

# **Introduction to Regulation: Institutional Choices**

**By Ray Gifford  
Silicon Flatirons Center for Law,  
Technology and Entrepreneurship  
Aspen Institute  
May 20, 2013**

**I·R·L·E**

---

**INSTITUTE FOR REGULATORY  
LAW & ECONOMICS**

---

# Why Do We Regulate?

- Solve Monopoly Problems
- Consumer Protection
- Social Policy
- Public Safety
- Barrier to Entry (industry capture)

# Why Do We Regulate?

## ■ Solve Monopoly Problems

- Neoclassical concern of ill effects from monopoly
- 'Perfect' competition models must give way to second-best efficiency – role of price discrimination and Ramsay pricing

## ■ Consumer Protection

- Solve information asymmetry, opportunism problems
- Make markets through avoiding 'lemons' problems
- BUT, information may not be (rationally) valued by consumers(see *Gramm-Leach Bliley*)

# Why Do We Regulate?

- Social Policy
  - Universal service
  - Taxation by regulation – redistribution outside of normal political
- Public Safety
  - Solve information asymmetry, opportunism problems
  - E.g., pipeline, transportation safety
- Barrier to Entry (industry capture)

# Regulatory Failure

- Regulatory agencies suffer from information asymmetry, opportunism problems of their own
  - No matter how hard you try, the regulated entity knows more
- Regulation may be *more* subject to political economy pressure because of the stakes and money involved
- Stigler/Friedland (1962): State regulators ineffective at stopping monopoly pricing. *What Can Regulators Regulate: The Case of Electricity*, Journal of Law and Economics 5: 1-16

# Regulatory Bubbles since 1970s

Nuclear, PURPA, IPPs, Renewables?



# How do we regulate?

## ■ Courts

- *Ex post* enforcement, generalist, insulated from political influence
- Decide single cases

## ■ Administrative agencies

- More *ex ante* rules across entire industry
- Specific jurisdiction (except FTC)
- More politically accountable

# How Else Do We Regulate?



Co- and Self-Regulatory Bodies to draw expertise



Co-regulation:  
government regulator  
backstop



Self-regulation: industry  
regulates itself



Price Cap and other 'self-executing' institutions

Baseball arbitration,  
consultation

# The Case of BITAG



## Welcome to the Broadband Internet Technical Advisory Group

Our mission is to bring together engineers and other similar technical experts to develop consensus on broadband network management practices or other related technical issues that can affect users' Internet experience.

Broad cross-section of industry, public interest and academics came together in 2009-2010 to create network management consensus

No formal regulatory authority, but defines best practices and social norms

Fourth report on port blocking due soon