Legal framework

- **Need for license** (Sec. 301 Com Act)
  "It is the purpose of this Act ... to maintain control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and period of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio ... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."

- **FCC mandate: secure public interest, convenience and necessity** (Sec. 302)

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FCC powers (Sec. 303)

- Classification of stations (Sec. 303(a))
- Prescription of services (Sec. 303(b))
- Assignment of frequencies, power, and operating time (Sec. 303(c))
- Determine station locations (Sec. 303(d))
- Regulate apparatus (Sec. 303(e))
- Make regulations to prevent interference (Sec. 303(f))

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FCC powers ...

- Study new uses of radio and promote its more effective use (Sec. 303(g))
- Make regulations for stations in chain broadcasting (Sec. 303(i))
- Define reporting requirements (Sec. 303(j))
- Authority to prescribe qualifications of station operators (Sec. 303(l))
- Suspend licenses (Sec. 303(m))
Constitutional limits

- Is licensing a prior restraint of speech (violation of 1st Amendment)
- Affirmative court decisions
  - *KFKB Broadcasting v. FRC* (consideration of programming does not constitute censorship)
  - *Trinity Methodist Church v. FRC* (denial of license renewal on basis of programming does not violate 1st or 5th Amendments)
- Main rationale: spectrum scarcity

Part II

Service classification and licensing

Basic differentiation

- Full-power broadcasting (Part 73, Code of Federal Regulations, 47 CFR 73)
  - AM radio, FM radio, international broadcasting, and digital audio broadcasting.
  - 58 analog VHF and UHF channels
  - Digital Television (DTV)
- Low-power TV and FM radio (47 CFR 74)
- Commercial and non-commercial broadcasting services

Broadcasting spectrum

Number of stations

<table>
<thead>
<tr>
<th>Service (Source: FCC, data June 30, 2003)</th>
<th>Stations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full power radio broadcasting</td>
<td>4,803</td>
</tr>
<tr>
<td>• AM radio</td>
<td></td>
</tr>
<tr>
<td>• FM radio</td>
<td>6,189</td>
</tr>
<tr>
<td>• FM noncommercial educational</td>
<td>2,426</td>
</tr>
<tr>
<td>Full power television broadcasting</td>
<td>760</td>
</tr>
<tr>
<td>• UHF commercial television</td>
<td>585</td>
</tr>
<tr>
<td>• VHF educational television</td>
<td>254</td>
</tr>
<tr>
<td>• VHF educational television</td>
<td>127</td>
</tr>
<tr>
<td>Translator and booster stations</td>
<td>3,795</td>
</tr>
<tr>
<td>FM radio</td>
<td></td>
</tr>
<tr>
<td>UHF and VHF television</td>
<td>4,759</td>
</tr>
<tr>
<td>Low power television</td>
<td>1,596</td>
</tr>
<tr>
<td>UHF</td>
<td>525</td>
</tr>
<tr>
<td>VHF</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>25,819</td>
</tr>
</tbody>
</table>

Nature of license

- Licenses are temporary, renewable privileges to use the spectrum on which the station transmits
- Licenses do not constitute ownership rights (only station can be owned)
- The Telecom Act of 1996 authorizes the FCC to issue licenses for up to eight years
Licensing methods

<table>
<thead>
<tr>
<th>Method</th>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative licensing</td>
<td>Full control of spectrum use</td>
<td>Time consuming, inflexible, mutually exclusive applications</td>
</tr>
<tr>
<td>(since 1934, dominant in radio, TV)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lotteries</td>
<td>Low administrative cost, quick</td>
<td>Random assignment, strategic bidding</td>
</tr>
<tr>
<td>(used in LP TV, initial wireless)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auctions</td>
<td>Efficient, license assigned to entity that values it most</td>
<td>Upfront cost of license increases cost of service</td>
</tr>
<tr>
<td>(used since 1995 for wireless and as a tiebreaker)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free market</td>
<td>Highly flexible</td>
<td>Possibly high transaction costs</td>
</tr>
</tbody>
</table>

Initial licensing: overview

- Frequency search
- Application at FCC
- MMB
- License qualifications & OL
- Licensee qualifications & OL
- Petitions to deny
- Auction
- Winning bidder
- Const. Permit
- License

Ownership rules

- Substitute to content regulation
  - Dual network ownership (1946)
  - Local radio ownership (1941)
  - Local TV ownership (1964)
  - Local radio-TV cross ownership
  - Local broadcast-newspaper cross ownership
  - Local cable-TV cross ownership
  - National TV ownership (1941)
- Rules relaxed repeatedly

Ownership limitations

- Local limits on full power radio station ownership but no national limits

- 35% of national audience ceiling on commercial television station ownership

Ownership rules...

- Court rejection of rules
  - Local and national TV ownership limit remanded by courts to FCC (2/02 and 4/02)
  - Local cable-TV cross ownership rule vacated 2/02
- Thorough FCC review (begun 2001) resulted in Order adopted 6/2/03
- 3rd US Court of Appeals stayed rules in 9/03 until full review completed
Television ("duopoly rule," 8/99)
- One entity may own two TV stations:
  - In separate Nielsen Designate Market Areas ("DMAs") even if their contours overlap
  - In the same DMA if their contours do not overlap
  - Within the same DMA if 8 full-power independent stations remain post-merge and one of the stations is not among the top 4
- Waivers allowed for "failed stations" and if prerequisite for new station

Cross-ownership
- One-to-a-market rule for radio-TV cross-ownership, changed 8/99
  - Party may own one or two TV station(s) and
    - Up to 6 radio stations where at least 20 "independent voices" remain post-merge
    - Up to 4 radio stations where at least 10 independent voices remain
  - One radio station regardless of other voices
  - Independent voices include commercial radio and TV, papers, and cable TV

Cross-ownership ...
- One person may not control a cable system and a TV station in the same community
- One person may not own or control both a daily newspaper and a broadcast station
- Noncommercial educational licensees exempted from limitations
- Increased concentration a problem?

Attribution (FCC R&O 99-207)
- Needed in enforcing ownership limits.
- The following constitutes ownership:
  - 5% voting stock ownership or 20% passive stock ownership (e.g., mutual funds)
  - >33% of total assets (debt + equity) if the entity is a major program supplier or in the same media market
  - >15% of broadcast hours per week brokered through Local Marketing Agreement (LMA)
- Other rules (e.g., joint sales agreements)

Proposed new rules
- FCC commissioned 12 background studies (http://www.fcc.gov/ownership/studies.html)
  - Diverse findings, not only that concentration reduces quality and diversity of programming
- New rules (see handout) would allow one firm to control up to 3 TV, 8 radio, cable TV, and newspapers in one area
- FCC introduced Diversity Index (DI)

Part IV
Content regulation
Admissible limitations

- U.S. Supreme Court has allowed regulation of speech in certain limited circumstances:
  - Clear and present danger
  - Obscene speech can be prohibited
  - Other sexually explicit expression can be restricted (e.g., zoning, "safe harbor hours")
- Electronic media subject to less freedom than print media

Statutory framework

- Section 326 Com Act prohibits the FCC from censorship (passed 1927)
  - "Censorship" is the approval of a message by a government agency before it is broadcast
- Section 1464 U.S. Criminal Code empowers the FCC to prohibit the broadcasting of obscene, indecent, or profane language (passed 1948)
- U.S. Supreme Court has upheld FCC powers in certain instances

Indecency policy

- FCC v. Pacifica (FCC, 1975)
- WBAI-FM broadcast “Filthy Words” by George Carlin (quoting “the seven words you can’t use on the public airwaves”)
- FCC warned station to refrain from the broadcast of indecent programs:
  - Children could have been in the audience
  - Radio receivers are found in homes where people are entitled to special protection of their privacy

- Unconsenting adults could tune into a station without warning about indecent content
- Radio spectrum scarcity merits special rules
- U.S. Supreme Court affirmed FCC (438 U.S. 726 (1978)
  - Radio spectrum scarcity allows a more stringent standard like indecency
  - Indecency guidelines are not “censorship”
  - The specific context matters, FCC cannot restrict indecent speech altogether

Current approach

- FCC uses generic definition:
  - "A description or depiction of sexual or excretory activities or organs in a manner patently offensive by contemporary community standards for the broadcast media"
  - Importance of context: were the words isolated, did the program have merit, were children in the audience?
- "Safe Harbor" policy permits indecent content during nighttime (10 p.m.-6 a.m.)

Public interest standard

- Public interest standard introduced by Radio Act in 1927
- In the Great Lakes decision (1929)
  - FRC defined public interest as “… well-rounded programming that meets the needs, tastes, and desires of the communities served …”
- FCC required affirmative measures, local programming, and so forth
- Many provisions relaxed since 1980s
Fairness Doctrine

- **Formulated by FCC in 1949** ("In the Matter of Editorializing by Broadcast Licensees," 13 F.C.C. 1246, 1949)
  - Obligation to dedicate a reasonable amount of time to the presentation of public issues
  - Provide reasonable opportunities for contrasting views on controversial issues of public importance
- **Difficulty in operationalizing policy** (e.g. 1974 Fairness Report, 48 F.C.C. 2d 1)

Repeal of Fairness Doctrine

- **Telecommunications Research and Action Center v. FCC** (801 F. 2d 501, 1986)
- **Meredith Corporation v. FCC** (809 F. 2d 863, 1987)
- **FCC repeal of the Fairness Doctrine** (Syracuse Peace Council, reconsideration denied, 3 F.C.C.R. 2035, 1987)
  - Doctrine has chilling effect, disserves interest of public in diverse opinion and broadcaster’s interest in free speech

Personal attack rules

- **Developed to protect individuals and groups as well as public.** Apply to:
  - Attacks on the honesty, character, integrity, or like qualities of an identified person or group
  - During the presentation of views on a controversial issue of public importance
- **Attacked has a right of reply on the station’s facilities. Does not have to be equal time but free of charge**

Personal attack rules ...

- **Station obligations:**
  - Notification of attacked of the date, time, and identification of the broadcast
  - Provision of a tape, script, or reasonable summary of the statement
  - Provision of reasonable opportunity to respond on the station
- **Upheld by U.S. Supreme Court** in *Red Lion* case (1964-69)

Political editorializing

- **Editorializing for or against a legally qualified candidate for a political office triggers a right of reply**
  - Station has to provide notification of the editorial and of its date and time
  - Furnish a script or tape of the editorial
  - Offer reasonable reply time on the station to allow a timely response
  - Reply opportunity must be given free of charge

Repeal of personal attack and political editorializing rules

- **Radio-Television News Director’s Association (RTNDA) challenged constitutionality or two sets of rules**
  - 1998 FCC split in 2-2 vote
  - Court asked FCC to clarify arguments in favor of continued enforcement of rules
  - FCC failed to responding in time repeatedly
- **Rules thrown out** ("interfere with the editorial judgment of professional journalists")
Political candidate rules

- Under certain conditions, a station has to provide equal opportunities to competing political candidates
  - If station granted "use" of its facilities to legally qualified candidate for public office
  - "Use" implies a personal appearance (except if candidates can be recognized otherwise)
  - Bona fide newscasts, news interviews, documentaries, on the spot coverage are exempted (see Ross Perot complaints in 1992)

Station obligations:

- Provide equal opportunity for legally qualified competing candidates once "use" established
- Provide reasonable access at lowest unit charge for comparable broadcasts
- Station cannot censor candidate’s message
- Timely demand for access access
- "Zapple doctrine" extends equal opportunity rule to supporters of political candidates
- No general right of access

Television violence

- Wide range of studies point to links between TV violence and behavior
- TV violence is basically unregulated
  - Difficulties in defining violence in a way that would survive the constitutional challenge
  - Some point to similarities between violence and obscenity issues
- Media industry and ACLU have lobbied strongly for self-regulation

Children’s television

- Historically, only weak concern of FCC. 1974 policy statements urged broadcasters to program for children
- Despite failure of moral persuasion, FCC declined to impose quotas
- Children’s Television Act (1990) requires children’s programs and regulates advertising (12 minutes/hour during weekdays, 10 1/2 minutes/hour weekends)

TV ratings

- Telecom Act of 1996 emphasized need for parental information (Sec. 551)
- Strongly contested approach:
  - Producers and motion picture industry (MPAA) in favor of minimal age based ratings scheme.
  - Parental groups in favor of more stringent and detailed ratings scheme
  - American Civil Liberties Union (ACLU) opposed as violation of First Amendment

Current approach:

- In 12/96, MPAA proposed an age based ratings system for a 10 month test period

TV-Y
  - Suited for all children.

TV-Y7, TV-Y7-FV
  - Designed for children 7 and over. FV.. Fantasy violence.

TV-G
  - Suited for general audience.

TV-PG
  - Parental guidance suggested.

TV-14
  - Parents strongly cautioned.

TV-MA
  - Mature audiences only.

TV-Y
  - Suited for all children.

TV-Y7, TV-Y7-FV
  - Designed for children 7 and over. FV.. Fantasy violence.

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  - Suited for general audience.

TV-PG
  - Parental guidance suggested.

TV-14
  - Parents strongly cautioned.

TV-MA
  - Mature audiences only.

(L) Language, (V) violence, (S) sexual, (D) dialogue.
### V-Chip

- Technology to assist parents in monitoring TV ratings
- At least half of all monitors >13 inches needed to be equipped with V-chip beginning July 1, 1999
- All monitors must include V-chip technology by January 1, 2000
- TV-capable computers will also have to have V-chip technology

### Concept of DTV

- Digital television (DTV) allows:
  - Movie-quality pictures, CD-quality sound
  - Simultaneous transmission of other information (e.g., newspapers, financial data)
  - More effective use of the existing broadcast channels
- Analog HDTV introduced in 1980s
  - FCC initiated formal proceeding in MM Docket 87-28 (1987) with many subsequent actions

### DTV channel assignment

#### Exemplary channel allotments for Michigan

<table>
<thead>
<tr>
<th>City</th>
<th>NTSC Ch.</th>
<th>DTV Channel</th>
<th>Power (kW)</th>
<th>HAAT (meters)</th>
<th>Area (sq. km)</th>
<th>People (1,000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alpena</td>
<td>6</td>
<td>57</td>
<td>1,000.0</td>
<td>448</td>
<td>37,515</td>
<td>253</td>
</tr>
<tr>
<td>Alpena</td>
<td>11</td>
<td>13</td>
<td>12.2</td>
<td>204</td>
<td>17,634</td>
<td>110</td>
</tr>
<tr>
<td>Detroit</td>
<td>4</td>
<td>46</td>
<td>1,000.0</td>
<td>305</td>
<td>31,676</td>
<td>5,587</td>
</tr>
<tr>
<td>Detroit</td>
<td>14</td>
<td>50</td>
<td>50.0</td>
<td>293</td>
<td>17,063</td>
<td>4,770</td>
</tr>
<tr>
<td>Grand Rapids</td>
<td>8</td>
<td>7</td>
<td>16.1</td>
<td>102</td>
<td>16,098</td>
<td>1,379</td>
</tr>
<tr>
<td>Lansing</td>
<td>52</td>
<td>5</td>
<td>1.0</td>
<td>125</td>
<td>3,000</td>
<td>1,840</td>
</tr>
<tr>
<td>Lansing</td>
<td>59</td>
<td>59</td>
<td>1,000.0</td>
<td>365</td>
<td>30,050</td>
<td>2,427</td>
</tr>
</tbody>
</table>


### Introduction of DTV

#### Phasing-in strategy

- Each existing broadcaster receives a second 6 MHz channel
- Second channel can be used to develop broad spectrum of digital services
- One channel needs to be surrendered by 2006
- Public will be able to receive DTV on analog TV sets using converter boxes
- Tower siting contested point

### Rollout

#### Time table

- In top 10 markets (30% of audience) affiliates of four networks had to be on the air with a digital signal by May 1, 1999
- In markets 11-30, representing 53% of the audience, DTV had to be available by November 1, 1999
- All stations must offer DTV by 2002
- Full conversion to DTV by 2006 or when 85% of consumers have switched
Rollout ...

- Many broadcasters filed for extensions
- DTV transition as of 10/16/03:
  - 1,061 commercial TV stations (81%) on air with a digital signal
  - 141 stations filed for third extension of 6 months, 104 granted (30 are “satellite” stations, under special consideration)
- Consumer adoption low

Summary

- Congress has given the FCC the mandate to protect the public interest, convenience, and necessity in the electronic mass media
- FCC policies include service and station classifications, licensing, and ownership regulations
- Analog television service will be replaced by digital television