Net Centric Distribution of Video Signal and Must Carry Rules in the U.S.

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Abstract: We are moving to a net centric video distribution model. There is thus a need to rethink must carry rules. In this paper we evaluate the process of transition to a model without must carry rules using an organizational change perspective: leadership; engagement and participation; planning and strategy; process; and outcome evaluation. It concludes that the U.S. Federal Communications Commission did not adequately respond to the needs of the sector and the lack of a transition strategy may have impaired the evolution of the video distribution sector towards a business model that can accomplish both access to greater variety as well as the survival of some local station producers.

Key words: must carry rules, net centric video distribution, FCC.

Convergence and rapid technological change is challenging the video distribution industry just as broadband networks have drastically changed music distribution. This disruptive technology will affect the business models for video distribution and challenge current U.S. legal/regulatory frameworks.

There are important obstacles that companies and regulators will need to overcome to survive. In this paper we focus on the factors that can facilitate the transition to a new regulatory system. The focus is on the United States, evaluating the role of the FCC in this process and determining whether or not the transition will lead to net centric video distribution. In this analysis we use an organizational change framework from the management literature.

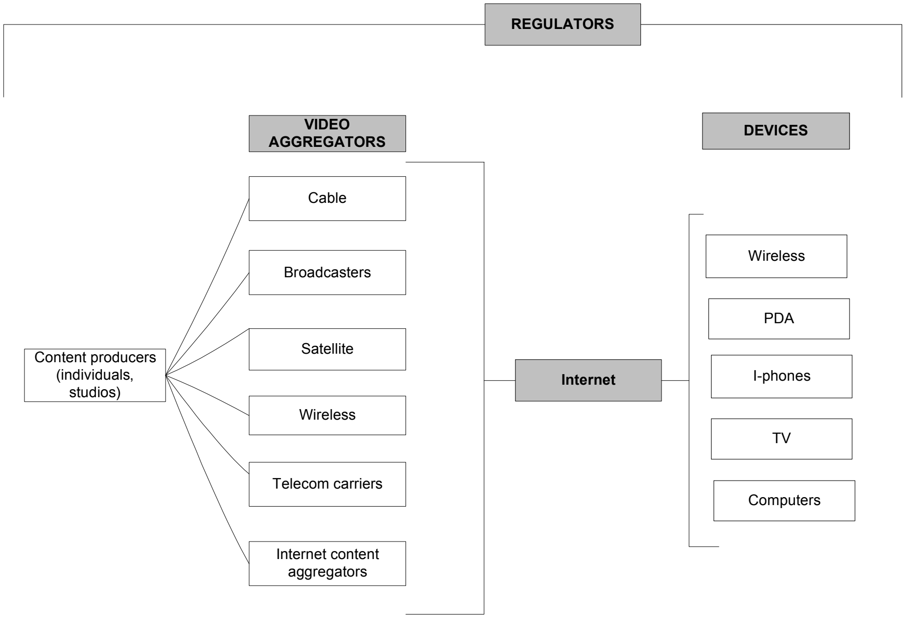
The video distribution industry: a new model

The business model for the distribution of video is changing dramatically. We are moving from scheduled, pre-packaged, pre-selected video offerings to an anytime, anywhere, and anything model.

The movement towards a net centric distribution model began in the late 1990s with the introduction of personal video recorders such as TiVo, (TiVo, 2009) which made recording television programs and skipping commercials easier. Further technological developments have allowed viewers - with products such as the SlingBox and SageTV - to watch programs recorded at home anywhere there is Internet access. Specialized equipment to watch video on demand from an Internet connection is no longer necessary. Examples are Netflix instant watch, Google video, YouTube, Hulu, and Joost, through which individuals have access to vast libraries of both low quality amateur productions and movies produced by major international studios.

Figure 1 shows the business model that we believe will prevail in the future.

Figure 1: Net Centric Business Model



The net centric model, defined as the use of the Internet for the distribution of video from multiple content developers to multiple devices, includes four distinctive parties. The first party is the content developer, which can be anybody, from an individual with an off-the-shelf digital camera to a major international studio.

The second set of players is the aggregators, which buy content from the developers and package it for delivery to the public. Content creators may try to eliminate the video aggregators - the "middle man." For example, Starz Entertainment, filed a lawsuit against Walt Disney Co.'s subsidiary Buena Vista Television, for copyright infringement and breach of contract over download-to-own movies (RILEY-KATZ, 2007). It is unclear at this point if substantial numbers of content developers will try to bypass the aggregators. This is an unlikely scenario due to the value that many users place on convenience. Viewers will be hard pressed to go to multiple websites, one for each content developer, to see their favorite programs. We thus believe that the aggregators will continue to exist.

The third element is the Internet, on which aggregators are increasingly relying. Cable companies have their program lineup, previews, as well as full length programs on their sites. Time Warner Cable, for example, introduced a service called Start Over which allows subscribers to get cable programming for free on the Internet, although it does not allow users to skip commercials (Time Warner Cable, 2009).

The last set of players in this net centric video distribution scenario is the equipment manufacturers. Televisions are no longer the only device to access video. It is now possible to watch programs on computers, cell phones, personal digital assistants (PDAs), and potentially any device with connectivity such as movie players or GPS mapping devices.

The move towards a net centric video model is now in a virtuous circle where the Internet is helping to change viewing habits and new viewing habits further enhance the move towards the Internet.

The change in viewing habits is forcing content developers and aggregators to evaluate their business models. The steps to date are relatively small. NBC Universal announced in 2008 that they were going to eliminate their traditional September new releases to a "year-round schedule of staggered program introductions" in an attempt to attract advertisers who are looking for new content to keep viewers (CARTER & ELLIOTT, 2008).

All of these changes in the video distribution industry and technology will make modifications in the law necessary. The purpose of this paper is to identify the factors that can facilitate these legal and regulatory changes.

Must carry regulations

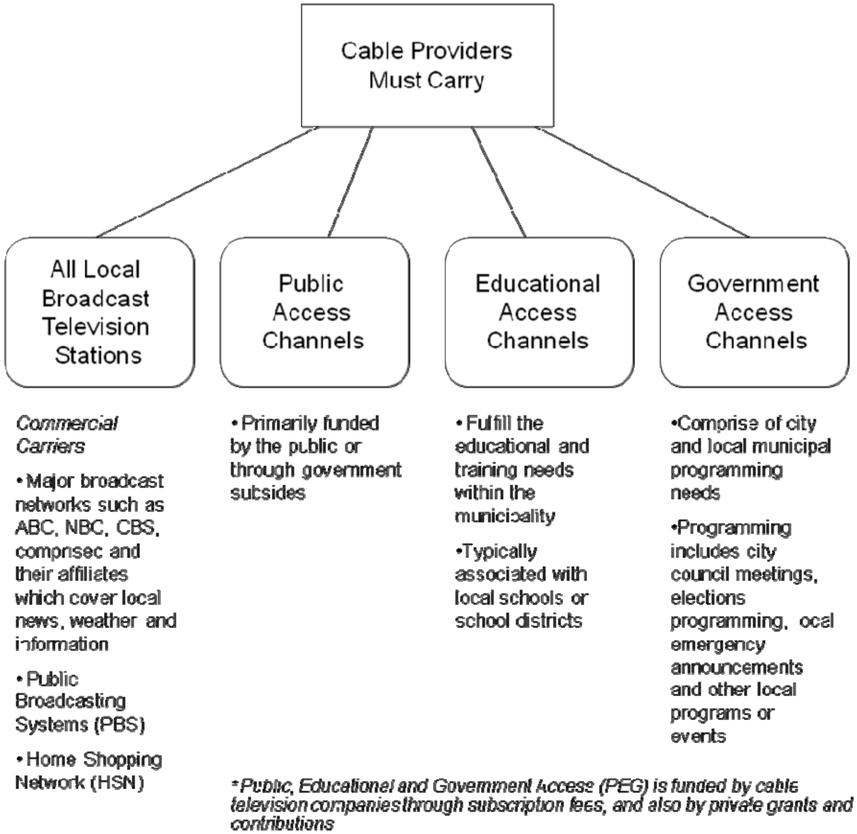
Must carry regulation has been controversial since it was implemented in 1962. According to WARNER (2008), the Carter Mountain Transmission Corporation was the first case where a CATV company was denied the retransmission of broadcasting signals because of anti-competitive concerns.

According to VITA (1993), the justification for must carry regulation was primarily economic. Since the 1960s the FCC considered a cable system's failure to carry a local broadcaster's signals an "unfair competitive practice" (FCC, 1966). Local broadcasters and the FCC were concerned because cable companies providing more programming outlets were likely to attract greater advertising revenue and negatively affect the survival of broadcasters.

The must carry rules were challenged on numerous occasions (See WARNER, 2008 for a detailed history) which eventually led to the 1992 Cable Television Consumer Protection and Competition Act, the "Cable Act", which took a completely different rationale for the imposition of must carry rules. The rationale, which originally was unfair competition, became a localism and diversity argument (WARNER, 2008). [1] The new rules forced cable companies to carry local broadcasting stations. The must carry requirements of both the 1992 Cable Act and the subsequent 1997 *Turner v FCC* case requires cable companies to carry local broadcast television stations and public, educational, and government access channels (PEG) (see Figure 2).

[1] Consumer groups such as Public Knowledge have criticized the protection of broadcasters through prohibition of distant network signals as they believe it reduces their choice and increases prices (SOHN, 2006).

Figure 2 - Must Carry Requirements



Concerns about must carry regulation often emerge when small regional cable providers are forced to carry stations or when local broadcasters must compete to be aired and cable companies must choose which local broadcast stations to offer (FCC, 2006). The debate over must carry regulations emerged once again due to the transition towards digital television. Congress initially established February 17th 2009 (later delayed until June) as the date when TV stations cease analog broadcasting (FCC, 2009). In the Third Period Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television Report and Order (FCC, 2007b) the FCC indicated that its primary concern was to make sure that the public would be able to watch broadcast stations on cable or over the air as easily on February 18th, the day after the conversion, as it was at the time of the order.

As the conversion to digital broadcasting happened, the FCC decided to require cable companies to carry digital signals on a must carry basis and the analog on a retransmission basis. They did so because, in their view, Congress did not intend to exclude those signals (FCC, 1998). The FCC also allowed television stations to require cable companies to carry their digital signal in analog format during the transition to digital. To assure that, the FCC required cable operators to comply with the viewability order by either: (1) carrying the signal in analog format, which will in fact require dual carriage if it is already broadcast in digital, or (2) for digital systems that carry only in digital to transmit in digital provided that the subscribers have the equipment necessary to view it. These viewability requirements will be in force until February 2012 and will be subject to review in the last year of this period (FCC, 2007a).

In spite of the deadline it was expected that many small rural television stations would continue analog broadcasts. This concern thus led to a September 11, 2007 FCC decision that requires dual carriage for all local broadcasting (HEARN, 2007). Small cable systems argue that, since they have limited bandwidth and have to abide by must carry regulation for local broadcasting, they should be exempt from the dual carriage legislation (LAUGHNER & BROWN, 2006).

Legal scholars have brought into question the constitutionality of must carry regulation now that cable companies no longer represent a bottleneck able to act anti-competitively against broadcasters (WARNER, 2008). In addition, the court recognized that Congress's goal for the must carry law was to protect the percentage of Americans whose main source of television was from broadcast signals. This, according to (WARNER, 2008), should be considered unconstitutional when in the presence of other video alternatives. The law impinges on cable companies' editorial discretion.

In a new net centric model, the consumer can receive content on demand from any provider and not the potentially more restrictive content that cable companies provide them. The must carry rules force cable companies to continue to provide a certain type of services and content which, in the long term with the Internet, may no longer be necessary. Local broadcasters are able to survive because they have a guaranteed audience and thus are able to attract advertising. Must carry rules are maintaining a system that on its own would have died out. The next section outlines some of the policies in the US that have entrenched a soon to be obsolete model. This is imposing an obstacle on a net centric video distribution model.

■ Challenges of change: organizational factors

The process of change is challenging for any organization, even more so when this involves more than one entity and conflicting interests. As THEESFELD (2006) indicated "[w]hen social dilemmas are solved and new rules are implemented, some people benefit more than others. Indeed, some may even benefit at the expense of others"

In the case of the must carry regulation it should be noted that one of the challenges that makes the transition towards a net centric video distribution model more difficult is the simultaneous movement towards digital television.

It is important to realize that there are major differences in the way transition takes place and is managed within the context of corporations and transitions at the industry sector level. Some elements that have been found to be useful within the context of corporations are also relevant for the public sector. In this section we thus only describe those elements in the organizational literature that are relevant to the risk of changing laws in the policy realm. We highlight their importance in the process of transition and how regulators and company officers are helping or limiting the success of each of these elements to transition towards the net centric video distribution model and the impact on must carry regulation.

Leadership and change

It is well established in the change literature that upper management is key to the success of an organizational change. These individuals are important because they can help the affected parties to identify the benefits and realize the potential opportunities that can come about as a result of the change (BASU & MUYLLE, 2007). As leaders they can also allocate resources and become vocal sponsors. Without their support they could even jeopardize the process. A leader can assign roles and responsibilities to those individuals that can facilitate change.

One of the main differences between organizations and governments is the lack of a single individual or entity that has enough power to be able to orchestrate the change. In the US the structure of government is set up in a manner that there is a balance of power among government entities to prevent abuse. The large number of potential advocates/adversaries to change complicates the process of transition.

From a new institutional economics perspective, the ideal regulator is stable, predictable, transparent and free from capture. The FCC as the potential leader in the transition towards a post must carry regime has not been entirely neutral. Former FCC chairman Kevin Martin, for the most part, sided with broadcasters over subscription based video distributors. The argument he made for dual carriage of digital and analog signals was about the obligation that the agency has towards consumers who do not want the expense of buying a cable set up box and that these individuals could be disfranchised. In this respect Martin stated: "[i]nstead, the cable operator should ensure that all of its customers have access to the broadcast signals, including those customers who do not want to rent a digital box. Today's Commission action ensures that cable subscribers will not be forced to rent a set top box to view the broadcast signals" (FCC, 2007a).

In addition to dual carriage, at the February 2008 meeting of the Commission, Martin proposed new requirements for cable operators to carry the signals of low-power television stations, known as class A TV stations. The FCC believed that if these small stations were given must carry rights on their digital signals it would motivate other stations to make the switch sooner (FCC, 2001a).

While not directly related to the issue of must carry or digital TV, at hearings on satellite and cable licenses the Consumer's Union, Public Knowledge and Free Press, in their joint testimony expressed concern about negative impact of the many regulations that govern the sector. They stated that "[…] the current, fragmented regulatory structure fails to meet consumer needs and the public interest by decreasing competition and creating unfair pricing practices" (*Copyright Licensing in a Digital Age*, 2009).

As will be shown later in the paper, inconsistencies have also affected the credibility of the FCC. The commission has made decisions on the same issue but reached different conclusions at different times.

It has also been surprising that, in spite of the greater number of outlets for video on the Internet, the FCC has generally ignored these developments in favor of must carry rules that will become increasingly irrelevant.

Engagement and participation

In the organizational change literature the main focus for engagement and participation is employees. Few studies take into consideration relationships with customers or competitors (FLYNN, 1997). The literature focuses on the internal participants. In this respect, it is best to solicit input and feedback (ARKIN, 1997; CARTOR, 1993; DUCK, 1993). In this process many scholars have recommended to set up a system that fosters and values communication (FLYNN, 1997), that establishes a non-threatening culture where individuals communicate with each other (De MEUSE & McDARIS, 1994) and provide reliable feedback (BIRKNER & BIRKNER, 1997).

Engagement and participation from affected parties is important within the context of changing laws and regulations where the external focus is a lot more important than the internal focus. The external players, unlike the internal employees, differ in their interests and these are often in conflict with one another. It is thus even more important that policy makers involve the affected parties in the process and elicit their feedback and input on the potential changes that are likely to emerge.

Input in changes to a law often comes from lobbyists. Lobbying members of Congress is a practice which allows corporations to influence changes in the law. Contributions to specific politicians are a common practice in the communications sector. In 2007, for example, the National Association of Broadcasters spent almost $9 million to lobby on digital TV, cable and satellite radio issues (AP, 2008). Similarly the National Cable and Telecommunications Association contributed over $100,000 to John McCain, with whom they had a battle over a proposal that would have allowed customers to choose channels a la carte (LUO, 2008).

There have also been procedural decisions that have negatively affected participation. The procedures that the agency utilizes in the policy making process, is governed by the Administrative Procedures Act of 1946 (5 USC s 500 et seq), APA for short. For example, in 2007 the FCC issued its Second Further Notice of Proposed Rulemaking after which it gave the public 30 days to file comments. The agency issued its order only two days after the deadline for comments. The APA establishes that all comments be read and that the agency's final decision reflects consideration of the comments. Given the speed at which the order was issued, there can be a legitimate concern about the FCC following APA norms. It gives the impression that the comments were not taken into consideration.

The way the FCC and Congress have tried to elicit feedback from the affected industries is through hearings or by soliciting comments to a proposed rule. These processes, nonetheless, have weaknesses. The

Sunshine Act of 1976 only requires the FCC to provide a week of advance notice before a hearing. In the FCC's hearings on localism, people who participated found out about the event a week before and did not have enough time to prepare their contributions. Commissioner Adelstein commented:

> "Despite unanimous approval weeks ago to hold this hearing today, it was not announced to the public until the latest possible moment allowed by law – late, under the dark of night, just five business days ago" (ADELSTEIN, 2007).

This sentiment was later affirmed by the Congress Committee on Energy and Commerce which indicated in its December report that "Chairman Martin refused to agree to 'publish the text of proposed rules sufficiently in advance of Commission meetings for both (i) the public to have a meaningful opportunity to comment and (ii) the Commissioners to have a meaningful opportunity to review such comments" (The Congress: Committee on Energy Commerce, 2008). This problem is further exacerbated, as the GAO report indicated, when some stakeholders know about upcoming votes before this information has been made known to the public giving those with closer connections to FCC staff an unfair advantage to lobby the agency (GAO, 2007).

On April 25, 2007, the FCC issued a Second Further Notice of Proposed Rulemaking pertaining to the must carry obligations of cable and satellite companies during the transition to digital television. In the notice the FCC also gave the public only a month to submit and reply to comments. While this is within the procedural guidelines, a month does not provide sufficient time for stakeholders to study such a complex issue in detail.

Many parties submitted comments: cable and telecommunications companies, small program developers, small cable carriers, broadcasters, and private citizens. All of the comments except those from broadcasters criticized the commission for requesting dual carriage of the analog and digital broadcast signal. The FCC implemented it in spite of the strong opposition.

For example the CEO of Google, after acquiring mobile phone spectrum, argued that TV broadcasters do not want to give up the economic benefit that they receive from the must carry regulation "no matter how small their over-the-air audience" is (HEARN, 2008). The percentage of people who rely on over-the-air broadcasting alone is only 12.7% (GREENWALD, 2007).

From the non-corporate sector the Consumer's Union, Public Knowledge and Free Press have criticized the government for putting video program distributors at a competitive disadvantage over broadcasters. At a hearing that took place about cable and satellite licenses their testimony indicated that must carry rules and distant signal restrictions for satellite companies create an imbalance that allows broadcasters to engage in discriminatory pricing and raising prices overall for consumers (*Copyright Licensing in a Digital Age*, 2009).

Given the evidence it is clear that feedback and pressure from various parties often leads to decisions that are not entirely desirable. The dual must carry regulations that were imposed on cable and satellite companies are out of sync with the evolution of the sector.

Planning and strategy

Planning and strategy at the organizational level entails setting a vision and goals (CROSS, 2001; GHANI, 1996), establishing priorities (BASU & MUYLLE, 2007), identifying the units within the organization, and the resources and the capabilities that can make the change possible (BRUCKNER, CHARLTON, & KERRIGAN, 1994). These recommendations also call for the writing of reports that take into consideration external forces (TRAHANT & BURKE, 1996). These should include cost benefit analysis (DANIELS & LECLERC, 1993), value stream studies (GHANI, 1996), and methods for system improvement (DANIELS & LECLERC, 1993).

In the context of legal/regulatory changes, it is not easy to establish a vision mostly because laws and regulations are intended to last for a long time. The Telecommunications Act of 1934, for example, was not changed until 1996 and even after this major overhaul, it barely mentions the Internet. With such long term horizons it is difficult to develop legislation for a highly uncertain future. In the absence of a general vision, there has been a tendency to react to changes and make adjustments in the law on an as needed basis, which is often done through the courts instead of the legislature. Using the courts is not ideal because court decisions take into consideration only the affected party and are based on laws that may already be obsolete.

Under Republican leadership the FCC generally tried to avoid regulation that they perceived as unnecessary. Their officers tried to limit the number of rulings, using a wait and see strategy before fully committing on a specific issue. This approach has disadvantages because it puts the agency into a reactionary mode where no clear strategic guidelines are established. The wait and see strategy breaks down when a crisis occurs that requires a quick response. Without a strategy the hasty response can potentially be worse than the problem.

Concerning must carry regulation, there was a reversal of strategy when the FCC decided to impose dual carriage, instead of leaving the market alone. One could argue, for example, that if cable operators found that their customers wanted to have access to the analog signal of their local broadcasters, they would try to offer such service. Cable companies thus had an inherent incentive to provide analog access as a way of keeping their customers, particularly with the existence of so much competition from online video outlets. There was thus no need to mandate dual carriage.

Without a vision and strategy, the sector was being shaped by the battles between the stakeholders and the courts that must refer to an obsolete law. This has, to a certain extent, been accelerated because of transition to digital TV. Cable companies filed a lawsuit against the FCC where they "complain that they are being required to carry up to three different versions of the same TV station−analog, digital and high definition−which they argue will take a large portion of their bandwidth capacity potentially forcing them to drop some of their programming" (EGGERTON, 2007). Broadcasters, in their defense argue that the FCC decision is simply "ensuring that no cable customer with an analog set lose access to TV service, just as the government is trying to ensure no over-the-air viewers are left behind after the transition" (EGGERTON, 2007).

Beyond the digital transition the government has not yet devised a strategy for the sector. The strategy was simply to make sure that all viewers could have access to a television signal without taking into consideration the costs of cable or satellite, and ignoring major business developments that are happening as a result of Internet convergence.

For example, because of concerns about signal degradation of high definition transmission over cable channels the FCC required a full signal. The logic was that if cable companies were not forced to carry broadcasters' entire high definition signal, the benefits of having made the transition would have not been realized. Commissioner Adelstein points out that the FCC is making carriage requirements without being aware of how much of the signal actually needs to be carried to avoid noticeable degradation for viewers:

> "Such a standard would establish the ceiling – the best resolution possible – not the floor, which is more akin to statutory meaning of 'material degradation'" (FCC, 2007a).

In addition, the strategy failed to take into consideration unintended consequences of their decisions. The plan, at least for the carrying requirements during the digital transition, appeared to take into consideration only two objectives: "material degradation" and "viewability" in the digital world. Viewability imposes an unreasonable high standard as it attempts to make sure that all viewers can access the signal even if this requires having a digital transmission downgraded to analog for viewers with old TV sets. The focus on these two objectives also prevented the FCC from seeing other factors such as the "constitutional, technical, economic, and equity-based concerns" that a decision to require cable companies to carry will entail. As articulated by Commissioner Adelstein, the regulation did not consider the possibility of cable companies moving some of their channels out of basic into premium offerings to be able to fit all of the must carry signals they were required to transmit. This requirement can then, in turn, force more consumers to have to rent a digital set top box which they may not want in the first place (FCC, 2007a).

The commission and the public at large also indicated that diversity of content is important for democracy and thus recognize the need to support local television stations. Content, however, is more diverse through cable and satellite providers because of the higher capacity that these companies have as compared to the spectrum available to over the air broadcasters (FCC, 2007c). It is also surprising that the strategy, as outlined in the dual carriage ruling, hardly mentions the effect of the Internet on the sector. The policy does not consider the advances that video distributors and, in particular, cable companies are making in an effort to make their services more viable against competitors such as Netflix. In those efforts the use of bandwidth is taking more and more space as they are introducing new services that expand beyond video into voice and data. The potential lack of space on these networks is not considered even though it was pointed out in the comments submitted to the commission (BRAVERMAN & FEDELI, 2007).

Process

During the process stage, officers need to determine the pace of change, generally recommended to be incremental. It entails engaging in transformation but also preserving those areas that provide the organization a competitive advantage as part of its traditions (CALORI, BADEN-FULLER & HUNT, 2000). The process stage also calls for specific steps to unfreeze the current institutional arrangements and make the organization establish the new processes (GOODSTEIN & BURKE, 1991). Particular attention should be paid to conflicts between the institutions that persist and the new institutions being implemented.

At the policy level the process should also be incremental and take into consideration the potential conflicts that may arise with other laws and regulations that govern the sector. The FCC had to determine how to balance all of its mandates. Unfortunately the process was not ideal. It showed many contradictions with previous decisions as well as conflicts with laws.

When the FCC decided to require the dual carriage of TV signals after the deadline to the transition had passed, it needed to make interpretations not only of the 1992 Cable Law but also of the Telecommunications Act, and to any other law or court order related to the issue of television distribution and programming. The transition process has been problematic as the decision to mandate dual carriage contradicts other FCC decisions and laws as is described below.

The Supreme Court in Turner II indicated that cable operators cannot be forced to carry more than a single primary program stream for each broadcaster (BRAVERMAN & FEDELI, 2007). Therefore a dual carriage requirement contradicts this mandate.

The commission's decisions to require dual carriage of analog and digital signals contradict the Telecommunications Act which does not require that all subscribers receive must carry stations or that cable operators provide their customers a converter box (WAZ, COLTHARP, NATHAN & CASSERLY, 2007). Section 614(b)(7) makes it clear that broadcast signals available only with a converter box are considered "viewable" (Waz, et al., 2007). The FCC's dual carriage decision also contradicted previous decisions. In 2001, for example, the FCC tentatively concluded that dual carriage "appears to burden cable operators' First Amendment interests…" (FCC, 2001b). In 2005 the commission stated "[t]here has not been an adequate showing that dual carriage is necessary to achieve any valid governmental interest. Therefore, in the absence of a clear statutory requirement for dual carriage, we decline to impose this burden on cable operators" (FCC, 2005). In addition in the Second Report and Order, the commission found that dual carriage was unnecessary because "it does not result in additional sources of programming and instead multiplies redundant sources, since digital programming largely simulcasts analog programming" (BRAVERMAN & FEDELI, 2007). In this same document the commission also rejected arguments in support of dual carriage to achieve a quick and successful DTV transition and instead found "voluntary carriage, combined with carriage of HD programming from non-broadcasters, more likely to spur the sale of digital television equipment (thereby, facilitating the transition) than forced dual carriage of all television stations" (BRAVERMAN & FEDELI, 2007). It also found that dual carriage was unnecessary to preserve free broadcast television because broadcasters are already required to broadcast digitally and thus dual carriage would not increase access to programming by over-the-air viewers, and absence of such carriage can potentially encourage broadcasters to produce innovative programming to convince cable operators to voluntarily carry their digital signal (BRAVERMAN & FEDELI, 2007).

With respect to diversity concerns, in the *Turner Broad. Sys. Inc. v. United States* (Turner II) decision, the Supreme Court established that diversity in sources of television programming was among the government's "highest order" ("*Turner Broad. Sys., Inc. v. United States*," 1997). Similarly in the Cable Television Consumer Protection and Competition Act of 1992, Congress reiterates as a policy objective to provide diversity of views and information through cable and other video distribution media.

In the process of making changes to the must carry rules there is also conflict with respect to the way the distribution of benefits is allocated to the different parties which offer similar video services. Local broadcasters, for example, have generally been supported by government policy. This has come in the form of free spectrum, must carry regulation, and subsidies for small, minority owned broadcasters. This contrasts with the little or no support that small content developers receive, considering that they may provide even more variety than local broadcasters do. This was made evident in comments submitted by program developers to the Second Further Notice of Proposed Rulemaking:

> "By way of example, multichannel networks such as La Familia Cosmovision and The Filipino Channel offer entire channels of foreign language programming in a host of languages and dialects, programming that cannot be found on broadcast television… The unparalleled quality, originality and value to television viewers of these diverse multichannel networks is reflected in the year-over-year increase in Nielson ratings. Multichannel networks continue this trend,

> outperforming broadcasters in ratings…. These accomplishments have come without the aid of government carriage requirements, preferences or subsidies that broadcasters receive indeed…" (BRAVERMAN & FEDELI, 2007).

The process by which the FCC has changed the must carry regulation has thus been problematic considering the many contradictions that dual carriage shows with other laws and FCC decisions.

Outcome evaluation

Companies engage in outcome evaluation mostly because they need to justify the costs of the transformation. At the same time they want to make sure the process of change is successful. Monitoring at the organizational level has other benefits. When an officer can point out the benefits of the process he can generate additional support for whatever changes are still to be made (BUCERO, 2002). It also allows officers to make adjustments in the strategy if they find that it is not working (CALVACCA, 1995; DUCK, 1993).

The process of change at the sector level also requires monitoring and evaluation of both external and internal factors. In order to justify the cost of transition to the net video distribution model and continue to modify and improve areas, executives keep focus on the outcome of their decisions and the progress made in the areas where changes have been implemented.

In the case of the FCC there is little evidence that any monitoring is taking place. They may have statistics on the number of people with digital TV sets or stations broadcasting in analog but they do not appear to be paying attention to other important movements that are happening in the sector. For example the Association of National Advertisers, Nielsen Media and Standard & Poors have found that one in four Internet users had streamed television programs; of those 39% were between 18 and 34 years of age and 23% between 35 to 54 (STELTER, 2008).

An article in the New York Times indicated that 20% of viewers of the premiere of the fourth season of The Office in September 2007 watched the program on the Internet. With an increasing number of people watching programs on the Internet, profit for broadcasters has been decreasing. From 2006 to 2007 revenues from online advertising increased 25% to $21 billion. While still small at 10% of US advertising this amount is growing (AP, 2008a). Local stations, which were considered cash cows in the past, are also beginning to see their revenues shrinking. Media fragmentation is making this outlet less attractive as well (ZURAWIK & KALTENBACH, 2008).

The trend is towards moving companies advertising dollars to the Internet. A survey by the Association of National Advertisers and Forrester Research found that 87% of respondents were going to be spending more on web ads. 62% percent also indicated that traditional TV ads have become less effective, and this prompted close to half of them to experiment with ads that work with digital video recorders or video-on-demand programs. Similarly more than 50% of marketers reported that when half of all TV households use DVRs they will cut spending on TV advertising by 12% (EGGERTON, 2008d).

These businesses and technological changes should be monitored and evaluated during the transition process. Doing so can lead to better decisions and help to forecast market trends, which can then be used to determine where regulation could or should occur. Evaluating the business situation of local broadcasting stations and their advertising revenues will help determine whether regulation such as must carry needs to be adjusted or has become obsolete in the net centric video distribution model.

Finally as change happens there is a need for constant monitoring of events and evaluation of the decisions made. A decision that may have made sense a year ago may be obsolete today. While we are not advocating that laws and regulations be changed as soon the circumstances change we believe that the general trends should first be recognized, and then design regulation, if necessary, that can support a desired outcome. Unfortunately this has not occurred in this case and the FCC has been ineffective in reading the trends and supporting a move towards a net centric video distribution model. The sector has evolved in spite of the regulations.

■ Conclusion

The video distribution industry is experiencing major changes caused by the Internet and associated technologies. These advances are making the delivery of content on demand possible anywhere and anytime. The public is also slowly abandoning traditional broadcasting outlets for non-traditional alternatives. This is forcing a change in both the business models of video distributors as well as the laws and regulations that govern the sector.

Given the strength of the Internet as an outlet for the delivery of video it is difficult to see how must carry rules, as they have been implemented in the past, can continue in the future. Forcing cable companies to carry local content at a time when people are decreasing their reliance on traditional broadcasting outlets for information forces them to spend resources on a shrinking industry.

There are many strategies that the government can use to move the sector toward the net centric video distribution model, most of which have been ignored by the FCC. These include providing a more consistent and neutral leadership, vision, and strategy. In the case of the must carry rules it appears as if the FCC leadership favored the broadcasters over other parties in spite of the numerous technical, economic, and legal criticisms which were presented to the commission.

Leadership should generate a vision and manage a smooth transition rather than react to changes in the market. Even though Congress and the regulatory agency can wait until external pressure facilitates change, it is nonetheless important that they plan ahead to make sure that decisions on key events are not decided by courts relying on obsolete laws. Studies can help identify the parties that are most likely to be negatively affected by the changes in the law/regulations and changes in the market.

This can be done by engaging affected parties and managing their expectations. The FCC gave the impression that they did not take into consideration feedback received in the must carry consultations. This occurred, in part, because the final order was issued only two days after the deadline for comments expired, and because there was little, if any, change in the proposed order in spite of the fact that all parties with the exception of broadcasters criticized it.

Given the constant change that this sector experiences, there should be a concerted effort to monitor the market and determine at a certain point how they would like to respond to the changes. In doing this, laws need to be sufficiently general for regulations to be reviewed after an established period of time.

The must carry rules are an example of a requirement imposed on cable companies that is out of sync with developments in the sector. This can lead to a slower and more uncertain evolution potentially limiting technological innovations that favor consumers.

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