

## 4. The Rise of Activism: the mid-1960s through the 1970s

This chapter describes the origins of contemporary media activism and the conditions that led to its proliferation in the 1970s. The mid-1960s and 1970s was the period of the most rapid growth in the cumulative number of advocacy organizations. For the most part, the advocacy surrounding communications and information during this period was connected to and subordinate to other social movements – civil rights, consumer, environmentalist, feminist, and peace. We also show, however, that the early debates over cable television sowed the seeds of an autonomous communication-information advocacy movement.

### 4.1 Political Opportunity and the WLBT Case

Ultimately it was broadcasting, and specifically broadcast licensing, that ushered in the era of the media advocacy group as the major mechanism for citizen participation in communications policy. Some background may be necessary here. The Radio Act of 1927 nationalized the radio spectrum and subjected broadcasting to a regime of licensing. Until fairly recently, broadcast licenses were the most important channel of mass communication to the public in any given locality, and were highly restricted in supply. This made broadcast licenses extremely valuable in economic and political terms. The history of U.S. broadcasting is rife with contention over their control and management. The result of that contention was a social compact in which licensees became “public trustees.” They were granted exclusive use of a scarce and valuable resource (the broadcast channel and license) and thus were obligated to submit to regulation by an independent agency, the Federal Communications Commission (FCC). The FCC served as a proxy for the public and applied a public interest standard to their conduct, including programming decisions. Radio and television licenses had to be renewed every three years. While the “scarcity” on which this system was based was overstated at the time and has long since been abolished, the institutional structure has remained due to the strong linkages it forged between regulators, local broadcast outlets, and a US political structure based on territorial representation. (Galperin, 2004; Hazlett, 1990)

#### *Latent activism*

Prior to the citizens’ challenges associated with the late 1960s and early 1970s, there was a long period of latency in which consumers organizations and listeners associations expressed dissatisfaction with broadcasting and occasionally (and always unsuccessfully) mounted challenges to license transfers. (Guimary, 1975, p. 34-36) Public dissatisfaction with commercial broadcasting began to manifest itself around 1959. Two key indicators were the quiz show scandals of 1959 and FCC Commissioner Newton Minow’s widely quoted speech describing television as a “vast wasteland” in 1961. Asked by Congress to review the performance of regulatory commissions, the Consumer’s Union in 1959 singled out the FCC for some of its strongest criticism. (Guimary, 1975, 34) A Consumers Union report called for the creation of a Television Consumer Council with the authority to review all FCC licensing decisions, and mandatory hearings in the affected locality before a broadcaster’s license could be renewed.

#### *UCC v. WLBT and broadcast license renewal challenges*

The proliferation of activist groups in communication and information followed a textbook case of a political opportunity created by an innovative act of public interest litigation. The innovation was

to link a broadcast license challenge to the civil rights movement. This was done in a particularly challenging, even dangerous context: a Jackson, Mississippi broadcaster with ties to the white Citizens Council, WLBT-TV, was challenged by Everett Parker, head of the United Church of Christ's (UCC) Office of Communication in partnership with a local NAACP chapter and another African-American resident in the viewing area. Parker started the challenge in March 1964:

The station had failed to serve the interests of the substantial Negro community in its viewing area (which represented approximately 45% of the total population within the station's prime service area), and had further failed to give a fair presentation of controversial issues, especially in the field of race relations. (Horwitz, 1997)

This conduct was clearly inconsistent with the public trustee mandate of the law, but the FCC routinely failed to do anything about it. UCC gathered the resources needed to document the station's practices and challenge the station's license before the FCC at renewal time. Because the station's performance violated the public interest provisions of the Communications Act, the petitioners asked that they be permitted to intervene and be heard in the license renewal proceeding. (United Church of Christ, 1964) Parker's purpose was not only to overturn the offending conduct of the station, but also to give minorities and citizens groups legal standing in FCC proceedings.

Reflecting its status as a regulator deeply enmeshed in a don't-rock-the-boat equilibrium with the regulated industry, the FCC voted 4-2 that Parker and his compatriots lacked the legal standing to participate in the license renewal proceedings. The UCC appealed the denial of standing in federal court, and in 1966 won a decision upholding their right to participate in license renewal proceedings.<sup>1</sup> Even after granting UCC standing, however, the FCC renewed WLBT's license after a highly biased hearing in Mississippi. After appeal of the hearing results by United Church of Christ, the same U.S. Appeals court overturned the FCC decision and revoked the license.<sup>2</sup> Winning the WLBT case made *United Church of Christ v. FCC* a major precedent employed by environmental and consumer public interest groups.<sup>3</sup>

The WLBT cases altered the advocacy landscape in two significant ways. First, it formally gave members of the public legal standing in license renewal cases before the FCC. Second, it signaled that licensees who violated civil rights norms were vulnerable to such challenges, thereby issuing an open invitation for mobilized minority groups and others dissatisfied with broadcasters in their locality to organize challenges. Schement, Guitierrez, *et al* (1977) document one of many such challenges in San Antonio Texas.

That in turn led to massive growth in the number of advocacy groups focused on broadcasting. (See Table 4.1 below) From 1967 to 1975, a large number of national organizations and local coalitions of ethnic and minority groups arose to focus on license renewals. The major liberal philanthropic foundations (Ford, Markle, Rockefeller) donated millions of dollars to the support of these efforts. The national organizations served as centers of legal expertise or coordinating committees for the smaller, more numerous and less well-organized and -funded local groups.

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<sup>1</sup> Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994 (1966).

<sup>2</sup> Office of Communication of the United Church of Christ v. FCC, 425 F.2d 543 (1969).

<sup>3</sup> Indeed, the issue of citizens' standing before regulatory authorities was litigated simultaneously by environmental groups. *Scenic Hudson Preservation Conference v. Federal Power Commission*, (1965). Cited in Horwitz (1997).

The WLBT case not only led to an increase in the number of media activists and advocacy organizations, but also shaped their methods. Most citizen collective action focused on license renewal challenges – or entered into direct negotiations with the broadcasters or networks about programming or hiring knowing that a challenge was always an option. The tremendous economic value of license renewal to broadcasters and the costs of defending themselves in renewal proceedings gave the challengers considerable leverage. As media activism proliferated, the number of petitions to deny grew by several orders of magnitude. By 1975 the FCC had a backlog of 200 unsettled petitions. (Grundfest, 1977) Seventy five percent (75%) of license renewal challenges in this period were based on alleged failures to ascertain the programming needs of minority viewers or employment discrimination issues. (Guimary, 1975, 48)

## **4.2 The Organizational Ecology of the Period**

The UCC lawsuits linking mass media policy to the civil rights and citizens movements had a major impact on the organizational ecology of the period. From 1964, the date the UCC lawsuits were initiated, until 1979 the cumulative total of advocacy organizations grew from 18 to 77. The focus of the new advocacy organizations was overwhelmingly on broadcasting, and usually targeted its content. A smaller minority of organizations dealt with cable television. There was a major shift in the mode of advocacy toward content (from 40% to 51%). There was also a major shift in ideology, with liberal organizations rising from 34% of the total in the 1960s to 54% of the total observations in the 1970s, and conservative organizations declining from 18% of the total observations in the 1960s to only 14% of the total observations in the 1970s.

Table 4.1 lists 49 advocacy organizations focused on communication and information policy founded from 1967 to 1975, inclusive. Of those, twenty-nine (29), or about 60%, were focused primarily on broadcasting and cable. (If the time span is reduced to 1967 – 1971, about 71% of the organizations are focused on broadcasting and cable.) Only five (5) of the organizations were conservative in orientation; most of the rest were identifiably liberal or “progressive.”

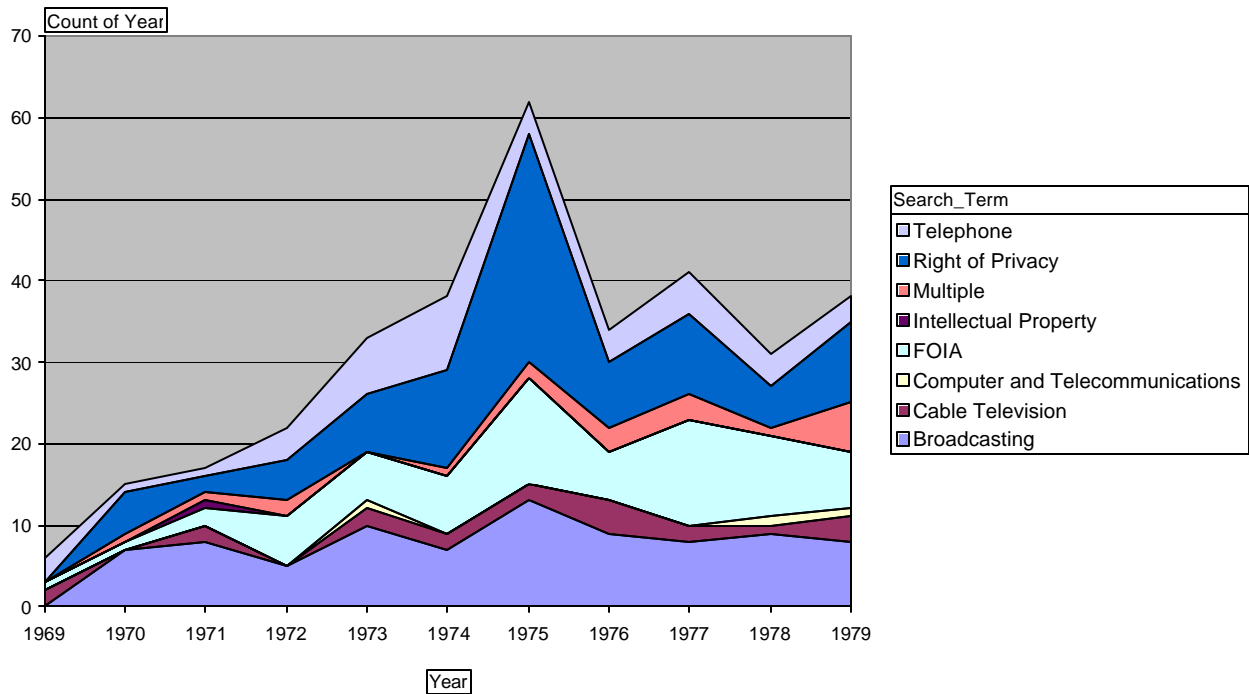
### *Congressional Hearings*

As can be seen from Chart 4.1 (two pages below), Congressional activity trended upwards during the 1970s, moving from less than 10 in 1969 to consistently over 30 per year by the end of the decade. The focus of congressional hearings was on privacy, freedom of information and broadcasting. The peak of CIP activity in 1975-75 reflects a combination of the Watergate scandals, the passage of the 1974 Privacy Act (see section 4.4 below) and some legislative changes regarding broadcast licensing.

Table 4.1 Organizational Foundings, 1967 – 1975

Name	Founding	Primary interest
Consumer Federation of America	1967	
Council for Children's Television and Media	1967	Broadcasting
National Citizens Committee for Broadcasting	1967	Broadcasting
Action for Children's Television	1968	Broadcasting
Christians United for Responsible Entertainment	1968	Broadcasting – Conserv
National Friends of Public Broadcasting	1968	Broadcasting
National Mexican American Anti-Defamation Committee	1968	Broadcasting
Accuracy in Media	1969	Conserv
Black Efforts for Soul in Television	1969	Broadcasting
Citizens Communications Center for Responsive Media	1969	Broadcasting
Crusade for Decency	1969	Broadcasting – Conserv
Foundation to Improve Television	1969	Broadcasting
Reporters Committee on Freedom of the Press	1969	
Alliance to End Repression	1970	
Black Awareness in Television	1970	Broadcasting
Council on Children, Media and Merchandising	1970	Broadcasting
National Committee for Sexual Civil Liberties	1970	
Task Force for Community Broadcasting	1970	Broadcasting
Women's Film Co-op	1970	
Nosotros	1970	Broadcasting
Black Citizens for a Fair Media	1971	Broadcasting
Media Access Project	1971	Broadcasting/Cable
National Association of Progressive Radio Announcers	1971	
Network Project	1971	Cable
Open Channel	1971	Cable
Public Citizen	1971	
Publi-Cable	1971	Cable
Justicia	1971	Broadcasting
Committee on Public Doublespeak	1972	
Gay Media Task Force	1972	Broadcasting
Speak Out!	1972	
Student Legal Action Organizations	1972	Broadcasting
Synanon Committee for a Responsible American Press	1972	
Women's Institute for Freedom of the Press	1972	
Center for the Rights of Campus Journalists	1973	
Federation of Information Users	1973	
National Black Media Coalition	1973	Broadcasting
National News Council	1973	
Truth in Advertising	1973	Broadcasting
Caucus for Producers, Writers and Directors	1974	Broadcasting
Media Action Research Center	1974	Broadcasting
National Coalition Against Censorship	1974	
National Council for the Public Assessment of Technology	1974	
Student Press Law Center	1974	
Americans for Decency	1975	Broadcasting – Conserv
Eagle Forum	1975	Conserv
Feminists on Children's Media	1975	
Media Alliance	1975	Broadcasting
National Citizen Communication Lobby	1975	Broadcasting

**Chart 4.1**  
**U.S. Congressional Hearings on CIP topics: 1970s**



Congressional testimony by public interest advocates from 1969 - 1979 was dominated by the American Civil Liberties Union. The ACLU accounted for 20 percent of all testimony on CIP issues by all public interest groups.

**Table 4.2 Top Ten Public Interest Organizations Testifying on CIP issues, 1970s**

Organization name	% of testimony by p.i. groups
American Civil Liberties Union	18.33%
Consumer Federation of America	4.00%
Common Cause	4.00%
United Church of Christ	3.67%
National Black Media Coalition	3.00%
Citizens Communications Center	2.67%
National Citizens Communications Lobby	2.67%
Public Citizen	2.33%
National Organization for Women	2.00%
NAACP	1.67%
Center for the Study of Responsive Law	1.67%

*Economic advocacy*

While the grass-roots organizations focused primarily on challenges to local licensees, the Nader-related, Washington-based groups started to develop an economic agenda for media advocacy. Media advocates in the 1960s and 1970s seized on a 1943 *NBC v. FCC* Supreme Court decision to advocate successfully for rules regulating the structure of the industry. For example, the Syndication and Financial Interest rules (Fin-Syn) prohibited networks from owning their programming, forcing them to rely on independents for programming in order to increase the diversity of ideas that received access to the airwaves. The Prime Time Access Rules (PTAR) required networks to “give back” half an hour of prime time to local affiliates. Of greatest significance, however, were the creation in this period of both the newspaper/broadcast cross ownership prohibition in 1976 and the cable/broadcast cross-ownership prohibition in 1975. In backing the FCC’s Fin-Syn and PTAR regulations, the advocates aligned themselves with content producers and local affiliate stations, respectively, whose economic interests were greatly enhanced by the rules.

*Cultural Conservative advocacy*

Contentious repertoires and organizational forms can be learned, imitated, and adapted to the purposes of groups not in accord with the original intentions of their developers. Thus, only about five or six years after the surge of media-oriented liberal public interest organizations in the late 1960s and early 1970s, culturally conservative groups began to organize on similar lines. Of the 30 advocacy organizations classified as “Conservative” throughout the whole period, 15 came into being in the mid-1970s and early 1980s. The older conservative organizations, formed in the 1940s, ‘50s and ‘60s, tended to be associated with the Catholic Church. Three of these went out of existence in the 1970s.<sup>4</sup> Many of the newer conservative organizations were Protestant, and saw themselves as locked in a “culture war” with “the liberal media” and more broadly with the counter-cultural, relativistic, and secular ideas of the period. As such, they focused on content policy, either exposing what they saw as biased reporting (Accuracy in Media, Eagle Forum, World Media Association, Fairness in Media) or supporting the suppression of what they saw as programs encouraging or reflecting immoral and anti-Christian values (National Federation for Decency, Clean Up T.V. Campaign, American Family Association). Donald Wildmon’s National Federation for Decency teamed up with Jerry Falwell’s Moral Majority to pioneer the use of boycott threats against advertisers to get networks to change TV programming. (Montgomery, 1989)

### **4.3 From Broadcasting to Cable Television: Early Encounters with Convergence**

Cable-related activism also started in the late 1960s and early 1970s and involved some of the groups already involved in broadcast license challenges (e.g., Media Access Project, National Citizens Committee for Broadcasting). But there was an important difference. Broadcasting was a mature technology and industry lodged in an institutional setting that had been in place for decades. Cable TV, on the other hand, was a newly developing infrastructure still trying to find out where it stood in the legal and regulatory environment. Its emergence attracted idealistic hopes and visions as well as legal and policy conflict. Like public television and later the Internet, cable came to be viewed by liberal elites and media activists as the “last best chance” for realizing the potential of

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<sup>4</sup> National Office for Decent Literature, Citizens for Decent Literature, Catholic Broadcasters Association (UNDA-USA).

mass media TV. Revealing widespread dissatisfaction with the quality and responsiveness of commercial TV, there were at this time frequent expressions of the fear that cable would devolve into something like commercial broadcasting. Several activists we interviewed attributed a decline in Foundation funding of media activism in the later 1970s to the foundations' belief that cable TV would solve problems of terrestrial broadcasting. The attitude was that "there will be a channel for everyone and you won't have to fight about it any more."<sup>5</sup>

### *Guerilla Television and Public Access*

One offshoot of the late 60s/early 70s counterculture was a utopian belief in the power of communications technology to transform society. The ideas of Marshall McLuhan (1964, 1969) melded with early manifestations of techno-culture formed around developments such as the experimental film and the portable video camera. (Youngblood, 1970) Two products of this intersection were the concepts of "guerilla television" and "public access." Guerilla television envisioned small-scale independent producers of documentaries that would promote social justice by exposing unacceptable social conditions and giving voice to the voiceless members of society. The concept of public access was conceived as the means of disseminating this revolutionary mode of content production. It sought to replace one-way mass audience entertainment transmissions of commercial broadcasting with what we might now call a "commons:" a completely unrestricted and nondiscriminatory pipeline to the public, unsullied by marketing and advertising. George Stoney, a documentary filmmaker based at New York University, co-founded with Red Burns the Alternative Media Center, a meeting and training locale for many of the activists who fought for cable access.

In its push for completely unmediated access between content producers on the street and an engaged public, this vision tended to downplay or ignore altogether critical economic constraints, such as the need to recoup major investments in infrastructure and content production and the need to market and promote productions to get audiences' attention. It also exaggerated the degree to which the general public (as opposed to the subculture involved with independent media) wanted to be involved with and challenged by TV rather than entertained and diverted by it.

The alternative television movement was more of an artistic counter-culture than an attempt to formally change institutions. But they influenced many legally inclined, mainstream advocates, who took their visionary ideas and tried to translate them into policy proposals. These proposals involved three prongs: 1) common carrier status for cable distribution, 2) promotion of public access channels, and 3) technological mandates. The main leverage for imposing these policies came from local franchising decisions. Efforts by local activists to intervene in franchising decisions were supported by foundation-funded cable TV information services and research efforts. (Smith, 1972, 81)

### *Structural regulation*

A catalytic role in policy proposal formation was played by the ACLU's Communications Media Committee, formed in 1968. Personalities such as Sidney Dean, Irwin Karp and Fred Powledge

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<sup>5</sup> Telephone interview with Jeff Chester, Center for Digital Democracy, February 3, 2003.

were involved.<sup>6</sup> In 1972, the ACLU Committee published what it called “rough guidelines” for its chapters to help “involved citizens” influence cable policy. (Powledge, 1972, 31-39) “First and foremost,” ACLU believed that cable franchisees should be limited to building the distribution system and then leasing the available channels to other programmers. In this model of industry organization, cable operators would not possess any control over the programming that they carried.<sup>7</sup> If common carrier status was achieved, there would be no need for set-asides or subsidized access for public access channels. As a common carrier, cable operators also would have no liability for censored content. The ACLU saw no need for the equal time and fairness doctrines either if cable became a common carrier, but believed in retaining those rules until such status was achieved. Rates should be “fair, reasonable, and nondiscriminatory.” As of 1972, ACLU was “in the process of formulating its position on the entire question of cross-ownership,” but the pamphlet noted that it “tends to believe” that cross-ownership among media forms inhibits diversity.

### *Public access channels*

Other advocacy groups urged franchise authorities to require cable systems to set aside channel capacity for public access. This would give people in a community an unrestricted right to either air programs they had produced or to speak out live. Open Channel was one of the leading organizations promoting the concept. Demands for public access channels eventually came to be grouped together with the demands of educational groups and local governments for set-aside channel capacity; thus, the concept of “PEG channels” (Public access, Education, Government) was born. PEG channels were a distributional issue in which advocates asserted non-economic, noncommercial criteria as a mechanism for allocation of channel capacity, one of the most vital resources of the new distribution medium of cable. Needless to say, this distributional principle was stoutly resisted by most of those who owned and invested in cable systems; they wanted to allocate channel capacity on the basis of optimizing the economic value and profitability of the cable system. However, cable system developers were willing to bargain with local authorities to win franchises, and this gave PEG advocates leverage. The outcome of this clash of allocation principles was a policy bargain in which PEG channels won an institutionalized right to exist but were contained as a small minority of total channel capacity. Longer term, the impact of PEG channels was minimized not so much by their smaller channel capacity as by their inability to compete successfully with commercial channels for finance and viewers’ attention and allegiance. Unlike the market-based system with which it was competing, PEG channels lacked an institutionalized capacity for economic sustainability, strategic resource allocation and self-promotion. As an unorganized commons, public access channels had no way to create a feedback loop between audiences and producers that would direct more resources and air time to programs, ideas and formats that the public responded to and wanted to see more of. The commercial sector of cable, of course, did have such a mechanism (the whole apparatus of ratings, advertising sales, premium subscription rates and the like). Here again, we see the appealing normative vision of the media activists unable to successfully translate itself into sustainable economic institutions.

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<sup>6</sup> Dean, a former advertising agency executive, was involved in communication policy also on behalf of Americans for Democratic Action (ADA). According to our data on Congressional testimony ADA was one of the most frequent testifying organizations on CIP issues in the 1969 – 1971 time frame.

<sup>7</sup> The separation of content and conduit actually was endorsed by a Presidential Cabinet Committee appointed by Nixon and run by Clay Whitehead in 1974. See Whitehead, C. T. (1974). *Cable: Report to the President*. Washington, DC, Cabinet Committee on Cable Communications: 122.

*Technological mandates*

Cable was probably the first communications arena in which public interest advocates and some elements of technical expert opinion tried to anticipate the future and use public policy to define the pace of development and the technical architecture of the medium.<sup>8</sup> Studies by the Sloan Commission, the Markle Foundation and Ford-funded RAND Corporation studies contributed to an anticipatory set of expectations about cable technology. (Sloan Commission on Cable Communications, 1971; Smith, 1972) Inspired by notions of what cable systems could do technically, many advocates proposed to use franchise requirements or FCC regulations to accelerate or require the deployment of advanced features. At a minimum, advocates called for capacity requirements; e.g., systems should have at least twice as many channels as required to carry local broadcast stations. (Powledge, 1972) At the other extreme, some commentators in the early 1970s heaped upon cable TV systems expectations for capabilities that were not fully realized until the advent of the Internet twenty-five years later. Forrest Chisman (1977, 83) of the Markle Foundation wrote, “Typically these groups wanted the cable industry to assume in the near future the responsibility of implementing innovative services which earlier visionaries had said it would only eventually provide. Among the services which these groups hoped the FCC would demand were two-way communications, reserved channels, funding for public access, and interconnection.” Chisman mentions the UCC Office of Communications and Open Channel as groups actively lobbying to require cable systems to be more advanced.

*The Legacy of Cable Advocacy*

Far-reaching visions of what cable could be had to contend with the gritty realities of business and local franchising politics. For the most part, politics as usual was the order of the day. Cable franchises were monopolies and potentially lucrative. In awarding monopoly franchises, cities would often “soak” cable operators to give themselves more revenue and perks and then allow local rates to be set higher to recover costs. Combinations of prominent local citizens with inside ties to local government teamed up to apply for exclusive franchises. (Smith, 1972, Chapter 6)

For all its excesses and failings, cable-related activism contained the germ of a homegrown communications-information movement. Presaging the Internet, it contributed to the rise of a techno-culture animated by a belief in the transformative powers of interactive communication. It brought the cultural and content elements of policy into close connection with ideas about industry structure and regulation. Engagement with cable development was also the first to raise privacy issues in the modern sense of a concern with the use of the technology for surveillance. (Smith, 1972, 98) Cable activists also seem to have suffered from a problem that continues to dog communication-information activists to this day: they had to convince people that their focus on what seemed to be an obscure, technical policy specialty should be of interest to the broad masses of people. (One must keep in mind that cable television in the 1970s, unlike today, reached a small minority of the public.)

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<sup>8</sup> Don LeDuc noted sardonically that “the studies and reports of the proponents of cable tend to blur the crucial distinction between potentiality and actuality; they predict the imminent emergence of a nationwide 80-channel coaxial system, while the cable television industry of the early 1970s...still furnishes less than a dozen channels to [an average] 2,300 subscribers [in small markets and rural areas].” Le Duc, D. R. (1973). *Cable Television and the FCC*. Philadelphia, PA, Temple University Press, p. 5.

## **4.4 Four Major Institutional Changes**

The ferment from the mid-1960s to the mid-1970s produced additional institutional changes distinctive to communications and information. We consider the Freedom of Information Act and Public Broadcasting to be two such changes.<sup>9</sup> There were also important changes in copyright and privacy law during this period. And yet, with the exception of the ACLU, which was deeply involved in privacy issues, the latter two areas of information and communications policy were not central to the media advocates' agenda.

### *Freedom of Information Act*

Enacted in 1966, the Freedom of Information Act (FOIA) was the first law to establish an effective legal right of citizen access to government information. The bill, passed by an overwhelming margin, emerged from widespread recognition that the growth of the federal bureaucracy led to a need for more transparency in government. The existing Administrative Procedures Act was perceived as inadequate and problematic with respect to information access. FOIA was authored and sponsored by Congressman John Emerson Moss of California, a leading consumer advocate who also authored the law that established the Consumer Product Safety Commission. In 1955 Moss began a crusade of investigations, reports and hearings on government information policy, and after 11 years his efforts were rewarded. In the ensuing 38 years, citizens, scholars, and reporters have used FOIA to obtain vital information; indeed, FOIA complemented and empowered the citizens groups formed later under the new model. By developing expertise in the rights granted to them under the law and using that expertise to sift through government documents, they could play a more effective role in formulating policy, reacting to government initiatives, or countering lies told by government or business.

FOIA and the principles behind it are mainstays of Jeffersonian liberal democracy, and have long-term historical roots. The purest manifestation of those principles prior to the American law was the Swedish Freedom of the Press Act of 1766, which not only guaranteed freedom of speech and the press but also enabled free public access to any official document. The Swedish Publicity Principle was not modified until a 1937 Secrecy Act, passed during the dark hours of fascism, but many aspects of the 1766 law are still in place today.

Although FOIA was supported by the ACLU, a more important role in its passage was played by professional and commercial interest groups associated with broadcasting and publishing. Many of these groups, such as the American Society of Newspaper Editors, Sigma Delta Chi, National Press Photographers, American Newspapers Publishers Association, and National Newspaper Association, set up "Freedom of Information Committees" to support the law. FOIA was also supported by the New York State Publishers Association, the National Association of Broadcasters, and the American Bar Association.

Since the 1980s, the US government has tightened up its control of information and carved out numerous exemptions to FOIA. Still, the Act qualifies as a major institutional change, as it does

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<sup>9</sup> Prohibitions on cigarette advertising might also be considered a noteworthy institutional change in media policy. In 1970, after years of maneuvering between the Federal Trade Commission, health advocates and the cigarette industry, Congress acted to ban all cigarette advertising on television and radio. This can be characterized as an extension of the consumerist-health movement to media policy more than a change in media institutions as such, although its economic impact on advertising-supported broadcasters was profound.

permit citizens groups to obtain valuable information about the activities of government. State versions of FOIA laws have also been passed, and the concept has been occasionally taken up by non-US polities.

### *Public Television*

A second major institutional change was the Public Television Act of 1967. The public broadcasting law emerged from a Carnegie Foundation Commission report and several Ford Foundation initiatives, as well as pressure from educational broadcasters. The Carnegie Commission had been formed in 1965. Its January 26, 1967 report concluded that “a well-financed and well-directed educational television system, substantially larger and far more pervasive and effective than that which now exists in the United States, must be brought into being if the full needs of the American public are to be served.” The report called the public television proposal “a system that in its totality will become a new and fundamental institution in American culture.” Only 10 months after the release of the Carnegie report (November 1967), a new law creating the Corporation for Public Television (CPT) was passed. CPT (later the Corporation for Public Broadcasting) began operation in 1968.

It is difficult to know how much general public support there was for public television. We do know, however, that public broadcasting resulted from the cultural concerns of educated elites dissatisfied with the lowest common denominator programs of the commercial mass media, and from pressure generated by educational programmers seeking better distribution for their content. (Pepper, 1975) The new media advocacy groups played no role in its founding because they did not exist yet, although some of them would later help resist budget cuts. It seems likely also that the older consumer groups and listeners associations helped to generate a climate of opinion critical of commercial broadcasting and favorable to a major reallocation of resources to a noncommercial alternative. Like FOIA, public broadcasting has suffered reversals, mainly attributable to financing issues, but must still be considered a lasting institutional change.

### *Privacy and Intellectual Property*

Two other important laws affecting communication and information policy passed in this period. One was the Privacy Act of 1974. Colin Bennett (1992) documents how in economically advanced Western democracies the impact of computer technology on privacy and personal data moved from “an abstract intellectual concern” to “a contentious political issue” in the late 1960s - early 1970s. The development in national governments of large-scale databases with records on individuals, the automation of census procedures around 1970, and the release of popular books on computers and privacy<sup>10</sup> all contributed to the emergence of what Bennett describes “as an international policy community.” The environment of technological uncertainty associated with computerization of records, he writes, “produced a strong motivation...for cross-national lesson-drawing, which stimulated frequent interaction among a tightly-knit community of mainly legal specialists.” However, for the most part this transnational issue network was limited to data protection issues and did not advance a comprehensive agenda for telecommunications and media policy. Privacy-related popular activism had to wait until the 1980s and 1990s (see Chapter 6).

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<sup>10</sup> Bennett (1992, 54) singles out Vance Packard’s *The Naked Society*, 1964; Myron Brenton’s *The Privacy Invaders*, 1964; Alan Westin’s *Privacy and Freedom*, 1967, and Arthur Miller’s *Assault on Privacy*, 1971.

In the United States, from the beginning of 1965 to the end of 1974 there were 47 separate sets of congressional hearings and reports on privacy-related issues. The 1974 Privacy Act in the US was passed to ensure that government records were accurate, timely, complete, and relevant. The law originally proposed to create a new federal Privacy Commission; but President Gerald Ford prevented that by objecting to the creation of more bureaucracy. (Diffie & Landau, 1998, 127) Passage of the Privacy Act and other privacy-related laws were also fueled by the need to impose restraints on the use of electronic surveillance by the FBI and CIA. This followed exposure of the abuses during the civil rights and antiwar movements. Although privacy issues began to be discussed in connection with the rise of cable television in the early 1970s, for the most part the new media advocacy groups did not consider privacy-related discourse a core part of their message. While the civil rights and antiwar groups that had been abused by the FBI played a significant role in generating opposition to government surveillance, and of course the ACLU was a major source of testimony and expertise, compared to the digital era there was little interaction between privacy and mass media issues.

Another important change was the Copyright Act of 1976. Like the privacy legislation, this major revision of copyright protection took place in reaction to technological changes: the rise of the photocopying machine and of cable television. The new media advocates, however, played no role in its formulation or passage.<sup>11</sup> Without further research it is difficult to determine whether the Copyright Act as a whole can be characterized as a significant institutional change. No marked redistribution of wealth is immediately evident; it appears to be more of a brokered compromise among various professional and commercial interest groups. However, the law did much to institutionalize concepts of fair use, particularly with respect to photocopying printed media.

It is notable that FOIA and public television *preceded* the growth of organized media advocacy groups, and that the other two laws (the Privacy and Copyright Acts) did not involve communication activists as a major part of the picture. At this time, the field was still fragmented into separate issue networks.

#### **4.5 License Renewals and Institutional Change**

Undoubtedly, the media activism of the 1970s was successful and influential insofar as it maintained and marginally extended the gains of civil rights and related social movements. But its success in transforming the economic basis of the media, or the institutional structure of communications regulation, was much more limited. When compared to other aspects of the advocacy movements of the late 1960s and 1970s, especially environmentalism and consumerism, the changes achieved in the media sphere seem modest and often temporary.

Action for Children's Television (ACT) was one of the few citizens groups that mounted a sustained attempt to add new regulatory content to the FCC's agenda. Formed as a local group in 1968, it went national with substantial foundation funding in 1970. ACT sought to improve the quality of children's programming and eventually came to seek an outright ban on advertising on children's programs as the means to that end. ACT succeeded in gaining significant publicity and a sympathetic hearing from the FCC's chairman at the time, Dean Burch (a Nixon appointee). The FCC was prompted to hold a rulemaking on children's programming – one of the few rulemakings

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<sup>11</sup> Not a single CIP-related public interest group testified in the hearings on the new Copyright Act.

directly attributable to a non-industry group in this period. However, in July 1972 the FCC investigation came to the unsurprising conclusion that a commercial broadcast regime dependent on advertising revenue would eliminate most children's programs if ads on them were banned. The overall impact of the ACT effort was ameliorative rather than structural: the National Association of Broadcasters was pressured to amend its advertising code to reduce by about 25 percent the minutes per hour of advertising on children's programs. (Guimary, 1975)

In other areas of content regulation, neither liberal-moderate-conservative coalitions concerned with televised violence, nor conservatives focused on sex and traditional values, nor joint feminist-conservative action against pornography, succeeded in institutionalizing their norms. The standards of sexual content acceptable on broadcast television moved toward ever-greater permissiveness, although there is still a disjunction between the more-regulated broadcast world and cable.

The United Church of Christ v. FCC decisions did, for a while, create an important institutional change in the relationship between citizens and regulators. The media activism that followed in its wake infused the norms of the civil rights and women's movements into the management, employment, and programming of the broadcast media. As Horwitz (2003) observes, the civil rights movement gave the FCC's vague mandate to foster "diversity" in programming a specific regulatory substance (racial or gender representation in content and hiring). Hence, the FCC was fairly active in translating those norms into regulations affecting broadcaster conduct.<sup>12</sup>

Some social science studies of broadcast license challenges seem to indicate that the efforts of advocacy groups were counterproductive in the regulatory context.<sup>13</sup> While this data is an interesting reflection on the effectiveness of advocacy in the *regulatory* process, for license challenges to be effective it was not necessary for the FCC itself to act. The tornado of petitions to deny led to direct bargaining between the license holder and the challengers. Major adjustments in employment and programming practices were made without involving the FCC. (Chisman, 1977; Guimary, 1975; Montgomery, 1989; Slavin & Pendleton, 1983)

But the bargaining between advocacy groups and the licensees raised an important institutional issue in itself – one that goes to the heart of the model of participatory democracy implicit in the organized advocacy of the period. The simple fact is that the petition to deny was an institutionalized possibility open to those with venal intentions as well as good intentions. As one contemporary observer noted, it created some "potential for improper and excessive payments to citizens groups and the danger of promoting extortionist behavior." (Grundfest, 1977, 87) More broadly, the FCC found that its (nominal) role as guardian and monitor of the public interest could be usurped by private agreements between the licensee and a challenger. This raised fundamental issues about how the public interest was to be defined. Should it be defined through essentially entrepreneurial actions of contending advocacy groups claiming to represent the public or some portion of it? Or should appointed governmental regulators, subject to judicial oversight, scrutinize

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<sup>12</sup> However, because the changes were only embodied in regulations, never in legislation, they have proven to be reversible by the Courts as conservative thinkers have gained positions and preeminence in the law. (Horwitz, 2003)

<sup>13</sup> These studies contrasted proceedings in which public interest groups intervened against a broadcaster with proceedings in which there was no public intervention. The data show that the FCC was more likely to take away a license or fine the broadcaster in proceedings where there was no intervention by advocacy groups. (Linker, 1983; McLauchlan, 1977)

these deals and apply standards based on interpretation of the law? Which method is more “democratic?” The FCC (predictably) tilted away from the participatory ideal. It initiated a series of proceedings regarding whether it should supervise or approve agreements between broadcasters and challenging groups. (Grundfest, 1977) The FCC proceedings produced two Final Report and Orders in 1975 and 1976 regulating, respectively, agreements and reimbursements between broadcast licensees and the public.<sup>14</sup>

Our point here is that petitions to deny and similar forms of public intervention could never form a stable basis for a public interest media system. A license renewal challenge is a precipitous and conflictual act; in essence, it is a struggle to completely expropriate the incumbent holder of a valuable right. The rationale for viewing license challenges as a policy tool was expressed well by Cheryl Leanza of the Media Access Project, in the convening reviewing an earlier draft of this report:

[License renewal challenges] could have led to a change in societal norms with respect to the public’s attitude toward the mass media. The public could perceive that if the news did not reflect them, or what they perceived as truth, they could not just accept that vision as real or valid, but take action to challenge this. The [renewal challenge] changed the interaction between the people with wealth and power (broadcast station owners) and the citizens and viewers.

The problem with this perspective is that there are many different groups with completely different, usually incompatible notions of what the news “should” look like. If all of them can threaten the economic existence of a broadcaster, freedom and diversity of expression is thwarted, not helped. Challenges of what constitutes “truth” could just as easily come from people with wealth and power who feel threatened by views of reality broadcast by critical but weaker groups. Such exposure simply leads to constant contention among social groups to impose their views on the rest of society.

Deeper questions can be raised about the long-term sustainability of license challenges as a mechanism for public accountability. When a property right (the broadcast license) with high commercial and political value is involved, an incumbent will fight like hell to keep it. Thus, one immediate effect of the UCC litigation was that virtually every year from 1969 to 1974, broadcasters tried to get legislation increasing their certainty over the license. By 1974, broadcasters successfully prodded Congress to propose legislation extending the term of the license from 3 years to 5 years.<sup>15</sup>

One could explain this as simply business interests getting the upper hand. A more accurate way to look at it, however, focuses on the tendency of social institutions to gravitate toward more predictable, coordinated structures. Short-term uncertainty and unpredictability may be a necessary

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<sup>14</sup> Final Report and Order in the Matter of Agreements Between Broadcast Licensees and the Public, Docket 20495, FCC 75-1359, December 19, 1975; Final Report and Order in the Notice of Inquiry and Proposed Rulemaking in the Matter of Reimbursement for the Legitimate and Prudent Expenses of a Public Interest Group for a Consultancy to a Broadcaster in Certain Instances, Docket 19518, FCC 72-473, June 7, 1972.

<sup>15</sup> A few years later, the Reagan Administration FCC instituted “postcard” renewal and abolished the need for community ascertainment of programming needs, making the broadcast license a much more secure property right and the paradigm of supply more commercial. (See Chapter 5)

concomitant of social change; long-term unpredictability, lack of certainty as a fixture of business, is extremely costly and rarely serves the public interest. Institutional arrangements will inexorably equilibrate on stability in assigning rights. And in the long run, whoever has the most to gain from stability and certainty is bound to invest enough in litigation and/or the political process to get it. In other words, there will always be an incumbent bias. Except in rare moments of social turmoil or the most extreme forms of malfeasance or monopoly domination, public authorities will be loath to yank valuable resources away from their incumbent holders. This has been proven true of similar forms of media interventions, e.g. challenges to cable TV franchise renewals.

Finally, the broadcast license was a fertile point for organization only insofar as it was an extremely scarce and limited resource awarded to private users as a trust laden with public interest obligations. The proliferation of alternative means of distributing television or radio content has undermined the broadcaster's special status as a "public trustee."

To conclude, license renewal challenges offer a mixed legacy. As a short-term mechanism for injecting civil rights norms into the broadcasting industry, they were effective and justifiable. As a long-term mechanism for promoting a diverse and free mass media, they were problematical from a First Amendment standpoint and probably unsustainable as a long-term process.

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