

EMPIRICAL ANALYSIS OF ACCESS OBJECTIVES AND POLICIES
FOR THE COMMUNICATIONS MEDIA

Premises

1. Communications media are defined as the entirety of channels, systems and processes involved in the transmission and reception of messages.

In fact, the media of public communications consist of three independent physical systems, each with its own operational, technical, economic, and public policy parameters. These are:

- A. **CONTENT:** Verbal, graphic, and data messages in all formats, for all end-uses. Content may comprise discrete messages, stories, announcements, advertisements, etc. or "packages" of messages for distribution or sale, like issues of a newspaper or magazine, or a broadcast program.

The intent of the First Amendment was to establish the right of public access to the "carrier systems" of the era (speech, assembly, petition, press). In Article I, section 8, the Congress was authorized to establish the only mass carrier system then recognized: namely, post office, and post roads.

- B. **EQUIPMENT:** The hardware components employed for the carriage of content. The Supreme Court has divorced control over terminal equipment (transmitting, receiving, recording, playing, storage, retrieval, etc. facilities) from the carrier systems.

The right to buy and lease equipment in a competitive market is protected by anti-trust and business practice legislation.

- C. **CARRIER SYSTEMS:** The equipment systems employed to connect the receiving/transmitting terminals. The broadband carriers are those systems with the capacity to carry television ("video-grade") signals, such as television broadcasting and microwave radiation, special cable and wire circuits, laser and optical radiation, etc.

Most communications carrier systems are de facto or de jure monopolies in the areas in which they operate. Practically all systems are franchised, licensed or regulated by common carrier principles (including the postal, rail, aviation, telephone, telegraph, microwave and satellite systems) with the notable exception of radio and television broadcast transmitters which were given control over the public's access and the rates and terms of use of their carrier facilities.

2. The chief cause of abridgements of expression and press in the communications media is abridgements of access and entry to the carrier systems. Present and prospective producers, publishers, distributors, and marketers of content lack enforceable rights to use or lease essential carrier and technical services. New broadcasting entrepreneurs or prospective metropolitan newspapers are effectively barred from entry by lack of channels and the magnitude of capital requirements to establish a new enterprise.
3. Access and entry to television and radio broadcast station carriers has been abridged by:
 - a. The failure of government to provide carrier capacity to meet the needs of the public and the demands of prospective broadcasters.
 - b. The legalized powers of broadcasting stations to control and exploit their content for private gain by maximizing advertising revenues (with grave biases to the diversity and quality of content).
 - c. The failure of government to legalize the direct sale of content to the public by producers, at equitable and convenient terms.
 - d. The failure of government to establish alternative electronic systems, such as public/educational broadcasting, wire, cable and microwave systems.

Access and entry to the print media systems is chiefly abridged by newspapers.

Most print media (magazines, business publications, books, pamphlets, handbills, direct mail etc.) have reasonable and equitable access to the basic services:

- .. paper - competitive suppliers
- .. printing - competitive contract printers
- .. carriers - postal systems; periodical, book, and other retail distribution channels
- ~~.. carriers~~ - some private carrier services
- .. content - no significant restraints

In contrast, mass circulation newspaper publishing is severely abridged both in access and in competitive entry:

- .. paper - to stabilize paper supply and costs, ^{long term contracts and} ownership of forests and mills is frequently required.

- .. printing - massive investments required for mass production; press and reproduction equipment usually not available locally on contract basis.
- .. carriers - large-scale private carrier-sales systems
 - private wholesale and trucking systems
- .. content - restricted or exclusive membership in news and photo gathering syndicates
 - restricted access to feature, comic and column syndicates
 - high-fixed cost local and national advertising sales and service organizations.

These restrictive operating conditions create powerful incentives and attractive opportunities for newspapers to exclude competition for local circulations and advertising and to control prices both to the public and to advertisers.

As a result

- 1) There are irresistible economic incentives to bring all newspapers serving the same metropolis under single ownership and control, and
 - 2) There are almost equally powerful economic inducements to achieve single or collusive control over all local media which compete for circulation and advertising, including radio and TV broadcasting stations and cable television systems.
3. The ACLU and others tend to express goals of media policy in terms of diversity, variety, and freedom of expression in content and programs. Experience indicates that when carriers determine content and also have control over capacity and technical services that their legitimate profit and power incentives imposes restraints on access and biases upon content and programs which are insurmountable. Correction of the content restraints would require a degree of government intervention into "press freedoms" which citizens properly reject as a remedy more evil than the disease.
4. A second assumption is that content and program deficiencies will be self-correcting if alternative competitive media are available. Experience demonstrates that alternative media which are identically structured and economically motivated will make no significant addition to diversity (cf. AM radio, FM radio, UHF television, daily newspapers, etc.), nor remove the restraints on open access.

The assumption of benefit from alternative media, to be effective, must meet the test of practical substitutability. ~~Therefore~~, A criterion of public utility status is whether the public has a viable alternative service. For example, the cost of production plus mail or carrier distribution of a newspaper-page size message will average 10-15¢ per household. This compares with 1¢ per household for a newspaper page and 2¢ for radio, and 3¢ for television of the same content. Cost comparisons for selective carriers (i.e., to specific geographical, demographic, occupational etc. communities) are even more disadvantageous.

Empirically, there are no viable media alternatives to metropolitan newspapers, radio and television stations as essential-carrier systems for public communications.

Working Conclusion: SHORT-TERM OBJECTIVES FOR ACCESS

The only practical ~~assurance~~ ^{ASSURANCE} to the public of equitable access for free expression in the local mass circulation print and electronic media is the right to buy advertising time and space in both broadcast stations and newspapers, at just and reasonable terms.

I believe that the ACLU should advocate the unqualified right of all persons to purchase advertising in all media which accept advertising. I would place no restrictions on the type or purpose of the advertising. I believe distinctions are unenforceable and illogical. Those who believe that commercial advertising serves their interests in promoting goods, services or ideas, or merely disseminating information, have equal rights to equitable access to these non-substitutable media which are sheltered from free competition by faulty public policies.

LONG TERM OBJECTIVES FOR ACCESS AND COMMUNICATIONS FREEDOMS

1. "Diversity" is a by-product benefit from providing unabridged opportunities for producers and marketers of communications content to profit from serving the diverse needs and interests of the diverse populations and markets of the nation. To serve this objective carrier systems of public communications must provide facilities ~~for~~
 - all data, voice, video, graphic formats
 - both pay and sponsored content
 - one and two-way capabilities
 - geographic selectivity
 - demographic selectivity
 - all modes: point/multi-point etc.at just and reasonable terms.
2. Optimum public policies for a regulated industry give the industry incentives for private gain for performance which parallel the goals of the public policy. Conversely, public policy should provide disincentives for private gain for performance which is opposed to public goals.

Optimum policies for the structure and regulation of public communications carrier systems would restrict their private gain incentives to the development and proliferation of carrier services, exclusively, prohibiting carriers from engaging in any other communications function. The precedent for such a policy is the evolution of common carrier principles of regulation in similar carrier industries such as the railroad and telephone systems.

3. Working Conclusion: POLICY OBJECTIVES

A. THE THREE BASIC COMMUNICATIONS MEDIA FUNCTIONS AND ~~INDUSTRIES~~

INDUSTRIES

(carriers, equipment, and content - both print and electronic)

SHOULD BE LEGALLY AND OPERATIONALLY DIVORCED.

For example, newspaper publishers would divest themselves of ownership in paper, printing, editorial and news syndicates, and physical distribution. They would continue to operate circulation and advertising sales organizations but employ independent distributors and the postal system for physical distribution. Other services would be purchased at arm's length on the open market.

~~Radio and Television~~

Radio and television broadcast station licensees would divest themselves of ownership interests in programming and advertising and become common carriers (many would elect to remain program producers and syndicates and sell their stations). Stations ~~CARRIER SYSTEMS~~ would contract for programming (funded both by sponsors and pay-TV payments by the public) by time blocks, similar to the present U.K./I.T.A., West German and Japanese systems.

- B. WITH ALL DELIBERATE SPEED, GOVERNMENT MUST ESTABLISH AND, IF NECESSARY, GUARANTEE THE FINANCING OF A UNIVERSAL, MULTI-FUNCTIONAL BROADBAND CARRIER SYSTEM (cable TV and other technologies) ~~REGULATED BY COMMON CARRIER PRINCIPLES.~~

Such a system in 20-30 years will carry 90% of the present print and broadcast media. The multiplied capacity, two-way capabilities and pay facilities of broadband carriers will predictably multiply creative publishing/program/content service markets. It has been predicted that the public's expenditures for all media services will increase by seven fold within five years of the ~~completion~~ CABLING of 80% of urban areas.