and broadcast networks and independent syndicators.
- exhibitors; the network-affiliated and independent stations, theatres and cable systems.

The new production and distribution developments are production by advertisers (see previous page) and barter programming.

With barter programming, producers offer programs directly to stations who pay little or no cash for the program. In exchange the producer retains and sells a certain number of commercial spots.

Anti-syphoning rules, which prevented cable and subscription television from competing with broadcast television to buy motion pictures as well as sporting events were overturned in 1977.

2. Recent Developments

a) Direct Broadcast Satellite (DBS)

When the COMSAT Corporation announced in late 1984 that it would discontinue efforts to establish a domestic DBS system using a dedicated satellite and very small, roof-top; antennas,

prospects for DBS services in the United States dimmed considerably.

It is now considered unlikely that a commercially viable DBS service will be established in the U.S.

The main reasons given are:

- the rapid growth of cable television
- ability of conventional broadcasters to satisfy the public's news, information and entertainment needs
- technical problems with the high power transponders needed for DBS
- lack of sufficient volumes of programmes
- organizational problems with DBS entrepreneurs each planning to do their own programming marketing, distribution and marketing.

One noteable failure in hybrid DBS operations was United Satellite Communications Inc. (USCI) who used a repositioned Canadian ANIC-C satellite to deliver programmes to small Ku Band earth stations leased to their customers in North-eastern United States. Despite reasonably effective control of their operation by using the uncommon 14/12 GHz transponders they failed in April 1985 due to substantial organizational problems.

Factors which may accelerate the introduction of DBS are

- limited availability of premium pay channels to home satellite owners when these services encrypt their signals

- continued decline in the cost of receive hardware
- diminished incentive by cable operators to build urban systems in light of the U.S. Treasury Department's proposed curtailment in cable construction
- there are 15-20 million homes which will never be cabled
- possible use for delivery of "High Definition Television" (HDTV).

"Hybrid DBS" systems are expected to develop slowly using capacity leased on conventional domestic communications satellite systems and distribute programmes to standard "back yard" receive only earth stations (TVROS) on a pay basis. Encryption of Premium Pay Channels will help this business.

The FCC have not yet determined transmission and reception standards for DBS.

b) Television Receive Only Dishes

The home satellite earth station market showed a strong growth in 1984 and by mid 1985 it was estimated there were 60,000 units sold each month and more than one million have been installed nation-wide since 1981.

In 1984 earth stations legislation clarified the right of individuals to use earth stations for home viewing of unscrambled domestic television programming.

The cost of TVRO's has fallen from $36,500 in 1979 to between $500 and $8,000 in 1985.

c) Multi-channel, Multi-point Distribution Systems (MMDS)

These are seen as "wireless-cable" systems. They use a multi-channel transmitter to deliver programming direct to homes within line-of-sight of the transmitter. MMDS is expected to develop in areas where cable has been delayed with franchising difficulties like Baltimore, Washington D.C. and Philadelphia.

The FCC have recently approved a lottery plan to process the 16,000 MMDS applications which have been on hold since 1983 and it is anticipated there will be 400-500 MMDS systems under way in 1986.

There are plans to combine Instructional Television Fixed Service (ITFS) multi-channel educational channels with MMDS to provide greater channel capacity. ITFS systems were recently approved to carry Pay TV programming on some channels.

MMDS is expected therefore to:

- beat cable into major urban centres
- complement smaller cable systems who need extra channel capacity
- compete with private cable for apartment buildings (SMATV) or enter complementary ventures.

b) Pay Per View (PPV)

In June 1985 three Pay Per View services were announced:

- Playboy Channel: Playboy Private Ticket - Lets Spend the Night Together
  : weekly 90 minute original programme

or recent adult movie

Playboy's firrst customers will be in three cable systems.

- Showtime/The Movie Channel

  No name decided yet for a service of films, concerns and special events.

- The Exchange - No detail available.

The advantage of PPV to producers is that it offers the possiblity of cutting out the middleman and make sales directly to the customer.

PPV is still linked by the availability of addressable decoders in sufficient volume.

APPENDIX 4

Address By the Minister For Communications,
The Hon Michael Duffy, MP To Public Conference On
"Australian Commercial Television: The Future"
Sydney, 30 September 1985

My role at your conference today is to give what the Americans call a "key-note speech"; that is, I am to set the prevailing tone of the meeting. Characteristically, this foreshadows a dull speech, long on rhetoric and short on ideas. Indeed, in American political circles the key-note speaker is usually a young man on the way up or an elder statesman on the way down. I leave it to you to draw your own conclusions as to which direction I am heading.

Whatever can be said of my time in the Communications portfolio, "dull" is not a word which readily springs to mind. And I think you will also accept that, despite the occasional flights of rhetoric, most of the speeches I make in public forums have a serious purpose.

In this particular case, my purpose is to reinforce the comments I have made on behalf of the Government about the equalization of commercial television services in regional areas of Australia. You will recall that I first foreshadowed equalization less than two years ago, when I announced our policy regarding Satellite Program Services, or SPS.

In that speech I said that the central broadcasting policy issue raised by the development of a satellite distribution system was the potential for syndicating program services - one aspect of what you would call "networking". In particular, I commented that if developments in this area were uncontrolled, and a single company were

allowed to program an unlimited number of stations, then the ownership and control provisions of the broadcasting legislation would be nullified.

Two years later, that remains a crucial point and any proposals regarding equalization which ignore networking issues are doomed to be largely irrelevant.

This should not be taken to mean that I intend today to spell out the Government's policy regarding networking - that will be decided after 11 October, when you and other interested parties have had an opportunity to make submissions to me on all the issues raised by the FDU Report.

However, you may find it helpful if I spell out some of the basic assumptions from which the Government approaches the complex problems which we loosely call "equalization".

Firstly, the Government has a continuing concern for the five major objectives of broadcasting policy:

a. to maximize diversity of choice in radio and television services, so that all Australians have access to as wide a range of services as possible; to bring a similar range of entertainment and information through broadcasting services to all Australians, especially those currently without any or with inadequate services;

b. to maintain the viability of the broadcasting system;

c. to encourage an Australian look for television and radio by maintenance of appropriate Australian content level and the fostering of an Australian production industry;

d. to provide broadcasting services relevant and responsive to local needs; and

e. to discourage concentration of media ownership and control of stations.

You should assume that all decisions in the broadcasting area will be tested against those five major objectives.

Secondly, the Government supports networking. We not only accept the Australian Broadcasting Tribunal's observation that "Networks and networking are the heart and arteries of the commercial television system," but we wish to do everything possible to encourage broadcasters to utilize satellite networking techniques and thereby provide better services more cost effectively than they have been able to do using terrestrial means.

Let me make this point crystal clear. While the Government expects to make a series of decisions related to equalization, ownership and control matters and networking by the end of this year, these will not be aimed at frustrating effective networking.

That brings me to my third point. In my speech to the FACTS seminar early this year, I said that, despite a good deal of rhetoric emphasizing the virtues of free enterprise, the broadcasting industry has in fact been heavily protected. While I do not for a moment forget the huge contributions that commercial broadcasters have made

to the development of television in Australia, it does sit a little oddly to have the same people argue in one context that they are bedevilled by bureaucrats seeking to impose unnecessary controls upon their activities, and in another context argue that the Government should not just protect their existing monopolies, but actually enhance them.

In other words, I wish to emphasize a particular passage in that speech to FACTS, which said:

> It should be recognized that the Government is not interested in building monopolies of any kind - neither a monopoly of the satellite distribution system by network stations nor local monopolies over outlets by regional stations. But we are interested to encourage and help those broadcasters who want to co-operate with us to develop a healthy, competitive broadcasting system.

What should you be suggesting if you are willing to co-operate with the Government in developing a healthy, competitive - note the words - a healthy, competitive broadcasting system?

You should certainly not be proposing schemes designed to preserve regional monopolies ad infinitum. I refer again to the five major objectives of broadcasting policy and particularly to the last objective: "To discourage concentration of media ownership and control of stations."

This does not mean that we are intent on ideology to the exclusion of rationality and equity. The Government recognizes that television is a complex, capital intensive industry and companies need to be big to be effective.

Equally, there would be no equity in seeking to divest licensees of television interests which they have acquired in good faith and under the rules as laid down by successive Governments since 1956.

However, none of this should be read as weakening the passage I have just quoted. For example, the FDU Report identifies three options for structural change:

i. Approach A: Aggregation

ii. Approach B: Multi-channel services (MCS)

iii. A combination of A and B, possibly MCS followed by aggregation.

It is open to interested parties to argue that the Government should not move immediately to aggregation because this would adversely affect the viability of existing licensees, or because the new services would be unviable. If you have read Volume 2 of the Report in particular, you will know that this is a central point of debate in the commercial television industry itself.

However, those people arguing for an MCS approach should not underestimate our commitment to competition in broadcasting. It is a perfectly respectable argument to suggest that MCS are in inevitable <u>interim</u> stage leading to the developed system. We can then debate the timing of the stages and the conditions under which MCS licences would operate. But it is not acceptable to argue that existing regional licensees should be given a permanent monopoly of services in their areas. Nor is it acceptable to do so distort what purports to be an

MCS proposal that there would be no future possibility of unlocking the arrangements so as to produce a competitive system.

Let me be quite explicit. The Government intends to complete the equalization exercise in such a way that regional Australia has the same diversity of choice that now exists in mainland capital cities - the Perth licence hearing willing. This means three competitive commercial television services.

You may also find it useful if I say a few words about general questions of ownership and control and about the timing of equalization.

As the FDU Report notes, the so-called "two-station rule" (now properly speaking a "two-licence rule"), has manifestly failed to achieve its main purpose. That is, it has successfully diffused ownership of television licences but has been a quite ineffective instrument in addressing questions of control. The Government accepts that it is paradoxical, if not plain silly, to equate licences to serve Sydney and Melbourne - which hold 44% of the population - with licences for Mt. Isa and Broken Hill - which together hold less than 0.4% of that population. In fact, the 20 smallest television markets add up to only 11.4% of Australia's population - a bit larger than Brisbane.

Consequently, we have considerable sympathy for the comments made by the Australian Broadcasting Tribunal about aggregation of markets. We also have taken the point that the "two station rule" needs

revision and have directed the FDU to report on this and other ownership and control matters soon.

The general point to make is that we will not be seeking to pull down existing structure - to reduce the effectiveness of large aggregations. But we will be creating conditions which make it possible for interested and risk-taking entrepreneurs to build significant aggregations of markets so that they, too, can contribute towards making better television available to viewers.

On the question of timing - the Government is very serious about equalization and we hope to have three services in a majority of areas by 1988. We certainly expect three services in most of regional Australia by 1990. While it would not distress us unduly,if, say, 10% of regional Australians were still awaiting their third commercial service in 1990, we could not accept any proposal which meant that most people in regional Australia were still waiting.

Again, there is no open end regarding the question of competition. It may prove to be necessary to accept some measure of monopoly in local areas while three services are established, but we could not accept that this might become an indefinite state of affairs. My view is that any proposal suggesting the perpetuation of monopoly situations after the first generation of satellites - that is, after 1996 - should be subject to the most testing scrutiny.

You will understand that, while I hope to have set a prevailing tone, as befits a key-note speaker, I cannot at this stage spell out final policies. It would not make much sense to arrange this

Conference if we had already decided exactly what we will do. However, I wish you the very best for what I am sure will be a very interesting two days and I look forward to considering the submissions which you will subsequently put to government. You have my personal assurance that the Government will consider the complex issues involved in equalization about November and I hope to make a major statement on this and related issues before the end of the year. The key-note is that 1985 is the year of decision.

BIBLIOGRAPHY

"A Conversation with Mark Fowler, Deregulation's Architect Finds the Structure Sturdy" Broadcasting. Dec. 23, 1985, p. 44-54.

Advisory Council for Applied Research and Development. "Information Technology." London: HMSO, 1980.

"America's Cable Convention, The Scramble to Scramble" Connections.

"America's Cable Law" Connections. 5 November 1984, p. 7.

"America's Television Fairness Doctrine, Fair Enough" Connections.

"American Cable Law, What About the Public" Connections. 19 November 1984, p. 2.

"American Television's Fairness Doctrine, Fair Enough" Connections.

Besen, Stanley and Robert W. Crandall, "The Deregulation of Cable Television" Law and Contemporary Problems. 44 Winter 1981, pp. 77-124.

Black, Norman "The Deregulation Revolution" Channels. September/October 1984, p. 52-55.

Bowman, David B. "The FCC's Deregulation of Cable Television: The Problem of Unfair Competition and the 1976 Copyright Act: Publishing, Entertainment, Advertising and Allied Fields Law Quarterly. 21 Fall 1982, p. 117-64.

British Broadcasting Corporation. BBC Annual Report and Handbook 1986. London: BBC, 1985.

"British Cable, Faint Praise" Connections. November 8, 1985.

"British Cable, Now for London" Connections.

"British Community Radio, Sorry no Stereo" Connections.

"British Community Radio, Up the Pole" Connections. September 13, 1985.

"British Satellite Rules, Pandora's Dish" Connections. 7 June 1985, p. 2-3.

"British Telecom, In a Competitive World" Connections. 9 April 1984, p. 6-7.

Broadcast Research Unit. "The Public Service Idea in British Broadcasting - Main Principles." London: BRU, 1986.

Broadcast Research Unit. A Report from the Working Party on the New Technologies. London: BRU, 1983

"Broadcasters Coming Together on Must Carry" Broadcasting. September 16, 1985, p. 35-36.

"The Broadcasters Lose a Big One" Connections.

Broadcasting. Cmnd. 7294. London: HMSO, 1978.

Broadcasting Act 1981. London: HMSO, 1981, reprinted 1984.

"Broadcasting, Holland Swallows Pay-TV" Connections. 27 February 1984, p. 6.

Brown, Les "Why Deregulation Won't Last" Channels. September/October 1984, p. 61-62.

"Cable '85: The Indicators all Point Positive" Broadcasting. December 2,1 985, p. 35-36.

Cable and Broadcasting Act 1984. London: HMSO, 1984.

Cabling London. Report by Economic Policy Group, Greater London Council, 3 December 1982.

Carey, John and Mitchell L. Moss "The Diffusion of New Telecommunication Technology" Telecommunications Policy. June 1985, p. 145-158.

"Casualties of Divorce" Connections.

Commission of the European Communites. Television Without Frontiers. COM(84) 300 final.

"Competition, Cable Be Preserved" Connections. 27 February 1981, p. 4-5.

Cooke, Wilhelmina Reuban "Whose Airwaves Are These Anyways?" Channels. September/October 1985, p. 58.

Council of Europe. Principles on Television Advertising. Strasbourg, 1984.

"Deregulation: the Chairman gets a second wind" Broadcasting. Sept. 30, 1985, p. 39-42.

"Deregulation Diary, Britain's Telecoms Bill" Connections. 27 February 1984, p. 7.

"Deregulation Diary, Cable gets its Bill" Connections. 22 October 1984, p. 5.

"Deregulation Diary, More Independent Broadcasting" Connections. 19 November 1984, p. 7.

"The Development of Cable Systems and Services." Cable White Paper, Cmnd. 8866. London: HMSO, April 1983, reprinted 1984.

"Direct Broadcast Satellites, Taking the B out of DBS" Connections. October 11, 1985, p. 2.

Economist Intelligence Unit. Cable TV in Western Europe - A Licence to Print Money? London, 1983.

Ehrenberg, A.S.C. Advertisers or Viewers Paying? London: ADMAP Publications, 1986.

"Fairness Doctrine Elimination Makes Strange Bedfellows" Broadcasting. January 20, 1986, p. 222.

"FCC Moves on Must-Carry Rules" Broadcasting. Sept. 30, 1985,. p. 42-43.

Feinberg, Lawrence "Court Voids Rule on Local TV" Washington Post. July 20, 1985.

The Financial Times Media Intelligence Unit. New Media Programming in Europe. London, August 1985.

"Fowler Still Slumping for Deregulation" Broadcasting. September 30, 1985, p. 86.

"French Cable, More Cable than Ever" Connections. September 13, 1985, p. 7.

"French Television, Smarten Up - Or Else" Connections. 12 March 1984, p. 6.

Geller, Henry "A Realist for All the Good" Channels. September/October 1985, p. 58.

"German Satellite Television, The Perils of Federalism" Connections. 5 November 1984, p. 3-4.

Glasser, Theodore L. "Competition and Diversity Among Radio Formats: A Rejoinder" Journal of Broadcasting. 28:2 Spring 1984, p. 147.

Glasser, Theodore L. "Competition and Diversity Among Radio Formats: Legal and Structural Issues: Journal of Broadcasting. 28:2 Spring 1984, p. 127-43.

Gore, Mike "Spanish Television, Private TV in the Wings" Connections. February 10, p. 4.

Gullet, Pamela B. "The 1984 Cable Flip Flop: From Capital Cities Inv. v. Crisp to the Cable Communications Policy Act" America University Law Review. 34 Winter 1985, p. 557-90.

Held, V. "The Current State of the Concept of the Public Interest" The Public Interest and Individual Interests. New York, Basic Books, 1970.

Helein, Charles H. "FCC Deregulation: Friend or Foe: Broadcasting January 6, 1986, p. 54.

Highan, Nick "British Radio, Branching Out" Connections.

Hollins, Timothy Beyond Broadcasting Into the Cable Age. London: Broadcast Research Unit, 1984.

Home Office. Direct Broadcasting by Satellite. London: HMSO, 1981.

Hoskins, Colin G. "The Cabling of the U.K.: Lessons from the Canadian Experience" Media, Culture and Soceity. 6 1984, p. 177-189.

"House Hears Must Carry Pro's and Cons" Broadcasting. September 23, 1985, p. 24-25.

House of Lords. Select Committee on the European Communities. Television Without Frontiers. London: HMSO, 1986.

"Hungarian Cable, Citizen's bandwidth" Connections.

Independent Broadcast Authority. The IBA Annual Report and Accounts 1984-85. London: IBA, 1985.

Information Technology Advisory Panel. Cable Systems. London: HMSO, February 1982.

"Introducing Commercial Television, Italian-Style" Connections. 11 February 1985, p. 6.

"Irish Cable, Green Prospects" Connections. 24 May 1985, p. 4-5.

"Italian Television, Off Your Bike" Connections. 19 November 1984, p. 3.

Jensen, Elizabeth "Adult Contemporary Top Format in Study" Electronic Media. May 23, 1985, p. 16.

Johnson, Nicholas "The Media Barons and the Public Interest" The Atlantic. June 1968, p. 43-51.

Kleiman, Howard M. "Government Licensed Public Broadcast Stations and the Fairness Doctrine: A Continued Mandate?" Journal of Broadcasting. 28:3 Summer 1984, p. 275-89.

Krasnow, Erwin G., Lawrence D. Longley, and Herbert A. Terry The Politics of Broadcast Regulation. St. Martin's Press, New York. Third Edition.

Krasnow, Erwin G. and William E. Kennard "Competition and Diversity Among Radio Formats: A 1984 Response" Journal of Broadcasting. 28:2 Spring 1984, p. 142-44.

Lee, William E. "Cable Franchising and the First Amendment" Vanderbuilt Law Review. 36 May 1983, p. 867-929.

"Legislation, Britain's Shadowy Cable" Connections. 10 February 1984, p. 5.

Lloyd, Frank W. "Cable Television's Emerging Two-Way Services: A Dilemna for Federal and State Regulators" Vanderbuilt Law Review. 36 May 1983, p. 1045-91.

London Industrial Strategy - Cable. Industry and Employment Branch, Greater London Council, 1984.

"Luxombourg Satellites, They're Coming" Connections. April 9, 1984, p. 2.

Maddox, Brenda "British Cable to the Rescue - Maxwell Vision? Connections. 5 November 1984, p. 1-2.

Maddox, Brenda "British Policy Conflict, Cable Sanitaire?" Connections. 25 February 1985, p. 2.

McKinney, James C. "Address at the Nebraska Broadcasters Convention" October 1, 1985.

"Media Institute says Cable can't have it both ways" Broadcasting. Nov. 25, 1985, p. 60-62.

Merriman, J.H.H. Report of the Independent Review of the Radio Spectrum (30-960 MHz). London: HMSO, 1983.

Meyer, Jason B. "The FCC and AMA Stereo: A Deregulatory Breach of Duty" University of Pennsylvania Law Review. December 1984, p. 265-86.

Meyerson, Michael L. "The Cable Communications Policy Act of 1984: A Balancing Act on the Coaxial Wires" Georgia Law Review. 19 Spring 1985, p. 543-622.

Miller, Johnathan "American Television Stations, Almost Priceless" Connections.

Morley, Meg. "Cable Cabal" Connections.

"Mosaic Vision" Connections.

"Must Carry: Coming to a boil at the FCC" Broadcasting. Sept. 23, 1985.

"Must Carry Spotlight Shifts to Cable" Broadcasting. November 25, 1985, p. 31-32.

'NAB'S Agenda For AM Action" Broadcasting. Oct. 14, 1985, p. 58-59.

"NATPE Gets Under Way in New Orleans" Broadcasting. January 20, 1986, p. 92.

National Economic Research Associates. The Effeccts on Other Media of the Introduction of Advertising on the BBC. London: HMSO, 1985.

"Norwegian Cable, Protective Custody" Connections. 12 March 1984, p. 5-6.

"Not Shy of a Cheap Ride" Connections.

Padden, Preston "Some Caveats for Congress on a Compulsory License" Broadcasting. July 1, 1985, p. 24.

"Pay TV, A View to Kill" Connections. October 11, 1985, p. 2-3.

Powell, J.J. "Towards a Negotiable Definition of Propoganda for International Agreements Related to Direct Broadcast Satellites" Law and Contemporary Problems. 45 pointer 1982, p. 1-35.

"Quick-quick Slow" Connections. 24 May 1985, p. 5-6.

"The Quickened March Toward Scrambling" Broadcasting. January 20, 1986, p. 175.

"Report of the Committee on the Future of Broadcasting (Annan Report.)" Cmnd. 6753. London: HMSO, 1977.

"Report of the Inquiry into Cable Expansion and Broadcasting Policy (Hunt Report)." Cmnd. 8679. London: HMSO, 1982.

Roper, Robert St. John "Rethinking the Strategies of Must Carry Reaction" Broadcasting. October 21, 1985, p. 20.

Rutkowski, Anthony M. "The Case of Deregulating U.S. International Radio Arrangements" Chronicle of International Communication. May 1983, p. 3.

Schrage, Michael "Cable Gets to Pick and Choose" Washington Post. September 10, 1985.

Shooshan, Harry M. "No to Must Carry, Yes to Copyright Reform" Broadcasting. October 7, 1985, p. 16.

Simon, Jules F. "The Collapse of Consensus: Effects of Deregulation of Cable Television" 81 Columbia Law Review. April 1981, p. 612-38.

Solomon, J.H.M. "U.K. Strategy - the Momentum of Change" Telecommunications Policy. June 1983, p. 96-97.

"Solving a Problem" Connections.

"State of the Art, Survival of the Fittest Among Equipment Makers" Broadcasting. October 28, 1985, p. 52-78.

Stein, Jill Abeshouse, Erwin G. Krasnow, and R. Michael Senkowski "The New Video Marketplace and the Search for a Coherent Regulatory Philosophy" Catholic University Law Review. 32 Spring 1983, p. 529-602.

Stone, Vernon A. "Survey Finds Little Effect From Deregulation" RTNA Communicator. May 1985, p. 14-15.

"Supreme Court's taking of 'Preferred' case buoys hopes of broadcasters for 'Quincy' Review" Broadcasting. November 25, 1985, p. 33-34.

Taylor, Robert "Satellite TV, Sky Over Belgium" Connections. 24 May 1985, p. 6-7.

Taylor, Stuart for "Cable-TV Rules are Overturned in Federal Court" The New York Times, July 20 1985.

Veljanovski, Cento "Regulatory Options for Cable Tv in the U.K." Telecommunications Policy. December 1984, p. 292-306.

Vsinski, Henry John "Deregulating Commercial Television: Will the Marketplace Watch Out for Children? American Law Review. 34 Fall 1984, p. 141-73.

Ward, Michael and Blunkett, David Cable. Report on GLC/Sheffield City Council Hearings on Cable. July 1983. Evidence to GLC/Sheffield City Council Hearings, Vols. I and II, July 1983.

Waterson, Michael "Issues in the Regulation of Cable TV" International Review of Law and Economics. 1984, p. 67-82.

"West German Cable Television, Little by Little" Connections.

Wirth, Michael O. "A Cost/Benefit Analysis of the FCC's Ascertainment and Program Log Requirements" prepared for the National Association of Broadcasters. October 28, 1983.