

COMMUNICATIONS POLICY AND THE PUBLIC INTEREST

Patricia Aufderheide

Editor's Note

Why should governments regulate telecommunication, and what should be the main policy goals? With a focus on communication in the U.S. context, Patricia Aufderheide sets forth various rationales for a regulatory policy for U.S. telecommunication enterprises. She delineates the clashing interests of businesspeople, who oppose most restraints, and average citizens, who want government protection from messages they deem socially harmful. The Telecommunications Act of 1996 seeks to juggle these demands in an age characterized by an ever-expanding array of governmental and industry stakeholders in the telecommunications arena. Compared to these experienced and well-financed players in the pressure-group politics game, the civic sector is poorly represented, and its interests tend to be shortchanged.

At the time of writing Aufderheide was a professor in the School of Communication at American University in Washington, D.C., and the director of its Center for Social Media. She is a prolific cultural journalist, policy analyst, and editor on media and society. The excellence of her work has been recognized by numerous awards, including Fulbright and Guggenheim fellowships.

Telecommunications policy is a calculated government intervention in the structures of businesses that offer communications and media services. The public is endlessly invoked in communications policy, but rarely is it consulted or even defined. Policymakers claim that they do what they do

Source: Excerpted from Patricia Aufderheide, *Communications Policy and the Public Interest: the Telecommunications Act of 1996*, New York: The Guilford Press, 1999, chapters 1 and 5. Reproduced by permission of The Guilford Press.

in the name of and for the benefit of the people they represent, who may or may not be consumers of the service. Without this connection to the public, policymakers would have no grounds to intervene in these businesses.

Who is the public that U.S. policy represents, and what is its interest? . . . [E]arly communications and antitrust regulators took it to be coterminous with the economic health of a capitalist society, associated with social peace and prosperity. This is a definition that . . . effectively made government regulators the representatives of society's interests as well as of the large, stable businesses the government regulators helped to create and maintain. . . .

Another way to see the public is as an agglomeration of consumers, or potential consumers. . . . While opening the door to much broader (and more politically volatile) participation, this definition can lead to checkbook democracy on a grassroots level, where people participate in society to the extent that they are consumers, and to the extent that they exercise consumer choice. Not only does the definition measure social participation only by purchase, but it also conveniently ignores the social institutional structures within which we all live, and within which consumers make their small choices.

There is also much in communication policy that reaches past traditional economic concerns, whether at the macro- or microlevel, and that reaches into social welfare considerations. Government regulators act as allies of and sometimes protectors of the weak and vulnerable in society. Policies have been made to protect children, the disabled, rural dwellers, the poor; these policies ensure equality of access to a communications technology for everyone, no matter what's in their wallets or on their minds; and these policies further the political promise of free expression. Policies have even attempted to set cultural standards, such as public decency on the airwaves, and have attempted to create cultural spaces, as in the case of public broadcasting.

Each of these social welfare-oriented approaches has a slightly different take on the notion of the public and its relationship to government. Some approaches are blatantly paternalistic, and some respond to the squeaky-wheel version of American politics. But all of them go beyond economic concerns. They indicate, sometimes clumsily, the notion that the public is more than a mass of consumers or the inhabitants of a commercial society, but rather is a social institution important enough to address in nonmarket-place ways. These approaches can easily result in patch-up policies or can be accused of catering to special interests, however vulnerable or worthy those interests may be.

In recent decades, with the rise of deregulation, market liberals who are concerned with policy have basically asserted that the public is roughly the

same thing, for the purposes of policymaking, as a vigorous marketplace. They have advocated deregulation, in order to promote an unfettered marketplace. However, in large infrastructure industries, deregulation does not necessarily lead to competition. Even then, these advocates would argue, so long as the sector is vigorous, growing, widely offering more jobs and a greater selection of products and choices, it acts in the public interest.

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. But the booming electronic media and telecommunications marketplaces inevitably affect cultural habits and have social consequences. Dial-a-porn, Jerry Springer scandal shows, wrong credit rating data spread via the Internet are a few among many of the concerns that have mobilized activists to demand government action. Such concerns are marginalized into a fringe area of policy. A zone of cultural backlash grows, where antipornography, antiviolence, anticensorship, pro-privacy, and anti-hate crimes advocates all sullenly hunker down. Those pioneers of emerging social landscapes find uneasy alliances as often as they carve out new Balkan states of opinion. And inevitably, cultural advocates of all kinds return to policymakers.

This has been a pattern throughout the history of U.S. communications regulation, but it appears ever more boldly as deregulation unleashes new market behaviors and intensifies others. There is a bipolar quality to current communications policies. The passion for regulatory platforms that permit unregulated industries, unbounded by government constraints, vies with the passion for social control over the emerging networks and channels that we plug into each day.

The problem of designing policies appropriate to today's and tomorrow's communications technologies and business environments always comes back to the problem of the public. . . . Communications policy either encourages or discourages public life, whatever its intent. So, of course, do many other social policies, including electoral practices and educational regimes. But communications structures in many ways map our social connections, and our communications practices express our cultural habits and understandings.

Legal scholar Monroe Price (1995) shows that electronic media regulation has long danced around the question of culture. He argues for policies that recognize the importance of electronic media for establishing and maintaining public spaces. Simply endorsing the competitive marketplace, as if to do so were a value-neutral decision, merely displaces problems.

Within this notion of the public, then, policies make the political culture of a democracy a central priority. This argument accords well with those of political philosophers who argue, as does Sandel (1996), that

the formative aspect of republican politics requires public spaces. . . . The global media and markets that shape our lives beckon us to a world beyond boundaries and belonging. But the civic resources we need to master these forces, or at least to contend with them, are still to be found in the places and stories, memories and meanings, incidents and identities, that situate [us] in the world and give our lives their moral particularity. (p. 349)

The revival of what Benjamin Barber (1984) contagiously called "strong democracy"—a more participatory and communitarian political system—requires "constructive civic uses of the new telecommunications technology" (p. 277).

But this approach to the public and the public interest has not been popular within the world of communications regulation. Over the years since the 1927 Radio Act, which was the precursor of the 1934 Communications Act, struggles over the notion of the public interest have inevitably, but often messily and uncomfortably, reflected the relationship between communications and culture. The very principles of economic intervention upon which regulation emerged as a social practice make it hard to see the connection between communication and culture. The First Amendment as it has evolved in the 20th century has also complicated any clear articulation. But tensions and conflicts in policy can often be seen as deriving from the thick and tangled relationship between communications businesses and services, on the one hand, and the expectations and habits of the societies they serve, on the other.

Rewriting the Rules

The creation of the Telecommunications Act of 1996, which President Bill Clinton signed into law on February 8, 1996, raised to public view issues that are often buried in regulatory procedures, and it showcased questions of the social impact of telecommunications policy.

The Act was designed to create a regulatory platform that would permit broad competition among different kinds of telecommunications service providers, encourage innovation, and recognize rapid technological change. The Act attempts to jump-start an era in which communications industries—and especially networked businesses that offer telephony and related network services—can operate as unregulated competitors rather than as monolithic utilities.

To accomplish this, the legislation rewrote the basic law that governs communications policy from top to bottom. That does not mean that the new law abolishes policies of the past or that it is even very foresightful, much less effective. In its amending of the 1934 Communications Act, the new law sketches out some regulatory principles, creates some possibilities, and

proposes a controversial premise of interindustry competition. Its sketches may end up being far different from a workable, regulatory regime. But it is without a doubt the first step in a decisively different regulatory universe for communications.

The law lurched and stumbled into existence, driven forward by a combination of ideological and technological changes to the terms of an existing compact between big business and big government. For two decades before its passage, Congress attempted in a variety of ways to comprehend, foster, and get some social benefit from changing communications technologies. The ensuing law contains within it elements of previous regulatory regimes, and elements of a new one as well.

Its inelegance has a long history. The evolution of electronic communications policy has been a complex, and often ad hoc, process. This process has reflected, in part, the separate, independent development of several kinds of businesses. Each of those businesses, ranging from telephony to radio and television to computing, has evolved with its own logic. Government regulation evolved parochially with each industry, and typically with a powerful allegiance to incumbents (Winston, 1986).

But today, the technologies of telephony, mass media, and computing increasingly cross the borders of their traditional business arenas. Would-be entrepreneurs, within and without central industry positions, increasingly chafe at regulatory regimes designed for a former era and oppose opportunities for others. . . . Those regimes emerge from a welter of places. They include, at the federal level, Congress, the Federal Communications Commission, the Department of Justice, the Federal Trade Commission, and the Department of Commerce. At the state and local level, Public Service Commissions and Public Utility Commissions have powerful sway over telecommunications, while municipalities have plenty to negotiate with any user of their rights of way, such as cable companies.

This state will continue. Under the new law, multiple jurisdictions remain, and industry rivals go on making the most of leverage won by pitting courts, legislators, and regulators against each other. But industry frustration with lack of clarity about the legality and regulatory structure of emerging technology uses was a powerful push toward the rewrite as it finally emerged.

Technological Innovation

Changes in the technical possibilities of telecommunications have been dramatic in the last four decades, building on a hefty investment in communications research during and after World War II. Those innovations have also changed the shapes of the industries involved and have introduced new players (Cairncross, 1997).

Technical innovations have brought new services and also have challenged the value of monopoly. *More, bigger, and faster* were key words for these changes. These innovations also made increasingly artificial the crafted distinction between common-carriage networks and editor-based mass media. These innovations made it possible to imagine (and even experience) communications networks that had multiple purposes and to imagine spectrum with multiple or shared uses.

Key technical innovations included satellites and digitally based information processing. Satellites permitted, among other things, vastly more efficient, over-the-air, point-to-multipoint transmission of large amounts of information. Satellites turned cable from a small-time, mom-and-pop local business dedicated to improving the television viewer's reception of over-the-air signals into a highly centralized industry featuring local delivery of satellite-delivered signals. Satellites made it economically viable for newspapers to produce regional editions across the nation, using satellite-delivered copy. Satellites generated new mass media services and, indeed, eventually, a new video platform in direct broadcast satellite, or DBS. Satellite access also changed the economics of telephone networks, vastly shrinking the costs of connection and shrinking as well the difference between local and long-distance service.

Digital processing, which is the motor of growth in computing, has been another major disruptive force in the organization of communications industries. The encoding of signals in simple, binary code, allowing computers both to compute and to communicate with great accuracy and speed, has rocked the way we do business in everything from stock trading to shopping for swimsuits and has powerfully affected all telecommunications businesses. It has squeezed and reshaped spectrum, it has multiplied the uses to which we put phones, and it has hosted a new mode of communication, namely, the many-to-many environment of the Internet. It has provided a common electronic language on the spectrum, making the spectrum far more mutable, permitting machines to talk to machines, and blurring the distinction between content and infrastructure on any system.

Perhaps most important, digital processing has changed the very characteristics of communications networks. Rapidly evolving computing that is based on digital processing has made it possible to decentralize networks. Many of the decisions once made in large centralized switches are now made at intermediate stops or even within the consumer's telephone. Along with increased flexibility and the potential to reconfigure the very shape of networks and subnetworks, decentralized digital processing has dramatically increased the amount of intelligence—or the ability to respond to input and take action—in communications networks. This innovation provides a fundamental challenge to the notion of common carriage, or the restriction of

network providers to transmission alone, because the clear lines between content and conduit have become muddied. Networks themselves have information, or content, built into them.

Related innovations have greatly, and suddenly, affected the variables of price, speed, and the cost of communication. Fiber optic wires, transmitting digital signals, vastly increased the capacity of wired networks. Compression techniques, ever in refinement, have permitted both increased speed of transmission and also new kinds of transmission. Wireless connections, in combination with wired networks, have permitted cheap, mobile communication in cellular phones as well as in data and even video transmission. Large businesses were the first beneficiaries of these innovations, and the incorporation of these innovations into business practice have driven further development, as well as the appetite for procompetitive policy (Harvey, 1992).

The elements of technological change that pushed toward rewriting the Communications Act were those that made it easy for telecommunications-based services to tap into existing networks and were those that potentially corroded the line between mass media and telecommunications. The first undercut the case for monopoly, and the second blurred regulatory categories. When a broadcaster was able to use part of available spectrum for non-broadcast services such as paging; when a phone company was tempted out of the common carrier box, maybe even to dream of offering cable service; when a cable network was able to offer phone service or Internet service to its customers, many different stakeholders appeared to redraw the rules. And when business—locally, internationally and virtually—had built telecommunications into its own infrastructures, all large users became invested in the prices and terms of provision of service.

The Political Process

The evolution of this rewrite legislation was, however, not primarily understandable as a result of technological innovation that was driving change, although technology transformation was important in it. As described by Robert Horwitz in his pathbreaking analysis *The Irony of Regulatory Reform* (1989), transformations in regulatory approach can best be seen as a political process. Summarizing the historical process of deregulation in infrastructure industries throughout the past three decades, he notes:

The reasons are, as usual, a complex mosaic of regulatory, political, economic, legal, and ideological factors. In telecommunications and banking they include technological changes as well. But . . . deregulation is at bottom a *political* phenomenon. Deregulation is basically a story of political movement from regulatory activism to regulatory "reform."

Nonetheless, deregulation *could not have occurred* without these supporting, underlying factors. . . . As a result [of the interplay between economic trends, political organizing, and legal actions], by the mid-1970s regulation came to be held responsible for the fall of American economic productivity. That ideological shift was surprisingly important, especially because it underlay the changing terms in which various political elites conceptualized regulation. (p. 198; emphasis in original)

Thus, the very notion of what regulation is and should be was at stake. Progressive Era federal agencies grew up around antitrust concerns generated by the monopolistic behavior of large national corporations. Such regulation safeguarded interests of small producers from large corporations. New Deal era agencies such as the Federal Communications [Commission] were mandated to protect and nurture specific industries. Such agencies ostensibly safeguarded the interests of consumers by providing the context in which dependable, affordable services could grow. The stability of this system “of mutual compromises and benefits to major corporations, organized labor, and even consumers” (Horwitz, 1989, p. 17) was irrevocably undermined in the 1960s and 1970s, with dramatic new technological possibilities. That instability was accompanied and facilitated by ideological ferment, in which the basic notion of what regulation—and even government itself—does came under revision. . . .

The Public Interest Beyond the Act

The Telecommunications Act of 1996 ensures that some kind of competitive telecommunications environment will emerge. But it is still not clear what kind of environment that will be, or what its advantages will be for social equity, democratic relationships, and the civil culture of a pluralist society. The Act ratifies long-developing trends toward a competitive marketplace, vertically integrated corporations, and a minimalist regulatory stance. It does not create a policy framework that resolves conflicts arising from a competitive environment, as the universal service debate demonstrates. It also raises questions about the capacity of government regulators to monitor uncompetitive behavior among the giants who are now unleashed.

If the most basic objectives of the 1996 Act are accomplished, then defining and acting upon the public interest in telecommunications become even more complicated, more contentious, and more public than ever before. FCC chairman Reed Hundt recognized this. As he put it succinctly on the eve of his departure from the Commission,

The primary job of the FCC Chairman historically was to give licenses to the airwaves to a limited group of folk and to rig markets so none would

ever do poorly. The good reason was to permit the firms to do well economically; the bad effect was a closed, oligopolized market with little diversity of viewpoint.

The primary job now ought to be the opposite: introduce risk and reward to all sectors of the communications business.

The problem then is how to promote noncommercial purposes—such as conducting civic debate about political issues or educating kids—without simply relying on a cozy partnership between government and a tiny group of media magnates. (Hundt, 1997)

That last problem has no easy answers. The preceding six decades had established no clear precedent about what noncommercial functions or social objectives are appropriate for government attention in communications policy. Instead, that history established that such concerns would be dealt with after the fact, accommodated at the margins, or made the subject of endless and ongoing debate. . . .

The emerging communications landscape is thus, unsurprisingly, impoverished in public sites or even noncommercial arenas of any kind. For instance, in the Act, public TV is simply treated as another broadcaster, potentially benefitting from digital spectrum (but not required to contribute to the quality of public life in any way as a result). Cable access channels that already exist are recognized but not encouraged or given a more general mandate. Schools, libraries, and rural health care facilities are given modest and oblique encouragement to build public relationships through a universal service provision that facilitates their access to advanced communications technologies. That provision sets aside nothing for equipment, teacher training, investment in community education, or civic activities that might make use of such networks.

There are no subsidies here, of course, for programming, production, or content creation associated with civic, community, or democratic behaviors and relationships. And there are no likely sources elsewhere in cultural policy. Such subsidy is being stripped away throughout the society. The National Endowments for the Humanities and Arts are both on the endangered species lists. Even the Department of Commerce's grants for demonstration nonprofit-sector projects in distributed networking (the so-called TIIAP, or Telecommunications and Information Infrastructure Assistance Program, grants) are held hostage to congressional whim. To the extent that there are economic benefits to the society from the changing terms of communications businesses, the largesse is thus carefully protected from falling upon the ground of daily political life. The notion of a protected electronic commons has been quashed, by corporations aspiring to be at once the shapers of culture and the delivery systems of it.

The sheer abundance of communications options is unlikely to lead, in itself, to formations of electronic commonses. The promise that burgeoning communications systems will create an abundance of access, making governmentally protected spaces and activities unnecessary, turns out to be hollow as the electronic universe expands. It is not merely that corporations that are developing new services are striving to develop proprietary gates and pathways through that electronic universe. In order to make use of any such common or public spaces, people have to have something to say, someone to talk to, and something that can happen. They need habits, knowledge, history, resources.

A minitest of the opportunities provided by open space was initiated when the FCC addressed the problem of using space set aside for noncommercial purposes on DBS. This was an issue raised in the 1992 Cable Act, then set aside because of legal action for several years. Finally, in 1997, there was, hypothetically, space for noncommercial and public purposes available on direct broadcast satellite services. Who, the FCC basically asked, wanted to use such space, and for what? Viable takers were few. The two entities with ready programming appropriate for the channel—a consortium of universities, and public TV—were long-time recipients of various kinds of public subsidy (Aufderheide, 1998).

At the same time, informational and communications abundance increases in the commercial sphere, often feeding social polarization. Broad discontent and unease does not stop, for lack of ways and places to resolve it. It gets expressed in clumsy policy. The bipolar approach to communications policy sets up a dynamic that pushes for new solutions. The deregulatory era may thus lead to renewed governmental intrusion. It may also create conditions for renewed civic activism around communications, as incoherent discontent is articulated and channeled. The quality of a new wave of regulatory reform will depend on the vitality, diversity, and vision of such civic activism.

Ironically, civic activism may be essential to the success of a much-vaunted competitive business environment. The principle of forbearance, so central to the regulatory logic of the Act, not only assumes the vitality of marketplace forces but implies a vital and active civic sector as a concomitant of functioning markets. And yet that sector is starved of resources.

Government will also continue to be a crucial tool of transition, as Gigi Sohn, executive director of Media Access Project, told an audience at the libertarian Cato Institute:

Government can play a constructive role in making markets work better, thereby lessening the need for government involvement in the future, and, in particular, obviating intrusive content-based regulation. It can do so by

ensuring that all Americans have access to the tools that are becoming more and more central to education, the economy, social interaction, First Amendment values and democracy. And it can do so by making more competitive markets than are currently dominated by entrenched monopolies. (Sohn, 1997, Appendix G)

Predictable cries of outrage at media concentration were common after passage of the Act, especially from journalists (Hickey, 1997; Schechter, 1997) and academics (Barnouw et al., 1997; McChesney, 1997). The Media and Democracy Congresses of 1996 and 1997 featured vigorous denunciations of media fat cats by left-wing journalists, and at Cultural Environment Movement meetings speakers denounced commercialism in media as a kind of pollution.

But far harder for media activists, noted consultant David Bollier, was finding “a coherent, positive *vision* that can help mobilize and unify diverse nonprofit players,” in comparison with the “intellectually respectable, highly marketable consumerist and entertainment-oriented vision of the new media” put forward in the corporate world. What was needed was a “sovereign citizen vision” of community and civic life supported crucially by a web of accessible electronic pathways and services. To do that, he argued, there needed to be more, larger, more committed and visible constituencies than civic advocates had been able to mobilize for anything other than consumer price issues (Bollier, 1997). . . .

Advocates of civil society, concerned with communications policy, will have their hands full in coming years. It will be crucial to assess the viability of the association between the public interest and a competitive environment in communications policy. Is competition truly developing? Does it strengthen the economy and workers’ and consumers’ options within it? Is that competition also fostering or permitting democratic behaviors, public life, and mutual respect? It will also be important to use, even if in demonstration projects, emerging communications to foster habits and relationships of civil society. Systems that have already become the lifeblood of global business surely have applications for vital democratic practices in the global community. Finally, it will be important to promote policies that pay for such experiments in public practice.

The passage and implementation of the legislation revising the platform for U.S. communications policy has demonstrated a continuing and even increased need for social participation on familiar issues of industry structure. It has demonstrated a continuing need for regulators to monitor performance by media corporations of their public obligations. Finally, it has shown the growing importance of the complicated fact that communications systems transmit not merely information but culture.

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33

THE WATCHDOG ROLE OF THE PRESS

W. Lance Bennett and William Serrin

Editor's Note

Power corrupts. Keeping a democracy healthy, therefore, requires institutions that monitor the actions of political elites. The news media fill that watchdog role in the United States. Regrettably, as W. Lance Bennett and William Serrin point out, their performance record has been quite spotty. They have scored many important successes, exposing corruption and mismanagement, and corrective action has often followed. But failures have been more plentiful because investigative journalism is tedious, time consuming, and very costly. The authors suggest remedies for this troubling situation, but the obstacles to effective watchdog journalism currently are so enormous that the chances for success are slim.

When this essay was written, Bennett was the Ruddick C. Lawrence Professor of Communication and a professor of political science at the University of Washington. He had already authored numerous important books covering political communication issues. He is also the founder and director of the Center for Communication and Civic Engagement at the University of Washington, which sponsors communication research and policy initiatives that enhance the quality of citizens' political engagements.

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Source: Excerpted from W. Lance Bennett and William Serrin, "The Watchdog Role of the Press," in *The Institutions of American Democracy: The Press*, ed. Geneva Overholser and Kathleen Hall Jamieson, New York: Oxford University Press, 2005, chapter 10. Copyright © 2005 by the Oxford University Press, Inc. Reprinted by permission of the Oxford University Press, Inc.