FEDERAL COMMUNICATIONS COMMISSION

U.S. Regulatory Commission

The United States Federal Communications Commission, created by an act of Congress on 19 June 1934, merged the administrative responsibilities for regulating broadcasting and wired communications under the rubric of one agency. Created during "The New Deal" with the blessings of President Franklin D. Roosevelt, the commission was given broad latitude to establish "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service." On 11 July 1934 seven commissioners and 233 federal employees began the task of merging rules and procedures from the Federal Radio Commission, the Interstate Commerce Commission and the Postmaster General into one agency. The agency was organized into three divisions: Broadcast, Telegraph, and Telephone. Today, the agency employs approximately 1900 people and has extensive oversight responsibilities in new communications technologies such as satellite, microwave, and private radio communications.

Chair Reed E. Hundt

Commissioner Susan Ness

The Act of 1934 and Organization of the FCC

The Federal Communications Commission is an independent regulatory government agency. It derives its powers to regulate various segments of the communications industries through the Communications Act of 1934. Congress appropriates money to fund the agency and its activities, though recently the FCC raised revenues through an auction process for non-broadcast frequency spectrum. The Act enumerates the powers and responsibilities of the agency and its commissioners. Government radio stations are exempt from FCC jurisdiction. The Communications Act is divided into titles and sections which describe various powers and concerns of the commission.

Title I describes the administration, formation, and powers of the Federal Communications Commission. The 1934 Act called for a commission consisting of seven members, reduced to five in 1983, appointed by the President and approved by Senate. The President designates one member to

serve as chairman. The chairman sets the agenda for the agency and appoints bureau and department heads. Commissioners serve for a period of five years. The President cannot appoint more than three members of one political party to the commission. Title I empowers the commission to create divisions or bureaus responsible for various specific work assigned.

Title II concerns common carrier regulation. Common carriers are communication companies that provide facilities for transmission but do not originate messages, such as telephone and microwave providers. The Act limits FCC regulation to interstate and international common carriers,

Title III of the Act deals with broadcast station requirements. Many determinations regarding broadcasting regulations were made prior to 1934 by the Federal Radio commission, and most provisions of the Radio Act of 1927 were subsumed into Title III of the 1934 Communications Act. Sections 303-307 define many of the powers given to the commission with respect to broadcasting. Other sections define limitations placed upon the commission. For example, section 326 within Title III prevents the commission from exercising censorship over broadcast stations. Provisions in the U.S. code also link to the Communications Act; for example, 18 U.S.C. 464 bars individuals from uttering obscene or indecent language over a broadcast station. And, section 315, the Equal Time Rule, requires broadcasters to afford equal opportunity to candidates seeking political office, and formally included provisions for rebuttal of controversial viewpoints under the contested Fairness Doctrine.

Titles IV and V deal with judicial review and enforcement of the Act. Title VI describes miscellaneous provisions of the Act including amendments to the Act, and the emergency war powers of the President. Title VI extends FCC power to regulate cable television.

The 1934 Act has been considerably ammended since its passage. Many of the alterations have been in response to the numerous technical changes in communications that have taken place during the FCC's history, including the introduction of television, satellite and microwave communications, cable television, cellular telephone, and PCS (personal communications) services. As a result of these and other developments, new responsibilities have been added to the commissions charge. The Communications Satellite Act of 1962, for example, gave the FCC new authority for satellite regulation

Commissioner Rochelle Chong

Commissioner James H. Quello

Other First Amendment problems facing the commission include enforcing rules against indecent or obscene broadcasts (*FCC v. Pacifica*). After *Pacifica*, the FCC enforced a ruling preventing broadcasters from using the "seven dirty words" enumerated in comedian George Carlin's "Filthy Words" monologue on the air. However, "shock jocks" (radio disk jockeys who routinely test the boundaries of language use) and increasingly suggestive musical lyrics moved the FCC to take action against several licensees in 1987. In a formal Public Notice, the FCC restated a generic definition of indecency which was upheld by the U.S. Court of Appeals. Spurred by Congress, the commission stepped up efforts to limit the broadcast of indecent programming material, including the graphic

and the recent passage of the Cable Act of 1992 required similar revisions to the 1934 Act. But the flexibility incorporated into the general provisions has allowed the agency to survived for sixty years. Though the FCC responsibilities have broadened to include supervision of these new technologies, it now shares regulatory power with other federal, executive and judicial agencies.

The FCC does have broad oversight over all broadcasting regulation. The FCC can license operators of various services and has recently used auctions as a means of determining who would be awarded licenses for personal communications services. The commission enforces various requirements for wire and wireless communication through the promulgation of rules and regulations. Major issues can come before the entire commission at monthly meetings; less important issues are "circulated" among commissioners for action. Individuals or parties of interest can challenge the legitimacy of the regulations without affecting the validity or constitutionality of the act itself. The language of the act is general enough to serve as a framework for the commission to promulgate new rules and regulations related to a wide variety of technologies and services. Though the agency has broad discretion to determine areas of interest and regulatory concern, the court, in *Quincy Cable TV, Inc. v. FCC*, reminded the FCC of its requirements to issue rules based on supportable facts and knowledge .

To more efficiently carry out all its tasks, the commission is divided into several branches and divisions. The Mass Media Bureau oversees licensing and regulation of broadcasting services. Common Carrier Bureau handles interstate communications service providers. The Cable Bureau oversees rates and competition provisions of the cable act of 1992. The Private Radio Bureau regulates microwave and land mobile services. Several offices within the FCC support the four bureaus. The Field Operations Bureau carries out enforcement, engineering and public outreach programs for the commission. The Office of Engineering and Technology provides engineering expertise and knowledge to the commission and tests equipment for compliance with FCC standards. The Office of Plans and Policy acts like the commission think tank.

The Fcc and Broadcasting

Scholars differ on whether the FCC has used its powers to enforce provisions of the Communications Act wisely. Among the broad responsibilities placed with the FCC under section depiction of aborted fetuses in political advertising. Various enforcement rules, including a "24 Hour Ban" and a "safe harbor" period from midnight to 6:00 A.M. have met with court challenges.

Other perennial areas of concern for the commission include television violence, the numbers of commercials broadcast in given time periods, the general banality of programming, and many issues related to children's television. Several FCC Chairmen and commissioners have been successful in using the "raised eyebrow" as an informal means of drawing attention to problems in industry practices. Calling television "a vast wasteland," a phrase adopted by many critics of television, Chairman Newton Minnow (1961-63) challenged broadcasters to raise programming standards. In 1974, under Richard Wiley (1972-77), the commission issued the Children's Television Programming and Advertising Practices policy statement starting a review of industry practices. And, Alfred Sikes (1989-92) called for "a commitment to the public trust" when he criticized television news coverage. Interest in children's television was further renewed in 1990 by the passage of the Children's Television Act which reinstated limits on the amount of commercial time broadcast during children's programming and requires the FCC to consider programming for children by individual stations at license renewal. The commission, under Chairman Reed Hundt (1993), adopted a new Notice of Inquiry on compliance in this area. Congress has become increasingly interested in reducing the amount of violence on television. Industry representatives have issued a Statement of Principles concerning the depiction of violence in an effort to stave off FCC rulemaking.

Currently the FCC has many critics who feel that the agency is unnecessary and the Communications Act of 1934 outdated. Calls to move communication policymaking into the Executive Branch at the National Telecommunications and Information Administration (NTIA) or to reform the FCC have been heard from both industry and government leaders. Congress has grappled with FCC reform through the legislative process in its most recent sessions. Convergence of telephone and broadcasting technologies could make the separate service requirements under Titles II and III difficult to reform. Whether the commission will be substantially changed in the future is uncertain, but rapid changes in communications technology are placing new burdens on the commission's resources.

- Fritz Messere

FURTHER READING

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303 are the power to classify stations and prescribe services, assign frequencies and power, approve equipment and mandate standards for levels of interference, make regulations for stations with network affiliations, prescribe qualifications for station owners and operators, levy fines and forfeitures, and issue cease and desist orders.

The most important powers granted to the commission are powers to license, short-license, withhold, fine, revoke or renew broadcast licenses and construction permits. These powers are based on the commission's own evaluation of whether the station has served in the public interest. Much of the debate over the FCC's wisdom, then, has focused on the determination of what constitutes fulfillment of a broadcast licensee's responsibilities under the "public interest, convenience and necessity" standard. Definitions and applications of this standard have varied considerably depending upon the composition of the commission and the mandates given by Congress. Though the FCC can wield the life-or-death sword of license revocation as a means of enforcing the standard, the commission has rarely used this power in its 60 year history.

Indeed, critics of the Federal Communications Commission argue that it has been too friendly and eager to serve the needs of large broadcast interests. Early FCC proceedings, for example, illustrate a pattern of favoring business over educational or community interests in license proceedings. But other scholars point to FCC actions against big broadcast interests by promulgating Duopoly, Prime-Time Access Rules (PTARs), and Syndication and Financial Interest Rules, all aimed at reducing the influence of large multiple license owners.

The commission has restated the public interest requirements numerous times over its sixty year history. The Blue Book, The 1960 Programming Policy Statement, and Policy Statement Concerning Comparative Hearing were examples of FCC attempts to provide licensees with guidance as to what constituted adequate public service. Today, the FCC's reliance on "marketplace forces" to create competitive programming options for viewers and listeners reflects beliefs that economic competition is preferable to behavioral regulation in the broadcast industry.

Viewed over its sixty year history, FCC decision making is generally seen as *ad hoc*. Frequent reversals of policymaking can be seen in commission decisions as the economic and technical conditions warranted changes in

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regulatory policy. Before the present era of deregulation, the FCC had promulgated extremely complex and detailed technical and operating rules and regulations for broadcasters, but it also gave licensees great latitude to determine what constituted service in the public interest based on local needs under its Ascertainment Policy. Once a station was licensed, the operator was required to monitor the technical, operational and programming aspects of the station. Files on all aspects of station operations had to be kept for several years. Today, under the general guidance of the "market," filing and renewal requirements for broadcasters are greatly reduced. However, when two or more applicants compete for the same license or when a Petition to Deny challenge is mounted, the commission makes a determination as to which of the competing applicants is best qualified to own and operate the broadcasting facility. Hearings follow strict procedures to ensure that the applicants' rights under the law are fully protected, and as a result the adjudicative process can be lengthy and cost applicants thousands of dollars in legal fees.

Reliance on "the marketplace rationale" began under Chairman Charles D. Ferris (1977-81), when the FCC embraced a new perspective on regulation and began licensing thousands of new stations in an effort to replace behavioral regulation with the forces of competition. Chairman Mark Fowler (1981-1987) endorsed the marketplace model even more willingly than his predecessor. Yet, despite the flood of new stations, the Scarcity Rationale, based on limitations of the electromagnetic spectrum, remains a primary premise for government regulation over electronic media.

Broadcast licensees do not enjoy the same First Amendment rights as other forms of mass media. Critics charge that entry regulation--either through utilizing the concept of "natural monopoly" or severely limiting the number of potential licenses available--effectively uses the coercive power of government to restrict the number of parties who benefit from involvement in telecommunications. Breyer and Stewart note that, "Commissions operate in hostile environments, and their regulatory policies become conditional upon the acceptance of regulation by the regulated groups. In the long run, a commission is forced to come to terms with the regulated groups as a condition of survival." Critics say both the FRC and the FCC became victims of client politics as these two regulatory agencies were captured by the industries they were created to regulate.

Broadcast Regulation and FCC Policy Decisions

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Throughout its history, a primary goal of the Federal Communications Commission has been to regulate the relationship between affiliated stations and broadcast networks, because the Communications Act does not grant specific powers to regulate networks. When the Commission issued *Chain Broadcasting Regulations* the networks challenged the commission's authority to promulgate such rules, and sued in *National Broadcasting Co., Inc. et al. v. United States.* The Supreme Court upheld the constitutionality of the 1934 Act and the FCC's rules related to business alliances, noting the broad and elastic powers legislated by Congress. The FCC has used *The Network Case* as a precedent to ratify its broad discretionary powers in numerous other rulings.

On another front, at various times the commission has promulgated rules to promote diversity of ownership and opinion in markets and geographical areas. The Seven Station Rule limited the number of stations that could be owned by a single corporate entity. Multiple-Ownership and Cross-Ownership restrictions dealt with similar problems and monitored multiple ownership of media outlets--newspapers, radio stations, television stations--in regions and locations. Rules restricting multiple ownership of cable and broadcast television were also applied in specific situations. However, as more radio and television stations were licensed, restrictions limiting owners to few stations, a limitation originally meant to protect diversity of viewpoint in the local market, made less sense to the commission. In 1985, recognizing greater market competition, the commission relaxed ownership rules. In the years that followed, restrictions on Ascertainment, Limits on Commercials, Ownership, Anti-Trafficking, Duopoly and Syndication and Financial Interest Rules were also eased.

Still, it is the issue of First Amendment rights of broadcasters that has generated more public controversy in the sixty year history of the Communications Act of 1934 than any other aspect of communication law. Since the earliest days, the FRC and then the FCC insisted that because of "scarcity," a licensee must operate a broadcast station in the public trust rather than promote only his or her point of view. The constitutionality of the Fairness Doctrine and section 315 was upheld by the Court in Red Lion Broadcasting v. FCC. Broadcasters complained that the doctrine produced a "chilling effect" on speech and cited the possibility of fighting protracted legal battles in Fairness Doctrine challenges. Generally, though, the FCC determined station "fairness" based on the overall programming record of the licensee. The Court reaffirmed the notion that licensees were not

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See also Allocation; Censorship; Children and Television; Communications Act of 1934; Deregulation; Equal Time Rule; Financial Interest and Syndication Rules; Hennock, Frieda B.; License; Hooks, Benjamin; NTIA; Ownership; Political Processes and Television; PTAR (Prime Time Access Rule); Public Interest, Convenience, and Necessity; Stations and Station Groups; Telecommunications Act of 1996; Telcos

obligated to sell or give time to specific opposing groups to meet Fairness Doctrine requirements as long as the licensee met its public trustee obligations. But, as Commissioners embraced deregulation, they began looking for ways to eliminate the Fairness Doctrine. In the 1985 Fairness Report, the FCC concluded that scarcity was no longer a valid argument and the Fairness Doctrine inhibited broadcasters from airing more controversial material. Two cases gave the commission the power to eliminate the Doctrine; in TRAC v. FCC, the court ruled that the Doctrine was not codified as part of the 1959 Amendment to the Communications Act as previously assumed. Secondly, the FCC applied the Fairness Doctrine to a Syracuse television station after it ran editorials supporting the building of a nuclear power plant *(Meredith Corp. v. FCC, 809 F. 2d. 863 (1987); Syracuse Peace Council 3 FCCR 2035 (1987)).* Meredith Corporation challenged the Doctrine and cited the 1985 FCC Report calling for the Doctrine's repeal. The courts remanded the case back to the commission to determine whether the Doctrine was constitutional and in the public interest. In 1987, the FCC repealed the Doctrine, with the exception of the personal attack and political editorializing rules which still remain in effect.