



Communication Law & Ethics

RU COMS 400 Unit 8

Broadcasting, cable, satellite and internet



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Class web site:

revolutionsincommunication.com/law

On Track: Unit 8 Broadcasting

- Read Unit 8 on web site
- Consider research / moot court brief
- Take Quiz 8

This section:

- Broadcasting content regulation
 - Broadcast indecency / censorship.
- Structural regulation of telecom
 - Anti-monopoly laws

Cases

- Trinity Methodist v FRC, 1932
- NBC v US, 1943
- Farmers Coop v. WDAY, 1959
- Red Lion Broadcasting v FCC, 1969
- United Church of Christ v. FCC, 1969
- FCC v. League of Women Voters, 1984
- Reno v ACLU, 1997
- Manhattan Comm Access v Halleck, 2019

Laws & regulations

- Federal Radio Act 1912
- Federal Radio Act 1927
- FRC General Order 40, 1928
- Federal Communications Act 1934
- Mayflower Decision 1940
- Fairness Doctrine, 1947 – 1987
- Children's Television Act, 1990
- Telecommunications Act, 1996

Broadcast law and regulation



Broadcasting is more regulated than print, film and the web.

- This regulation involves both structure and content.
- The regulatory authority comes through legislation from Congress, enforced by the FCC , and interpreted through the Courts.

Principles of FCC regulation

- **Scarcity rationale** — Originally, the scarcity rationale applied to the narrow band of the electromagnetic spectrum made available for radio and TV broadcasting.
 - This was undermined by 1) Cable networks 1970s; 2) Satellite systems 1990s; 3) the Internet 2000s; 4) and Digital TV. *So the trend has been towards deregulation.*

Principles of FCC regulation

- **Localism** for radio and television stations to serve their individual communities. More ideal than real; *industry profits don't support localism.*
- *Cabled / Streaming (MVPD – multichannel video programming distributors)* not as regulated, threaten old broadcast business, local influence
- NAB wants “regulatory symmetry” / keep AM radios in new cars

Principles of FCC regulation

- **Fairness** – an open marketplace of ideas, eg, the much-debated Fairness Doctrine
- **Common Carrier doctrine** – The idea in common law that a carrier of any kind should operate without discrimination for the "public convenience and necessity."
 - Telcos became regulated utilities with the promise that profits would be applied to ensuring wide access to service at low cost.

Principles of FCC regulation

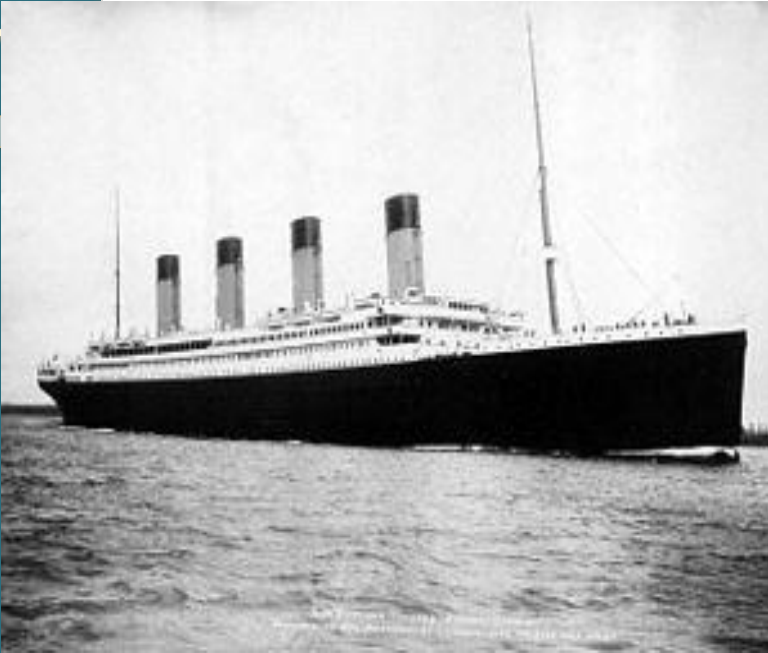
- **Public forum**, especially community access cable programming
 - Affirmed in [Denver Area Educational Telecommunications Consortium v FCC](#), 1996
 - Partly overturned in [Manhattan Community Access Corp v Halleck](#), 2019.
 - *“Local governments are vested with discretion to experiment... [and] establishing public forums is properly a local decision*

Advent of radio

- **Radio telegraphy** --
invented and commercialized
in the 1890s by Guglielmo Marconi.
- **Radio “telephony”** (voice and music) became
available commercially in the 1920s.
- British company Marconi → American Marconi
 - Which later became RCA, the Radio Corporation of
America
 - Which formed NBC radio network



Titanic - April 15, 1912



- Marconi spark system
 - Protected by patents but
 - Long out of date
 - Only one signal over entire spectrum at a time
- Nearby ship Californian told to “get off” the air

“Sixteen hundred lives were lost that should have been saved if the wireless communication had been what it should have been.” NY Times, May 2, 1912

Titanic changes radio

- Radio monopolies outlawed –
 - Federal Radio Act of 1912 (passed Aug. 13)
- Technology changing from radio telegraph to radio telephony
- World War I — All radio controlled by government 1917 - 1918.
- 1919 -- American Marconi becomes Radio Corporation of America (RCA)

Monopoly radio network

- Demand for radio explodes after WWI
 - 5,000 tubes per month in 1921 to 200,000 by mid-1922; by 1930 125 million / month
- **RCA creates NBC** in 1926
 - Network broadcasts carried on telephone to broadcasters in major US cities
 - Two networks – Red (commercial) and Blue (non-commercial)
- **Radio Act of 1927**, establishing the Federal Radio Commission - licensing & frequency allocation
- **FRC 1927 General Order 40**
 - Created 25 super stations (clear channel)
 - 23 of these were NBC owned or affiliated
 - Some 700 independent and educational radio stations were pushed off the air

Challenging the NBC monopoly

- CBS established in 1929 by cigar company owner William S. Paley
- NBC dominates airwaves through 1930s
 - CBS – patchwork more than a network
 - CBS innovates to compete -- news and non-commercial programs (Orson Welles' Mercury theater)
- Mutual Broadcasting - anti-trust complaint 1934
 - FCC investigates, recommends split NBC blue
 - NBC appeals, but loses in NBC v FCC, 1942
- NBC Blue becomes ABC

KFKB v FRC, 1930

“Doctor” John Brinkley



- quack medical philosophy of implanting “goat glands”
- Medical license but no training
- Radio license but no public service
- Lost both
- Moved station to Mexico & created the first “border blaster”
- Legal fights, medical issues; died 1941

Trinity Methodist Church

KGEF v. FRC, 1933

- Rev. Robert P. Shuler
- Attacked evil and its agents on earth, including gamblers, bootleggers, grafters, and corrupt police and politicians; the president of UCLA for allowing evolution to be taught; the Los Angeles public library for allowing certain evil books; the YWCA for allowing dances; and fellow evangelists such as Billy Sunday and Aimee Semple McPherson.



Trinity v FRC (cont)

- In November 1931, the Federal Radio Commission revoked Shuler's broadcast license, and KGEF went off the air.
- Shuler appealed but a federal appeals court affirmed the decision,
- Court said if this use of the airwaves were permitted, *“radio will become a scourge and the nation a theater for the display of individual passions and the collision of personal interests.”*

FCC Act 1934

- Communications Act of 1934 — Set up Federal Communications Commission with authority over a variety of areas, including: Mass Media licensing, Wireless (ham, aeronautic, marine), Common Carrier (telephone, telegraph) and field operations.
- The FCC also said that because the broadcasting spectrum belonged to the public, stations must operate in the “public interest, convenience and necessity.”

FCC Structure

- 5 commissioners, 5-year terms
 - President appoints, U.S. Senate confirms
 - No more than 3 commissioners from same political party
- Regulates technologies using the electromagnetic spectrum
 - e.g., radio, TV, cable, satellite, some internet
- Regulates wired and wireless long-distance phone companies

Section 315 – Equal time rule

- Still applies
 - despite end of Fairness Doctrine
- Federal political campaign advertising must be sold at lowest block rate
- All candidates must have access to advertising
- Broadcasters not responsible for libel or other issues in qualified campaign ads
 - Farmer's Co-op v WDAY, 1959

War of the Worlds - 1938



Why a panic?

- News program style
- 6 million listened,
- 1 million believed
- War news from Europe was new
- No commercial breaks (Mercury had no sponsor)
- Wells didn't believe that people were really panicking / didn't break up program

The New York Times.

Copyright, 1918, by The New York Times Company.

NEW YORK, MONDAY, OCTOBER 21, 1938.

Radio Listeners in Panic, Taking War Drama as Fact

*Many Flee Homes to Escape 'Gas Raid From
Mars'—Phone Calls Swamp Police at
Broadcast of Wells Fantasy*

A wave of mass hysteria seized thousands of radio listeners throughout the nation between 8:15 and 9:20 o'clock last night when a broadcast of a dramatization of H. G. Wells's fantasy, "The War of the Worlds," led thousands to believe that an interplanetary conflict had started with invading Martians spreading wide death and destruction in New Jersey and New

York, and radio stations here and in other cities of the United States and Canada seeking advice on protective measures against the raids.

The program was produced by Mr. Wells and the Mercury Theatre on the Air over station WABC and the Columbia Broadcasting System's coast-to-coast network, from 8 to 9 o'clock.

The radio play, as presented, was to simulate a regular radio pro-

War of the Worlds – outcome



Hoax Rule – FCC regulations now ban broadcast fabrications of disasters or catastrophes.

- Intent is to minimize panic avoid harm
- No similar “hoax rule” is imposed on the print media.
- Imagine print tabloids being banned from fabrications.

News distortion rule

Broadcasting false information that causes substantial ‘public harm’ — The FCC prohibits broadcasting false information about a crime or a catastrophe if the broadcaster knows the information is false and will cause substantial “public harm” if aired.

- **Broadcasting false content during news programming** — The FCC is prohibited by law from engaging in censorship or infringing on First Amendment rights of the press. It is, however, illegal for broadcasters to intentionally distort the news

News distortion rule



In 2025, the U.S. Federal Communications Commission opened an investigation about possible violations of the rule in the wake of a complaint about the editing of a CBS “60 Minutes” interview with then-Vice President Kamala Harris. (See [“FCC must drop CBS news distortion inquiry”](#) by the RCFP).

Father Charles Coughlin 1930s

- Radio priest had his own program on NBC
- Hour-long sermons
- Sided with Nazis against Jewish people, 1938
- Regulations change – No more one-person shows
- Start of Fairness Doctrine



Fairness Doctrine I

- NAB code changes 1938
 - Fr. Coughlin speech defends “Krystallnacht”
 - Supported Nazi attacks on Jewish people in Germany
 - No more one-speaker programs
 - FCC & NBC change policies
- FCC Mayflower decision 1940
 - Ban on supporting single candidates or issues
- FCC Blue book report 1946
 - Notes “Shabby commercialism” and a “listeners be damned” attitude, requires public service
 - Broadcasters fight FCC, use anti-communist rhetoric
- Fairness doctrine 1947
 - Access for all viewpoints (But not really all)

Fairness Doctrine 2

- **Upheld** in Red Lion Broadcasting v FCC, 1969
 - TV station had to provide time for response to a personal attack
- **Struck down**, FCC v. League of Women Voters 1984
 - Challenge to law that said public broadcasting stations couldn't editorialize
 - First time the court had ever overturned a content restriction of broadcasters on First Amendment grounds.
 - Paved the way for abolition of most of Fairness Doctrine

Red Lion v FCC 1969

- Rev. Billy Joe Hargis attacked Fred J. Cook and his book about the 1964 candidate Barry Goldwater.
- Cook sued for a right of reply under the Fairness Doctrine and won.
- *It is the right of viewers and listeners, not broadcasters, which is paramount, the court said.*
- In contrast, note the Miami Herald v. Tornillo 1974 case, in which a print medium was not given a “right of reply.”



WLBT Civil Rights media case

- In 1954, a group of civil rights activists began studying the pattern of racially biased news and public affairs programming. The Jackson, Miss. Chapter of the NAACP filed repeated complaints with the FCC about one particularly racist television station, WLBT in Jackson. Requests for a public hearing when the station license came up over the years were consistently turned down by the FCC.

Medgar Evers

One Jackson Mississippi NAACP leader, Medgar Evers, went on the air to complain that broadcasters were deliberately blocking civil rights news coverage coming from network news in the 1950s and 60s.

He was assassinated in 1963, the day after the broadcast



The Evers case ...

- Office of Comm. of United Church of Christ v. FCC., in which civil rights groups challenged the FCC's licensing practices in Mississippi — and won.
- <https://www.youtube.com/watch?v=oEfMVzeGd8Q&t=5s>

UCC v FCC opinion, 1966

A broadcaster is not a public utility ... but neither is it a purely private enterprise like a newspaper or an automobile agency...

Under our system, the interests of the public are dominant. The commercial needs of licensed broadcasters and advertisers must be integrated into those of the public.

-- Warren Burger, 1966

Children's Television Act 1990

- Commercial TV stations must provide programming for children meeting their intellectual and social/emotional needs
 - 3 hours per week, 30-minute long programs
- Program-length commercials banned
 - Programs broadcast between 7 a.m. and 10 p.m. local time
- Ads have to show toys as used, not idealized

Broadcast indecency: The Garden of Eden sketch on NBC

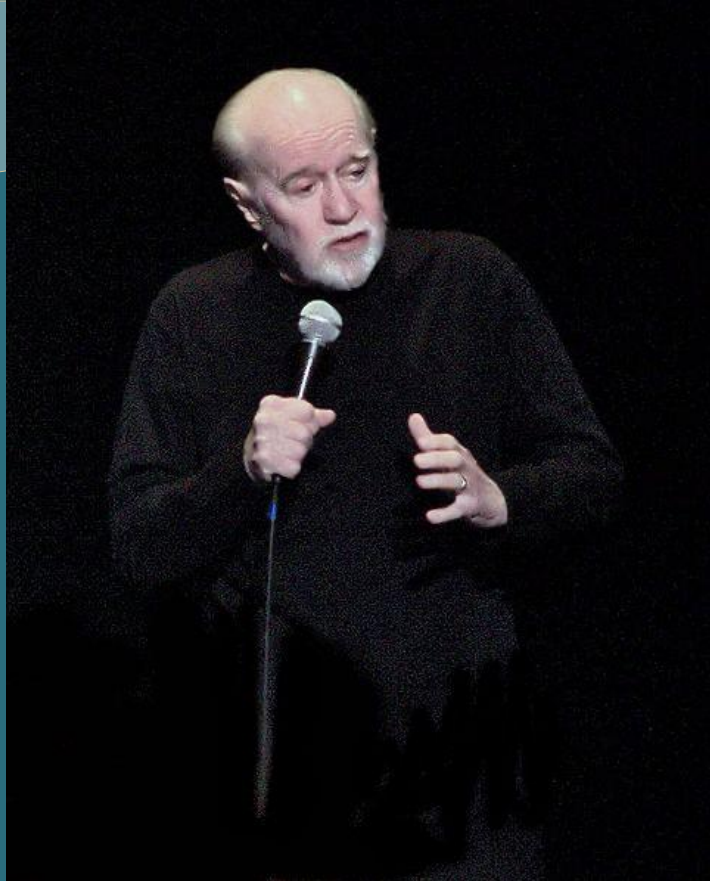


With



“If trouble is something that makes your blood run like seltzer water, mmh, Adam, give me trouble...” Mae West

Big trouble from the FCC,
Dec. 12, 1937



FCC v Pacifica, 1978

- George Carlin's "Seven Dirty Words" monologue
- Created a new time, place and manner restriction setting aside the 10 pm to 6 am slot as a "safe harbor" for indecent material,

1980s – 1990s — Over time, FCC standards slipped, but in 1987, FCC tried to re-regulate obscenity on the air, especially in songs (Makin' Bacon), a play (The Jerker) and "shock" radio (Howard Stern). The FCC faced typical difficulties in defining indecency. They settled on:

"Language or material that depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." This, of course, is very similar to the language in *Miller v California*.

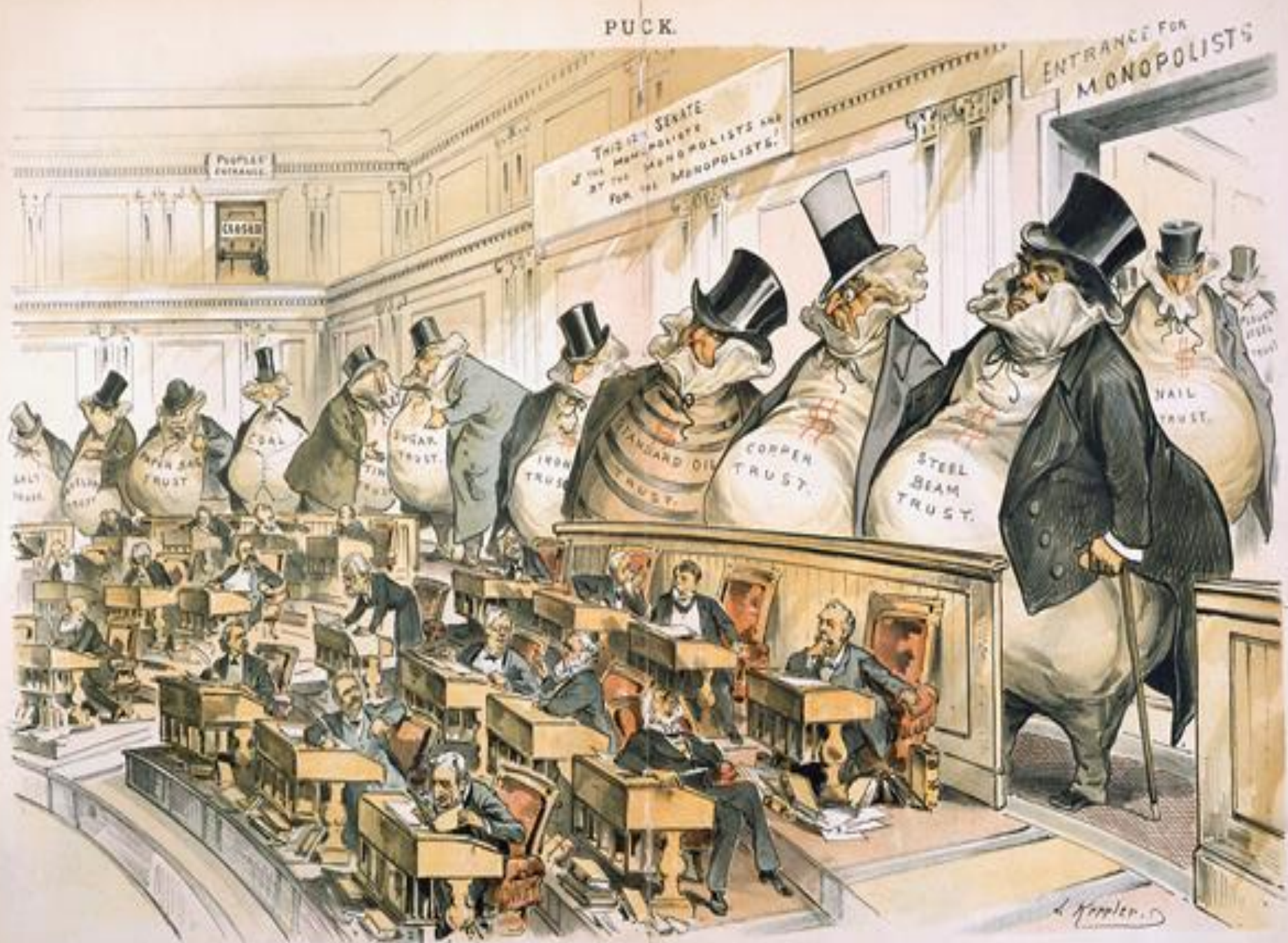
Fleeting indecency cases

2001 to today -- dozens of cases of indecency on TV

2002 —(example) Billboard Music Awards, Cher gives classic response to critics: “I’ve had unbelievable support in my life, and I’ve worked really hard. I’ve had great people to work with. Oh, yeah, you know what? I’ve also had critics for the last 40 years saying that I was on my way out every year. Right. So fuck ‘em. I still have a job and they don’t.”

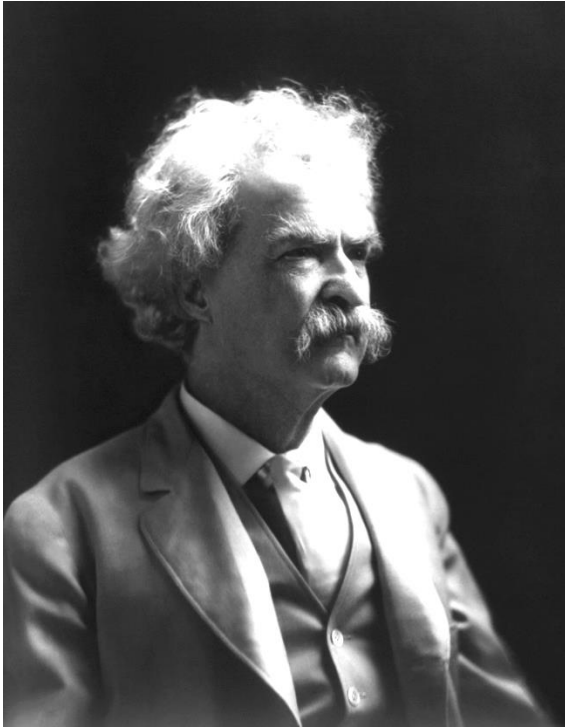
Lots of other cases ...

2011 CBS v FCC, 2012 FCC v Fox (series of cases) US Supreme Court upholds FCC fines for indecency



THE BOSSES OF THE SENATE.

The Brilliant Associated Press



- “There are only two forces that can carry light to all corners of the globe -- the sun in the heavens and the Associated Press down here. I may seem to be flattering the sun, but I do not mean to do so...” Mark Twain, 1906

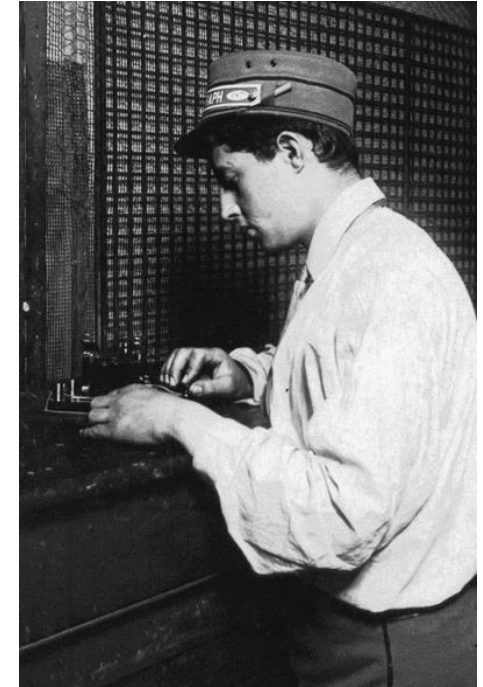
AP criticized, investigated



- Congress -- 96 bills, 48 committee reports on AP and Western Union, 1866 – 1910
- AP monopoly meant that news of regional controversy would come from biased sources.
- Cartoon (above) from The Masses pictures AP poisoning the well of news about the West Virginia mine wars around 1912.

Opposition to monopoly

- AP-Western Union was one of dozens of trusts they tried to break up
- United Press (Scripps), International News (Hearst) formed to compete with AP 1907
- AP finally loses anti-trust suit 1945



Standard Oil Trust broken



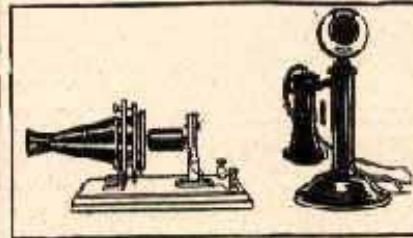
- 1906 first suit under the [Sherman Antitrust Act](#) of 1890;
- 1911 the New Jersey company was ordered to [divest](#) itself of its major holdings—33 companies in all.
- Standard of Ohio, Indiana, NY, NJ, become Amoco, Chevron, Exxon, Arco ...

Not all
Trusts
were
busted

1920s ad
defending
phone
monopoly

How the Public Profits By Telephone Improvements

Here is a big fact in the telephone progress of this country:



Original
Bell Telephone
1876

Standard
Bell Telephone
To-day

Hand in hand with inventions and developments which have improved the service many fold have come operating economies that have greatly cut its cost.

To appreciate these betterments and their resulting economies, consider a few examples:

Your present telephone instrument had seventy-two ancestors; it is better and cheaper than any of them.

Time was when a switchboard required a room full of boys to handle the calls of a few hundred subscribers. Today, two or three girls will serve a greater number without confusion and very much more promptly.

A three-inch underground cable now carries as many as eight hundred wires. If strung in the old way, these would require four sets of poles, each with twenty cross arms—a congestion utterly prohibitive in city streets.

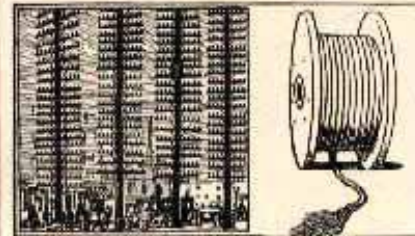
These are some of the familiar improvements. They have saved tens of millions of dollars. But those which have had the most radical effect, resulting in the largest economies and putting the telephone within everyone's reach, are too technical to describe here. And their value can no more be estimated than can the value of the invention of the automobile.

This progress in economy, as well as in service, has given the United States the Bell System with about ten times as many telephones, proportionate to the population, as in all Europe.



Early
Telephone
Exchange

Typical
Present-day
Exchange



If City Wires
Were Carried
Overhead

800 Wires
in Underground
Cable



AMERICAN TELEPHONE AND TELEGRAPH COMPANY
AND ASSOCIATED COMPANIES

One Policy

One System

Universal Service

Anti Trust law (very basic)

- Begins with Sherman Act 1890, Clayton Act 1914
- Some companies split up (Standard Oil) and some retained “natural” monopoly status (AT&T)
 - “Bell system” phone cos broken up in 1984
 - IBM being investigated by Justice Dept early 80s when MS and Apple emerged
 - Sat radio & tv OK’d only if competitive 1990s
 - Technology changed all that

Anti Trust law (very basic) 2

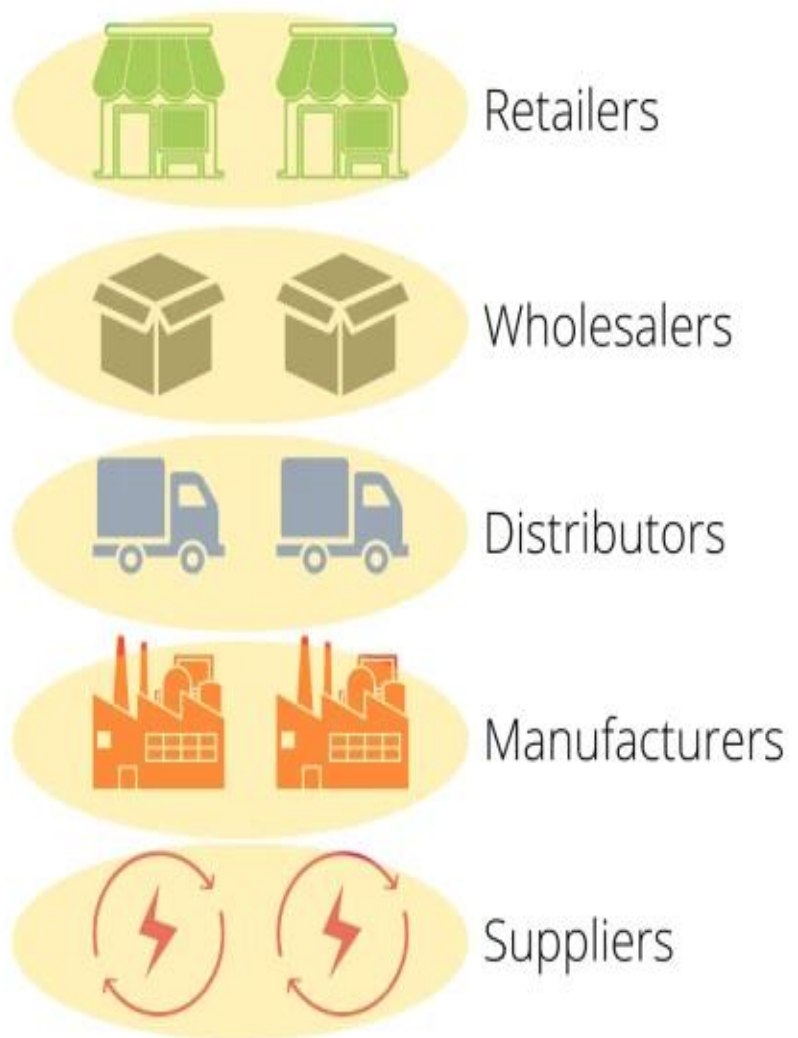
- Two philosophies:
 - **Liberal** - 1930s thru 70s Warren court — Pro Regulation (per se test)
 - Per se — by itself — Market dominance is itself evidence of anti competitive behavior. If Microsoft has 90 percent of the market, it is per se a monopoly,
 - **Neo-conservative** -- (80s – present) The market is best and tends to be self correcting. If companies get too big they will divest.
 - Ex: IBM lost to small computer companies like Microsoft when it was essentially a monopoly.



Vertical integration

Horizontal integration

Supply chain

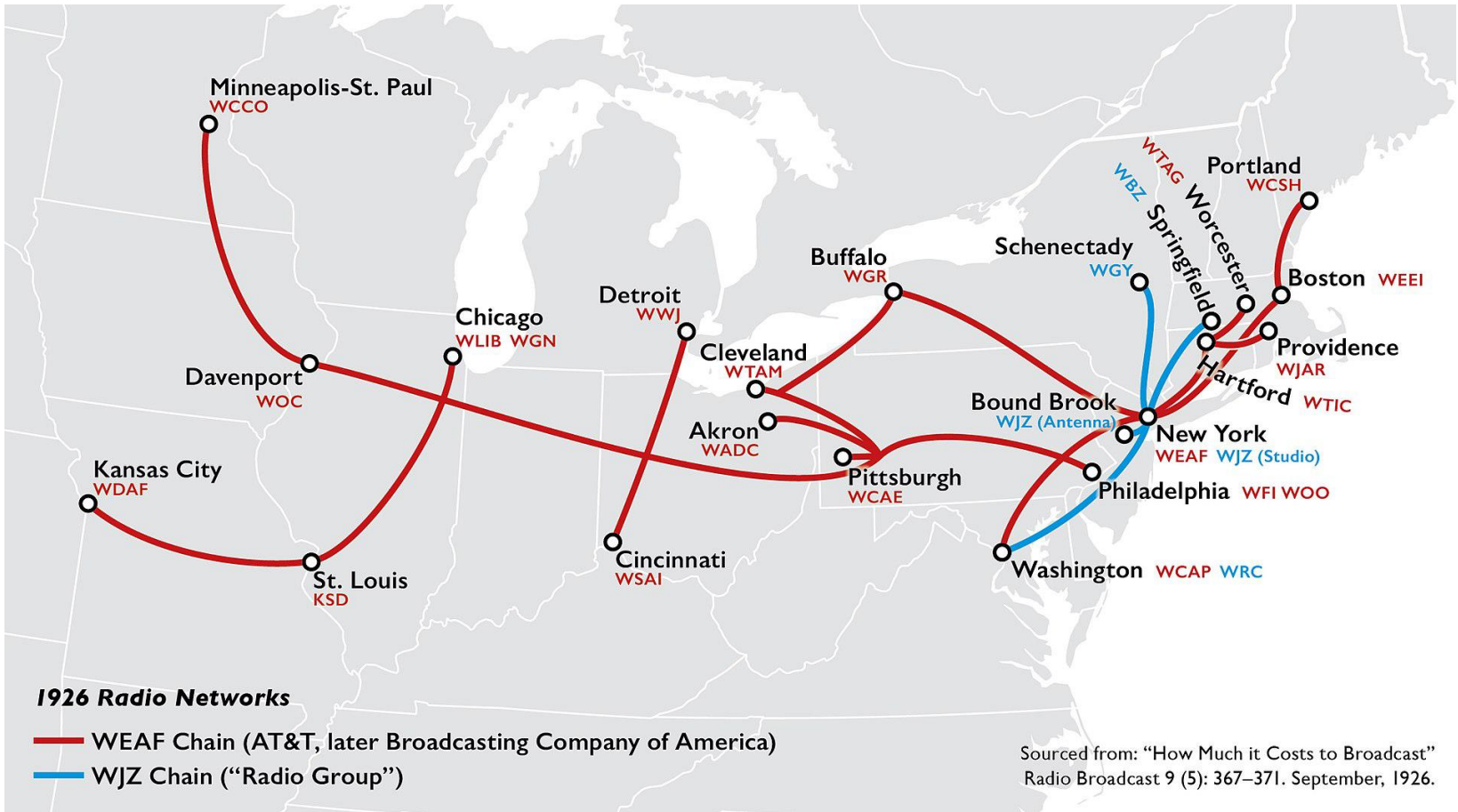


Businesses from the same level merge

Regulating media structure

- **NBC v US, 1942**
 - Originally two networks – blue and red
 - Blue network becomes ABC following anti trust decision by US Supreme Court
- **Associated Press v. U.S. 1945** — AP membership presented “barriers to entry”

NBC red and blue 1926



Structure of broadcasting

- Broadcasting is highly structured in 1980
- Rule of sevens (AM, FM, TV) limits ownership
- Cross ownership not allowed (phone-cable-newspapers-tv)
- Community radio local ownership
- Ends with Telecomm act 1996

Anti-Trust & newspapers

- In a 1969 case, US v Citizen Publishing, the Supreme Court struck down “joint operating agreements” of morning & afternoon papers
- **Newspaper Preservation Act of 1970** Congress legalized JOAs.
- Most city newspapers merged, so you had double names on the banner: Richmond Times-Dispatch; Roanoke Times-World; etc.
- Monopoly status was one reason newspapers missed the digital curve in the road

Anti-Trust media cases

- **Associated Press v. U.S. 1945** — AP membership presented “barriers to entry”
- **Loraine Journal Co. v. US 1951** — An Ohio newspaper refused to accept advertising from anyone who bought ads on a new radio station. This is a classic “refusal to deal”
- **US v. Microsoft, 1998**, “refusal” to program for Netscape browser was anti-competitive “refusal to deal.” Settled by consent decree.

Media mergers

- Anti-trust (anti-monopoly) law means US Justice Dept. blocks some mergers
- The Justice Department and Federal Trade Commission examine proposed mergers for "any reasonably available and reliable evidence to address the central question of whether a ... merger may substantially lessen competition."

Media mergers

- **Warner Media and Discovery** - Feb., 2022, \$43 billion, combines HBO, Warner Bros. television and film studios and the sports-heavy TNT and TBS networks with Discovery's library of nonfiction programming, which includes Oprah Winfrey's OWN, HGTV, the Food Network and Animal Planet.
- **Microsoft acquires Activision** (Blizzard /World of Warcraft) in a **\$68.7 billion deal** proposed Jan 18, 2022.
- **AT&T Inc. acquires Time Warner Inc.** Oct. 22, 2016, \$101 billion (including debt)
- **Charter Communications Inc. acquires Time Warner Cable Inc.**, May 26, 2015, \$87.4 billion (including debt)
- **AT&T Inc. acquires DirecTV.** May 18, 2014, \$66.5 billion.

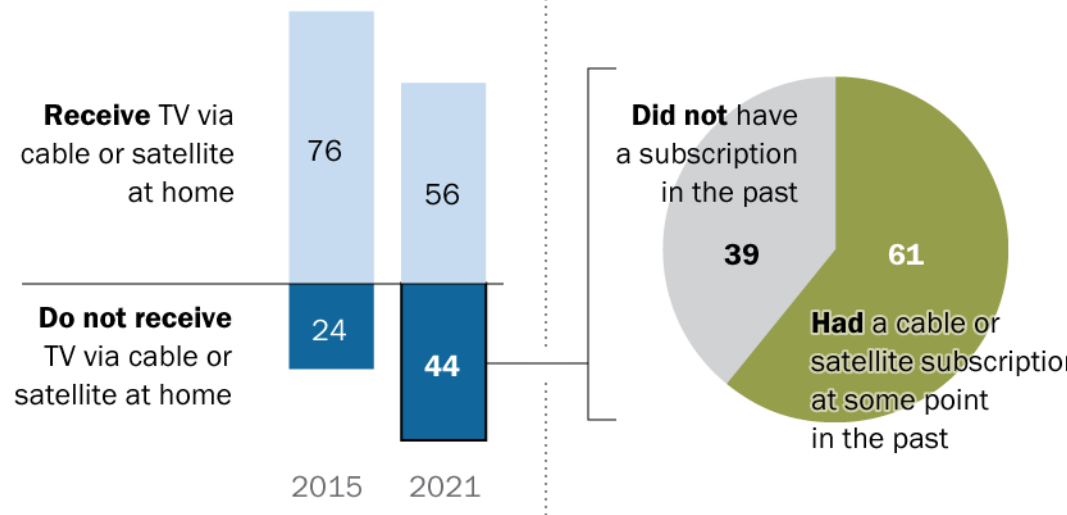
Anticompetitive legislation

- **In March, 2022**, Democrats proposed an antitrust bill that would prohibit acquisitions larger than \$5 billion, allow the Senate to block mergers that give companies market shares larger than 33%, and even retroactively prevent deals that resulted in a market share of 50% or more.
- If passed, bill could reverse some of the largest media mergers of the last few years
- There are no Republican co-sponsors, which means it is unlikely to pass, but it is not an unpopular topic among Republicans.

Cable TV

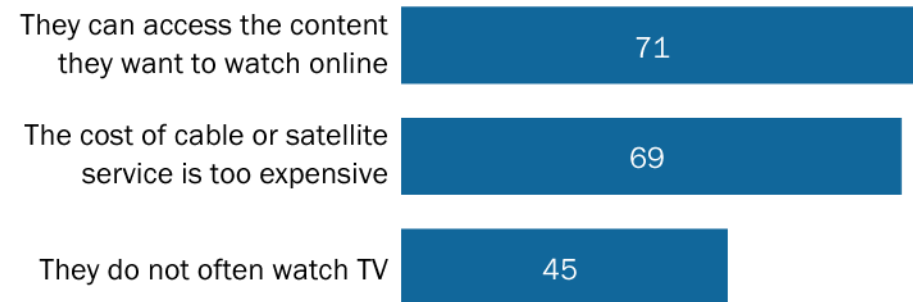
- Monopoly in most US localities
 - **Cable TV consumer protection act 1992** meant local governments could set rates & clarify terms
 - But industry agreements avoided competition
- Over-priced through leveraged buyouts
- Started in 1950s, market penetration peaked c. 2010, expected to fall below half of households by 2020
- City of LA v Preferred Cable, 1986 – city poles & wires not closed (important for 5g)
- Alternatives include on-demand services like Netflix, Starz, Hulu etc.

Cable TV is Declining



Nonsubscribers cite the availability of content online and cost as reasons they do not subscribe to cable or satellite TV

*Among those who **do not receive** TV via cable or satellite at home, the % who say these are reasons they do not have a subscription*

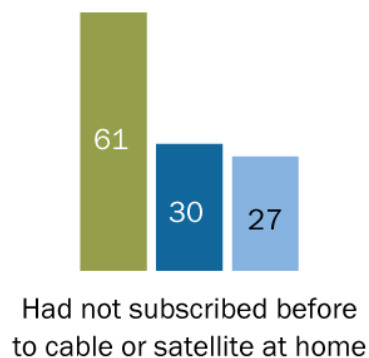


Note: Respondents who did not give an answer are not shown.
Source: Survey of U.S. adults conducted Jan. 25–Feb. 8, 2021.

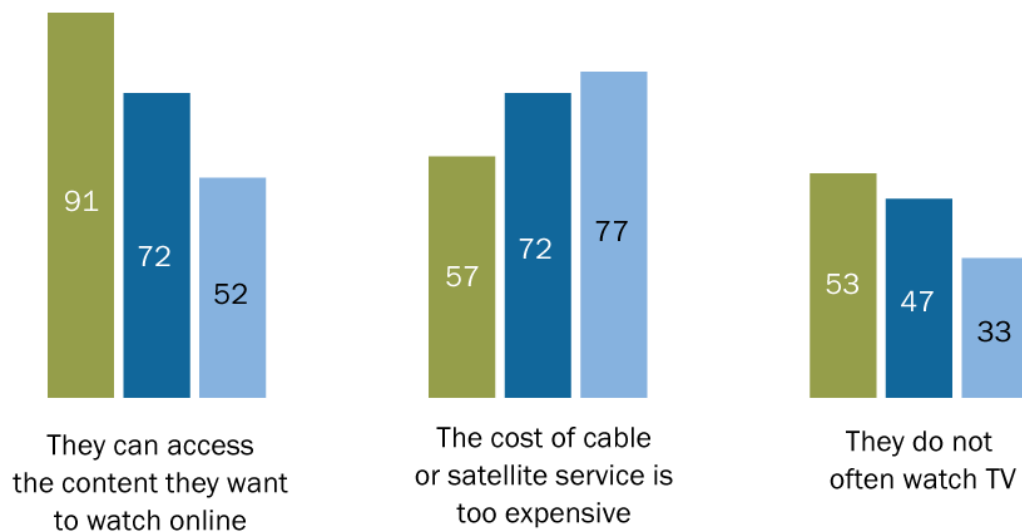
Young adults are the most likely never to have subscribed to cable or satellite and say they can access the content they want online

■ Ages 18-29 ■ 30-49 ■ 50+

Among the 44% of U.S. adults who **do not receive** TV via cable or satellite at home, the % in each group who say they ...



Among the 44% of U.S. adults who **do not receive** TV via cable or satellite at home, the % in each group who say they do not currently have a subscription because ...



Note: Respondents who did not give an answer are not shown.
Source: Survey of U.S. adults conducted Jan. 25–Feb. 8, 2021.

PEW RESEARCH CENTER

Telecomm Act 1996

- Major overhaul of 1934 FCC Act
 - Rollback of New Deal broadcast regulation
 - Especially broadcast station ownership rules
- Repealed AT&T breakup
- Converge telecom and b'casting
 - Opened markets to competition between types of media (cable tv vs phone – didnt work)
 - Allowed large companies to control more markets
 - Allowed broadcast radio monopolies
 - This killed broadcast radio and accelerated alternatives
- Included Communications Decency Act
 - Prohibited obscenity and indecency on internet
 - Challenged in Reno v ACLU, 1997, guaranteeing that internet would be regulated like print not broadcasting
 - But CDA section 230 “good samaritan” provision kept

CDA Section 230

- “One of the most valuable tools for protecting freedom of expression and innovation on the Internet.” Electronic Frontier Foundation
- *CDA 230 says: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider"*
- Shields ISPs and bloggers who publish other views
 - Eg FB shielded from suits about comments
 - Some reforms, esp. FOSTA, ended Craigslist dating apps
 - But Facebook quickly started its own dating app
- Liberals object; Section 230 is a “gift” to big tech
- Libertarians say the real problem is unfair business models and lack of privacy protection

Net neutrality

- Internet Service Providers (ISPs)
- ISPs = phone, cable TV, satellite TV
 - Verizon, Comcast, Shentel, Dish, etc
- Net neutrality means ISPs not allowed to discriminate content provided
- Without net neutrality, ISPs can block content they don't like
 - Eg phone companies block Voice Over IP (VOIP) or

Net neutrality

- Using provisions of the Communications Act of 1934, the FCC classified Internet service providers as common carriers, effective June 12, 2015, for the purpose of enforcing net neutrality.
- On December 14, 2017, under a new presidential administration, the FCC reversed its own rules on net neutrality, essentially revoking common carrier status as a requirement for internet service providers.
- The U.S. Senate narrowly passed a non-binding resolution aiming to reverse the FCC's decision and restore FCC's net neutrality rules.

Net neutrality politics & technology

- Phone & telegraph – common carriers
 - Historically not allowed to discriminate
- ISPs regulated differently depending on technology – No common carrier rules for cable ISP, but CC for phone
- 2008 – 2017 FCC net neutrality rules
- Trump FCC in 2017 overturned neutrality, Biden FCC returned it
- States can foster competition, net neutrality
 - Virginia legislature backed local and rural broadband in 2017 despite telecomm opposition

Broadcasting cases / Review

- Trinity Methodist Church v. FRC, 1933
- Office of Com. UCC, v FCC, 1969
- NBC v US, 1943
- Farmers Educational Cooperative Union v. WDAY, 1959
- Red Lion Broadcasting v FCC 1969
- FCC v LOWV, 1984
- FCC v Pacifica, 1978
- FCC v Fox TV, 2012

Broadcasting law / Review

- Radio Act of 1912
- Radio Act 1927
- FCC Act 1934
- Fairness Doctrine 1948
- Equal Time Rule (Section 315) / Political advertising (?)
- Comm Act 1996,
- Sherman 1890



- Thank you