

Encyclopedia of Radio

Regulation by Fritz Messere

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Regulation of radio began in 1910 when Congress passed modest legislation over the infant wireless communication industry. Following the development of broadcasting and a surge of growth during the 1920s, the Radio Act of 1927 was passed. The act created an independent commission to determine regulatory policy for broadcasting in the United States. The venerable Communications Act of 1934 expanded the powers of the agency and made the Federal Communications Commission the permanent body to determine regulatory policy of radio and television in the United States, subject to Congressional oversight.

During the past 90 years, radio regulation has varied from the Department of Commerce providing little oversight to significant FCC oversight of broadcasting. Beginning in the 1980s the Federal Communications Commission began adopting less stringent regulatory policies on broadcasters, replacing specific requirements with market based competition. The Telecommunications Act of 1996 introduced significant relaxation in broadcasting ownership requirements. Today the 1934 Act, amended many times, still provides the overarching schema for American radio regulatory policy.

Early Radio Regulation

The 'commerce' clause of the U. S. Constitution assigned to Congress the task of regulating interstate and foreign commerce. Early radio stations served as basic communication systems, transmitters of messages that were meant to facilitate commerce and protect the health and well being of U. S. citizens. The Wireless Ship Act of 1910 (P.L 262, 61st Congress) reflected Congressional intent to institute modest regulatory requirements on the nascent wireless communications industry. Ocean-going ships traveling to or from the United States were required to have transmitting equipment if more than 60 passengers were on board the ship. The Secretary of Commerce and Labor was given the authority to make additional regulations to secure the execution of the 1910 act.

The sinking of the Titanic, with the tragic loss of hundreds of lives, forced congressional action intent on providing compliance for America with its international treaty obligations in wireless communication. The Radio Act of 1912 was the first attempt to apply some comprehensive legislative oversight to the radio industry. The law provided for licensing all transmitting apparatus for interstate or foreign commerce by the Secretary of Commerce, required that each station operator be licensed and that the government prescribe regulations to minimize interference. Other sections of the act provided for licensing of experimental stations, regulation over the type of modulation, prohibition against divulging content of private messages, and for giving preference to distress signals.

The Radio Act of 1912 did not foresee or mention radio broadcasting. Public interest/service obligations were not discussed except as they pertained to point-to-point communication. However, the emergence of broadcasting in the

early 1920s, with the rapid proliferation of new stations seeking licenses and vying for airtime on an extremely limited allocation of frequencies, created administrative problems for the Secretary of Commerce, Herbert Hoover.

In 1922, Hoover convened the first of four annual National Radio Conferences designed to elicit voluntary cooperation from broadcasters, radio manufacturers, and interested parties. Attendees realized the inadequacy of the 1912 Act, some calling for better government oversight through more comprehensive legislation. In 1923, a federal appeals court ruled that the Secretary of Commerce did not have the discretionary power to withhold licenses from qualified applicants. As a result, interference on broadcasting channels dramatically increased as the number of stations proliferated; early broadcasting entered a period of chaos without any significant government oversight.

Between 1923 and 1924, Hoover expanded the number of frequencies assigned to broadcasting in an attempt to relieve interference conditions. The Secretary, who endorsed the notion of self-regulation, had some success persuading stations to share frequencies, limit power and split the broadcast day. However, despite Hoover's attempt to facilitate solutions between competing stations and industry interests, a growing dissatisfaction with time allotments and frequencies sharing created problems for Hoover's policy of 'associationalism.' It was becoming apparent to Hoover and the industry that self-regulation could not solve the increasing interference and allocation problems. At the fourth radio conference in November 1925, industry leaders affirmed that 'public interest' should be the basis for broadcasting. They also convinced the Secretary to stop issuing new radio licenses. Thus, the licensing provisions of the 1912 Act were suspended under an ad hoc regulatory policy agreed to by government, large radio manufacturing and broadcasting interests. Historian Eric Barnouw notes that Hoover frequently showed favoritism by developing policies that were favorable to large business interests in broadcasting such as RCA, General Electric and Westinghouse. Later, members of Congress leveled criticisms against the Federal Radio Commission that it, too, favored interests of big broadcasters.

On April 16, 1926, the Court dealt the final blow to the 1912 Act when it ruled that the Secretary had overstepped his authority. As a result Hoover was powerless to enforce time and frequency requirements on licensees (*United States v. Zenith Radio Corp. et. al.*, 12 F. 2nd 614(N. D. Ill. 1926)). Immediately after the Zenith decision, stations began switching frequencies, increasing power, and ignoring previously agreed upon time-sharing arrangements. Interference levels grew dramatically, particularly at night when signals were prone to long-distance skipping.

Amid growing dissatisfaction among broadcasters and the listening public, congressional members passed the Radio Act of 1927. The compromise legislation specifically dealt with broadcasting for the first time. It created a framework for regulating the rapidly growing broadcasting industry investing decisionmaking powers in an independent agency. Seven years later, with the passage of the Communications Act of 1934, Congress merged oversight of wire and wireless communication under the rubric of the Federal Communications Commission. A framework for broadcast oversight and general regulatory policy for broadcasting was established between 1926 and 1934.

The Radio Act of 1927 - The Beginning of Broadcast Regulation

The Radio Act of 1927 (P.L 632, 69th Congress) was enacted on February 23, 1927. Five days later President Coolidge signed the legislation investing regulatory power in a new temporary independent agency. Authors of the legislation conceived that a newly constituted Federal Radio Commission would be able to resolve numerous interference problems created during the development of broadcasting. Drawing on a combination of earlier legislative efforts introduced by Representative Wallace White of Maine and Washington's Senator Clarence C. Dill, the compromise legislation provided for station licensing, devising allotments of frequency bands, assigning station wavelengths, and fixed terms for all radio licenses. The legislation also provided for the creation of a temporary commission with authority to designate licensees and regulate station operating times and power output. The act asserted a public interest in broadcasting and public ownership of the airwaves, extended considerable rulemaking capability to the Commission, and provided Commissioners with considerable discretion to decide questions of law and policy.

One of the significant outcomes of the 1927 Act, still debated today, was the fact that broadcasters were accorded fewer First Amendment rights than newspapers. The legislation clearly designated the electromagnetic spectrum as part of the public domain, allowing the Commission the power to grant rights to users of the spectrum but forbidding private ownership over communication channels. In addition, extreme interference problems encountered with the breakdown of the 1912 Act suggested that a real scarcity of available channels existed. This complicated the task of the commission to devise a permanent allocation scheme that would suit all political and business constituents. Since the known radio spectrum and limited engineering capabilities could not afford all who wanted to speak an opportunity to do so, the radio commission was empowered to impose rules and regulations limiting the number of entities actually using the airwave. Legislators provided the commission with broad discretionary powers subject to adjudication by the federal courts.

Many of the today's expectations for regulatory policy emanate out of the 1927 legislation. The Radio Act called for a commission comprised of five members, each appointed from and responsible for representing a specific geographical zone of the United States. Congress initially conceived that the agency would dispense with the interference problems within the first year, after which the Commission would become a consultative, quasi-judicial body meeting when necessary. Sections 4 and 9 of the act invoked an undefined public interest standard and gave commissioners the power to license and regulate wireless stations; federal radio stations were exempt from regulatory oversight. Licensing decisions made by the Commission were subject to adjudication by the court of appeals, essentially as a *de novo* review. Legal scholars point to the fact that oversight was essentially a limited review of specific issues within a narrow class of petitioners.

Though the act did not contain specific language to regulate broadcasting 'chains' or networks, legislators gave commissioners the ability to 'make special regulations applicable to radio stations engaged in chain broadcasting' (sec. 4 (h)). Therefore, whatever control the Commission could impose over radio networks had to be accomplished at the station level. Similarly, the Act dealt with advertising in a minimal fashion. Some historians point to the fact that

advertising was not widely accepted in 1926 when the bill was written as one possible reason to explain the apparent oversight in the legislation.

Scholars are divided over the effectiveness of the Federal Radio Commission but they generally give the FRC little credit for effecting consistent and strong regulatory policy. During its six-year tenure, relations with Congress were stormy, sometimes to the point of hostility. By the end of its first year, Congressional members who wrote provisions of the act called FRC commissioners 'cowards' for their lack of regulatory action. Other critics pointed to flawed decisionmaking based on poor information collection. The FRC's inability to resolve interference problems and redistribute licenses caused Congress to impose the Davis Amendment, which called for equality of service standards, in the 1928 reauthorization bill.

The broadcasting industry, led by RCA, Westinghouse and General Electric succeeded in convincing the FRC that the general framework of broadcasting developed under the Secretary of Commerce should be retained. Robert McChesney points out that reauthorizing the existing commercial stations without redistributing licenses caused many non-commercial licenses to have their allocations and times of operation reduced. At the end of the Federal Radio Commission's tenure, commercial broadcasting was well established in the United States.

Passage of radio legislation clearly reflected the congressional view that the electromagnetic spectrum represented a valuable natural resource that was to be carefully cultivated and conserved for the general population. *Zenith v. U. S.* had opened the floodgates to far too many licenses, creating substantial interference and chaos for listeners and broadcasters alike. It is not surprising, therefore, that resolution of licensing-related controversies became the first priority of the FRC. Regulatory decisions of the early commission frequently were politically motivated. Client politics stifled regulatory efforts by pitting interests that favored policies that supported the growth of a nascent broadcasting industry on one hand against the desires of congressional members who wanted a solution that redistributed licenses along geographical regions on the other. Thus, partisan politics made the FRC sensitive to criticism from both large industry players and the regional constituents of various members of Congress. Furthermore, because only two of the FRC commissioners were actually confirmed by the Senate during its first term, the initial action of the agency was tentative, depriving the Commission of an opportunity to regulate boldly.

The basic regulatory structure embodied in the Radio Act of 1927 became the basis for the permanent body designated under the Communications Act of 1934.

The Federal Communications Commission

The passage of the Communications Act of 1934 (P.L. 416, 73 Congress) established a permanent commission to oversee and regulate the broadcasting and telecommunications industries. In creating the Federal Communications Commission, Congress invested the permanent agency with the same broad regulatory powers that were given to the FRC. These powers were extended to include wired telecommunications services that had been under the jurisdiction of the Interstate Commerce Commission. Many of the provisions of the 1927 Act were incorporated word-for-word into Title III of the Communications Act. The

language of both the 1927 and 1934 acts allowed the agency to employ a wide variety of sanctions, incentives, and other tools to fulfill regulatory or policy mandates. Court rulings and challenges to the Communications Act and against FCC decisions have helped the agency delineate the extent of its powers.

By 1934, broadcasting had evolved into a highly profitable business. The structural components of the network radio system, almost wholly outside the purview of the Federal Radio Commission, had developed into a series of highly successful operations. The breakup of the RCA trust had created powerful forces within the communications industry vying for different segments of the industry. Many of the most powerful broadcasting stations, designated as 'clear channels' were licensed to the large broadcasting or radio manufacturing companies, and the Federal Radio Commission's adoption of a rigid allotment scheme, under General Order 40, solidified the interests of the large broadcasters.

The new agency did not intend to upset the broadcasting systems that had developed under the Secretary of Commerce and the FRC. However, Congress provided the new agency with some regulatory flexibility by repealing the specific requirements of the Davis Amendment. The general themes of the 1934 Act exemplified the principles of the New Deal by consolidating federal powers under one agency and centralizing the decision making power for all communications industries. The act is significant because it invested permanent regulatory powers in an independent 'expert' agency. The realization that broadcast regulation should not be limited to supervision of interference and other technical aspects was fully apparent to legislators.

The newly formed Federal Communications Commission was confronted with the need to develop both an immediate and a long-term agenda. Immediate tasks included identifying and defining what constituted service in the 'public interest, convenience, and necessity.' The Federal Radio Commission had developed some regulatory policies but clarification would be needed for long term administrative policy development. As a corollary to this process, the FCC would have to develop reflective criteria to determine whether stations were doing an acceptable job of meeting their public service obligations. Consistent with this goal, the agency would be required to articulate and give meaning to broad phrases such as 'public interest.'

Secondly, the FCC was now charged with developing a plan for utilizing the expanding electromagnetic spectrum. The years between the creation of the FRC and the FCC yielded important discoveries regarding the extent and usage of the spectrum. The Commission, charged with 'the larger, more effective use of radio' (sec 303 g), needed to develop a more complex mechanism for determining which users should be allowed to use what radio band and for what purposes. Different uses would require differing amounts of spectrum space and conflicting requests for spectrum utilization would require the FCC to make determinations for which services and how many users the spectrum could provide for.

FCC Annual Reports during the period 1934 through 1939 illustrate that the Commission undertook much more sophisticated record collection than the FRC. Between 1936 and 1937, the Commission required all broadcasters to file comprehensive information regarding income, property investment, number of employees, nature and types of programs. The FCC reported much of the

statistical data to Congress during 1938. In that same year, the Commission began the first full-fledged review into the practices of chain broadcasting. The initial years of the FCC reflected the need to collect and collate sufficient data to implement a long-term regulatory policy towards broadcasters.

Localism and Trusteeship - A Framework for Broadcast Agenda Setting

The broad nature of the language used in the 1927 and 1934 acts did not prescribe specific tests or mandates for users of the radio spectrum. Consequently, it became necessary for the agency to articulate policies that it could use as touchstones for measuring the service of the licensee. Over time these pronouncements, coupled with rules and regulations promulgated by the agency, allowed the Commission to establish a baseline regulatory policy.

Early decisions of the FRC and the FCC generally illustrate an ad hoc approach to policymaking, more or less supporting an avowed regulatory interest in localism. Commission pronouncements reflected the importance placed on localism and the conceptualization of a trusteeship model in broadcasting, despite the growing power and programming of the radio networks throughout the 1930s and 1940s. These two principles became the bedrock of federal radio policymaking for many years to come.

The Commission realized that defining what constituted acceptable service for a licensee required developing a set of standards that a broadcast licensee could aspire to or be measured against. In *Great Lakes Broadcasting Co.* (37 F. 2nd 993 (D.C. Cir.)), the Radio Commission devised an important set of principles meant to delineate what constituted public service and to inform licensees as to what their obligations would be as trustees using a natural public resource. The principle of trusteeship was based on a rationale of spectrum scarcity. According to the FRC, trusteeship required broadcasters to provide for:

[T]he tastes, needs, and desires of all substantial groups among the listening public should be met, in some fair proportion, by a well-rounded program, in which entertainment, consisting of music both classical and lighter grades, religion, education, and instruction, important public events, discussion of public questions, weather, market reports, and news, and matters of interest to all members of the family find a place.

In asserting that radio stations were trustees of the public, the FCC also moved to develop a regulatory policy that scrutinized the economic impact that proposed stations had on current trustees. Thus, sometimes the FCC denied licenses when it claimed that there was insufficient evidence to indicate that an applicant had adequate resources. Other times, the FCC refused station applications when a station was financially secure but would appear to provide competition to an existing licensee. Taken as a whole, FCC decisions published between 1934 and 1940 do not illustrate a clear procedure of how the agency evaluated the merits of the potential economic injury nor do they demonstrate a uniform record of policymaking. In apparent ad hoc fashion, the FCC sometimes approved licensee applications where there were existing stations and other times it refused to grant construction permits in cities that had no primary radio service at all. Engineering factors were not critical in many decisions.

Encouraging localism became the second fundamental principle for the Federal Communications Commission. This regulatory policy proved useful for several reasons. First, the agency inherited a commercial structure for broadcasting based almost entirely on advertising revenues. Local radio stations affiliated with national network program suppliers frequently found their broadcast schedules manipulated by the same networks who provided stations with high quality programming. Stations without affiliation looked to local community sources for program inspiration. However both network and local programs were being provided to listeners via a local licensee assigned to serve a particular community or a clear channel station meant to serve a wide geographical area. Although the FCC had very limited control over national networks, it discerned that its power to regulate was essentially the power to control local stations, the stations' relationships with network program suppliers, and the stations' relationship with the community of license. Thus, policy evaluation based on serving the interests of the city of license provided the FCC with sufficient leverage over the whole of the broadcast industry through station regulation.

The Network Case, The Blue Book and Regulatory Policies of the 1940s

As the 1930s ended, the FCC expressed concern that radio networks held too much power over licensees through its affiliation agreements and these contracts prevented stations from programming more actively. Analysis of the Commission's actions during this period illustrates a desire to promulgate regulations which would increase the responsiveness of the local licensees to the listening public, reduce the anti-competitive behavior of the powerful radio networks, and effectively increase competition in local broadcasting. In addition, the Commission wanted to end the competitive advantage NBC held over CBS and the smaller Mutual network as a result of its ability to program both the NBC Red and Blue networks. The Chain Broadcasting Regulations issued in 1941 were challenged by NBC in *National Broadcasting Co. et al. v. U. S.* (319 U. S. 190 (1943)). The Supreme Court decision, written by Justice Frankfurter, upheld the FCC's authority to regulate the business arrangements between networks and licensees. More importantly, the decision upheld the constitutionality of the Communications Act and reaffirmed the Commission's presumption that it had substantive discretionary power to regulate broadcasting.

The hoped for changes in the relationship between networks and affiliates failed to emerge. Even though the Commission faced increased criticism and oversight hearings between 1942 and 1944, resulting in the resignation or non-reappointment of several commissioners, FCC staff investigated what licensees proposed to program when they filed applications compared to what they actually programmed. The results of the investigation were summarized in 'The Blue Book.' The Blue Book restated the Commission's interpretation of what constituted public interest obligations and articulated four areas of concern: the quantity of sustaining programming aired by the licensee, the broadcast of live-local programs, the creation of programming devoted to the discussion of public issues, and elimination of advertising abuse.

While the Blue Book reflected the first attempt by the FCC to articulate a fully developed policy statement regarding what constituted good service, the FCC never fully enforced the quality of service statements it advocated. However,

the regulatory significance of the Blue Book can be seen in a number of ways. First it was an attempt to make broadcasters more responsive to their listeners. Thus it articulated the Commission's view as to what constituted good service. Secondly, the Blue Book started a debate within the industry as broadcasters objected to a perceived governmental attack on their ability to program without censorship or government interference. Thirdly, as an attempt to forestall the promulgation of content based rules, the NAB strengthened its self-regulatory radio code. Finally another outcome of the Blue Book, though perhaps unintended, was that the Commission increased the record keeping requirements for broadcasters.

Following the end of the World War II and a period of unparalleled prosperity in broadcasting, the Commission encouraged local competition by rapidly increasing the number of licensees in the standard (AM) broadcast band. Some experts note that the pressure to expand broadcasting may be seen less as a regulatory initiative and more as a result of renewed interest in entertainment due to the end of the depression of the 1930s and the repeal of war priority restrictions. The expansion of radio broadcasting was further enhanced with the FCC's creation of a new expanded FM band. As the decade drew to a close, the FCC revisited its 20 year old prohibition against licensee advocacy and issued the 'Fairness Doctrine.' The restatement of the Commission's editorializing policy for licensees caused substantial debate within the broadcasting community.

First Amendment Concerns, Generic Formats and Community Ascertainment

Early broadcasting regulators developed ways for evaluating applicants based on speech-neutral criteria including evaluating financial status, technical ability, and a broadcaster's experience. With the Blue Book and the Fairness Doctrine, the Federal Communications Commission seemed to shift focus toward programming and content requirements. The change in regulatory focus coincided with the decline of network radio and the phenomenal growth of television.

The shift in revenue from network to local radio and the increased competition in the AM band forced significant changes in radio programming. As local stations programmed new music formats, morning and afternoon times became major sources of revenue. Stations abandoned the block programming structure typical of network affiliation in favor of generic formats that were stripped across the broadcast week. Some concepts developed in the Blue Book held little significance with new local competition. As a result the FCC issued the 1960 Programming Policy Statement (25 Fed. Reg. 7291; 44 FCC 2303) as a restatement of a licensee's broadcast obligations. To reflect the changes in the business of radio, sustaining programming requirements were dropped while other programming aspects were updated.

The 1960 Programming Policy Statement required broadcasters to discover the 'tastes, needs, and desires' of the people through a series of local area surveys known as 'community ascertainment.' Broadcasters began to realize the growing importance of ascertainment as the Commission revised application forms to reflect the significance it placed on a station's survey findings. With the 1960 Policy Statement, the Commission delineated a fourteen-point list of major program elements that broadcasters were supposed to provide for the service area. Broadcasters criticized the laundry list approach to programming

requirements and the agency itself for using specific 'quotas' of programs enumerated in Policy Statement guidelines as a litmus test for automatic license renewal.

A decade later the FCC issued a 'primer' that placed significance on programming that was responsive to community problems rather than serving "tastes, needs, and desires" of the community. In 1976, the Commission reaffirmed a commitment to the ascertainment process by making it a continuous requirement. Combined with other filing requirements, many felt that the FCC was imposing a significant record keeping and filing burden on licensees. In Congress several oversight committees led examinations of the 1934 Act and the FCC's regulatory requirements.

The constitutional test of the Fairness Doctrine occurred as a result of a November 27, 1964 broadcast when WGGB in Red Lion, Pennsylvania aired a 15 minute broadcast attacking an author who painted an unsympathetic picture of Senator Barry Goldwater. Fred Cook, author of the book, demanded free time to reply to the attack. The Court opinion, written by Justice White, held that the public interest standard imposed an obligation upon broadcasters to discuss both sides of controversial issues. Between 1964 and 1980, the Fairness Doctrine was not rigorously enforced by the FCC, but critics of the Doctrine claim that the specter of a fairness complaint with the potential legal entanglements included frequently prevented broadcasters from airing more controversial programming. Supporters of the Fairness Doctrine claim that broadcasters used the threat of a Fairness complaint as an excuse for not airing more controversial material.

However, the Fairness Doctrine was a source of discomfort for broadcasters and First Amendment advocates alike. By the 1980s, because of the increasing competition among stations and with radio deregulation underway, the Commission began looking for a way to repeal the Doctrine. Its attempts met with resistance from some members of Congress who believed that the Doctrine had become part of section 315 of the Communications Act. The Commission finally received the ammunition it was looking for in 1986, when a federal appeals court ruled that the Doctrine was not codified as part of the Act. The FCC acted swiftly. FCC Chairman, Dennis Patrick, the newly installed successor to Mark Fowler, moved to repeal the Fairness Doctrine just as 1987 began.

Throughout a thirty-year period from 1950 until 1980, the FCC set policy through implementation of a series of structural rules meant to provide guidelines for broadcasters as to what was or was not acceptable. For example, the FCC ban on indecent language tended to be proscriptive, telling stations what was the boundary of acceptable speech. Cross ownership and simulcasting rules were other examples of agency rulemaking designed to structurally organize the industry. Taken as a whole, the accretion of rules and recordkeeping led broadcasters and policymakers alike to question whether the time was ripe for regulatory reform.

Deregulation of Radio Broadcasting

The 1980 election of Ronald Reagan ushered in an era of radio deregulation. Radio had grown from a few hundred stations in the 1920s to thousands of stations. FM was providing significant competition for AM radio. Under the lead of FCC Chairman Mark Fowler, the agency began a push to deregulate

licensing requirements. The debate found currency among broadcasters and listeners alike. The Notice of Proposed Rulemaking produced an enormous response with more than 20,000 comments filed.

The Federal Communications Commission Report and Order (84 FCC 2nd 968) eliminated advertising and non-entertainment programming guidelines, formal ascertainment, and programming logging requirements. In place of any structural policy for radio regulation, the Commission encouraged 'marketplace forces' to provide checks and balances against programming or advertising abuses. Many rules regarding filing requirements were abolished. Prohibitions against station trafficking were eased, license terms were extended and logging requirements were no longer necessary for license holders. In the deregulatory process, radio license renewal literally became a pro forma postcard process, increasing most licensees' expectations of renewal because stations were no longer required to keep substantive logs of programming efforts. Deregulation combined with an easing of ownership restrictions in the early 1990s reflected the agency's attempt to make economies of scale work for broadcasters who now faced increasing operating costs and stagnant advertising revenues.

Commission Regulation as Ad Hoc Policymaking and a Diminishing Public Trustee Model

Robert Britt Horowitz notes that deregulatory policies championed under Fowler mirrored the fifty-year old demands of the broadcasting industry to make the Federal Communications Commission a neutral technical oversight agency. The liberal interpretation of the First Amendment, characterized by the equal time requirements of the Fairness Doctrine faded with the Commission's deregulatory efforts and the Court's ruling in *CBS v. DNC*. With fewer content and structural controls left in place, radio broadcasting illustrated an erosion of the regulatory policy of public trusteeship that characterized the beginning days of radio. The dismantling of the trustee concept combined with the reduction in structural requirements in regulation left radio open to increased competition and liberalization of industrial policy. As an industry sector, there were fewer structural or policy reasons to argue for economic protection and the economic recession of the early 1990s suggested to Congress that radio was ready for further deregulation. Passage of the Telecommunications Act of 1996 eased station ownership limitations although the maximum number of stations allowed in any specific market is still restricted. During the 1990s, large radio group mergers and takeovers have created a few large broadcasting organizations that now dominate the American radio landscape. FCC policy has continued to liberalize radio regulation.

Even though deregulation and the easing of ownership restrictions has increased competition among the top radio stations in most radio markets, critics of deregulation note that the FCC has failed to create a diversity of ownership that mirrors the demographic characteristics of the America itself. The number of minority licensees in broadcasting has actually decreased as the number of station licenses has increased despite agency attempts to encourage diversity. Other critics point to the failure of AM stereo and the lack of a digital radio broadcasting standard as indications that the FCC has not been particularly successful in inducing the industry to embrace technological innovations. Pirate radio broadcasters and growing disenchantment against increasingly stratified radio programming led the FCC to create a new low-

powered FM broadcasting service, further reinforcing critics arguments that deregulatory policies of the Commission have failed to serve the public interest.

The Federal Communications Commission has pursued an ad hoc approach to regulation during its sixty-five year history. The Commission's decision making can be views from a number of useful perspectives. Politically, the FCC is required to report to Congress periodically regarding its regulatory agenda. Thus, Commission policy can be traced frequently on a track parallel to congressional initiatives. For example, with the growth of radio into a large mature industry, constituent pressure from members of Congress became less significant on the agency and as a result social regulatory or structural policies were relaxed. Congressional intent as manifested in legislative efforts such as the Telecommunications Act of 1996 illustrates Congress' desire to treat radio broadcasting less like public trustee utility sector and more like a price-and-entry controlled industry segment.

Early critics of the Radio Commission and later the FCC complained that forced social regulation created artificially close ties between the regulatory agency and the broadcasting industry. Under 'capture theory' analysis, such a regulatory agency becomes overly concerned with maintaining the economic well being of the public trustees it licenses. The result is the creation of an oligopoly with limited, managed competition. During the 1980s both conservatives and liberals promoted broadcast deregulation as a way to deconstruct the relationship that had developed between the regulators and the maturing broadcasting industry. Since competition creates long term economic uncertainty, deregulation undermines the agency-client relationship.

The Federal Communications Commission's regulatory success can be measured in a number of ways. From an industrial policy perspective, radio is a vibrant industry with several large competitive players owning hundreds of radio stations each. Competition for listeners within specific demographic segments in most medium and large radio markets is fierce. Large radio markets also support many different formats but as the population of a market decreases, so to do the number of listening choices. Critics of the FCC liberalization policies complain that such policies may serve large listening segments but tend to marginalize smaller populations that seek more diversity in programming or increased access to the media to express divergent viewpoints. Whether the Commission should be concerned with First Amendment issues is largely dependent on one's view of whether social regulation should mandate public access to the airwaves. However, a consequence of the expansion of the number of radio outlets and deregulation as a governmental policy is that these factors undermine the argument for a public trustee model for radio broadcasters. In the long term, radio broadcasting will probably become more concerned with economic modeling and less concerned with the tastes, needs, and desires of the community of license.

Cross-references - Federal Radio Commission, Federal Communications Commission, Herbert Hoover, Radio Trust, Chain Broadcasting Regulations, Great Lakes Broadcasting Statement, Red Lion Decision, Fairness Doctrine, Community Ascertainment, The Blue Book, Radio Deregulation, The Radio Act of 1912, The Radio Act of 1927, The Communications Act of 1934, The 1960 Programming Policy Statement, Public Interest Convenience and Necessity, Zenith v. U. S.

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