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8

A History of Broadcast Regulations: Principles and Perspectives

Jennifer Holt

Regulating the most important medium of communication and information of the twentieth century has been a long-term ideological, legal, and cultural project. This history has been marked by the (often lagging) impetus of technological development, informed by political winds, negotiated by appointed and elected government officials, and influenced to varying degrees by the participation of the public, the demands of broadcast stations and networks, and the growth of new media technologies. Many scholars have skillfully articulated the long arcs, the resilient themes, and the detailed nuances of broadcast's regulatory history in the United States, including the drive toward commercialism and away from public service (McChesney, Hesmondhalgh); the complexities of diversity (Einstein, Classen, Perlman); the trends of consolidation and concentration (Gomery, Holt, Kunz); the triumphs of marketplace logic and corporate liberalism in policy rationale (Streeter); the impact of social reform and political movements (Pickard, Noriega, Perlman, Hendershot); the role that regulation has played on defining the parameters of "good" citizenship (Ouellette, McCarthy); and the embedded articulation of "the national" and national identity in the foundations of regulatory policy (Hilmes). The vast inconsistencies, complications, and political influences inherent in the foundational history of broadcast regulation (Horowitz, Napoli, Freedman) demonstrate that policy decisions are anything but intuitive or straightforward, much of the time. They are, however, designed by those in power and, as such, policy study ultimately becomes a study in how social and political power is enacted, mobilized, and embedded in our media's structure and content.

This power is astounding – the power to control television is the power to control much of our culture, information, and national character. As Fred Friendly, President of CBS News from 1964 to1966, explained in one of the more eloquent arguments for why regulation matters:

> Television is no more a preserve set aside for any special-interest group than is a school board or draft board, or the Tennessee Valley Authority or Grand Canyon National Park. Nor are the three networks' plans and deliberations entitled to any more privacy. It can be argued that the decisions made in the board rooms of any one of these broadcasting companies are at least as vital to the public interest

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> as our national education, as crucial as national defense, as far-reaching as those made by the Congress, and as relevant to beauty and aesthetics as all our museums and national parks. (Friendly 1968: xxiv)

A host of different agencies and branches of government are responsible for regulating the various dimensions of the broadcast industry. The Department of Justice (along with the Federal Trade Commission) has traditionally focused on issues of concentration, restraint of trade and monopoly concerns. The Federal Communications Commission (FCC) regulates a wide array of permissions and practices, including licensing and ownership, technical standards, industry conduct, and content – all to varying degrees. Congress and the Supreme Court also participate in the regulation of broadcast via legislation, budget allocation, and judicial decisions that have had significant impact on the policies governing the conduct of the industry. Currently, both the FCC and the Department of Justice review corporate and station mergers, and the Federal Trade Commission also has authority to review such mergers but rarely does, deferring instead to the Justice Department. Although these bodies are not coordinated, they have maintained a somewhat synchronized, if politicized, approach to regulating (and deregulating) broadcasting, especially since the mid-1980s.

Regulation is traditionally associated with control, rules, limits, standards for conduct, and government interventions. Regulation has been defined as "the instrument through which the state supervises, controls, or curtails the activities of non-state actors in accordance with policy" (Abramson 2001: 302), and "the deployment of specific and binding implements used to intervene in media markets and systems: quotas, ownership restrictions, competition rules, and so on" (Freedman 2008: 13), with both economic and social functions (Napoli 2001: 17–18). Former FCC Chairman Nicholas Johnson (1966–73) has noted that "there is no 'regulation,' there are only individual regulations."[1] Often, these regulations are designed to compensate for a lack of genuine marketplace competition in industries where infrastructural realities have precluded it, such as telecommunications, railroads, or broadcasting.

Deregulation, on the other hand, is more than simply an *absence* of regulation; it is the distinct presence of different values than those underpinning regulation. In the US context, deregulation has evolved as the retooling/redesign of regulatory principles to accommodate a neoliberal, market-driven approach to policing industry conduct, and became the dominant philosophy behind broadcast policy in the 1980s and has, for the most part, endured ever since. This marketplace orientation has ultimately created, in the words of Thomas Streeter, "an institution that is dependent on government privileges and other forms of collective constraints" (1996: xiii). In other words, as Robert McChesney has extensively argued, deregulation is "more often than not, government regulation that advances the interests of the dominant corporate players" (2004a: 19–20).

Regulation and regulatory principles in broadcasting have indeed functioned to privilege the needs of major broadcasters and benefit entrenched corporate players and interests most of all. There were indeed some regulations that were at least designed to benefit constituencies such as the public, or independent producers and stations. However, as the policy landscape has evolved, and as regulatory principles have been adapted from radio and mapped onto television, the owners of the airwaves, or broadcasters' "landlords" (the public) have unquestionably had most of their power

reallocated to their tenants – the corporations utilizing their government-issued slice of the spectrum for profit. The seeds of this power structure can be found in the earliest regulatory principles and the manners in which the foundation for broadcast policy developed during the birth of radio.

Early Regulatory Principles

Scarcity and the Radio Spectrum

The 1912 Radio Act, which regulated wireless telegraphy, established many principles that would guide the development of broadcasting. Scarcity is one of those principles, and has been described by Robert Horwitz as "the bottom-line legal rationale for the regulation of broadcasting" (1989: 249). Formulated in the wake of the *Titanic* disaster, Susan Douglas has explained that regulation of wireless became necessary as "the perceived value of the ether as a resource increased immeasurably, and the resource had to become more serviceable" (1987: 233). The 1912 Act thus kept amateurs out of the Navy's way by dividing the wireless spectrum between ship, coastal, amateur, and government frequencies, gave the US Secretary of Commerce the power to assign station licenses, and thus recognized the elements of scarcity inherent in wireless infrastructure and embedded them into law (Czitrom 1982: 68). The Act required that all operators be licensed, established a host of technical specifications for the burgeoning medium, and "increased hegemony in the spectrum" in sorting out the chaos in the wireless world (see Douglas 1987: 234–235). Most significantly, as Douglas has pointed out, the 1912 law "acknowledged that property rights could be established in the ether and that the main claimants to those rights were institutional users," not the individual amateurs who had done so much to develop the medium but were beginning to wreak havoc on military and emergency communications. Further, state and industrial players were deemed best suited to protect the interests of spectrum users, and the state would assign the actual property rights in the spectrum to those (institutions) it deemed worthy (ibid: 236–237). This transfer of power in the wireless space from individual hobbyists and enthusiasts to government forces acting on behalf of commercial interests would remain a hallmark of broadcast regulation.

These principles, along with a "weak, administrative type of federal regulation" favoring commercial broadcasters as characterized by Donald Czitrom (1982: 79, 80) largely found their way into the 1927 Radio Act, and would direct the development of broadcasting in the 1930s and beyond. Passed by Congress on February 3, 1927, the Radio Act also established a specific government agency, the Federal Radio Commission (FRC) to allocate spectrum space, assign frequencies, and handle licensing – all based partially on the rationale that the spectrum was a finite and scarce resource. Secretary of Commerce Herbert Hoover had warned in 1925 that the frequencies for broadcasting were exhausted: "Conditions absolutely preclude increasing the total number of stations in congested areas. It is a condition, not an emotion," he cautioned, and the licensed broadcasters agreed (Hoover 1926).

Many have since written about the fiction of spectrum scarcity and the institutional refusal to acknowledge it (see de Sola Pool 1983; Rosenbloom 2003; Einstein 2004). Mara Einstein has argued that the scarcity principle was "a myth almost from the time

of its inception. As early as the mid-1920s, technology existed that would overcome the perceived shortage in spectrum ... Thus the need to have a license to broadcast and the belief in spectrum scarcity was a government choice" (2004: 10). And while the reigning conventional wisdom and approach in Washington, DC has always been that the spectrum is scarce, long-time expert Michael Calabrese of the New America Foundation has succinctly explained that "In reality, only government permission to access the airwaves (licenses) is scarce – spectrum capacity is itself is barely used in most locations and at most times" (Calabrese 2009). The spectrum has remained abundant, but the choice to have policy driven by the illusory concept of scarcity at radio's outset significantly limited the potential competition in the broadcast industry and ensured that the major networks who were awarded exclusive rights over some of the spectrum's prime real estate would remain the dominant players in the industry throughout its history. As Robert Horwitz has explained: "More than any other factor, spectrum allocation policy limited commercial television to three networks only" (1989: 156).

As various scholars have argued, the notion of scarcity is one of many principles that have failed to endure the test of time as a foundational rationale for broadcast regulation. Ithiel de Sola Pool, for one, has noted, "Congress failed to recognize the possible transiency of spectrum scarcity" and willfully refused to acknowledge or consider technologies that could have multiplied channels and expanded usable frequencies (de Sola Pool 1983: 114). That legacy of scarcity as a policy mindset has continued; as the FRC evolved into the Federal Communications Commission (FCC) with the passage of the 1934 Communications Act, the legacy of spectrum scarcity was handed down from radio to television, along with most other foundational policy rationales. However, scarcity was *not* actually a function of technological or material conditions. Indeed, it was, as de Sola Pool noted, a "man-made" reality due to the lack of legal structure and economic incentives necessary to create a sense of availability and abundance (1983: 151). This mindset of scarcity has endured into broadcast's newest dissemination platforms: cable and broadband pipelines. The available space and bandwidth have continued to be characterized – and regulated – as scarce, limited, and precious, despite the dramatically contrasting realities. Nevertheless, the specter of scarcity (and its attendant limitations and implications, particularly in the realm of competition) looms large, and continues to dominate thinking in the policy sphere as it has for the last century.

The Public Interest

In addition to the principle that the spectrum is a scarce resource, the foundation of regulatory policy in the American broadcast industry has also been guided by what serves "the public interest, convenience or necessity" – which is traditionally shortened to simply "the public interest." Philip Napoli has characterized the principle as "the broad umbrella concept from which all of the other foundation principles in communications policy stem" (2001: 63). It is the underlying rationale behind some of the most significant powers held by the FCC: to grant, withhold, renew, or revoke licenses, or institute fines based on whether or not the station has served the public's best interest in its operating behavior.

This standard was first officially used by then Secretary of Commerce Herbert Hoover in a speech before the Third Annual Radio Conference in 1924 (Krasnow and Goodman 1998: 608), formally established as policy rationale by the 1927 Radio Act, and

consequently adopted by the 1934 Communications Act, as were many of the Radio Act's values and principles. Both Acts considered the airwaves a public trust and therefore determined that those utilizing this resource were obliged to do so in a manner that was best for its "owners" as opposed to its "renters." In other words, this phrase suggested that broadcast was supposed to be regulated in order to privilege the "rights of the audience over that of the broadcaster" (Einstein 2004: 9). The infamous FCC "Blue Book" attempted to codify these public interest obligations even further in 1946, mandating certain requirements for programming to be deemed "in the public interest" and threatening stations with a loss of their broadcast license if the requirements were not met. Despite these attempts to clarify public interest obligations for the industry, or perhaps because of them, the Blue Book came under significant attack from broadcasters, Congress, and the courts, and ultimately faded away with minimal lasting impact. Victor Pickard has argued quite convincingly that the origins of America's weak public interest standards are deeply embedded in 1940s media policy history and that, in fact, the public interest standard – and methods to enforce it – have remained vague and ineffectual in large part due to the efforts of commercial broadcasters fighting to keep it that way (Pickard 2015: 207).

There is an undeniably marked ambiguity to the phrase "the public interest" that has rendered it a very frustrating concept for anyone seeking a specific definition with any discernible clarity, legal or otherwise. The ambiguity has often been attributed to a deliberate design in the legislation to allow regulators to accommodate changing economic conditions and technologies, and adapt policy as it becomes necessary. This imprecision has also been viewed as an abstraction that makes regulators more susceptible to the influence of Congressional politics or lobbying (Krasnow and Goodman 1998; Napoli 2001). Patricia Aufderheide has characterized the "public interest" as both "the favorite invocation of every stakeholder in the regulatory process" and "the notorious fudge factor in the FCC's rule making" (1999: 13). Robert Horwitz has similarly described this transformation in the concept of the public interest during the Reagan era as "a shift away from concern with stability and a kind of social equity to a concern with market controls and economic efficiency" (Horwitz 1989: 21). Thomas Streeter has identified an assumption and belief at the FCC that economic competition in the broadcast industry necessarily serves the public interest, while noting that "the question of whether or not the marketplace is a good determinant of the public interest in the first place goes unasked" (1983: 260). The indeterminacy of the construct has certainly allowed regulators a great deal of latitude over the years, and the loose interpretation of the public interest has ultimately been politicized and of particular benefit to private interests (McChesney 2004a, 2007; Freedman 2008).

As such, the public interest clause has long been one of the most vexing to enforce and explain; after all, the "public" itself is a wildly divergent constituency that is essentially impossible to define in a way that also articulates how their interests are best served. So what indeed *is* the public interest, and how is it best served through regulation? A mandatory enforcement of programming quality? A quantifiable, acceptable level of diversity in terms of ownership and content? A certain percentage of airtime devoted to education or informational programs? Locally originated/oriented programs? An absence of certain types of content or language? Is advertising in the public's interest? If so, how much? And who should be trusted to make such decisions and determinations?

In the wake of the quiz show and "payola" scandals in the late 1950s, the FCC actually did attempt to clarify the public interest standard as a means to offer programming guidelines for an industry that seemed to be losing its way (Boddy 1990). After extensive hearings culminating in a report that became known as the 1960 Programming Policy Statement, the FCC articulated fourteen "major elements usually necessary to the public interest" (1960: 32–33). In addition to entertainment, these included commitments to localism, education and public affairs, service to minority groups, religious, agricultural, and children's programming, news, weather, sports, political broadcasts, and editorials. The FCC emphasized that these categories were not intended as a "rigid mold or fixed formula" (1960: 33), but this general approach to defining the public interest standard prevailed for the next two decades (Advisory Committee 1998: 23). In the years following the 1960 Programming Policy Statement, the FCC also adopted guidelines for minimum amounts of news, public affairs, and other educational programming, as well as the Primetime Access Rules (see below) to encourage more local programming as a way to serve the public interest.

During the 1960s, the FCC also began enforcing the "Fairness Doctrine" more stringently. Adopted in 1949, the Doctrine declared that since station licensees were "public trustees," they were required to afford equal opportunities for differing viewpoints and for decades it required television and radio stations to give equal time to contrasting political viewpoints and opposing candidates. In 1963, the agency released a letter that became known as the Cullman Doctrine, which effectively stated that a broadcaster cannot meet its public interest obligations by presenting only one side of an issue of public debate – they must balance their coverage with competing viewpoints (Geller and Watts 2002: 18, n. 26).

When President Reagan's FCC Chairman, Mark Fowler, arrived in 1981, most of the agency's public interest commitments – including the 1960 guidelines – were essentially abandoned. Fowler most famously equated television to any other household appliance, calling it a "toaster with pictures" and reasoned that if viewers did not like what they saw, they could simply pull the plug. His vision for regulating broadcast disavowed the "public trustee" model that had served as a philosophical pillar of regulation since radio, and instead embraced a marketplace model, overtly replacing government oversight with basic economic principles of supply and demand. The swing had begun under his predecessor, Charles Ferris (1977–81), but Fowler is most famous for implementing it as a uniform policy vision. His approach had profound implications for the concept of the public interest, which was devoid of any and all connection to citizenship, quality, or education (Gomery 1989; Horwitz 1989). In his co-authored *Texas Law Review* article published during his tenure at the FCC, Fowler famously argued that:

> the perception of broadcasters as community trustees should be replaced by a view of broadcasters as marketplace participants. Communications policy should be directed toward maximizing the services the public desires. Instead of defining public demand and specifying categories of programming to serve this demand, the Commission should rely on the broadcasters' ability to determine the wants of their audiences through the normal mechanisms of the marketplace. The public's interest, then, defines the public interest. (Fowler and Brenner 1982: 209–210)

With that, the regulatory foundation created over the previous fifty years was dealt a crippling blow, and the notion of broadcasters as stewards of the public interest would never truly recover in practice.

The public interest still remains an elusive, ill-defined standard that has continued to be employed as a rhetorical prop, and justification or rationale for a host of corporate behaviors that have nothing to do with serving their public. Des Freedman isolated the deeper problem with this evolution when he explained, "It is not that the concept of the public interest is disappearing but that its meaning as a counterweight to private pressures is being evacuated" (2008: 69). As Philip Napoli has observed in his thorough treatment of the standard, "As long as the public interest standard remains ambiguously operationalized, and is not associated with specific analytical criteria, it can be utilized on behalf of virtually any policy action taken" (2001: 94). The early twenty-first-century political and regulatory climate did not indicate that there would be any actions taken to better define or articulate that standard. Michael Powell, President George W. Bush's FCC Chairman 2001–5, encapsulated contemporary attitudes embedded in regulatory philosophy regarding the public interest, albeit crudely:

> The night after I was sworn in, I waited for a visit from the angel of the public interest. I waited all night, but she did not come. And in fact, five months into this job, I still have had no divine awakening and no one has issued me my public interest crystal ball. But I am here, an enlightened wiseman without a clue. The best that I can discern is that the public interest standard is a bit like modern art, people see in it what they want to see. That may be a fine quality for art, but it is a bit of a problem when that quality exists in a legal standard. (Powell 1998)

Much of the discussion about the public interest standard's evolution in FCC policy is often reduced to Newton Minow and his deep and often controversial commitment to its promise (Baughman 1985; Watson 1990) or to Mark Fowler and his wholesale abandonment of it (Horwitz 1989; Holt 2011). The contrasting approaches of these two chairmen highlight the dramatic political swings possible in broadcast regulation. However, the progressive forerunner to Minow's public interest orientation (James Fly 1939–44) and legacy successors of Fowler's free-market vision (Michael Powell 2001–5; Kevin Martin 2005–9) demonstrate that the polarities of this construct have a much longer arc than the twenty-five years of broadcast regulation represented by the years from Minow to Fowler. Indeed, scholars have addressed the ways in which the interests of the public have long been highly politicized (Krasnow, Longley, and Terry 1982; Pickard 2015), impacted significantly by social movements and advocacy (Perlman 2016), and applied at multiple (conceptual, operational, applicational) levels (Napoli 2001). Ultimately, it is a construct that has been and continues to be malleable, and most notable for being as Allison Perlman has written, "consistently reconstituted" (2016: 182) by interest groups, corporate broadcasters, and regulators who have located a multitude of social, cultural, and political struggles within its embattled contours.

Commercialism and Market Competition

The qualities of our broadcast media are in many ways dictated by regulatory forces and values that are often so embedded in the framework of industry protocols that they are

rendered invisible, or even "natural." The framework of commercialism and the market-driven rationale underpinning the broadcast industry are paradigmatic examples of such naturalized ideological values also inherent in regulatory policy. Robert McChesney (1993) has written extensively about the period in the late 1920s through the mid-1930s when the purpose and nature of broadcasting were actually being hotly debated and contested in the United States, and the foundation of the medium as a commercial industry as opposed to an educational, cultural, or informational one, was being called into question. Victor Pickard has written about similar reform efforts and alternative visions that were circulating in America during the 1940s, forcefully arguing through archival research that the market centrism in the broadcast industry "was not natural, inevitable, nor necessarily ideal; it was first and foremost the result of policy decisions and political struggles" (Pickard 2015: 6).

Herbert Hoover as Secretary of Commerce in 1922 told an audience at the first national radio conference, "It is inconceivable that we should allow so great a possibility for service, for news, for entertainment, for education, and for vital commercial purposes to be drowned in advertising chatter" (quoted in Wu 2010: 74). Although there was strong support early on in broadcasting's history among educators and reformers for a vital nonprofit and noncommercial alternative to the advertiser-supported model – a foundation that many saw as destructive to the potential of the medium – the voice of that movement was ultimately silenced by commercial broadcasters and their allies in the regulatory sphere. The commercial nature and advertiser-supported business model has been the norm ever since in the United States, and broadcasting has been regulated in a manner that supports those commercial interests.

Thomas Streeter (1983, 1996) has articulated how corporate liberal "habits of thought" have created a framework for broadcast policy that has privileged giant corporations over individuals, created broadcasting as a process of buying and selling, and viewed the spectrum as property to be owned, in a sense, by private interests fortunate enough to acquire a license. Victor Pickard (2015) has similarly written about a guiding logic of "corporate liberalism" that has been prevalent since the 1940s, and argues that although our policy formations were once buoyed by an ethos of New Deal liberalism, activism, and social movements, they were ultimately co-opted by a protectionist FCC rooted in market-based ideology. This has differentiated the US broadcasters from their counterparts in the United Kingdom, particularly the BBC, who have been largely guided by a public service model (Freedman 2008; Hesmondhalgh 2013), although recent work by Michele Hilmes has convincingly argued that these national industries have enjoyed a lengthy, historical relationship of mutual influence, and that in fact neither could have developed without the constant presence of the other (2012: 3).

The FCC's *Report on Chain Broadcasting*, which was issued in May 1941 after investigations into complaints about the radio networks, was an early indicator of the US regulatory agency's position on marketplace values for the industry. Following a long series of Congressional hearings on network monopoly practices, the FCC came out with its report. It targeted the power that the networks could exercise over their affiliated stations, including programming restrictions, scheduling requirements and a host of (often punitive) contractual agreements that were no longer allowable. It also prevented one company from owning more than one network, or more than one station in a market. Often called the "Monopoly Report," it was essentially a condemnation of

the networks' behavior deemed to be anti-competitive and therefore not in the public interest. It has been called "perhaps the FCC's most significant regulatory action against media conglomeration" (Pickard 2015: 51), and was a distinct moment of rare progressivism at the agency, then under Chairman Fly (1939–44). It would not be repeated. Indeed, the report framed the stakes of concentrated ownership starkly: "To the extent that the ownership and control of radio-broadcast stations falls into fewer and fewer hands, whether they be network organizations or other private interests, the free dissemination of ideas and information upon which our democracy depends, is threatened" (FCC 1941: 99). It also emphasized, however, that the agency was focused on marketplace competition above all else: competition, after all, was "the essence of the American system of broadcasting" according to the FCC's report (1941: 46–79; also see Streeter 1983).

And yet the notion of competition in broadcast markets has been as ill-defined and malleable as the notion of the public interest. Part of that malleability stems from the politicization of market definitions, including what actually constitutes competition, and what roles/constituencies competition should serve. How such competition (and markets) are measured and assessed, what levels of competition and concentration are appropriate, and how those assessments are employed as regulatory tools often exposes the gaps between numerical data and cultural implications. Pat Aufderheide eloquently summed up this disconnect when she observed that "the equation of public interest with an unregulated marketplace, which has grown to be widely accepted, has resulted in disconnecting social consequences from the cultivation of the marketplace" (1999: 6). As a result, this faulty logic has obscured the larger ramifications, that is, the "externalities" of the neoliberal regulatory values that have guided policymaking since the 1980s (Freedman 2008: 9).

The advocacy and reform movement has been working since the 1930s (with varying degrees of success) to preserve a space for noncommercial, educational, and informational broadcast programming that would not be subjected to the vagaries of sponsorship or market demands regarding popularity and commercial viability (see McChesney 1993; Pickard 2015; Perlman 2016). Newton Minow, President Kennedy's FCC Chairman, was unusual among regulators in his commitment to these educational and cultural values for broadcasting, and his disdain for the commercialism of the programming landscape. He was aligned, often controversially, with the reform movement and sympathized with their goals. Minow actively fought to preserve funding for public and educational television; sought tighter restrictions on network-affiliate programming practices; and threatened to take away broadcasting licenses if the industry did not become more responsible to the audience. "If there is not a nation-wide educational television system in this country," he said, "it will not be the fault of the FCC" (Minow 1961).

Minow actively crusaded against the "vast wasteland" of violence and commercialism that he saw taking hold of the spectrum in the early 1960s. "You must provide a wider range of choices, more diversity, more alternatives," he told the National Association of Broadcasters in 1961, during his famous "Vast Wasteland" speech. "It is not enough to cater to the nation's whims; you must also serve the nation's needs. [I]f some of you persist in a relentless search for the highest rating and the lowest common denominator, you may very well lose your audience. Because ... the people are wise, wiser than some of the broadcasters – and politicians – think." Minow also oversaw the passage of the

1962 All Channel Receiver Act, which afforded channels on the less desirable, less powerful UHF band – many of which were local and educational – a much bigger audience reach with the mandate that all television sets be equipped with a UHF tuner (Watson 1990).

The 1967 Public Broadcasting Act signed by President Johnson, which created the Corporation for Public Broadcasting, a private, nonprofit corporation funded by the federal government, is the closest thing to Minow's nationwide educational television system that the United States has achieved. The Carnegie Commission on Educational Television – a panel of prominent business, broadcasting, educational, and cultural leaders – created a mission/blueprint for federally chartered, nonprofit, nongovernment corporation (drawing on the BBC) in 1967: *Public Television: a Program for Action*.[2] Quite surprisingly, the report helped President Johnson to convince Congress to fund it, and there was a hopeful moment for public television in America. As Laurie Ouellette has written, "With virtually no public input, a prestigious commission was assembled to chart the terms of public broadcasting in the United States" (2002: 52). The subsequent Act created the Corporation for Public Broadcasting (CPB), put new power and money in the hands of local stations themselves, and distributed locally produced programming via the Public Broadcasting System. Along with National Public Radio (NPR), established in 1970, the new system was a boon to children's programming, news, and public affairs shows.

However, funding would be at the mercy of biannual Congressional approval, and grew extremely political and susceptible to government influence and attack. President Nixon, for example, vetoed funding in 1972 because he felt public television was critical of his administration. Conservatives from Newt Gingrich, Republican House Speaker in the 1990s, to 2012 Republican presidential candidate, Mitt Romney, have proposed cutting funding for public broadcasting altogether, characterizing it as elitist, "caviar television" and wasteful spending. The original aims of public television have partially been sabotaged, largely because of this funding structure. The Carnegie Commission had recommended a system of permanent federally subsidized support for noncommercial television via an excise tax on television sets, which sought to keep public television independent of both sponsor control as well as insulate it from the pressures of government appropriations procedures. Those recommendations were rejected. By eliminating this safeguard, public television has been a political football in the culture wars for decades, and subsequently has had to turn to corporate underwriters and limited spot advertising as government funding has dwindled to roughly ten to fifteen percent of the budget (with the rest coming from private donations, corporations, foundations, and state/local taxes). Backed into a sustaining relationship with corporate sponsors, noncommercial television's dream of broadcasting a truly independent voice has remained elusive.

Aside from the dream of independence, the notion of the "public" in public television and its relationship to broadcast regulation has been similarly challenging to pin down over the years. Laurie Ouellette's work has been influential in articulating the "dissonance" between public television's promise of universal service and the portrait of its "selective" and upscale audience that circulates institutionally, culturally, and in policy debates (2002: 5). The limited cultural assumptions rooted in a particular politics of gender, race, and class have, according to Ouellette, undermined PBS's capacity to serve the people it supposedly represents. Further, Ouellette argues the Carnegie

Commission's blueprint offered a conceptual framework for public television where "diversity and popularity were incompatible" (2002: 56), ultimately rendering it vulnerable to attacks from critics across the political spectrum. Despite the (often overlooked) long history of public service, educational, and cultural broadcasting in the United States (Hilmes 2012), the future for such broadcast programming remains uncertain at best, particularly in an expanding television ecosystem with educational and cultural programming on numerous cable and satellite channels, an absence of commitment to localism, and ever-diminishing funds for cultural initiatives in times of austerity.

Localism and Diversity

Localism and diversity are two more long arc principles underlying broadcast regulation (at least in theory) since the Radio Act of 1927. The goal of these principles has been to protect the medium from being dominated by a few national companies with a limited range of expression, and to maintain the connection to local news, information, and culture in order to serve the community in which the station was located. Localism been central to policy-making related to spectrum allocation, licensing, and ownership limits, among other things. Horwitz has argued that localism's fundamental regulatory value "was a logical outgrowth of the [FCC's] essential licensing function and the 'public trustee' status of the broadcaster," as the FCC "saw the local broadcaster as the bedrock of the broadcast system" (1989: 158). It follows thus that the FCC has regulatory authority over the local stations, not national networks.

However, these values have been heralded much more in principle than in practice. The 1927 Radio Act had diversity in its licensing requirements and that has remained on the books ever since, although it has scarcely been enforced. The 1941 *Report on Chain Broadcasting*, for example, dealt with issues of anti-competitive behavior among the radio networks but was also written in order to enhance the authority of local stations in the face of overly controlling networks. Chairman Fly characterized the report as being based "upon the premise that responsibility for broadcasting must remain in the hands of the more than nine hundred station licensees all over the country, rather than gravitating into the hands of the three or four nationwide network organizations" (Pickard 2015: 52). Yet the report ultimately emphasized the importance of network programming over that of locally originated programming, in many ways undermining its own recommendations for reform. Bill Kirkpatrick has argued that the failure to implement or enforce localism was mostly about the disconnect between the ways in which regulators mobilized the term, and the more widely accepted interpretations of the concept (e.g., as preserving local identities or fostering diverse communal expression). In fact, Kirkpatrick explains, historically "localism was a tool that regulators used to achieve a nationalizing goal, not an end in itself" (Kirkpatrick 2006).

The FCC's *Sixth Report and Order* (1952), which lifted the freeze and established national spectrum assignments for television channels, had its priorities rooted in the local: the provision of each community with at least one television broadcast station fell just below ensuring that the entire United States had access to service (FCC 1952: 167). Nevertheless, the contradictions of operating nationally but regulating locally have proven vexing for maintaining a true foundation of localism in industry policy.

As Horwitz has noted about the *Sixth Report and Order*, these incompatible objectives illuminated the disconnect between "political ideal and economic reality. Wedded to the ideal of an equitable, locally based, national television system, the *Sixth Report* reserved television assignments for communities whose population (and hence advertising base) was not large enough to support a commercial television station" (1989: 184).

Anderson and Curtin have argued that while American broadcasting was partially shaped by the tensions that existed between local and national interests, those tensions were evident in policy debates and rationales as well. "In the debates about broadcast policy," they write in their study of Chicago television and a series of FCC hearings in the 1960s, "the tensions between local and national interests often appear as an opposition between a nostalgic localism and a modern nationalism. Local interests are troublesome for policymakers, partly because they represent impediments to the technological and economic 'progress' that seems to drive national integration" (Anderson and Curtin 1997: 293). Sandra Braman has also written about the significant gaps between "the ideal underlying the regulatory principle [of localism] and the real communities our policies address" (2007: 234). Localism has thus been lost in translation throughout policy history, as well as a frequent casualty of the network business model particularly since the age of media conglomeration that began in the 1980s.

Diversity, like the public interest and competition, is a very amorphous and ambiguous term. It has been utilized as a measure of quality (albeit without explicit standards), as a requirement for licensing, and a component of public interest obligations. Largely due to the scarcity argument and attendant public interest requirements, licensees are held responsible for a balanced presentation of diverse views. At stake is the character of our broadcast media, the types of news and culture that create and inform our society, and the voices that have a right to be heard by local and national audiences.

There are various dimensions of diversity that can be incorporated into broadcasters' public interest obligation to the audience, including the diversity of content (ranging from demographic representation, to ideas and issues, to targeted audiences), sources of content, and ownership in terms of both quality (i.e., demographics of owners) *and* quantity (how many owners locally and nationally) for stations and networks.[3] The measurement of these concepts has historically been devoid of any empirical component, and the lack of any concrete qualitative standards has been a significant impediment to enforcing true diversity, at least in terms of content. As Mara Einstein has explained, the lack of agreed upon working definitions and measurements of diversity have rendered media diversity as a policy goal "very difficult, if not impossible, to achieve" (2004: 6).

Further, as Philip Napoli has noted, the source–content diversity relationship in the policy arena is quite complicated, and the goals of policies for source diversity go beyond simply expanding the range of perspectives in the ranks of media ownership. "Implicit in virtually all of these source diversity policies is the assumption that a greater diversity of sources leads to a greater diversity of content" (Napoli 2001: 133). This "reasonable expectation" of content diversity following source diversity has guided policy-making and judicial decisions in the broadcast arena for many decades, and yet there still remains a genuine lack of gender, ethnic, and racial diversity in media ownership. Women comprise over 51 percent of the US population but hold less than 7 percent of all TV and radio station licenses. People of color make up over 36 percent of the US population but hold just over 7 percent of radio licenses and 3 percent of TV licenses

(Free Press). Despite a long history of social movements and reformers battling for greater inclusion (Perlman 2016), sadly, those numbers were still, according to FCC Commissioner Mignon Clyburn, "trending incredibly downward" at the end of the Obama Administration (2013).

The Fairness Doctrine is the most significant regulatory statute related to diversity of content. The doctrine essentially had two basic elements: it required broadcasters to devote some of their airtime to discussing controversial matters of public interest, and to air contrasting views regarding those matters. Stations were given wide latitude as to how to provide contrasting views, and how much time was required. This could be achieved through news segments, public affairs shows, or editorials. However, this responsibility was not supposed to be simply a passive one; in fact, the concept of "ascertainment" was a part of it as well – stations were directed to actively seek out diverse views to broadcast instead of ignoring the hot button issues. The doctrine did not require that each program be internally balanced, nor did it mandate equal time for opposing points of view. It simply prohibited stations from broadcasting from a single perspective, day after day, without presenting opposing views.

However, it took an unreasonable amount of time to enforce – decades in the most egregious cases. As Steve Classen (2004) has explored extensively, Mississippi stations WLBT and WJTV were repeatedly in violation of the Fairness Doctrine and it took many years of petitioning by activists and engaged citizens to bring FCC action to these stations for their coverage (or lack thereof) of the civil rights struggle and the African American perspective during the 1950s and 1960s. Classen used this example to further highlight the ways in which regulatory language and proceedings can be positioned as neutral when in fact they are highly politicized by virtue of who gets to speak, and what materials are allowable. The case even served to galvanize the broadcast reform movement in many ways (see Horwitz 1997; Classen 2004, Perlman 2016) and connect the imperatives of broadcast diversity to the larger project of civil rights in the United States. In a scenario where localism – or the responsibilities to the local community – were intricately intertwined with diversity, the striking lack of both in the cultural and political context of the deep south in the 1950s proved to be a tipping point.

The Fairness Doctrine was ultimately given legal credence by the 1969 *Red Lion* case.[4] The concept of scarcity was further invoked and linked to the mandate of diversity in the Supreme Court decision that held "the speech rights of listeners, rather than broadcasters, were paramount in a media sector utilizing a scarce resource – the airwaves – where as a condition of receiving a license, broadcasters were justifiably subject to public interest requirements" (Perlman 2012: 356). After less than two decades of legal sanction, the Fairness Doctrine was revoked in 1987 under FCC Chairman Mark Fowler. Since that time, there is no longer an obligation on the part of broadcasters to present multiple sides of controversial issues to the public, or even characterize them as such in the first place. The proliferation of media outlets, especially in the Internet era, has served to nullify most calls for its return, and there have been critiques such as Einstein's that "the Fairness Doctrine appears to have done more to squelch diversity than it did to promote it" (2004: 24) and, more broadly, that regulation has thus far proven to be an ineffective creator of diversity (ibid.: 226). It has also been discussed as infringing on First Amendment rights of broadcasters, and even producing a "chilling effect" on the discussion of the very issues it was created to foster (Napoli 2001: 54, 144). While its potential or imagined impact and effectiveness in the digital

age is impossible to discern, its demise is ultimately a testament to the insurmountable and incalculably politicized challenges of measuring and enforcing diversity as a matter of broadcast policy.

The Financial Interest and Syndication Rules (Fin-Syn) and the Prime Time Access Rule (PTAR) were two of the last attempts by the FCC to enact diversity – in terms of program suppliers – albeit in an extremely limited way. Due to their oligopoly over the airwaves, the three US broadcast television networks (ABC, NBC, and CBS) were under the scrutiny of both the FCC and the Justice Department for over a decade by 1970. At that time, the three broadcast networks had a financial interest or syndication rights to almost all of their programming and independent producers were practically shut out of the market. In response to the abuses of power that they perceived, the FCC eventually established Fin-Syn and PTAR in tandem with similar goals: to loosen the grip of network power over the industry and expand the market for independent producers (Hilmes 1990).[5] While these regulations did not ultimately achieve their intended effects across the board (see Einstein 2004; Holt 2011), they did stand as one of the last gasps of FCC intervention in the oligopolistic broadcast marketplace before deregulation became the order of the day in the 1980s.

Deregulation in the Network and Multi-Channel Era

The FCC's aggressive work to curb monopoly ownership in the broadcast industry reached its peak in the 1940s under Chairman Fly. Such attention to controlling media concentration by the commission has not occurred since; to the contrary, limits on ownership have consistently been relaxed since the 1980s. Media ownership has grown increasingly consolidated, and this has limited the views and perspectives shaping broadcast culture and, in particular, the news media (McChesney 1999, 2004a). Broadcasting was deregulated along with many other industries during the 1980s, and President Reagan's FCC was essentially in lockstep with the administration's overall "laissez-faire" agenda. By the end of Mark Fowler's first four years as chairman, the Commission had reviewed, changed, or deleted most regulations relating to ownership limitations, content restrictions, licensing, *and* broadcaster conduct. Media concentration and conglomeration would engulf the industry in the following two decades. It became clear, writes William Kunz, that "during this period ... the Fowler-chaired FCC would take almost any action, whether in the writing of new rules or the interpretation of old ones, to allow media consolidation to occur" (2007: 77). As a result, the broadcast industry would experience dramatic structural changes over the next two decades that would end with every broadcast network changing hands and eventually they would all become properties of global media conglomerates that had major cable, film, and publishing holdings as well (see Kunz 2007; Holt 2011).

The processes and ramifications of this increased concentration and conglomeration have been documented by legal scholars (Baker 2002, 2007; Cooper 2007), policy scholars (Aufderheide 1999), political economists (Kunz 2007; Winseck 2011), industrial/media economists (Compaine and Gomery 2000; Noam 2009), and journalists, advocates, and academics with a call for systemic media reform (McChesney 1999, 2004b, 2007; Bagdikian 2004; Chester 2007), to name just a few. Others have called for synthetic approaches to the study of ownership, including Des Freedman who

has argued that we need "an approach to media ownership that integrates empirical data, normative assumptions and ideological critique into a robust assessment of ownership that acknowledges the role of agency, interests and structures" (2014: 182). In his overview of ownership debates, John Downing also echoed the challenge for more expansive frameworks to analyze media ownership when he wrote, "The issues of contemporary media control, culture, and power need to be set within this larger historical epic of power and control, not confined to the straitjacket of the contemporary" (2011: 165).

Deregulation also created the conditions for the rise of media conglomerates that united cable, broadcast, and publishing holdings under one roof, largely due to ownership restrictions that were either relaxed or eliminated. In the 1970s, the FCC had instituted various cross-ownership rules that prevented the common ownership of a broadcast property and a cable system (1970), a radio station and a television station (1970), or a broadcast station and a newspaper (1975) in the same market (NTIA 1988: 61). The regulatory reasoning behind these rules was rooted in the fundamental policy principles of localism and diversity, and the attendant desire "to prevent any single corporate entity from becoming too powerful a single voice within a community, and thus ... maximize diversity under the conditions dictated by the marketplace" (Gomery 2002). However, in the "multi-channel era" (Lotz 2014), the cross-ownership rules were scaled back, as were the commitments to (and presence of) the principles of diversity and localism in the broadcast landscape.

Thanks largely to the repeal of Fin-Syn in 1995, and the passage of the Telecommunications Act of 1996 (the first rewrite of the 1934 Communications Act), the broadcast networks were also liberated from many of the restrictions that prevented vertical integration in the programming market, horizontal integration, and other convergent media mergers (Aufderheide 1999; Holt 2003, 2011; Kunz 2007, 2009). These restrictions had previously maintained a system of "checks and balances" that were designed to temper the concentration of power in broadcasting and foster more diversified ownership (Chester 2007: 28–29). Consequently, according to Kunz, the goal of expanded and independent sources of programming still "remains as elusive in a 500-channel universe as it did in a three-network marketplace" (2009: 651). Radio has seen more mergers than any other industry since the 1996 Act, and became largely controlled by a handful of companies that colonized the country's largest markets (McChesney 1999). Moreover, broadcast, cable, and telephone companies were given the green light to merge with one another and create newly expansive media empires.

The protracted period of broadcast deregulation gave rise to tremendous activism and expansion in the media reform movement, as well as scholarship that also played an advocacy role. Robert McChesney (1999, 2004a, 2007) has written extensively about the historical trajectories and impact of these policy shifts on national and local broadcast media, and the implications for our citizenry and culture. The media reform movement has a long and diverse history that precedes the era of deregulation (Montgomery 1989; McChesney 1993; Horwitz 1997; Pickard 2015; Perlman 2016), but activists were newly galvanized after the Telecommunications Act of 1996 around issues of media ownership, and again after the FCC's announcement of another relaxation of its ownership rules in 2003. The resulting "Uprising of 2003" (McChesney 2007) demonstrated that the reform movement was alive and well, and that media ownership was actually a bipartisan issue. Moreover, it proved that the general public could be moved to rise up in collective

protest and demand action from their government on matters of media policy, and the FCC would be forced to pay attention. This confluence of media reform efforts, scholarship, and citizen activism offers a counterweight to the enduring legacy of broadcast deregulation and media concentration in the multichannel era, and shines a bright light on the political history that has shaped many of the broadcast industry's regulatory policies.

Content and the First Amendment

The history of broadcast content regulation is defined more by inconsistency and struggle than by any coherent set of rules or guidelines. Legislative efforts to censor broadcast content have always been a juggling act, as regulators and law-makers try to balance and define the elusive construct of the "public interest" with First Amendment values and objectives (see Napoli 2001: 29–62), the maintenance of diversity over the airwaves, the preservation of a robust marketplace of ideas, and the protection of contemporary community standards. Heather Hendershot has written about the historical tensions between censorship and regulation in relation to children's television. She calls our attention to the fact that regulation is legal, whereas censorship is illegal (Hendershot 1998: 14). However, she argues, "like TV news during wartime, children's TV regulation/censorship is widely considered acceptable in the name of a greater good: the safety of children" (1998: 22). Lynn Spigel (1992) explores the myriad cultural anxieties that have circulated since the introduction of television into the home around the potential ill effects of the medium on children. Many of these sociocultural anxieties around television in the home studied by Hendershot and Spigel led to the rise of citizens groups such as Action for Children's Television (ACT), which argued for reform in children's television, and the Children's Television Act in 1990, which was designed to increase the amount of educational children's programming on television and reestablish advertising restrictions. Concerns about children were also behind the mandatory TV ratings called for by the 1996 Telecommunications Act (to identify sexual, violent, or other indecent programming), and the requirement that TV manufacturers install the V-chip in all newly manufactured sets by January 1, 2000, allowing parents to censor their children's television viewing based on such ratings. The efficacy of these laws and technologies continues to be debated by social scientists, policy-makers, advocacy groups, broadcasters, parents, and cultural critics, and yet the very complex cultural question of "what's good" for children remains an unresolved legacy in the history of broadcast policy.

The FCC also polices indecent and obscene broadcast content. The landmark Supreme Court case *Miller* v. *California*[6] established a three-pronged test for obscenity, and declared that this form of speech is not protected under the First Amendment. Obscenity is never allowed on broadcast television. Indecent speech, on the other hand, is another issue – and the one that has proven to be the most divisive for broadcasters and regulators (see Levi 2008). Indecent speech is permitted but restricted to between the hours of 10 pm and 6 am, when it is assumed that children will not be watching or listening. The FCC was authorized by Congress in 1960 to impose fines on those who broadcast obscene, indecent, or profane language, but the agency did not exercise its authority to regulate indecent speech until 1975 (*Fox* v. *FCC* 2010).[7] This shift was

inspired by the now famous *Pacifica* case, which concerned the broadcast of comedian George Carlin's "Filthy Words" monologue. The case went all the way to the Supreme Court, which ruled that the FCC could legally fine stations and determine indecency in specific contexts. The Court found Carlin's routine to be indecent, but not obscene (see *FCC* v. *Pacifica*, at 759–760).[8] While this determination should have protected the speech somewhat, legal analysis has shown that "in the context of broadcasting, twin concerns of privacy and parenting trump the First Amendment" (Fairman 2009: 188). This case is also one of the great and largely unheralded contributions of George Carlin to media culture, in that his act of mocking media policy, Carlin actually helped to legally define it. For many years after the *Pacifica* ruling, the FCC focused its enforcement efforts on the use of Carlin's "seven dirty words" (Holt 2013: 276).

Indecency cases have continued to return to the courts ever since, and the FCC has had a much more challenging history of regulating this form of speech. Most substantive discussions of the topic are found in legal briefs and law reviews, as the issues at the core of speech categories and censorship involve constitutional questions and case law (Finch, 2005; Levi, 2008; Fairman 2013). The FCC's standards for acceptable content guidelines vary widely and have historically exhibited a far greater tolerance for graphic violence than nudity on broadcast television. Profanity is restricted much the same as indecency; Christopher Fairman has argued that the government's policy in this area is essentially "a triumph of word taboo" (2013). The FCC issued a set of guidelines attempting to provide direction for broadcasters regarding indecency in 2001, and again in 2004 – the same year as Janet Jackson's "wardrobe malfunction" during the halftime show of Super Bowl XXXVIII – in response to organized lobbying by conservative watchdog groups and an increasingly reactionary political climate. Broadcast networks ABC, Fox, CBS networks and various affiliate stations joined forces in 2010 and sued the FCC to challenge the agency's indecency policy in a case that wound its way up to the Supreme Court and back down, with little clarity gained in the process.[9] After more cases went through the circuit court, the Supreme Court eventually ruled in 2012 that the FCC has the authority to regulate indecency, but they needed to modify their standards into something more clear and specific for broadcasters to use.[10] None have been crafted as of 2016. The Supreme Court's decision offered none of the definition that the broadcasters sought, and almost guarantees future litigation for indecency on television. Consequently, uncertainty continues to reign in the arena of content regulation.

The "chilling effect" of the vagueness and lack of definition in the FCC's indecency policy has also led to much self-censorship (Levi 2008: 32–34), including an over-reliance on Standards and Practices lawyers to vet scripts, and a reluctance on the part of broadcasters to air content that might run afoul of the mysterious guidelines. Many ABC affiliates, for example, decided not to air the network's planned broadcast of Steven Spielberg's Second World War motion picture, *Saving Private Ryan*, over Veteran's Day in 2004 because of concerns about FCC fines for profane language. Self-regulation also happens when "standards criteria … become internalized" and "ideas are discarded/censored before they are even written down" (Hendershot 1998: 55). There are also instances when local affiliates behave as morality police and censor/refuse programming "to protect their viewing community" (Hendershot 1998: 19–20), as was the case when CBS's affiliate in Birmingham, Alabama refused to show the episode of the sit-com *Ellen* in which the title character played by Ellen DeGeneres

comes out as gay, or during the civil rights era when southern stations (notably WLBT and WJTV in Jackson, Mississippi) refused to air news footage of brutality against black citizens (Classen 2004: 47–50). The TV ratings system/parental guidelines that took effect in 1997 represented a First Amendment infringement to producers, programmers, and broadcasters and potentially threatening to ad revenue (Aufderheide 1999: 97), but the industry ultimately saw this form of self-regulation as preferable to the alternative.

Broadcast Policy and the Digital Age

As broadcast television and radio have adapted to the digital landscape, they have also had to rely on a range of new technologies and distribution platforms for their carriage and dissemination. This has necessarily created new regulatory challenges that will require a fundamental rethinking of policy foundations, which have thus far been hard pressed to keep up with the explosive pace of technological change. For example, now that the broadcast signal is primarily carried over privately-owned cable wires and broadband pipes, is there a legitimate policy rationale behind the public interest standard, or standards of "decency" that apply to over-the-air transmission of the broadcast signal? And what role should "access" and universal service play in policy-making for broadband, now that these pipelines are acting as the primary delivery conduits for broadcast media? In the first decades of the twenty-first century, Americans live in a vastly expanded playing field for broadcast television, and yet Amanda Lotz has noted that rapid adaptations, particularly in the production and distribution sectors, have exposed the diminished "relevance of the lumbering regulatory sector in establishing the regulatory conditions appropriate to emerging post-network norms" (2014: 52).

Patricia Aufderheide (1999) wrote a comprehensive analysis of the 1996 Telecommunications Act in which she recounts its "long history of inelegance" and political process that traces back to the earliest uses of the "public interest" in the 1920s. Aufderheide delineated the rather staggering breadth and depth of deregulatory provisions in the 1996 Act and contextualized it in the long arc of "regulatory reform." In so doing, she presented a dynamic media landscape where broadcast, cable, telecommunications, and Internet providers would all be operating under newly converged policy regimes with far fewer restrictions than ever before. This has taken place on a grander scale than anyone could have imagined, thanks to the explosion of personal, portable, and mobile devices in our media ecosystem. Moreover, as Susan Crawford has noted, in the era of deals like Comcast–Universal, the broadcast properties are the least profitable companies in the global media conglomerate, and have lost much of their competitive position in the television landscape (Crawford 2013: 131–133). Thus, the future of broadcast will, in many ways, hinge on how the industry is to be recognized in these converged policy regimes. Most pressing will be the need for an expansion of regulatory paradigms to accommodate the new era of distributing broadcast via cable, broadband, and telephone wires (Holt 2012). The pressures of "convergent media policy" (Flew 2014) include an array of concerns about the treatment of different types of content and platforms, measuring industry concentration, and navigating new terrain for censorship and privacy issues. These will also undoubtedly be paramount in the policy concerns of broadcast's digital future.

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Notes

1 Interview with author, December 21, 2015.
2 A summary of the report's recommendations can be found at: http://web.archive.org/web/20120608113702/http://www.current.org/pbpb/carnegie/CarnegieISummary.html.
3 Diversity of the labor workforce is another arena where diversity could be measured and required, but that has yet to fall onto the radar of the FCC or other regulatory agencies.
4 *Red Lion Broadcasting Co.* v. *FCC* 395 US 367 (1969).
5 PTAR prohibited network-affiliated television stations in the top fifty television markets from broadcasting more than three hours of their own programming during the four prime-time viewing hours. By limiting the hours of network programming on affiliate stations, PTAR established a protected, one-hour block during prime-time in which it was assumed that individual stations would have more freedom to schedule locally produced, community interest, or independent shows. Fin-Syn mandated that the broadcast networks were not allowed to produce or have an ownership stake in their own prime-time entertainment programming, nor were they allowed to participate in syndication revenues from programming that they aired.
6 *Miller* v. *California* 413 US 15 (1973).
7 *Fox Television Stations, Inc.* v. *FCC* 613 F.3d 317 (2d Cir. 2010).
8 *FCC* v. *Pacifica Foundation* 438 US 726 (1978).
9 See n. 7 above.
10 *Federal Communications Commission et al.* v. *Fox Television Stations Inc., et al., Certiorari* to the United States Court of Appeals for the Second Circuit, No. 10-1293, argued January 10, 2012; decided June 21, 2012, available at: http://www.supremecourt.gov/opinions/11pdf/10-1293f3e5.pdf.