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THE INTERNET AS “THE COMMON MEDIUM”*

Reed E. Hundt**

All nations need a common medium. A common medium needs to be (1) the customary medium for the entire population; (2) very easy for people to use; (3) culturally accessible and in common language(s); (4) open to participation by everyone; (5) good for business—because economic growth should be fostered by the medium, not undercut by it; (6) providing access for the government to the people; (7) full of news; (8) sufficiently local in its manifestation for people to know what is going on around them; (9) in a private multi-firm market; and (10) consistent with the First Amendment (one reason why it should be private). These are the ten necessary traits of a common medium.

By 1948, the year of my birth, over-the-air broadcast had become the common medium in the United States. Today, broadcast, even when transmitted over cable, is no longer the common medium. Today’s common medium is the Internet. This transition has been underway for nearly twenty years.

In late 1993, when I had only been at the Federal Communications Commission (“FCC” or “Commission”) for about a month, I received a call from one of Al Gore’s people. He said, “Come over and take a look at this.” On his computer he showed me a picture of the Louvre. I said, “Well, that’s really nice. I guess that’s this thing called the screensaver.” He said, “You don’t understand, that’s actually the Louvre. It’s the telephone network that’s carrying it here—over this thing called the Internet.” So then we talked to many people who already had a vision for the Internet. By early 1994 we had decided that the Internet would be, and ought to be, the common medium instead of broadcast.

The choice to favor the Internet over broadcast was ultimately made over many years by many people in the public and private

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sectors. Now this selection is apparent in many industries—newspapers, telephone, studios, and many others. To do its part to facilitate the transition, the FCC has undertaken many actions, but the first, important fundamental policy decision was to link America’s telephone networks to the large installed base for personal computers. The FCC, therefore, allowed people to connect their computers to the telephone network for free and allowed Internet Service Providers (“ISPs”) to connect the telephone network to the Internet almost for free. Essentially, the Commission harvested the new-found value of the telephone network as a data network and gave it to society. (This is the way Washington used to work. It does not always work like this anymore. As you can see, it works really well now.)

Almost everyone in the internet community has long operated under the delusion that government played no role in the growth of the Internet. In many ways, to be sure, the transition from broadcast to broadband has been more technologically-driven than government-driven. But government has always played an important role.

The telephone networks argued that internet communications crossed state lines and therefore were subject to interstate access charges—a view that would have burdened the fledging technology. But the FCC held that internet communications did not cross state lines.¹ As another boon to the Internet, reciprocal compensation required telephone companies to pay ISPs for terminating phone calls, even where no calls would ever be made back to the telephone company.² At the time, there were only three places in the world to which you could make a telephone call but from which you would never receive a phone call—funeral parlors, pizza parlors, and ISPs. The FCC also helped make sure that internet commerce would not be taxed.

Another government move to support the Internet was a special universal service provision called E-rate.³ The E-rate program transferred billions of dollars from telephone customers to schools and libraries to subsidize access to the Internet.⁴ Internet access in the

¹ Access Charge Reform, First Report and Order, 12 FCC Rcd. 15982, 16133, 16134 (April 18, 1997).

² *Id.*

³ See Telecommunications Act of 1996, 47 U.S.C. § 254 (2006).

⁴ See Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 9003 (May 7, 1997); see generally *E-rate Program – Discounted Telecommunications Services*, U.S.

classroom is the one area with respect to the Internet where the U.S. leads the world. The generation that went to school from 1995 to 2010 is the most Internet-savvy generation in the world. Most of the children in lower-income groups of that generation primarily learned to use the Internet at school instead of at home.⁵ The Internet is the first technology to have been introduced into the educational at the same pace for the poor as for the rich.

I. THE EVOLUTION AWAY FROM BROADCAST

For many years, the FCC delayed the transition to HDTV, preferring analog broadcasting. In my tenure, the FCC joined with John McCain and Bob Dole to fight a quiet and losing battle against a governmental gift of spectrum for digital broadcasting. Broadcast had served the country well. It spread like wildfire after World War II, and had a number of advantages as a common medium. It was licensed to be universal. Oligopolies were created in every city so that there would be enough revenue to sustain local stations. Broadcast was organized around three principal networks. People were happy with it. Broadcast was entertaining, ad-supported, and free. Government standards made it easy for the industry to build the equipment and to work efficiently. Broadcast was accessible linguistically and culturally. The medium created common denominators across society.

Not all elements of a common medium could be enshrined perfectly in broadcast. For example, the FCC fought a long, slow, and largely unavailing battle to ensure some openness and diversity over fifty years. Government access to the public was guaranteed in broadcast by tradition, but only politicians with money could easily and routinely access the general public over it. (Rupert Murdoch, it should be noted, would have committed free time for political debate if the other broadcasters had not stymied that effort.)

DEP'T OF EDUC., <http://www2.ed.gov/about/offices/list/oii/nonpublic/erate.html> (last visited Sept. 10, 2010); *E-rate*, FCC, <http://www.fcc.gov/learnnet> (last visited Sept. 10, 2010).

⁵ U.S. DEPT. OF COMMERCE, A NATION ONLINE: HOW AMERICANS ARE EXPANDING THEIR USE OF THE INTERNET 85 (2002), <http://www.ntia.doc.gov/ntiahome/dn/anationonline2.pdf>; Gabrielle Hammond, *The Use of Technology in Low-Income Communities*, NONPROFIT TECHNOLOGY NETWORK (Mar. 13, 2006, 10:40 AM), <http://www.nten.org/blog/2006/03/13/the-use-of-technology-in-low-income-communities>.

In any case, broadcast definitely was good for business by creating huge brand value in the U.S., and it was an intrinsic part of the great economic growth from 1950 to the mid-1970's. To promote local news, the FCC passed various rules that transferred wealth from the networks to the affiliates and imposed obligations to serve the public interest on stations.⁶ Broadcast, with some exceptions, is privately owned and run for profit. It was, and still is, very important that the government does not control any important communication medium in the U.S. In fact, the tiny niche for public broadcasting reflects the FCC's fundamental commitment to depend on private enterprise as the model for all media.

Despite the many beneficial characteristics of broadcast, the FCC in the early 1990s began to lay the framework for the selection of the Internet as the common medium for many reasons. The Commission's view was that the Internet was going to be, among other things, a pathway for the global propagation of Western values and, at least at first, a leading technology that happened to be of American origin. It would be part of a battle of ideas about how to live. The FCC thought the Internet would reach the whole world.

Moreover, the Internet was obviously a richer technology than broadcast. It allowed for text and pictures which provided an easier way for people to have access to information. At its heart the Internet would be a dis-intermediating medium. The Internet was more than just easy to access; it would be diverse, with every race welcome to participate. The content would be generated by people who would choose any point of view; any form of content would be possible; and any kind of ownership of the content would be admissible. All these characteristics represented discrete bodies of legal struggles with broadcasters, which the FCC thought would be obviated if the Internet replaced broadcast as the common medium.

The Commission also thought that the Internet fundamentally would be pro-democracy. The Internet represented an expansion of individual power and choice. Perhaps the single most important thing

⁶ Localism rules, such as content requirements and advisory boards, are designed to ensure that a local broadcaster effectively serves the local community that it is licensed to serve. See Broadcast Localism, Report and Notice of Proposed Rulemaking, 23 FCC Rcd. 1324, para. 4 (Dec. 18, 2007) (citing Press Release, FCC, FCC Chairman Powell Launches "Localism in Broadcasting" Initiative (Aug. 20, 2003)).

to say was that it was two-way, so that active communities and not just passive audiences could flourish in this new common medium.

II. NATIONAL BROADBAND PLAN

The government cannot be stopped from choosing a common medium, because government wants a way to reach everyone. In the U.S., for many years, government tried to slow, impede, and stymie those who tried to rival over-the-air-broadcast’s role as the common medium. The history of cable’s early decades consisted of the government trying to make sure that cable did not undermine broadcast’s role as the common medium. Ultimately cable and satellite ineluctably became delivery mechanisms for broadcast. They simply had too many channels not to succeed. Nevertheless, broadcast continued to receive many benefits and breaks from the government, even after multichannel video demonstrated its advantages.

The 2010 National Broadband Plan reflects the end of an era of trying to maintain over-the-air broadcast as the common medium, and marked a substantive commitment to broadband as the common medium.⁷ For example, the Plan outlines a way to shrink the amount of spectrum that broadcast uses. In previous eras, government had expanded the spectrum for broadcast so as to give it a chance to thrive as it moved from analog to digital. The Plan shows a way to move cable more quickly away from pay-video to broadband. It describes ways to create new electronic public goods that can be accessed only over broadband—electronic healthcare, energy efficiency, community engagement, public safety.

The Plan intended to create more value in broadband, to increase the willingness for people to pay for it, thereby aiding in the achievement in 100% penetration for broadband. It proposes to convert a portion of satellite spectrum into more spectrum capacity for broadband. The Plan also lays out a method to create a Universal Service Fund, to support not the telephone networks, but broadband.

⁷ The National Broadband Plan is a general statement for the development of high capacity broadband in the U.S. It is not a regulatory scheme and is nonbinding. See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001, 123 Stat. 115, 512 (2009) (to be codified at 47 U.S.C. § 1305) (charging the FCC with the task of creating a national broadband plan which explored the deployment and use of broadband throughout the U.S.); FCC, *CONNECTING AMERICA: NATIONAL BROADBAND PLAN* (2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

The Plan represents a commitment to broadband as the common medium. News will eventually be primarily accessed on broadband. The importance of an open and public Internet has been repeatedly stressed by President Obama.⁸

III. CONCLUSION

The fundamental idea driving FCC Chairman Genachowski's various broadband initiatives is that broadband will have the characteristics of the common medium.⁹ It will be open at a technical level. It will be open to devices. It will be open for one communicating to many, for many communicating to one, and for many communicating to many. It will be open in terms of the way people will be permitted to create audiences that demand content, instead of waiting for content to shape an audience.

All of this represents a belief in fundamental American values. We have an identifiable, describable set of values that bring us together. As expressed by Hillary Clinton in her Internet Freedom Speech,¹⁰ these include the empowerment of individuals, and a commitment to entrepreneurship as a form of business activity. These values are meant to be enshrined in a common medium, making the choice of the Internet as that medium fateful for the future of America.

⁸ See President Barack Obama, Remarks to the United Nations General Assembly at the United Nations (Sept. 23, 2010) (as prepared for delivery).

⁹ Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Policy Statement, 20 FCC Rcd. 14986 (Aug. 5, 2005).

¹⁰ Hillary Rodham Clinton, Sec'y of State, Remarks on Internet Freedom at the Newseum (Jan. 21, 2010).