



FCC Update:

The Intersection of Broadband, Spectrum and Media

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Overview

- Trends in Media Delivery and Consumption
- National Broadband Plan
- Incentive Auctions for Broadcast Spectrum
- Future of Media Report
- Net Neutrality
- Fairness Doctrine
- Cross Ownership
- Video and Communications Accessibility
- Distribution Regulation
- Content Regulation

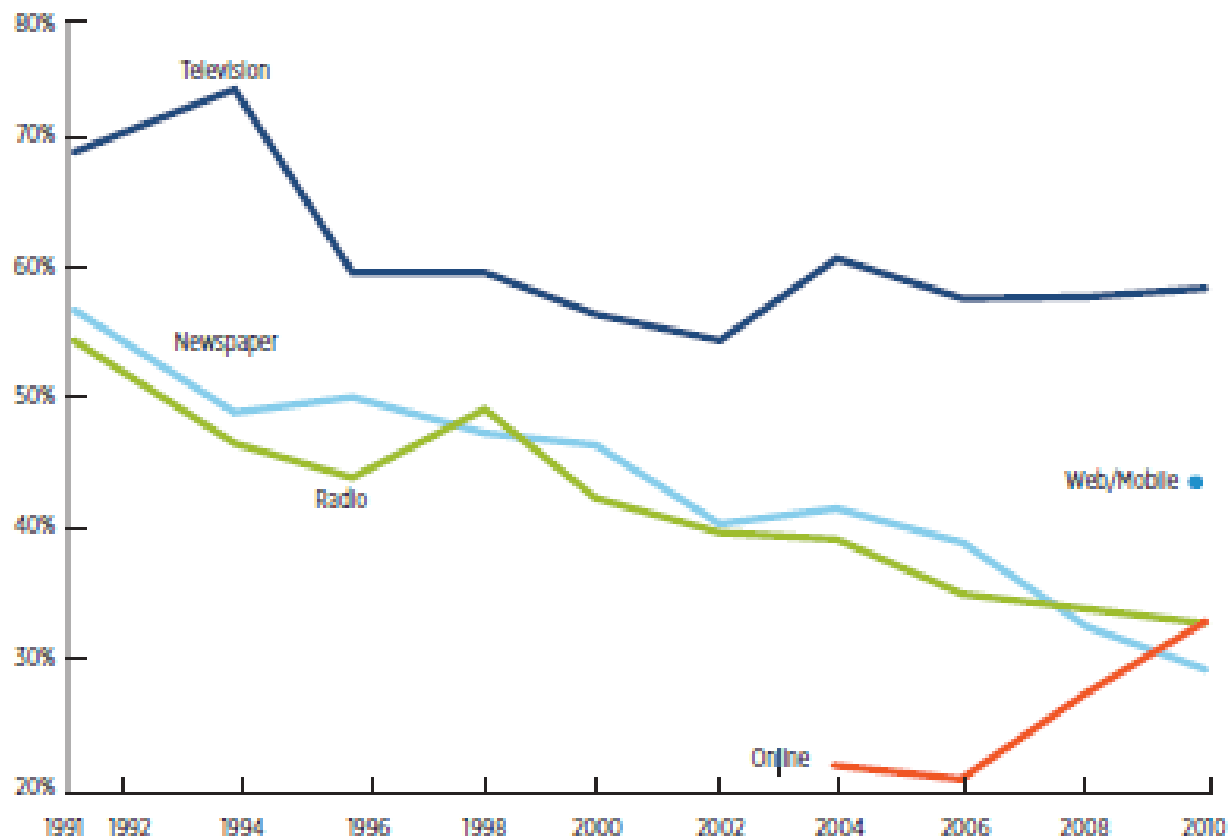


Trends in Media Delivery and Consumption

Explosive Growth in Outlets

- There is a growing shift away from traditional news sources and towards the Internet especially for people under 30

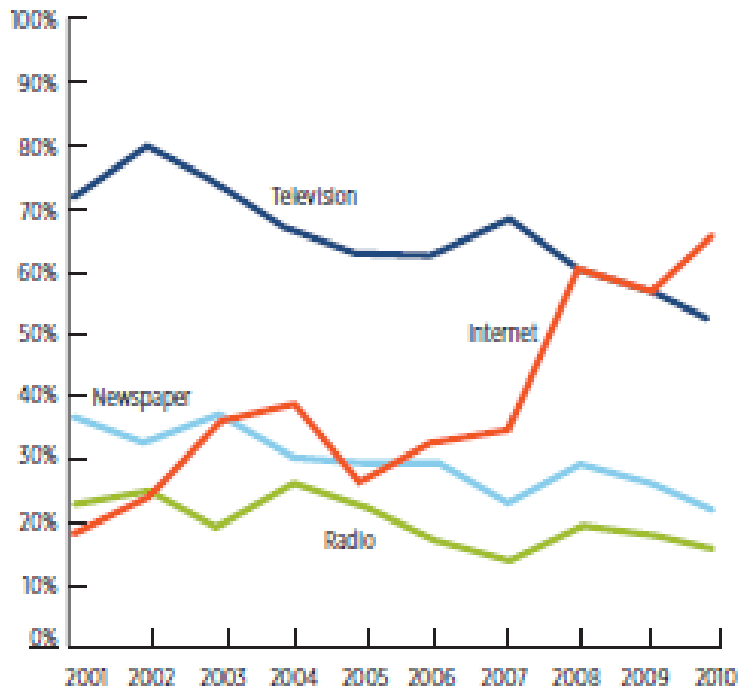
WHERE PEOPLE GOT THEIR NEWS "YESTERDAY"



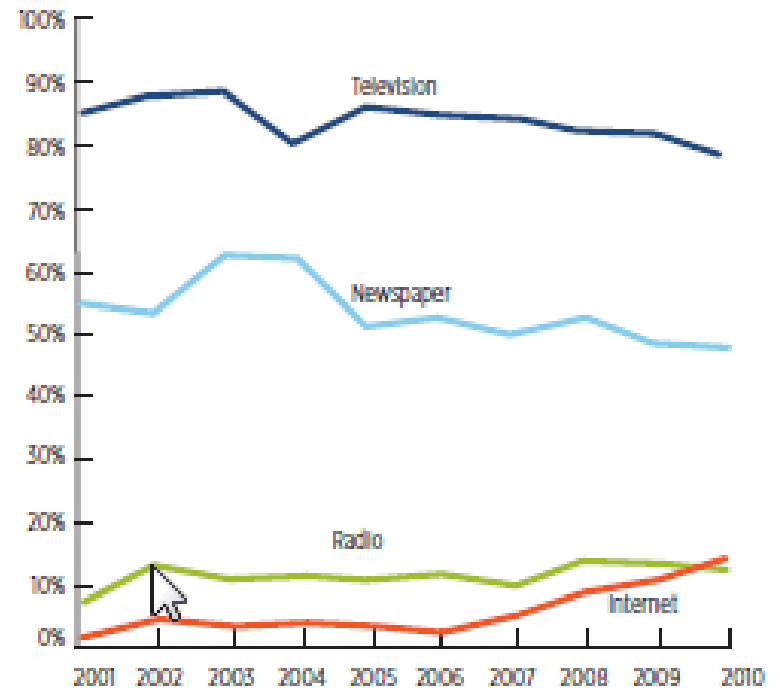
Source: Pew Research Center, June 8-28, 2010¹⁷

MAIN NEWS SOURCE, BY AGE

18–29 Year Olds

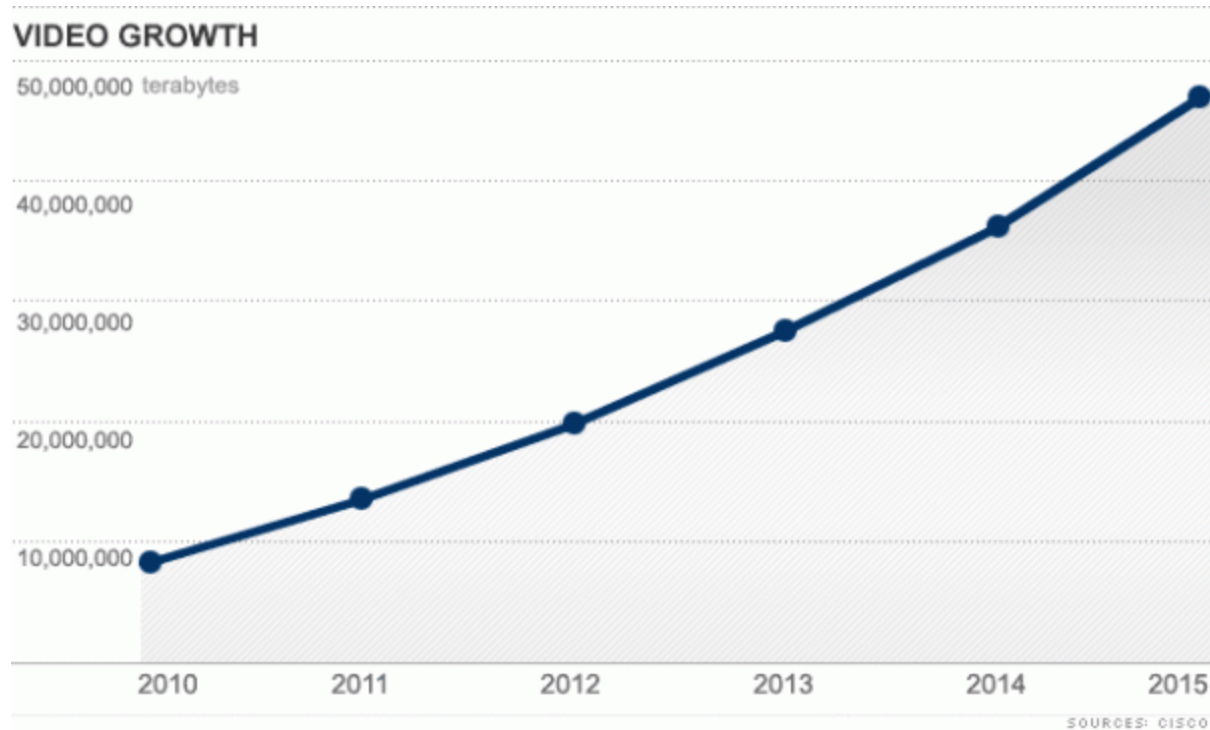


65 Years and Older

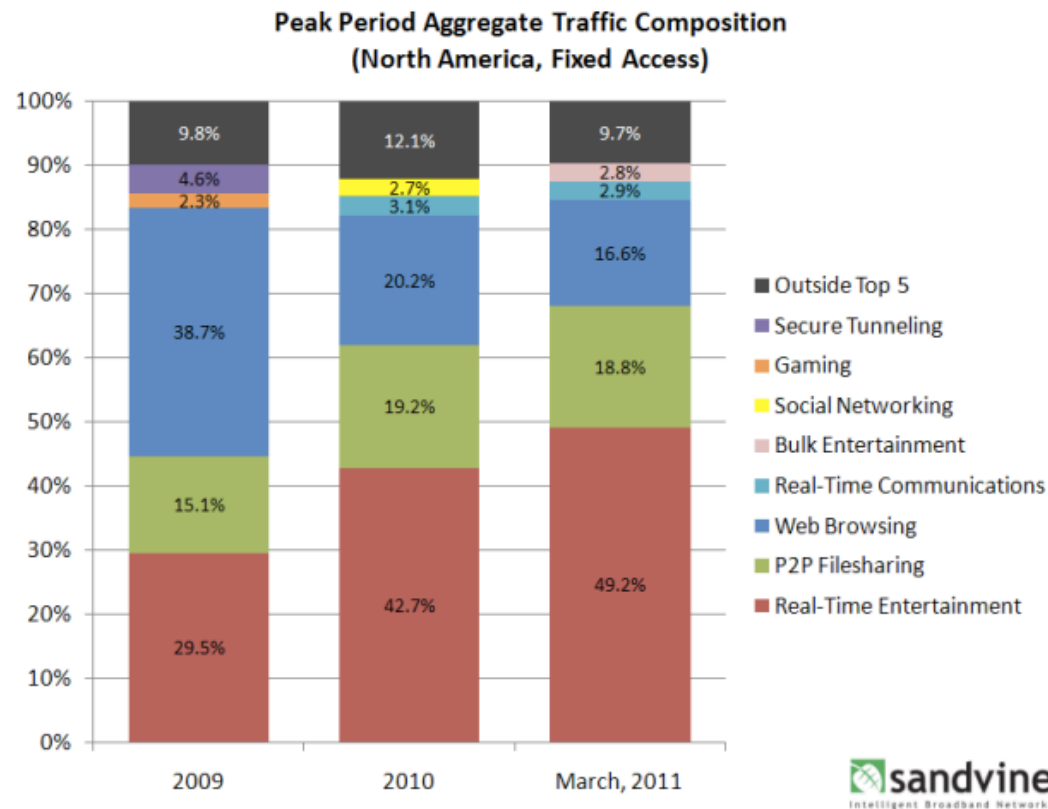


Source: Pew State of the News Media 2011, citing Pew Research Center Dec. 1–5, 2010. Figures add up to more than 100% because respondents could volunteer up to two main media sources.⁹

Video Content Sent Over Internet Growing Rapidly



Streaming Internet Video (Mostly Netflix) is Surpassing File Sharing

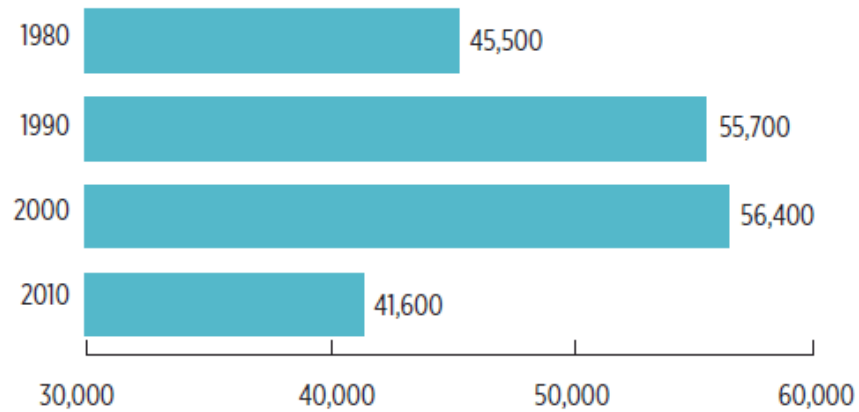


Abundance of Voices Does Not Necessarily Mean an Abundance of Journalism

- Growing number of outlets rely on relatively fixed or declining pools of original reporting by traditional outlets
- Reduced staff leads to less in-depth coverage

a/

TOTAL U.S. DAILY NEWSPAPER NEWSROOM WORKFORCE (1980-2010)



Source: Pew State of the Media 2011; American Society of Newspaper Editors, Newsroom Employment Census, 2010⁵⁷

Average Local News Staff (2009 vs. 2008)

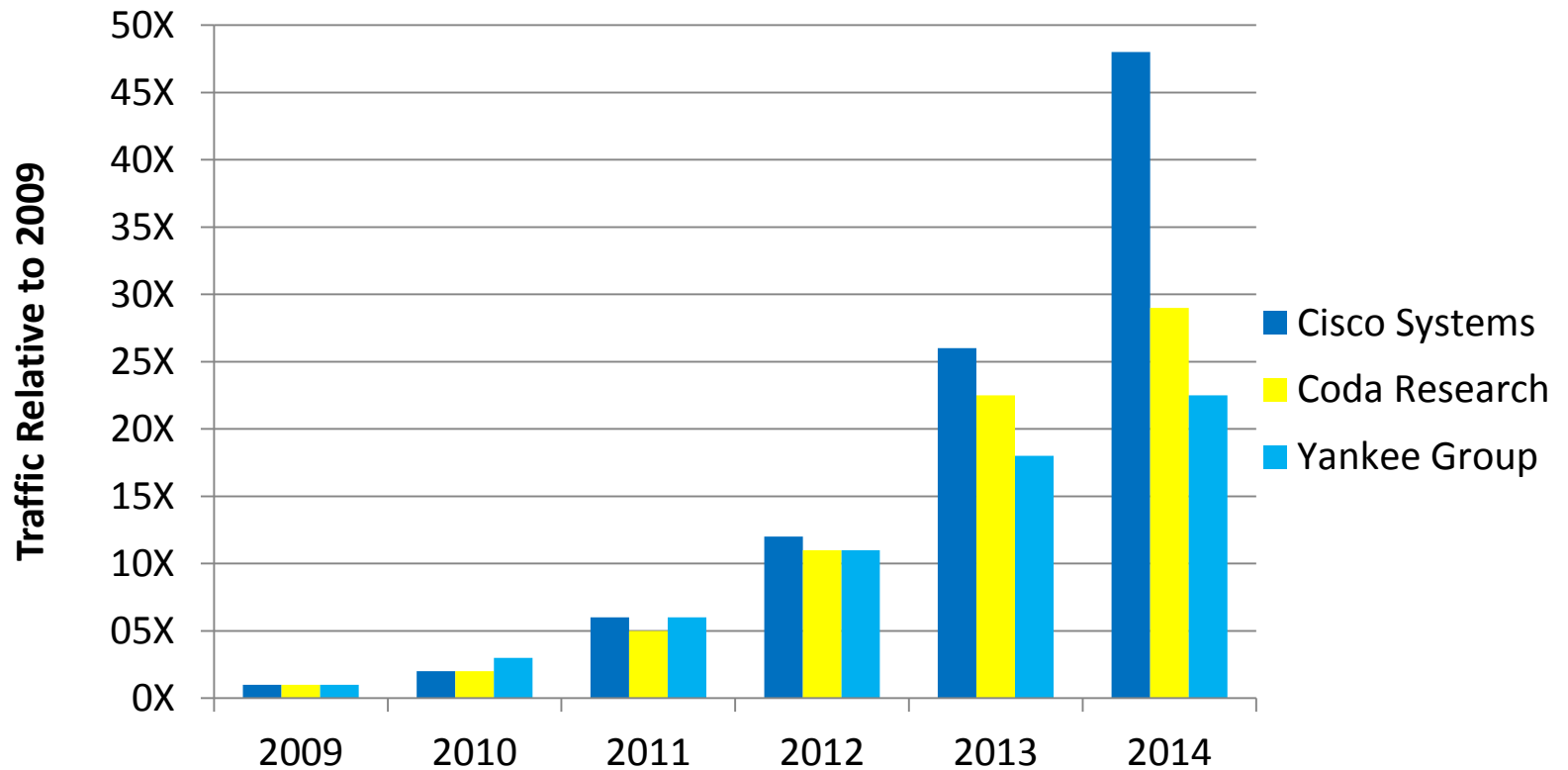
	All TV News	Big Four Affiliates: ABC, CBS, NBC, Fox	Other Commercial Broadcast TV Stations
Increased	11.5%	11.4%	15.2%
Decreased	64.1%	64.0%	60.6%
Same	24.3%	24.2%	24.2%
“Don’t Know”	0.3%	0.3%	0%

Source RTDNA/Hofstra Surveys based on survey responses of news directors

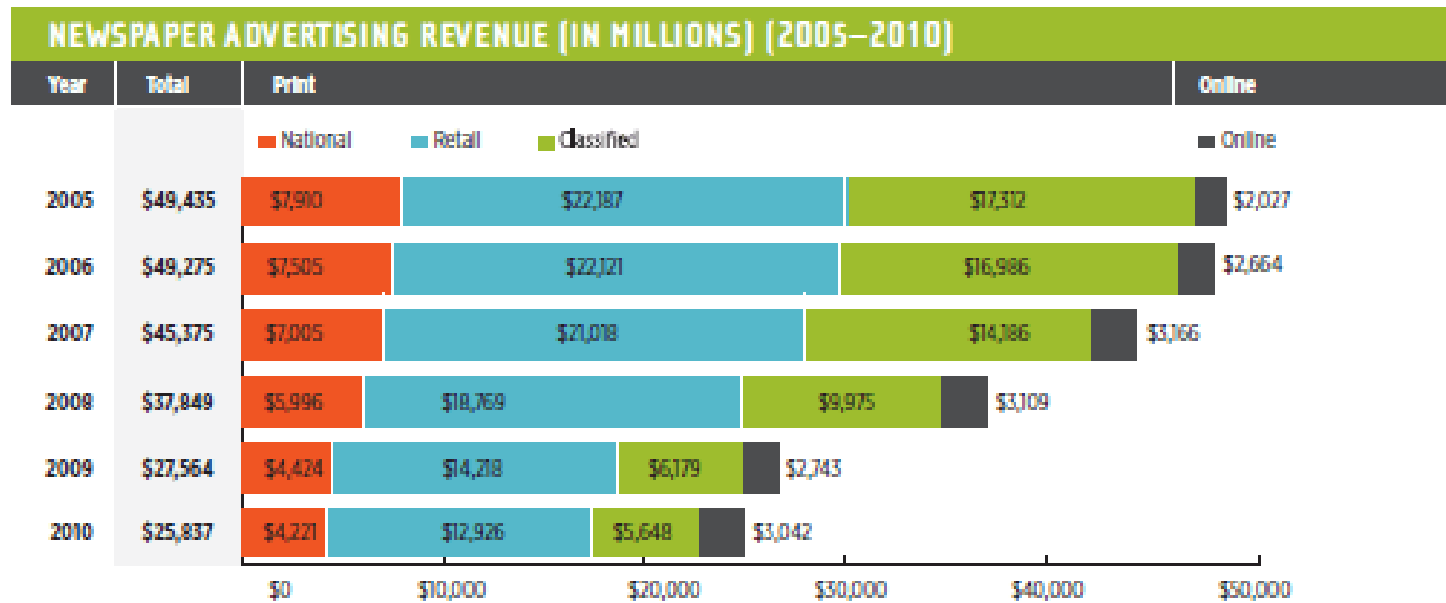
Demand for Mobile Data Skyrocketing

- The fastest growing means for accessing news and information is the mobile device
 - 56% of mobile device users and 47% of population use mobile devices to get local news via the Internet

Industry Forecasts of Mobile Data Traffic



Technology Has Upended Traditional News Media Business Models



Multiplicity of Outlets Leads to Regulatory and Policy Inconsistencies



National Broadband Plan

Key Goals

- Connect 100M households to 100 megabit broadband
- Affordable access to every community of 1 gigabyte
- 500 MHz of spectrum for wireless broadband
- Increase broadband adoption rate from 65% to 50%
- Affordable broadband to rural communities (USF)
- Promote competition by ensuring greater transparency
- Interoperable public safety network

Reallocation of Broadcast Spectrum

Background

- 500 MHz to meet wireless demand for broadband
- Proposed to reallocate as much as 120 MHz of spectrum from TV to wireless broadband
 - Contention: The spectrum has been underutilized since the DTV transition in 2001 (only 10% watch TV over the air)



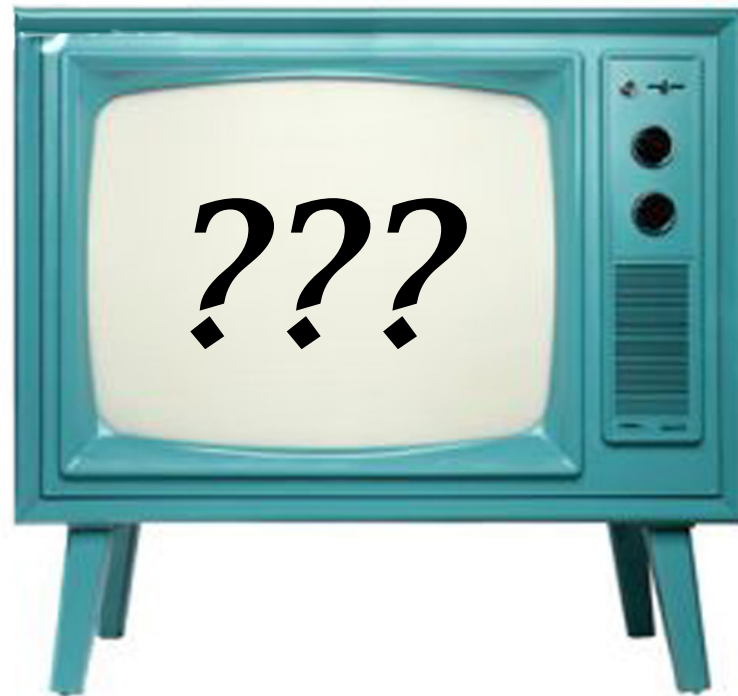
Incentive Auctions for Broadcast Spectrum

Reallocation of Broadcast Spectrum

- FCC issued NPRM proposing incentive auctions (Nov. 2010)
 - New primary allocations for fixed and mobile wireless users
 - Framework that would allow two or more stations to share a single 6 MHz channel
 - Repack remaining broadcasters in Channels 2-31.
 - Exploring ways to improve VHF reception
- Congressional action is necessary before incentive auctions can occur

Broadcasters are Concerned

- How will repacking work? Will current coverage area and interference protection be retained?
- Repacking in channels 2-31 may not be possible, especially in the Northeast, near Canadian border.
- Will incentive auctions work? How much money will broadcasters get?
- Who will pay for repacking?





Future of Media Report



THE INFORMATION NEEDS OF COMMUNITIES

The changing media landscape in a broadband age

Conclusions Re: Policy and Regulatory Landscape

The Fairness Doctrine

Reinstating the Fairness Doctrine would chill debate and harm local news

Sponsorship Identification Rules

Penalties have not been updated in years, making it hard for whistleblowers to report infractions. Stations are not required to post information online

Public Interest Obligations of Broadcasters

The system is broken, licenses are routinely renewed regardless of compliance

Enhanced Disclosure

Overly bureaucratic and cumbersome

Ownership Rules

The nature of the “diversity” calculus may have changed; more is not necessarily better

Conclusions (cont'd)

Minority and Small Business Ownership

Few operating programs are designed to encourage ownership of small businesses

Leased Access

System is dysfunctional

Satellite Radio Rules

Prohibit satellite from airing locally originated programs

Local Reporting

Due to constitutional constraints and long-standing policy decisions, most media-related regulations are not addressing the gaps in local programming

Policy in a Digital Era

Because content no longer lives within just one platform, there are many policy inconsistencies.

Recommendations

Emphasize Online Disclosure as a Pillar of FCC Media Policy

- Replace the burdensome "enhanced disclosure" rule, terminate the localism proceeding and repeal the remnants of the Fairness Doctrine
- Require disclosure of the "pay-for-play" arrangements online as well as on the air
- Allow noncommercial broadcasters that do not receive CPB funding, including religious broadcasters, to devote up to one percent of on-air time to fundraising
- Require satellite operators to post their disclosure forms online
- Study the effectiveness of leased access program

Enhance Citizen Monitoring

- Every state should have a state public affairs network similar to C-SPAN
- Governments should collect and publish data in a manner that is easy to access and analyze
- Proceedings and hearings should be available online
- Direct existing government advertising spending toward local media

Nonprofit Media Sustainability

- Give more flexibility to fund *local* programming
- Journalism schools should continue "medical residency" model
- PEG channels should consider shifting toward teaching digital literacy
- Allow low power FM stations to gain traction
- Support widespread broadband access
- Local public TV stations should be able to participate in incentive actions
- Modern media policy should work for people in historically underserved communities

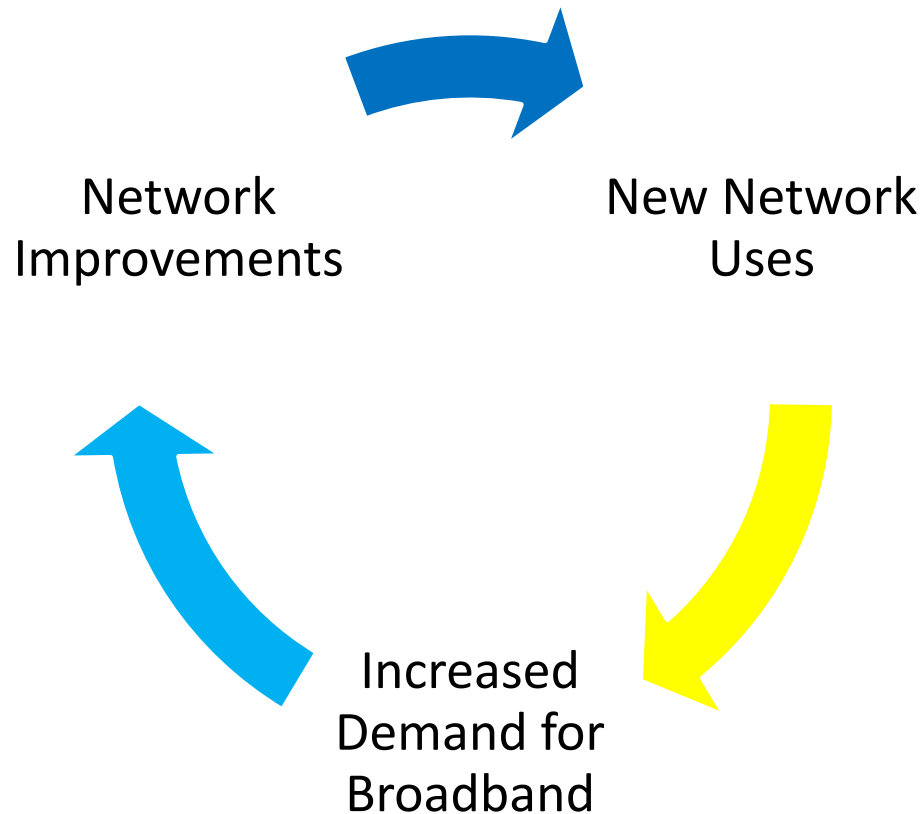


Net Neutrality

Impetus for Order

- Increasing reliance on internet for news, entertainment
- Limited choices for broadband services
- Broadband providers' economic incentives to reduce openness for competitors
- Economic and civic benefits of maintaining an open and competitive platform

The Virtuous Cycle of Internet



Four Core Principles Applied to Broadband Internet Access

1. Transparency
2. No blocking
3. No unreasonable discrimination
4. Reasonable network management

Transparency

RULE A person engaged in the provision of broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings

No Blocking (Fixed)

RULE A person engaged in the provision of fixed broadband Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management

No Blocking (Mobile)

RULE

A person engaged in the provision of mobile broadband Internet access service, insofar as such person is so engaged, shall not block consumers from accessing lawful websites, subject to reasonable network management; nor shall such person block applications that compete with the provider's voice or video telephony services, subject to reasonable network management

No Unreasonable Discrimination (Fixed Only)

RULE A person engaged in the provision of fixed broadband Internet access service, insofar as such person is so engaged, shall not unreasonably discriminate in transmitting lawful network traffic over a consumer's broadband Internet access service. Reasonable network management shall not constitute unreasonable discrimination

Reasonable Network Management

RULE A network management practice is reasonable if it is appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service

Key Content Issues

Managed Services

- Video distributors provide both subscription video and Internet access; FCC will monitor to ensure subscription product is not used to evade rules

Paid Prioritization

- FCC stopped short of banning payment for prioritization from content provider to Internet access provider, but says it would probably be unlawfully discriminatory under most circumstances

Basis of Authority

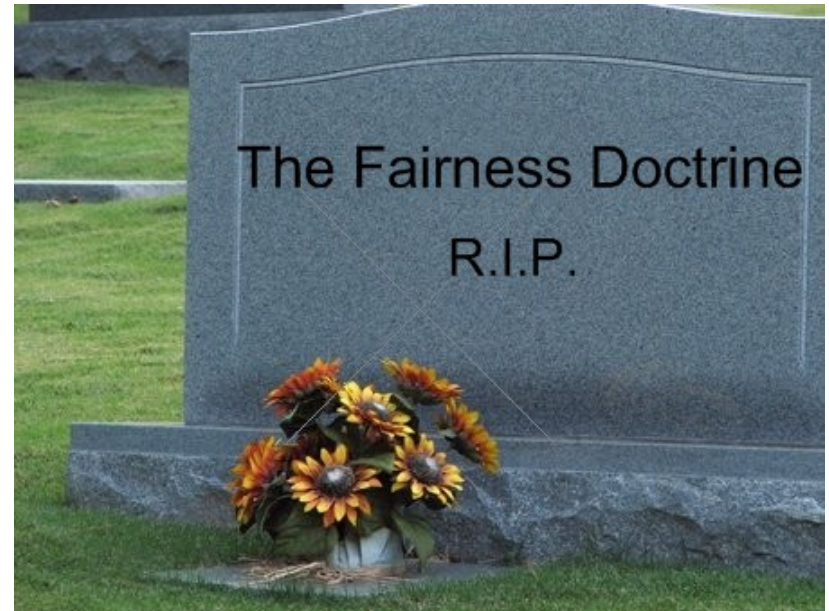
- Primarily relies on Title I ancillary authority and a variety of other provisions of the Communications Act, including:
 - Section 706
 - Section 201
 - Section 251(a)(1)
 - Section 303
 - Section 628(b)
 - Section 616(a)



Fairness Doctrine

Fairness Doctrine

- Abolished August 23, 2011, together with 83 outdated Media Rules
- Impact of a repeal not terribly significant
 - In 1987, the FCC had already decided Fairness Doctrine was an unconstitutional restriction in broadcast freedom of speech





Cross Ownership

FCC's Quadrennial Review

- NOI issued May 25, 2010
- Broad ranging document asks dozens of questions
- NPRM still has not been issued
- Decision—possibly late 2012

Rules to Be Considered

Local Television Ownership Cap

- Ownership is limited to two stations in markets where there are at least eight independent owned stations
- Combination of top four stations in every market is prohibited

Local Radio Ownership Cap

- One entity can own up to eight stations in a single market, as long as no more than five are in any single service (AM or FM)

Rules to Be Considered

Newspaper Broadcast Cross Ownership

- Forbids cross-ownership of broadcast stations and local newspapers without a waiver
- 2007 Order provided that waivers will be granted on a more liberal basis in the top 20 markets

Radio/Television Cross Ownership Only

- Limits number of radio and TV stations that can be owned in a single market

Dual Network Rule

- Prohibits common ownership of any top four TV networks

Prometheus Radio Project v. FCC

(3rd Circuit Decision)

- Court questions two FCC cross ownership orders
 1. Relaxing newspaper – broadcast cross ownership (2007 Order)
 2. Adopting policies to increase diversity in broadcast ownership (2008 Order)
- Orders sent back to FCC for further consideration
- 2007 and 2008 Orders followed prior 3rd Circuit decisions finding the FCC's 2003 Order was not adequately justified





Communications and Video Accessibility

- Communications and Video Accessibility Act enacted in October 2010
 - Modernize FCC rules to address accessibility of new communications and video devices and services
- Stepped up enforcement by DOJ of accessibility issues and advocacy under state laws

- NPRM on TV closed captioning
- Video Description
- IP-delivered closed captioning
 - Full-length video programming previously displayed on television must be captioned on Internet
 - Pass-through requirements for devices, software maybe
 - Final rules implemented by January 2012, subject to phase-in compliance schedule
- NPRM comments filed October 18
 - Replies due October 28



Distribution Regulation

Cable Program Carriage

- Rule: FCC prevents video distributors (Time Warner Cable, Verizon Fios, DirecTV, etc.) from carrying affiliated cable programming in favor of unaffiliated cable programming.
- Recent development: FCC denied carriage complaint of Wealth TV (network) against Cox, Comcast, and TWC, finding no discrimination by cable operators *on the basis of affiliation*.

Cable Program Access

- Rule: FCC prevents video distributors from *withholding* affiliated cable programming from competing video distributors.
- Recent development: FCC granted access complaint by Verizon against Cablevision for access to High Def NY Knicks game, finding the programming was “must have” for Fios to compete (DC Circuit upheld).

Broadcast Retransmission Consent

- Rule: FCC prevents video distributors from retransmitting off-air broadcast signals without permission station owners, who are otherwise prohibited from charging the public.
- Recent development: FCC initiated a proceeding at request of video distributors to consider new restrictions on broadcasters' latitude to withhold permission (transparency, non-discrimination, and no tying).

Online Video Distributor (“OVD”) Condition on Comcast-NBCU Merger

- As condition of merger approval, FCC and DOJ impose conditions on Internet distribution by OVDs (e.g. Hulu) of Comcast-NBCU owned content
 - Content must be provided to OVDs on similar economic terms as Comcast-NBCU gives to traditional video distributors (U-Verse, Dish, etc.)
 - If an OVD obtains Internet distribution rights to major studio or network content, Comcast-NBCU must also grant rights on similar terms



Content Regulation

- Supreme Court reviewing two FCC indecency appeals
- Expansion of Children's Television Act for a digital age?



Thank you

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