

Historical Perspectives on Federal Regulation of the Media

June 6, 2024, at 9:00 a.m. ET, Rayburn House Office Building Room 2075

Chronology of the History of US Communications Regulation

1792 – Congress passed the Post Office Act to facilitate network expansion and ban the surveillance of personal correspondence.

1844 – Telegraph inventor Samuel F. B. Morse tried unsuccessfully to sell his telegraph patent to Congress.

1866 – Congress passed the National Telegraph Act to encourage new entrants to compete with Western Union in the landline telegraph market.

1878 – The world's first telephone exchange opened in New Haven, CT.

1913 – Justice Department negotiated a consent decree with Bell (American Telephone & Telegraph) to stabilize the telephone market and legitimate the "Bell System."

1927 – Congress passed the Radio Act, establishing protocols for allocating the electromagnetic spectrum and mandating that political candidates have equal access to purchase radio time at equal rates.

1934 – Congress passed the Federal Communications Act, creating the Federal Communications Commission (FCC).

1949 – FCC introduced the Fairness Doctrine, requiring broadcasters to present contrasting views on "controversial issues of public importance."

1956 – Justice Department negotiated a second consent decree with Bell, limiting Bell to telephony and mandating the licensing of its patent portfolio.

1961 – FCC Chairman Newton Minow criticized commercial broadcast networks for producing a "vast wasteland" of television content and ignoring their public service obligations.

1967 – Congress passed the Public Broadcasting Act.

1982 – The US Justice Department negotiated a third consent decree with Bell, breaking up the Bell System.

1984 – Congress passed the Cable Communications Policy Act, eliminating local rate caps and streamlining the local franchising process.

1987 – After the FCC eliminated the Fairness Doctrine, President Ronald Reagan vetoed legislation to codify it in law.

1992 – Congress passed the Cable Television Protection and Competition Act over President George H. W. Bush's veto, reregulating the cable industry with rate caps and programming mandates.

1996 – Congress passed the Telecommunications Act of 1996, eliminating rate caps and relaxing cross ownership rules for telecommunications industries.

1996 – Congress passed the Communications Decency Act of 1996, including Section 230, providing immunity to online platforms from liability based on third-party content and for the removal of content in certain circumstances.

2001 – Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act.

2006 – Social media platforms Facebook and Twitter launched their products to the general public.

2007 – Apple released the first iPhone.

2012 – Facebook acquired Instagram.

2020 – The Federal Trade Commission and a number of US states undertake a lawsuit against Facebook for anti-competitive conduct and unfair methods of competition.

2021 – Facebook rebranded as Meta.

2022 – Elon Musk completed acquisition of Twitter.

The Formation of Postal, Telegraph, and Telephone Networks

- To operationalize the Constitution's postal clause, in 1792 Congress passed a landmark postal law that established a communications network that could expand rapidly, circulate public information on a nonpreferential basis, and guarantee the privacy of personal correspondence.
- To help ensure that the newly invented electric telegraph would not be grafted onto the Post Office Department, in the 1840s Congress rejected Samuel F. B. Morse's proposal to sell his patent rights to Congress.
- To encourage competition between dominant telegraph network provider Western Union and its would-be rivals, in 1866 Congress passed the National Telegraph Act. Every signatory agreed to permit Congress to buy out its assets for a mutually agreed-upon sum.
- To stabilize the telephone market, in 1911 the Justice Department legitimated the "Bell System" as the dominant network provider.
- To foster a commercially oriented radio network and provide political candidates with equal access to the airwaves, in 1927 Congress passed the National Radio Act.
- To promote innovation, in 1956 the Justice Department restricted the Bell System to the telephone market and mandated the nonpreferential cross-licensing of Bell patents (including the transistor).
- To encourage competition in the telephone market, the Justice Department in 1992 broke up the Bell System.

The Rise of Television

- As television took over the media landscape in the 1960s, the Federal Communications Commission (FCC) highly regulated its operations. Because dissemination of television content happened over the airwaves, local stations had a broadcast license to determine what part of the spectrum they could use and when they could use it.
- Building on precedents set with radio regulation, FCC allowed a commercial system to develop in which these local broadcasters affiliated with a national network—CBS, NBC, and ABC—and received higher quality programming to disseminate. In exchange for

monopolizing the marketplace, the FCC required the broadcasting industry to serve a vaguely defined “public interest.”

- Discontent abounded with a regulatory structure that people across the political spectrum saw as elitist and exclusionary.
- A range of policy solutions to diversify the media landscape emerged, including the passage of the 1967 Public Broadcasting Act. Other ideas, including federally funded efforts to build an “information highway,” lost traction during the 1970s as policymakers embraced a more market-driven regulatory approach to promote the development of alternative communications industries, especially cable television and satellite.
- While such deregulatory policies frequently resulted in public ire when consumers experienced rate hikes and poor customer service, by 1996 both parties embraced a media regulatory framework that equated the public interest with the consumer interest and allowed cross-ownership of telecommunications industries to encourage competition.

Grappling with the Internet, Emerging Social Media Platforms, the Decline of Print Media, and Civil Liberties Online

- From the turn of the new millennium to onset of the COVID-19 pandemic in 2020, the recent history of communications regulation in the United States has been defined by the explosion of use of the internet, as well as the political and social struggles over the meaning of freedom of speech and the definition of privacy in this new medium.
- Prior to the late 1990s, internet communications had only been readily available to military, university, and corporate experts. But in the late 1990s, new federal legislation emerged that allowed the internet to become a household consumer good, available in increasing numbers of American homes.
- This new legislation also authorized the consumer internet to become a medium for commercial and credit card transactions, allowing for the proliferation and regularization of online commerce.
- This created a boom in electronic correspondence, shopping, advertising, self-expression, photography, music, mapping, and information retrieval and publication on the internet.
- In 2001, increased concerns over national security presented new questions about Americans’ rights to communicate freely online. The passage of the PATRIOT Act was opposed by prominent civil rights watchdog groups, who held that it constituted a number of violations of Americans’ civil liberties online and through telephone networks. Concerns over these violations specifically highlighted the threats to the rights of Muslim American and African American communities.

- In 2007, the release of Apple's iPhone, and in 2008, the launch of Apple's App Store, increasingly promoted the widespread use of emerging social media platforms like Facebook, Instagram, WhatsApp, and Twitter (now X).
- Following that, the late 2000s and early 2010s were characterized by the efforts of large technology corporations to consolidate their traffic over these platforms through acquisitions of competing products.
- Over the course of the 2000s, 2010s, and early 2020s, the United States' media landscape concurrently saw a sharp decline in the circulation of legacy print media, and a steep collapse of the number of steady, full-time, benefits-granting journalism jobs with sustaining conditions of labor. This has had serious consequences for journalism as a sector, and for the state of the aggressive and independent investigative reporting that is so necessary to a free and thriving democracy.

Participant Biographies

Kathryn Cramer Brownell is an associate professor of history at Purdue University. She is the author of *24/7 Politics: Cable Television and the Fragmenting of America from Watergate to Fox News* and *Showbiz Politics: Hollywood in American Political Life*. She is a senior editor of “Made by History” at *TIME Magazine* and the inaugural director of the new Center for American Political History and Technology at Purdue University.

Jeannette Alden Estruth is an assistant professor of history at Bard College, and a faculty associate at Harvard University’s Berkman Klein Center for Internet and Society. In 2021-2022, she was the American Historical Association Jameson Fellow at the Kluge Center at the Library of Congress. Her writing has appeared in the *Washington Post*, *The Drift*, *Business Insider*, *IEEE Annals of the History of Computing*, *the Business History Review*, *Public Seminar*, and *Enterprise and Society*, among others. Estruth is finishing her book, *Think Different: Silicon Valley Activism and the Making of Modern American Politics*, which explores the history of social movements, the technology industry, and economic culture in the United States.

Richard R. John is a professor of history and communications at Columbia University, where he teaches courses in the history of communications and the history of capitalism. His publications include *Network Nation: Inventing American Telecommunications* (2010) and *Spreading the News: The American Postal System from Franklin to Morse* (1995). He is currently working on a history of antimonopoly thought and practice in the United States.

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