# Administrative Structures

CYBR 4400/5400: Principles of Internet Policy, Lecture 1-4

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# Today's Lecture

- Recap of last lecture on When to Regulate
- Lecture on Administrative Structures

# Key Concepts from Last Lecture

- Difference between policy and regulation
- Market failures justifying regulation
- Difficulties for regulators to mimic competitive markets

# When to Act – Framework for Regulation (cont'd)

# Another Common Carrier Requirement: Universal Service

- Must serve all
- Funded by explicit and implicit subsidies to achieve "affordability"
- Again, only applies to essential services
  - Telephone in 1910
  - Broadband and mobile in 2010 (in areas of only one provider)

# Common Carrier Obligations

1. Rates must be non-discriminatory (cost-based differentiation is OK)
2. Overall rate regulation through tariffs
3. Control over market entry and exit
4. Obliged to offer service at reasonable rates (no excessive monopoly profits)

# Common Carrier Regulation

## Managing monopolist entry into new telecommunications markets

source of controversy 1970 - 2000..

# Common Carrier Regulation

Still very controversial today…

# Market Failure Justifications (cont'd)

2. Network effects — demand-side phenomenon

- Value increases with the number of other consumers
- Occurs not only with communications services, but platforms
- Addressed through interoperability mandates and interconnection requirements

# Market Failure Justifications

3. Public good

- Product or service for which demand is nonrivalous
- Marginal costs of next consumer is zero, but still need to recover costs - potential to underproduce
- Concern to television broadcasting

# Additional Justifications

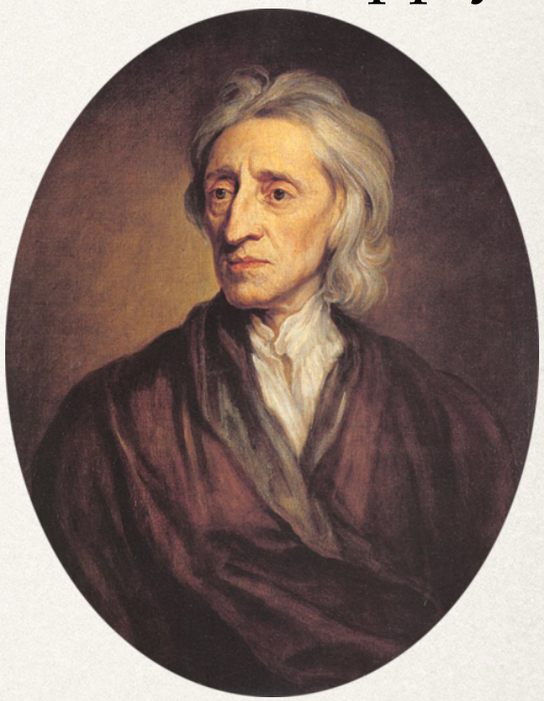
- Well-functioning market still does not provide the communications services needed by society
  - Universal service
  - Lack of “high-value” services such as 911, government cable channels, children’s TV programming, etc…
  - Net neutrality to insure open access

# Regulatory Challenges

- Direct costs (e.g., $350M FCC budget)
- Obtaining the correct information
- Creating market distortions
- Gaming the regulatory system (e.g., public choice theory assuming government actors maximize their own private goals)

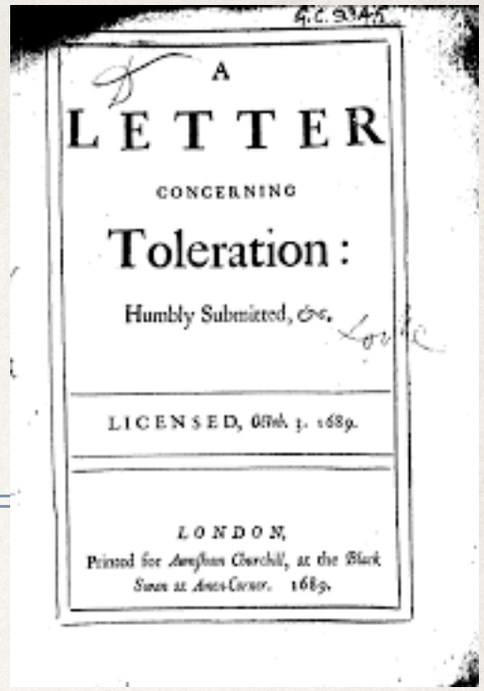
# Characteristics of Government

- John Locke (1632–1704) — how to protect individual rights
  - Government action only takes place as result of general laws that apply to a spectrum of individuals
  - Laws voted by representatives of people
  - Implemented by executive
  - Violations by judiciary



- Courts can determine legality of the law (both executive and legislative)
  - Due process of the individual

# Sidebar: John Locke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Printed for Awsham Churchill, at the Black Swan at Ames-Corner. 1689.

- People have rights independent of the laws of any particular society
- Legitimate political government result of a social contract where people transfer some of their rights to better ensure comfortable enjoyment of their lives, liberty, and property
- Governments that fail contract can be resisted and replaced with new governments
- Locke thus important for his defense of right of revolution

3. Name a market failure caused by demand side effects? Name one caused by a supply side effect?

1. _____

2. _____

# Policy Analysis Framework from Reading

- What market failures or other issues are given to justify intervention?
- What does the government need to know to administer proposed regulations effectively?
- What are the likely market effects?
- How will the government assess effectiveness?
- Who will likely benefit from proposed policies?

# Levels of Government Regulation Today

- Municipal
- State - Public Utility Commissions (PUCs)
- Federal
  - Executive branch
  - Legislative branch
  - Judicial branch
  - “Fourth Branch” - Independent regulatory commissions
- International - International Telecommunications Union (ITU)

**Who's in Charge?**

# Executive Branch

- National Telecommunications and Information Administration (NTIA)
  - President's principal adviser on telecommunications and information policy issues
  - Controls spectrum used by government
  - Manages grant and loan programs
- Department of Justice
  - Brings antitrust cases
  - Must approve mergers

# Legislative Branch (Congress)

- Broad policy making authority to establish new laws
- House Energy and Commerce Committee
  - Subcommittee on Commerce, Science and Transportation
- Senate Committee on Commerce, Science and Transportation
  - Subcommittee on Communications, Technology, and the Internet

# Judiciary

- U.S. Court of Appeals (12 regional circuits)
  - Most FCC appeals to licensing decisions and rule making proceedings heard by U.S. Court of Appeals for the District of Columbia
- U.S. Supreme Court
- Judges: generalists with few resources

# Independent Regulatory Commissions

- Independent from Executive and Legislative branches though powers delegated by legislative branch
- Independence within government
  - Commissioners from different political parties
  - Odd number of commissioners, staggered terms, difficult to remove
- Independent from industry
  - Agency budget from Government, conflict of interest regulations for employees

# Independent Regulatory Commissions (cont'd)

- Set policies or rules, though action taken must be under authority of basic laws
  - Must follow general rules as set by Administrative Procedures Act
- Hear cases, invoke punishments - like judiciary
- Must give notice, hearing to a violator
  - Actual authority to coerce is not with Agency - if someone refused to follow, then must go to court to enforce
- Due process - rates must not be confiscating
  - Courts examine regulations to make sure agency following purpose and will call into question procedural errors

# Independent Regulatory Commissions (cont'd)

- Federal Communications Commission
- Federal Trade Commission
- Security Exchange Commission
- Federal Energy Regulatory Commission
- Consumer Product Safety Commission
- Nuclear Regulatory Commission
- Commodity Futures Trading Commission

# History of the FCC

- Created by Communications Act of 1934
  - "for the purpose of regulating interstate and foreign commerce in communication by wire and radio…"
- Combined responsibilities previously residing in the Federal Radio Commission (Title III), plus the Department of Commerce, and the Interstate Commerce Commission (Title II)
- Original responsibilities
  - Allocate, allot, assign and otherwise manage all non-federal government use of the radio spectrum
  - Regulate interstate communications, common carrier communications and facilities (wired and wireless)

# Structure of 1934 Communications Act

Key subchapters or "Titles" of the Act most relevant for our class

| Title | Coverage |
| --- | --- |
| Title II | Governs common carrier provisions of telephony |
| Title III | Establishes regulatory regime for radio spectrum and broadcast services |
| Title VI | Addresses cable television and other services over cable |

# Organization of the FCC

- 5 Commissioners, restrictions on political affiliation
- 5-year term of office, appointed by President, confirmed by the Senate
- Operating funds from Congress (~$350M budget, 2000 employees)
- Functions
  - “Ex ante” or command and control regulation
  - Rulemakings to implement legislative mandate
  - Enforce rules/regulations through adjudications
  - Issue licenses
  - Standard setting

# FCC Organization

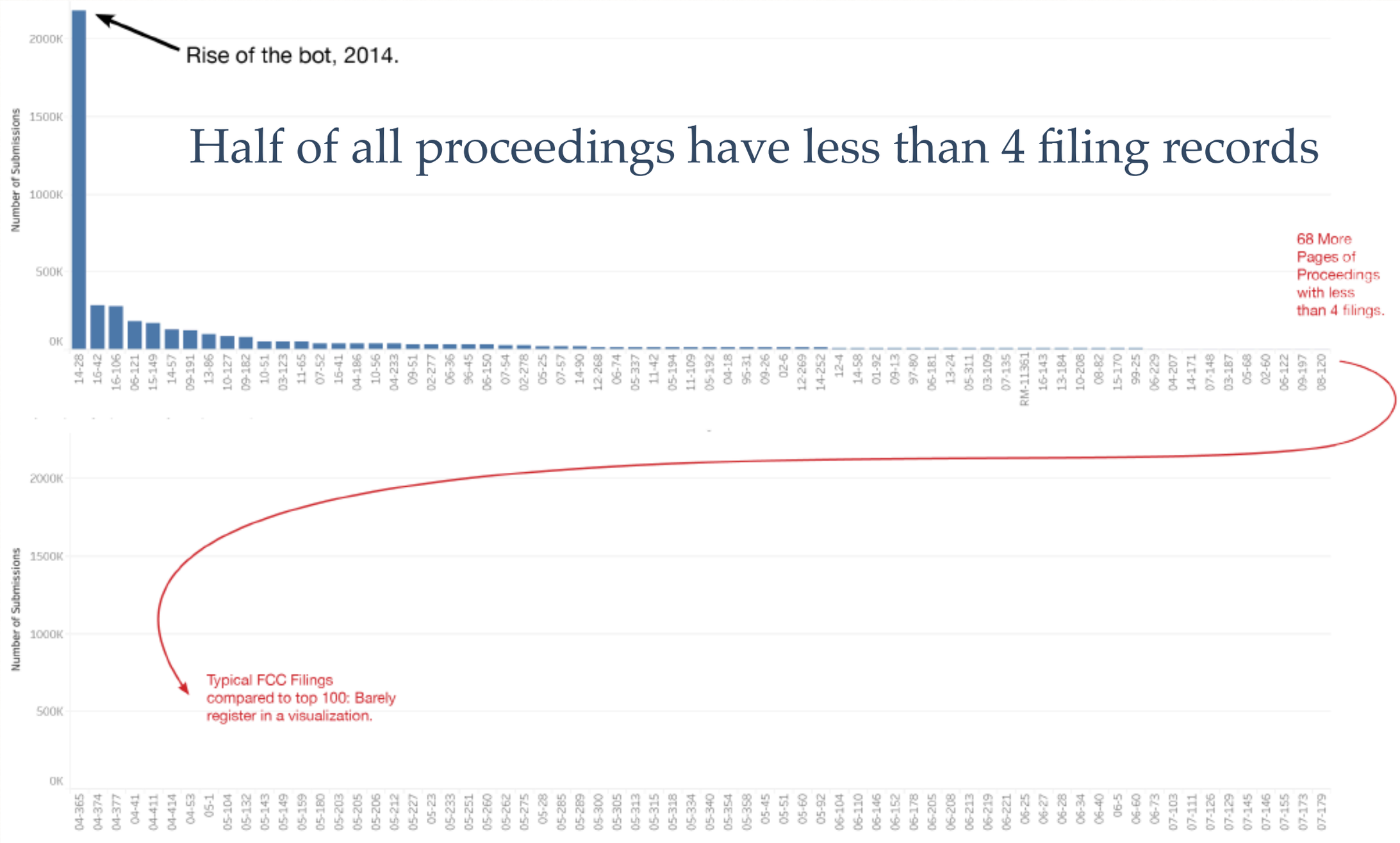
"Wise man" theory of regulation established command-and-control organization (i.e., only the regulator knows what is *best* for the public)

| Organization | Responsibility |
|---|---|
| Media Bureau | Broadcast licenses for TV and Radio |
| International Bureau | Satellite Systems |
| Wireless Telecom Bureau | Cellular Providers |
| Office of Engineering and Technology | Unlicensed Spectrum |
| Wireline Competition Bureau | Wireline Telephony |

# General Rulemaking Proceedings

- Initiation of proceedings
  - Own Motion/Petitions for Rulemakings/ Statutory Mandate
- Types of proceedings
  - Notice of Inquiry (NOI)/ Notice of Proposed Rulemaking (NPRM)
- Example of rule making sequence
  1. NOI
  2. NPRM
  3. Comments and Reply Comments
  4. Ex Parte contacts
  5. Report and Order (R&O) with decision and rationale

# Growing Number of Filings in FCC Proceedings




Source: Blankner and Candeub, Whispering Into Princes' Ears: A Empirical Descriptive Analysis of Comments and Ex Parte Meetings at the Federal Communications Commission, August, 2018.

# Constraints on FCC Authority

- Must meet "public interest, convenience, and necessity"
- Legislative mandates either directly (e.g., pass legislation) or indirectly (e.g., oversight hearings, reducing budget)
- Administrative Procedures Act (establishes right to sue the FCC)
- Appeals
  - Petition the FCC for Reconsideration or in Federal Court

# FCC Public Trust Safeguards

- Outside influence
  - Limits on gifts from outside sources and bribery prohibition
- Financial restrictions
  - Financial interests in regulated entities and position of close relatives
- Employment restrictions
  - Matters relating to prior employment
  - Limitations in new employment