

Comment: Competing Technologies and Inconsistent Regulation

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Communication technologies, consumer choice, and program diversity are advancing more rapidly than policies are changing to assure regulatory parity in the delivery of programming to American households. It is time for a review of the nature of the regulatory environment for communication technologies that deliver information and entertainment to American households.

Most of the major changes in the communications environment are traceable to the astonishing growth in satellite communication. Cable television, for example, would never be the competitive force that it is today without satellite communication that distributes both pay and advertiser-supported services to cable systems. Many, if not all, of the newer delivery technologies rely heavily on satellite communication, none more so than direct broadcast satellites (DBS).

Ten years ago DBS did not exist. In November 1983 United Satellite Communications, Inc. (USCI) launched the first interim DBS operation serving television households in the northeast quadrant of the U.S. through one Canadian satellite. USCI offers five channels of programming directly to homes equipped with a small receiving dish about 4 feet in diameter. It is estimated that there are about 10,000 subscribers to the USCI service. These subscribers tend to be concentrated in uncabled, although not necessarily rural, areas. The USCI subscribers are believed to be concentrated in large urban areas not yet wired for cable. In September 1984 Satellite Television Corporation (STC), a subsidiary of COMSAT, and USCI tentatively agreed to merge and pursue the DBS business in tandem. In early 1986 the USCI-STC DBS venture will likely expand the service area to the entire continental U.S. Other DBS

companies expected to enter the business in 1987–88 are Hubbard Broadcasting's United States Satellite Broadcasting and Dominion Video.

Estimates for the potential growth of DBS in the United States vary from 2.5 to 6 million households by the early 1990s. DBS operators will not only serve homes, but also seek alliances with full-power and low-power television stations, satellite master antenna television systems, and cable systems.

Until very recently, DBS was an excellent example of regulatory inconsistency and confusion. DBS operators had a choice of being regulated as a broadcaster or as a common carrier. In the broadcaster mode, the service provider retains control over the transmission whether or not the service is offered on a subscription basis. If, on the other hand, someone leased the transmission capacity from a DBS operator acting as a common carrier, then the service would be completely unregulated. In a third mode, the FCC approved a transaction between a satellite owner (Satellite Business Systems) and an entity controlled by a news publisher (Rupert Murdoch) without applying the common carrier or the broadcast provisions. This third mode of DBS operation is best called private DBS. Judge Mikva of the Court of Appeals in Washington recently forced the FCC to regulate DBS as a broadcaster.

There are many other inconsistencies in the regulation of DBS. DBS operators obviously have no local service requirements even though terrestrial broadcasters must serve local needs. There are no limits on DBS ownership. There are no multiple ownership restrictions and there are no limits on the ownership of more than one channel on a single satellite serving an area. By contrast, a terrestrial broadcaster cannot own more than a set number of radio and TV stations and cannot own two or more AM, two or more FM, or two or more television stations in the same local market. Some DBS operators, by comparison, are proposing to offer as many as 16 channels, all receivable in a local area.

The FCC decided to let the marketplace set de facto technical standards for DBS. That means that if a home owner purchases one DBS receiving dish, that dish probably will not be able to receive the signals of other DBS services. Terrestrial broadcasters, however, must conform to stringent transmission and reception standards. The current rules will permit DBS to offer both conventional and high definition television.

MDS

Single channel multipoint distribution service was first authorized in the early 1970s and by the summer of 1984 there were between 300,000 and 500,000 single channel MDS subscribers in over 100 different cities. Single channel MDS is a good example of the inability of a single channel provider to survive in the new multichannel environment. In 1982, single channel MDS had over 700,000 subscribers and the subscribing base has been eroding as cable and other multichannel providers are established.

In 1983, the FCC authorized multichannel MDS (MMDS) which will result in at least 8 channels of service in many communities. An indication of the strong entrepreneurial interest in MMDS is that the FCC received 16,500 applications for MMDS systems in 1983. Even though single channel MDS is suffering some loss of subscribers, it appears that MMDS will have about 5% of the pay video market in the early 1990s.

MDS is an even better example of regulatory confusion than is DBS. MDS is regulated as a common carrier even though MDS (and MMDS) operates essentially as any terrestrial broadcaster sending a signal through the air to a receiving antenna. The channels are leased on a first-come-first-served basis. There are no ownership restrictions, no programming requirements or restrictions, and no local service requirements even though MDS systems serve very local areas, usually about a 25-mile radius.

One MMDS operation can offer at least 4 or 8 channels and possibly as many as 31 channels by leasing channels from Instructional Television Fixed Service (ITFS) and private Operational Fixed Service (OFS). This latter option raises even more inconsistencies since ITFS is regulated as a private service and OFS is regulated as a hybrid.

MMDS is sometimes referred to as "wireless cable" because it has the multichannel capacity of cable. The odd thing about MMDS is that it is not regulated as broadcasting even though it looks like broadcasting. In addition, it has none of the local, state, or federal regulations of cable, which is also regulated as an ancillary broadcast service.

STV

Over-the-air Subscription Television (STV) is another example of the problems of a single channel provider in a multichannel environment.

Although STV was authorized in 1968, it took STV until 1982 to reach a high of 28 stations and about 1.3 million subscribers. By 1984 a subscription service was offered by about 20 STV stations and there were less than 800,000 subscribers. By 1990 there will be about 3 STV stations in operation with perhaps 300,000 subscribers in 2 or 3 markets. STV stations are regulated as broadcasters even though they look much like MDS systems since both of these technologies send scrambled signals through the airwaves to receivers.

Perhaps the inconsistency among over-the-air services can be highlighted by an example. If an entrepreneur is interested in providing an over-the-air pay television service, he/she can: (1) obtain an STV license and be regulated as a broadcaster; (2) lease time from an MDS licensee and be unregulated; (3) get an OFS license, in which case the entrepreneur will control the transmission facility and the program content but be exempt from broadcast *and* common carrier regulation; or (4) lease time from an ITFS licensee at privately set rates and conditions and avoid broadcast regulation.

SMATV

Satellite Master Antenna Television (SMATV) is yet another system of video programming delivery that did not exist even ten years ago. Some of these systems offer as many as 36 channels of service and there are an estimated 500,000 subscribers nationwide. By the early 1990s we believe SMATV could have 3 percent of the pay video market.

SMATV systems are essentially unregulated. There are no ownership restrictions, no local franchise is required, there are no program content requirements, no requirements to serve or ascertain or program for local needs, yet one operator can control many channels of service.

CABLE

In 1974, cable was in 12.6 percent of TV households; by 1984 it was in 43 percent of TV households. The number of subscribing households has increased by over 300 percent since 1974. Subscribing households will grow another 50 percent between now and the early 1990s, eventually penetrating about 60 percent of U.S. television households.

Cable is regulated as ancillary to broadcasting, so many of the broadcast regulations apply; however, there are some dramatic distinctions.

Cable has no multiple ownership restrictions even though there are many cable subscribers being served by a relatively small number of companies. For example, about 70 percent of the nation's 36 million cable households are served by the top 50 cable multiple system operators. One cable operator controls many channels in the local area while the local broadcaster can control only a single channel.

BROADCASTING

In the past ten years there has been a 22 percent increase in the number of radio stations, and the number of radio stations is expected to increase another 10 percent between 1984 and the early 1990s. By the early 1990s there will be about 10,500 radio stations on the air.

Since 1974, the number of TV stations has increased by 24 percent. In 1974 low-power television did not exist as a broadcast service. In 1984 there were over 280 LPTV stations on the air. By the early 1990s there should be a 375 percent increase in broadcast television stations including full-power and low-power television stations. There are no real ownership limits for LPTV stations and no local service requirements.

There are multiple and cross-ownership restrictions for broadcasters. There are limitations on the number of channels a broadcaster can control in a single market. There are local program service requirements. Broadcasters must adhere to specific transmission and reception technical standards. Broadcasters must adhere to the Fairness Doctrine and provide access for political candidates. Broadcasters must adhere to and be judged by a public interest standard.

HOME INFOTAINMENT APPLIANCES

In addition to all of these systems and services there are the home information and entertainment appliances. Home videocassette recorders (VCRs) did not exist in 1974. Ten years later they are in 14 percent of all households and will be in about 40 percent of all households in the early 1990s. Video game units are in 22 percent of households. Home computers did not exist in 1974; in 1984 they are in 12 percent of households. Neither videotex nor teletext existed in 1974; but by the early 1990s 20 percent of households will use these services.

According to the Society for Private and Commercial Earth Stations (SPACE), backyard satellite dishes are selling at the rate of 30,000 to 35,000 a month. At the beginning of 1984 there were about 500,000 to 700,000 backyard dishes installed. These receiving dishes are not regulated by the FCC and provide for the reception of about 60 channels of programming.

Nearly every American household is touched in some way by new communication technologies. American consumers, however, do not watch or listen to technologies—they watch or listen to programs. These consumers do not care if the programs come from cable, a direct broadcast satellite, a tape in a VCR unit, a videodisc, an MDS system, a SMATV system, their home computer connected to a telephone line, or a terrestrial broadcast station.

There is regulatory confusion for single channel and multichannel providers delivering programming to American households. From the FCC's experience with the regulation of DBS, it is clear that the courts probably will not permit such confusion and inconsistency. The FCC and Congress need to consider the total communications environment of American consumers and decide on the best regulatory approach for services such that regulatory parity is achieved.