

CURRENT PROBLEMS

TELEVISION SERVICE AND THE FCC

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PREFACE AND CONTEXT

NICHOLAS JOHNSON*

It was with pleasure that I accepted an invitation from the editors of the *Texas Law Review* to write some brief introductory comments for their special broadcasting issue. A short ten years ago I was in their place, waiting on authors to honor their commitments so we could put together what we thought at the time was a pretty good volume 36. Now at the end of a decade's odyssey I am back, due to the coincidence of my being a Federal Communications Commissioner at the same time the editors of 1968 decided to do a special broadcasting issue.

But maybe it is more than a coincidence—for I see on all hands an awakening to the realization that the revolutions of our time are inexorably intertwined with the communications revolution. Like Texas' prominence in the Texan's map of the United States, I feel that the FCC is very much at the center of "what's happening"—or ought to be. And it seems altogether natural to me that today's college and law school graduates should sense this, too. I was 23 when I left Austin in 1958 for my first job, as law clerk to U.S. Court of Appeals Judge John R. Brown in Houston. I could remember what it was like for a family to gather around the radio set, listening to Bob Hope and Jack Benny. Today's 23-year-olds, born in 1945, have no such memories. They are America's first television generation. "Radio" has become, for them, no more than portable muzak and commercials from a pocket "transistor"; television is the family entertainment. How natural that, once given the intellectual tools, they should want to turn them to an understanding of the forces that make television what it is. How pleasing that the *Texas Law Review* would claim the distinction of being among the first to take on the task.

One of the forces shaping television—whether for good or ill will be left to the reader's judgment—is the Federal Communications Commission. And so this issue largely devoted to an exposition, and critique, of the FCC's relation to television.

The issue has been—wisely, in my judgment—quite limited in its attempted coverage. It deals with the FCC's regulation of television (almost to the exclusion of radio): commercial and educational, pay TV, and cable television. There are sections on comparative hearings in awarding licenses, and the new development in the law of "standing." There are major discussions of programming regulation and the growing concentration of control of the mass media. Finally, there is an

* Commissioner, Federal Communications Commission.

effort to put the FCC's role in a perspective that takes account of such other forces as the Justice Department, Federal Trade Commission, and industry self-regulation.

It is difficult to slice the spongy wad of chewing gum that is "national communications policy" and come up with a chunk that is easily detached and obviously unrelated to the rest. The Ford Foundation domestic satellite proposal is mentioned in this issue as a possible means for funding educational television. That it is. But it is also a part of a package that includes such issues as: the structure of the common carrier industry (should ATT own all domestic satellites or should anyone be permitted to own one?), the rates to be charged (should savings be shared by earth-bound communications users, or passed on to the satellite's principal customers: broadcasters?), our international relations and satellite development throughout the world (should a U.S. domestic satellite system be operated by Intelsat?), and so forth.

Here is another example of "communications" confusing inter-relationships. Although 95 percent of the most valuable frequency space is given over to commercial radio and television, there are many other uses of this valuable national resource: mobile radio (air traffic control; fire truck, police car and taxicab dispatching; personal paging devices, and hand-held two-way radios), remote control devices (natural gas pipeline pumping stations, garage door openers), scientific research and experimentation (radio astronomy, radio amateurs), and national defense (weapons systems, as well as more conventional military communications needs). Throughout broadcasting's history higher and higher frequencies have been opened up, first experimentally and then to commercial use. UHF television is one example; so are the uses of radar, microwave relay (a common substitute today for telephone cable), and satellite communication (in effect, a flying microwave relay tower). The fact remains, however, that the pressures to reassign broadcasting's frequencies are intense, and increasing. And this is a factor that a national communications planner must keep very much in mind when evaluating the national benefits and costs of cable television, and the existence of "local service" by 7,500 radio and television stations (whose national programming product could be provided by satellite-to-home or cable systems).

Telephone regulation is another major FCC responsibility, seemingly unrelated to broadcasting, that is (appropriately) not treated in this issue. And yet telephone rate structure and service affect many aspects of our economy and lives: "Inward WATS" ("free" long distance calls to a national number from anywhere in the country) can significantly affect the branch office operations of an airline or a Sears, Roebuck; the fact that it costs more to call Washington from Alaska or

Hawaii than from London affects the quality of citizenship in the "United" States—and our relations with England; the lower evening rates (which simply serve to increase telephone company revenue by encouraging use of otherwise idle plant) affect relations between far-flung family members and friends. It is in this sense that telephone regulation also has an impact on broadcasting: The relatively low monthly rates offered the networks may serve to discourage new, part-time networking efforts because of disproportionately higher lines charges; the high rates for special television "remotes" (about \$1 per minute per mile—\$10,000 for 3 minutes 20 seconds, Los Angeles to New York) is a factor in limiting most live television news to Washington and New York. (Most "television news" from elsewhere is film or tape brought to New York by airplane.)

Satellites, mobile radio, and telephone regulation are all examples of areas of FCC responsibility that bear a relation to broadcasting. They serve to illustrate the truth that a nation's communications policies are a single package, and a package that affects every facet of the life of that nation. Trying to make communications policy recommendations by looking at one facet alone is as futile as it is dangerous. But it is also inevitable, for one cannot begin everywhere at once.

This issue also fails to deal with the nitty-gritty of day-to-day FCC practice. It does not purport to be a how-to-do-it manual for those seeking to buy a station, move a transmitter, or choose an attractive color paint for their antenna tower. Nor does it purport to be a lawyer's, economist's, sociologist's, or psychiatrist's exploration of what's really wrong with the FCC.

What it does attempt is to give the reader a once-over-with-footnotes on some of the major issues currently confronting our nation, and the FCC, regarding the growth and regulation of television. That it does well.

The FCC bears substantial responsibility for the present design of our communications system. All along the way we have chosen among technological alternatives—and once these choices are made it is difficult and costly to go back.

The cable television case study presented in the succeeding pages is illustrative of the Commission's problems in making decisions about technological alternatives. But these cable problems will be dwarfed by the complexity of the alternatives presented by computer-communications systems, improved switching for telephone, micro-miniaturization and large scale integration in electronic circuitry, and the vastly improved transmission capability of satellites, wave guides, and laser pipes.

What the sections of this issue demonstrate so well is that unless

there is a vastly altered FCC response to technological change, this nation may well find itself with communications systems that only by chance will match the needs or the opportunities of coming generations. Perhaps it is fancy to expect a governmental agency to deal with the future creatively. We all tend to prefer known evils and worlds to unknown ones. Thus one *could* describe FCC cable television policies as blatant protectionism and the status quo, that has been achieved not only out of syncophancy to the broadcasting industry but out of ignorance of the future and fear that the regulatory agency may choose unwisely. We may confront a built-in bias against timely technological change.

We do not as yet possess the techniques or data for systematically evaluating alternative policy choices in the design of communications. But we can certainly do better than we have been doing. The historic alternative for our economy—upon which much of its dynamism and creativity rests—has been the opportunity for adventurous entrepreneurs to present newer (or different) technology and see if it will supplant the old—without fear of government or private inhibitions to progress. Perhaps there needs to be a more sympathetic response on the part of the Commission toward viable technological alternatives—and decisions which frustrate change made only under the most compelling circumstances. Such an attitude would be clearly preferable to an ill-informed defense of present arrangements.

Reliance on market or competitive forces may seem unduly “conservative” or “classical.” In fact I would prefer a greatly enhanced FCC capability to evaluate truly in all their facets the technological paths before us—and in fact to develop alternatives which are not naturally forthcoming from the private sector. But that does not now exist. And it will not until more young law review editors decide to take on the challenge of training themselves for this task, and—most significantly—contributing to the FCC’s day-to-day actions the kind of independent, intelligent critique that has done so much to keep our judicial system vibrant and responsive.

As I hope my comments demonstrate, I am reasonably enthused over the contents of this issue. I have not, of course, edited the material, nor do I agree with all that is said—but, then, I do not agree with all my colleagues say about communications policy issues either. I do appreciate and applaud the efforts of these bright young people, thinking and writing about one of the most crucial segments of the society they are about to enter professionally. There is a freshness and spontaneity about these articles—and I am confident that their authors and readers alike will benefit from this project.