

# Driving Under the Influence: The Role of Policy in Media Convergence

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## ABSTRACT

There is little doubt today that media are converging, and will continue to do so. While media convergence is arguably driven primarily by technological change and resulting economic forces, policy has often been influential in the process over time.

There have been policies directly addressing convergence, both negatively (bans on cross-ownership or market entry), and positively (opening markets, setting cross-market standards, mandating access). At times, old media have sought to use policy to protect markets and their monopoly power, just as new players have sought to have policy open markets for competition. In addition, a range of media, technological, economic, and information policy has had indirect impacts. Industrial and technological research policies can result in the development of new media and can shift costs and impact on barriers to entry. Social policy can encourage access and openness. Intellectual property policy can open or seek to limit new uses of information and media.

In addition, policies can often conflict in purpose and impact, or may result in unintended consequences. This is particularly evident in media and information policies attempting to deal with complex and evolving media and information markets. Social and economic policy generally works by seeking to encourage or discourage certain behaviors. However, policymakers may base their policy on inaccurate or incomplete understanding of the real world and its interactions. In such cases, policy may have unintended, even perverse, impacts.

This paper will review the role of policy in the drive to media convergence in the United States in the last half-century, and how policy has interacted with technological, economic, and market forces in the drive to convergence. We will examine the direct and indirect role played by various policies in influencing convergence, and discuss their relative effectiveness, and what implications can be learned to help develop more effective policies in the future.

## **Driving Under the Influence: The Role of Policy in Media Convergence**

There is little doubt today that media are converging, and will continue to do so. What is somewhat less clear is what “media convergence” means, what forces are driving convergence, and what roles governments and societies can play in shaping the evolution of media. And, of course, what media convergence means for individuals and societies. If there is a role for governments and civic society in shaping what “media convergence” will look like and its impacts on individuals and societies, it is through the promulgation of policies. This paper will examine the role played by policy in the rise of media convergence.

Policy is sometimes defined as government actions directed towards the achievement of specific goals. Certainly there have been policy actions aimed directly at encouraging aspects of media convergence. But to the degree that media are converging, they are doing so not merely from such policies, but as the consequence of a number of social, political, and economic forces, and enabled to a large extent by technological innovations; all of which have been influenced directly and indirectly by myriad policies over time. Policies can impact directly, indirectly, or as the unanticipated consequence of policies directed at other goals. To understand the broader impact of policy on media convergence, then, one has to go beyond recent media policy directed at encouraging media convergence. Still, the number of potential policy influences is enormous in a complex social system. Still, the guiding policy philosophies can be identified, as well as key policies and policy shifts that are likely to have significant influence on the underlying forces and factors promoting media convergence.

Such an examination is not merely an academic exercise. Effective policy needs to be founded on a thorough understanding of the issues addressed, and the forces at play. Otherwise, efforts at influencing behavior can be counterproductive. In addition, policy should be framed within larger political-economic paradigms, if one seeks to avoid disruptive conflict.<sup>1</sup> This paper will thus examine the historical philosophies underlying U.S. communication, information, and media policy, address major media policies shaping fundamental structures, and consider how basic policy approaches in other areas may influence the various forces and factors shaping media convergence, in an effort to illustrate the role of policy in media convergence.

What are those basic forces driving convergence? Clearly, one of the primary forces in modern media evolution is technology. The rise of electronic media, and the development of digital technologies provided the mechanism for allowing content to be separated from medium and physical formats. Technology allowed content to break free from media in new ways, and allowed old market barriers to be transcended. Advances in technology also tend to shift costs, further shifting media behaviors and market structures.

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<sup>1</sup> Such conflict may often arise with international efforts at policy, where countries may not share underlying politico-economic paradigms.

Another driving force, one favored by political economists, is the economics of modern media systems. Economic factors certainly are one of the primary motivating factors for both individual and firm behaviors, and are interrelated with market and ownership structural factors. As noted above, technological developments can shift cost structures. Such shifts impact on both supply and demand, and if they are significant, can empower new media, lead to new uses for media content, and/or transform markets.

There is quite a substantial literature examining the impact of technological and economic factors on the evolution of media, and on “media convergence.” These seem to point to technological factors, the rise of computing, information processing technology, and digital media in particular, as fundamental precursors permitting media convergence. While providing the potential, media evolution are shaped more by a variety of social, economic, and political forces (Bates, 1993; Beniger, 1986; Flichy, 1995; Green, 2001; Innis, 1991; Pool, 1983; Schiller, 1969).

While technology and economics may be the primary drivers of convergence, policy is sometimes identified as a third driving force, particularly in terms of opening regulatory barriers that may have limited convergence (Hamelink, 1988; Pool, 1990). But policy has often had an impact on the development of media, both directly and indirectly and over a much longer period of time (Borchadt, 1970; Faulhaber, 1987; Horwitz, 1989). Further, the influence of policy is not always limited to specific media policy. Policy can influence indirectly as well as directly, and policy may also influence as unintended consequences of unrelated actions.

Indirectly, technological developments and economic factors do not arise from vacuums; rather, they develop within social systems, and can be influenced both directly and indirectly by policy and other social factors (Brown and Duguid, 2002; Rogers, 2003; Slack, 1984). In particular, there is an interrelationship between technology and economics, as technological advances can change cost patterns, impact market definitions, and influence the nature and size of scale and scope efficiencies (Fidler, 1997).

This paper will focus on the role of policy in the drive to media convergence in the United States in the last half-century, and how current and historical policy has interacted with technological, economic, and market forces in the drive to convergence. We will examine the direct and indirect role played by various policies in influencing convergence, and discuss their relative effectiveness, and what implications can be learned to help develop more effective policies in the future.

### ***Fundamental Policy Frameworks***

In this section, we will examine some of the fundamental policies underlying government actions towards media and media convergence in the United States.

It can be argued that communication, information, and knowledge were all highly valued by the Founding Fathers. Understanding that the success of a democracy rides upon the electorate’s ability to make informed decisions, they saw the value of supporting political communication and open debate. Principles of the Enlightenment, fostered by leaders such as Benjamin Franklin and Thomas Jefferson, emphasized the value of encouraging education and the continued development of new ideas and inventions.

These provided a strong foundation for arguments that one of the major roles of government is to facilitate the provision and communication of useful knowledge. There was also a recognition that it would take a truly national communication system to help bind the former colonies together and help to develop a national identity.

At the same time, they also saw the harm that could result from placing limits on expression, communication, and education, whether from the imposition of a state religion, the whims of authoritarian governors, or inefficient lines of communication.

These concerns converge in the concept of the marketplace of ideas. The “marketplace” ideal borrows heavily from Adam Smith’s free market economics, in the notion that in a free and open market, competition will preclude the ability to control the flow of ideas. Smith’s notions of free markets and individual choice fit well with the guiding philosophy of libertarianism, as well as classical Enlightenment liberalism. It also fit in with the largely rural economy of the time. On the other hand, the open-market approach was not universal; there was recognition that America, like many former colonies, needed to develop native markets and industries. Economic policy promoting development was not wholly inconsistent with open market principles; in part, local economic development could be encouraged by fostering innovation, and where there was government intervention, it was often minimal. Concerns over excessive state power were dealt with by limiting the power to act for or against specific firms or individuals. Federal policy more typically fostered developments of new industries and markets rather than trying to preserve old, failing, ones.

Economic principles were also at play in the idea that increasing the value of ideas will encourage their creation and dissemination. This led to an emphasis on finding mechanisms to reward creators and innovators. Again, the marketplace metaphor provided a mechanism. If ideas could be treated as economic goods, then the open market could be trusted to reward good ones and encourage further efforts. The marketplace also addressed concerns about power; judgments of value of information and ideas would be made by people as individuals, rather than imposed by authority. Again, at that time, such examples of authority and power tended to reside in the state and religion. Leaving such decisions to the market limited their power.

There is general scholarly consensus that the ability to control communication flows grants a degree of political power to those with control. Thus, the question of who is permitted to control media is fundamental to most media policy debates, even if not publicly emphasized, or even acknowledged. The early U.S., emerging from a revolution spurred at least in part by heavy-handed attempts of colonial government to control and limit communication, addressed the question of control directly. The Federalist papers track much of the debate over how much power to cede to the new federal government, and those favoring limits won the day. Even so, many felt the new constitution did not do enough to restrict the government’s power, and proposed a set of Amendments to clarify the limits of federal control. As a result, the U.S. Constitution is quite distinctive in only ceding a limited set of powers to the new government, while the First Amendment directly prohibits government control of religion, speech, and the press.

How did this concern over federal power manifest itself with the marketplace of ideas concept? Remember that at this time, the most common forms of media

communication were by printing, and the technology and economics of printing of the time precluded any serious degree of consolidation. Printing was generally competitive, and even where the local market was insufficient to support true competition, the mails and public debates and discussions provided access to alternative information sources. In 18<sup>th</sup> century America, the primary potential source of the power to control media and communication was government, not big business. No business was big enough to be perceived as a threat.

Thus, the guiding principles of American information, communication, and media policy was to promote and facilitate the generation and communication of information, while simultaneously refraining from exerting any control over those flows. This underlying paradigm can be seen as the guiding principle of information and media until the early 20<sup>th</sup> century. Media policy was, in that sense, generally consistent with fundamental economic and political philosophies. The founding fathers placed a lot of faith in the ability of the marketplace of ideas to function effectively and appropriately, albeit at times with a little help.

### ***The U. S. Constitution and Early Media-related Policy***

The importance placed on promoting communication and information is illustrated by the fact that two of the enumerated powers granted to Congress are related to communication. Article 1, Section 8 of the Constitution grants Congress the power to establish a postal system, and mandates passage of intellectual property rights “to promote the progress of science and useful arts”. Further, among the Bill of Rights added as clarification of other principles, the First Amendment offers guarantees of rights to exercise free speech, and for a press free from state control.

The U.S. Postal system actually predates the Constitution, being established initially by Congress under the Articles of Confederation. At a time when most enterprises were local, the postal system was re-established as a federal monopoly, in large part to seek uniform national standards and reach. While there was still concern over providing too much control with a state monopoly, the benefits of being able to establish an efficient communication system ruled. Still, legislation also limited the opportunity for the state control was limited by mandating equal treatment of messages, regardless of the actual content, and prohibiting postmasters from opening mail.

While they were at it, Congress also established the first federal media subsidies, giving newspapers the ability to mail copies to other papers free of charge. The subsidy was general; it applied to all newspapers regardless of content. This subsidy, while technically distorting the economic marketplace, was thoroughly consistent with the “marketplace of ideas” concept. It facilitated the transmission of news and ideas, helping to foster debate, inform the public, as well as help build knowledge of other parts of the young nation and a sense of community.

There was one early aberrant policy: the Alien & Sedition Acts of 1798. Under threat of war with France, and strong political opposition at home, Federalists used the acts to suppress several political newspapers. However, the Acts and their application proved largely futile, the Federalists who passed them were voted out of office in 1800 and the laws expired. The Acts, and their impact, though, can be said to have

strengthened concerns about abuses of state power in the early 19<sup>th</sup> century, making Congress more skeptical about direct intervention in media and communication systems.

When Morse sought funding and sponsorship for his first telegraph some decades later, Congress gave him some development funds, but later refused opportunities to directly develop and operate the system. This set a pattern for new media: while the government may offer support for innovation and early development, it was hesitant to allow state control. Following this system over the years, various emerging electronic media were sometimes granted subsidies to develop or expand systems, but in large part, the government refrained from seeking to directly control or operate the system. This distinguished the U.S. from other developing national policies with respect to emerging communications systems..

The telegraph, and later the telephone, posed a degree of competition to traditional mail services. Differences in state policy towards their development reflect some of the underlying differences in guiding principles. European countries tended to see the telegraph, and later the telephone, as extensions of (as well as competition for) their postal systems. As such, their policy approach was to seek government control of emerging communication systems, following the postal model. States also used anecdotal reports of abuse by private operators to justify the need for state oversight. Combining services under a single monopoly also allowed states to limit competition and preserve existing infrastructure investments (Bates, 1997). This approach reflected the more paternalistic philosophy of government evident in most of Europe.<sup>2</sup>

In the U.S., however, the presence of substitutes as competition for the postal system was generally seen as a positive thing. Rather than encouraging the rise of a government monopoly, U.S. policy favored keeping the various media separate and encouraging competition among them. The new media were allowed to develop in private hands, although it was clear that there were aspects of natural monopolies in the technologies and economics of wired telecommunications and that concentration and monopolies were likely. As these developed, policies aimed at limiting abuse were extended from postal policy and railroad regulation. This “common carrier approach” (universal access, no preferential treatment, privacy of communications, etc.) became a fundamental principle for interactive media. The principles of the postal system were extended to these media if not the ownership structure.

The U.S. approach to PTT reveals one of the fundamental differences between the old European and the old American guiding philosophies. While both were concerned about the potential to control communications, European political philosophies tended to place greater faith in state interests than in the private interests of firms and individuals. In the America of the 18<sup>th</sup> and 19<sup>th</sup> century, state control was feared more than private control.

This started to change somewhat with the rise of industrial and transportation monopolies in the late 1800s. After several examples of various capitalists seeking to gain control over industries and markets, Congress passed a series of anti-trust

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<sup>2</sup> In addition, Europe at that time arguably had had more experience with the potential of large private enterprises being able to exert degrees of control (although usually with state support, or at least acquiescence).

legislation. The open market remained an ideal, but there was recognition that reality might differ in some cases, and there might be a need for greater oversight. Concern over private power in general manifested in a range of anti-trust legislation, although in practice it was recognized that natural monopolies might best serve the public in certain cases. In telecommunications policy, where wired telecommunications systems seemed to epitomize the concept of “natural monopoly,” this led to the guiding principle of regulated monopolies that arose in the early 1900s. Monopolies were not only allowed, but increasingly mandated as the efficient means of operation. However, the ability of the monopoly to control content, limit service, or set prices, was severely restricted through the combination of “common carrier” regulations and price controls. As a further limit on federal power, federal control was limited to interstate telecommunications, while the states maintained oversight and price control for local and intrastate services.

Despite those general concerns over private monopolies, the U.S. had several opportunities to assume control of the telegraph, telephone, and broadcast systems in the early twentieth century. While the state did assume some control during World War I, in the end, the systems returned to private control, although under more formal state regulation. It would seem that monopoly status or not, the guiding principle remained a preference for private over state operation.

The rise of broadcasting brought similar concerns, but a different set of technological limits, economic implications, and uses emerged. The pre-WWI emphasis on radio as “wireless telegraphy” or “wireless telephony” shifted to “broadcasting.”<sup>3</sup> In a sense, broadcasting was more like newspapers and magazines, distributing a set of content widely and publicly, than the telephone and telegraph’s focus on sending private messages between individuals. Further, wireless systems could accommodate multiple competing systems, depending on the bandwidth allocated to that service. There was no efficiency in monopoly service. Over time, the available bandwidth increased to allow a number of competing signals, although after AT&T demonstrated the potential profits of running a broadcast station, it was clear that in larger markets at least, demand would outstrip supply. Thus, a different policy approach seemed to be called for (Pool, 1983).

Early U.S. radio policy regarding public uses was eminently laissez-faire. Operators required licenses, but no criteria were established with respect to who could obtain a license, or on limiting the number of licenses granted. In the Zenith decision, the Courts affirmed that the regulatory authority of that time had no power to deny or restrict licenses or uses of radio spectrum. With a growing industry threatened, Congress acted quickly, passing the 1927 Radio Act as a temporary measure, following it up with the more comprehensive 1934 Communications Act that combined oversight and regulation of both wired and wireless telecommunications under the Federal Communications Commission.

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<sup>3</sup> The focus of our discussion will be on radio and public communication, and thus on broadcasting. Radio is also used for a range of private and mixed uses that fall under the notions of wireless interactive communications.

## **The Communications Act of 1934: A shift in paradigm?**

Federal regulation of electronic media was aggregated and formalized under the 1934 Communications Act. While continuing the “common carrier” approach for wired services, the 1927 Act had developed a different approach for broadcasting policy, and that approach was continued and refined in the 1934 Act. This approach continued the emphasis on private operations, but with a degree of federal oversight “in the public interest.”

The Act continues many of the fundamental guiding principles. It presumed that public media (media used and accessed by the public) should be primarily local, and privately owned.<sup>4</sup> It included, as an explicit regulatory goal, the promotion and continuing development of electronic communication systems.<sup>5</sup> Limits were placed on the ability to control content through the continuation of the common carrier model for telephony, and by explicit language limiting the FCC’s ability to censor broadcast content (Section 326). This was a deliberate choice to follow the marketplace model with its focus on private ownership and operation rather than public control, and to minimize the capacity for federal control over communication content.

Part of the act focused on telephony and the residual telegraph wired telecommunication systems. Federal regulation focused on standards, interoperability and interconnections, and interstate uses and pricing. Price and service standards were nominally handled by the individual states, although following federal guidelines. Policy focused on achieving universal service, and on price controls. Even so, pricing rules in the early years was used not only to recover costs, but in aid of general policy perspectives. In the first part of the 20<sup>th</sup> century, the allowable level of profit was based on the level of continuing investment rather than sales, providing an incentive to invest in expanding service areas and to invest in technology improvements. When combined with AT&T’s early emphasis on using patent monopolies to preclude competition, this established an emphasis on continued research, innovation, and system improvements that made the U.S. telephone industry among the best in the world.

Later, regulators limited telephone companies to monopolies, at least in part in order to manipulate prices to meet social policy goals.<sup>6</sup> Cross-subsidies were used to promote the universal service concept, subsidizing consumer basic access at the expense of business and long-distance service, and setting regional rates to mitigate service costs differences. Other specific policies helped to subsidize telephone companies in rural areas and extend service into other high-cost areas.

The broadcasting portion of the Act, however, can be seen as a partial shift in paradigm, or at least a recognition that technology imposes market limits. In other

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<sup>4</sup> The presumption of private ownership did not preclude various other public groups (cities, educational institutions, etc.) from acquiring and operating media. Nor did the focus on localism preclude interconnections in regional or national networks. Rather, the focus was in contrast to the single national state-owned system, which seemed to be the other viable alternative.

<sup>5</sup> Section 303(g) directs the FCC to “study new uses” of electronic media technologies. It’s specifically important to note that this wasn’t phrased as protecting or expanding existing industry, but promoting new uses and new technologies.

<sup>6</sup> Monopolies provide the market power to manipulate prices. Cross-subsidies are less practicable in competitive markets.

words, that the “open and free markets” model may not be appropriate for broadcasting. Somewhat inaccurately phrasing this as a concern over scarcity,<sup>7</sup> there was a recognition after the turmoil of 1926/27 that broadcast licenses needed to be limited, and that regulatory barriers to entry might justify some degree of control in the public interest.

Still, early actions of the FCC and its precursor agency still reinforced the guiding policy of preferring private to public control. As a matter of policy, the agency preferred private commercial operators to public owners in early licensing, arguing that public entities tended to more narrowly focus their content offerings and audiences. When reauthorizing early licenses under the new regulatory scheme, the FCC had an official preference for private commercial ownership over public or non-profit operators.<sup>8</sup> Preferences remain, even today, for potential operators with a history of competent broadcast operations.

Still, there were concerns about control. As the common carrier model did not fit with broadcasting as it developed in the 1920s, the FCC opted to give the broadcaster control over their content, but subject it to oversight and review. While censorship was prohibited, the FCC was given the power to penalize operators for behaviors not in the public interest, even to the point of revoking licenses. In addition, diversity was included as one of the licensing preferences; after a few years this was formalized as rules limiting multiple ownership. While the limits changed over the years, they still remain.

The FCC’s actions related to broadcasting in the early years tended to favor large stations and networks, and the corporate giant RCA in particular (Quinlan, 1974, Ray, 1990).<sup>9</sup> Commissioners and staff shuffled between the FCC and the larger broadcasting firms. Congress occasionally voiced outrage, but rarely intervened except to insure their ability to access broadcast stations for their election campaigns. While perhaps not reflecting an official policy approach of corporatism, neither was it inconsistent with the general philosophy of preferring private to state control.

These concerns, and a variety of changes in media systems and technologies, started raising a variety of concerns by the early 1960s, although these would tend to remain unresolved until the 1980s. The three major issues were the growing behemoth that was AT&T<sup>10</sup>; the development of computers and computer networking, and the growth of the U.S. broadcasting system. The FCC had not only expanded the AM band, but added FM and television services. Cable was also beginning to make inroads as an alternative to traditional over-the-air broadcasting for the delivery of audio and video content. And all of it was making levels of profit that encouraged conglomeration. Approaches based on

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<sup>7</sup> Scarcity is not an appropriate justification, as scarcity is a normal condition in economics and markets. Time is scarce, money is scarce, goods are scarce. This term is used more to reflect the reality that technological and policy impose limits on market entry. The problem is not that broadcasting is scarce, it’s that broadcast markets are not open.

<sup>8</sup> The basic argument was that commercial operators, by seeking broader audiences, would serve a broader public than the narrower special interests of public, educational, or other noncommercial operators. As the number of available licenses in an area were still very limited, this was not an unreasonable assumption for the time.

<sup>9</sup> A significant exception was the 1941 Chain Broadcasting Report.

<sup>10</sup> Concerns emerged from telephony operations, but from AT&T’s dominance in related markets such as equipment manufacturing and phone book publishing, and its use of its monopoly power in those markets. By the 1970s, the highly profitable long distance market had become highly competitive..

the premise of a relatively few locally owned and operated stations offering general interest programming did not seem to address growing power of networks and station groups.

The U.S. faced the dominating monopoly status of AT&T by instituting a number of anti-trust suits. Early efforts resulted in promises of good behavior. By the mid-1960s, the FCC started experimenting with chipping away at the monopoly directly, allowing competition to enter aspects of the telephone systems. Finally, litigation in the early 1980s gave AT&T an ultimatum. It could operate as a monopoly in regulated markets, or it could operate in competitive markets. It would not be allowed to operate in both. To those who hadn't been following the international trends towards privatization and competition in telecommunications, AT&T's decision to divest itself of its regulated telephone operating companies and focus on competitive markets came as a shock.

The shift from a preference for regulated monopolies was further reflected in how the FCC dealt with new media. As they developed standards and systems for cellular telephony, direct broadcast satellites and satellite radio, the services were designed to provide at least two competing service providers, in addition to the close competition provided by existing services.

The growth of broadcasting also made it more competitive, at least in some ways. While regulatory barriers to entry still existing, the number of stations rose significantly throughout this period, providing local audiences increased choice. Cable not only expanded station reach, but brought new programming options. Finally, technological improvements in transmitters and receivers allowed additional stations to be allocated within existing bands. With more stations and options in markets, new questions arose.

First, more stations meant that there was room for narrowly focused programming without diminishing general interest options. This allowed the FCC to promote diversity in service as well as diversity in ownership. Policy started to shift to how well were broadcasters serving special interests (children, minorities, etc.) as well as the general public. The FCC began to exert influence over content. The FCC also attempted to control the emerging cable industry, primarily through content limits. These early attempts seemed to be aimed more at protecting broadcasters from cable than serving the public, and were hampered by the fact that cable services fit the definitions of neither wired telecommunications services (at least as defined in the 1934 Act), nor broadcasting. Congress backed and funded the development of a public broadcasting system; although it was careful to separate funding from operations and content.

Both sets of actions were debatable extensions of the powers granted by the 1934 Act, and the FCC went back and forth with the courts over the validity of these approaches. The FCC was able to sneak the Prime-Time Access rule pass review by phrasing their control on the basis of program source, rather than content, and anti-trust concerns. The cable issue was finally resolved with the 1984 Cable Act, which granted FCC oversight of cable systems. Struggles over the level of FCC oversight over programming continued, although the 1990 Children's Television Act finally provided explicit authority to mandate levels of at least a programming format. Authority to place general program mandates and limits were also included in the 1992 Cable Act, and the 1996 Telecommunications Act.

The increase in the level of acceptable oversight may reflect an underlying shift in philosophy about control. Critical scholars have railed against corporate interests in general, and several have raised particular concerns about media (McChesney, Schiller). Bagdikian has made a career of tracking what he sees as growing levels of concentration and conglomeration in media. And certainly, in at least some ways and in some measures, levels of concentration have increased. On the other hand, one can also demonstrate that the number of alternative information sources available to the public has significantly increased. There is also the often unspoken question of what standard for concentration (or diversity) should be applied. What remains unclear is whether concentration and conglomeration has negatively impacted programming, and whether the state or the market is the better judge of what is in the public interest.

The other general policy shift actually derives from that question. While deregulation efforts at the FCC started under President Carter,<sup>11</sup> two Reagan appointees to the FCC began to push for a more fundamental policy shift. Looking at the issue of how to determine public interest, and the growth in the number of outlets, they argued that broadcasting was now competitive enough that the marketplace could be trusted to assure behavior in the public interest. Similar arguments were used in the FCC's decision to drop the "Fairness Doctrine."

Certainly, they had evidence that the markets were increasingly competitive, as profit margins began to decline over the next few decades.<sup>12</sup> What was more debatable to some was whether the public interest was what the public wanted (which an open market should provide), or what the public needed (which also raised the question of who decides what is needed). The market-decides approach clearly draws upon the root "marketplace of ideas" philosophy, and the tendency to prefer private to state operation. The fact that this view was challenged, and remains so, is another indication that the underlying policy philosophy may be shifting.

## **Promoting development: Computer and Digital Communications Policy**

Let us step back a moment, away from traditional media. Certainly, one of the driving technological forces towards media convergence is the rise of digital computing and the development and diffusion of computer networks. How has policy shaped these emerging communication systems? Do they reflect the underlying media policy philosophies, or are those policies driven more by other concerns?

In general, economic policy in the United States promotes innovation. Patent and copyright legislation provide economic incentives for innovation. The state historically supported not only education, but higher education that includes an emphasis on research and the application of knowledge. While much of the direct financial support is through local and state governments, the federal government also provides general support through a mix of tax incentives, direct tuition and research support, and in the case of

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<sup>11</sup> Carter's focus was on reducing paperwork and reporting requirements, rather than a shift in policy approach.

<sup>12</sup> As monopoly power is defined as the ability to extract excess profits, declining profits are an indication of increasing competition.

land-grant institutions, though initial grants of federal property. Tax policy in the last half-century has also provided incentives for private investment in research and development activities.

One can certainly conclude that the general policy approach favors the creation and application of knowledge, generally. It also reflects the two guiding philosophies for media and communication policy: a belief in the value of the “marketplace of ideas” concept, and a hesitancy to place too much ability to control specifics in the hands of the state. Generally, policy provides a framework of incentives, while even targeted subsidies have emphasized basic research, and/or the explorations of multiple approaches. While this may seem inefficient, not all research is fruitful, and not all innovations are adopted. The value of the “marketplace of ideas” approach is that, in the long run, it is more productive and efficient to explore multiple ideas and see which succeed, and which fail, than to trust that one can always choose the best approach a priori. That is, unless those that choose are omniscient.

In addition to the general support of innovation, research on computing also had federal support through their perceived value for military uses. Military appropriations funded much of the early development of computers and computer communications. However, while the military provided a lot of the funding, there were two reflections of general policy philosophy that aided later media convergence. The general “marketplace of ideas” approach encouraged that funding to be applied towards basic research, and also to a range of projects. Also, much of that research was done by universities and private contractors, rather than federal labs.<sup>13</sup> While the military might try to keep certain specific applications and technologies secret, basic approaches and ideas tended to become public rather quickly. Good developments, tested in the marketplace of ideas, were rapidly adopted. The spread of the internet is a classic example of a military research project whose basic ideas and approaches were rapidly diffused externally.

Research and investment in digital computers and digital telecommunications were also spurred by the Cold War’s space race. The Soviet Union’s early success with Sputnik prompted significant increases in federal support for, and investment in, science and technology, particularly in computing and communications. The consequent emphasis on putting a man on the moon also resulted in heavy funding of research and development in electronics, computing, and communication, particularly in miniaturization and the development of solid-state systems, contributing to the development of the computer chip. Expanding demand, again particularly by the military, for reliable high-bandwidth communications systems provided support for research and innovations in wired, wireless, and satellite telecommunications.

Thus, both general and specific policies promoting research and development facilitated research, innovation, development, and diffusion of digital computing and digital telecommunications. Unlike the initial questions about whether the 1934 Act covered cable, there was little doubt that the FCC could extend their oversight to the various systems of computer telecommunications and networking that arose in the early

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<sup>13</sup> While the U.S. developed a series of national laboratories with greater security after World War II, these tended to be focused on developing specific applications of technology, rather than more fundamental basic research.

1960s.<sup>14</sup> The FCC instituted a series of Computer Inquiries to consider what kinds of policy, if any, it should adopt with regard to computer communications. The FCC policy was to not make policy; there was a feeling that the area was developing and evolving new systems and uses much too rapidly, and that the potential benefits, while likely quite significant, were also still emerging. Any significant FCC action in this area, they felt, would only limit that potential. In the absence of any significant harmful behaviors, letting the “marketplace” sort itself out seemed best.

This approach can also be interpreted as a reluctance to make a possibly bad choice, reflecting that underlying philosophy of concern over who controls the system. It was also an approach that the FCC began extending into other areas. As new systems and media developed, rather than making final choices about which specific technological standards to require, the FCC started to define standards in terms of service capabilities and spectrum use, rather than specifying a specific standard (for example, in AM stereo, cellular telephony, and broadcast satellite services), or by letting the impacted industry reach a consensus on standards (for example, digital terrestrial radio and television broadcasting, V-chip and ratings standards, etc.).

The failure to take timely and decisive action can slow adoption and diffusion in the short term, or result in standards that may not match those used in other parts of the world. As such, in the near term, this might slow convergence. In the long term, however, this approach amounts to letting the market decide, and the forces driving convergence are at play here as well. In fact, one of those main forces is the reduction of the importance of individual standards, as technology increasing permits the inclusion of multiple standards in equipment, as well as the conversion of signals from one standard to another. If standards are important to the market, media systems and operators will incorporate them, if they are allowed to. Thus, this approach is one that actually is more likely to promote convergence in the long run.

### **Priming convergence: Telecommunications Act of 1996**

The 1996 Telecommunications Act was seen as a fairly major re-write of the 1934 Act, in approach if not in language. The main difference was that this legislation seemed to wholly embrace the marketplace approach to public interest and the goal of competition and media convergence. One of the key changes was that the Act eliminated statutory monopolies in telecommunications. Entry into local cable and telephone markets by new operators and services was encouraged, if not expected. Definitions of markets and services were expanded to embrace new delivery mechanisms.<sup>15</sup> Ownership limits were lifted or increased, with the goal of maximizing outlets rather than owners.

From the perspective of ownership and outlets, the 1996 Act was strongly deregulatory.

Media ownership limits and diversity have remained one of the fiercely challenged aspects of the Act and subsequent FCC actions. The Act clearly removed some barriers to entry, arguably providing the potential for additional outlets and diversity. On the

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<sup>14</sup> In the U.S., these connections were largely made through the existing telephone systems, through the use of leased high-capacity lines, or later, through the use of modems and the public network.

<sup>15</sup> For example, broadcast television, cable, and DBS were all considered as competition, along with a range of other minor and future video delivery systems.

other hand, the Act also allowed significant increases in multiple ownership and concentration. Group ownership, or national concentration levels, were significantly raised for cable and television services, while no limits were imposed for radio ownership. The FCC had been raising those limits over the years, arguably responding to the increasing number of available outlets, so this was not a major policy shift. What was more of a shift was the Act's, and the FCC's perspective on local duopolies. Since 1938, the FCC had pretty consistently limited ownership of multiple stations in the same market. By the mid 1990s, though, competition had driven revenues and profits downward, particularly in the AM band, and smaller markets. The FCC began to worry about losing outlets due to bankruptcy, and instituted a series of policies to allow stations to benefit from some scale economics. The 1996 Act was a major leap in that direction, allowing a single radio owner to acquire and operate up to 8 stations in a market. While public debate often focused more on the national limits (caps), local concentration is a more serious concern in terms of ability to control communications and content. The Act also recognized

On the other hand, the 1996 Act and subsequent policy actions seemed to follow the trend of increasing oversight of content. One section, labeled the "Communication Decency Act," sought to impose significant limits on internet content. The Supreme Court unanimously affirmed that this was a gross overreach of authority and fundamental public rights to communicate. Still, other mandates for programming and carriage requirements remained or were enhanced, and the Act provided for the FCC to impose a rating system if the industry failed to do so.

More recently, Congress and the FCC have sought stronger limits and oversight in the areas of "indecentcy," and proposals to restore "balance" in broadcasting have periodically been introduced.<sup>16</sup> While the courts have just slapped down the FCC's attempt to enforce stricter indecentcy standards, and the various "balance" procedures have yet to pass, these actions do suggest that the shift towards interest in greater state oversight of content continues.

Thus, the 1996 Telecommunications Act shows more of a mix of policy approaches. While generally retaining a preference for private operations, and the underlying "marketplace of ideas" philosophy, it does reflect a general acceptance of the reality of changing market structures. And it seems to conclude that convergence is the desirable goal of media evolution. The recognition of changing market structures is also reflected in the somewhat contradictory approaches to ownership and content policy. On the one hand, the 1996 Act incorporates the basic notion that media markets are competitive and less in need of regulation. The evolving, and arguably more competitive markets are reflected in the shift in ownership limits. Not merely in the raising of those limits, but in an underlying shift in concern from providing diversity to maintaining the number of functioning outlets. On the other hand, the Act takes steps to reassert oversight over some aspects of content, perhaps to restore some of that lost diversity.

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<sup>16</sup> Interestingly, these include both conservatives proposing to counter perceived leftist bias in public broadcasting

## **Copyright in the Way?**

As mentioned in the general overview above, copyright and intellectual property policy in the U.S. is generally supportive of innovation, and of media in general. The influence on new media forms were more mixed, as early copyright policy was media specific, requiring new content forms to be added in order to gain coverage, although the same uncertainty over coverage also allowed early experimentation and adaptation of content published in other media. This changed in the 1976 rewrite, which extended coverage to any content, in any current or future format, as long as it was a fixed form.

For many of the same reasons that uncertainty over coverage had mixed impacts, the certainty of coverage provided by the 1976 Act also had mixed impacts, although in the opposite directions. Content production for the new media was encouraged by the certainty of coverage; however media operators were likely to face added content acquisition costs because of that. The copyright shift was not over, however.

Over the years, some specific copyright-related policies have supported emerging media, principally by encouraging or mandating blanket licensing of content from other media. RCA and the entire broadcasting industry in the U.S. emerged from the patent pool the U.S. created to facilitate military production of radios in WWI, and music licensing for radio, and later, television broadcast program licensing agreements for cable, helped to provide a stable financial basis for those industries. Licensing policy focus in recent years has shifted a bit, though. Rather than use blanket licensing to encourage development, the modern focus seems to be to use it to maximize revenues for rights-holders. This can make content more expensive, and reduce experimentation with new media and forms, particularly if the value of those forms is uncertain.

In the 1990s, the U.S. moved to make U.S. copyright policy consistent with international standards and agreements. In doing so, U.S. copyright policy further shifted the balance between creators and users, and imposed copy protection mechanisms on existing and emerging information technologies and systems. Reactions to the ease of copying in the new digital media created concerns about piracy and prompted a variety of suggestions for limiting copying, with a focus on technological copy protection measures. Such measures are not only costly, but can delay the introduction of new media and technologies.<sup>17</sup> And as mentioned above, the focus seems to have shifted from enhancing creation, access, and use of covered content, to maximizing the ability to exploit commercial value in that content. From our perspective, that means that copyright policy trends, if they continue along this shifted focus, may hamper media convergence.

## **Conclusions**

The basic policy philosophies for the first centuries of the American Experiment can be found in the ideas underlying “marketplace of ideas” metaphor. Support for open markets, diversity of sources, competition, and the value of information, knowledge, and media as distribution mechanisms are all there. So is concern over the ability of agencies to control content and media. It is the interaction of individuals in that market that provides truth, not the decisions and choices of outside agencies. Conditions of the

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<sup>17</sup> Delay results in part from the need to develop those measures and get them used, and also because such measures are costly, and reduce the value of the technology to users, which lowers demand.

revolution, and early American social and economic structures produced that initial, and continuing, belief that state power was the more prominent threat.

These were the foundations that generally guided U.S. policy, and that policy generally promoted the development and diffusion of new media.

Specific media policy developed in the last century to deal with the rise of media systems whose structures did not match the ideal of the open market. Still, those policies tended to reflect the same underlying approaches and principles, and still supported media development in general. Of course, support was not absolute nor uniform, but in general, U.S. economic and communication policy helped to build an environment that helped lead to media convergence.

It should be noted, though, that recent policy approaches have shown a bit of a shift in focus and underlying philosophies. Again, these shifts are not consistent. Some support movements towards privatization, competition, and deregulation. Others seem to call for greater oversight, particularly in areas of content, and in the case of copyright, might seem to argue for limiting rights to access and use information. If continued, these policy trends may slow convergence, and raise questions about what kind of converged system will emerge. Will it be a true “marketplace of ideas,” or will it be a system that limits content to what either the state or private conglomerates want to sell you.

### **Sources:**

- Aufderheide, Patricia (1999). **Communications Policy and the Public Interest: The Telecommunications Act of 1996**. New York: Guilford Press.
- Baldwin, Thomas F., D. Stevens McVoy and Charles Steinfield. (1996). **Convergence: Integrating Media, Information & Communication**. Thousand Oaks: Sage.
- Bates, Benjamin J. "The Macrosocial Impact of Communication Systems: Access, Bias, Control." Paper presented at the 43rd International Communication Association annual conference, Washington DC, May 1993.
- Bates, Benjamin J. "Learning from the Evolution of Telecommunications in the Developed World." In P. S.-N. Lee (Ed.), **Telecommunications and Development in China** (pp. 21-54). Cresskill, NJ: Hampton Press (1997).
- Bates, Benjamin J., and Chambers, L. Todd. (1999). "The Economic Basis for Radio Deregulation." **Journal of Media Economics**, 12(1), 19-34.
- Bell, Tom W., and Singleton, Solveig. (1998). **Regulators' Revenge: The Future of Telecommunications Deregulation**. Washington, DC: Cato Institute.
- Beniger, J. R. (1986). **The control revolution: Technological and economic origins of the information society**. Cambridge, MA: Harvard University Press.
- Borchadt, K. (1970). **Structure and performance of the U.S. communication industry: Government regulation and company planning**. Boston: Division of Research, Harvard Business School.
- Besen, Stanley M., Krattenmaker, Thomas G., Metzger, A. Richard, Jrr., and Woodbury, John R. (1984). **Misregulating Television: Network Dominance and the FCC**. Chicago: University of Chicago Press.

- Brooks, J. (1976). **Telephone: The first 100 Years**. New York: Harper & Row.
- Brown, John Seely and Paul Duguid. (2002). **The Social Life of Information**. Boston: Harvard Business School Press.
- Doyle, Gillian. (2002). **Understanding Media Economics**. London: Sage.
- Faulhaber, G. R. (1987). **Telecommunications in turmoil: Technology and public policy**. Cambridge, MA: Balinger.
- Fidler, Roger. (1997). **Mediamorphosis: Understanding New Media**. Thousand Oaks: Pine Forge Press.
- Flichy, Patrice (1995). **Dynamics of Modern Communication: The Shaping and Impact of New Communication Technologies**. London: Sage.
- Green, Lelia. (2001). **Communication, Technology and Society**. London: Sage.
- Hamelink, C. J. (1988). **The technology gamble: Informatics and public policy: A study of technology choice**. Norwood, NJ: Ablex.
- Horwitz, R. B. (1989). **The irony of regulatory reform: The deregulation of American telecommunications**. New York: Oxford University Press.
- Hutchison, David (1999). **Media Policy: An Introduction**. Oxford: Blackwell Publishers.
- Innis, Harold A. (1991). **The Bias of Communication**. Toronto: University of Toronto Press.
- Jenkins, Henry. (2004). "The Cultural Logic of Media Convergence" **International Journal of Cultural Studies**, 7(1), 33-43.
- McChesney, Robert W. (2000). **Rich Media, Poor Democracy: Communication Politics in Dubious Times**. New York: New Press.
- McChesney, Robert W. (2004). **The Politics of the Media: U.S. Communications Politics in the 21<sup>st</sup> Century**. New York: Monthly Review Press.
- Menon, Siddhartha. (2006). "Policy Initiative Dilemmas Surrounding Media Convergence: A Cross National Perspective." **Prometheus**, 24(1), 59-80.
- Pool, Ithiel de Sola (1983). **Technologies of Freedom: On free speech in an electronic age**. Cambridge, MA: Harvard University Press.
- Pool, I. S.. (1990). **Technologies without boundaries: On telecommunications in a global age**. Cambridge, MA: Harvard University Press.
- Quinlan, Sterling Red. (1974). **The Hundred Million Dollar Lunch: The Broadcasting Industry's Own Watergate**. Chicago: J. Philip O'Hara, Inc.
- Ray, William B. (1990). **FCC: The Ups and Downs of Radio-TV Regulation**. Ames, IA: Iowa State University Press.
- Rogers, Everett. (2003). **Diffusion of Innovations**, 5<sup>th</sup> ed. New York: The Free Press.
- Schiller, H. I. (1969). **Mass communications and American empire**. Boston: Beacon Press

- Simone, Maria and Jan Fernback. (2006). "Invisible Hand or Public Spheres? Theoretical Foundations for U.S. Broadcast Policy." **Communication Law & Policy**, 11, 287-313.
- Slack, J. D. (1984). **Communication technologies and society: Conceptions of causality and the politics of technological intervention**. Norwood, NJ: Ablex Publishing.
- Temin, P. (1987). **The fall of the Bell system: A study in prices and politics**. Cambridge: Cambridge University Press.
- Winston, B. (1986). **Misunderstanding media**. Cambridge, MA: Harvard University Press.
- Winston, Brian. (1998). **Media Technology and Society: A History From the Telegraph to the Internet**. New York: Routledge.