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Introduction

As in other areas of US governmental activity, the dominant ideology of broadcast policymakers has changed from the New Deal's social welfare orientation to 'Chicago School' economics. This reasoning assumes that an open market-place inevitably produces competition among suppliers, which creates the greatest possible consumer satisfaction. Any type of governmental regulation thus is an anathema to the Chicago School, except in the case of a natural monopoly.

In terms of the mass media, this ideological change translates into the perhaps internally inconsistent notion of 'market-place regulation' – that is, the removal of government intervention in the operation of broadcast stations. Since the late 1970s, the Federal Communications Commission (FCC), with a little help from its friends in Congress, has engaged in a programme of first 'reregulation', then 'deregulation' and now 'unregulation'.

No sane person favours unnecessary regulation, of course, particularly in an area as fraught with free speech considerations as broadcasting. However, as the House Subcommittee on Telecommunications, Consumer Protection and Finance suggested in a 1981 Report, 'deregulation is not an end in or of itself'.[1] It is less than clear whether the FCC's recent deregulatory actions achieve their professed goal of substituting open and effective competition in the market-place for government regulation.

Although the Congress has the ultimate federal control over broadcast policy, it has influenced the Commission's regulatory philosophy only indirectly. From 1976 to 1980, Representative Lionel Van Deerlin, Chairman of the House Communications Subcommittee, pressed for a 'basement to attic' rewrite of the Communications Act.[2] Although Van Deerlin's rewrite bill never passed the House, the introduction of other bills and the resulting debate on them has had a significant impact on communications policy. For example, Congressional oversight of the FCC's actions improved. Former FCC Commissioner Glen Robinson has observed:

'As part of a studied effort over the last two years [1976 – 1977] to review and revise the entire legislative mandate of the FCC, the Subcommittee on Communications and its staff have shown greater attentiveness to, and more understanding of, important policy issues than has been evident for at least twenty years .... '[3]

By threatening the FCC's survival, the rewrite proposals spurred the agency to action. The Commission adopted major decisions deregulating radio,[4] cable television[5] and satellite earth stations.[6] To provide new broadcasting outlets, the FCC 'dropped in' four new VHF television channels,[7] created a new low power television (LPTV) service,[8] and authorised a direct-to-home broadcast satellite (DBS) service.[9] Van Deerlin and many other observers concluded that the FCC's bold actions 'would have been impossible without the thunder and lightning sparked by those first two comprehensive bills'.[10] In fact, the Commission has implemented administratively many of the rewrite bills deregulatory goals, thus taking some of the steam out of the drive for legislation.

At the same time, some of the Commission's deregulatory efforts may have created some unexpected and negative side effects. An overview and analysis of broadcast deregulation thus may be useful.

The FCC's implementation of market-place regulation

A. Changes in FCC regulatory philosophy

The FCC initially embraced market-place regulation during the regime of FCC Chairman Charles Ferris, who served during President Carter's term. Ferris transformed the FCC's office of Plans and Policy into an office of 'Chief Economist', and introduced a substantial number of economists into the highest levels of FCC decision making. This created an opportunity to challenge past legal structures for broadcast regulation with open entry for new technologies. Ferris' legacy includes the Network Inquiry Special Staff Report, which has served as the basis of many recent deregulatory initiatives.

The next Chairman, Mark Fowler, was appointed by President Reagan, and he also has endorsed an open entry philosophy. Fowler advocates a market-place approach under which broadcasters are viewed not as public trustees, but as market-place competitors.

As a result of these new regulatory philosophies, the Commission has consolidated regulation of all video services in a new Mass Media Bureau, which includes 'branches' for cable, broadcast television, LPTV, DBS and other new technologies.[11] The FCC believes that this consolidation will lead to more efficient processing of licenses, reduction of duplicative record-keeping, less confusion among consumers, more flexible staff utilisation and more orderly development of emerging video technologies. The Commission's recent delays in processing applications for new FM and LPTV stations, however, cast some doubt over the success of this management technique. Moreover, this approach creates some doctrinal fuzziness, since it places under

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one administrative roof both broadcast (e.g. conventional television) and common carrier (e.g. DBS) services.

B. Deregulation of radio and television

In its radio deregulation proceeding[12] the Commission eliminated its internal processing guidelines, which had required full Commission consideration of any renewal application either proposing less than eight per cent (for AM stations) or six per cent (for FM stations) non-entertainment programming, or proposing more than 18 minutes of advertisements per hour. Although theoretically not substantive rules, these guidelines had been followed by all broadcasters; failure to comply guaranteed at best an expensive FCC proceeding and at worst a denial of a licence renewal. Formalistic requirements for 'ascertainment' of community leaders and for a general survey of the public also were eliminated for commercial radio licensees, as was the Commission's programme log requirement.

These Commission actions were upheld by the US Court of Appeals for the D.C. Circuit in 1983.[13] The court held that the Commission's prior requirements had not been mandated by the Communications Act, but rather had been created solely by the Commission's direction. Though the court held that the Communications Act did not compel the FCC to require programme logs, it directed the Commission to give further consideration to that issue – particularly to alternative ways of permitting the public to assess a station's performance and the agency to monitor the results of its deregulatory regime.[14]

The court approved the Commission's reliance upon market conditions in the radio industry to justify deregulation. The FCC particularly had noted the radio industry's explosive growth – especially in terms of increases in the number of FM stations and of alternative sources for informational programming. The Commission stressed that the greater number of outlets had increased specialisation and competition in the radio market-place. The Commission concluded that radio had become a specialised medium, offering programming geared to narrower audiences than in the past.[15]

Under its public interest mandate, the FCC maintained that it was compelled to review its regulations to reflect changes in the radio industry. Indeed, it observed that 'failure to do so could constitute less than adequate performance of our regulatory mission'.[16] In addition to establishing the Commission's authority to adapt its regulations to industry changes, the court also recognised that market-place forces would force licensees to provide program diversity in some situations. Whether the Commission would repeal any and all broadcast regulations, however, is less than clear; at least some of them have strong statutory bases.

In this regard, *FCC v. WNCN Listeners Guild*[17] is also significant. The Supreme Court there upheld the Commission's refusal to review radio format changes in licence renewal or transfer cases. Calling to market the 'allocation mechanism of preference', the Commission had found that competition already had produced a 'bewildering array of diversity' in entertainment formats.[18] In the Commission's view, the market was more flexible than government regulation and responded more quickly to changing public tastes. The Supreme Court agreed by holding that the FCC's statutory duties are 'best fulfilled by not attempting to oversee format changes'.[19]

The FCC also has tried to encourage diversity by authorising a new low power television (LPTV) service, which will create several thousand new stations with five to ten mile service radii. The FCC again relied upon 'market-place forces' to fulfil many of the policy objectives underlying conventional broadcast regulation.[20] Creation of LPTV in turn justified further deregulation of other services such as radio. This type of regulatory 'Catch-22' makes eminently good sense if authorisation of new stations actually leads to new services; in the case of LPTV this may not be the case, however, since few stations have become financially viable.

The Commission adopted minimal programming requirements for the new LPTV service. LPTV stations thus did not need to comply with the formal ascertainment, minimum hours of operation, commercial time, and programming requirements which applied until June 1984 to full service television stations. The Commission reasoned that 'government surveillance' of LPTV stations would interfere with market-place conditions. Given LPTV stations' limited coverage areas, the FCC concluded that LPTV stations had to be sensitive to local needs in order to survive. The technical nature of the new service, the Commission observed, also warranted a departure from the general mandate of providing programming to all elements of a community. The agency therefore left programming decisions to the discretion of licensees and to the demands of the market-place.

The Commission also adopted flexible ownership policies for the new service, by deleting restrictions on ownership of LPTV stations by existing local broadcast licensees. Because of the new service's uncertain viability, the FCC concluded that cross-ownership would be outweighed by the benefit of permitting experienced broadcasters to develop the service initially.

Precisely because of most LPTV stations' small coverage areas and remote locations, some observers believe that their economic viability is marginal at best, and that they are just a gesture towards diversity. Indeed, some FCC staff members refer to LPTV informally as 'toy television'.

On another front, in 1983 the FCC ended a 13-year inquiry into children's television by declining to require a minimum amount of children's programming.[12] Instead, the Commission stressed each licensee's continuing duty to respond to the needs of the child audience. The Commission disagreed with the Children's Television Task Force's conclusion that the economic incentives of the advertiser-supported broadcasting system discouraged production of specialised programming for children. In particular, the Commission found that the Task Force had failed to consider (1) the growth in the number of commercial stations; (2) programming on non-commercial stations; (3) cable television programmes; and (4) child viewing of 'family' television. The growth of alternative video outlets, the Commission noted, tended to result in market segmentation and greater attention to specific subgroups such as the child audience.

Finally, in June 1984, the Commission deregulated television by eliminating minimum programme percentages, ascertainment requirements, commercial time standards and programme log rules for commercial television stations[22] – thus paralleling the rule changes previously adopted for radio. When it began the proceeding a year earlier, the Commission had announced an intention 'to evaluate the market-place to determine whether the public interest can be furthered by competitive forces rather than by the Commission's existing rules and policies'.[23] While inviting comment on several options – ranging from substantial to nominal deregulation – the Commission ultimately chose the most extreme revisions, reflecting its faith in market-place regulation.

In justifying its action, the FCC noted several factors. First, it pointed to the increasingly competitive nature of the video market-place. Second, it observed that changing competitive conditions might inhibit television's ability to compete with other unregulated or less regulated technologies. Third, the Commission relied upon Congress's strong national policy against government regulation, as reflected in the Paperwork Reduction and Regulatory Flexibility Acts. Fourth, the FCC noted that the rules presented a particularly compelling case for reassessment, because the programming guidelines and commercialisation policies related to the sensitive content control issues. Finally, the Commission pointed out that broadcasters apparently were presenting more informational, local and non-entertainment programming than required and less commercial material than permitted.

The Commission also instituted a proceeding in 1984 to re-examine the fairness doctrine obligations of broadcast licensees.[24] (The fairness doctrine requires broadcasters to cover 'controversial issues of public importance,' and to provide reasonable opportunities for the presentation of contrasting viewpoints on such issues.)[25] In initiating its re-examination of the 35-year-old policy, the FCC noted that 'significant new developments and changes in the electronic and print media over the past decade have contributed to an extremely dynamic, robust, and diverse market-place of ideas that may call into question the continued necessity of the doctrine as a means of insuring the attainment of First Amendment objective'.[26] Because of strong political opposition from many members of Congress – who naturally had an inherent interest in obtaining free reply time – the FCC shelved its proposed repeal in late 1985. In a plea for legislative help, the Commission stated that it lacked jurisdiction to repeal the statutorily-based doctrine, but urged Congress to do so.

C. Deregulation of subscription television

Subscription television (STV) stations operate on conventional television channels, but offer scrambled 'pay' programming, which is receivable only by subscribers with decoding equipment. STV stations generally charge about fifteen dollars per month for a mixture of recently released movies and live sporting events. Cable television naturally presents major competition to STV; the recent failure of many STV stations once their markets were wired for cable indicated that STV may not have a long life expectancy.

Part of the problem may stem from the Commission's past restrictions on STV, because it feared that STV would kill off 'free' advertiser-supported television. Recognising this counter-productive effect, the FCC recently deregulated STV substantially, in order to give free rein to market-place forces. To this end, the Commission: (1) eliminated the 'complement-of-four' rule, which restricted STV operations to communities with at least four other commercial television stations; (2) deleted the requirement that STV stations broadcast at least 28 hours of free programming per week; (3) allowed STV operators to sell as well as lease decoders; and (4) relieved STV licensees from any obligation to identify community needs as to STV programming.[27] More recently, the Commission exempted STV stations from conventional television signal quality standards,[28] on the theory that consumers could vote with their dollars for quality signals.

The 'complement-of-four' rule originally was adopted to assure that pay television would not replace an existing free service or utilise a vacant channel that otherwise would be available for a conventional station. As the Commission later found, however, market conditions protected conventional programming from harm in eliminating the rule. Moreover, the Commission observed that the rule placed STV licensees at a competitive disadvantage vis-à-vis pay cable operators, by preventing them from entering markets before cable did.

The '28 hour' rule also was designed to ensure the availability of free programming. In deleting this requirement, the FCC noted that the 'mix of conventional and pay programming might better be determined by the judgment of the individual entrepreneur and the demands of the market-place,' rather than by 'an arbitrary government rule'.[29] The Commission believed that the rule did not serve the public interest, and that its elimination would result in greater programming diversity by enabling a licensee to respond to audience demands.

The FCC's analysis of the video market-place led to other elements of STV deregulation. It authorised STV licensees and other entities to sell decoders because other terminal equipment for pay technologies – primarily cable television – was available on a lease or purchase basis. Elimination of ascertainment obligations for STV licensees also reflected a market-place approach.

Deregulation of STV is signified in its assumption that STV competes with alternative forms of home video entertainment such as cable, pay cable and MDS, and that the STV licensee should be on an equal footing with its competitors. Whether STV can compete with multichannel media is far from clear, as evidenced by the many recent failures of STV stations. For STV, deregulation may have been too little and too late.

D. Technical standards

Traditionally, the FCC has set technical standards for both transmitting and receiving equipment, not only to prevent interference, but also to protect consumers. The FCC's recent decisions on technical standards reflect its belief that the market-place should determine these issues. For new communications services, the Commission merely has established minimum performance standards. In the case of existing services, the FCC has begun to examine the validity of many technical standards, and has proposed to retain some of these standards only as voluntary guidelines.

For example, after a half-decade of deliberations, the FCC decided to allow the market-place to choose an AM stereo system for the US. Faced with five inconsistent systems proposed by five competing manufacturers, the Commission simply set minimum performance standards that all five systems could meet.[30]

The FCC recognised that the result of its refusal to choose might be that *no* system would be adopted widely enough to sustain AM stereo. But the Commission preferred this outcome to endorsing a particular technical system in order to encourage its adoption. In the FCC's view, governmental interference with normal market development was justifiable only in extraordinary circumstances. The Commission observed:

'A very strong case would have to be made in order to override the inherent benefits of consumers making their own choices rather than having their decisions made by the government ... [O]ur society generally had not seen fit to supplant the free decisions of consumers with those imposed by government, and there is no convincing reason why AM radio represents a special case.'[31]

The Commission employed a similar 'open marketplace' approach in authorising direct broadcast satellites. It declined to impose technical standards upon DBS, since such standards might have stifled development of the service.[32] The FCC stated that a flexible approach would permit DBS operators to respond to technological advances and encourage the introduction of new services. This debate naturally is somewhat theoretical now, since all proposed DBS operators have abandoned their plans and withdrawn their applications.

In authorising videotex transmissions by conventional broadcast stations, the Commission similarly left the choice of technical systems to individual licensees.[33] The FCC pointed out that a market-place approach would allow licensees to tailor videotex service to their own specific need and to respond to changes in demand. In the Commission's view, a market-place approach provided the best mechanism for resolving the trade-offs among system features and prices – decisions that are extremely difficult for regulators. The FCC also believed that its hands-off approach would hasten introduction of the service, by avoiding years of administrative delay in specifying uniform standards.

A market-place approach also emerged in the Commission's authorisation of multichannel television sound (popularly referred to as 'TV stereo').[34] Consistent with its AM stereo, DBS and videotex decisions, the FCC declined to select a uniform technical system. Instead, it opted to 'allow the processes of change and development associated with both user preference and technology to evolve unencumbered by the costs and delays associated with changing government regulations'.[35] The Commission also proposed to impose technical rules on TV aural subcarriers only to the extent necessary to ensure integrity of service and to preclude interference.

The Commission's approval of TV stereo was relatively painless because of careful planning by the private sector. Unlike AM stereo, the TV stereo proceeding was marked by general industry agreement. Through the Multichannel Sound Subcommittee of the Electronic Industries Association, industry representatives presented the FCC with a proposed uniform technical system, known as the Broadcast Television Systems Committee (BTSC) system. The Commission sought to balance the investment of BTSC receiver owners with the opportunity for market-place advances in technology, by insuring that BTSC receivers do not respond to non-BTSC signals.

In another development affecting technical standards, the Commission instituted a proceeding in April of 1983 to eliminate many of its technical rules and policies.[36] The FCC proposed to delete all transmission system requirements for AM, FM and television stations, and began an inquiry into the continued usefulness of rules on: minimum performance standards for equipment and services; equipment inter-operability requirements; interference control regulations; and spectrum efficiency rules.

E. Ownership rules and policies

The Commission's ownership rules have attempted to insure diversification of control over the media and promote ideological as well as economic diversity.[37] The Commission has revised several significant ownership rules and policies under the market-place rationale.

1. Elimination of the 'Trafficking' Rule

In late 1982, the Commission deleted the 'trafficking' rule, which had required that broadcast licences be held for at least three years before being sold.[38] The Commission concluded that in a new competitive environment the public interest was served best by allowing market-place forces to regulate station sales. Under the new approach, buyers of broadcast licences no longer must hold their licences for a particular period before selling those licences at a profit.[39]

Chairman Fowler characterised this decision as 'a true blockbuster in the unregulation process'. Consistent with Chairman Fowler's view, the Commission's trafficking decision finds profit and public service to be compatible. Whether this approach would be well received if large numbers of stations were resold frequently, however, remains to be seen. Congress might intervene in the creation of a future market for broadcast stations.

Responding to the concern that 'a licensee who acquired a station with a primary interest in imminent resale would work to increase the station's resale value rather than making a meaningful effort to provide programming in the public interest', the Commission observed that market-place forces would militate against such a result. '[I]n broadcasting, like any other business, important services can be performed by people who trade broadcast properties, rehabilitate ailing stations with new capital and ideas or relieve unwilling licensees of the responsibility of running a station they no longer want.'[40]

2. Modification of the Ownership Attribution Rules

In 1984 the FCC comprehensively changed its rules specifying the ownership interests in broadcast, cable television and newspaper properties that will be considered – that is, 'attributed' to a party – in determining whether media transactions violate its multiple and cross-ownership rules and policies. The new rules shrink the amount and type of interests which are attributed to a party under the Commission's multiple and cross-ownership rules. Prompting the revisions was the Commission's recognition that the industry and the investment community have changed dramatically, as well as the FCC's belief that relaxing the benchmark 'might serve the public interest by increasing investment in the industry and by promoting the entry of new participants, particularly minorities, by increasing the availability of start-up capital'.[41] The Commission thus assumed that modifying the rules would attract passive investors to new technologies and minority group ventures, through arrangements such as limited partnerships and preferred stock.

3. *Elimination of the 'Top-50' Policy*

In addition to its cross and common ownership restrictions, in the past the FCC also attempted to limit concentration of station ownership in the nation's largest and most lucrative markets. The 'Top-50' Policy required entities seeking to acquire a fourth TV station (either UHF or VHF) or a third VHF station in the 50 largest television markets to show that the benefit of the acquisition would 'overcome the detriment with respect to the policy of diversifying the sources of mass media communications to the public'.[42] The policy's effectiveness was somewhat questionable, however, since most waiver requests got rubber-stamp approval. In abolishing this policy, the FCC heavily emphasised that changes in the video market-place had lessened concentration levels in the 50 largest markets.[43]

The Commission noted that the creation of new video outlets such as LPTV and the existence of the other ownership rules tended to foster diversity of program voices on the local and national levels. Based on an analysis of economic concentration in the top 50 markets since 1968, the Commission found no trend toward concentration. To the contrary, the Commission noted that 'the top fifty markets are the very markets with the greatest number of competing voices, so that each owner's expected share of that potential audience will be much less.'[44]

4. *Modification of the '7-7-7' Restrictions*

Almost since time immemorial, the Commission has limited the total number of broadcast stations which a single entity may own. Under the old 'seven-station' rule, no company could have more than seven AM stations, seven FM stations and seven TV stations (only five of which could be VHF). Although the multiple ownership rules had seemed untouchable, in July 1984, the Commission adopted a six-year phase-out of them under a transitional limitation of 12 AM, 12 FM and 12 TV (whether VHF or UHF) stations.[45] As initially proposed by the FCC, at the end of six years multiple ownership would be unrestricted, unless experience showed that FCC involvement was necessary to prevent undue concentration.

Following the FCC's action, several members of Congress requested that the rule changes as to television be suspended, to permit review and reconsideration of the issues. Responding to this strong Congressional interest, the FCC modified the rule to prevent any television entity from reaching more than 25 per cent of the nation's viewers.[46] The FCC also eliminated the six-year phase-out, and provided for ownership of up to 14 broadcast stations and an audience reach of up to 30 per cent for minority group-controlled entities.

In relaxing the multiple ownership rules, the FCC emphasised that it was retaining its local 'one-to-a-market' as well as 'duopoly' restrictions, and that it would defer to the Department of Justice and the Federal Trade Commission in challenges to particular acquisitions. In their final form, the multiple ownership restrictions incorporate limits on the ownership of radio and/or television stations based upon a national economic concentration index measured in terms of audience shares.

In modifying the seven-station rule, the Commission again relied upon changes in the video market-place since 1953, when the 7-7-7 rules were adopted. These market-place changes rendered the rules 'obsolete' in the FCC's view. Underlying the FCC's decision was the belief that multiple at the national level would not reduce the number of independently owned radio, TV and cable outlets available to the consumer, and might create economies of scale.

5. *Rejection of Limitations on Multiple Ownership of Cable Systems*

Shortly before loosening the multiple ownership restrictions for broadcasters, the FCC declined to adopt similar rules for cable operators.[47] The Commission concluded that 'while the amount of concentration in the cable television industry is increasing, it is still not a concentrated industry'.[48] The FCC relied largely upon reports by its Network Inquiry Special Staff and Office of Plans and Policy. The Commission also noted that it had reviewed – and consistently approved – merger proposals by cable television operators. Moreover, the Commission expressed concern that multiple ownership limits would limit economies of scale. Consistent with these studies and with the growth of the new video media, the Commission concluded that multiple ownership limitations for cable television were unnecessary.

6. *Repeal of Limitations on Regional Ownership of Broadcast Stations*

In April of 1984, the FCC repealed the regional concentration-of-control rules,[49] which had prohibited the acquisition of a broadcast facility which resulted in common ownership of three stations, where any two were within 100 miles of the third and any of the three had primary service contour overlap with another.[50]

In initially proposing to eliminate the rules, the FCC relied upon changes in the telecommunications market-place.[51] As a result of these changes, the Commission stated, 'the potential influence of any given combination of commonly owned outlets is diluted and our concern with the impact of such combinations on diversity and levels of competition declines accordingly'.[52] The Commission ultimately concluded that market-place developments and the continued applicability of the duopoly as well as the one-to-a-market rules had obviated the need for regional ownership restrictions. The FCC also noted that the rules created administrative burdens and opportunity costs.

Conclusion

As the above review indicates, during the past few years the Commission has been hacking away vigorously at broadcasting's regulatory underbrush. In its fervour to 'reregulate', 'deregulate' and 'unregulate', however, the FCC may not have considered some of its actions' side effects, a phenomenon characterised by the regulatory cognoscenti as the 'law of unintended consequence'. Although these effects do not necessarily counterbalance the benefits of deregulation, their weight must be thrown onto the policy making scales.

First, the Commission may turn out to have a bit too much upon the arrival of the new video technologies as a cure-all. To begin with, the scope and vitality of the new media are less than clear.[53] STV stations are encountering stiff multi-channel competition from cable systems and MMDS. Most LPTV stations have tiny audiences. And most plans for DBS are on hold. The much-heralded new video market-place thus must boil down to the continued growth of cable television and the strong sales of video-cassette recorders (VCRs).

Whether either cable systems or VCRs are effective competition for broadcasting, however, is less than clear. On the one hand, cable is a passive medium and produces little or no programming. On the other, it has facilitated the development of several dozen new satellite services – ranging from the Cable News Network to the Christian Broadcasting Network – which supply diverse programming to cable subscribers. And although VCRs provide access to otherwise unavailable material, they inherently cannot offer news or current events. Moreover, the cost of both cable and VCRs will keep them beyond the means of many US viewers for the foreseeable future.

Second, the FCC's forebearance from regulation may frustrate the formation of a competitive market-place in some situations. Indeed, the current chaos in AM stereo seems to flow largely from the Commission's refusal to adopt uniform technical standards. It now appears that consumers may not get the opportunity the FCC had in mind for them, namely of 'voting' with their dollars for the best system. Similar problems have delayed implementation of teletext. The Commission's accommodation of an industry-recommended standard for multichannel television sound, however, signals a partial retreat from the pure market-place approach espoused in the AM stereo proceedings, and reflects a recognition that the market may require FCC-selected standards to protect customers. The FCC may have overlooked the fact that regulation can be a means of making as well as policing a market.

Finally, deregulation can be a double-edged sword. The mere existence of an administrative rule often deters litigation within an industry. On a legal level, US courts usually refuse to hear cases against regulated firms if a plaintiff's claim is covered by a regulation, on theories of 'primary administrative jurisdiction' or 'exhaustion of administrative remedies'. Deregulation thus often leads to litigation, as both a firm's competitors and members of the public turn to the courts with their grievances. Moreover, litigation not only is much more expensive in terms of legal fees than agency proceedings, but also has much greater risks – e.g. awards of treble damages and attorney's fees under the antitrust laws. Although it is impossible to quantify developments at this early stage of deregulation, the amount of litigation – particularly antitrust litigation – in the communications field seems to have increased substantially during the past few years. Precisely for this reason, some communications practitioners view deregulation as a 'Lawyer's Relief Act'.

The benefits and burdens of deregulation thus are not clear. As the old baseball saying goes, 'it ain't over 'til it's over . . . ', and the process of deregulation is far from over. On the positive side of the ledger, deregulation has unleashed some dynamic competitive forces, which previously had been caged by artificial or obsolete rules. On the negative side, however, the full implications of these changes only now have begun to play out. The bottom line is still unknown.

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NOTES

1. Staff Report, House Subcommittee on Telecommunications, Consumer Protection and Finance, *Telecommunications in Transition: The Status of Competition in the Telecommunications Industry* xii (Comm. Print 97–V, 3 November 1981).
2. For a detailed discussion of this effort, *see* E. Krasnow; L. Longley; H. Terry, *The Politics of Broadcast Regulation* 240–69 (3rd ed. 1982).
3. Robinson, *The Federal Communications Commission: An Essay on Regulatory Watchdogs*, 64 Va. L. Rev. 169, 182 (1978).
4. *Deregulation of Radio*, 84 FCC 2d 968, *aff'd in part, remanded in part, Office of Communication of the United Church of Christ v. FCC*, 707 F 2d 1413 (DC Cir. 1983).
5. See *Malrite TV v. FCC*, 652 F 2d 1140 (2d Cir. 1981).
6. *Regulation of Receive-Only Domestic Earth Stations*, 74 FCC 2d 205 (1979).
7. *VHF TV Top 100 Markets*, 81 FCC 2d 233 (1980).
8. *Lower Power Television Service*, 51 Rad. Reg. 2d (P&F) 476 (1982).
9. *Direct Broadcast Satellites*, 90 FCC 2d 676 (1982).
10. Van Deerlin, 'Progress Made Via "Rewrite" Dialog', *Variety*, 9 January 1980, at 213.
11. *Order*, 47 Fed. Reg. 47828 (1982).
12. *Deregulation of Radio*, 84 FCC 2d 968 (1981), *aff'd in part, remanded in part, Office of Communication of the United Church of Christ v. FCC*, 707 F 2d 1413 (DC Cir. 1983). The Court remanded that aspect of the decision eliminating programme logs, and instructed the FCC to conduct a further proceeding to determine what records should be retained to demonstrate service to the community.
13. *Office of Communication of the United Church of Christ v. FCC*, 707 F 2d 1413 (DC Cir. 1983).
14. *Id.* The Commission subsequently adopted a requirement that licensees compile local public inspection files on a quarterly basis, a list of the significant issues facing their communities, and examples of responsive programming. *Second Report and Order* (BC Docket No. 79–219). FCC 84–67, released 27 April 1984.
15. *Deregulation of Radio*, 84 FCC 2d 969 (1979).
16. *Id.*
17. 450 US 582 (1981).
18. 450 US at 590.
19. *Id.* at 595.
20. *Low Power Television Service*, 51 Rad. Reg. 2d (P&F) 476, 484–85 (1982).
21. *Children's Television Programming and Advertising Practices, Report and Order* (Docket No. 19142), FCC 83-609, released 4 January 1984, *aff'd sub nom. Action for Children's Television v. FCC*, No. 84–1052, slip op. (DC Cir. 27 March 1985).
22. *Report and Order* (MM Docket No. 83–670) FCC 84–293, released 21 August 1984; *see also Report and Order* (BC Docket No.81-496), FCC 84–924, released 22 August 1984 (deregulation of noncommercial television).