



VIDEO MARKETPLACE REGULATION A Primer on the History of Television Regulation and Current Legislative Proposals

Video distribution in the United States, unlike other forms of mass media, is a highly regulated market. Since the emergence of broadcast television in the 1940s and 1950s, the Federal Communications Commission (FCC) enforces a patchwork of rules with contradictory policy goals that benefit special interests rather than the public. With incredible technological innovation occurring in video distribution in the past two decades, policymakers are now looking to once again overhaul and bring up to date the nation's television regulations.

In a study for the Mercatus Center at George Mason University, "[Video Marketplace Regulation: A Primer on the History of Television Regulation and Current Legislative Proposals](#)," scholars [Adam Thierer](#) and [Brent Skorup](#) review television distribution rules and regulations, their negative effects on the market, and the various proposals for reform. While most congressional proposals for reforming video regulation only address the symptoms of overregulation, or worse, propose to expand these regulations, some proposals take a more comprehensive approach to reforming the extensive regulatory regime for video distribution. Entrepreneurs and consumers would benefit from removing or reforming much of the current regulation of the video distribution market.

CURRENT STATE OF VIDEO DISTRIBUTION REGULATION

The video distribution market in the United States is regulated by a series of federal laws, with the Telecommunications Act of 1996 being the most recent major update. The FCC is responsible for enforcing many of the rules through regulation.

- The FCC's regulations are designed to support goals with competing and often conflicting effects. These regulations seek to support the goals of supporting localism, providing universal service, offering free broadcast television, and keeping the broadcasting industry competitive—all at the same time. For example, a conflict arises when mandates for free

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broadcasting impede the provision of universal service in areas where local broadcasters alone cannot command the necessary advertising dollars.

- Rules that attempt to further the FCC's contradictory goals often benefit special interests—primarily local broadcasters—at the expense of television distributors and, ultimately, consumers. For example, FCC rules promote localism by forbidding cable providers from carrying nonlocal broadcast affiliates of a network where a local broadcast affiliate exists. These rules lead to higher cable prices for consumers, owing to the increased bargaining power of the local affiliate.

CURRENT RULES IN NEED OF REFORM

Five major areas of regulation that can be reformed are:

- *Network nonduplication and syndicated exclusivity.* The FCC forbids local cable and satellite providers from retransmitting nonlocal affiliates of the broadcast networks (ABC, CBS, FOX, and NBC) instead of the local network affiliates in their service areas. These providers must also black out syndicated programs aired by nonlocal broadcast stations when a local broadcast affiliate has an exclusive deal with a network to carry those programs. These rules protect local broadcasters from competition while occasionally leading to network blackouts when cable and satellite providers cannot reach a deal to retransmit local broadcast affiliates.
- *Must-carry.* The 1992 Cable Act requires local cable and satellite providers to carry every local broadcast station that requests to be carried. This rule allows broadcast stations that would otherwise not be carried because of lack of consumer demand—like home shopping networks—to force cable and satellite providers to carry them for free.
- *Compulsory licensing.* The Copyright Act of 1976 requires broadcast television programmers to allow nonlocal cable and satellite providers to carry their programming in exchange for royalties paid by the providers into a government-administered fund. This rule gives programmers a “duty to deal” with television providers at rates set by the government.
- *Retransmission consent.* The 1992 Cable Act gave local broadcast stations the right to request payment from local cable and satellite providers for retransmission of their broadcasts in lieu of the must-carry requirements described above. These payments provide a new source of bargaining power and income for local broadcasters and the major broadcast networks, which can prevent local television providers from carrying their programming if disputes over retransmission fees arise.
- *Media ownership.* In addition to antitrust laws that already cover broadcasters and cable providers, a myriad of laws and regulations further restrict ownership of local broadcast stations, national broadcast networks, and local cable providers. These preemptive rules

preclude mergers that may not even be harmful to competition and may offer benefits to consumers.

MOST LEGISLATIVE PROPOSALS FALL SHORT: DEREGULATION IS NECESSARY

Different legislative proposals for reform from recent Congresses have sought reform video distribution regulation in a variety of ways—some more effectively than others:

- *Expanding the current regulatory regime.* Many proposals would expand the FCC's power. The proposals would either prescribe new regulations for cable providers or broadcasters, or they would increase the scope of the FCC's video regulations to cover online video providers, who currently are largely unregulated. These proposals would make the US's already complicated and far-reaching video regulatory regime even more burdensome.
- *Piecemeal reform.* Other proposals focus on repealing smaller, less consequential regulations or making small reforms to more significant regulations in an attempt to fix the distortions they cause in the video market. While these proposals may provide some limited relief, tinkering with particular regulations instead of overhauling the entire video regulatory regime may add to the complexity and overall burden of the current system.
- *Comprehensive deregulation.* The best legislative proposals for regulatory reform go beyond repealing or fixing certain regulations, and instead emphasize comprehensive deregulation. The convergence of all mass media, especially television, to broadband networks exacerbates the inefficiency caused by complex video laws and underscores the pressing need for sweeping reform.

CONCLUSION

Because current regulations limit market opportunities for media providers, reform is needed to clear out the regulatory detritus of the past half-century. If the current rules are maintained or extended, future content creators and distributors will be stymied. Innovation in video distribution will not come about through new mandates or rules, but rather by freeing markets and giving entrepreneurs freedom to experiment with new video distribution models.