Self-Regulation in American Television: In Areas Aside From Content

by Les Brown

Do not quote without the permission of the author.

Columbia Institute for Tele-Information
Graduate School of Business
Columbia University
809 Uris Hall
New York, NY 10027
(212)854-4222

Self-Regulation in American Television: in Areas Aside from Program Content

Les Brown

Editorial Consultant
Center for Communications
New York, New York

TELEVISION SELF-REGULATION AND OWNERSHIP REGULATION: THE AMERICAN EXPERIENCE

March 10, 1995

A Symposium Presented by:

Columbia Institute for Tele-Information
Columbia University
New York, New York
U.S.A.

in cooperation with

Bertelsmann Foundation
Germany

SELF-REGULATION IN AMERICAN TELEVISION
IN AREAS ASIDE FROM PROGRAM CONTENT

By Les Brown

From the earliest days of television, and indeed dating to the advent of commercial radio in the U.S., there was a tension within the industry between broadcasting as a profession and broadcasting as a business. For the first three decades, most television practitioners considered their field to be something of both. Station and network operators were determined to make money and increase their profits every year, but always within the professional parameters and in accordance with the industry ethos.

Most owners and managers spoke proudly of being professional broadcasters in the service of their communities, though most produced very little locally, beyond newscasts, in the normal course of things. They meant they do not shirk their responsibilities in a time of social crisis or natural catastrophe. No company prided itself on professionalism more than the CBS network in the 60s and 70s, while at the same time boasting of being "the world's largest advertising medium."

To a great extent federal regulation dictated professional behavior. Licenses were awarded on the promise of serving "the public interest, convenience and necessity," and they were renewed on evidence that the promise was substantially fulfilled during the license term. Unsponsored educational, cultural, public affairs and religious programs were considered license protectors, though they were seldom favored with choice time periods. News, children's programs and public service announcements, the key services, were usually more prominent in the schedules. Such loss leaders (news was considered one until the 70s) were a small price to pay for what the media baron Lord Thompson of Fleet once called "a license to print money."

Regulation designated broadcasters as public trustees. They were to deal with important public issues fairly by airing all contrasting viewpoints and, during election campaigns, to abide by rules designed to treat all qualified candidates equally and without bias.

But beyond FCC regulation, professionalism was best enunciated by the Television Code administered by the National Association of Broadcasters. This set of standards, created as a mechanism for industry self-regulation, spelled out time limits for commercials, banned the advertising of certain products (liquor, condoms and female undergarments, for example), and forbade smut and vulgarity, gratuitous violence, and behaviors in children's programs that might frighten the young. Around 70% of stations subscribed to the Code. Violation was punishable only by the denying the station the right to post on the screen the Seal of Good Practice.

The Code was adopted in 1952 as the industry's response to Congressional concerns about the crime shows on television and their possible contribution to juvenile delinquency. In 1982 a federal court outlawed the Code on antitrust grounds. The 30 years between marked the period in which broadcasters might rightfully have considered themselves professionals.

The abolition of the Code coincided with the Federal Communications Commission's determination during the Reagan Administration to deregulate broadcasting. In the Washington mood at the time, Republicans and Democrats alike embraced the principles of a market economy that viewed democracy in consumer terms. With the emergence of cable and other video technologies, television was perceived as a cultural democracy in which people regulated the medium for themselves by means of the dial or the remote-control tuner.

"Let the market rule" and "Get Government off of business's back" became the shibboleths of the 80s. Their effect was to tranform the citizen into the consumer, which was necessary to facilitate deregulation. It became possible then to define the public interest as what the public is interested in. The assumption was that people would tune out and thus kill off whatever programs they deemed offensive or excessively exploitative. It followed from that line of thinking that the most profitable stations were by definition the ones serving the public best.

The disappearance of the Television Code, the government's embrace of market democracy, competition from the rainstorm of satellite channels for cable, and substantial deregulation all combined to resolve the decades-old industry tension in favor of business. By 1986 no one spoke of television as a profession.

An important fifth factor was the wholesale transfer of ownership to a new generation of broadcaster. All three networks changed hands that year, following most of the venerable station groups whose founders either cashed out for retirement or died. By and large the new owners were no-nonsense businessmen who had had no exposure to the defunct Code and were attracted to broacasting because it had become largely deregulated, making it a more agreeable business.

At the networks primarily, and principally in the news divisions where the sense of professionalism was strongest, the new owners' first act was to cut staff. And, as it appeared, the first to go were the personnel so indoctrinated with the old ideals that they might have difficulty adapting to the new mode of operation.

TELEVISION IN THE REGULATED MODE

Television grew out of radio and inherited most of the regulation that was created for the older medium dating to the late 20s. As with radio, U.S. policy was to have a system based on localism built by private industry. Regulating these media was a delicate matter in light of the First Amendment -- the free speech/free press Constitutional provision that is a most distinguishing feature of American democracy -- and the FCC was prohibited from creating rules that bore directly on content or that were in any respect censorial.

Public service content was of course a consideration in granting and renewing licenses, but in the main it was looked at quantitavely by the commission, rather than qualitatively. The agency has adhered to a policy of trusting the licensee to determine what is best for his community. While the FCC has no regulatory authority over the networks, since they are independent program services and not licensed entities (in theory anyone can start a network, as Paramount and Warner Bros. now have), it has historically dealt with them through their owned stations.

That broadcasters did not share the full First Amendment freedoms of print publishers was defended by the scarcity of spectrum and the argument that the airwaves belong to the public. Broadcasting was differentiated from print as a privilege differs from a right. Because broadcasters were loaned a public resource for commercial purposes, they were held to be public trustees, and differed also in that respect from newspaper and book publishers.

Created by the Communications Act of 1934, the FCC is a government agency administered today by five commissioners and reporting to Congress; it is responsible for regulating interstate and foreign communications by radio, television, telephone, cable, microwave, satellites and newer electronic technologies. Licenses or construction permits cannot be transferred or sold without FCC permission, and when a license is challenged by another desiring the frequency the agency, after holding comparative hearings, must judge which is the most deserving applicant. (Last year the FCC began awarding the portions of spectrum for cellular and PCS communications by auction rather than by comparative hearings).

TV licenses were originally granted for three-year terms, after which they were subject to an elaborate renewal procedure and open to challenge by competing applicants. Such challenges were rare because they took years to resolve and therefore were costly, and because historically the FCC tended to favor the incumbent. More common in the late 60s and during the 70s were challenges by citizen activist groups. Known as petitions to deny, these were actions that charged the licensee with failure to meet the public trust or with an egregious violation of the regulations. The petitioning groups did not seek the license for themselves but only to cause the operator to lose the privilege of broadcasting.

The most spectacular such petition was that filed in 1964 against WLBT in Jackson, Miss. for openly discriminating against African-Americans and proponents of the civil rights movement. The Office of Communication of the United Church of Christ had monitored the station to accumulate evidence that the station used its airtime to promote a segretationist philosophy while shunning the viewpoints of the African-American community, which comprised 40% of the city's population.

Five years later the case was won, and Lamar Life Insurance Company, owner of the station, was forced to sell WLBT. The effect was to propel the broadcast reform movement by establishing the right of citizens groups to have their views made part of the license-renewal proceedings.

Much of FCC regulation was intended to bolster localism and ensure the integrity of the license. Character was an important criterion in awarding licenses; the FCC would reject applications from persons with criminal records and could revoke the licenses of companies or individuals convicted of wrongdoing. Among other things, the character criterion served to keep organized crime out of the lucrative broadcasting business.

The FCC's anti-trafficking rule prohibited a new licensee from selling the station within the first license term of three years. This was to enforce serious intentions by the broadcaster and keep out speculators who would buy a station and turn it over quickly for a neat profit.

Throughout most of its history, the FCC guarded against the establishment of media monopolies with limits on station ownership and prohibitions against media cross-ownership (primarily the ownership of a TV station and newspaper in the same city, except where "grandfathered" from the early years).

Until the late 80s, broadcast groups were limited to owning seven TV stations, but no more than five on the VHF band. To allow for larger ownership groups would be harmful to the ideal of localism, it was felt, as well as to the wish for a diversity of voices. As for cross-ownership, the concern was that a company with multiple communications outlets in a municipality would have extraordinary political influence and an unfair advantage with advertisers.

Stations were held responsible by the FCC for all they broadcast, including the programs sent out by the networks. Local broadcasters were implicitly encouraged to preempt network programming they deemed unsuitable for their audiences and to substitute programs of their own. They were not to enter into contracts under which the networks effectively controlled their airtime. These restrictions gave the stations a small but not insignificant voice in network programming, since substantial rejection by the affiliates could doom a new series.

The FCC also maintained strict rules for contests and lotteries and imposed fines and even more severe sanctions for promotions and programs that intentionally deceived their audiences. It also discouraged program-length commercials (advertisements masquerading as full-blown programs) especially in the children's sphere.

Rules for political advertising were extensive, ranging from a provision that candidates must be charged a station's lowest rate for airtime to one that prohibits the broadcaster from interfering with the content of a political commercial, even if it contains profanity the station would not otherwise allow on the air.

Central to this set of rules is the Equal Time Law, which requires broadcasters giving free or paid airtime to a political candidate to afford equivalent opportunities and time to all qualified candidates for that office.

Despite the FCC's efforts to foster localism, the three networks became the dominant force in television during the 60s, claiming some 60% of the affiliates' airtime and exercising such control over the program market that few opportunities existed for independent suppliers or for local stations to create their own programs.

When they purchased or commissioned programs from Hollywood producers, the networks typically negotiated equity positions for themselves and syndication rights for the reruns. The syndication arms of ABC, CBS and NBC dominated the field. Moreover, the networks would not release programs for syndication until they had run their course in prime time and their essential popularity drained. By the time the reruns went to independent stations, their ratings power was so slight that they posed no competitive threat to the networks.

The power and arrogance of the networks prompted the FCC to restructure the television system in 1970. The commission's Prime Time Access Rule limited the networks' claim to the peak viewing hours to three hours per night (8-11 p.m. in the eastern and western time zones, and 7-10 in the midwest). An additional half hour was granted for network news. That left 30 minutes per night of choice airtime open to other suppliers or, as the FCC had hoped, to original local production.

A companion regulation, The Financial Interest and Syndication Rule, which became popularly known as fin-syn, barred the networks from taking a financial interest in the programs they put on the air and from engaging any longer in domestic syndication. The networks were permitted to lease the programs they commissioned from Hollywood for only a first and second run, and not to share at all in the after-markets. A companion rule barred the networks from owning cable systems in order to allow that emerging industry to grow freely.

In 1971, a year after the adoption of the rules, CBS spun off its syndication and cable units into a new company called Viacom, which has grown to become one of the most formidable players in the field. ABC sold its syndication business to its employees, who named it Worldvision; it too has flourished, especially internationally, and has changed hands several times. NBC sold off its syndication properties to a number of distributors, so that NBC Films has no successor.

The Prime Time Access Rule proved a great boon to the syndication industry in opening a whole new market for original production. It also added greatly to local station profits, since a non-network half hour can carry more commercials than a network half-hour is allowed. But the FCC's hope that it would foster exciting new works for television died when the choice time period wrested from the networks was given over predominantly to gameshows stripped over five or six nights a week (<u>Wheel of Fortune,</u> and <u>Password</u>, notably) and in latter years also to tabloid news-magazines like <u>A Current Affair.</u>

Fin-syn served to transfer the power over programs from the networks to the major Hollywood studios. They determined when network reruns could enter the syndication market -- usually in the fifth network year -- so that enormously successful shows like M*A*S*H and The Cosby Show could be sold to independent stations while they were at peak popularity on the networks. The reruns could be scheduled against the networks and bite into their ratings, even as the networks continued to popularize those shows in their weekly first-runs.

Having the hot reruns not only gave the studios dominance in domestic syndication but allowed them to profit hugely from sales abroad when European, Latin American and Asian markets opened more widely to commercial television in the late 80s. Some program series derived more than $1 million per episode from foreign sales. Even programs that turned out to be failures on the American networks were able to recoup their costs in offshore sales.

For all the restrictions against them, however, and despite the growing competition from cable, the networks managed to thrive because they remained the most efficient way for national advertisers to span the entire country with a single commercial. No matter how many new cable channels came on stream, the networks were still the main streets of the electronic village.

Though fin-syn and prime-access rank with the FCC's most ambitious undertakings, the agency's most controversial and beleaguered rule by far was the Fairness Doctrine, whose origins date to the commission's Editorializing Report of 1949. It was codified in 1959 and became an actual instrument of the FCC in 1962. In essence the Fairness Doctrine was intended to serve the First Amendment ideal of robust, wide-open debate, yet it was opposed by avid First Amendment adherents because it imposed a duty on what they believed should be media of free expression.

The Fairness Doctrine was two-faceted. First it required, as a condition of keeping the license, that broadcasters actively involve themselves on air with controversial issues of public importance. Then, in dealing with those issues, that broadcasters behave fairly, affording reasonable opportunity for all opposing viewpoints to be heard. A companion was the personal attack rule, which required broadcasters to notify people who were severely criticized by speakers on air and give them opportunity to respond.

The Fairness Doctrine played a part in the success of the civil rights, women's rights, and gay rights movements. It became the cornerstone for citizens' rights in the broadcast media. That was why it was so unpopular with broadcasters.

UNBINDING THE MEDIUM

Deregulation of the broadcast media had been contemplated by certain members of Congress and FCC chairmen during the 1970s, because the scarcity factor -- the underlying rationale for regulation -- seemed obviated by the emergence of cable and other new video technologies. But it was in the Reaganite climate of the 80s that the process began. The chief engineer of the demolition was Reagan's FCC chairman Mark Fowler, whose disdain for the agency's body of rules to protect the citizenry was epitomized in a memorable remark made in a major address, that television was nothing so much as "a toaster with a picture."

Fowler acted quickly to clear away the underbrush of rules that had stood for years and had scant relevance in the 80s. Then with libertarian zeal he moved to eliminate all content-oriented regulation and other restraints on the operation of free-market forces in broadcasting, notably those that had served as the levers for citizen participation. Thus silenced, most organizations that had made up the citizens reform movement vanished in a wave.

Aided by a conservative Congress, Fowler also achieved a relaxation of the ownership rules, an extension of the three-year license term to five years, a simplification of the renewal procedure that amounted to little more than completing a postcard, and repeal of the trafficking rules.

The latter made it possible for speculators to buy and sell stations as rapidly as real estate.

But by far his most significant act was to revoke the concept of public trusteeship, which had provided the justification for broadcast regulation for 50 years. Fowler called the public's ownership of the airwaves a myth and argued in virtually every speech that the public interest would be better served by market forces than by bureaucrats in a federal agency.

Fowler was not completely successful at deregulation. He was thwarted in his attempt to do away with rules giving preference to minority and female applicants for new stations. Nor was he even-handed in abolishing outdated regulations. Fowler allowed the Prime Time Access Rule to stand undisturbed, for example, apparently because it was favored by most broadcasters, having developed into a lush profit center for them.

After starting to attack the Financial Interest and Syndication Rule, Fowler suddenly backed away from it. His change of heart came after a private meeting with President Reagan, which raised the suspicion that the White House had intervened in behalf of the Hollywood production industry, the prime beneficiary of the rule and, of course, Reagan's former milieu. But in broaching fin-syn's possible elimination, Fowler touched off a heated battle between the networks and the studios on the issue which took a decade to resolve -- in the courts, ultimately, rather than by the commission. Fin-syn will be officially terminated in November of this year.

That not only will radically shift the balance of power in programming but promises to have a seismic effect on the entire television business. Predictably, one or more networks will merge with a studio, operating in the manner of 20th Century-Fox and the Fox Network, which had been exempted from fin-syn in the FCC's eagerness to promote the growth of a fourth network. In owning or having an equity stake in the programs they air, the networks will have reason to pay heed to what succeeds abroad, since the revenues from offshore sales could affect the fate of programs in the prime time schedules. If ABC had owned Twin Peaks, for example, the series might not have been cancelled when its ratings flagged in the U.S., because it was still enjoying great popularity in Europe.

Mark Fowler's boldest move was an attempt to repeal the Fairness Doctrine, the very cornerstone of trusteeship. This prompted a number of attempts by Congress to codify the rule into law, but each bill met with a Presidential veto. A Circuit Appeals Court ruling in 1987 established that the commission had discretion to overturn the rule on its own, which was promptly done by the FCC under Fowler's successor, Dennis Patrick. To appease Congress, Patrick retained certain aspects of the doctrine, including those related to elections, station editorials and personal attacks.

It is worth noting that the category left virtually untouched was the one concerning political broadcasting and advertising, though the First Amendment arguments for abolishing the Fairness Doctrine would apply equally to them. It was as if market principles could be trusted for all but what the lawmakers themselves live by.

THE EFFECTS OF DEREGULATION

The easing of the ownership rules, coming at a time when the founders of local stations were of age to retire, transformed the broadcast landscape. In the permissive climate, companies that would have eschewed an industry that was subject to the vagaries of regulation found television an attractive business to enter.

Long-established broadcast groups such as Storer, Taft, King, Wometco, Field, and Metromedia vanished in the buying spree, their knots of stations broken apart and sold to various new group entrants in the field.

Acquisition activity went into high gear in 1985, the year the FCC expanded ownership limits from seven stations to twelve, provided that the full complement covered no more than 25% of the country's population. Stations were usually acquired on borrowed money with confidence that economic growth would continually indefinitely.

Speculators and takeover specialists like Kohlbert, Kravis, Roberts & Co., taking immediate advantage of the elimination of trafficking rules, made quick fortunes buying and then re-selling station properties. The usual practice was to improve a station's cash-flow simply by cutting staff and then "flipping" it, that is, turning the station over to a new buyer for a substantial profit. To help reduce their debt load, the new buyers would also immediately cut staff. The many who financed their purchases with high-risk junk bonds lost the stations when the junk bond market collapsed, causing yet another turnover in ownership.

The ideal of localism was not well served by the loss of continuity from the transactions. Moreover, with the expansion of ownership limits and a virtual release from accountability for local service, most of the new station groups adopted a system of centralized management under which the entire unit was run by a cadre at headquarters. Among the traditional job designations that disappeared at many local stations were those of program director and manager of public affairs.

Act III Broadcasting, for example, manages its eight stations and purchases all programs for them from a small office in New York City, though none of its stations are based there. Like a number of other groups that entered the field in the 80s, the Act III stations provide no local news.

News, however, is an important staple of most of the larger and long established stations, because it has become both a profitable form of programming and the key to a station's overall popularity as the expression of its personality. Local news programs were offered as loss leaders for the sake of the license in the early years, but by the mid-60s the top ten ratings in most midwestern markets (where prime time network service ends at 10 p.m.) were dominated by the leading station's evening news. Studies of local markets found that stations with the most popular newscasts tended to be first in the ratings generally, regardless of network affiliation.

It remains a given, then, that local markets will be amply served with news, even without regulation that in effect demands it, because local news gives TV stations an edge on cable channels and other competitors, and in fact has become the essential business of local television. Because that is the case, and because the idea of localism has come down to merely providing a news service, the FCC is able to consider currently another expansion of ownership limits, allowing coverage of around one-third of the country.

From its desire to encourage competition for the three networks, the FCC gave various kinds of special dispensation to Rupert Murdoch. After purchasing the 20th Century-Fox studio, the Australian media tycoon became an American citizen in record time to qualify for purchasing the Metromedia station group from John Kluge. These were well-established VHF stations with no network affiliation, and they provided an aspiring new network with anchorage in the three key population centers -- New York, Los Angeles, and Chicago.

While ABC, CBS and NBC were prohibited from owning entertainment programs or entering the domestic syndication business, Murdoch was allowed to start the Fox Network with connections to the Fox studio, one of the largest players in syndication. The FCC did this simply by creating an ad hoc definition for a network, namely one that broadcast fewer than 15 hours of programming in prime time, a threshold that Fox had barely reached. Murdoch was also given cross-ownership waivers in New York and Boston where he sought to purchase newspapers.

The fledgling Fox Network did indeed create competition for the other networks, becoming especially popular with youth, but except for one or two admirable programs like The Simpsons its influence can hardly be characterized as positive. Having no news division, its main contribution in that sphere has been the tabloid news magazine, A Current Affair, a series whose popularity inspired others of the kind in syndication, leading to a program genre the critics dubbed "trash television." In programming generally, Murdoch's network took the low road, and in the permissive post-regulatory climate much of the industry followed.

Late in 1994, Murdoch became a more troublesome competitor of the networks by staging a raid on their affiliates, many in major markets. One of his tactics was to provide financial backing for outside companies to buy the stations and switch their affiliation to Fox. His raids created such turmoil in the industry that the other networks, to secure their national infrastructures, made costly long-term deals with their key affiliates.

These arrangements would not have been permitted in the era of strict regulation, because they involve guaranteed carriage of the entire network schedules with no preemptions except in times of emergency. Thus the stations give up their autonomy to the networks -- another blow to localism. That the FCC did not object to the terms signifies that the easing of the rules no longer holds licensees responsible for all they put on the air.

THE FLAW IN THE MARKET APPROACH

If Mark Fowler and his Reaganite colleagues had understood the true nature of the market they might not have acted in such haste to dispose of rules that had been created with good reason after lengthy debate by honorable and well-meaning commissioners. Though television is a mass-audience medium, the plain fact is that it is not ruled by a mass viewership but by a limited segment of the audience, people in the age range of 18 to 49.

This is the demographic group most advertisers want to reach, and for which they will pay the highest rates -- typically around $15 or $16 per thousand -- because it represents the young homemakers who buy the kinds of products best sold by means of television spots. Older and younger viewers command some 50% less per thousand, though the cost of reaching them is the same. Performers, production, distribution, and marketing do not make allowances for less desirable populations.

The disparity is reflected in the profit picture for 1994, which was a boom year for all the broadcast networks. CBS did least well, some $200 million less in profits than the others, because for all its efforts to attract the young it continued to draw the largest over-50 audience. The advertising industry is unshakeable in its conviction that the older generations cannot readily be persuaded to change brands or try new products. Though CBS may at times have reached more people totally, its air time had less value in the market than ABC's or NBC's. That is intolerable not only to corporate CBS and its shareholders but also to CBS affiliates.

All entertainment media play to the young adult population -- networks, TV stations, radio stations, cable networks, motion pictures, record companies, and even the online computer services. The very audience that television pursues is the one that most often goes to the movies, listens to rock or country radio stations, and buys popular recordings. In all earlier times, culture was handed down to the young by the older generations. Today, because they are commercially the arbiters of popular entertainment, the young hand up culture to the old.

So the market is not as open and all-encompassing as it is thought to be by anti-regulators, and television is by no means a cultural democracy in which, as Fowler and others imagined, viewers vote with the dial or remote-control tuner. Not when the only votes that really count are those of persons in the 18-49 age range or, better, in the 18-35 group.

In the mid-60s the radio industry, battered by television, appealed to the FCC to relieve radio stations of the obligation to serve the entire public and allow each to provide a single consistent daylong service for a particular audience. In agreeing, the FCC imagined that each station would select an audience niche, so that horizontally across the dial each segment of the public would be served. Instead, virtually every station sought a format to reach young adults. In markets like New York and Los Angeles, with upwards of 50 stations on AM and FM, the great majority offered some form of rock music. To this day, 30 years later not a single radio station in the country programs expressly for children, or even (outside of public radio) offers a single program for children. And there are no stations that openly court the elderly.

The writer of this paper some years ago appeared on a call-in radio talk show that had only young callers. When the program was over, the writer expressed his surprise to the host that the show had such youthful appeal. The host pointed to the producer in the control booth and explained that he was the one who screened all the calls, never putting through the people with creaky voices. We don't want any advertisers who might be listening to think we're a program that gets the old folks, the host said. This was a station owned by Group W, one of the topflight and most professional broadcast groups.

SOME OBSERVATIONS IN CONCLUSION

Self-reregulation thus far has a spotty record in broadcasting and cable. De-regulation has indeed energized the industry and enlivened the broadcast economy. But it has not contributed to greater employment, quite the opposite, or overall to a higher level of programming.

The early aspirations of the American system for localism and a diversity of ownership have clearly gone by the boards. Religious programming by the major faiths have long since given way to "paid religion," air time purchased by evangelical and fundamentalist showmen to raise money for their electronic ministries. Educational and cultural programming have been abandoned with impunity to public television and such cable networks as A&E, Bravo, The Learning Channel, and Mind Extension University.

But some social issues persist and, if anything, have been heightened rather than resolved by market forces. Sex and violence, which have haunted television since the 50s, remain such a problem that Congress has once again called upon the industry to police itself or risk some manner of intervention by government.

Public outrage over television's exploitation of the child market has revived regulatory activity in that sphere and led to recent rules requiring stations to provide programs that nourish the minds of the young. Only a few years after cable was deregulated, Congress, responding to the din of complaints from their constituents over poor service and constant rate increases, ordered the FCC to re-regulate the industry.

While Americans readily accept their political designation as consumers, they cannot help behaving at times as citizens. And when they do Congress and the FCC will always respond. Regulation has a future.