Tyranny of the FCC (Part 1)

by John Cobin, Ph.D. for *The Times Examiner*
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This column is the first segment of a two-part series dealing with the tyranny of the FCC.

Like land, radio waves are part of part of the heritage that God has freely given to men. Men did not create radio waves any more than they created land, oxygen, water, or sunlight. But men have chosen to regulate land and radio waves by means of the state. Why? States cannot tolerate either thing to exist freely on the market because they pose a threat to the state's existence.

If men were to own their land absolutely, without restrictions from the state or any taxes, then men could live in sovereign freedom apart from the state. Such sovereign men would thus hold their land *allodially* (i.e., absolutely, without taxes or regulation). Although they might align themselves to other allodiaries (or even states) for the common defense, the state would ultimately fear their secession from its political jurisdiction—along with the resulting loss of power and important tax revenue. The easiest way for the state to alleviate this threat is to (1) generate a "crisis" whereby the "public interest" is placed in jeopardy by the existence of competing allodiaries and (2) to make the state the sole allodiary that doles out property in "fee" to tenants, granting privileges to use and possess land so long as the grantee pays the fee (taxes) and abides by the overlord's rules. Such is the deplorable situation in modern America.

Likewise, if men were to have free access to radio waves and their transmission and reception, the state's power would be jeopardized. Men would be able to freely propagate points of view that counter the objectives of the state or even question its existence. To have freedom in radio is anathema to the state. In order to rid themselves of the potential threat, states have trumped up the public interest "need" to have state ownership of radio frequency bands. It is suggested, that the state needs to control the airwaves in order to prevent the chaos of thousands of people broadcasting at once on the same frequency. It is also suggested that national security is served by state ownership and control of the airwaves, both to prevent subversive activities or indecency and to have frequencies clear for use during times of crisis. After mesmerizing its constituents with such platitudes and rhetoric, the citizenry has in turn granted the state an electromagnetic spectrum monopoly over the artificially-created supply of 218 frequencies (AM and FM) that it has designated for broadcasting. And as plenary owner, as in the case of allodial landowner, the state doles out privileges to use certain frequencies so long as a fee or tax is paid to the state and the user abides by the state's rules.

Radio transmission is possible as a transmitter modulates an audio signal over a carrier frequency resulting in a modulated carrier wave. These electromagnetic waves of many different frequencies travel through the air, are detected by antennas (being filtered to keep only the desired frequency), and are converted back into audio by the radio receiver and played though speakers. Usable radio waves range from a few thousand to thirty billion cycles per second (3 kilohertz to 30 gigahertz).[1] However, using most of these frequencies commercially requires new or uncommon technologies. Indeed, being able to make use of more frequencies is limited by the physical circuit design and components in the transmitter. Thus, technological advancement is essential to expanding the usable spectrum of radio frequencies. There are many other segments of the electromagnetic spectrum that could potentially be opened up for commercial radio use, but doing so would depend on technological advances and regulatory permission.[2]

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[1] Technically speaking, a radio wave is measured or specified by two properties: its physical length and the number of times its wave cycle is repeated per second (or frequency).

[2] Note that the FM radio band authorized by the FCC goes from 87.9 megahertz to 107.9 megahertz, incremented by 0.2 megahertz. That means that there is a significant buffer between each station which is necessary to facilitate high-fidelity transmission. AM radio waves are longer (lower frequency) than FM waves, which are in turn have a lower frequency than microwave ones. The AM band frequencies run from 535 kilohertz to 1,700 kilohertz (or 1.7 megahertz), incremented by 10 kilohertz (only wide enough to permit mono—rather than stereo—modulation). Using current technology, there is no way to squeeze more frequencies out of the buffer between stations. However, there are potentially many more frequencies that could be used by radio outside the designated radio commercial band if technology were ever able to find a way to designate and utilize smaller segments of the electromagnetic spectrum for each radio frequency—instead of the mere 218 available on FM and AM. (Of course, the amount available for radio is constrained by needs for television broadcasts, cell phones, short wave radio, astronomy, etc.) And why would we not expect technology to eventually find a way to expand the number of available frequencies if it were not impeded by regulation and profitable to exploit? The constriction of supply of available radio frequencies causes the price to rise dramatically for available commercial radio frequencies, reflected in the thousands of dollars for a typical FCC license.

The Federal Communications Commission (FCC), "established in 1934 to regulate interstate and foreign communications in the public interest", is the state's regulatory agency that coerces otherwise free men into compliance. But should those of us who love liberty also love and support this New Deal institution? Should we accept the socialist notion that markets "fail" to serve the public interest in allocating scarce resources like radio bands and therefore agencies like the FCC must step in to ensure that the public interest is served? As economists have widely shown, state regulation makes social problems worse and exacerbates property rights conflicts. The high price of monopoly participation has led some to exclaim the inequalities caused by FCC regulation. As Ted Coopman notes, on account of the proactive FCC policies, the electromagnetic spectrum "is like a highway everyone paid taxes to build, but only the richest five percent of the population can drive on it. Everyone else just gets to watch."[3]

Furthermore, as with all New Deal policies and the bureaus they create, the Constitution is a nuisance for the FCC. The First Amendment, in pertinent part, says "Congress shall make no law…abridging the freedom of speech, or of the press…" Radio is not mentioned in the Amendment, of course, since the technology did not exist at the time. The Constitution does not mention many unknown technologies. But that fact is not important. No document can take into account specific unknown future developments. The Constitution is about enduring principles and those principles can be applied today. One purpose of the First Amendment is to protect dissenters from majorities. However, the FCC's existence and oversight of radio transmission is a violation of the Constitution. The use of radio bands form part of our freedom of speech and the press while the FCC runs roughshod over American liberties.[4]

Tyranny of the FCC (Part 2)

by John Cobin, Ph.D. for *The Times Examiner*
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This column is the second segment of a two-part series dealing with the tyranny of the FCC.

The airwaves are considered to be a "shared resource" owned by "everyone" and the FCC is supposed to act as a watchdog to prevent abuse. According to this premise, the tragedy of the commons would be exemplified in the unregulated airwaves since property rights would not be allocated. So the FCC "solves" this problem and the federal government effectively absconds with the electromagnetic property rights. But does state intervention really improve on the free market?

As Adam Thierer, Director of Communications Studies at the Cato Institute pointed out, "Although few history books mention it, and most Americans are not aware of it, roughly 75 years ago, the federal government nationalized one of the most important natural resources in existence…the electromagnetic wireless spectrum…The history of America's seven-decade experiment with government management of the airwaves reads like a never-ending series of Soviet-style five-year plans. The Federal Communications Commission has basically doled out spectrum on a licensed basis for specific uses and then dictated how license holders can use or sell that spectrum allocation. This has resulted in two very serious problems: inflexible use policies and artificial spectrum scarcity. The combined effect has been the creation of a serious spectrum crisis in America."[5] And this proactive policy is costing Americans billions of dollars, as the Mercatus Center's Dr. Jerry Ellig has shown in a recent study. The costs of the FCC's overall "public interest" regulation have been enormous.[6]

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[3] Ted M. Coopman (1997), "Free Radio v. the FCC: A Case Study of Micro Broadcasting", paper presented in Mass Communication Division at the November 1997 annual meeting of the National Communication Association in Chicago.

[4] Some have even argued that FCC regulation and state ownership of the electromagnetic spectrum violate property rights guaranteed by the Fifth Amendment along with the right to freely exercise one's religion guaranteed by the First. The FCC is further charged with discriminatory practice, pandering to powerful lobbies and special interest groups, monopolists, and doctrinaire proponents of the state to the exclusion of philosophical minorities. Public choice (economic) theory would tend to support these claims.

[5] Adam D. Thierer (2001), "Solving America's Spectrum Crisis", *Tech Knowledge*, issue no. 4 (April 18), The Cato Institute.

[6] The "estimates from scholarly literature [suggest] that federal telecommunications and broadband regulation generates $75 billion in wealth transfers annually, reduces consumer welfare by $25 billion annually, and reduces social welfare by $41 billion annually." Jerry Ellig (2005), "Costs and Consequences: Despite reforms, telecom regulations are still costing consumers billions of dollars", *Regulation* (Fall), pp. 40-44.

In his book *Selling the Air: A Critique of the Policy of Commercial Broadcasting in the United States* (1996), Thomas Streeter debunks the notion that FCC regulation creates a market rather than intervenes in an existing potential market. In analyzing the processes by which commercial media are organized, Streeter questions how broadcasting can constitute something that can be bought, owned, and sold under modern conditions. Moreover, Streeter points out that commercial broadcasting is dependent on state privileges. The artificial electromagnetic "market" is in reality a function of the political choices of corporate liberalism that shape America's landscape of cultural property and electronic intangibles.

Accordingly, the real purpose of the FCC is to control property that is potentially hazardous to the health of the state and to act as a favor broker to aspiring monopolists. The mechanism used for control is the licensing system, wherein a would-be user of a frequency must ask the FCC bureaucracy for permission to broadcast. This allegedly serves the "public interest" by keeping big brother "in the loop" and by allowing big brother the final word over what is broadcast over the airwaves. As a big brother establishment, the FCC represents an abominable proactive policy.[7]

The FCC protects the recipients of the political privileges that it grants. Indeed, the paramount economic effect of any licensing policy is to generate monopoly profits for license holders. These profits are effectively split between the monopolist and the FCC, which extracts annual rents from the monopolist by way of licensing fees. Broadcasters who lack an FCC license are subject to having their equipment confiscated or to be fined (after repeated violations).

How does the FCC find violators? Triangulation is a technique that the FCC uses to find them, i.e., people who are using its property without permission. How does triangulation work? By plotting three concentric circles based on estimates of distance from a mobile FCC surveillance unit to a violating transmission, the radio station's location can be pinpointed within a few meters by finding the place where the three circles intersect. With GPS triangulation technology, intersecting spheres are used instead of circles. So technology makes it easy for the FCC to enforce its vision and values on society.

How would the market for radio waves operate without the FCC? There are two ways to facilitate ownership of airwaves in a market economy: pay for the use of air space that one's radio waves will pass over (the demand side) or buy an enforceable (at common law) property right in frequency (the supply side). The former method would permit anyone to use a radio frequency. He would have to purchase or otherwise obtain permission to pass radio waves through your airspace—just as a man hunting game on someone's allodial land would require prior permission. Moreover, as the market developed, brokers would likely emerge to monitor the airspace and to collect payment for the use of airspace rights. The latter method requires that someone—whether a private group or the government—create property out of the electromagnetic spectrum and then offer it for sale to the highest bidder. The government's role would thus be reduced to what the county recorder or clerk does for real property today. Either method would eliminate the tragedy of the commons, overuse and dilapidation, and would ensure the most efficient use of the natural resource. And either method would be vastly superior to the tyranny of FCC regulation. Let's give this New Deal policy the boot and welcome a free market in radio transmission instead.

[7] Only in the sense of its minor duties as coordinator of use privileges could the FCC be considered a policy of inefficient provision of a market service. The FCC is certainly not reactive policy, notwithstanding the state's claims to the contrary, since there is no clear defensive purpose in state ownership or regulation of electromagnetic property (other than defending the state's existence of course). The FCC does not exist to protect the negative rights of individuals to life, liberty, or property.