HJRS #616465, VOL 18, ISS 2 (September 22, 2011)

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SYMPOSIUM: RADIO LOCALISM

Regulation Before Regulation: The Local-National Struggle for Control of Radio Regulation

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The standard narrative of U.S. radio policy history before 1927 focuses almost exclusively on the federal level, ignoring the vibrant and far-reaching policymaking that was occurring at a wide range of sites below the federal level during this era, especially municipalities. Such local regulation became an important structuring ''other'' of federal policy, resulting in political, legal, and cultural struggles over not just the narrow question of the reach of federal jurisdiction over radio, but the larger question of the place of local autonomy in an age of national economic and political consolidation.

In 1923, town authorities in Atchison, Kansas finally got fed up and took regulatory action on radio. It seems that with the growing popularity of wireless broadcasting in the 1920s, several problems had arisen, including a serious safety issue: local citizens were scurrying up the electric poles—each pole carrying up to 2,300 volts—in order to mount aerials for their radio sets. Some 300 aerials had been attached to the town's electric poles in the early 1920s, or about one for every four of the town's 12,600 residents; the dangers of the practice were so self-evident that one publication was moved to observe, ''The good people of Atchison evidently need some special supervision'' (''Atchison, Kansas, Takes Control of Radio,'' 1923).

But the risky pole-climbing in Kansas actually indicated a much larger problem nationwide: radio interference was becoming not merely an annoyance for listeners, but an untenable problem that they would no longer passively tolerate. The city commissioners sought to address interference with an ordinance directed at spark-gap devices, unshielded electrical equipment, and other local sources of interference; they declared it unlawful ''for anybody unnecessarily and electrically

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DOI: 10.1080/19376529.2011.616465
Journal of Radio & Audio Media 18(2), 2011, pp. 1–15
ISSN: 1937-6529 print/1937-6537 online

to disturb the atmosphere within the city limits of the city of Atchison by any means whatsoever'' (''Atchison, Kansas, Takes Control of Radio,'' 1923). The radio-enthusiast journal *Radio Broadcast* quickly pointed out the obvious problem with the town's new law: the federal government had claimed jurisdiction over wireless communications more than a decade earlier, apparently nullifying any effort to regulate radio at the local level. But in questioning the legality of the ordinance, *Radio Broadcast* pinpointed a bigger issue: ''We have heard of the federal authorities assuming control where the state or municipal machinery had broken down but it seems incongruous to have a small town stepping in to take care of the federal authorities' business'' (''Atchison, Kansas, Takes Control of Radio,'' 1923). Perhaps in the face of ongoing federal inaction, which allowed interference and other problems new to the age of radio to go unsolved, local officials should be allowed to take policy action.

Whether local regulation was incongruous or not, Atchison was hardly the only locality attempting to solve the unique problems raised by the exploding popularity of radio and the inadequacy of the federal response. Accordingly, the early and mid-1920s saw a wide range of substantive local efforts to eliminate interference, integrate radio into local life, and organize the radio system municipally or regionally. Collectively, these local initiatives represent something of a hidden history of radio policy, discussed only sporadically (e.g., the self-regulation of amateur radio clubs in the 1910s; Walker, 2001). Yet this hidden history is interesting for the stories it tells about our social, political, and cultural adjustments to the coming of broadcasting in the 1920s, not to mention the local-national tensions engendered by the growth of national corporate-liberal governmental structures. Moreover, these local regulatory activities represent an opportunity to think differently about policy formation generally and media policy formation in particular—about the relationship between policymaking from the top down and the bottom up.

Consequently, in this article I will argue that moments of local regulation in the 1920s—such as Atchison's anti-interference ordinance—were not merely trivial and empty gestures made unenforceable by the federal government's jurisdiction over radio, but instead represented an important competitor to federal policymaking, one that had to be marginalized, contained, and overcome in order for a system of national regulation to ultimately prevail. Local and regional media policy was a key structuring ''other'' for federal media policy, a viable regulatory possibility that was actively suppressed, and the federal policy framework that emerged in the late 1920s cannot be fully understood without appreciating the local regulatory initiatives to which it was, in part, a response.

These local regulatory activities have largely been ignored in the standard telling of early American radio policy, a narrative that goes something like this: In 1912, Congress passed the Radio Act, which claimed federal jurisdiction over wireless telegraphy under the interstate commerce clause, required wireless operators to be federally licensed, and put the Commerce Department in charge of the airwaves. The next 15 years weren't exactly uneventful, but when broadcasting emerged in the early 1920s, federal policy was ill-equipped to deal with it; the authors of

the 1912 Act simply had not foreseen the numbers of new users of the wireless spectrum nor the new uses to which that spectrum would be put. The Commerce Department under Herbert Hoover made some small but important decisions to reduce interference and stabilize the system, but within 5 years the airwaves were a chaotic mess, a cacophonous tower of Babel ruining the potential of radio for everyone. As the problems grew ever worse through the 1920s, Congress dithered. Finally, after a couple of key court decisions and much political wrangling, Congress belatedly responded to the situation with the Radio Act of 1927, which created the Federal Radio Commission (FRC) and established for a more effective federal radio policy regime for the age of broadcasting.

Even setting aside the touch of teleological ''just so'' that informs this standard story—the federal authorities emerged in control of radio, so of course the federal level is where radio historians and media policy analysts must direct their attention—much is missing from this account. In the rest of this brief article, I will examine two categories of policy formation that have been marginalized by this standard telling of radio policy history: local and regional policymaking, and disputes over localism and regionalism within federal policymaking. I will conclude with some remarks about what this history can tell us about policy formation from the bottom up.

On the Obviousness of Federal Jurisdiction Over Radio

In asserting that ''the federal government must control the broadcasting situation,'' the *Yale Law Journal* wrote in the late 1920s, ''The tremendous present importance and future possibilities of the radio, ... and the fact that radio waves are not confined within the bounds of a single state or nation, make obvious the necessity of a unified federal control'' (''Federal Control of Radio Broadcasting,'' 1929). The journal was not alone: one of the key themes that arose in the 1920s is the widespread insistence that radio, by its very nature, *must* be regulated by the federal government, and that the interstate commerce clause of the Constitution gave federal officials all the authority they needed to do so. For example, *Radio Broadcast* averred in 1924 that ''The control of radio must necessarily come under the Federal Government, as it surely is 'interstate traffic,' '' then again in 1927 that radio is ''an interstate affair if there ever was one'' (''Local Regulation of Broadcasting,'' 1927). The magazine assured its readers that although ''[s]ome municipalities have enacted statutes which purport to dictate on radio matters ... such statutes are probably of no real importance'' (''The Chicago Municipal Radio Commission,'' 1924). While this position does not appear particularly controversial from today's vantage point with a century of federal regulation behind us, what is surprising is the vehemence with which it was asserted at the time and the strenuous efforts to naturalize radio as incontrovertibly ''interstate'' and irrefutably ''commerce.'' Often accompanied by patient, authoritative explanations of how even weak local radio signals supposedly inevitably disturbed the airwaves in other states, contemporaneous observers forcefully insisted that radio policy must

obviously be a federal matter. They insisted so forcefully, in fact, that we can suspect that it was perhaps not so obvious at all—that resistance to the nationalization of media policy was in fact widespread and possibly not entirely without good arguments of its own.

The claim that radio should everywhere and at all times be subject to the interstate commerce clause of the Constitution appeared in popular, scholarly, and legal articles throughout the 1920s. ''[T]he interstate-commerce clause of the Federal Constitution is peculiarly applicable to broadcasting,'' wrote legal scholar Carl Zollmann in 1927, reasoning that because the clause had been interpreted to apply to the telephone, telegraph, and railroad, it must also self-evidently apply to radio: ''That the National Government is competent to absorb almost the whole field of regulation of radio is indeed implied in numerous decisions'' (1927, pp. 102–3). Similarly, Stephen B. Davis, a legal advisor in the Department of Commerce (and together with Herbert Hoover one of the key figures in developing federal radio policy in the 1920s), devoted a chapter of his book *Law of Radio Communication* (1927) to justifying federal jurisdiction on the basis that even the most low-powered and local broadcasts were ''interstate,'' and that even non-profit broadcasting was ''commerce'' (1927, pp. 22–31). Q1 Q1

Although rarely citing the people they were arguing against, Davis, Zollman, and others expended a great deal of energy raising and then refuting the viewpoint that the federal government might not have a legitimate claim to radio policy. Clearly they personally desired federal radio regulation, but whatever the legal merits of their arguments, their reasoning was often marked by unsupported generalities and poor reasoning. For example, in arguing that all broadcasting is ''commerce'' and thus subject to the interstate commerce clause, Davis wrote, ''The argument that broadcasting is not commerce because not carried on for profit is ... unsound'' (1927, p. 26). He admitted that there were many broadcasters who did not seek or gain revenue from their stations, but then asserted (without evidence), ''But their motive likewise is usually a financial one ... [and] some element of financial advantage is always involved'' (Davis, 1927, p. 27). As for the nonprofit religious stations that sold no airtime and sought no revenue whatsoever, thereby seeming to disprove his claims, Davis was simply dismissive: ''There may be a few isolated instances ... in which a direct financial element is not apparent, but they constitute a small fraction of the broadcasting whole, and are relatively of little consequence'' (1927, pp. 27–28). That nonprofits could come to constitute a larger and more consequential fraction of the broadcasting whole—or that the legal basis for federal radio policy might not apply to them at all—does not seem to be a possibility that Davis wished to entertain. Q1 Q1 Q1

Instead, legal experts like Davis looked for analogies in previous media technologies and used them to justify federal radio regulation regardless of how poorly the analogy fit. Writing in the *American Bar Association Journal* in 1925, for example, Blewett Lee claimed that there were no non-commercial telegraph operators, then used that fact to argue that the very use of the telegraph itself, independent of the economics of the industry, must therefore always count as ''commerce.'' Since radio

is just telegraph without wires, he then reasoned, it too must always be ''commerce,'' and thus anything that is transmitted via radio is ''commerce'' too. Lee seemed oblivious to the reasons why there might be no non-commercial telegraph providers and indifferent to the many ways in which radio differs from telegraph, enabling him to briskly make the case that even non-commercial broadcasting necessarily falls under the scope of the interstate commerce clause: ''There are churches and colleges which transmit for religious and educational purposes, but it is by means of commerce'' (Lee, 1925, p. 20).

The commercial aspect of broadcasting that Davis, Zollmann, and others argued was so intrinsic to radio was then used to portray the medium as inherently in need of strong centralized control. As James Patrick Taugher (1928) warned in the *Marquette Law Review*, ''[B]roadcasting stations are not . . . operated with the sole idea of spreading the philanthropic good cheer of their benevolent owners. Human nature is not so constituted as to spend $50,000 a year for the upkeep of the average station merely for the idle delectation of millions of unknown and unseen listeners'' (p. 184). This ''baser and more utilitarian purpose'' would, if inadequately overseen, harm listeners and the medium's civic potential (p. 184). Zollmann, for his part, also clearly distrusted an under-regulated broadcast system, ''with its wave pirating, interferences, and blatant noises under the guise of programs, smashing into a presidential speech or into metropolitan opera,'' and expressed desire that the irresponsible ''program smearer'' be ''regulated into a semblance of order'' by the federal government (1927, p. 104). Blewitt Lee was one of the legal voices clamoring most strongly for congressional authority; unabashedly seeking *post hoc* legal justification for the federal regulation he desired, Lee unsubtly titled his 1925 article in the *American Bar Association Journal* ''Power of Congress Over Radio Communication: Important to Ascertain Where Lies the Power to Make Laws Which Will Eventually Be Necessary in Dealing With This Great Discovery'' (Lee, 1925). Here, too, the need for federal regulation was naturalized, as if the ether itself could imagine no other master but the federal government. As an article in the *Michigan Law Review* put it, ''The very nature of the scientific phenomena made use of in radio communication demands centralized regulation as a condition of its advantageous exploitation'' (Uren, 1928, p. 921).

There were at least two problems with this position. First, even if a large percentage of radio transmissions could be shown to constitute ''interstate commerce,'' that would not in itself call forth the strongly centralized policymaking authority that the authors desired (and that ultimately prevailed). For example, the telephone and telegraph were undoubtedly covered by the interstate commerce clause, yet they were nonetheless subject to non-federal as well as federal regulation (e.g., by state public utilities commissions), so by analogy something like state radio boards would seem a viable legal alternative to complete federal control.

A second problem was that these authors wished to subsume *all* radio under federal jurisdiction, but a plain-language reading of the 1912 Radio Act specifically exempts low-powered and non-commercial signals from its regulatory requirements (United States Congress, 1968a, p. 8). Even the 1927 Act allowed for the possibility

that some wireless transmissions might not be subject to federal authority, since it explicitly regulated only radio signals ''within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use ... from within said State to any place beyond its borders.'' (United States Congress, 1968b, p. 36). Of course, the legal experts drew on scientific explanations of radio waves to claim that *all* radio signals would cause interstate interference, but although interference across states borders was a real potential problem, particularly for higher-powered signals at night, the blanket inclusion of all radio under a definition of ''interstate commerce'' was nonetheless far from incontrovertible black-letter law.

In analyzing these legal interpretations, then, it becomes apparent that the arguments propounded by Davis, Zollmann, Lee, and others did not so much reveal the natural facts of radio or the self-evident way it should be managed as they revealed a fantasy of what broadcasting should be: the national, corporate transferal of ''good'' culture from the cities to the hinterlands via high-powered radio signals. They clearly considered small, low-powered local stations antithetical to the very purpose of the technology; as Davis wrote, ''The characteristic feature of broadcasting is the conveying of the occurrences in one locality to the ears of listeners in other places.... It picks up speech, music, and song, produced in a studio, hotel, theater, or public hall, ... and carries it to the ears of a multitude of others far distant'' (1927, p. 26). This vision, equating broadcasting with high-powered, non-local communication, obviously demanded a supra-authority orchestrating this cultural transfer, and in their interpretation the commerce clause gave the federal government all the legal authority it needed to play that role. In their view the laws of physics and of the United States were shaping the construction of the radio system, but their vision for broadcasting was at least equally driven by their reading of the law and the characteristics of radio to which they chose to pay attention.

To be sure, some observers at the time recognized the arbitrariness—rather than the naturalness—of the claims that the interstate commerce clause applied to all radio. The *Michigan Law Review*, for instance, although coming down firmly in favor of federal regulation, dismissed analogies to the telephone and telegraph as ''scarcely applicable,'' arguing instead that ''broadcasting is more like a free band concert on one side of a state line being enjoyed by the public on the other side. If the state in which the band was playing undertook to regulate its time and place of playing, would such state be interfering with interstate commerce? Or would the Federal Government have the exclusive right to regulate such playing either because the band wished to be heard across the state line or the people there wished to hear it?'' (Uren, 1928, pp. 920–921). But such alternative analogies found little traction with other legal experts—and, more importantly, the courts. As economist Douglas A. Galbi observed, ''The weak policy, statutory, and constitutional basis for federal control over all radio use [was never] considered in an open, substantive way'' (2002, p. 52).

Despite poor analogic reasoning and other weaknesses of the case for totalizing national regulation, judges echoed the legal scholars in asserting the self-evident

constitutionality of federal regulation of all radio signals under the commerce clause as a range of challenges to this regulatory regime wended their way through the courts in the late 1920s. Indeed, every major court agreed with Zollmann, Davis et al. in upholding federal jurisdiction over radio policy, often with little explanation or justification. The famous *Whitehurst v. Grimes* decision of 1927, for example, wasted little time rationalizing its verdict overturning a local tax on broadcasters, stating bluntly (and without documenting a record of fact-finding):

> Radio communications are all interstate. This is so, though they may be intended only for intrastate transmission; and interstate transmission of such communications may be seriously affected by communications intended only for intrastate transmission. Such communications admit of and require a uniform system of regulation and control throughout the United States, and Congress has covered the field by appropriate legislation. It follows that the ordinance is void, as a regulation of interstate commerce. (*Whitehurst v. Grimes*, 1927)

The equally important decision in *United States v. American Bond & Mortgage Co.* did at least acknowledge that the commerce clause might be a poor fit for broadcasting: ''To be sure it is a new species of commerce. Nothing visible and tangible is transported.'' But the court nonetheless shaped the meaning of broadcasting in order to fit the commerce clause and thereby uphold federal regulation: ''[The] result [of a radio broadcast] is the transmission of intelligence, ideas, and entertainment. It is intercourse, and that intercourse is commerce.'' Again asserting the ostensibly obvious, the court wrote, ''It does not seem to be open to question that radio ... [is] interstate commerce'' (qtd. in Sturtevant, 1930, p. 71).

Even if it was not open to question that *some* radio was interstate commerce, it is worth pointing out that these justices had again subsumed *all* radio into one monolithic category, even though both the 1912 and 1927 Acts had provided for some kinds of radio that would not fall within federal jurisdiction. In other words, by the late 1920s, *Whitehurst, American Bond,* and several other prominent cases had erased any meaningful distinction between interstate and intrastate radio or between commercial and non-commercial radio, even though the possibility of such distinctions was clearly acknowledged in the relevant legislation. As Galbi observed, these sweeping assertions about radio full stop were not part of the precedential holdings in these cases and thus amounted, essentially, to the non-authoritative opining of individual judges; nonetheless, through the peculiar mechanisms of the legal system, these opinions (in both senses) soon solidified into hardened precedent. Writes Galbi, ''Subsequent decisions of the DC circuit and the U.S. Supreme Court followed the decisions of the district courts. Widely cited cases in these higher courts seemed to have relied essentially on *dicta* in earlier decisions, and the higher courts provided additional *dicta* on their own initiative. Qualifying language disappeared over time. By the end of World War II, courts seemed reluctant to examine carefully past precedent and the changing nature of radio communications'' (2002, p. 46). By the time the Communications Act was passed in 1934, any opportunity for substantively revisiting these jurisdictional questions had passed, and although the

FCC now allows a range of unlicensed radio transmissions for different purposes, the legitimacy of federal control over all radio has never been seriously challenged since.

Local and Regional Policymaking in the 1920s

If legal scholars and many radio experts in the 1920s were vigorous in shouting down alternatives to complete federal regulation of radio, it pays to consider what those alternatives might have been and what they can tell us about early broadcasting. One alternative—by far the best known by broadcast historians—was the threat of ''chaos,'' the breakdown in law and order supposedly leading to nothing but static and noise on the airwaves in the absence of any adequate regulation at all. A great deal of scholarship has considered just how significant this threat was, suggesting that the risk of ongoing chaos, even in the absence of state intervention, might have been overstated for various reasons (see for example, Hilmes, 2003; Phipps, 2001). A slightly lesser-known alternative was what we might call the ''law of the jungle,'' a vision of radio that sought to justify federal control by painting even effective self-regulation as undesirable because it is inherently violent and irrational when compared to efficient and rational bureaucratic regulation; not for nothing did Herbert Hoover tell the anecdote in the 1920s of a radio club whose method of dealing with miscreants was to ''just take the fellow out and beat him up'' (quoted in Walker, 2001, p. 23). The claims of obviousness and inevitability for national radio policy thus point to the perceived threat of an unregulated or under-regulated system, to fears that this powerful new medium might escape proper social control.

There was third alternative to federal regulation, however, which was to devolve authority to regions, states, and localities, and this was an alternative that many local communities acted on regardless of ongoing debates of federal jurisdiction. Local regulation in the 1920s involved a wide range of issues, many of them pertaining to the ways that radio fit into local cultures and was made to make sense in particular contexts. In such cases, there was usually no question of federal preemption or the legal basis for local policymaking. For example, many localities found they had to revise noise suppression ordinances under pressure from the public, radio dealers, or others in the wake of the growing popularity of radio. Portland, Oregon, for example, had had a noise pollution law that banned playing a piano or any type of music downtown, which caught radio in its net; when local lawyers and doctors insisted that the city enforce the law, claiming that radio sales demonstrations were disturbing their clients, the city revoked the ordinance instead (''Noise Suppression Ordinance Revoked,'' 1927). In East Orange, New Jersey, the opposite case occurred: Police officers there grew so tired of fielding complaints about radio noise that they asked the city council to ban loudspeakers altogether (''Police Chief Asks Ban on Loud-Speakers,'' 1926).

While noise and nuisance ordinances were relatively straightforward, sometimes the regulatory issues involving radio could become almost philosophical. In Prov-

idence, Rhode Island, an anti-auctioneering law prohibited using a bell or similar device to announce a sale, and in 1928 local police (''The Blue Laws of Radio,'' 1928) had to determine whether that included radios carrying advertising messages (they decided it did). A court in Des Moines in 1927 had to decide whether a radio was a ''musical instrument'' in the eyes of the law; the case involved a statute that said that creditors could not seize musical instruments to pay off debts. One debtor, a Mr. F. H. Dunbar, sued to get his repossessed radio back and won: ''The judge found that while a radio set does not actually produce music as do other instruments, it serves the same purpose so far as entertainment is concerned.'' (''Judge Finds Radio Set Is a Musical Instrument,'' 1927). Unfortunately for Mr. Dunbar, this decision was reversed on appeal, the appeals court reasoning that radios also played speeches and prize fights and thus was not a ''musical instrument'' but merely a ''reproduction device'' (''Radio Not Musical Instrument, Say Court,'' 1929).

Another set of cultural tensions that gave rise to local policy was the conflict between local broadcasters and the listeners who wanted to receive distant signals; in such cases the legal limits of local vs. federal regulation began to play a more important role. One well-known expression of this conflict was the voluntary ''silent night'' that many stations organized among themselves: one night a week, they agreed not to broadcast so that people in that area could better pick up signals from across the country. As might be expected, these arrangements met with mixed results. For a time, even large cities like New York and Chicago were able to pull off complicated schedules involving two dozen or more broadcasters; while impressive, inevitably some stations would violate these silent night agreements and they were ultimately abandoned. In contrast, smaller cities with only a handful of local stations successfully organized silent nights throughout the 1920s, leading one publication to observe, ''Silent night may be observed on Main Street, but it never will be on Broadway'' (''Current Events In Radio,'' 1925). Conflict with national regulation arose, however, when local governments attempted to impose silent nights on behalf of the citizenry, thereby encroaching on the federal government's ability to determine licensing conditions and restrictions. In early 1927, for example, the city council of Milwaukee, Wisconsin attempted to legislate a compulsory silent night for local broadcasters, and Minot, North Dakota, imposed silent nights on amateur operators. (Segal & Spearman, 1929, p. 2; '' 'Silent Night' On Trial,'' 1927). Both of these local arrangements were eventually overturned.

The most frequent efforts at local regulation were attempts to control interference at the state, regional, or local level. This, too, could occasionally take unexpected turns. In 1924, for example, several farmers in southern Wisconsin banded together to oppose the planned route for a power line, not because of right-of-way issues or concern about the possible health effects, but because they feared interference with their radio sets (''Listening In on the Radio,'' 1924). The Washington state legislature introduced a bill that sought to regulate sources of radiant electrical energy that interfered with radio reception, such as electric generators and X-ray machines. Using a complex system of financial incentives and penalties, the bill proposed to license non-interfering electric devices for $2/year; interfering devices would

have to improve insulation or take other measures to mitigate interference. The state would then charge a $10 refundable fee to investigate interference complaints ("Washington Proposes to Make Interference Illegal," 1926). Minneapolis passed a similar ordinance, with radio interference punishable by fines and even jail time ("Local Regulation of Broadcasting," 1927). The village of Boonville, New York, adopted an ordinance banning any "electric sign or other so-called blinking device" unless it was properly grounded, and also forbade the use of x-ray machines between 6–10 p.m. except in the case of medical emergencies ("Municipal Regulation of Man-Made Interference," 1929).

Collectively, such measures to reduce interference were by far the largest category of local policymaking. While much of this interference originated with power companies due to breaks in the transmission lines, defective insulators, leaky transformers, and similar conditions, such sources were easily remedied because it was usually in the interest of the power companies themselves to do so. As one electric company executive put it, "We are interested in selling power, not broadcasting it" (quoted in Segal & Spearman, 1929, p. 12) That meant that the ordinances were mostly directed at private individuals, many of whom presumably had at best a dim understanding of how radio works, and more than a few of whom had only recently encountered domestic electrical appliances at all. In hundreds of localities throughout the country where such ordinances were passed, then, ordinary citizens could suddenly find themselves criminalized by the operation of a poorly shielded toaster.

By the mid-1920s, the tide of local regulation was rising, with Chicago implementing a Municipal Radio Commission appointed by the mayor in 1924, and a host of cities including Portland, Oregon, Seattle, St. Louis, Flint, Berkeley, San Diego, and New York all attempting to exercise some measure of regulatory powers over radio a few years later (Codel, 1929; "The Chicago Municipal Radio Commission," 1924). A particularly important case of local policymaking occurred in early 1927, just prior to the passage of the Radio Act, when the city of Minneapolis took far-reaching steps to regulate radio at the local level. Frustrated by federal inaction, the city passed an ordinance designed to reduce interference with local radio reception. Among its provisions, the law forced broadcasters to move their radio towers outside of the city limits; the higher the transmitter power, the further out of town they were required to move. If a broadcaster failed to comply, the city would be authorized to cut off electricity to the station. The ordinance also banned any local stations from broadcasting simultaneously (to be enforced by the city building inspector) and gave the mayor and the city council the right to revoke licenses of violators ("First Radio Regulation Measure is Passed in Minneapolis," 1927; see also "Local Regulation of Broadcasting," 1927).

Although Minneapolis went farther than most communities in asserting its regulatory authority over radio, as argued above it was far from clear at the time—much less clearly desirable—that the commerce clause invalidated this and other instances of local policymaking. In particular, many of these local ordinances used well-established and long-recognized local powers in ways that skirted the direct question

of federal control over media policy. For example, Boonville, New York, one of the examples cited above of efforts to regulate interference, was not actually directly regulating radio transmissions, but instead acted under a ''public order'' rationale: people with interfering spark-gap devices were cited for disorderly conduct, a local police power that would be difficult to specifically construe as encroaching on federal licensing authority (''Municipal Regulation of Man-Made Interference,'' 1929; see also Segal & Spearman, 1929). Similarly, several municipalities that wished to prevent interference caused by radio transmitters did not directly challenge the federal government's authority to regulate radio, but instead used local zoning laws to prevent the erection of unsightly towers and buildings in specific neighborhoods. Such an approach might have been a blatant end-around to circumvent federal authority, but these local powers were so well established and so critical to the governance of local communities as to cast doubt on the legitimacy of blanket claims of federal jurisdiction over radio. Nor did these efforts cease after the passage of the Radio Act: as late as 1929, Los Angeles passed an anti-interference statute that encroached on the FRC's jurisdiction (Power, 1929). As noted above, *Whitehurst* had held in 1927 (shortly after the Minneapolis ordinance was introduced) that local licensing of radio stations was unconstitutional, but beyond that these issues would remain unsettled for the next several years, and state and local regulation of radio broadcasting would continue to be litigated in various ways for decades.

Although the Radio Act of 1927 was not purely a direct response to such local actions, we can see in the national discussion of local policymaking some of the anxieties over radio regulation at play—anxieties that support the interpretation that local regulation was a structuring ''other'' of federal policy and a complicating force to be contained through stronger national action. ''Several cities are beginning to frame their own radio laws,'' warned the *New York Times* in 1927, ''which when they become effective, according to Government official in Washington, may raise extremely complicated questions of jurisdiction'' (''Cities Pass Local Radio Ordinances,'' 1927). Similarly, *Radio Broadcast* winced at the thought of local rather than national regulation, arguing, ''Radio is not a town-meeting affair, and can't be made one by the best of town legislators'' (''Local Regulation of Broadcasting,'' 1927, p. 237). Perhaps one of the key ways that we see federal policy responding to these pressures from below is in the efforts to inject regionalism into the regulatory system: clearly a purely national system was politically unpalatable to much of the country, despite the preferences of Hoover and many others in the national professional-managerial class who saw centralized control as more rational and efficient,. As scholars including Hugh Slotten (2000) and Steve Wurtzler (2007) have discussed, there was a moment in the mid-1920s when a decentralized radio system under local or regional control was a real possibility. This was driven partly by AT&T, which saw an economic advantage in such an arrangement; as Wurtzler writes, ''AT&T proposed developing U.S. radio as a dispersed, largely decentralized array of noncompetitive local broadcast stations . . . designed only to reach members within a specific community. . . . [P]rogramming would be predominantly local in origin with the community itself determining the content of broadcast material''

(p. 34). Policies and regulatory decisions would be within the jurisdiction of local broadcasting associations, which would also be responsible for helping to foster radio as a community enterprise shared by the citizens in a locality. In that sense, both production and policymaking would be local and collective—needless to say a very different vision of the radio system from what actually developed.

Unsurprisingly, such a plan would have worked to AT&T's economic advantage: since the company saw its patent strength at the time in transmitters, AT&T preferred to see a system with thousands of low-powered transmitters rather than just a few hundred higher-powered ones. The company would have been the sole interconnector for all of these stations as well, securing further profits into the foreseeable future. But it was not just AT&T: voices in Hoover's Commerce Department also entertained the idea of more local regulation in the radio system. After all, there were already nine regional radio inspectors working for the department, so some element of regional control seemed to some a logical plan. Even Stephen Davis, who as we have seen strongly argued for federal jurisdiction, nonetheless welcomed some degree of decentralization in the system, including state radio regulatory commissions. Writing in 1925 to a skeptical RCA engineer, Alfred Goldsmith, Davis said, ''The question of how many stations should be allowed to operate in a given locality ... is a local question which should be left to local determination. It is of small concern to New York or Washington whether one or a dozen stations operate in Minneapolis'' (Davis, 1925, p. 2). He still felt that the federal government should retain ultimate control over radio under the interstate commerce clause, but otherwise sounded sanguine about local decision-making: ''Assuming the necessity of limiting stations, I can think of no better plan for doing so. I do not believe it can be efficiently done from Washington'' (1925, p. 3).

Later that fall, at the Fourth Radio Conference, Herbert Hoover floated exactly such a hybrid plan in which the federal government set broad policy and organized the spectrum nationally, while regional radio boards decided who actually received the licenses allocated to their area. Apparently the plan was immediately controversial among the corporate broadcasting interests who dominated the conference. Wrote the *New York Times,* ''Secretary Hoover's proposal that local communities should participate in a determination as to who should use the channels available for broadcasting in their localities aroused protest. Complaint was made that under such a system radio activities eventually would come under political control that would destroy the usefulness of the whole structure'' (''Hoover Offers Plan to Regulate Radio,'' 1925). A watered-down resolution to create regional advisory committees was also discussed, but the conference closed without the attendees specifically endorsing any specific regulatory structure. In a telling exchange the following month, however, General Electric chairman Owen D. Young wrote to Hoover, apparently in the mistaken belief that the conference had rejected regional regulation: ''Personally, I was very glad that the conference favored the plan of a National Advisory Committee on Broadcasting Licenses rather than the regional committee.'' Saying that he had his ''heart set'' on national broadcasting, Young wrote, ''There is no such thing as a region in broadcasting, and it seems to me that

the regional committees would result only in providing a new crop of controversies and problems'' (Young, 1925). Hoover corrected Young's claim, pointing out that the conference had not decided on the question of centralized vs. decentralized authority, and warned Young that ''the country would not be content unless there were either regional boards or boards of regional representation'' (Hoover, 1925).

Hoover's political instincts proved correct. When the 1927 bill finally passed, it instituted a regional five-zone system; although this was weak regionalism at best, in 1928, the Davis Amendment represented a stronger attempt to shoehorn a regional system into a national regulatory framework. This provision required the FRC to use its licensing powers to achieve ''equality of service'' among the five geographical zones. The amendment was pushed in particular by Tennessee Representative Ewin L. Davis, who feared that the south was becoming economically and culturally dominated within the radio system by stations and corporations in the northeast. The nationally minded bureaucrats on the Federal Radio Commission never fully supported it, however, and commissioners like Orestes H. Caldwell argued against it from the beginning using many of the ''radio respects no boundaries'' arguments already discussed. Unsurprisingly, then, the Commission's record of licensing decisions demonstrates frequent disregard for both the spirit and letter of the law, and the Davis Amendment proved ineffective in practice. Nonetheless, it does illustrate the ways in which federal policy was forced to accommodate and at least in some measure respond to widespread support for local and regional regulation.

Conclusion: Policy From the Bottom Up

Broadcast history has tended to focus on federal radio policy, largely ignoring the wide range of attempts at local radio regulation or state/regional autonomy within a national system. Certainly we have a century of vehement claims—that the interstate commerce clause *obviously* applies to all radio, that broadcasting respects no geographical boundaries—that have naturalized the legitimacy of federal radio policy as a matter of both law and science. The debates in the 1920s over exactly this question, however, suggest that we should read such claims through a critical cultural lens: the constant insistence that radio was completely and entirely a federal matter was not a simple statement of fact, but an assertion of cultural and political power on the part of those sympathetic to a highly centralized and regulated media system. It supported a particular vision of broadcasting, contained the threat of an under-regulated system, and also expressed a certain cultural superiority that the national professional-managerial class often felt over the people in rural areas. The good people of Atchison, Kansas after all, needed ''special supervision,'' because they clearly couldn't handle radio on their own. Local authorities, in this view, were not advancing legitimate policy but simply meddling in affairs that they had neither business nor competence in.

Local claims of regulatory authority over radio challenged such cultural and political power and, if left unchecked, threatened to destabilize the national radio

system as a whole. The 1927 Radio Act, then, was as much about containing the ''chaos'' in the law as the ''chaos'' on the air. Indeed, one of the first acts of the Federal Radio Commission, once it was stabilized, was to commission a study of local radio regulation and begin a legal and even PR offensive against state and municipal radio ordinances. The suppression of bottom-up policymaking was key to the vision of ''efficient'' and ''rational'' national regulation that threatened to challenge the corporate-liberal managerial project emerging in the early 20th century.

The larger context for the federalization of radio policy is the longer-term struggle over broader control of the media system. In the 1910s and 1920s, as wireless was gaining popularity, media control was still predominantly local: despite the advent of syndication, newspapers were still primarily locally owned and produced, municipal censorship of film and stage was still common, and local postmasters could and did seize materials going through the mail. Effective procedures of national industrial self-regulation like the Underwriters Laboratories or the Hollywood Production Code were still developing in the 1920s, as was the federal governmental apparatus of commissions and regulatory bodies that would come to include the Federal Radio Commission. These translocal governmental and corporate efforts were not simply filling a void, as we often imagine, because there was no void—there was local activity, and national public and private institutions were competing for policy control with a decentralized system of local and regional autonomy. Similarly, the 1927 Radio Act was not filling a void in broadcast regulation, but reinserting the federal government into an active regulatory sphere that was coming to be dominated by local policy initiatives. By paying attention to struggles over local regulation (and bottom-up policy more generally) we can better understand how, in a world in which control of the media had long been understood to be local in the last instance, national control emerged as the dominant regulatory scheme for U.S. broadcasting. Furthermore, as state and federal policy today increasingly preempts and usurps local policymaking on issues like cable franchising and municipal Wi-Fi, these questions remain as vital as ever.

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