

TWO DOMINANT INDUSTRIES, ONE REGULATORY AGENCY: LOBBYING
STRATEGIES TO ATTAIN REGULATORY CAPTURE

by

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(Under the Direction of William Lee)

ABSTRACT

What happens when two dominant industries are regulated by the same agency? The majority of regulatory research operates under the assumption that the agency is captured by a single, dominant industry. Having two dominant industries regulated by the same agency impacts the government relations strategies of corporations in both industries. This situation is occurring at the Federal Communications Commission (FCC) as the broadcast and wireless industries, two industries that previously received separate regulatory attention from the FCC are now competing for regulatory favoritism on policy issues including spectrum allocation and broadband innovation. This dissertation argues that competition for regulatory favoritism will impact the lobbying and campaign contribution activities of corporations in the broadcast and wireless industries. This argument is developed through the creation of a theoretical framework and empirical studies. The theoretical framework brings in institutional isomorphism and resource dependence theory to moderate traditional regulatory capture theory to examine the effectiveness of lobbying and campaign contribution strategies when a regulatory agency oversees more than one dominant industry. Empirically, this dissertation examines the effect increased competition between the wireless and broadcast industries has on the government relations strategies of both industries, through the creation of lobbying expenditure and campaign

contribution data sets and interviews with lobbyists employed in both industries. The main empirical focus of the study is the government relation strategies of the broadcast and wireless industries. The findings suggests that isomorphic lobbying strategies still occur frequently between the telecommunications and broadcast industries, but some efforts are being made to distinguish lobbying and campaign contribution strategies from one another in an attempt to achieve regulatory capture. The findings also suggest that lobbyists employed by broadcast and wireless corporations do not believe the FCC will ever be fully captured by one dominant industry, setting up a cycle of competition, increased spending on lobbying expenditures and campaign contributions, and attempts to receive regulatory favoritism that is likely to continue, and even increase, as other previously separate industries (e.g., the Internet industry) begin to have their own conflicting policy goals for communication issues.

INDEX WORDS: Lobbying, Regulatory capture, FCC, Broadcast industry, Wireless industry, Institutional isomorphism, Campaign contributions, Spectrum, Broadband

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DEDICATION

To Chris, for serving as my unofficial research assistant, tech support, and (occasional) ATM machine for the past three years. Like everything in my life, this work is infinitely better due to your love and support.

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CHAPTER 1

INTRODUCTION

Lobbying in Washington, D.C. is a big money, high-stakes business. However, for all of the money spent trying to influence policy formation, lobbying activities can sometimes resemble high school courtship more than sophisticated business practices. When AT&T recently wanted to influence the Federal Communications Commission (FCC) towards the corporation's position on an Internet policy issue, the company decided to take a sugar-and-spice approach, sending cupcakes over to the FCC staff.¹ The stakes for this courtship being higher than a high school date however, every detail of the cupcake delivery was planned and no expense was spared. The cupcakes came from a top cupcake shop in the city, Georgetown Cupcakes, and the delivery plan was created in a three-page, confidential spreadsheet to ensure that all 1,500 cupcakes reached the appropriate commission offices.² Operation Cupcake exemplifies the attention paid to lobbying activities in Washington, D.C., particularly in the wireless and broadcast industries. While not the only industries to spend serious money on lobbying, the communication industries have been noted for their increased lobbying expenditures in recent years due to the fact that the two industries are beginning to compete against each other for policy objectives.³

Changing of the Guard?

¹ Wyatt, E. (2011, March 26). AT&T lobbyist faces beltway test in T-Mobile deal. *The New York Times*, BU1.

² Wyatt, E. (2011, March 26).

³ Lasar, M. (2010, August 2). Verizon tops telecom lobbying list. *Tech Observer* blog on Portfolio.com; Wyatt, E. (2011, April 21). A clash over the airwaves. *The New York Times*, B1.

As competition between communication industries heats up, so does the media and public attention paid to the lobbying battles for certain pieces of media policy legislation. As evidenced by the Stop Online Piracy Act (SOPA) and Protect IP Act (PIPA) battles conducted in January 2012, media policy battles are moving from inside the beltway to popular press front pages and public conversation. Behind the buzz worthiness of a Wikipedia blackout day, however, are important shifts in the relationships between media industries and government relations officials. Corporations that offer communication services (whether in traditional media, wireless, or Internet industries) are political forces in Washington, D.C., and the media industries that receive regulatory and Congressional favoritism are beginning to change. As the crux of political power appears to shift from traditional media industries to new entrants, all communication industries are reexamining their government relations strategies.⁴

In the SOPA/PIPA legislation battles, the traditional media industries that are accustomed to being considered the more favored and powerful political players were outpaced and out-strategized by Internet corporations that are relatively new entrants into the inside Washington, world of lobbying and political influence.⁵ The efforts made by companies like Facebook and Google to increase their presence in Washington over the past several years⁶ appeared to pay off when the Internet companies outpaced traditional communications industries in both public persuasion and lobbyist usage for the piracy legislation.⁷ While growing lobbying muscle is not the only reason for the Internet industry's success and strength (easy access to the public and the public's perception that they have a right to a free Internet also come into play), the growing

⁴ Schatz, A., Fowler, G.A., Orden, E. (2012, January 24). The web's growing muscle. *The Wall Street Journal*, retrieved from <http://online.wsj.com/article/SB10001424052970204624204577179331402697446.html>.

⁵ Orden, E., & Fowler, G.A. (2012, January 19). Hollywood loses the story. *The Wall Street Journal*, B1.

⁶ Google spent \$9.68 million on lobbying expenditures in 2011, compared to \$1.52 million in 2007. Facebook spend a lobbying record for itself in 2011, spending \$1.35 million (Center for Responsive Politics).

⁷ Stewart, C.S., Fowler, G.A., & Schechner, S. (2012, January 18). New, old media battle over net rules. *The Wall Street Journal*, B1.

political clout of the Internet industry is undeniable. This growing presence and ability to shape the conversation among lawmakers, the media, and the public has created a sea change in political clout in Washington amongst communication industries, causing one media executive with a Washington background to observe, “There is a changing of the guard in D.C. The political power mirrors the marketplace growth. You see a lot of gravitational pull toward these new technologies.”⁸

While a changing of the guard may be starting, in terms of what communications industries enjoy regulatory and Congressional favoritism, neither the more traditional media industries, nor the newer communication industries are gaining or losing political clout without a fight. This fight is often analyzed in terms of the government relations efforts the communication industries are making as competition for favoritism occurs. In 2010, the broadcast industry spent \$14 million in lobbying expenditures. This number has steadily risen in recent years, with the industry’s largest trade association, the National Association of Broadcasters, increasing lobbying expenditures 43% from 2005 – 2010 and the industry’s current top corporation in terms of lobbying, Comcast, increasing lobbying expenditures 70% in the same time period.⁹ The wireless industry is also ramping up the amount of money spent lobbying, with the industry’s largest trade association, CTIA-The Wireless Association®¹⁰, increasing lobbying expenditures 71% during the 2005-2010 time frame and the industry’s

⁸ Stewart, C.S., Fowler, G.A., & Schechner, S. (2012, January 18). New, old media battle over net rules. *The Wall Street Journal*, B1.

⁹ The NAB spent \$13.7 million in lobbying expenditures in 2010 and \$7.8 million in 2005. Comcast spent \$12.94 million in lobbying expenditures in 2010 and \$3.95 in 2005. All lobbying data from The Center for Responsive Politics.

¹⁰ CTIA-The Wireless Association was formerly named the Cellular Telecommunications Industry Association. The trade association changed its name in 2004 to reflect the inclusion of other wireless services (ctia.org).

current top corporation in terms of lobbying, Verizon, increasing expenditures 30% during the time frame.¹¹

Sources of Competition

One of the primary reasons for the increased money devoted to lobbying expenditures is the burgeoning competition between the broadcast and wireless industries. Previously, the industries coexisted fairly peacefully because the products and services the industries offered did not compete for audiences. However, deregulatory efforts in the telecommunications industry and innovations in technology have created a world where people can stream movies, YouTube clips and television shows on their tablet device or smart phones just as easily (if not with more ease and convenience) as they can watch a show on television, causing the lines between the industries to blur. In addition to the increased popularity of these new technologies, these devices also require more spectrum space to transmit signals than previous wireless technologies. Smart phones can use 24 times as much airwave capacity as traditional cellular phones and tablet devices can use 100 times as much capacity. This increased need for airwaves means that if there is not sufficient spectrum space available for the technologies, dropped calls, slower connection speeds and longer downloads can all occur.¹² As the lines between the industries blur, so does the level of competition for regulatory favoritism at the FCC, particularly in the area of spectrum allocation.

Exempting the cable industry, virtually all mass electronic communication is conducted over electromagnetic waves known as the spectrum. Historically, the broadcast industry was the only communication industry to use spectrum on a mass level, using spectrum space to send out

¹¹ CTIA spent \$9.37 million on lobbying expenditures in 2010 and \$2.73 million in 2005. Verizon spent \$16.75 million on lobbying expenditures in 2010 and \$11.76 million in 2005.

¹² Op-Ed. (2011, December 15). FCC should stop worrying and learn to love spectrum market. Bloomberg.com. Retrieved from <http://www.bloomberg.com/news/2011-12-16/fcc-should-stop-worrying-and-learn-to-love-free-market-for-spectrum-view.html>.

over-the-air television and radio signals. As the wireless industry emerged from the traditional wired telecommunications industry, competing needs and desires for the same spectrum space arose. The wireless industry also requires a large amount of spectrum space to transmit cellular frequencies and broadband signals. While the demand for spectrum space has increased, the amount of available spectrum space has not kept pace with the number of products needing spectrum in order to properly function. Crowded airwaves can result in dropped calls, slowly loading videos and other inconveniences. As the need for over-the-air broadcast signals wanes (an estimated 11 million households,¹³ out of 114 million total United States households¹⁴ still rely on over-the-air-signals), and America ranks well behind other developed nations in terms of broadband speed,¹⁵ private industry efforts and policy initiatives are being proposed to change the amount of spectrum available to the broadcast and wireless industries and possibly shape the future communication practices of all Americans.¹⁶

While the amount of total spectrum in the United States may be finite, and corporations cannot purchase new spectrum on the open market, wireless companies are attempting to gain spectrum to keep pace with consumer demand for spectrum usage. These attempts have recently occurred through attempted company mergers and purchases of spectrum from other corporations. AT&T's primary motivation in wanting to acquire T-Mobile for \$39 billion in 2011 was to acquire T-Mobile's airwaves, not its customers.¹⁷ AT&T wanted T-Mobile's spectrum space to alleviate congested networks and offer faster service to data customers. While the most discussed benefit of the merger was the ability to expand 4G services, the underlying

¹³ Seelye, K.Q. (2011, September 13). For Idaho and the Internet, life in the slow lane, *The New York Times*, A24

¹⁴ U.S. Census data, retrieved from <http://quickfacts.census.gov/qfd/states/00000.html>

¹⁵ The United States currently ranks 25th overall for broadband speed.

¹⁶ Wyatt, E. (2011, April 21); Seelye, K.Q. (2011, September 13). For Idaho and the Internet, life in the slow lane, *The New York Times*, A24.

¹⁷ De La Merced, M.J. (2011, December 19). AT&T ends \$39 billion bid for T-Mobile. *The New York Times*, Dealbook blog, retrieved from <http://dealbook.nytimes.com/2011/12/19/att-withdraws-39-bid-for-t-mobile/>.

issue driving the merger was the lack of spectrum available to AT&T. The Department of Justice's ruling against the merger on the grounds that it would reduce competition was contested by AT&T, which argued that by not allowing the merger, the DOJ and FCC were harming customers and worsening the spectrum shortage.¹⁸

AT&T's frustration in not being able to complete the merger and gain additional spectrum was increased by the fact that its biggest competitor, Verizon, went on a spectrum buying spree shortly after the AT&T/T-Mobile merger was blocked. Verizon spent \$3.6 billion to acquire spectrum licenses from three cable companies (Comcast, Time Warner Cable, and Bright House Networks).¹⁹ The close relationship between wireless and cable companies predicts a future where quad-play bills (cable television, broadband, home phone and cellphone service) are likely to be common in most markets. The motivation for the deal is that cable companies recognize the importance of playing a part in the wireless market, but lack either the resources or desire to create their own wireless networks. While the spectrum deal is between a wireless corporation and a cable corporation, and not a broadcast corporation, the fact that Comcast and NBC recently merged as well suggests that Comcast's interests could play a part in similar partnerships in the future. The deal also further illustrates the ever-increasing market value of spectrum licenses. Verizon will pay Comcast \$2.3 billion for its portion of the spectrum

¹⁸ O'Brien, T. (2011, December 19). AT&T abandons T-Mobile merger plans. Endgate.com, retrieved from <http://www.engadget.com/2011/12/19/atandt-abandons-t-mobile-merger-plans/>; Velazco, C. (2011, December 19). The AT&T/T-Mobile merger is dead. TechCrunch.com, retrieved from <http://techcrunch.com/2011/12/19/att-t-mobile-merger-dead/>.

¹⁹ T-Mobile has filed a request to block the spectrum agreement between Verizon and the cable companies with the FCC, arguing that the deal would give Verizon an unfair amount of spectrum in the wireless industry. Chen, B.X. (2012, February 23). T-Mobile urges U.S. to block Verizon's spectrum purchase. *The New York Times*, B2; Stelter, B. (2011, December 2). With Verizon's \$3.6 billion spectrum deal, cable and wireless inch closer. *The New York Times*, Media Decoder blog. Retrieved from <http://mediadecoder.blogs.nytimes.com/2011/12/02/with-verizons-3-6-billion-spectrum-deal-cable-and-wireless-inch-closer/>

licenses, more than \$1 billion more than what Comcast paid for the spectrum license in a 2006 auction.²⁰

In addition to the efforts of private wireless corporations to gain more spectrum space, the FCC is also attempting give more spectrum to the wireless industry through the National Broadband Plan. The National Broadband Plan proposes taking spectrum space away from broadcasters and allocating it to broadband companies to increase broadband speed, affordability and access. While the FCC cannot take away all the broadcasters' spectrum due to a legal obligation to keep over-the-air services in each market, the agency is asking for broadcasters to voluntarily return 120 MHz of spectrum through incentive auctions.²¹ Although the broadcasters will be compensated for the reallocated spectrum through the incentive auctions, many broadcasters are not willing to give up spectrum space and worry that the transfer of spectrum space will reinforce the perception that broadband has become the dominant communications platform.²² Incentive auction legislation was passed by Congress in February 2012 as part of a Payroll Package, with the expected \$25 billion in auction revenue being allotted to extend a payroll tax holiday and jobless benefits.²³ While the legislation is clearly favorable to the wireless industry and reflects the growing dominance of the wireless industry as the dominant communications industry, the legislation does contain some concessions to the broadcast industry²⁴ and it is not yet known the full impact the auctions will have on broadcasters.²⁵

²⁰ Stelter, B. (2011, December 2)

²¹ Eggerton, J. (2010, June 28). White House backs spectrum reclamation. *Broadcasting & Cable*; Eggerton, J. (2010, March 8). FCC Has legal obligation to preserve free TV. *Broadcasting & Cable*.

²² Eggerton, J. (2010, February 24). FCC proposing TV spectrum auction. *Broadcasting & Cable*; Stelter, B., & J. Wortham. (2010, March 12). Effort to widen U.S. Internet access sets up battle. *The New York Times*, A1.

²³ Wyatt, E., & Steinhauer, J. (2012, February 17). Congress will auction public airwaves to pay for benefits. *The New York Times*, A1.

²⁴ The language of the auction incentive legislation includes several broadcast friendly provisions, including limiting the FCC 's ability to maximize the amount and benefits of recovered spectrum, and a provision that limits what actions the FCC can take to reclaim airwaves from broadcasters. These broadcast industry friendly inclusions are

The purpose of this dissertation is to closely examine one area of the policy battles, the lobbying practices of the broadcast and wireless industries. As corporations in both industries continue to outspend previous government relations budgets in the attempt to influence legislation in Congress and proposals at the FCC, there has been little research examining the way two industries previously accustomed to winning policy battles and regulatory favoritism will shape lobbying activities when faced with competition for regulatory capture. This chapter of the dissertation will provide context for the policy battles, define the term lobbying, explore the literature on lobbying and regulatory agencies, introduce the theoretical framework and methodology used in this dissertation, provide a justification for the dissertation topic, and introduce the topics of the subsequent chapters.

Literature Review

Simply stated, lobbying is the practice of attempting to persuade government officials. As a practice, lobbying has both increased in activity and come under increased scrutiny in recent decades.²⁶ Lobbying is a non-market strategy corporations use in an attempt to gain favorable governmental and policy outcomes.²⁷ Non-market strategies include campaign contributions, lobbying, and litigation, and can also be used to shape property rights.²⁸ The importance of non-market versus market activities depends on the extent to which both contribute to firm performance.²⁹ Corporations are one of the primary groups to engage in

attributed to the NABs influence over the legislation. Eggerton, J. (2012, February 16). Incentive spectrum auctions are part of payroll package, *Broadcasting & Cable*.

²⁵ Eggerton, J. (2012, February 16). Incentive spectrum auctions are part of payroll package. *Broadcasting & Cable*; Wyatt & Steinhauer, February 17, 2012.

²⁶ Birnbaum, J.H. (1993). *The Lobbyists*. New York: Times Books; West, D.M., & Loomis, B.A. (1998). *The sound of money*. New York: W.W. Norton & Company.

²⁷ Holburn, G.L., & Vanden Bergh, R.G. (2002). Policy and process: A game-theoretic framework for the design of nonmarket strategy. *Advances in Strategic Management*, 19, 33-66; Vining, A.R., Shapiro, D.M., & Borges, B. (2005). Building the firms' political (lobbying) strategy. *Journal of Public Affairs*, 5, 150-175.

²⁸ Holburn & Vanden Bergh, 2002

²⁹ Ibid

lobbying (and other political activities), and are motivated by increased competitive advantage and favoritism bestowed from the regulatory agency.³⁰ Regulation is not a passive activity for corporations; rather firms devote time and resources to strategic political strategies in order to gain maximum economic returns.³¹

Lobbying Strategies

Why Lobby?

Firms engage in lobbying to gain competitive advantage, increase legitimacy, and reduce uncertainties.³² When regulation is part of an industry's environment, firms will have more active political strategies, take a more proactive stand towards lobbying, and have additional incentives to lobby.³³ The firms' likelihood of lobbying may be increased by firm size, issue salience, and material interests, but these indicators have not been found in all lobbying

³⁰ Nownes, A.J. (2006). *Total lobbying*. New York: Cambridge University Press; Oliver, C., & Holzinger, I. (2008). The effectiveness of strategic political management: A dynamic capabilities framework. *Academy of Management Review*, 33(2), 496–520; Olson, M. (1965). *The Logic of Collective Action: Public Goods and a Theory of Groups*. Cambridge, MA: Harvard University Press.

³¹ Cherry, B. (2006). Regulatory and political influences on media management and economics. In Albarran, A.B., Chan-Olmsted, S.M., & Wirth, M.O. (Eds.), *Handbook of media management and economics*, 91–114. Mahway, NJ: Lawrence Erlbaum; Oliver & Holzinger, 2008.

³² Cherry, 2006; Hillman, A.J., & Hitt, M.A. (1999). Corporate political strategy formulation: A model of approach, participation, and strategy decisions. *Academy of Management Review*, 26(4), 825–842; Hillman, A.J., Zardkoohi, A., & Bierman, L. (1999). Corporate political strategies and firm performance: Indications of firm-specific benefits from personal service in the U.S. government. *Strategic Management Journal*, 20: 67–81; Holburn, G.L., & Vanden Bergh, R.G. (2002); Mezner, M. B., & Nigh, D. (1995). Buffer or bridge? Environmental and organizational determinants of public affairs activities in American firms. *Academy of Management Journal*, 38, 975–996. Oliver, C., & Holzinger, I. (2008); Oliver, C. (1991). Strategic responses to institutional processes. *The Academy of Management Review*, 16(1), 145–179; Schuler, D.A., Rehbein, K., & Cramer, R.D. (2002). Pursuing strategic advantage through political means: A multivariate approach. *Academy of Management Journal*, 45(4), 659–672.

³³ Etzinoni, A. (1984). *Capital Corruption*. San Diego: Harcourt; Gais, T.L. (1983). On the scope and bias of interest group involvement in elections. APSA paper, September 12–14; Oliver & Holzinger, 2008; Pittman, R. (1988). Rent-seeking and market structure: Comment. *Public Choice*, 58, 173–185; Ungson, G. R., James, C., & Spicer, B. H. (1985). The effects of regulatory agencies on organizations in wood products and high technology/electronics industries. *Academy of Management Journal*, 28, 426–445.

literature.³⁴ The discrepancy in research findings is likely due to measurement difficulties associated with measuring lobbying strategies.³⁵

While firms engage in a variety of political actions, lobbying is a better investment for firms than other political actions (e.g., campaign contributions and independent expenditures) because lobbying can more directly shape regulation.³⁶ Lobbying can give firms a competitive advantage because it allows information valued by the firm to be shared with policy makers, an important priority for firms.³⁷ Sharing information with policy makers is an efficient political strategy for firms because government decisions are rarely decided without considering the consequences the decisions will have on corporations in the industry.³⁸

Although firms invest in lobbying because they anticipate equal or greater benefits from regulatory agencies and government officials, receiving favorable legislation in exchange for lobbying expenditures is not guaranteed. The most common material to get in return for lobbying expenditures is information, both in the form of published information (e.g., journals and reports) and access to insiders with information.³⁹ However, the extent to which the access to inside information and insiders enables the corporations to shape policy is difficult to measure.⁴⁰ While the research into influences is limited, studies have found that lobbying

³⁴ Oliver & Holzinger, 2008.

³⁵ Cohen, J.E., & Hamman, J.A. (2003). Interest group PAC contributions and the 1992 regulation of cable television. *The Social Science Journal*, 40, 357-369; Hojnacki, M., & Kimball, D.C. (2001). PAC contributions and lobbying contacts in Congressional committees. *Political Research Quarterly*, 161-180.

³⁶ Birnbaum, J.H. (1993). *The lobbyists*. New York: Times Books; Silverstein, K. (1998). *Washington on \$10 million a day*. Monroe, ME: Common Courage Press.

³⁷ Clawson, D., Neustadt, A., & Weller, M. (1998). *Dollars and votes: How business campaign contributions subvert democracy*. Philadelphia: Temple University Press; Holburn & Vanden Bergh, 2002; Lord, M.L., (2000). Corporate political strategy and legislative decision making: The impact of corporate legislative influence activities. *Business & Society*, 39(1), 76-93; Schuler, D.A., Rehbein, K., & Cramer, R.D. (2002). Pursuing strategic advantage through political means: A multivariate approach. *Academy of Management Journal*, 45(4), 659-672.

³⁸ Cherry, 2006; Lenway & Rehbein, 1991; Vining et al., 2005.

³⁹ Berry, J. M., & Wilcox, C. (2006). *The interest group society*, 4th ed. New York: Longman.

⁴⁰ Berry & Wilcox, 2006; Cohen & Hamman, 2003; Grenzke, J.M. (1989). PACs and the congressional supermarket: The currency is complex. *American Journal of Political Science*, 33(1), 1-24; Hojnacki & Kimball, 2001; Smith, R.A. (1995). Interest group influence in the U.S. congress. *Legislative Studies Quarterly*, 20, 89-139.

expenditures and campaign contributions are more likely to have influence over policy subsystems (e.g., Congressional subcommittees) than over macro political level efforts, more likely to influence legislative involvement than votes, and contributions are more likely to have influence over members of the House than members of the Senate.⁴¹

Who Firms Lobby

Once lobbying has been determined to be an effective non-market strategy for corporations to partake in, strategies must be determined for the lobbying efforts. The primary questions for corporations to determine are who should be lobbied (Senate, House, regulatory agency and/or executive branch), and by what methods (in-house representative, outside lobbying firm or trade association).⁴² Lobbyists are more likely to lobby established legislative allies rather than either undecided or opposing legislators, even if their allies are also the targets of opposing lobbyists.⁴³ When interacting with legislators, the key strategy for lobbyists is not to change the legislators' minds, but rather to have time interacting with allies in order to help a corporation achieve its goals.⁴⁴

How Firms Lobby

Little research has been done to uncover a corporation's comprehensive lobbying strategy, which would explain the level of importance placed on different lobbying activities.⁴⁵

Firms need to use a variety of tactics to gain access to policy makers due to variances in firm

⁴¹ Cohen & Hamman, 2003; Hall, R.L. & Wayman, F.W. (1990). Buying time: Moneyed interests and the mobilization of bias in congressional committees. *American Political Science Review*, 84, 797-820.

⁴² Furlong, S.R., & Kerwin, C.M. (2004). Interest group participation in rule making: A decade of change. *Journal of Public Administration Research and Theory*, 15 (2), 353-370; Hojnacki, M., & Kimball, D.C. (1998). Organized interests and the decision of whom to lobby in Congress. *The American Political Science Review*, 92(4), 775-790; Holburn & Vanden Bergh, 2002; Lyon, T.P., & Maxwell, J.W. (2004). Astroturf: Interest group lobbying and corporate strategy. *Journal of Economics & Management Strategy*, 13(4), 561-597; Vining et al., 2005.

⁴³ Hojnacki & Kimball, 1998

⁴⁴ Hall, R.L., & Deardorff, A.V. (2006). Lobbying as legislative subsidy. *The American Political Science Review*, 100 (1), 69-84.

⁴⁵ Vining et al., 2005.

size, governance contracts, industry concentration and political activism. Additional considerations when determining a lobbying strategy include determining the frequency, level and type of lobbying, the arguments to be used, and the venue (local versus national) in which to lobby.⁴⁶ Lobbying groups enjoy a competitive advantage when they are formally organized, specialized and represent a large body of people.⁴⁷

Firms can lobby through several different venues: trade association lobbying, firm-specific lobbying, or free-ridership.⁴⁸ Firm-specific lobbying can be conducted through an in-firm lobbyists and/or lobbying firms. Outside lobbyists are used by firms when the outside lobbyist has better contacts to the policy makers.⁴⁹ The firm-specific approach is a rational choice when the fixed costs are low and the output is a private good. Large firms are likely to engage in firm-specific lobbying because they can bear the costs, and the benefits of receiving competitive advantage are worth the costs of lobbying.⁵⁰ Disadvantages of firm-specific lobbying include the high cost of lobbying, potential for negative net gains if solo lobbying produces a decision that benefits the entire industry, and fact that some research suggests that group lobbying carries more weight.⁵¹

In addition to firm-specific lobbying, corporations can also lobby through trade associations or other coalitions. Benefits of lobbying as a group are lower transaction costs, greater lobbying legitimacy, and fact that the industry (rather than a corporation) is the natural focal point for political action.⁵² Trade associations are considered the most stable and common

⁴⁶ Lyon, T.P., & Maxwell, J.W. (2004); Vining et al., 2005.

⁴⁷ Hansen, John Mark. (1991). *Gaining access: Congress and the farm lobby, 1919-1981*. Chicago: The University of Chicago Press.

⁴⁸ Vining et al., 2005

⁴⁹ Nownes, 2006

⁵⁰ Vining et al., 2005

⁵¹ Vining et al., 2005

⁵² Vining et al., 2005

form of lobbying entities. In order for industry-level lobbying to be effective, the corporations must have a common goal, which also reduces the lobbying costs.

Drawbacks of lobbying through a trade association are that the goals of each corporation may have to be compromised in order to pursue a group agenda, the inclusion of free-riders, and the monitoring and membership costs associated with trade associations.⁵³ Industries that stand to profit more from governmental assistance tend to contribute more to group lobbying efforts, but the effectiveness of these contributions is not guaranteed. The collective action problems facing corporations in each industry deplete the ability of firms to make good on their contributions.⁵⁴

Communication Industries

The competition between the broadcast and wireless industries is a fairly new phenomenon due in large part to the fact that the 1934 Communications Act designated the broadcast and telecommunications industries as separate legal entities. This designation was created in order to keep the industries distinct, and to prevent the industries from interfering with one another's business practices. The purpose of this section is to provide a brief examination of the formation of the industries, the regulatory framework under which the industries operate, the way spectrum space is allocated for both industries, and the events that shaped the blurring of the broadcast and wireless industries, leading to the current competitive environment.

The Broadcast Industry

The first commercial broadcaster on the airwaves was KDKA, which began broadcasting in 1920. Following the success of KDKA, other commercial radio stations began broadcasting over the air, without legislation in place to sufficiently regulate the fledgling broadcast industry.

⁵³ Vining et al., 2005

⁵⁴ Grier, K.B., Munger, M.C., & Roberts, B.E. (1994). The determinants of industry political activity, 1978-1986. *The American Political Science Review*, 88 (4), 911-926.

The only radio legislation in place, the Radio Act of 1912, was created to deal with point-to-point telegraphy and telephony and failed to anticipate the popularity of amateur and commercial radio broadcasting that would soon develop, and quickly became an outdated and ineffective piece of legislation.⁵⁵ The Radio Act of 1912 did not provide the Department of Commerce (then overseeing the broadcast industry) with instructions regarding how to allocate spectrum space, nor did it provide a standard upon which to base licensing decisions.

After a district court ruled that the Radio Act of 1912 did not provide the Department of Commerce with the power to deny spectrum licenses' to applicants,⁵⁶ a state of chaos ruled the airwaves. This state of chaos was abated with the passage of the Radio Act of 1927. The Radio Act transferred power over the fledgling radio industry to the newly created Federal Radio Commission (FRC), and granted the FRC the power to grant and deny licenses and assign frequencies to each license. The key regulations created in the Radio Act were kept when the 1934 Communications Act was developed a short time later, and many of the provisions of the Radio Act became Title III of the 1934 Act. The Communications Act officially separated the regulation of the broadcast and telephony industries into two separate sections of the Act, with Title II overseeing common carriers and Title III overseeing broadcast services. Title III, covering provisions for radio, defined the powers (and limitation of powers) given to regulators. The Communications Act clearly depicted the broadcasting and telecommunications industries as separate industries, subject to different rules and legal frameworks. This division of the broadcast and telephony industries into separate parts of the Communications Act shows that Congress conceived of broadcast and telephony as separate industries.

⁵⁵ Rowland 1997; Mackey, D. (1957). The development of the National Association of Broadcasters. *Journal of Broadcasting*, 1, 305-325.

⁵⁶ United States v. Zenith Radio Corp., 12 F.2d 614 (N.D. Ill. 1926)

While the 1934 Communications Act replaced the FRC with the newly created Federal Communications Commission, the FCC handled the allocation of broadcast licenses in a similar manner to the FRC. Due in large part to its political clout, the broadcast industry has managed to maintain a legacy use of spectrum space, maintaining a merit based allocation process even though the FCC now allocates all non-broadcast spectrum through a revenue raising auction system.⁵⁷ By not participating in the auction system when receiving a new or renewed license, the broadcast industry receives free usage of the spectrum. This free usage of the spectrum is a primary reason that incentive auction legislation is able to take unused spectrum space from broadcast stations and assign them to the highest wireless bidder.⁵⁸

While the broadcast industry has been able to remain legacy spectrum users due to the political clout of the industry (this clout stems from the fact that broadcast stations are powerful allies in the (re)election campaigns of legislators⁵⁹), broadcasters were originally allocated spectrum through a merit based system due to their fiduciary duty to the American public. Since the available airwaves to broadcast over are limited, the corporations receiving broadcast licenses were required to serve the public interest and remain in good standing in order to serve as a fiduciary to viewers and listeners.⁶⁰

The Wireless Industry

While both the broadcast and telecommunications industries have undergone dramatic changes in terms of technological advances and the role industry products play in society, the telecommunications industry has been transformed to the point that the industry is likely unrecognizable to the creators of the 1934 Act. The Communications Act clarified the

⁵⁷ Layton, C. (2004, October/November). Lobbying juggernaut. *American Journalism Review*, 26-35.

⁵⁸ Wyatt, E. (2011, April 21).

⁵⁹ Layton, C. (2004, October/November).

⁶⁰ Hoffman-Riem, W. (1996). *Regulating media: The licensing and supervision of broadcasting in six countries*. New York: The Guilford Press.

telecommunications industry as a separate entity from the broadcasting industry by classifying telecommunications as Title II (common carrier) services. The telecommunications industry was designated as legally separate from the broadcasting industry due to the belief that the telephone industry has a natural monopoly, and had to be kept separate from the regulations of other communication areas, including broadcasting.⁶¹ As a common carrier, telecommunication services are designated as an infrastructure so central to the economy that service leaders cannot refuse customers. Subject to Title II services, the Communications Act stated that telecommunications carriers should be treated as a common carrier to the extent to which it is engaged in providing telecommunications services. This designation aimed to provide a competitive marketplace for telecommunication services and provides basic protections (e.g. just and reasonable rates) to users.

When the telecommunications industry only offered wired services, the legal distinctions between the two industries were easily maintained and the industries focused on separate products and services. However, as the wireless industry grew out of the telecommunications industry, the need for spectrum space associated with wireless devices caused competition for spectrum allocation. The 1970s – early 1980s marked a rise in the application for spectrum licenses at the FCC, due in part to both an increase in broadcast competition and the need to allocate spectrum space for new technologies (e.g., cellular phones), which were beginning to rise in popularity.⁶² The rise in the number of applications enhanced the workload of the FCC, which resulted in a backlog of spectrum applicants.⁶³ This backlog, combined with the

⁶¹ Dodd, L.C. Preface. In Zarkin, M.J. (2003). *Social learning and the history of U.S. telecommunications policy 1900-1996*. Lewiston, N.Y.: The Edwin Meller Press.

⁶² Shelanski, H., & Huber, P. (1998). Administrative creation of property rights to radio spectrum. *Journal of Law & Economics* 41,(2), 581-607.

⁶³ Hazlett, T. (1998). Assigning property rights to radio spectrum users: Why did FCC license auctions take 67 years? *Journal of Law & Economics* 41(2), 29-75.

deregulatory focus of the time period, led to the system of spectrum allocation being changed from a merit-based system to a lottery system for non-broadcast license applicants in 1981. As an industry not subject to fiduciary duties, wireless corporations that received spectrum space were able to achieve more leeway in regards to the services the corporations could transmit over their assigned airwaves. This freedom contributed to the extreme development made by the wireless industry over the past twenty-five years.

While the lottery system was considered an improvement from the merit-based system, the true wish of many legislators and policy scholars was an auction based allocation system. Leo Herzel is credited as being the first academic to write in support of spectrum allocation auctions.⁶⁴ The idea of spectrum auctions was later popularized by the economist Ronald Coase. Herzel arrived at the possibility of the FCC auctioning off spectrum space to the highest bidder by concluding that the allocation of spectrum space is an economic, not policy decision.⁶⁵ While the FCC could still control the distribution of spectrum space, the distribution decisions would be based solely on the amount of profit the license could make, not on what content the licensee would create and distribute.

Coase added economic rationale to Herzel's original idea by developing the idea that property rights, and not ownership, should be the main consideration when allocating spectrum space.⁶⁶ He concluded that spectrum space should be allocated due to the forces of the market rather than the result of government regulation and argued that the FCC's rationale that spectrum space must be treated uniquely due to its scarcity did not make economic sense. Many goods are produced in limited quantities and do not require special legislation to be sold.

⁶⁴ "Public interest" and the market in color television regulation. (1951). *The University of Chicago Law Review* 18,(4), 802-16.

⁶⁵ Ibid

⁶⁶ Coase, R. H. (1959). The Federal Communications Commission. *Journal of Law and Economics*, 2, 1-40.

But it is a commonplace of economics that almost all resources used in the economic system (and not simply radio and television frequencies) are limited in amount and scarce, in that people would like to use more than exists...But the way this is usually done in the American economic system is to employ the price mechanism, and this allocates resources to users without the need for government regulations.⁶⁷

Coase's article on spectrum allocations included the theorem that later helped him earn the Nobel Prize in economics. Coase's theorem states that when the market is efficient, consumers will direct resources to the area where these resources yield the highest value. For the spectrum space, this theorem means that if the government let go of spectrum allocation and allowed the free market to take over, spectrum space would flow to its most valuable use.⁶⁸

While Coase's proposal did not win immediate popularity with legislators (presenting his proposal to the FCC in 1959, a commissioner asked him if the proposal was really "a big joke?"⁶⁹), the notion of an auction based system began to win popularity with legislators and regulators in the 1980s and early 1990s due to the revenue raising potential of an auction system and the fact that the wireless industry was steadily increasing its spectrum auction requests. After a prolonged fight from the broadcast industry, auction allocation legislation passed in 1994. The introductory PCS and interactive video license auctions were a tremendous profit maker for the United States government, raising \$800 million in one week and surpassing all pre-auction profit estimates.⁷⁰ Overall, 87 spectrum auctions have been conducted in the United States since 1994, raising approximately \$60 billion for the United States Treasury.⁷¹

⁶⁷ Coase, 1959, p. 14.

⁶⁸ Crovitz, G.L. (2010, March 22). Better Broadband Is No 'Joke.' *The Wall Street Journal*. Retrieved from http://online.wsj.com/article/SB10001424052748704550004575133802210396886.html?mod=WSJ_Opinion_BelowLEFTSecond.

⁶⁹ Crovitz, G.L. (2010, March 22).

⁷⁰ Milgrom, P. (2000). Putting auction theory to work: The simultaneous ascending auction. *Journal of Political Economy*, 108(2), 245-272.

⁷¹ www.fcc.gov

The success of the spectrum auctions demonstrated the free market value of spectrum for the first time, and planted the seeds of competition for regulatory favoritism. The ability of the wireless industry to participate in spectrum allocation auction has contributed to the industry's capacity to provide its technological innovations to a mass audience, and allow the industry to be considered the dominant communications infrastructure of the future. However, participating in the spectrum auctions is also a key example of the way the way the lines between the broadcast and wireless industries have blurred in recent years, despite the Title II and Title III legal distinctions.

Blurring of the Industries

The boundaries between the telecommunications and broadcast industries, particularly in terms of technological distinctions, began to be blurred with the Above 890 decision of 1959.⁷² The ruling allowed microwave system competition in point-to-point microwave transmissions. Previously, radio technology used for telephone interconnection (microwave) had fallen into the common carrier domain. The move to promote competition in telecommunications complicated the task of regulators.⁷³ Prior to 1970, almost every part of the telecom industry was a regulated monopoly, and regulators were primarily concerned with preventing AT&T and other local service monopolists from using market power to exploit their powers.⁷⁴ During this era, clear distinctions between industries were made. Telephone companies were treated as natural monopolies and subject to regulation at the state and federal levels, while the computer industry was treated as a competitive industry.⁷⁵ Due to the regulatory and antitrust policies, AT&T had

⁷² Will, T. E. (1978). *Telecommunications structure and management in the executive branch of government, 1900-1970*. Boulder, CO.: Westview Press.

⁷³ Noll, R.G. (1989). Telecommunications regulation in the 1980s. In Newberg, P.R. (Ed.), *New directions in telecommunications policy*. Durham: Duke Press Policy Studies, Duke University Press.

⁷⁴ Noll, 1989; Zarkin, 2003.

⁷⁵ Zarkin, 2003

not entered the computer and microelectronics industries, and these industries had not entered the telecommunications industry, however the boundaries between the two industries were artificial and increasingly difficult to maintain.⁷⁶

As technological innovations increased and the regulated companies were unable to keep up with the demands for them, the FCC began allowing competition for some aspects of each industry, thereby opening the gates for competing corporations offering new products.⁷⁷ As competition and needs for new technologies occurred, concurrent with the Department of Justice's continuing investigation of AT&T in the early 1980s, the FCC and NTIA argued that while the telecommunications industry was not a natural monopoly, it was most efficiently organized as vertically integrated firms. The DOJ rejected these arguments and did not believe that regulatory rules could effectively prevent a monopoly from providing an advantage to an affiliate that provided competitive products and services. This belief was based on the FCC's failure to prevent anticompetitive abuses during the 1970s, despite attempts to do so.⁷⁸ The deregulatory attitude prevailed and resulted in the Modified Final Judgment that broke AT&T's local operations into seven separate Regional Bell Operating Companies (RBOCs). One major consequence of the arrangement is that it fragmented regulatory responsibility contributed to the blurring of the lines between the industries.⁷⁹ Lines between the industries continue to blur, as the industries offer competing products and competing ways to communicate.

To reiterate, the legal distinctions created between the broadcast and wireless industries by the 1934 Communications Act to keep the industries away from one another's business practices have eroded as vast technological innovations have occurred and changes regarding

⁷⁶ Noll, 1989

⁷⁷ Noll, 1989

⁷⁸ Noll, 1989

⁷⁹ Noll, 1989; Zarkin, 2003

what industries require spectrum space, and the best way to allocate the spectrum space have occurred. The regulatory agency most often tasked with sorting out the complex relationships and competing policy desires of the broadcast and wireless industries is the FCC.

Regulatory Agencies

FCC Lifecycle and Ability to be Captured

Created in 1934, the FCC was formed in the era of the associational regime.⁸⁰ The associational regime regulatory agencies were created in response to the Great Depression and were formed to have regulatory policies in place to promote industrial stability through corporation.⁸¹ The FCC is primarily an economic regulatory agency that, along with other agencies created during the New Deal era, was created to emphasize the role of government intervention to restore a properly working marketplace.⁸² Specifically, the FCC was created to extend government control over pricing, limit the number of participants in the industry and determine the barriers to entry into the industry.⁸³ While the FCC does not determine pricing, it is considered an economic regulatory agency because it limits the number of participants in the industry and distributes benefits to the limited number of corporations in a single area of the economy.⁸⁴ The FCC also influences the economics of the industry because it imposes technological requirements on the industry that are intended to improve industry performance.⁸⁵

As an older regulatory agency, the FCC has advanced through the regulatory agency life cycle introduced by Bernstein.⁸⁶ The lifecycle notion states that over time, a regulatory agency

⁸⁰ Eisner, M.A. (2000). *Regulatory politics in transition*. Baltimore: The Johns Hopkins University Press.

⁸¹ Ibid

⁸² Zarkin, 2003

⁸³ Eisner, 2000; Noll, 1984.

⁸⁴ Comanor, W.S., & Mitchell, B.M. (1972). The costs of planning: The FCC and cable television. *Journal of Law and Economics*, 15(1), 177-206; Eisner, 2000; Noll, 1984.

⁸⁵ Noll, 1984

⁸⁶ Wilson, G.K. (1984). Social regulation and explanations of regulatory failure. *Political Studies*, XXXII, 203-225.

becomes more aligned with the industry it regulates.⁸⁷ A decline in regulation efficiency is linked to numerous opportunities for capture by the industry it regulates over the agency's lifetime. At the beginning of an agency's life, the agency has a committed staff, and enjoys support from the coalitions that formed to create the agency. During the youth of the agency, the agency is likely to challenge and engage in battle with the industry it regulates.⁸⁸ During the maturity state of the lifecycle, the agency grows tired of battle and begins to cultivate a more cooperative relationship with its regulated industry. During old age, the agency adheres to the opinions and interests of its regulated industry. This lifecycle idea is popular among regulatory agency scholars, but is also criticized for lacking a theoretical foundation and its normative tendencies.⁸⁹ Once the agency has reached old age, it is considered to be captured by the regulated industry.

The FCC has been traditionally considered a weak, easily captured industry by both industry members and Congress.⁹⁰ The fight for capture at the FCC is unique because the agency does not have control over industry pricing. The FCC has been susceptible to capture due to its lack of pricing powers, a dynamic relationship with the industries it regulates, and because Congress has never given the agency political or legal guidelines to follow.⁹¹ These tendencies have created backlash at the FCC, and attempts to involve the public in the decision

⁸⁷ Bernstein, M. (1955). *Regulating business by independent commission*. Princeton: Princeton University Press; Martimort, D. (1999). The life cycle of regulatory agencies: Dynamic capture and transaction costs. *Review of Economic Studies*, 66, 929-947; Wilson, 1984.

⁸⁸ Wilson, 1984

⁸⁹ Martimort, 1999

⁹⁰ Emery, W. (1971). *Broadcasting and government*. East Lansing: Michigan State University Press; Hillard, R.L. (1991). *The Federal Communications Commission: A primer*. Boston: Focal Press; McChesney, R. (2004). *The problem of the media: U.S. communication policies in the twenty first century*. New York: Monthly Review Press; Smith, R. W. (2010). Regulating the regulators: Conflict between the Congressional Oversight Subcommittee and the FCC. *Journal of Broadcasting & Electronic Media*, 54(2), 194-210.

⁹¹ McChesney, 2004; Smith, 2010

making process have been attempted through ex parte comments and public hearings, but these efforts are not considered to be particularly effective.⁹²

Critics believe that commissioners will be biased as long as they are appointed as a political award and continue the revolving door policy of returning to the industry once they leave the FCC.⁹³ The revolving door mechanism between the FCC and the broadcast and wireless industries has also appeared to make the relationship between the agency and both industries stronger and more isomorphic. Once staffers leave the FCC, they still remain in touch with their former colleagues, and every former FCC Commissioner in the last three decades has gone on to work in the media and telecommunications industry in some capacity.⁹⁴ A recent example of the revolving door phenomenon occurred when FCC Commissioner Meredith Attwell Baker left the FCC to work as a lobbyist in Comcast's Washington, DC lobbying office six months after voting to approve the NBC-Comcast merger.⁹⁵ Attwell Baker's move to Comcast shortly after helping approve the merger grew criticism from parties that had opposed the merger, and brought renewed attention to revolving door employment.

FCC Structure

The efficiency of the FCC is also determined by its organizational structure.⁹⁶ As an older agency that oversees technology driven industries, the FCC's organizational structure needs to keep pace with technological innovations in order to remain efficient. This efficiency is lacking in the FCC because the agency has remained structured by industry, instead of by

⁹² Obara, J.A., & Schejter, A.M. (2010). Inclusion or illusion? An analysis of the FCC's public hearings on media ownership 2006-2007. *Journal of Broadcasting & Electronic Media*, 54(2), 212-227.

⁹³ Barkow, R.E. (2010). Insulating agencies: Avoiding capture through institutional design. *Texas Law Review*, 89(15), 15-79; Hillard, 1991

⁹⁴ Obar, J.A. (2009). Beyond cynicism: A review of the FCC's reasoning for modifying the newspaper/broadcast cross-ownership rule. *Communication Law & Policy*, 14, 479-525.

⁹⁵ Wyatt, E. (2011, May 11). F.C.C. Commissioner Leaving to Join Comcast. *The New York Times*, Media Decoder Blog. Retrieved from <http://mediadecoder.blogs.nytimes.com/2011/05/11/f-c-c-commissioner-to-join-comcast/?hp>.

⁹⁶ Garcia-Murillo, M.A., and MacInnes, I. (2001). FCC organizational structure and regulatory convergence. *Telecommunications Policy*, 25(6), 431-452.

function. The FCC consists of different bureaus within in the commission, including the mass media bureau, private radio bureau and common carrier bureau.⁹⁷ The mass media bureau regulates AM, FM, broadcast networks, satellite and enforcement of cable rules. The private radio bureau regulates services for private communication for businesses, individuals, non profits and state and local governments. The common carrier bureau regulates interstate and foreign telephone, telegraph and some satellites. Structuring the FCC by function would be more efficient than structuring it by industry because many industry functions overlap and require additional time to oversee.⁹⁸ The FCC has not changed its structure due to corporate inertia and the difficulty in producing adaption in a bureaucracy.

When the FCC receives a petition for rule-making, it is sent to the bureau or office under whose jurisdiction the subject falls. If the office decides the petition is worthy of consideration, it can request the FCC Dockets office assign it a rule making number, then submit the petition for public comments. If the agenda item is considered by the commission, the office overseeing the item recommends the FCC issue one of four rulings: memorandum opinion and order (denying the petition), notice of inquiry (FCC issues call for public comments), a notice of proposed rulemaking (the FCC states exactly how it proposes to change the rules) or a report and order adopting change (any changes are limited to editorial content).⁹⁹

The literature on the structure of the FCC examines the way agency personnel and departmental corporation impact efficiency.¹⁰⁰ FCC commissioners who have previously been employed by the regulated industry tend to support the regulated industry more than

⁹⁷ Hillard, 1991

⁹⁸ Garcia-Murillo & MacInnes, 2001

⁹⁹ Hillard, 1991

¹⁰⁰ Garcia-Murillo & MacInnes, 2001; Gormley, W.T. (1979). A test of the revolving door hypothesis at the FCC. *American Journal of Political Science*, 23(4), 665-683.

commissioners who have not been employed by the industry.¹⁰¹ However, the political party the commissioner belongs to determines voting behavior more than previous employment.¹⁰²

Institutional Change

The dismantling of AT&T and developments in technology aided the emergence of new or altered industries in the field. When new industries are created, the emergence of the industry can be examined by studying the development of corporations within the overall industry, and the outcomes related to different attempts at progression within the burgeoning industry.¹⁰³ As an industry develops, three key decisions for individuals firms must be made: what functions the firm will perform, what other corporations the firm will contract with to have other functions performed, and what corporations the firm will compete with on certain functions and cooperate with on others.

There will be cooperation and competition in both intra-and inter industry relationships. Understanding the combination of cooperation and competition that occurs in industries allow firms to understand how to cooperate enough to sustain the industry, while at the same time compete for individuality in the industry. Intra-industry competition results not only from other companies attempting to enter the industry, but also as a result of failed efforts at cooperative relationships in the industry. These failed attempts at cooperation can result in competitive relationships. In addition to the development of new industries, other remaining industries remain, but in altered form. When an industry's major governance structure and ideology erode,

¹⁰¹ Garcia-Murillo & MacInnes, 2001

¹⁰² Garcia-Murillo & MacInnes, 2001

¹⁰³ Garud, R.G., & Van de Ven, A.H. (1987). Innovation and the emergence of industries. *Academy of Management proceedings*, 318-22.

industry leaders can begin to change and new and alternative ideas for the industry can emerge.¹⁰⁴

Justification for the Study

The issue of government relations strategies for dominant industries competing for regulatory capture has received little to no academic attention and is a topic that can build new knowledge in the area of media policy and regulation. In addition to building new knowledge in the area of media policy, examining the relationship between the FCC and broadcast and wireless industries can also serve as a starting research point for studying other regulatory agencies that may also be required to oversee more than one dominant industry. Examining the government relations habits of the broadcast and telecommunications industries is an important area of research, because policy decisions made by the FCC and Congress have financial, technological, and practical usage implications for companies and consumers.¹⁰⁵ As a regulatory agency whose policy decisions impact both the financial aspect of businesses and the communication methods available to Americans, it is important to examine how the FCC arrives at its policy decisions, what industries attempt to influence the decision making, and if the lobbying strategies of the industries are changing as the nature of regulatory capture at the FCC oversees multiple dominant industries who compete for beneficial regulatory decisions.

The competition for spectrum space and the desire to attain the legitimacy associated with being the dominant form of communication in the United States has increased the level of lobbying for both the broadcast and wireless communication industries. Industry trade groups (e.g., NAB, and CTIA) and individual corporations (e.g., Verizon, AT&T, Comcast, Time Warner Cable, Google and Clear Channel) have increased lobbying expenditures and campaign

¹⁰⁴ Galvin, T.L. (2002). Examining institutional change: Evidence from the founding dynamics of U.S. health care interest associations. *Academy of Management Journal*, 45(4) 673-696.

¹⁰⁵ Horowitz, R.B. (1989). *The irony of regulatory reform*. New York: Oxford University Press.

contributions in recent years.¹⁰⁶ While the lobbying expenditures are used for a variety of non-FCC issues, including taxation, patents and health care, the main priority for the wireless telecommunications industry is the way Congress governs the Internet and spectrum allocation issues.¹⁰⁷

Examining the government relations strategies dominant industries use to in the attempt to gain regulatory capture will be conducted through a theoretical framework and empirical studies. The theoretical framework attempts to provide explanatory power for the government relations strategies of industries competing for regulatory capture. It contributes to traditional regulatory theories, specifically capture theory, by extending the theory to situations where more than one dominant industry is regulated by the same agency.

Traditional regulatory research often uses capture theory to explain a regulatory agency's decision-making process. Capture theory states that over time, the interests of the regulatory agency will become aligned with the issues of the agency it regulates and the regulatory agency will eventually consider the industry, and not the public, when making decisions.¹⁰⁸ Capture theory also posits that instead of resisting regulation, industries want to be regulated in order to receive competitive advantage and attempt to shape regulatory policies.¹⁰⁹ However, a limitation of capture theory is that it does not take into consideration the way regulatory capture occurs when a regulatory agency oversees more than one dominant industry.¹¹⁰ In order to conduct a theoretical examination of that situation, this dissertation will also bring in institutional theory and research dependence theory to examine the strategies the industries engage in to reduce

¹⁰⁶ Lasar, M. (2010, August 2). Verizon tops telecom lobbying list. *Tech Observer* blog on Portfolio.com.

¹⁰⁷ Lasar, M. 2010, August 2; Spire, S. (2010b). Telecom Services & Equipment: Background. *Center for Responsive Politics report*. Retrieved from <http://www.opensecrets.org/>

¹⁰⁸ Kolko, G. (1970). *Railroads and Regulation*. Abingdon: Greenwood Publishing Group; Stigler, G. (1971). The theory of economic regulation. *Bell Journal of Economics*, 2, 29-51.

¹⁰⁹ Kolko, 1970

¹¹⁰ Levine, M.E., & Forrence, J.L. (1990). Regulatory capture, public interest, and the public agency: Toward a synthesis. *Journal of Law, Economics & Organization*, 6, 167-198.

uncertainty and increase legitimacy as regulated industries. By extending capture theory to scenarios where there is more than one dominant industry, this dissertation will add new knowledge to media management and policy literature and make a theoretical contribution to regulatory theories.

While capture theory originally envisioned a two-way relationship between the industry and a regulatory agency, developments in capture theory consider capture as a three-way relationship between the regulatory agency, regulated industry and legislators.¹¹¹ This dynamic relationship increases the legitimacy of all parties involved. A firm's legitimacy is created through the amount of regulatory capture it receives, and can create a feedback loop of legitimacy between the regulatory agency and industry.¹¹² By bestowing legitimacy on an industry, the regulatory agency also receives additional legitimacy due to its ability to endorse, or rule over, the dominant industry. This dynamic relationship has been found to occur in the FCC. The FCC receives strong pressure from the industry and Congress and while the FCC may initiate policy, the fate of policies is often determined by other government agencies.¹¹³

Congress has the most ways to apply pressure to regulatory agencies, and can exert influence by threatening to pass legislation overturning regulatory decisions.¹¹⁴ Policy development often relies heavily on meetings with industry leaders, while also putting out public requests for comment.¹¹⁵ Congress can also become captured by industry groups and other interested parties.¹¹⁶ Legislators have been found to grant access to groups when the group has competitive advantage over its rivals, and the legislator expects that the issues and conditions

¹¹¹ Noll, R.G. (Ed). (1984). *Regulatory policy and the social sciences*. Berkeley: University of California Press.

¹¹² Deephouse, D.L., & Suchman, M. (2008). Legitimacy in organizational institutionalism. *The Sage Handbook of Organizational Institutionalism*.

¹¹³ Krasnow, E., Longley, L., & Terry, H. (1982). *The politics of broadcast regulation*. New York: Palgrave Macmillan.

¹¹⁴ Zarkin, 2003

¹¹⁵ Krasnow, Longley, & Terry, 1982

¹¹⁶ Hansen, 1991

that have provided the group with competitive advantage in the past will continue in the future. Legislators are interested in working with groups whose competitive advantage will continue because a main goal of legislators is to gain reelection, and aligning with a popular message and/or group may help decrease the uncertainty surrounding elections.¹¹⁷

One criticism of capture theory is that it does not specifically address the processes and mechanisms that result in capture.¹¹⁸ While other literature has attempted to examine the “black box” of capture to provide predictive power for the regulatory process, a gap remains for examining regulatory decision making and creating predictive power for dominant industries competing for regulatory capture.¹¹⁹ Incorporating institutional theory and resource dependence theory to modify capture theory allows for the creation of a theoretical framework with greater predictive power, and allows the examination of the effectiveness of government relations strategies when competing for regulatory favoritism. These theoretical contributions were made to create a fuller explanation and prediction for lobbying strategies in an uncertain regulatory environment. This theoretical framework will also begin to open the black box of regulatory decision making by examining the impact the regulated industries have on the agency decision making process.

This dissertation also has implications for the broadcast and wireless industries. The uncertainty of regulatory capture has very real consequences for the broadcast and wireless communications industries. As the industries compete for relevance as communications

¹¹⁷ Hansen, 1991; Mayhew, D. (2004). *Congress: The electoral connection*, 2nd edition. New Haven: Yale University Press.

¹¹⁸ Levine & Forrence, 1990

¹¹⁹ Denzau, A., & Munger, M. (1986). Legislators and interest groups: How unorganized interests get represented. *American Political Science Review*, 80, 89-106; Fiorina, M.P., & Noll, R.G. (1978). Voters, bureaucrats and legislators: A rational choice perspective on the growth of bureaucracy. *Journal of Public Economics*, 9(2), 239-254; Levine & Forrence, 1990

mechanisms and for technological innovation, regulatory capture is necessary to secure their place in a rapidly changing communications environment. The broadcast industry is lobbying to maintain its relevance, secure spectrum space and progress technologically, while being regulated by the FCC. The wireless industry is lobbying to continue limiting government regulation of the Internet and wireless devices, specifically in the areas of net neutrality, mergers, oversight of cellular phone costs and global online freedom, while attempting to gain spectrum space and subsidize technological innovation through favorable regulation. Both industries are also attempting to influence provisions of the National Broadband Plan before the plan passes into law, and also attempting to influence efforts to make changes to the 1934 Communications Act. The lobbying strategies' each industry uses to attempt to gain capture with the FCC is likely to impact the way Americans communicate, and pay for communication devices, in the future.

Theoretical Framework

The theoretical framework begins with the basic assumptions of capture theory. Understanding capture theory requires examining why regulatory oversight is needed. A regulatory agency is formed as a way to house a collection of experts in an area who can serve as information intermediaries.¹²⁰ It was believed that the creation of a commission of experts, insulated from politics and authorized to make expert decisions could carry out the public interest.¹²¹ However, skepticism regarding the feasibility of this independence has existed for as long as the regulatory agencies.¹²²

¹²⁰ Barkow, 2010; Laffont, J.J., & Tirole, J. (2000). *Competition in telecommunications*. Cambridge: MIT Press; Zarkin, 2003

¹²¹ Zarkin, 2003

¹²² Barkow, 2010

Capture Theory

Assumptions of capture theory include rational behavior on the part of the actors, and that individuals have self-interested goals (e.g., job retention or reelection) and will attempt to achieve their goals by using their regulatory powers. The theory assumes that people will act no less rationally as bureaucrats as they do in private market exchanges.¹²³ Due to these limitations, regulation is a way that politicians can transfer income or power to well organized groups, if the groups will return the favor with votes and contributions.¹²⁴

Gaining regulatory capture is beneficial for corporations because regulatory capture shapes policy outcomes.¹²⁵ A primary reason for this is economic, because the regulatory policies promote stability and profitability in the industry, even if the policies hurt consumers and potential competitors.¹²⁶ Capture occurs most frequently when a regulatory agency places the needs of an industry above the needs of the public.¹²⁷ While independent regulatory agencies are ideally formed as insulated agencies, the fact that agencies are captured by industries is widely accepted by government officials.¹²⁸ Although independent regulatory agencies were formed due to the need for expert decision making, corporations in the industry often have greater knowledge as to what is happening in the industry than regulators.¹²⁹ Capture of an agency can be increased when corporations' lobby and contribute to political campaigns because

¹²³ Levine & Forrence, 1990

¹²⁴ Peltzman, S. (1971). Pricing in public and private enterprises: Electric utilities in the United States. *Journal of Law & Economics*, 14, 109.

¹²⁵ Stigler, 1971

¹²⁶ Eisner, 2000

¹²⁷ Noll, R.G. (1971). *Reforming regulation*. Washington DC: Brookings Institute.

¹²⁸ Barkow, 2010

¹²⁹ Barkow, 2010; Landis, J.M. (1938). *The administrative process*. Princeton: Yale University Press; Laffont, J.J., & Tirole, J. (2000). *Competition in telecommunications*. Cambridge: MIT Press;

these actions give the corporation influence over legislators that oversee policy committees that decide on regulatory proposals.¹³⁰

Bias towards an industry is enhanced due to the fact that regulated industries are well-financed and organized, especially compared to interest groups. This makes industry groups well positioned to contribute to political campaigns and to lobby, which in turn gives them influence with the agency's legislative overseers on the appropriate oversight committees.¹³¹ Corporations also have influence due to the revolving door phenomenon and the information advantage of the regulated industry.¹³² More heavily regulated firms tend to have more ex-politicians on their board of directors, and while firms with politician directors are associated with better market-based performance in both regulated and non-regulated industries, the relationship is more pronounced in regulated industries.¹³³ However, capture theory does not explain the way capture is achieved when a regulatory agency oversees two dominant industries. Adding in the isomorphic processes of institutional theory and resource dependence theory allows the theoretical framework to examine the black box of regulatory decision making glossed over by capture theory, and examine the strategies employed by institutions in an organizational field when competing for regulatory capture.

Institutional Theory

Institutional theory is an open systems perspective that examines what causes organizational structures to arise and become institutionalized. The theory posits that dynamics

¹³⁰ Elhauge, E.R. (1991). Does interest group theory justify more intrusive judicial review? *Yale Law Journal*, 101(1), 31-110.

¹³¹ Barkow, 2010

¹³² Ibid

¹³³ Hillman, A. (2005). Politicians on the board of directors: Do connections affect the bottom line? *Journal of Management*, 31, 464-481.

in the organizational environment stem from cultural norms, symbols, beliefs and rituals.¹³⁴

Over time, institutions begin to be viewed as pertaining to a set of shared belief systems referred to as rational myths and many formal organizational structures are created as a reflection of these rationalized myths.¹³⁵ Corporations cultivate and incorporate these myths in order to gain legitimacy, resources, stability and enhanced survival prospects.¹³⁶

Institutional theory provides explanatory power when studying the way institutional forces impact the formation, and possible adaptation, of government relations strategies. In addition to examining institutionalism at the industry level, institutionalism can also be examined at the national level. Government institutional practices and processes impact the formation, efficiency, and legitimacy of telecommunications structures, thus also impacting the ability of the government to encourage private investment in a telecommunications system/industry.¹³⁷

Previous empirical studies have used the theory to examine how technological change and regulatory forces impact institutional practices and strategies.¹³⁸ Studies examining the adoption of civil service reform, changes to the commercial radio industry and technical developments in the creation of the cochlear implant industry demonstrate that the impact of new technology is a key contributor to organizational change. However, changes in technology are not always enough to cause an organizational field to change, and when an organizational field is resistant to change due to isomorphic practices, adoption of new policies or programs can be

¹³⁴ Suchman, M. C. (1995). Managing legitimacy: Strategic and institutional approaches. *Academy of Management Review*, 20, 571-610.

¹³⁵ Meyer, J.W., & Rowan, B. (1977). Institutionalized organizations: Formal structure as myth and ceremony. *American Journal of Sociology*, 83, 340-63.

¹³⁶ Meyer & Rowan, 1977

¹³⁷ Levy, B., & Spiller, P. (1996). *Regulations, institutions, and commitment: Comparative studies of telecommunications*. New York: Cambridge University Press.

¹³⁸ Leblebici, H., Salancik, G.R., Copay, A., & King, T. (1991). Institutional change and the transformation of interorganizational fields: An organizational history of the U.S. radio broadcasting industry. *Administrative Science Quarterly*, 333-363; Garud, R.G., & Rappa, M.A. (1994). A socio-cognitive model of technology evolution: The case of cochlear implants. *Organization Science*, 5(3), 344-362; Tolbert, P.S., & Zucker, L.G. (1983). Institutional sources of change in the formal structure of organizations: The diffusion of civil service reform, 1880-1935. *Administrative Science Quarterly*, 28, 22-39.

determined by the extent to which the change is dictated, or legitimized, by outside institutional factors, including regulatory agencies or laws.¹³⁹

Institutional isomorphism

Institutional isomorphism is the homogenization process of industries, and occurs as corporations emerge as a field. An organizational field is defined as a collection of corporations and other actors that partake in a common meaning system, interact more frequently and fatefully with each other than with outside field members, and discuss issues that bring together members of the field with different goals and purposes.¹⁴⁰ These corporations are likely to become increasingly similar in structure, culture and output, despite efforts to distinguish between corporations.¹⁴¹ This homogenization has a positive impact on the health and legitimacy of an industry because highly structured corporations provide a structure for individuals to deal with uncertainty and constraint in the market.

The similarity between corporations is primarily due to three isomorphic processes: coercive (political influence), mimetic (corporations will copy each other and model a standard response to uncertainty) and normative (professionalism, workers come from similar backgrounds and educations, and share social networks, which cause them to think similarly).¹⁴² Organizational scholars recognize that corporations are embedded in social environments that influence their behaviors. Institutional theory offers a rich account of the way corporations

¹³⁹ Garad & Rappa, 1994; Tolbert & Zucker 1983

¹⁴⁰ Scott, R. (2003). *Organizations: Rational, natural and open systems*, 5th ed. Upper Saddle River, NJ: Prentice Hall

¹⁴¹ DiMaggio, P. & Powell, W.W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review*, 48, 147-160.

¹⁴² DiMaggio & Powell, 1983

comply with regulative, normative and cognitive environment elements in an attempt to secure legitimacy and support.¹⁴³

Institutional isomorphism suggests that the likelihood of a firm achieving power and stability grows when firms act similarly, and this similar behavior can allow firms to become sources of normative influence and form a stronger industry.¹⁴⁴ The strategic actions conducted by the corporations are a result of institutional pressures towards conformity exerted on the corporations.¹⁴⁵ Using institutional isomorphism as a part of this theoretical framework allows for the examination of whether institutional isomorphic lobbying techniques help or harm an industries' attempt to receive regulatory capture. Benefits include the fact that imitating rivals can allow firms to achieve legitimacy and fight for policy space in a concentrated industry.¹⁴⁶ Harmful effects of institutional isomorphism may include the inability to differentiate between lobbying efforts of the competing industries.

This dissertation research offers a way to expand theoretical development in the area of institutional isomorphism because the examination of broadcast and wireless industries competing for regulatory favoritism can empirically examine all three isomorphic processes. While much of the research utilizing isomorphism focuses on normative processes, the unique conditions of the broadcast and wireless industries allow for the examination of all three processes. Mimetic isomorphic processes can be examined due to the fact that a higher amount of uncertainty is faced by regulated firms,¹⁴⁷ combined with the high amount of uncertainty faced

¹⁴³ Pache, A.C., & Santos, F. (2010). When worlds collide: The internal dynamics of organizational responses to conflicting institutional demands. *Academy of Management Review*, 35(3), 455-476.

¹⁴⁴ DiMaggio & Powell, 1983; Oliver & Holzinger, 2008

¹⁴⁵ Oliver, 1991

¹⁴⁶ DiMaggio & Powell, 1983; Gray, V., & Lowrey, D. (2001). The institutionalization of state communities of organized interests. *Political Research Quarterly*, 54(2), 265-284.

¹⁴⁷ Cherry, 2006; Holburn & Vanden Bergh, 2002; Oliver, 1991; Oliver & Holzinger, 2008; Vining, Shapiro, & Borges, 2005

by media industries.¹⁴⁸ Coercive isomorphic processes can be examined due to the regulated nature of both industries. The fact that corporations in the respective industries face similar amounts of political oversight due to regulation means that the corporations face similar coercive pressures.

Normatively, when two industries are regulated by the same regulatory agency, it is likely that the industries have overlapping goals and employment. Institutional isomorphism suggests that the firms both within each industry and across industries will engage in similar lobbying techniques. This isomorphic impact causes social ties to contribute more to similarities in political behavior than common economic interests.¹⁴⁹ In addition to workers switching between the broadcast and wireless industries, there is also normative activity between lobbyists, industry workers and members of Congress. The experts selected to serve on regulatory commissions tend to have experience in the industry they are now regulating, and often return to the industry once their time serving as a regulator has ended.¹⁵⁰ Similarly, lobbyists also switch between careers. Lobbyists are often former members of Congress or formerly held another regulatory or executive branch position. There is a growing trend of these former members of Congress becoming lobbyists and then being re-elected and going back to Congress to act in a legislative component.¹⁵¹

Within the FCC, commissioners who have previously been employed by the regulated industry tend to support the regulated industry more than commissioners who have not been employed by the industry, however this support determines voting behavior less than the political

¹⁴⁸ Priest, C. (1994). An Information Framework for the Planning and Design of "Information Highways". Retrieved from: http://w2.eff.org/Infrastructure/Govt_docs/cits_nii_framework_ota.report

¹⁴⁹ Burris, V. (2001). The two faces of capital: Corporations and individual capitalists as political actors. *American Sociological Review*, 66, 361–381.

¹⁵⁰ McCraw, 1975; Kolko, 1970

¹⁵¹ Lipton, E. (2010, November 13). A journey from lawmaker to lobbyist and back again. *The New York Times*, A1.

party of the commissioner.¹⁵² Beyond specific regulatory agencies, national institutional structures have also been found to impact the efficiency of regulatory policies.¹⁵³ Political and social institutions impact the regulatory structure and performance of the telecommunications industry.

Resource Dependence Theory

Resource dependence theory examines ways corporations reduce environmental interdependence and uncertainty.¹⁵⁴ Resource dependence provides explanatory power for why external relationships are formed and valued by corporations. The theory is an open systems view that assumes that firms are dependent on external sources and provides explanatory power for the question of how corporations can control issues that occur outside of their business environment.¹⁵⁵ A corporation's survival is based on its utilization of both internal and external resources, and corporations can alter their dependence on other corporations through a variety of ways, including political activity.¹⁵⁶ While this dependency can create risk and uncertainty, firms that create linkages to important external sources can reduce environmental uncertainty.

Government policy, regulation, and enforcement are major forces in the external environment of business.¹⁵⁷ Since regulated firms do not have control over their external environment, they use political action to impact the regulatory environment. Empirical research has found that corporations in comparable regulatory environments enact similar patterns of

¹⁵² Gormley, W.T. (1979). A test of the revolving door hypothesis at the FCC. *American Journal of Political Science*, 23(4), 665-683.

¹⁵³ Levy & Spiller, 1996

¹⁵⁴ Hillman, A. J., Withers, M. C., & Collins, B. J. (2009). Resource dependence theory: A review. *Journal of Management*, 35(6), 1404-1427; Pfeffer, J., & Salancik, G. R. (1978). *The external control of organizations: A resource dependence perspective*. New York: Harper & Row.

¹⁵⁵ Pfeffer & Salancik, 1978

¹⁵⁶ Pfeffer & Salancik, 1978

¹⁵⁷ Hillman, A.J., Zardkoohi, A., & Bierman, L. (1999). Corporate political strategies and firm performance: Indications of firm-specific benefits from personal service in the U.S. government. *Strategic Management Journal*, 20, 67-81.

campaign contributions,¹⁵⁸ theoretically demonstrating that corporations facing the same environmental dependencies are most likely to use the same strategies. While the motivations of corporations under the resource dependence viewpoint is not that different than under institutional theory, or even capture theory, conceptually resource dependence approaches the topic from a different angle and brings in the notion of inter-organizational dependencies.

While political activity is a core area of importance for broadcast and wireless corporations, political activity is considered the most overlooked by resource dependence researchers.¹⁵⁹ This study will be making contributions to resource dependence theory by focusing on political action, an under-examined arm of the theory. While government oversight is considered one of the most uncertain environmental dependencies due to the heterogeneous interests of governmental agencies and political decision makers, it is also considered a key area for corporations to focus on, especially in regulated industries.¹⁶⁰ Incorporating resource dependence theory into the overall theoretical framework provides this dissertation with stronger explanatory power when examining ways firms cope with uncertainty. As uncertainty is a significant reality for the regulated broadcast and wireless industries, this theoretical contribution will shed further light on the motivations the industries have for their government relation strategies and actions.

Research Question

RQ1: How does competition between the wireless and broadcast industries affect their government relations strategies?

¹⁵⁸ Mullery, C. B., Brenner, S. N., & Perrin, N. A. (1995). A structural analysis of corporate political activity. *Business & Society*, 34, 147-171.

¹⁵⁹ Hillman, A. J., Withers, M. C., & Collins, B. J., 2009

¹⁶⁰ Aharoni, V., Maimon, Z., & Segev, E. (1981). Interrelationships between environmental dependencies: A basis for tradeoffs to increase autonomy. *Strategic Management Journal*, 2, 197-208; Pfeffer & Salancik, 1978

The dependent variable for this dissertation is the government relations strategies of the wireless and broadcast industries. The independent variable is the competition between the wireless and broadcast industries. Naming the industries under study for this dissertation was a deceptively hard task. In earlier times, differentiating between the broadcast and wireless/telecommunications industries was fairly intuitive because the industries produced different products and offered distinctive services. However, the technological innovations that impact regulatory favoritism also make it more difficult to provide exact terms that delineate the industries. With wireless corporations offering some of the same content as broadcasters, only through a different platform, the line between the industries is difficult to define, as is the distinction between the wireless industry and the more general telecommunications industry. This dissertation selected the terms broadcast and wireless industries based on the FCC licenses the industries receive for spectrum usage (e.g., if Verizon receives a spectrum license for wireless services, it is categorized as a wireless corporation operating in the wireless industry, not as a general telecommunications corporation). It is hoped that these distinctions help future scholars that grapple with the distinction of, and naming, of media industries.

However, these terms are given with the understanding that the wireless industry is not a standalone industry, but rather one that developed from a history of telecommunication products, and shaped by the telecommunications industry. With this understanding, the context of the wireless industry within the larger environment of the telecommunications industry will be provided.

Design of the Dissertation

This dissertation examines the effect increased competition between the wireless and broadcast industries has on the government relations strategies of both industries, through the

creation of lobbying expenditure and campaign contribution data sets and interviews with lobbyists employed in both industries. The main empirical focus of the study is the government relation strategies of the broadcast and wireless industries. The information collected from these empirical studies are not considered in a vacuum, but rather through a historical context to better understand the development of the legal and technological distinctions of both industries.

Theoretically, this empirical focus will allow for the expansion of a theoretical framework that examines the motivations and activities of the regulated industries.

Throughout the study, across the various methodological approaches, three key research propositions are studied: (1) the broadcast and wireless industries seek regulatory capture, and view the FCC as capable of being captured by one of the dominant industries, (2) the broadcast and wireless industries will attempt to differentiate their government relations activities and extract their activities from isomorphic processes in order to distinguish themselves before the FCC and Congress, and (3) the broadcast and wireless industries will attempt to reduce environmental uncertainty by building relations and increasing political action.

The main chronological focus of this dissertation is 1998 – present time. This time period was selected for several reasons. This time period follows the 1996 Telecommunications Act, a piece of legislation that served as an impetus for further innovation in the telecommunications industry and further blurred the lines between the broadcast and wireless industries, setting the stage for the two industries to begin competing for regulatory favoritism. The time period also follows the implementation of spectrum auctions in 1994. While the broadcast industry does not participate in the spectrum auctions, the participation of the wireless industry showed the market value of the licenses, and also showed that a competing industry was willing to pay in order to receive spectrum space. The amount of money the wireless industry

was willing to pay for spectrum license allowed the wireless companies to further expand wireless networks and broadband capabilities, while at the same time endearing the wireless industry to members of the FCC and Congress who valued the revenue source.

The time period was also selected because one of the primary data sources, the website Open Secrets, maintains electronic filings on lobbying expenditures and campaign contributions from 1998-present day. Per the Lobbying and Disclosure Act of 1995, lobbyists are required to register with the clerk of the House of Representatives and the Secretary of the Senate, and file quarterly reports disclosing lobbying actions. The lobbying data is collected by the Center for Responsive Politics and posted electronically on Open Secrets with public access.

While this dissertation acknowledges the limitations of using fourteen years of data to create the government relations databases, it is argued that industry changes that have occurred over the past fourteen years make this time period a sufficient enough era/length of time to study the effect increased competition has had on the government relations strategies of the broadcast and wireless industries. Additionally, to partially compensate for the relatively recent main chronological focus, a historical examination of the growth of both industries and examination of the development, and decline, of the technological and legal distinctions of the industries will be included in the dissertation.

As a study that aims to uncover new knowledge on lobbying strategies and extend theoretical contributions, this dissertation will use a combination of quantitative and qualitative research methods to analyze lobbying strategies. Previous research on research design recommends a mix of quantitative and qualitative analysis when conducting field research in the attempt to uncover new information.¹⁶¹ Edmondson and McManus define an intermediate field

¹⁶¹ Edmondson, A. C., & McManus, S. E. (2007). Methodological fit in management field research. *Academy of Management Review*, 32, 1155-1179.

of research as one that has research questions that proposes relationships between new and established constructs. This dissertation topic falls under that category because it is attempting to connect the concept of competition for regulatory favoritism (a new relationship for the broadcast and wireless industries) to the established constructs of capture theory and institutional isomorphism. As a dissertation topic attempting to contribute research to an intermediate field, a combination of quantitative and qualitative data collection is recommended. The goal of the data collection and analysis is preliminary or exploratory testing of new propositions and/or constructs. The theoretical contribution at this research stage is generally a provisional theory that often integrates previously separate bodies of work.¹⁶²

The main primary data sources for this dissertation are interviews with lobbyists employed by broadcast and wireless corporations and trade corporations, and the creation of lobbying expenditure and campaign contribution data sets. The research for this dissertation will contribute unique knowledge to the area of regulatory capture by examining different data than previous work on government relations strategies. Previous research, which has assumed only one dominant agency is seeking capture, has used PAC contributions, campaign contributions, ex parte comments and public meeting transcripts. Little to no research has used lobbying expenditure data to study the way two dominant industries attempt to seek regulatory capture. This dissertation will also attempt to deepen the research by conducting structured, in-depth interviews with lobbyists for the broadcast and wireless industries. The qualitative data attained through the interviews can provide information on the way the industries attempt to be captured, and the way members of the industry evaluate regulatory capture. Capture is a difficult association to measure through the use of secondary data alone, and it is hoped that the interviews will strengthen the understanding of capture in the literature.

¹⁶² Edmundson & McManus, 2007

The remainder of this dissertation is structured as follows:

Chapter Two situates corporations' lobbying and campaign contribution activities in a legal context. The chapter examines the importance of political activity to corporations, the constitutionality of lobbying and campaign contributions, the disclosure requirements needed for lobbying and campaign contribution activities, and the impact super PACs and new independent expenditure rules are having on corporate political activity. The chapter also provides context for the lobbying expenditures and campaign contributions of the broadcast and wireless by industries by comparing broadcast and wireless corporation's lobbying and campaign contribution activities to each other and to general industry trends.

Chapter Three examines the lobbying expenditure and campaign contribution behaviors of the broadcast and wireless industries, and if the behaviors are becoming more or less isomorphic as the industries compete for regulatory favoritism. This examination is conducted through the analysis of lobbying expenditure and campaign contribution data sets created for this dissertation.

Chapter Four examines the framework of lobbying through qualitative interviews. The chapter examines the organizational structure under which broadcast and wireless corporations formulate lobbying strategies. The chapter also examines the value corporations place on lobbying, and the resources available to broadcast and wireless industry lobbyists, through qualitative interviews with lobbyists in the broadcast and wireless industries.

Chapter Five examines whether broadcast and industry lobbyists view the FCC as captured by one industry, and if the lobbyists believe there has been an increase in competition between the two industries. The examination is drawn from the interviews conducted with the lobbyists.

Chapter Six provides a conclusion and overview to the empirical studies and theoretical development offered in the preceding chapters, and offers final thoughts on the question of what effect competition between the broadcast and wireless industries has on the government relation strategies for both industries.

Conclusion

By studying the competition between the wireless industry and broadcast industry, and the impact the increased competition has on the government relations strategies of both industries, this dissertation aims to break new ground in the study of the formation of government relations strategies when industries are faced with increased competition and attempting to gain regulatory capture. From an applied standpoint, trade press and mainstream media stories detailing the competition between the broadcast and wireless for spectrum allocation and technological innovation (e.g., the Connect America Fund) are being written almost daily, highlighting the impact that the government relations strategies, and policy fights, will have on wireless and broadcast policy in the future. To ensure that this dissertation is not only timely, but also timeless, an effective theoretical framework also has been constructed to examine the dependent and independent variables.

Using a theoretical framework comprised of regulatory and management theories allows this examination of the government relations strategies of the wireless and broadcast industries to be studied from different viewpoints and provide a fully fleshed out argument regarding the motivations, development and objectives of the government relations strategies. The empirical studies bring new information to the study of government relations strategies, and allow me to study both through the corporations' lobbying and campaign contribution actions, as well as

through their personal explanations, what goals the government relations activities attempt to meet, and if these goals are changing as competition for regulatory favoritism increases.

CHAPTER 2

MAKING FRIENDS AND INFLUENCING CANDIDATES: A LEGAL GUIDE TO CORPORATE POLITICAL ACTIVITIES

As the 2012 presidential race continues, the second biggest story, behind the competition for the Republican nomination, is the rise of super political action committee (PAC) groups, which have raised more than \$100 million for the 2012 election cycle.¹⁶³ Super PACs, otherwise known as independent expenditure-only PACs, are prohibited from contributing to candidates. Due to the fact that super PACs engage only in independent expenditures (such as advertisements), they may receive unlimited contributions from individuals, corporations and unions. Super PACs are being recognized as a new, dominant force shaping the campaign race.¹⁶⁴ The rise and influence of super PACs have resulted in a renewed discussion regarding the unbalanced influence individuals or corporations with substantial resources (nearly 25% of all super PAC donations have come from five donors¹⁶⁵) can gain over the democratic political process. The chapter examines why lobbying expenditures and campaign contributions and expenditures are protected by First Amendment rights and Supreme Court decisions.

This chapter begins by examining the motivation for corporations to conduct political activity, as well as the benefits corporations can hope to gain from political activity. The chapter then situates lobbying expenditures and campaign contributions and expenditures within a legal

¹⁶³ McIntire, M., & Luo, M. (2012, February 26). Fine line between 'super PACs' and campaigns. *The New York Times*, A1.

¹⁶⁴ McIntire & Luo, February 26, 2012; Schouten, F. (2012, February 29). Super PAC, candidates blur the line ahead of November 6. *USA Today*, retrieved from <http://www.usatoday.com/news/politics/story/2012-02-29/super-pac-candidates-coordination/53307020/1>.

¹⁶⁵ Schouten, F., Korte, G., & Schnaars, C. (2012, February 22). 25% of super PAC money coming from just 5 rich donors. *USA Today*, retrieved from <http://www.usatoday.com/news/politics/story/2012-02-21/super-pac-donors/53196658/1>.

context. In addition to examining the legality of lobbying and campaign contributions, this chapter also examines the legal framework surrounding disclosure requirements associated with lobbying and campaign contribution activities, and the impact *Citizens United v. FEC* has had on political activities of corporate corporations. After examining the legality of corporate political activities, the chapter specifically examines the lobbying and campaign contribution activities of the communication industries and places them in the context of PAC and lobbying activity for other industries.

The chapter concludes by examining the rise of super PACs in greater detail and examining to what extent communication corporations have been involved in super PAC contributions. The intentions of this chapter are two-fold: to situate lobbying and campaign contributions and expenditures in a legal framework, and to examine the lobbying and campaign contribution activities of the broadcast and wireless industries. Examining the constitutionality of corporate lobbying and contribution activities provides a better understanding of the reasons that actions that may be considered unfair and unbalanced are legally protected by individual and organizational First Amendment rights. The legal examination provided in this chapter also provides context for the government relations activities this dissertation will examine in subsequent chapters.

Corporate Political Activity

The structure of the American political economy causes corporations to rank amongst the nation's most important political institutions, and make business corporations inevitable participants in the political process.¹⁶⁶ Corporations can participate in the political process through lobbying expenditures, the creation of PACs (through which federal campaign

¹⁶⁶ Epstein, E. (1980). Business political activity: Research approaches and analytical issues. In L. Preston (ed.), *Research in Corporate Social Responsibility and Policy*, Vol. 2, 1-55. Greenwich, CT: JAI Press.

contributions can be made) and independent campaign expenditures (through which corporations can conduct political campaign communication). Corporations began to set up offices in Washington, DC, create PACs, and establish lobbying efforts in the 1970s, after changes to the Federal Election Campaign Act (FECA) prohibited corporations from providing contributions to political candidates. While FECA prohibited corporate money from directly going to candidates, the law did allow corporations to form PACs.¹⁶⁷ PAC money is not corporate money merely funneled to another account however; rather PAC money is raised from the donor class at a corporation (e.g., shareholders and management level employees), and the solicited funds are then made as PAC contributions to candidates.

As FECA allowed business corporations to form PACs, the notion that government relations activities were critical for corporations became a core belief at corporations.¹⁶⁸ FECA increased the disclosure requirements of contributions to federal campaigns and placed legal limits on the contributions individuals and corporations could make to campaigns. FECA also required all PACs to register with the Federal Elections Committee (FEC) and keep detailed records on campaign contributions and expenditures made with the intention of influencing the election or nomination of a person to federal office.¹⁶⁹

The primary way many corporations are active is through PAC contributions, with 24% of all money donated for House and Senate candidates coming from PACs.¹⁷⁰ The majority of PACs are small, and raise from a few hundred to a few thousand dollars per election cycle, which is donated to a handful of candidates. Examples of communication industry corporations with small PACs include Horizon Telecom (\$400 contributed to candidates for the 2012 election

¹⁶⁷ Berry, J.M., & Wilcox, C. (2006). *The interest group society*, 4th Edition. New York: Pearson Longman.

¹⁶⁸ Berry & Wilcox, 2006

¹⁶⁹ Middleton, K., & Lee, W. (2011). *The law of public communication*, 8th edition. Boston: Allyn & Bacon.

¹⁷⁰ Berry & Wilcox, 2006

cycle), One Communications (\$500 contributed to candidates for the 2012 election cycle), and Jones Media Networks (\$1,000 contributed to candidates for the 2012 election cycle). Large corporate PACs however, are often very big, and raise anywhere from a hundred thousand dollars to over a million dollars per election cycle, which is contributed to almost all of the candidates and races.¹⁷¹ Examples of communication industry corporations with large PACs include T-Mobile USA (\$253,000 contributed to candidates for the 2012 election cycle), Time Warner Cable (\$304,500 contributed to candidates for the 2012 election cycle), and Verizon Wireless (\$746,600 contributed to candidates for the 2012 election cycle).

Motivations for corporations to be politically active include the corporations' access to monetary resources, the prestige that political involvement can bring the corporation's management (e.g. networking through advisory committees and strengthening personal contacts), the information advantage of the corporation and the ability of the corporation to mobilize stakeholders to become politically involved.¹⁷² For regulated corporations, additional motivations include the reliance these corporations have on government officials and institutions for economic survival and profitability, and the potential for increased access to members of Congress and the executive branch in order to attempt to influence regulatory agency decisions.¹⁷³

The importance of corporate political activity, as well as the legal restrictions placed on lobbying activities was highlighted during the recent SOPA/PIPA legislative battles. The piracy

¹⁷¹ Berry & Wilcox, 2006; Center for Responsive Politics PAC data

¹⁷² Lenway, S.A., & Rehbein, K. (1991). Leaders, followers, and free riders: An empirical test of variation in corporate political involvement. *The Academy of Management Journal*, 34(4), 893-905; Salamon, L.M., & Siegfried, J.J. (1977). Economic power and political influence: The impact of industry structure on public policy. *The American Political Science Review*, 71(3), 1026-1043.

¹⁷³ Masters, M.F., & Keim, G. (1985). Determinants of PAC participation among large corporations. *Journal of Politics*, 47, 1158-73; Pittman, R. (1988). Rent-seeking and market structure: Comment. *Public Choice*, 58, 173-185; Zardkoohi, A. (1985). On the political participation of the firm in the electoral process. *Southern Journal of Economics*, 51, 804-817.

legislation backed by traditional media corporations shifted from legislation almost certain to become law, to legislation that quickly lost Congressional support due to the efforts of Internet corporations. One of the takeaway impressions of this change was that the Internet industry outpaced traditional media companies in both public persuasion and lobbying. The ability of the Internet industry to take control the issue however, was not only attributed to the industry's proactive stance on the piracy legislation, but also to the inability of the Motion Picture Association of America (MPAA) to engage in equal lobbying due to the legal restrictions placed on the trade association's leader.¹⁷⁴

As the head of the MPAA, former Senator Christopher Dodd would be normally be at the center of the traditional media's side in the piracy debates; however the legal restrictions in place for lobbyists silenced his voice. Lobbying legislation however, prevents former Senators to lobby Congress for two years after leaving office.¹⁷⁵ As Dodd only retired six months prior to the piracy legislation battle, this means that the former Senator could not use his considerable Washington connections to meet with former Congressional colleagues, attach his name to MPAA statements, or serve as a voice for the industry. While Dodd could strategize behind the scenes, the restrictions placed on lobbying activities may have played a role in the traditional media industries' lackluster presence during the piracy battles. The inability of Dodd to lobby on behalf of his trade association highlights the importance of political activity for corporations and the delicate balance between First Amendment rights and legislative oversight that corporations must achieve.

¹⁷⁴ Orden, E., & Fowler, G.A. (2012, January 19). Hollywood loses the story. *The Wall Street Journal*, B1.

¹⁷⁵ Middleton & Lee, 2011

Lobbying

Constitutionality of Lobbying

The freedoms afforded to all Americans through the First Amendment allow lobbyists the ability to conduct their activities. Lobbying is related to some of America's most fundamental First Amendment rights, however the extent to which lobbying is covered by the First Amendment is a matter of continuous debate for Congress and the Supreme Court.¹⁷⁶ The majority of government relations activities operate under First Amendment protection, particularly freedom of speech and freedom to petition. Considered speech directed to the government, lobbying is a form of political speech.¹⁷⁷

Political speech has been found to be a unique form of speech that is exempt from antitrust laws due to its First Amendment components.¹⁷⁸ Freedom of political speech allows corporations to provide input and help create policy that will contribute to the corporations' well-being and competitive advantage. To consider speech to the government a business activity would impede on the corporations' First Amendment rights and be considered an unconstitutional infringement on freedom of speech and petition. Speech directed to the government furthers the process of self-government by allowing corporations to have a voice in shaping policies governing their industry. Much like capture theory, which states that one of the reasons an industry can capture a regulatory agency is because the industry has an information advantage over the regulators, the information advantage offered by industries is also helpful to government actors when formulating policy. While lobbying is certainly not the only way to share information with a regulatory agency or legislator, the access lobbyists have to decision

¹⁷⁶ Schoeneman, B.W. (2011). The scarlet L: Have recent developments in lobbying regulation gone too far? *The Catholic University Law Review*, 60, 505-532.

¹⁷⁷ Middleton & Lee, 2011

¹⁷⁸ Middleton & Lee, 2011

makers is often unparalleled and causes lobbyists to be valuable entities at organizations. The information shared by lobbyists is often appreciated by Congress, whose legislators have to vote on such a wide variety of issues that they often seek out (or at least are willing to listen) to information given by lobbyists on policy suggestions.¹⁷⁹

Noerr-Pennington Doctrine

The framework under which lobbyists can operate is shaped by the *Noerr-Pennington* doctrine. The *Noerr-Pennington* doctrine is based on two cases that established that political speech directed to the government is protected by the First Amendment and exempt from antitrust legislation. First Amendment rights (particularly freedom of speech and freedom to petition the government for redress of grievances) are protected political speech, even when the only reason for the speech to the government is to lobby Congress to create legislation that will harm competitors.¹⁸⁰ The Supreme Court ruled that merely being a corporate entity does not diminish the company's First Amendment right to speech and petition; and political activities, even when competitive in nature, are immune from antitrust laws.

In the case of *Eastern Railroads v. Noerr Motor Freights*, the Eastern Railroad Company conducted a negative public relations campaign against the trucking industry as part of the railroad industry's support for legislation that would reduce the weight limits commercial trucks were allowed to carry. By hiring a public relations agency and conducting a negative publicity campaign about the trucking industry, Eastern Railroad was able to win public support for the railroad industry, and enact legislation that reduced the weight limit truckers were allowed to carry. The trucking industry felt that the actions of the railroad industry were unfair and sued the railroads, claiming that the railroad industry's activities were illegal under the Sherman Act.

¹⁷⁹ Hansen, J.M. (1991). *Gaining access: Congress and the farm lobby, 1919-1981*. Chicago: The University of Chicago Press.

¹⁸⁰ *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 135 (1961)

In a unanimous decision, the Supreme Court ruled in favor of the railroads, stating that the actions of the railroad industry were political activities, not business activities, and as such, was immune from anti-trust considerations. In *Noerr*, the Supreme Court noted that barring lobbying activities (speech to the government) would substantially impair the ability of people to make their views known and this impairment would reflect a substantial impediment to democracy and would infringe on the First Amendment rights of the railroad industry employees. The Court also noted that barring corporations willing to spend money to lobby on issues they care about would cause government officials to be unable to receive helpful information, while at the same time denying people the right to petition when the right is most vital to them.

Similarly, in *United Mine Workers v. Pennington*, the Supreme Court found that efforts to influence public officials do not violate antitrust laws, even if the intent of the influence is to eliminate competition.¹⁸¹ *United Mine Workers v. Pennington* was a labor case in which the trustees of the United Mine Workers of America Welfare and Retirement Fund sued the defendant, partners in a coal mining company for royalty payments, and the defendants filed a cross-claim accusing the mine workers of conspiring to restrain and monopolize trade. The majority of the case revolved around Sherman Act issues outside of the realms of political speech, however the Supreme Court cited and supported the *Noerr* decision by stating that “concerted efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition.”¹⁸²

Lobbying Disclosure Acts

One area in which lobbyists do not enjoy complete First Amendment protection is the area of disclosing lobbying activities. Lobbying the government can be carried out through

¹⁸¹ *United Mine Workers v. Pennington*, 381 U.S. 657, 670 (1965)

¹⁸² *United Mine Workers v. Pennington*, 381 U.S. 657, 670 (1965), pp. 381 U. S. 669-672.

direct contacts with legislators or through indirect public relations campaigns (e.g., grassroots or astroturfing efforts).¹⁸³ Either way, lobbyists are protected by the First Amendment, but lobbyists are required to disclose their lobbying actions. Lobbying disclosure laws require lobbyists to register with the Clerk of the House of Representatives and the Secretary of the Senate, and submit quarterly reports of their lobbying expenditures.¹⁸⁴ The first piece of lobbying legislation was the Federal Regulation of Lobbying Act (FRLA) of 1946. With some amendments, the FRLA remained in place until the passing of the Lobbying Disclosure Act (LDA) of 1995. The LDA is still the primary piece of lobbying legislation, although the Honesty in Leadership and Open Government Act (HLOGA) of 2007 added to the LDA.

The FRLA required anyone whose “principal purpose” was to influence legislation in Congress to register with the House and Senate and file quarterly financial reports. The reports required the lobbyists to disclose the names of their clients and their contact information, how much the lobbyists were paid, a list of the lobbying expenditures, the identity of any publications the lobbyists caused articles or editorials to be printed in, and particular legislation the lobbyist was attempting to influence. However, the FRLA did not require the lobbyist to disclose the total amount of lobbying expenditures and for what policy objectives the lobbying expenditures were spent on, nor did the FRLA attempt to regulate the conduct of lobbyists or the financial aspect of lobbying.

The LDA requires lobbyists whose income from lobbying government contacts exceeds \$2500 in a quarter, and corporations with in-house lobbyists whose lobbying expenses are more than \$10,000 per quarter, to register with the House and Senate.¹⁸⁵ Under the LDA, trade

¹⁸³ Astroturfing is a political strategy in which corporations create advocacy in which the political efforts are designed to look like grassroots efforts. Middleton & Lee, 2011

¹⁸⁴ Middleton & Lee, 2011

¹⁸⁵ Middleton & Lee, 2011

associations generally have to register because their principle purpose is often to influence legislation. While lobbyists must disclose their names, amount they spent lobbying for the quarter, issues lobbied on and venue lobbied to, they do not have to disclose the specific people they lobbied to, nor do they have to itemize lobbying expenses by issue. Some people are excluded from having to register as lobbyists, including public officials acting in an official capacity, newspapers and other mass media, and people who testify before Congressional committees on legislative issues. Also excluded are people who spend less than 20 percent of their time at work lobbying.

The HLOGA amendment was enacted in 2007 in part as a response to the Jack Abramoff scandal.¹⁸⁶ The law restricted lobbyist sponsored travel and gifts, prohibited House candidates from flying on private planes with lobbyists and required Senate and presidential candidates to pay fair market value for private plane rides. HLOGA also prohibited lobbyists from giving gifts or meals that violated Congressional rules and sought to restrict the revolving door between former members of Congress and the lobbying industry. Under HLOGA, former Senators must wait two years before they can lobby Congress and former House members must wait one year (the bans also apply to top Congressional staff members). HLOGA also requires the disclosure of bundling (combining contributions from multiple donors) and requires the Secretary of Senate and House Clerk to maintain searchable electronic databases of reports filed by registered lobbyists. Most recently, Obama's Executive Order on lobbying included a prohibition on executive branch employees receiving gifts from lobbyists, imposed a two year ban on working on issues effecting a former employer, and a two-year ban on lobbying the executive branch after leaving government service.

¹⁸⁶ Middleton & Lee, 2011

The FRLA in particular was criticized for its vague language and difficulty in enforcing,¹⁸⁷ and all three lobbying disclosure laws include loopholes that make it possible for seemingly restricted lobbying activities to still take place. For example, HLOGA bars lobbyists from paying for travel for legislators and traveling with government officials, but corporate clients and friends of the lobbyists can still pay for the travel, and the lobbyists can meet the legislators at their destinations.

One of the reasons that the lobbying acts include loopholes and vague language is because the laws are drafted with the First Amendment in mind, and the laws must be careful not to infringe on the First Amendment rights of the lobbyist.¹⁸⁸ If too restrictive, the law will be struck down as unconstitutional by the judiciary. Congress attempts to balance the freedom of speech and freedom of petition clauses of the First Amendment with the desire for transparency in lobbying activities.¹⁸⁹ These attempts at balance often result in laws that are written with such general language that they are heavily criticized for their vagueness and ineffectiveness.¹⁹⁰ Despite these criticisms, Congress is careful when creating lobbying laws due to the legal opposition previous lobbying acts have received.

Constitutionality of the Lobbying Acts

The FRLA was challenged by lobbyists for being unconstitutionally vague and unclear in *U.S. v. Harris* (1954). The Supreme Court upheld the constitutionality of the lobbying act in *Harris*, but narrowed the scope and application of the FRLA. The *Harris* decision narrowed the definition of lobbying to only apply to lobbying directly done to members of Congress on

¹⁸⁷ Bado, B. (1976). Federal lobbying disclosure legislation. *26 American University Law Review*, 972-1017; Schoeneman, B.W. (2010). The scarlet L: Have recent developments in lobbying regulation gone too far? *60 Catholic University Law Review*, 505-532.

¹⁸⁸ Brand, S.M., Ryan, S.M., & Nahra, M.N. (1993). Disclosing "lobbying" activities: A critical examination of the federal regulation of lobbying act and the Byrd amendment. *45 Administrative Law Review*, 343-365.

¹⁸⁹ Bado, 1976

¹⁹⁰ Bado, 1976

pending or proposed federal legislation. This definition meant that lobbyists who visited Congressional staffers were not considered lobbyists, nor were people who spent less than half of their time lobbying. The *Harris* Court noted that the Court must find a compelling interest for the infringement on First Amendment rights that the lobbying disclosure act created in order to rule in favor of upholding the FRLA. In ruling to uphold the disclosure act, the Court perceived the informational value of lobbying disclosure forms as sufficiently compelling to allow a slight infringement of First Amendment protection.¹⁹¹

The balancing test of the lobbying disclosure reports (information given in the lobbying reports vs. infringement on First Amendment rights) has been compared to the balancing tests given by the court in other cases that rule on the disclosure requirements, including *Buckley v. Valeo* and *NAACP v. Alabama*. *Buckley v. Valeo* was a campaign finance case in which the Supreme Court upheld the FECA requirements that set limits on campaign contributions and required the disclosure of campaign contributions and contributors.¹⁹² The Supreme Court ruled that any potential risks associated with disclosing donor information were outweighed by the benefits of having the donor information made public knowledge.

In *NAACP v. Alabama* however, the Supreme Court sided with the NAACP when the state of Alabama attempted to prevent the civil rights organization from conducting further business in the state, and issued a subpoena for various organizational records, including membership records.¹⁹³ In these circumstances, the Supreme Court ruled that the risk associated with making the membership rolls publically available outweighed the benefits of making the information a matter of public record. These comparisons to *Buckley v. Valeo* and *NAACP v. Alabama* note that that the Supreme Court views having to share lobbying information as more

¹⁹¹ Bado, 1976

¹⁹² *Buckley v. Valeo*, 424 U.S. 1 (1976)

¹⁹³ *National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958)

in line with having to share campaign contribution information than with having to share controversial membership roll data. The court does not view the disclosure of lobbying information as dangerous, or as a severe impediment to the First Amendment rights of lobbyists.

What do Lobbying Disclosure Laws Accomplish?

Lobbying disclosure laws accomplish the sharing of some information regarding lobbying activity to make lobbying appear a more legitimized activity. The laws also allow Congress and other government workers to give the impression that they are interested in regulating the oversight of lobbying activity. This impression allows members of Congress to attempt to distinguish themselves from lobbyists, and demonstrate that Congress is interested in regulating lobbying. Congress often pushes for increased lobbying legislation, but is confined from creating additional legislation due to the First Amendment rights that protect lobbyists' right to speech and petition.

A cycle of lobbying scandals and increased efforts at lobbying legislation has been found to occur in Congress, usually after a highly publicized lobbying scandal.¹⁹⁴ After a lobbying scandal occurs, Congress historically attempts to pass increased lobbying legislation, in the effort to separate the members of Congress from the private lobbyist(s) accused of improprieties. By attempting to enact new lobbying legislation, members of Congress can position themselves as opposed to lobbying, and separate themselves from the lobbyists they may have interacted with by creating legislation that increases the monitoring and oversight of lobbying activities. Since the primary goal of all legislators is reelection, members of Congress attempt to be viewed as regulators of lobbying activities, and not active participants in lobbying practices.¹⁹⁵

¹⁹⁴ Thomas, 1993

¹⁹⁵ Mayhew, 1974; Thomas, 1993

Overall and Communication Industry Lobbying Patterns

Overall Trends

Lobbying disclosure forms allow the lobbying expenditures of the broadcast and wireless industries to be placed in the context of overall lobbying spending by corporations and trade associations. The data in the quarterly reports lobbyists are required to file with the House and Senate is collected by the Center for Responsive Politics. The Center for Responsive Politics ranks lobbying efforts by both sector and more specific industry listings. Across industries, lobbying activity has continually risen since 1998, in terms of both money spent on lobbying expenditures and the number of lobbyists filing disclosure reports.¹⁹⁶ The top ten spenders in terms of lobbying expenditures for 2011 consist of five trade associations and five corporate corporations (Table 1). Among the five corporations on the top ten list are Comcast (ranked 8th), a corporation with heavy broadcast policy interests, and AT&T (ranked 9th), a corporation with heavy wireless policy interests. Several other corporations with communication interests are right outside of the top ten, with the National Cable & Telecommunications Association ranked 11th, Verizon ranked 13th, and the National Association of Broadcasters ranked 18th.

¹⁹⁶ Lobbying Databases (2012, February 6). Open Secrets, retrieved from <http://www.opensecrets.org/lobby/index.php>.

Table 1

Top Lobbying Spenders

Lobbying Client	Expenditure Amount	Year
United States Chamber of Commerce	\$66,370,000	2011
General Electric	\$26,340,000	2011
National Association of Realtors	\$22,355,463	2011
American Medical Association	\$21,490,000	2011
Blue Cross/Blue Shield	\$20,985,802	2011
ConocoPhillips	\$20,557,043	2011
American Hospital Association	\$20,452,147	2011
AT&T Inc.	\$20,230,000	2011
Comcast Corp	\$19,260,000	2011
Pharmaceutical Research & Manufacturers of America	\$18,910,000	2011

Open Secrets categorizes all industries into thirteen sectors. The broadcast and wireless industries are categorized as part of the Communications/Electronics sector, which ranked 4th out of 13 sectors for both the overall rankings for all lobbying expenditure activity from 1998-2011, and also ranked 4th overall for lobbying in 2011 (Table 2).

Table 2

Ranked Sectors Lobbying Expenditures, 1998-2011

Sector	Total
Health	\$4,874,607,744
Miscellaneous Business	\$4,866,798,457
Finance/Insurance/Real Estate	\$4,857,488,775
Communications/Electronics	\$4,052,426,200
Energy/Natural Resource	\$3,600,150,212
Other	\$2,608,296,970
Transportation	\$2,529,460,538
Ideology/Single-Issue	\$1,653,419,103
Agribusiness	\$1,438,932,316
Defense	\$1,400,531,712
Construction	\$539,528,181
Labor	\$491,992,685
Lawyers & Lobbyists	\$382,200,029

Communication Industry Trends

Within the Communications/Electronics sector, industries are divided into seven divisions (Table 3). Corporations in the broadcast and wireless industries are included in the TV/Movies/Music division (broadcast corporations), the Telephone Utilities division (wireless corporations) and Telecom Services & Equipment (wireless corporations).

Table 3

Industries in the Communications/Electronics Sector

Industry	Total Spending	Year
Computers/Internet	\$126,457,852	2011
TV/Movies/Music	\$123,007,063	2011
Telecom Services & Equipment	\$58,494,452	2011
Telephone Utilities	\$49,349,466	2011
Electronics Manufacturing & Services	\$18,842,339	2011
Printing & Publishing	\$12,649,643	2011
Miscellaneous	\$4,210,000	2011
Communications/Electronics		

Corporations with broadcast interests are categorized as part of the TV/Movies/Music division, along with cable corporations, movie and recording studios, and trade associations for broadcast, cable, music and motion picture groups. Corporations in this group include Comcast, NewsCorp, ClearChannel, and Sony Corporation. The TV/Movies/Music division is categorized as being interested in policy issues surrounding spectrum allocation, copyright protection and piracy issues.¹⁹⁷ Wireless corporations and trade associations are included in both the Telephone Utilities and Telecom Services & Equipment divisions. The Telephone Utilities division generally includes traditional telecommunications corporations formed from the breakup of AT&T, while the Telecom Services & Equipment division features corporations that rose to prominence as part of the tech bubble in the late 1990s. The Telephone Utilities division has a long history of regulation and the relationship between the government and division has become further entwined as corporations in the division attempt to integrate traditional phone services with wireless, Internet and cable television offerings.¹⁹⁸ Corporations in this group include AT&T, Verizon, CenturyLink and Embarq Corporation. The Telecom Services & Equipment

¹⁹⁷ Lollie, 2010

¹⁹⁸ Spires, 2010a

division is categorized as interested in policy issues surrounding cellular phone and Internet regulation, opposing Internet taxes and receiving access to spectrum controlled by the FCC.¹⁹⁹ Corporations in this group include Qualcomm Inc., Sprint Nextel, Deutsche Telekom and Motorola Solutions.

Out of the three divisions examined for this dissertation, lobbying patterns have varied since 1998 (Figure 1). The TV/Movies/Music division spent the most on lobbying in 2011, and has steadily increased lobbying efforts in the past 13 years.²⁰⁰ The Telecom Services & Equipment division followed the TV/Movies/Music division in lobbying expenditures. The Telecom Services & Equipment division's lobbying expenditure spending peaked in the late 1990s along with the rise of the tech bubble, and declined considerably after the tech bubble burst in the early 2000s.²⁰¹ Lobbying expenditure spending is again on the rise for the Telecom Services & Equipment division and the division consistently ranks in the top twenty for lobbying expenditures. The Telephone Utilities division devoted the least amount of resources to lobbying expenditures of the three divisions. Lobbying expenditure spending by the Telephone Utilities division peaked in 2006 when Congress was considering a major overhaul of communications law.²⁰² Since 2006, spending has declined, but the inclusion of AT&T and Verizon in the division causes the group to remain one of the top spenders in the Communications/Electronics sector.

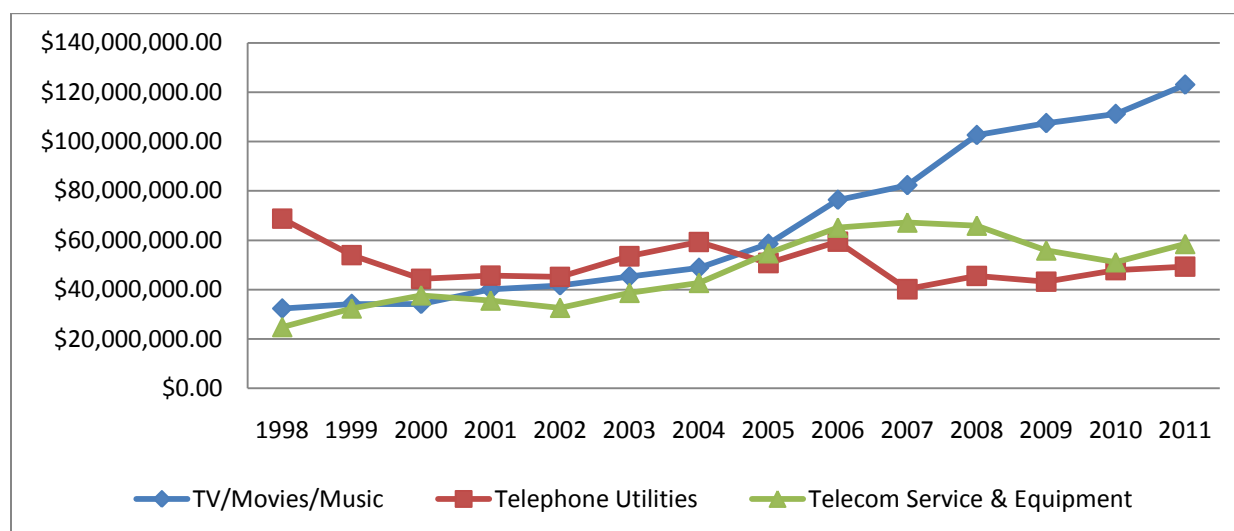
¹⁹⁹ Spires, 2010b

²⁰⁰ Lollie, 2010

²⁰¹ Spires, 2010b

²⁰² Spires, 2010a

Figure 1

Lobbying Activity for Divisions Containing Broadcast and Wireless Corporations

In addition to examining the overall spending of the industries, the spending of individual corporations within the divisions is also examined in order to determine the top ten spenders in each industry, and the range of lobbying spending by corporations comprising the top ten (Tables 4 – 6).

Table 4

Top 10 Spenders in the TV/Movies/Music Division

Corporation	Expenditure Amount	Year
Comcast Corp	\$19,260,000	2011
National Cable & Telecommunications Assn	\$18,530,000	2011
National Assn of Broadcasters	\$13,960,000	2011
Time Warner Cable	\$8,380,000	2011
News Corp	\$7,060,000	2011
National Amusements Inc	\$7,030,000	2011
Recording Industry Assn of America	\$5,706,844	2011
Liberty Media	\$5,070,000	2011
CC Media Holdings	\$4,451,700	2011
Vivendi	\$3,670,00	2011

Table 5

Top 10 Spenders in the Telephone Utilities Division

Telephone Utilities	Expenditure Amount	Year
AT&T Inc	\$20,230,000	2011
Verizon Communications	\$15,125,000	2011
US Telecom Association	\$6,420,000	2011
Time Warner	\$983,218	2011
Embarq Corp	\$940,000	2011
Starfire Holding	\$730,000	2011
Competitive Telecommunications Association	\$608,297	2011
Frontier Communications	\$520,000	2011
Huawei Technologies	\$425,000	2011
National Telecommunications Coop Association	\$370,000	2011

Table 6

Top 10 Spenders in the Telecom Services & Equipment Division

Telecom Services & Equipment	Expenditure Amount	Year
Cellular Telecom & Internet Association	\$11,440,000	2011
Qualcomm Inc	\$6,620,000	2011
Deutsche Telekom	\$4,226,785	2011
Sprint Nextel	\$3,907,379	2011
Motorola Solutions	\$3,470,000	2011
Research In Motion	\$3,316,000	2011
LightSquared	\$2,390,000	2011
Google Inc	\$1,740,000	2011
Alcatel-Lucent	\$1,410,000	2011
Motorola Inc	\$1,335,260	2011

This overview of the top corporations in terms of lobbying expenditures and the lobbying habits of corporations within the broadcast and wireless industries illustrates the priority broadcast and wireless corporations and trade associations and the overall Communications/Electronics sector places on lobbying expenditures in comparison to other

industries. Within the Communications/Electronics sector, the TV/Movies/Music, Telephone Utilities and Telecom Services & Equipment all have a formidable lobbying presence and a few of the corporations in the sector, mainly Comcast and AT&T, are among the top lobbying corporations overall.

Campaign Contributions

Campaign Contributions through PACs

Unlike money used for lobbying expenditures, corporations cannot directly allocate corporate treasury funds to fund political campaigns. Per FECA however, corporations can form and contribute to separately segregated PAC funds to support federal candidates for elected office.²⁰³ With a PAC in place, corporations can solicit contributions from employees, union members, and/or shareholders, and then use the pooled money to support candidates running for elected office.²⁰⁴ As separate entities, PACs are limited in the amount that can be contributed to candidates and who can be solicited to contribute to the PAC.²⁰⁵

Limits on PAC contributions have been upheld by the Supreme Court.²⁰⁶ PACs can contribute \$5,000 per year to candidates, and can contribute to as many candidates as they desire. PACs can also contribute up to \$15,000 per year to national political parties and up to \$5,000 per year to other committees. PACs can also give unlimited amounts to Super PACs. Individuals giving to PACs can contribute up to \$5,000 per year. Corporate PACs can ask for voluntary contributions from management level employees, stockholders, and their families, and are not allowed to ask for contributions from employees below the management level. PACs can also engage in independent expenditures, which will be discussed in more detail later in this chapter.

²⁰³ Hasen, 2011; Middleton & Lee, 2011

²⁰⁴ Hasen, 2011; Middleton & Lee, 2011

²⁰⁵ Hasen, 2011

²⁰⁶ Buckley v. Valeo, 1976

Appeal of PACs

The primary reason to develop PACs and contribute to campaigns is because the corporations anticipate getting something of equal or greater value back in return for the contributions.²⁰⁷ When determining whether to form a company PAC, the expected costs and benefits of the PAC are weighed by a corporation.²⁰⁸ Corporations originally developed company PACs as a way to have a voice in the policy formation process, and PAC contributions were soon viewed as necessary business costs.²⁰⁹ As such, executives and other management level employees are often expected to contribute to company PACs, despite the official voluntary nature of PAC contributions.²¹⁰

Despite the appeal of PACs, it is difficult to measure the extent to which a campaign contribution influences either policy formation or congressional votes.²¹¹ Previous empirical research done to measure PAC contribution effectiveness has had mixed results, demonstrating the difficulty of successfully measuring contribution effectiveness,²¹² and the fact that careful statistical analysis is needed to determine if contributions are influential when all other factors are held constant. An additional measurement problem is that not all campaign contributions and expenditures are made with the same corporate objectives in mind.²¹³ PACs are also hard to study because the literature often treats business PACs as homogenous and pervasive despite the fact that many corporations do not have company PACs.²¹⁴

²⁰⁷ Berry & Wilcox, 2006; Masters & Keim, 1986

²⁰⁸ Masters & Keim, 1986

²⁰⁹ Berry & Wilcox, 2006

²¹⁰ Berry & Wilcox, 2006

²¹¹ Berry & Wilcox, 2006; Cohen, J.E., & Hamman, J.A. (2003). Interest group PAC contributions and the 1992 regulation of cable television. *The Social Science Journal*, 40, 357-369; Hojnacki, M., & Kimball, D.C. (2001). PAC contributions and lobbying contacts in congressional committees. *Political Research Quarterly*, 54(1), 161-180.

²¹² Cohen & Hammond, 2003

²¹³ Cohen & Hammond, 2003; Hojnacki & Kimball, 2001

²¹⁴ Masters & Keim, 1986

Corporate goals for campaign contributions include gaining access to politicians, influencing congressional votes and influencing wording on potential legislation.²¹⁵ Campaign contributions to PACs are viewed by corporations as both offensive and defensive strategies, with corporations not only forming PACs and contributing to campaigns to mobilize support for their causes, but also to temper the ability of other corporations with competing viewpoints to gain influence over government officials.²¹⁶ Research examining campaign contributions made in the automobile industry found that PAC contributions to an incumbent were not only made due to the corporations' ties to the incumbent, but also due to the corporations' competitors' ties to the incumbent.²¹⁷ Unlike most interest groups, corporate PACs tend to donate to both Democratic and Republican candidates in fairly equal numbers, in order to stay connected to both political parties, and tend to give more to incumbents than to challengers.²¹⁸

Overall and Communication Industry PAC Contributions

The value corporate corporations place on PACs can be better understood by examining the top overall PACs in all industries and the top communication corporation PACs.²¹⁹ The top ten overall PACs consist of six trade associations, three corporations, and one union group (Table 7). AT&T is the only communications industry corporation on the top ten list, and has the reputation of having one of the largest and most active PACs in Washington. Over the past two decades, AT&T's PAC has contributed more to federal candidates than any other single

²¹⁵ Hansen, 1991

²¹⁶ Hall, R.L., & Wayman, F.W. (1990). Buying time: Moneyed interests and the mobilization of bias in congressional committees. *American Political Science Review* 84: 797-820; Hersch, P.L., & McDougall, G.S. (2000). Determinants of automobile PAC contributions to House incumbents: Own versus rival effects. *Public Choice*, 104 (3/4), 329-343

²¹⁷ Hersch & McDougall, 2000

²¹⁸ Berry & Wilcox, 2006

²¹⁹ All PAC data from the Center for Responsive Politics

corporation in any industry or sector.²²⁰ Due to its PAC contributions, AT&T is also defined as a Heavy Hitter by Open Secrets. Heavy Hitters are defined as the 140 biggest overall donors to federal elections since the 1990 election cycle, as compiled by the Center for Responsive Politics. All of the top ten PACs have raised at least \$1 million in the current election cycle and represent a variety of industry interests.

Table 7

Top PACs

PAC	Contributions to candidates	Year
National Association of Realtors	\$1,628,900	2011-2012
National Beer Wholesalers Association	\$1,511,500	2011-2012
AT&T	\$1,355,000	2011-2012
International Brotherhood of Electrical Workers	\$1,319,150	2011-2012
American Association for Justice	\$1,300,500	2011-2012
Honeywell International	\$1,252,702	2011-2012
American Bankers Association	\$1,144,750	2011-2012
Every Republican is Crucial PAC	\$1,101,000	2011-2012
Credit Union National Association	\$1,069,900	2011-2012
American Crystal Sugar	\$1,021,500	2011-2012

Communication Industry PACs

Overall, the Communications/Electronics sector has raised more than \$10 million in PAC contributions for the 2012 election cycle,²²¹ with 44% of the contributions going to Democratic candidates and 56% of the contributions going to Republican candidates. The Communications/Electronics sector contains some of the largest corporate PACs in any industry. In addition to having one of the largest PACs for the past year, AT&T is ranked second on the Center for Responsive Politics list of Top All-Time Donors and is categorized as an ‘on the

²²⁰ Spires, 2010a

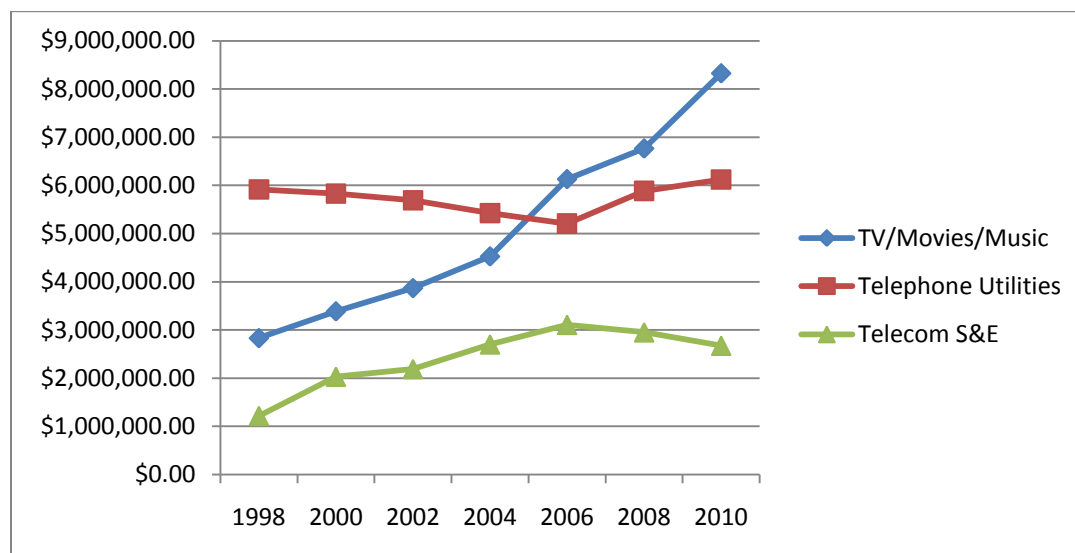
²²¹ All data is based on the FEC report released on February 21, 2012

fence' PAC, meaning that the PAC contributes between 40-59 percent of its donations to both parties.²²² Other media and wireless groups on the Top All-Time list include Time Warner (#31, categorized as a strongly Democratic PAC, defined as contributing 70-89 percent of PAC funds to Democratic candidates), Verizon (#35, on-the-fence), Comcast (#67, on-the-fence), Walt Disney Company (#76, categorized as slightly Democratic, defined as contributing 60-69 percent of PAC funds to Democratic candidates), News Corp (#82, on-the-fence), and NAB (#117, on-the-fence).

Similar to its lobbying expenditures, the Television/Music/Movies division has also consistently increased its campaign contributions in the past decade, and outspent the Telephone Utilities and Telecom Services & Utilities divisions in terms of campaign contributions (Figure 2). The TV/Movies/Music division contributed more than \$3 million overall for the 2012 election cycle, with 48% going to Democratic candidates and 52% going to Republican candidates. The Telephone Utilities division has contributed more than \$2.5 million to federal candidates for the 2012 election cycle, with 40% of the contributions going to Democrats and 60% going to Republicans. The Telecom Services & Equipment division ranks last out of the three divisions in terms of PAC contributions, having contributed more than \$1 million to federal candidates. Of the total amount of contributions raised, 47% went to Democratic candidates and 53% went to Republican candidates.

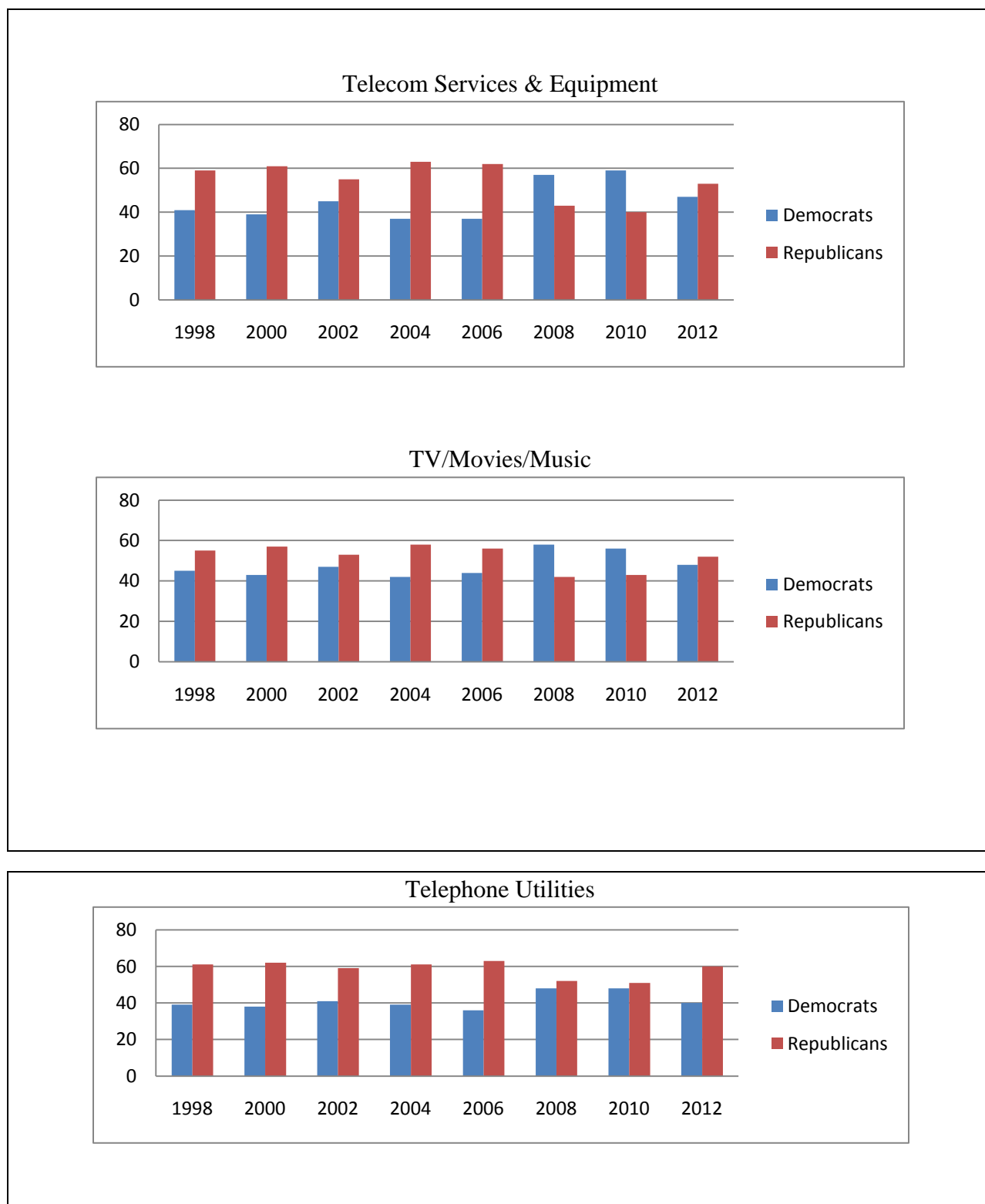
²²² Center for Responsive Politics, 2011

Figure 2

Campaign Contributions for Divisions Containing Broadcast and Wireless Corporations

In addition to the overall PAC contributions, the amount each division gives to Democratic versus Republican candidates has remained fairly steady from the 1998-2012 election cycles. While all three divisions tend to give more to whatever party is in power, TV/Movies/Music division tends to give more to Democratic candidates, while the Telephone Utilities and Telecom Services & Equipment divisions give more to Republican candidates (Table 8). The discrepancy between contributions to Democratic and Republican candidates is not drastic for any of the divisions however, reiterating previous research that found that corporate PACs tend to donate to both parties fairly evenly and give campaign contributions for pragmatic business-based reasons, rather than ideological positions.

Table 8

Contributions to Democratic and Republican Candidates from the Divisions

In addition to examining the overall PAC contribution patterns of the industries, the contributions of corporate PACs within the divisions is also examined in order to determine the top ten PAC contributors in each industry, and the range of PAC contributions by corporations comprising the top ten (Tables 9-11).

Table 9

Contributions Made by the TV/Movies/Music Division

Corporation	Contributions to candidates	Election Cycle
Comcast Corporation*	\$699,000	2012
National Association of Broadcasters*	\$584,000	2012
Time Warner Cable	\$304,500	2012
Cox Enterprises*	\$262,500	2012
National Cable & Telecommunication Association	\$202,000	2012
DirectTV Group	\$194,500	2012
Viacom International	\$165,500	2012
Walt Disney Company*	\$153,000	2012
Clear Channel Communications	\$146,000	2012
Cablevision Systems	\$137,200	2012

**Designated a Heavy Hitter by Open Secrets*

Table 10

Contributions Made by the Telephone Utilities Division

Corporation	Contributions to candidates	Election cycle
AT&T*	\$1,355,000	2012
Verizon Communications*	\$388,100	2012
CenturyLink	\$226,600	2012
National Telephone Cooperative Association	\$139,300	2012
Time Warner Telecom	\$114,500	2012
Windstream Communications	\$65,500	2012
US Telecom Association	\$55,500	2012
Integra Telecommunications	\$54,500	2012
Cbeyond Inc	\$34,000	2012
XO Communications	\$30,000	2012

*Designated a Heavy Hitter by Open Secrets

Table 11

Contributions Made by the Telecom Services & Equipment Division

Corporation	Contributions to candidates	Election cycle
T-Mobile USA	\$253,000	2012
Sprint Nextel	\$169,499	2012
CTIA	\$124,500	2012
Qualcomm Inc	\$92,000	2012
Motorola Solutions	\$74,500	2012
Qwest Communications	\$58,700	2012
Paetec Holdings	\$55,500	2012
US Cellular	\$38,000	2012
Level 3 Communications	\$37,500	2012
Hughes Communications	\$34,500	2012

This overview of the top overall PACs and top communication PACs illustrates the ability of corporate corporations to participate in the elections process despite the federal election laws that bar corporations from donating directly to candidates. Another way corporations are able to participate in the political process is through independent campaign expenditures.

Independent Campaign Expenditures

In addition to the legal distinctions between lobbying expenditures and campaign contributions to federal candidates, independent campaign expenditures also have a distinct set of legal guidelines. Independent campaign expenditures include advertising on the behalf of a candidate (when the ad is not coordinated with the candidate), and other forms of campaign speech that support or oppose candidates running for office. The political opportunities associated with independent expenditures increased for corporations following the Supreme Court's *Citizens United vs. FEC* decision in 2010.²²³ Prior to the *Citizens United* decision, corporations were not permitted to use corporate funds to pay for election advertising for federal candidates. Citing First Amendment protection, *Citizens United* allows corporations the same First Amendment rights as private citizens and political groups to speak and fund advertisements for or against political candidates.²²⁴

The changes to independent expenditure legislation began when Citizens United, a small corporation, funded an unflattering documentary about Senator and Presidential candidate Hillary Clinton. Citizens United wanted to distribute the movie to cable video-on-demand services for free viewing, and to use its general treasury funds to pay the \$1.2 million fee charged by a cable television operator to make the documentary available through the video-on-demand service. The attempt to distribute the movie through on-demand services was blocked, as the group's status as a corporation prohibited it from publicly distributing electronic communication on behalf of a candidate. After the group contested the prohibition, the Supreme Court ruled that corporations are able to use corporate treasury funds to purchase advertising and

²²³ Middleton & Lee, 2011

²²⁴ While the Citizens United ruling has reignited debate regarding the rationale for allowing corporations the same First Amendment rights as individuals, this debate has never been raised in the context of lobbying and First Amendment protections allowed to lobbyists representing corporate entities.

other forms of federal campaign speech for candidates, but corporations are still prohibited from contributing directly to candidates.

The *Citizens* decision was explained by the Court as a way to create consistency with *Buckley v. Valeo*, a previous campaign finance case considered the “fountainhead of modern U.S. campaign finance jurisprudence.”²²⁵ In *Buckley*, the Court determined that independent expenditures do not present a risk of corruption, making government regulation of the expenditures unconstitutional and also drew a distinction between the First Amendment rights afforded to campaign contributions and campaign expenditures made by corporations. *Buckley* ruled that campaign contributions could be limited to prevent corruption, but independent expenditures could not be limited by the same justification due to the fact that there was a lack of evidence demonstrating that independent spending could similarly corrupt candidates.²²⁶

This distinction between purchasing advertising on behalf of a candidate and contributing directly to a candidate’s campaign has been made because large contributions are feared to translate to quid pro quo corruption in which dollars are given in exchange for political favors, whereas independent expenditures are considered to be outside the realm of considerable quid pro quo corruption since no money is being given directly to a candidate. Campaign contribution limits are viewed as different from campaign expenditure limits due to the fact that limits on contributions still allow the contributors to fund speech independent of the candidate, while campaign expenditures are considered more of a pure speech, and limits to expenditures are considered more in violation of First Amendment protections.²²⁷

While the *Citizens United* decision has changed the options available for corporations in terms of campaign expenditures, it has not yet altered the allocation of political funds for most

²²⁵ Hasen, R.L. (2011). *Citizens United* and the illusion of coherence. *Michigan Law Review*, 109, 581-624, p. 585.

²²⁶ *Buckley v. Valeo*, 1976

²²⁷ Middleton & Lee, 2011

corporate corporations. The majority of corporate raised money is still going towards traditional campaign donations, with few media corporations allocating funds to campaign expenditures. Corporations in the TV/Movies/Music, Telephone Utilities and Telecom Services & Equipment divisions still allocate almost all of their federal campaign spending to campaign contributions. The TV/Movies/Music division allocates 97.55% of its spending to campaign contributions and none to campaign expenditures, the Telephone Utilities division allocates 99% to campaign contributions and less than one percent to campaign expenditures and the Telecom Services & Equipment division allocates 89% to campaign contributions and less than one percent to campaign expenditures (Figures 3 – 5).

The spending allocation of campaign resources shown in the charts indicates that while the legal framework surrounding campaign expenditures has changed, corporations are not yet thinking of independent expenditures as part of their political strategies and remain primarily campaign contribution minded when it comes to allocating federal campaign expenditures. This allocation of campaign resources may be due to the fact that corporations do not want to risk alienating a portion of their customer base or the opposing candidate by publically aligning with one candidate.

Figure 3

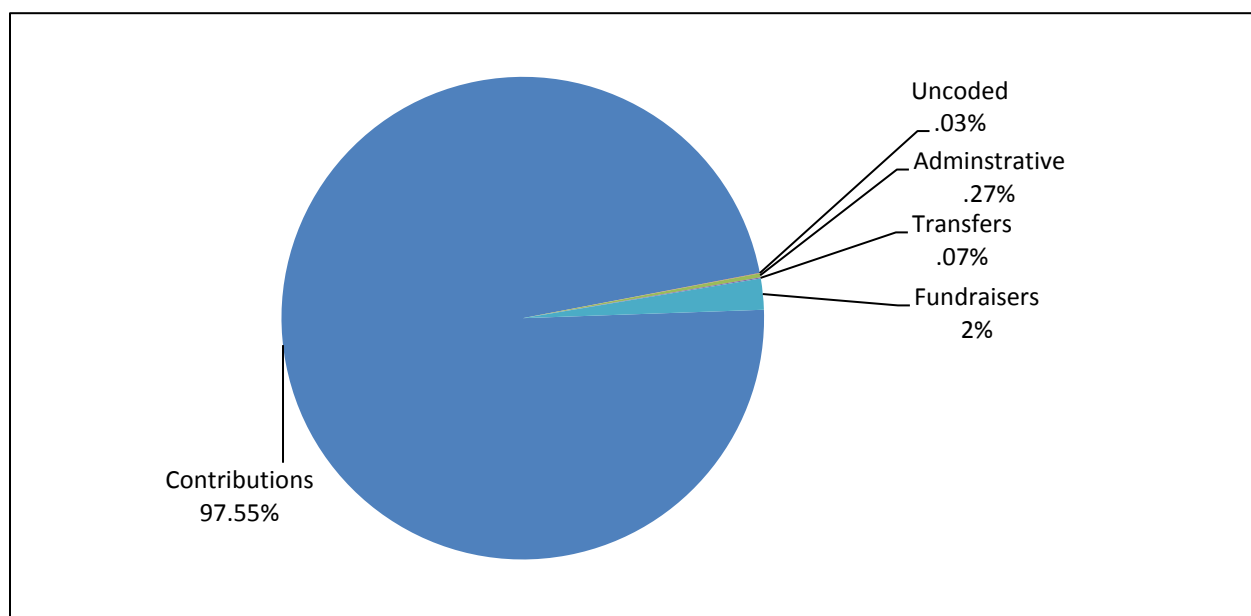
TV/Movies/Music Division

Figure 4

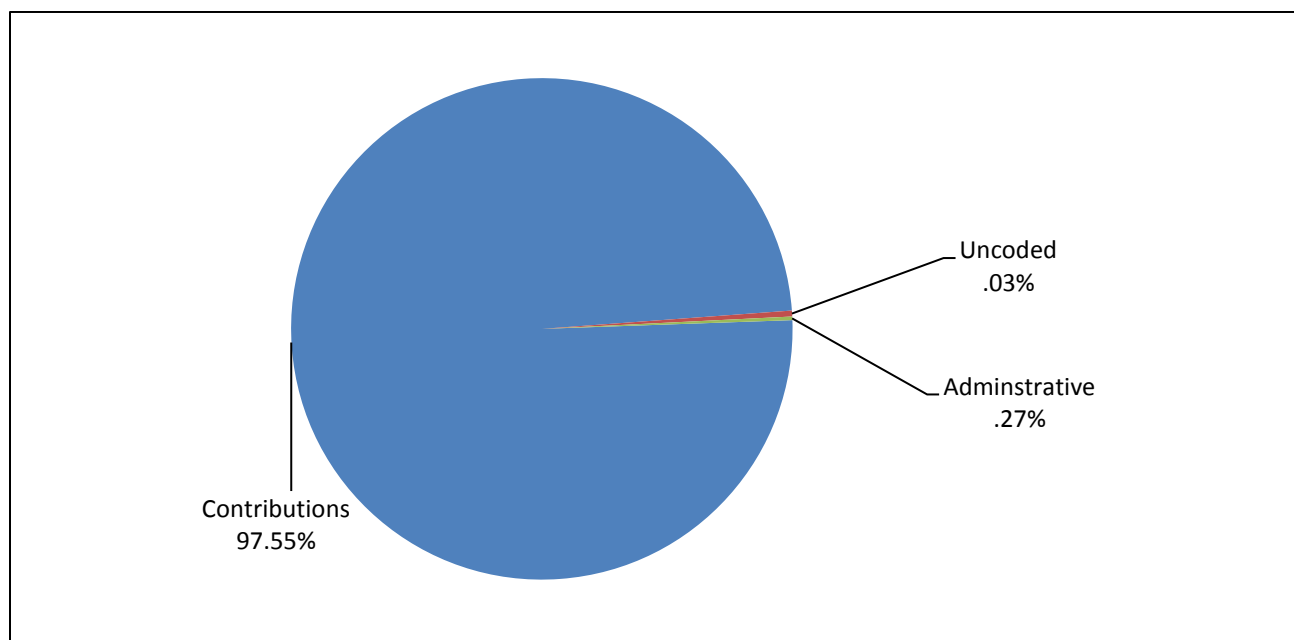
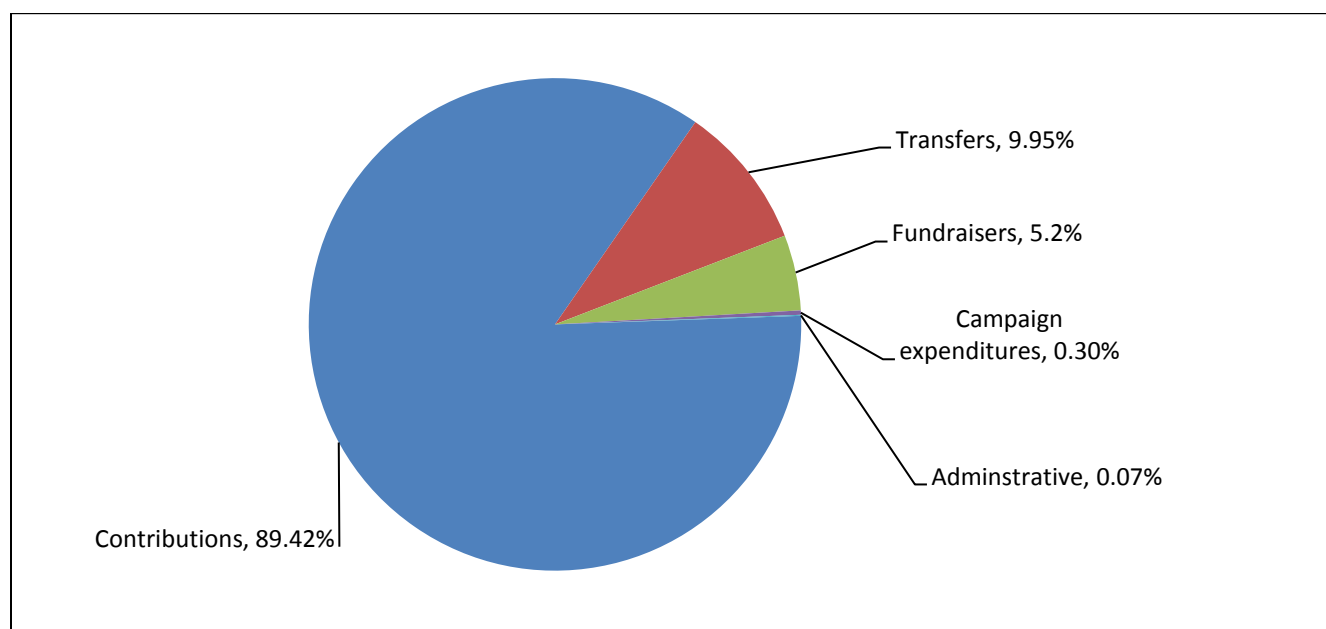
Telecom Utilities Division

Figure 5

Telecom Services & Equipment Division**Super PACs and the Future of Corporate Political Activity**

While media corporations are not changing campaign allocation strategies as of yet, the overall importance of the changes made to campaign finance legislation are already being felt. The 2012 presidential campaign illustrates the deep impact the *Citizens* decision has already had on independent campaign expenditures, and had led to an unprecedented amount of money being donated to PACs referred to as super PACs.²²⁸ Unlike traditional PACs, super PACs cannot contribute directly to political candidates but can fund independent expenditures for or against a candidate. A super PAC is technically known as an independent expenditure only committee²²⁹, but is more thoroughly defined as a political committee whose primary purpose is to influence

²²⁸ The *SpeechNow.org v. Federal Election Commission* (2010) decision also impacted the rise of super PACs. In *Speechnow.org*, the Federal Court of Appeals for the D.C. Circuit decided that contributions to groups that only make independent expenditures could not be limited.

²²⁹ Super PACs. (2012, February 27). Open Secrets.org, retrieved from www.opensecrets.org/pacs/superpacs.php?cycle=2012.

elections that can take unlimited donations from corporations, unions, or wealthy individuals, so long as the money is spent independently of the candidate's campaign.²³⁰ The stipulation of the money being spent independently of the campaign however appears to be loosely followed with many super PACs and presidential campaigns finding ways to share consulting agencies, donors and advertisements.²³¹ While federal prohibitions restricting campaign coordination between candidates and independent groups are in place, the FEC's "fluid and ineffective enforcement of the rules" have allowed campaigns and super PACs to coordinate in relative ease.²³²

While most of the money raised by super PACs has been donated by private individuals interested in shaping the campaign, corporations are beginning to involve themselves in super PACs as well. So far, communication corporations have not had much of a presence in the super PACs, with no corporations from the broadcast or wireless industries listed as having donated funds to the super PACs listed on Open Secrets.²³³ Internet corporations have had minimal involvement in super PACs, with both Facebook and Google contributing to the Endorse Liberty Independent Expenditures super PAC supporting Ron Paul.²³⁴ However, the rise of super PACs suggests that media corporations may grow more involved with super PACs in the future and should be considered as a future avenue of research.

Campaign Contribution and Expenditure Disclosure Laws

Like the lobbying expenditure laws, campaign contributions and expenditures are also subject to disclosure laws. The Supreme Court has upheld the constitutionality of laws requiring PACs and the *Citizens United* ruling placed new importance on the disclosure of campaign

²³⁰ Confessore, N. (2012). Campaign finance news section. *The New York Times*. Retrieved from http://topics.nytimes.com/top/reference/timestopics/subjects/c/campaign_finance/index.html.

²³¹ McIntire, M., & Luo, M. (2012, February 26). Fine line between 'super PACs' and campaigns. *The New York Times*, A1. Schouten, F., February 29, 2012.

²³² McIntire & Luo, February 26, 2012

²³³ Center for Responsive Politics data retrieved from <http://www.opensecrets.org/pacs/superpacs.php?cycle=2012>.

²³⁴ Center for Responsive Politics

expenditures. FECA requires PACs and federal candidates to register with the FEC and disclose records of contributions and expenditures made for the purpose on influencing elections, the name and address of everyone making a donation of more than \$50 and the date and amount of the contribution. Candidates and their committees must also file disclosure reports stating the name of each person who contributed to the campaign and names of candidates and committees that received more than \$200 per year. Super PACs are also required to report their list of donors to the FEC on a monthly or quarterly basis.²³⁵

Conclusion

Situating lobbying and campaign contribution activities within a legal context provides this dissertation with the ability to analyze the way government relations activities work in theory. The next three chapters will examine the way government relations activities work in practice, and the impact the legal framework has on the formulation of lobbying and campaign contribution strategies, the impact the legal framework has on the isomorphism of the broadcast and wireless industries, and the ability of the industries to attempt to achieve regulatory capture. While lobbying and campaign contribution legislation must attempt to find a balance between adhering to the First Amendment rights of lobbyists and corporations and the desire for transparency in government relations activities, this balance is continually being redefined, making a landscape for corporate political activity that changes just as corporations in the broadcast and wireless industries are also adjusting political activity in order to remain a competitive player for regulatory favoritism.

²³⁵ Super PACs. (2012, February 27). Open Secrets.org, retrieved from www.opensecrets.org/pacs/superpacs.php?cycle=2012.

CHAPTER 3

STANDING OUT IN THE CROWD: HOW UNIQUE ARE THE LOBBYING AND CAMPAIGN CONTRIBUTION PATTERNS OF THE BROADCAST AND WIRELESS INDUSTRIES?

This chapter examines whether the government relations activities of the wireless and broadcast industries have remained isomorphic in the face of competition, or have the industries altered strategies for lobbying expenditures and campaign contributions in an effort to receive regulatory and Congressional favoritism? Applying a mechanism of institutional theory, institutional isomorphism, this chapter examines six hypotheses relating to isomorphic behavior and the lobbying expenditure and campaign contribution activities of the broadcast and wireless industries through the analysis of lobbying and campaign contribution data sets.

The data analysis found support for the hypotheses that the broadcast and wireless industries are engaging in non-isomorphic lobbying behaviors in the areas of policy issues lobbied on and when deciding to lobby through either an external lobbyist or internal source. The data analysis also found support for the hypotheses that the broadcast and wireless industries are engaging in non-isomorphic campaign contribution behaviors. Overall, this chapter found support for the notion that in the face of competition, the broadcast and wireless industries are attempting to engage in non-isomorphic government relations activities, but the strong institutional pressures that form isomorphic behaviors, and limited ways in which to conduct effective government relations activities, prevent the industries from developing fully non-isomorphic lobbying and campaign contribution activities.

Lobbying and Campaign Contribution Patterns of the Broadcast and Wireless Industries

The overall examination of the broadcast and wireless industries given in chapter two indicates a general increase in lobbying expenditures and campaign contributions, but does not indicate if, in addition to allocating more money to government relations activities, corporations are also attempting to alter lobbying strategies in the effort to achieve regulatory favoritism. This dissertation argues that as competition between the broadcast and wireless industries occurs, corporations in both industries will attempt to alter lobbying strategies to stand out among the competition. Corporations in both industries will attempt to do so by employing non-isomorphic lobbying strategies when determining what policy issues to focus on, what venues to lobby to, and whether to lobby an issue internally or by hiring an outside lobbying firm. This dissertation also argues that corporations will attempt to engage in non-isomorphic campaign contribution patterns by attempting to alter contribution patterns.

Theoretical Framework

The theoretical framework for this chapter begins with the basic assumptions of capture theory. However, capture theory does not explain the way capture is achieved when a regulatory agency oversees two dominant industries. Adding in isomorphic processes allows the theoretical framework to explain the way regulatory capture occurs when there is competition for capture. Institutional isomorphism is a theoretical mechanism of institutional theory by which heterogeneity is reduced. The mechanism argues that as an industry grows, corporations in the industry are likely to become increasingly similar in structure, culture and output, despite efforts to distinguish between corporations.²³⁶ This homogenization has a positive impact on the health and legitimacy of an industry because highly structured corporations provide a structure for individual corporations to deal with uncertainty and constraint in the market. The similarity

²³⁶ DiMaggio & Powell, 1983

between corporations is primarily due to three isomorphic processes: coercive (political influence), mimetic (corporations will copy each other and model a standard response to uncertainty) and normative (professionalism, workers come from similar backgrounds and educations, and share social networks, which cause them to think similarly).

This dissertation extends capture theory by examining the way industries attempt to achieve regulatory capture when more than one dominant industry competes for regulatory attention by examining the isomorphic behaviors of the wireless and broadcast industries in terms of government relations behaviors. Under circumstances when industries do not have to compete for regulatory capture, this dissertation argues that isomorphic government relations behaviors will be in place because these behaviors contribute to the health and legitimacy of the industry. Isomorphic government relations activities entail all organizations in the same industry having similar lobbying and campaign contribution habits. These habits include lobbying on the same policy issues, lobbying to the same venues, conducting lobbying through similar portions of internal lobbyists and outside consultants hired by the organization, contributing similar levels of campaign funds, and distributing campaign funds similarly between Democratic and Republic candidates.

The similar lobbying and campaign contribution behaviors are likely to occur because all organizations in the same industry face similar mimetic, coercive and normative pressures, resulting in isomorphic behaviors that increase the homogeneity of government relations activities. In addition to this homogeneity occurring between organizations in the same industry, it is also likely that isomorphic government relations habits will also occur between the broadcast and wireless industries, due to the similarity of the industries in terms of policy interests, the

blurring of the lines in terms of products and services offered, government oversight, and a cross-pollination of employees between the two industries.

When industries are competing for regulatory capture however, this dissertation proposes that it will no longer be in the industry's best interest to engage in isomorphic lobbying techniques. Rather, the industries will attempt to change lobbying strategies in three central areas of lobbying strategy (attention paid to policy issues, venue to lobby, and whether to lobby through internal or external lobbyist) in order to distinguish the industry from competitors and increase the chance that the industry will receive regulatory favoritism. Altering the amount of attention paid to policy issues can make a corporation stand out from the homogenous habits of the industry by positioning the corporation as having unique policy goals. Altering the amount of lobbying conducted to specific venues can make a corporation stand out from the homogenous habits of the industry by concentrating the corporation's lobbying resources at certain sources, or by spreading out the lobbying resources of the corporation more than the rest of the industry. Altering the proportion of outside consultant versus internal lobbying conducting can make a corporation stand out by either providing more or less personal attention from the corporation's lobbyists than other corporations in the industry. While changing government relations strategies could risk jeopardizing the health and legitimacy of the industry, organizations in the broadcast and wireless industries could consider this a risk worth taking in order to make lobbying stand out in an environment where regulatory capture can no longer be taken for granted.

Research Questions and Hypotheses

Research Question 1: Do industries competing for the capture of a regulatory agency use non-isomorphic lobbying actions?

Research Question 2: Do industries competing for the capture of a regulatory agency use non-isomorphic campaign contribution actions?

The first research question is tested through hypotheses examining the similarities between the broadcast and wireless industries in the areas of attention paid to policy issues, the lobbying source (internal versus external lobbyist), and selection of lobbying venue. These variables were selected both because the information is included in lobbying disclosure forms and can be empirically examined, and because the variables are important components to a corporation's overall lobbying strategy. Determining which policy issues to focus time and attention on, whether an outside or internal lobbyist is a more effective voice on the policy issue, and what venue(s) to lobby at help shape a corporation's lobbying appearance and contribute to a sense of lobbying legitimacy bestowed upon the corporation.

Hypothesis 1: To increase the likelihood of regulatory capture, non-isomorphic lobbying strategies will be used by the wireless and broadcast industries when determining the attention given to policy issues.

Hypothesis 2: To increase the likelihood of regulatory capture, non-isomorphic lobbying strategies will be used by the wireless and broadcast industries when determining lobbying venues.

Hypothesis 3: To increase the likelihood of regulatory capture, non-isomorphic lobbying strategies will be used by wireless and broadcast industries when determining whether to use an external or internal lobbyist.

The second research question is tested through hypotheses examining the similarities in the broadcast and wireless industries in the areas of overall campaign contribution amount and the division of contributions given to Democratic and Republican candidates. These variables

were selected because they were able to be tested empirically and shed light on a corporation's campaign contribution behaviors.

Hypothesis 4: To increase the likelihood of regulatory capture, non-isomorphic campaign contribution strategies will be used by the broadcast and wireless industries when determining the overall amount of campaign contributions.

Hypothesis 5: To increase the likelihood of regulatory capture, non-isomorphic campaign contribution strategies will be used by the broadcast and wireless industries when determining the way to divide contributions between Democrats and Republicans.

Method

To test these hypotheses, lobbying expenditure and campaign contribution data were obtained from lobbying disclosure reports and campaign contribution data posted on the website Open Secrets.²³⁷ Based on the disclosure reports, an original data set of lobbying expenditures was constructed, as was an original data set of campaign contributions from the broadcast and wireless industries. The lobbying data were collected by the Center for Responsive Politics, based on lobbying reports disclosed to the Senate Office of Public Records.²³⁸ The lobbying reports submitted to Congress include the registrants name and contact information, lobbying income (money spent on lobbying expenditures for the quarter), general lobbying topic, specific lobbying issues and Congressional bills lobbied on behalf of, and venues lobbied to. Open

²³⁷ www.opensecrets.org

²³⁸ All federal lobbying contributions are required to be disclosed and posted to the Senate's Office of Public Records' Web site. Lobbying firms are required to report good-faith estimates of their lobbying activities, rounded to the nearest \$20,000 for each six-month period. Similarly, all organizations that hire outside lobbyists must also provide good-faith estimates of all lobbying activities rounded to the nearest \$20,000. Organizations spending less than \$10,000 in a six-month period are not required to report their activities. When organizations use in-house lobbyists, the organization self-files their lobbying contributions. The self-filing lobbying amount is used to represent their overall lobbying expenditures for the period. If the organization does not self-file, the lobbying expenditures amount is created by compiling its contracts with outside lobbying firms. In order to classify lobbying expenditures by sector and industry, each subsidiary is counted in its own sector, and not that of its parent (<http://www.opensecrets.org/lobby/methodology.php>).

Secrets organizes and posts the lobbying reports according to industry sector. The online lobbying records available on Open Secrets date from 1998-present, with the lobbying records being updated every quarter.

The lobbying research in this chapter consisted of a pilot study of broadcast and wireless corporation lobbying reports (N = 315) and an expanded study of lobbying reports for the same industries (N = 771). A non-random pilot study was first conducted to begin gathering data on the topic. Data for the pilot study was gathered by creating a list of the top 10 broadcast companies in terms of lobbying expenditures in 2010. A separate list of the top ten wireless companies was also made based on lobbying expenditures in 2010. From the top ten lists, two broadcast corporations and two wireless corporations were randomly selected for the study. In addition to the random selection of the broadcast and wireless corporations, the top broadcast trade association and top wireless trade association, in terms of lobbying expenditures, were also selected in order to examine if lobbying differences between the trade associations and corporations existed.

After the sample was selected for the pilot study, lobbying reports from the selected broadcast corporations (n = 42), wireless corporations (n = 223), primary broadcast trade association (n = 15) and primary wireless trade association (n = 35) were collected for the first two quarters of every even year from 2002 – 2010 (N = 315). This time period was selected because both the broadcast and wireless industries substantially increased lobbying activity during this time (Table 12). Each lobbying report was analyzed to determine what issue(s) the corporation lobbied on behalf of, the venues to which the lobbying was conducted, if the lobbying was conducted by an internal or external lobbyist, and the amount of the lobbying expenditure.

Table 12

Percentage Change in Lobbying Reports Filed, 2002 – 2010

Corporation	2002 reports	2010 reports	% change
Comcast	17	128	653%
ClearChannel	2	29	1350%
National Amusements Inc.	2	28	1300%
Walt Disney	7	14	100%
NewsCorp	18	31	72%
AT&T	99	101	2%
Verizon	70	159	127%
Qualcomm	8	24	200%
SprintNextel	9	27	200%
Qwest (CenturyLink)	18	10	-44%
National Association of Broadcasters	13	53	308%
CTIA	17	128	175%

After completing the pilot study, an expanded study was conducted. Data for the full study was gathered by examining the lobbying activities of the top five corporations with broadcast interests, and top five wireless corporations, in terms of lobbying expenditures in 2010.²³⁹ Data were also collected for the primary broadcast trade association and the primary wireless trade association.²⁴⁰ Due to the fact that many of the broadcast corporations under study are owned by larger conglomerates with other media interests (e.g., cable divisions), the broadcast corporations under study were divided into two groups, broadcast corporations with no competing lobbying interests conducted by the parent corporation, and hybrid media corporations. Lobbying data from the broadcast corporations (n = 49), wireless corporations (n = 470), broadcast trade association (n = 37), wireless trade association (n = 51) and hybrid media corporations (n = 164) were collected for the entirety of every even year from 2010 – 1998 (N =

²³⁹ The broadcast organizations examined were Comcast/GE (NBC), ClearChannel, National Amusements Inc. (CBS parent company), Walt Disney and NewsCorp. The wireless organizations examined were Verizon, AT&T, Qualcomm, Sprint Nextel and Qwest (now CenturyLink).

²⁴⁰ The National Association of Broadcasters and CTIA—The Wireless Organization

771). This time frame was dictated by the electronic data available on Open Secrets. Similar to the pilot study, each lobbying report was analyzed to determine what issue(s) the corporation lobbying on behalf of, the venue(s) to which the lobbying was conducted, if the lobbying was conducted by an internal or external lobbyist, and the lobbying expenditure amount.

To test the campaign contribution hypotheses, an original campaign contribution data set was also compiled from data from the Center for Responsive Politics listed on Open Secrets. Open Secrets lists the total contributions made by corporate PACs, the percentage of the contribution given to Republicans and the percentage given to Democrats, as well as a breakdown of the specific Congressional members and/or candidates who received contributions from the corporation. Similar to the lobbying dataset, the campaign contribution data set was also created by selecting the top five wireless corporations and top five corporations with broadcast interests, in terms of campaign contributions in 2010. After the corporations were selected, campaign contribution data was collected for every even year between 1998 – 2010. This time frame was dictated by the electronic data available on Open Secrets. Data was collected for the three dependent variables: the total amount of the contribution, the percentage of the contribution given to Republican candidates and the percentage of the contribution given to Democratic candidates.

Database

Creating lobbying and campaign contribution databases based on secondary data was selected as the appropriate methodology for this study due to both previous studies and the benefits of original lobbying and campaign contribution datasets. Previous lobbying research has used secondary data of ex parte comments, comments from FCC public meetings, and interest group statements in order to examine lobbying behavior and establish lobbying practices

before more evolutionary research.²⁴¹ This study takes advantage of internal company data in the form of federally required lobby reports and campaign contributions.

Independent Variable

To test the lobbying and campaign hypotheses, independent variable categories were constructed and statistical tests were used to examine the impact of isomorphic lobbying and campaign contributions. The independent variable was type of corporation. This independent variable had five categories: broadcast corporations, broadcast trade associations, hybrid media corporations, wireless corporations and wireless trade associations. Broadcast corporations, hybrid media corporations and the broadcast trade association are operationalized as being part of an industry that distributes content to an audience over an audio-visual medium. Wireless corporations and the wireless trade association are operationalized as being part of an industry that manufactures and distributes wireless communication services. Each category of corporation was assigned a different dummy variable when coding the lobbying forms.

Dependent Variables

The dependent variables for the lobbying hypotheses were the policy issues being lobbied, the venue where the lobbying was directed and if the lobbying was done through internal or external lobbying sources. Isomorphic processes were measured by examining if the industries paid attention to the same policy issues, lobbied to the same venue(s), and conducted a similar amount of lobbying through internal versus external sources.

²⁴¹ Joskow. P.L. (1991). The role of transaction cost economics in antitrust and public utility regulatory policies. *Journal of Law, Economics, & Organization*, 7, 53-83; de Figueiredo, J.M., & Kim, J.J. (2004). When do firms hire lobbyists? The organization of lobbying at the Federal Communications Commission. *Industrial and Corporate Change*, 13(6), 883-900; de Figueiredo, J.M., & Tiller, E.H. (2001). The structure and conduct of corporate lobbying: How firms lobby the Federal Communications Commission. *Journal of Economics & Management Strategy*, 10(1), 91-122.

The policy issues examined were three issues that are frequently lobbied on by the industries: spectrum allocation, broadband development, and mergers. These three policy issues were chosen not only due to the frequency by which they are lobbied, but also because each issue represents a different level of regulatory control and competition. Spectrum allocation is entirely controlled by the FCC and corporations are dependent on the FCC in order to receive spectrum and increase economic performance. Attention paid to spectrum allocations was operationalized as including spectrum policy issues as a topic on the corporation's lobbying disclosure form. Broadband development is not controlled by the government, but FCC policies and proposals can greatly influence the popularity and availability of new technologies. Attention paid to broadband development is operationalized as including broadband development policy issues as a topic on the corporation's lobbying disclosure form. Mergers are included in the study as a form of control because they are an issue where the broadcast and wireless industries often form cooperative lobbying strategies and lobby for the same result. Attention paid to mergers is operationalized as including merger policy issues as a topic on the corporation's lobbying disclosure form. Corporations are able to lobby on more than one of the topics at a time. Each topic, and combination of topics, was dummy-coded for each lobbying report and added to form an index score.

The lobbying venues under study are the House of Representatives, Senate, FCC and Executive Branch. These venues were selected as the primary venues the broadcast and wireless industries directed lobbying efforts towards. Lobbyists were able to select that they had lobbied to more than one venue on a lobbying report. Each venue, and combination of venues, was dummy-coded for each lobbying report and added to form an index score.

The internal source of lobbying for this study was operationalized as any lobbying conducted by an employee of a corporation in the sample for this study. An outside lobbyist was operationalized as a lobbyist working for an outside lobbying firm that represented the interests of a corporation under study as a client. A corporation could either lobby through an internal source or an external source. Each lobbying report was assigned a dummy variable of 1 if the source was an internal lobbyist and 0 if the source was an external lobbyist.

The lobbying disclosure forms listed all of the policy issues the corporations were lobbying for. Each policy issue (spectrum, broadband, and mergers) was assigned a dummy code variable. If a lobbying report included a combination of policy issues (e.g., spectrum and mergers, broadband and spectrum) a separate dummy variable was applied to each possible combination of issues. The venues lobbied (House, Senate, FCC, and Executive Branch) to were also assigned dummy variables and a separate dummy variable was assigned to each possible combination of venue combinations. The status of the lobbying report filer as an internal employee or outside lobbyist was also coded as a dummy variable.

The dependent variables for the campaign contribution hypotheses were the total contribution amount, the percentage of the contribution given to Democrats candidates and the percentage of the contribution given to Republican candidates. Institutional isomorphic processes were measured by examining if the industries contributed similar levels of campaign contributions and contributed similar percentages to Democratic and Republican candidates. After collecting the data on the contributions for the wireless and broadcast corporations under study, the size of the contribution was controlled for by using the size of the corporation in terms of employees (for the trade association, size by controlled by the number of member corporations).

Findings

A non-random pilot study for the lobbying hypotheses was first conducted to begin gathering data on whether broadcast and wireless industry lobbying strategies were isomorphic when an industry is competing for regulatory capture. The pilot study found that the wireless corporations conducted the largest amount of lobbying on the issues and were responsible for 71% ($n = 223$) of the reports filed under the time period. The broadcast corporations were responsible for 13% ($n = 42$) of the lobbying reports filed, the wireless trade association ($n = 35$) was responsible for an additional 11% of the lobbying reports and the broadcast trade association ($n = 15$) was responsible for 5% of the lobbying reports. In the pilot study, hiring an outside lobbying firm was the most popular way to lobby, however corporations in both industries devoted more money to internal lobbying efforts. The House of Representatives and the Senate were the most popular venues to lobby to, and broadband was the most frequently lobbied topic.

The pilot study found overall support for the notion that the broadcast and wireless industries were attempting to engage in non-isomorphic lobbying strategies on the matters of some policy issues, some venue choices and choosing whether to lobby on an issue internally or through an outside lobbyist. Lobbying strategies for attention paid to the policy issues differed significantly across the four groups sizes for the issues of spectrum, $F(3, 311) = 24.237, p = .001$ and mergers $F(3, 311) = 6.071, p = .001$. Non-isomorphic lobbying strategies were also found in lobbying done to the FCC, with the amount of lobbying done to the FCC varied significantly across the four groups, $F(3, 311) = 5.623, p = .001$. The amount of lobbying conducted through an internal employee versus an outside lobbyists also differed significantly across the four groups, $F(3, 311) = 15.261, p = .001$.

Descriptive Results

Lobbying Expenditures

The data set ($N = 771$) of lobbying disclosure forms accounted for approximately \$324 million in expenditures. The wireless corporations devoted the most attention and resources to lobbying, filing the most lobbying reports and spending the most money on lobbying expenditures for the time period under study (Figures 6 – 7).

Figure 6

Lobbying Reports Filed, 1998 – 2010

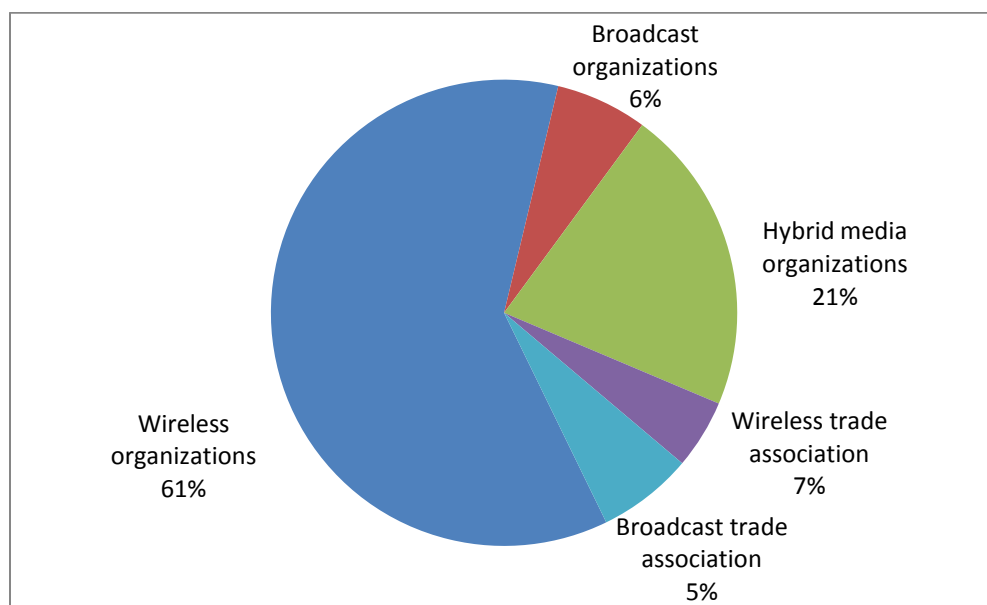
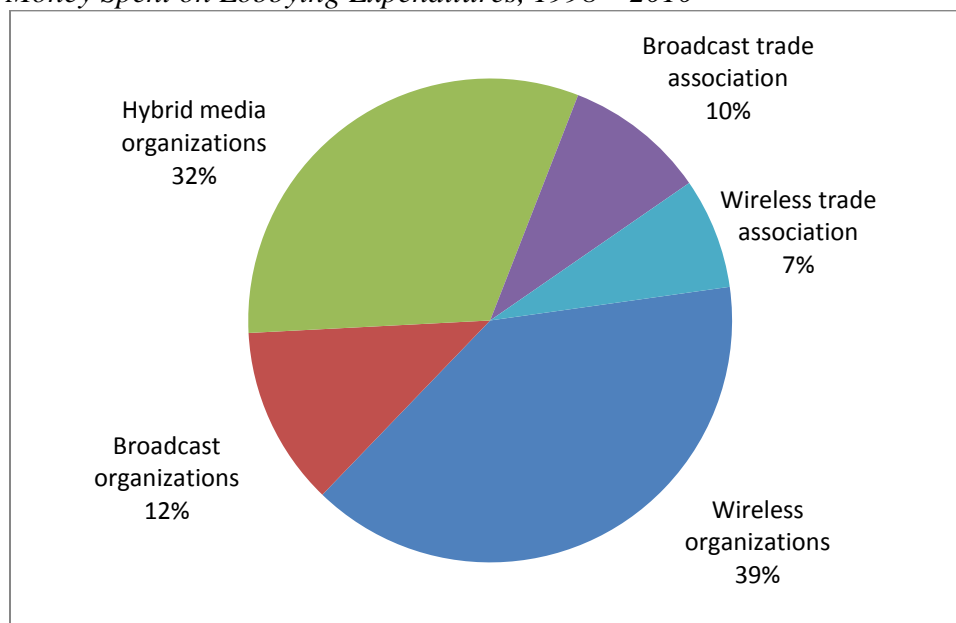
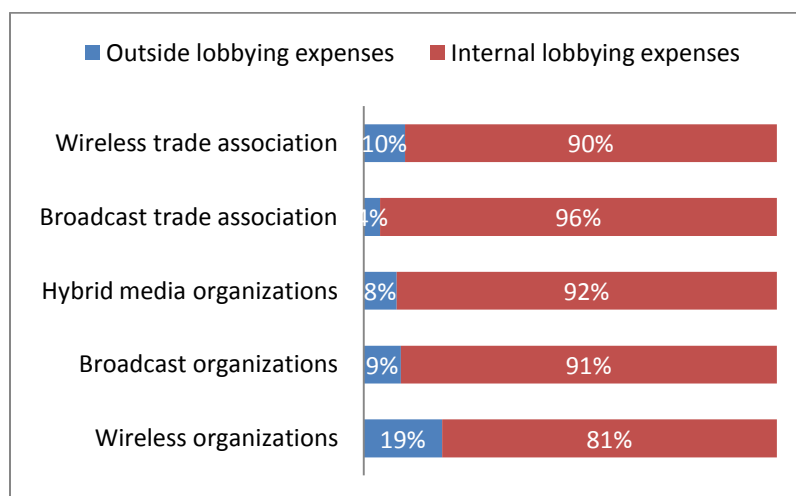


Figure 7

Money Spent on Lobbying Expenditures, 1998 – 2010

Hiring an outside lobbying firm was the most popular way to lobby, with outside lobbying firms conducting 85% (n = 652) of the activity. Internal lobbying efforts made up the additional 15% (n = 119) of the activity. However, industries devoted more money to internal lobbying than to outside lobbying efforts (Figure 8).

Figure 8

Internal Versus External Lobbying Spending

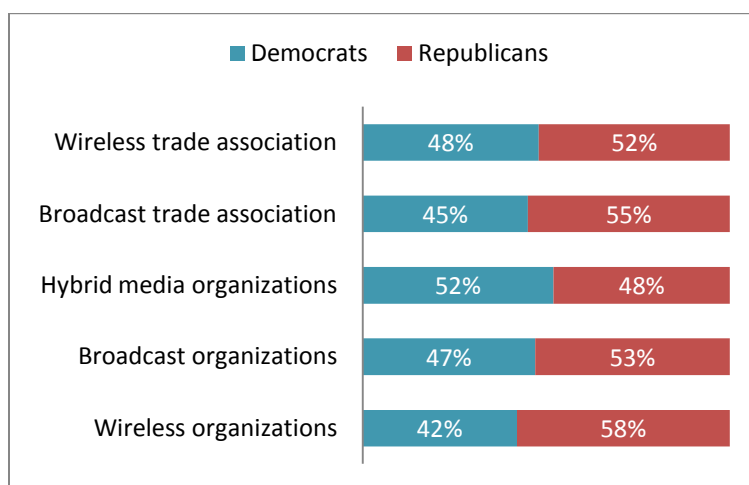
Similar to the pilot study, the House of Representatives and Senate were again the most popular venues to lobby to, with 98% (n = 753) of all lobbying reports indicating that at least a portion of the lobbying activity had been directed towards the House. The Senate received lobbying attention from 97% (n = 748) of the lobbying reports under study. The FCC received lobbying attention from 29% (n = 225) of the lobbying reports, and the White House received attention from 13% (n = 98) of the reports.

Broadband was the most frequently lobbied upon topic, appearing in 63% (n = 488) of the lobbying reports. Spectrum appeared in 38% (n = 294) of the reports and mergers appeared in 19% (n = 146) of the reports.

Campaign Contributions

The data set of campaign contributions (N = 72) accounted for approximately \$49.05 million in contributions during the time period under study. Of the total \$49.05 million, 44% (\$21.64 million) was given to Democratic candidates and 56% (\$27.62 million) was given to Republican candidates. With the exception of the hybrid media corporations, the rest of the groups under study donated slightly more to Republican candidates during the time period under study (Figure 9).

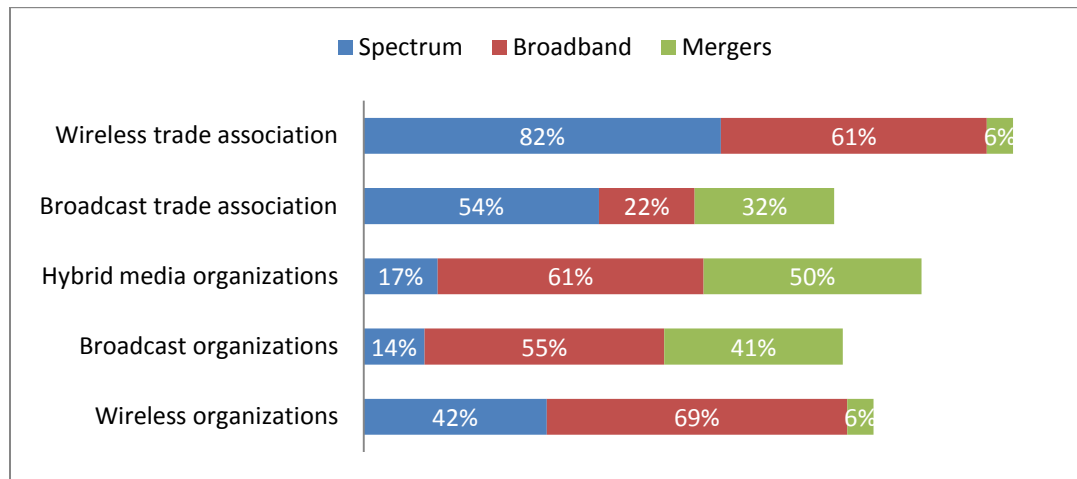
Figure 9

Contributions to Democratic and Republican Candidates

Hypothesis 1: To increase the likelihood of regulatory capture, non-isomorphic lobbying strategies will be used by the wireless and broadcast industries when determining the attention given to policy issues.

This hypothesis was supported for all three of the issues, broadband, spectrum and mergers. This finding deviates from the pilot study, which only found support for the issues of spectrum and mergers. Overall, the wireless trade association included spectrum in the largest percentage of lobbying reports, the wireless corporations included broadband in the greatest percentage of reports and the hybrid media corporations included mergers in the greatest number of lobbying reports (Figure 10).

Figure 10

Policy Topics Included in Lobbying Reports

A one-way ANOVA was used to test for attention paid to the policy issues among the five groups (broadcast corporations, wireless corporations, hybrid media corporations, broadcast trade association and wireless trade association). Lobbying strategies for attention paid to the policy issues varied significantly across the five groups for broadband, $F(4, 766) = 9.319, p = .001$, spectrum, $F(4, 765) = 25.90, p = .001$ and mergers $F(3, 766) = 57.62, p = .001$. This finding indicates that there were differences among the five groups in terms of the policy topics under study.

LSD post-hoc comparisons of the five groups indicate that the attention paid to the issues by the wireless corporations group ($M = 1.86, 95\% \text{ CI } [1.75, 1.97]$) varied significantly from the hybrid media corporations group ($M = 2.72, 95\% \text{ CI } [2.49, 2.96]$), $p = .001$, the broadcast trade association group ($M = 2.35, 95\% \text{ CI } [1.96, 2.74]$), $p = .028$, and the wireless trade association group ($M = 2.88, 95\% \text{ CI } [2.48, 3.29]$), $p = .001$. The LSD post-hoc comparisons of the five groups also indicate that the broadcast corporation group ($M = 2.16, 95\% \text{ CI } [1.82, 2.51]$) differed in the amount of attention paid to the issues from the wireless trade association group (M

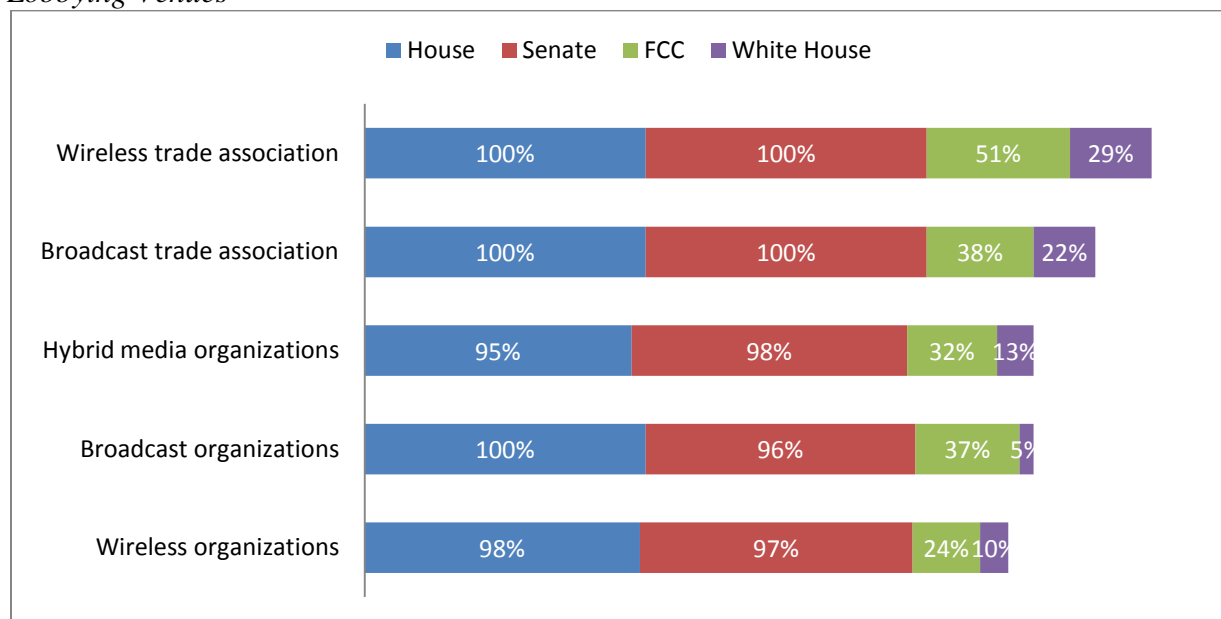
= 2.88, 95% CI [2.48, 3.29]), $p = .006$ and the hybrid media group ($M = 2.72$, 95% CI [2.49, 2.96]), $p = .009$.

These results support the fact that the wireless corporation group devotes more overall resources to lobbying, and submitted more lobbying reports, than the other groups under study. These results also indicate that both the broadcast and wireless corporations differ in attention paid to the issues from the trade associations and hybrid media groups, but do not significantly differ from each other. This reflects similar policy interests that make completely non-isomorphic lobbying activities difficult to achieve. Overall, it appears that the wireless and broadcast industries are attempting to engage in non-isomorphic lobbying strategies by not giving equal lobbying attention to the policy issues under study.

Hypothesis 2: To increase the likelihood of regulatory capture, non-isomorphic lobbying strategies will be used by the wireless and broadcast industries when determining lobbying venues.

This hypothesis was not supported, with the one-way ANOVA testing for differences in lobbying venue among the five groups (broadcast corporations, hybrid media corporations, wireless corporations, broadcast trade association and wireless trade association) finding no significant differences. The five groups devoted a similar amount of time to lobbying at the House, Senate, FCC and White House (Figure 11). This finding is a slight deviation from the pilot study, which found support for non-isomorphic lobbying to the FCC.

Figure 11

Lobbying Venues

Significant differences in the amount of lobbying done to the House of Representatives, Senate, FCC and White House were not found, suggesting that the groups still exhibit isomorphic tendencies when determining what venues to direct lobbying efforts towards. Given the importance of Congressional and regulatory support, this result is not surprising and suggests that engaging in non-isomorphic behavior when it comes to lobbying the House, Senate, FCC and White House may harm industries, by not having their voices heard as often, more than a non-isomorphic strategy would help the industry stand out and help achieve regulatory capture.

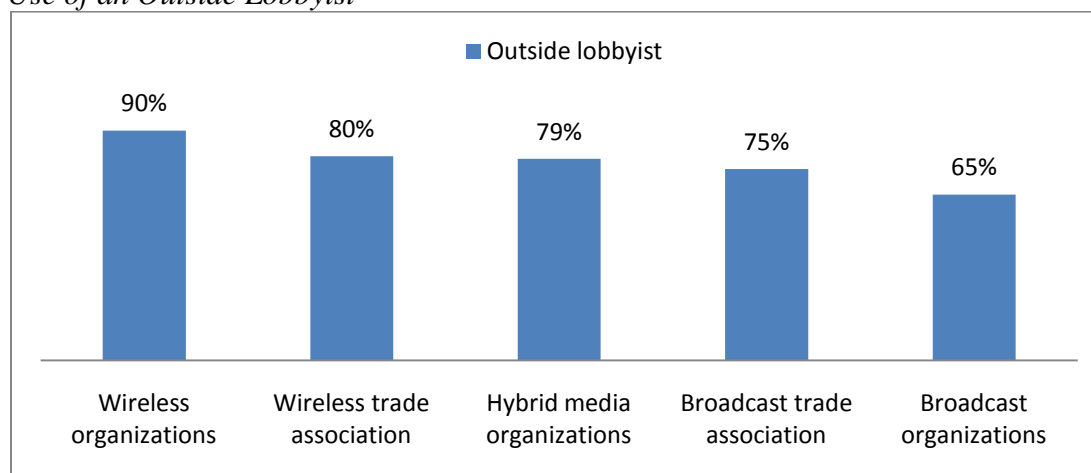
Hypothesis 3: To increase the likelihood of regulatory capture, non-isomorphic lobbying strategies will be used by wireless and broadcast industries when determining whether to use an external or internal lobbyist.

This hypothesis was supported for the groups under study. Overall, the wireless corporations employed an outside lobbyist the most frequently, followed by the hybrid media

corporations, wireless trade association and broadcast trade association, while the broadcast corporations employed an outside lobbyist the least often (Figure 12).

Figure 12

Use of an Outside Lobbyist



A one-way ANOVA was used to test for the amount of internal versus external lobbying among the five groups (broadcast corporations, hybrid media corporations, wireless corporations, broadcast trade associations and wireless trade associations). The amount of lobbying conducted through an internal employee versus an outside lobbyist varied significantly across the five groups, $F(4, 765) = 2.901, p = .021$. LSD post-hoc comparisons of the five groups indicate that the broadcast corporations group ($M = 3.41, 95\% \text{ CI } [-.13, 6.94]$) used a significantly different ratio of inside to outside lobbying than the wireless corporations group ($M = 1.90, 95\% \text{ CI } [1.87, 1.93]$), $p = .001$, hybrid media corporations group ($M = 1.79, 95\% \text{ CI } [1.72, 1.85]$), $p = .001$, the broadcast trade association group ($M = 1.76, 95\% \text{ CI } [1.61, 1.90]$), $p = .015$, and the wireless trade association group ($M = 1.79, 95\% \text{ CI } [1.72, 1.85]$), $p = .010$. This finding suggests that the broadcast group may be attempting to distinguish its lobbying efforts from those of their competitors by using internal versus external lobbyists at a different rate from the other groups.

Hypothesis 4: To increase the likelihood of regulatory capture, non-isomorphic campaign contribution strategies will be used by the broadcast and wireless industries when determining the overall amount of campaign contributions.

This hypothesis was supported for the groups under study and indicates that significant differences are evident in the overall amount of campaign contributions given by the five groups. A one-way ANOVA was used to test for differences in the overall amount of campaign contributions among the five groups (broadcast corporations, hybrid media corporations, wireless corporations, broadcast trade association and wireless trade association). The total amount of contributions given by the five groups varied significantly, $F(4, 67) = 1.00, p = .001$.

LSD post-hoc comparisons of the five groups indicate that the wireless trade association group ($M = 691.55, 95\% \text{ CI } [352.1, 1031.0]$) donated campaign contributions at a significantly different rate than the broadcast corporations group ($M = 9.33, 95\% \text{ CI } [1.51, 17.14]$), $p = .001$, the wireless corporation group ($M = 108.4, 95\% \text{ CI } [-12.63, 29.41]$), $p = .001$, the broadcast trade association group ($M = 79.6, 95\% \text{ CI } [61.56, 97.72]$), $p = .001$, and the hybrid media group ($M = 7.0, 95\% \text{ CI } [3.84, 10.09]$), $p = .001$. These results support the notion that the wireless trade association devotes a different level of resources to the campaign contributions and may be attempting to engage in a non-isomorphic government relations strategy.

Hypothesis 5: To increase the likelihood of regulatory capture, non-isomorphic campaign contribution strategies will be used by the broadcast and wireless industries when determining the way to divide contributions between Democrats and Republicans.

This hypothesis was supported for the groups under study and indicates that significant differences are evident in the campaign contributions given to Democratic and Republican candidates by the five groups. A one-way ANOVA was used to test for differences in the

amount of campaign contributions given to Democrats and Republicans among the five groups (broadcast corporations, hybrid media corporations, wireless corporations, broadcast trade association and wireless trade association). The amount of contributions given to Democrats by the five groups varied significantly, $F(4, 67) = 336.61, p = .001$. The amount of contributions given to Republicans by the five groups also differed significantly, $F(4, 67) = 250.59, p = .001$.

LSD post-hoc comparisons of the five groups indicate that the wireless trade association group ($M = 334.14, 95\% \text{ CI } [258.1, 454.3]$) differed significantly in terms of Democratic contributions from the broadcast corporations group ($M = 4.34, 95\% \text{ CI } [.66, 9.2]$), $p = .001$, the wireless corporations group ($M = 4.91, 95\% \text{ CI } [3.4, 6.3]$), $p = .001$, the broadcast trade association group ($M = 35.88, 95\% \text{ CI } [18.9, 52.9]$), $p = .001$, and the hybrid media group ($M = 3.56, 95\% \text{ CI } [8.6, 60.4]$), $p = .001$. The wireless trade association group ($M = 356.17, 95\% \text{ CI } [258.1, 454.3]$) also differed significantly in terms Republican contributions in comparison to the broadcast corporations group ($M = 4.94, 95\% \text{ CI } [.66, 9.2]$), $p = .001$, the wireless corporations group ($M = 6.40, 95\% \text{ CI } [4.7, 8.1]$), $p = .001$, the broadcast trade association group ($M = 43.63, 95\% \text{ CI } [39.8, 47.4]$), $p = .001$, and the hybrid media group ($M = 3.25, 95\% \text{ CI } [1.9, 4.5]$), $p = .001$.

The broadcast trade association group ($M = 43.63, 95\% \text{ CI } [39.8, 47.4]$) also differed significantly in terms of Republican contributions in comparison to the broadcast corporation group ($M = 4.94, 95\% \text{ CI } [.66, 9.2]$), $p = .004$, the wireless corporation group ($M = 6.40, 95\% \text{ CI } [4.7, 8.1]$), $p = .002$, and the hybrid media group ($M = 3.25, 95\% \text{ CI } [1.9, 4.5]$), $p = .002$. These results support the notion that the trade association groups are attempting to engage in non-isomorphic government relations activities by differentiating the amount of campaign support given, in terms of contributions, to Democratic and Republican candidates. The results indicate

that the broadcast and wireless trade associations may be trying harder to engage in non-isomorphic contribution activity when it comes to determining the level of contributions to donate to Democratic and Republican candidates.

Discussion

This chapter examined if industries competing for regulatory capture use non-isomorphic lobbying and campaign contribution activities in the attempt to accomplish policy goals. The results in this chapter suggest that competing for regulatory capture may be a motivator for the industry strategies that, while still isomorphic, show some divisions. This study suggests that isomorphic lobbying and campaign contribution strategies still occur between the wireless and broadcast industries, but some efforts are being made to begin distinguishing lobbying efforts in the areas of policy focus, the amount of internal versus external lobbying conducted by the corporations, and the campaign contribution strategies of the corporations and trade associations. When lobbying and campaign contribution differences do occur between the groups, the significant differences were split between inter-industry differences (broadcast industry versus wireless industry differences) and intra-industry differences (corporation versus trade association differences).

These results may suggest that not only are the different industries attempting to distinguish themselves in order to achieve regulatory capture, so are the lobbyists at the intra-industry corporations and trade associations. The corporations and trade associations in the same industry may have the desire to show differences in lobbying strategies in order to differentiate the groups and work separately to achieve regulatory capture. While it is likely that the wireless and broadcast industries will never engage in fully non-isomorphic strategies due to the relatively small and insular world in which Washington, DC lobbyists operate, the evidence

suggesting that the industries are attempting to engage in some non-isomorphic strategies indicates that differentiating lobbying strategies from competitors is considered as a possible lobbying weapon in the current competitive atmosphere for regulatory capture.

The similarities when deciding what venues to lobby to are still strong perhaps due to the isomorphism between the two industries, especially in the areas of normative and mimetic isomorphic habits. However, the changes in the level of similar focus given to the same issues, using an internal or external lobbyist, as well as the changes in campaign contribution habits may indicate that, in an attempt to gain regulatory capture, the industries are attempting to distinguish their lobbying efforts. This attempt appears to be easier for the trade associations, which may be more delineated than the corporations. In the post-hoc statistical analysis, all of the differences between groups included a trade association. The trade associations' focus on lobbying in the industry's best interests, and may have an easier time separating their lobbying efforts from the competing industry due to a group consensus of lobbying message and strategies.

Additionally, the wireless industry's ability to distinguish itself by spending more money spreading out lobbying efforts more evenly across issues and across venues may reflect its status as the newer, and more proactive of the industries. As the industry that is attempting to displace the traditionally captured broadcast industry, research indicates that the wireless industry will try to mimic the broadcast industries lobbying strategies in an effort to gain legitimacy with the FCC and government, while at the same time attempting a more proactive lobbying strategy as the upstart industry.²⁴² This division between a desire for legitimacy and a culture of proactive behavior may also explain the reasons why the broadcast and wireless industry's lobbying strategies are similar, but not mirror images of one another.

²⁴² Oliver & Holzinger, 2008

Theoretically, this chapter contributes to the literature by attempting to expand on the explanatory power provided by capture theory for regulatory favoritism. By incorporating institutional isomorphism as a mechanism of institutional theory, and examining the way lobbying strategies can change when industries compete for regulatory capture, the study attempts to add to the explanatory power regarding the ways industries attain regulatory capture. When industries cannot count on regulatory capture to achieve desired policy goals, organizations in the broadcast and wireless industries appear willing to risk some of the health and legitimacy of their industries that is gained through homogenous actions, and shift some portions of government relations strategies to stand out from other competitions. The willingness to change some portions of lobbying and campaign contribution actions when encountering competition from another dominant industry for policy attention suggests that one way industries attempt to gain regulatory favoritism in a competitive environment is through the use of non-isomorphic activities and strategies. Future research is required to test this theoretical framework, and could examine if industries that engage in non-isomorphic government relations activities are more or less successful in achieving regulatory favoritism than industries that continued to engage in isomorphic lobbying and campaign contribution activities.

Limitations

As with any research, this study contained limitations. Secondary research is limited by validity and is limited to data that already exists.²⁴³ This dissertation also acknowledges that not all of the lobbying and campaign contribution decisions made by the groups under study can be solely attributed to isomorphic pressures and the desire to conduct non-isomorphic government relations activities in an attempt to make the corporations' desired policy issues stand out. The

²⁴³ Babbie, E. (2006). *The practice of social research, 10th Edition*. Belmont, CA: Thomson: Wadsworth; Wimmer, R.D., & Dominick, J.R. (2006). *Mass media research, 8th edition*. Belmont, CA: Thomson Wadsworth.

corporations in the industries under study likely brought a variety of corporate issues and priorities to the table when determining government relations strategies for lobbying behavior and campaign contributions. Corporations also have different resources available for government relations strategies, as well as different goals and objectives they hope to achieve through lobbying and campaign contribution efforts.

This dissertation also acknowledges the limitations of examining corporations and trade associations together as part of an overall industry. Many differences exist between corporations and trade associations in terms of objectives, overall resources, resource allocation and company structure, making intra-industry comparisons between corporations and trade associations difficult to conduct. While this dissertation drew distinctions between trade associations and corporations by examining their respective government relations activities as separate entities, the drawing together of corporate and trade association activities to make overall conclusions about an industry is acknowledged as a limitation. Including trade association government relation activities was viewed as necessary in order to conduct an encompassing view of the lobbying and campaign contributions done by the broadcast and wireless industries, however the inclusion of trade associations also limited the number of control variables that could be used in the quantitative research. While the corporations examined are public companies whose lobbying expenditures could be controlled by company profits or total revenue, this information is not made available by trade associations and resulted in fewer control variables being used in the quantitative analysis than was originally anticipated. As a stream of research examining an undeveloped research area, both trade associations' and corporations' political activities were included in the attempt to learn as much as possible about the overall lobbying and campaign contribution activities of the broadcast and wireless organizations.

The lobbying reports gathered for this study also contained other limitations. Corporations are able to group together lobbying on a variety of topics on the same lobbying report, making it impossible to discover the amount of money that was actually spent on the each individual issue (e.g., a company can submit a report for \$100,000 in lobbying expenditures and state that the funds were directed to broadband, taxation, defense, and retransmission issues without having to break down what percentage of the \$100,000 went to each issue). While being required to file lobbying reports does increase the overall transparency of the lobbying process, there are still limitations to working with the lobbying documents.

While the use of lobbying reports has limitation, the lobbying reports and campaign contribution data used in this chapter also contain useful information and have been primarily ignored in previous research examining lobbying strategies. When previous research has conducted empirical research, ex parte comments, political contributions and meeting comments have been used. The use of lobbying reports adds another dimension to the study of lobbying strategies.

Conclusion

Following this examination of the lobbying expenditure and campaign contribution data sets to analyze the government relations actions of the broadcast and wireless industries, the next two chapters of this dissertation shift the focus to the reasons behind the lobbying and campaign contribution activities that are documented in the disclosure reports. This will be done by sharing the results of interviews with lobbyists from the broadcast and wireless industries on the topics of strategy formation, the impact competition has had on lobbying activities, and regulatory capture.

CHAPTER 4

ORGANIZATIONAL ACTIVITIES OF LOBBYISTS

This chapter focuses on the day-to-day business of lobbying, the way corporations form lobbying strategies, and the impact competition has had on lobbying strategies. Using institutional isomorphic processes and resource dependence theory, this chapter examines four research questions relating to isomorphism and government relations strategies and activities, as well as resource dependence motivations for government relations departments and trade association involvement. These questions are examined through the analysis of in-person interviews conducted with corporate and trade association lobbyists in the broadcast and wireless industries. The interviews found some support for the idea that competition between the industries was motivating corporations to attempt to move away from isomorphic lobbying strategies and activities; however a large amount of isomorphism still exists between the industries. Stronger support was found for the questions regarding competition and resource dependence, finding that government relations departments received enough resources to reduce uncertainties by having the funds to effectively lobby government officials and remain committed to trade association memberships.

The Lobbying Profession

When considering professions that are nearly universally disliked and distrusted, lobbying is often at the top of the list. While lobbying may help corporations achieve numerous benefits including gaining an edge over competitors by getting desired policies enacted, the process of lobbying is not viewed nearly as favorably as the benefits the practice can bring to a

corporation. Few professions are associated with as much general distrust as professional lobbyists, with the public often considering Jack Abramoff as indicative of all corporate lobbyists.²⁴⁴ Public opinion polls often rate lobbyists as one of the least trusted professions, on par with politicians and used car salesmen, and the media generally depict lobbyists in a negative light, including unflattering portrayals in movies including *Thank You for Smoking* and *Casino Jack*.²⁴⁵ The general public consensus is that lobbyists have an unfair advantage in shaping public policy, due to their access to government officials and unlimited resources to attempt to sway these officials towards their desired policy outcomes.

While lobbying may be viewed as a selfish, soulless profession whose practitioners conduct unfair activities to ensure that corporations receive more advantages than individual citizens, the nature of the lobbying profession is often very different in reality than the public perception. The purpose of this chapter is to examine the actualities of the lobbying profession, if the realities of lobbying differ from the legal guidelines outlined in chapter two, and the way lobbying strategies and activities are decided upon by lobbyists working for broadcast and wireless corporations. This chapter shares the results of interviews conducted with lobbyists at broadcast and wireless corporations and trade associations. The purpose of the interviews is to move beyond the public perception of lobbying and take an inside look at the ways lobbyists in the broadcast and wireless industries develop strategies, conduct government relations activities, as well as to learn if lobbyists really operate with unlimited resources and corporate support, or if the lobbyists face similar restraints in their professions as people in other careers. The interviews also aim to uncover if competition is changing lobbying strategies for professionals working in

²⁴⁴Spulak, T. (2009, January 13). What's so bad about lobbyists, anyway? *The Hill.com*. Retrieved from <http://thehill.com/business-a-lobbying/k-street-insiders/k-street-insiders/20174-whats-so-bad-about-lobbyists-anyway>.

²⁴⁵Rivera, R. (2007, June 25). For lobbyists, this campaign is personal. *The New York Times*. Retrieved from <http://www.nytimes.com/2007/06/25/nyregion/25lobby.html>.

the broadcast and wireless industries. The chapter concludes with an analysis of the interviews and a discussion regarding if empirical support was found for the theoretical framework used in this dissertation.

Organizational Framework

While lobbying is afforded legal protections through the First Amendment, *Noerr-Pennington* doctrine and subsequent Supreme Court decisions, lobbyists do not have carte blanche to operate under whatever directives they see fit, and conduct any activities that will enhance their chances of shaping policy. Rather, the vast majority of lobbyists operate under well-developed corporate guidelines and often operate in a manner similar to other lobbyists in the same industry, due to institutional isomorphic pressures. One of the primary motivations for institutional isomorphism is that conducting similar actions as other corporations in the industry increases legitimacy for a corporation.²⁴⁶ Legitimacy is the notion that the actions of an entity are appropriate within a socially constructed system of values, norms, beliefs and definitions.²⁴⁷ Legitimacy building is considered a proactive activity for corporations, and favorable regulatory rulings and policies that result from lobbying can enhance legitimacy.²⁴⁸ Likewise, corporations that do not practice isomorphism and focus on innovation often suffer in terms of legitimacy.²⁴⁹

For government relations activities, isomorphism can exist in determining what policy issues to focus resources on, what venues to lobby, whether to lobby through an internal or external lobbyist, and whether to supplement corporate lobbying through lobbying with a trade association. Membership in trade associations is common for wireless and broadcast

²⁴⁶ Deephouse, D.L. (1996). Does isomorphism legitimate? *Academy of Management Review*, 39(4), 1024-1039.

²⁴⁷ Suchman, M.C. (1995). Managing legitimacy: Strategic and institutional approaches. *Academy of Management Review*, 20(3), 571-610.

²⁴⁸ Suchman, 1995

²⁴⁹ Deephouse, 1996; DiMaggio, P. & Powell, W.W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review*, 48, 147-160.

corporations, and is often a key resource for government relations activities. As competition increases between the broadcast and wireless industries, trade association membership is on the rise and appears to be a key component of the corporations' government relations strategies.

The leading broadcast trade association, the National Association of Broadcasters (NAB), has regained the membership of the broadcast networks, due in large part to the increased competition faced by the wireless industry.²⁵⁰ After experiencing the loss of all of the broadcast networks from the trade association in the late 1990s due to divisions between broadcast interests and local network interests, the networks have returned to the NAB in recent years, providing the NAB with millions of extra dollars in membership fees.²⁵¹ The increased importance of spectrum allocation and broadband issues motivated the networks to rejoin the trade association.

Trade Associations

Trade associations are defined as groups that provide representation and other collective services to businesses in a specific sector, with common interests.²⁵² Characteristics of trade associations that differentiate them from other associations include the facts that trade associations are member-based corporations with the members being corporations not individuals; trade association lobbying on behalf of the collective position of the group, members have a common interest, and members are involved in the decision making process.²⁵³ The most common type of trade association is a single industry association (e.g., the NAB representing all broadcaster members).²⁵⁴ The structure of a trade association can affect the level of political

²⁵⁰ Flint, J. (2010, May 10). Fox and CBS rejoin TV industry's DC lobbying group. *The Los Angeles Times*. Retrieved from <http://latimesblogs.latimes.com/entertainmentnewsbuzz/2010/05/fox-and-cbs-rejoin-tv-industrys-dc-lobbying-group.html>.

²⁵¹ Flint, 2010.

²⁵² Boleat, M. (2003). *Managing trade associations*. Great Britain: Trade Association Forum.

²⁵³ Boleat, 2003; Perry, M. (2008). Trade associations: A case of Cinderella at the ball? *University of Auckland Business Review*, 54-62.

²⁵⁴ Boleat, 2003

influence held by the association, and associations with centralized and representative structures have been found to have the most political influence.²⁵⁵

Trade associations are a specific type of corporation that relies on participation from corporations in the industry to maintain relevance and legitimacy.²⁵⁶ Historically, trade associations have been viewed as protectionist organizations that value defending members from new competition.²⁵⁷ A primary way this protection is conducted is through the formation of policies that benefit existing members, and subsequent lobbying efforts on behalf of the policies.²⁵⁸ In return, the members contribute to the relationship by sharing information with other member corporations.²⁵⁹ The formation of trade association policy is different from corporate policy formation because trade associations must create policy that best benefit all the association members.

Research Questions

Theoretically, this chapter applies institutional isomorphism mechanisms and resource dependence theory to the activity of lobbying for a broadcast or wireless corporation or trade association. While institutional isomorphism argues that government relations strategies will be similar for corporations in each industry, this dissertation proposes that the impact of increased competition between the broadcast and wireless corporations is altering government relations strategies and having corporations move away from similar strategies in order to stand out to government officials. Whether a deliberate move from isomorphic strategies is occurring, or if

²⁵⁵ Coleman, W., & Grant, W. (1988). The organizational cohesion and political access of business: a study of comprehensive associations. *European Journal of Political Research*, 16, 467–487.

²⁵⁶ Boleat, 2003; Drope, J.M., & Hansen, W.L. (2009). New evidence for the theory of groups: Trade association lobbying in Washington, D.C. *Political Research Quarterly*, 62(2), 303-316.

²⁵⁷ Olson, M. (1965). *The logic of collective action: Public goods and a theory of groups*. Cambridge, MA: Harvard University Press.

²⁵⁸ Barringer, B.R., & Harrison, J.S. (2000). Walking a tightrope: Creating value through interorganizational relationships. *Journal of Management*, 26(3), 367-403; Drope & Hansen, 2009.

²⁵⁹ Bresser, R.K. (1988). Matching collective and competitive strategies. *Strategic Management Journal*, 9, 375-385.

the isomorphic pressures faced by the broadcast and wireless industries are too great to beget easy change is examined in the interviews.

Research Question 1: How does competition for regulatory favoritism impact the formation of government relations strategies?

Research Question 2: How does competition for regulatory favoritism impact the execution of government relations activities?

Using resource dependence theory, this dissertation also examines if the level of organizational support government relations departments receive from their corporations when facing competition for desired policy outcomes. Organizational support is operationalized as receiving sufficient budgetary and personnel support in order for lobbyists to feel that they are able to effectively communicate the corporation's policy objectives to legislators and regulatory agencies. Resource dependence theory argues that organizational support will be given to government relations departments because lobbying activities are a key way that regulated industries can strengthen outside ties and reduce uncertainties with outside environments, such as government officials.

Research Question 3: How does competition for regulatory favoritism impact the organizational support to government relations departments receive?

Using resource dependence theory, this chapter also examines if increased competition between the broadcast and wireless industries motivates corporations to develop increased commitment and involvement in trade associations. Resource dependence theory suggests that increased involvement will be done as a way to strengthen the corporations' political actions and outside ties to the environment.

Research Question 4: How does competition for regulatory support impact involvement in trade associations?

Method

Seven in-depth interviews lasting approximately one hour each were held with government relations executives at broadcast and wireless corporations and broadcast and wireless trade associations in Washington, D.C. during the week of May 16 – 19, 2011. The interviews were structured around a questionnaire using 19 open-ended questions (Appendix). The questions were formulated based on an analysis of the lobbying disclosure documents and popular press articles discussing increased lobbying and competition between the industries. In-person interviews were selected as a useful method to gain more insight into the lobbying habits of the broadcast and wireless industries. The researcher was first able to begin learning about the lobbying habits through the analysis of the lobbying disclosure forms, and the interviews served as a way to gain more in-depth knowledge about lobbying strategies and activities. Through the interviews, the researcher was able to gain more in-depth impressions regarding strategy formation, organizational support given to government relations departments, and trade association relationships. Not all of the respondents answered all of the questions on the questionnaire, due to both time constraints and the respondents' preference to focus on one area of the questionnaire. Based on the respondent's answers, different follow up questions were asked in each interview.

Sample

The interviews were conducted with senior level executives at three broadcast corporations, one broadcast trade association, two wireless corporations, and one wireless trade association. Several of the corporations interviewed were part of larger conglomerate

corporations. Interview requests were extended to lobbyists from the top twenty wireless and broadcast corporations via email. The wireless and broadcast top twenty lists were created based on lobbying expenditure information from Open Secrets. Corporations on the top twenty lists that only used external lobbyists for government relations activities were not extended interview invitations. After the top twenty lists for the wireless and broadcast industries were created, a lobbyist from each corporation was identified from the lobbying reports filed with the Senate Office of Public Records. Interview requests were extended by emailing either the top lobbyist directly, or through their assistant. Follow up requests were sent one week after the initial interview request.

Nine in-person interviews were scheduled for a response rate of 23%, but due to scheduling conflicts during the interview week in Washington D.C., seven interviews were ultimately conducted for a final response rate of 18%. All of the respondents were emailed the questionnaire sheet one week prior to the interviews in order to allow them to familiarize themselves with the questions and alert the respondents ahead of time if there were any questions they were not comfortable answering, or any questions not on the questionnaire they felt the researcher should discuss with them.

Interview Analysis

Participants signed consent forms that made them aware that they could refuse to participate or stop taking part at any time without giving any reason, and without penalty, and could ask to have information related to them returned, removed from the research records, or destroyed. The data collected from the interviews remained confidential and participants will never be named or identified. The interviews were recorded with an audio recorder for purposes of verifying the accuracy of the analysis of the responses; following the interviews the tapes

were transcribed. Approximately eight hours of interview time was logged and recorded with the seven respondents. During the interviews, the researcher also took handwritten notes to note highlights of the interviews.

After the interviews were transcribed, the researcher felt familiar enough with the data to begin a content analysis. In order to allow the researcher to identify commonalities in answers and identify if isomorphic tendencies existed in lobbying strategy formation and activities, four major content categories were examined in regards to the impact competition had played in the broadcast and wireless industries: 1) the formulation of lobbying strategies, 2) the formulation of lobbying activities 3) the organizational support given to government relations departments and 4) the involvement between the organization and trade associations. For each content category, the researcher placed interview responses in a spreadsheet matrix in order to clearly compare the answers from each respondent.

The interviews aim to shed further light on corporate and government relations department decisions that are reflected in the lobbying disclosure forms, but not explained in literature. These decisions include when to lobby internally on an issue versus when to hire an outside consultant, how the decision is made regarding what venue to lobby to, and when firms decide to lobby as part of a trade association, and if the trade association lobbying precludes the corporation from also lobbying on the issue on its own behalf. The interviews also aim to shed light on the way lobbying strategies which determine the above activities are created, and the role the government relations department plays in the overall corporation.

Findings

Due to time constraints and the semi-structured nature of the interviews, not all of the respondents answered each pre-determined question in detail. In situations where the interview

went off-script and veered into other areas of government relations strategy formation, comments were weaved in with other similar areas of conversation, when applicable. Due to the high-stakes nature of the lobbying profession, which often includes sharing sensitive corporate information, pressure placed on the lobbyists to help achieve corporate policy goals, and increased competition between the broadcast and wireless industries, conducting seven fairly frank conversations was considered a successful sample for this dissertation research.

However, it is acknowledged that the information gathered in the interviews can only be used to suggest at patterns in isomorphic lobbying and the role competition is playing in the lobbying environment. No statistically significant findings or sweeping trends can be gathered from the small sample used for these interviews. While no absolutes can be stated from these interviews, the interviews do serve as important information in a new area of study. Little of the empirical work conducted into lobbying practices contains qualitative interviews with lobbyists, and little-to-no empirical work in the area of competing for regulatory capture includes interviews with lobbyists. These interviews serve as an important step in going beyond the black box of regulatory capture and strategy formation and provide first-hand knowledge regarding the decision making processes, system of prioritizing lobbying issues and lobbying activities conducted by the government relations respondents.

While the number of interviews conducted was not great in number, the interviews that were conducted contained internal consistency between the respondents. While not all of the respondents answered all of the questions with the same information, enough similarity between responses was provided to suggest that all of the respondents were answering honestly and sharing as much information as they felt comfortable with a researcher. None of the respondents

had answers (or demeanors) substantially different from the others, and many of the answers reflected shared experiences in corporate environments.

Research Question 1: How does competition for regulatory favoritism impact the formation of government relations strategies?

The interviews began broadly, with the respondents asked general questions regarding the formation of the government relations strategies. Several of both the wireless and broadcast corporations described the development of government relations strategies as being a mixture of high-level management formation and a dependence on hearing about issues from in-the-trenches workers across the country. One of the respondents representing a broadcast corporation described the process in similar terms to the other respondents.

Deciding on how to develop strategies is done in two ways, but they all come to two sides of the same coin. One way is somebody down here in Washington sees something that's broad and general enough that we think it creates either a threat or an opportunity that should be addressed and it's then brought to the attention of business people and there's a feedback loop between business people and government affairs people, and economists and other experts, to try and figure out whether in point of fact a), our interests are engaged and b), if whether we have a credible leg to stand on. The second side of exactly the same coin is simply that process starting, but starting with an observation by a business guy someplace else. They arrive in many many areas, logically enough it's going to be the business guy that's living and breathing in that space who's going to know if something's going to create a problem for him or not. And if he brings it to our attention, it's the same process of going back and forth and figuring out if there's an issue or not that we need to address.

A second broadcast corporation respondent echoed the feedback loop sentiments, explaining, "our Government Affairs team talks to our business units to try and see what problems they're having in the marketplace and then we try to look to see if there's legislation on point regarding that and we try to shape that." The wireless trade association respondent also described strategies as occurring theoretically at the Executive Committee and board of directors' level, but

practically also being impacted by weekly calls with business groups that allow the trade association to keep their pulse on the current business environment.

While many government relations strategies were developed through both executive management decisions and input from workers at different levels in the corporation, other corporations demonstrated a more formal and hierarchical process of policy development. The broadcast trade association respondent described policy formation as developing internally through the government relations department and board of directors. One of the wireless corporations also had a more formal policy development process in place, describing the formation of government relations strategies as being primarily set by the company headquarters, with some room for adaptation.

[We're] a foreign based company, so we consider government affairs from a holistic, overall point of view. The majority of our policies and priorities are set during the annual and quarterly meetings of our government affairs people, and those are general policies for the entire corporation, however we have local empowerment as well, for each of our regions. But for the most part, we have our overarching policies and then from there we're allowed to make tweaks and implement lobbying strategies as we see fit at the local level.

Respondents also categorized strategy formation as being impacted by the increased competition between the wireless and broadcast industries, and the strategy formation process working differently for offensive and defensive policy issues. As one of the broadcast corporation respondents explained, "Sometimes we have issues placed on us. So we could have a strategy where we want to work on different things, where no one was actively working to amend those laws, and that was just placed in our lap, and then current events take over and that became a top priority for our company." A second broadcast respondent also described strategy development as being influenced by competition, stating "We try to advocate for our positions and defend against those who would take positions that would be detrimental to our company."

A respondent from a wireless corporation also described government relations strategies as often occurring from a defensive position, but these strategies came from a different background as the corporation stemmed from a traditional RBOC and was used to having FCC oversight into corporate business decisions (e.g., pricing and taxation) and rule changes. “The FCC is always interested in what we’re doing. We have to respond to inquiries that the FCC has, or when they make proposals to change rules or adopt new rules, they have to give a time for the public to make comments, so we’re frequently making comments on proposed rules or changes to rules or other things that are going on at the commission where they’re setting policy.”

In response to the research question, the interviews provided some support for the idea that competition between the industries was impacting the formation of lobbying strategies. The interviews demonstrated a split between corporations that created government relations strategies only through a formal, hierarchical system and corporations who formulated government relations strategies through a feedback loop between senior levels of management and workers facing policy issues on the ground level. The split between the feedback loop corporations and formal strategic process was not evenly split between the broadcast and wireless industries, suggests that industry wide isomorphic habits were not securely in place for strategy formation.

The discussion of strategy formation also indicated the impact competition was having on the government relations departments of the broadcast and wireless corporations and trade associations. The increased competition often translated to having to develop strategies for policy issues placed on the lobbyists’ laps unexpectedly, and provided the lobbyists with less time to work towards policy goals developed in annual strategy meetings. The competition also appeared to make the government relations strategies less isomorphic because the corporations

had to deal with policy issues placed on them with short notice, and could not stick to the formally developed policy plans.

Research Question 2: How does competition for regulatory favoritism impact the execution of government relations activities?

When attempting to determine the impact competition had on lobbying activities, and if the broadcast and wireless industries were still conducting isomorphic lobbying activities, respondents were asked to explain their lobbying and campaign contribution activities, and also asked to explain the way the corporation decided whether to use an external lobbyist on an issue, and what venues to lobby. Gaining information regarding these areas of government relations activities allowed for a picture to be created regarding each corporations' overall government relations activities, and if competition was impacting isomorphic lobbying activities.

Lobbying

When asked to define lobbying, the respondents were unified in characterizing lobbying as comprising of business conducted on Capitol Hill and serving as a resource for other division in their corporation. The respondents also characterized lobbying as a forward looking process that determined the corporations' policy priorities. Lobbying activities were simply described by wireless and broadcast respondents as engagement (defined as meetings, document creation, etc.) on Capitol Hill, with legislators and their staffs. Depending on whether lobbying was the respondents primary job task and the priority given to lobbying by the corporation, the amount of time spent conducting lobbying activities varied between 90 percent of every day to "some years where it's 80 percent of my time and some years when it's virtually none, just depending on the process."

Serving as a resource for the corporation was also described as a vital role for lobbyists to play. As one of the broadcast respondents explained, “I think the most effective of the government relations offices try to integrate themselves as government relations representatives to the company with the businesses. So really you’re here to advocate on behalf of the businesses. If you’re not able to know what their strategic plans are for the next five years or ten years, you’re really at a disadvantage.”

However, respondents were split when asked to describe the process of lobbying. Some respondents defining lobbying as a structured practice defined by corporate norms and expectations, while others defined the process as a more fluid activity that required flexibility in order to achieve the desired results. While many of the respondents described lobbying activities as containing a certain set of actions (e.g., visiting the Hill, making contact with trade association members) that they were expected to fulfill for the corporation, the notion of being able to treat lobbying activities as fluid and flexible was also discussed by some respondents. The wireless trade association respondent provided a poignant overview regarding the importance of mixing corporate structure and flexibility.

You have to recognize that none of this is done in a vacuum and everything is constantly changing. The forces at the FCC change constantly, the Hill changes, the politics of an issue change, so what you’re trying to do is be fairly consistent on the policy issues that are your priorities, and then find that circuitous path through the maze of ultimate success.

The wireless trade association respondent also noted that the notion of flexibility was particularly important due to the industry he worked in, and the way the constantly changing technology impacted lobbying strategies.

Just by the technology, it’s sort of like trying to take an arrow and hit a bull’s-eye 200 miles away in a 30 mile per hour wind. And the wind is variable, so sometimes you aim over here because you know the wind will be right, and you know, it’s not an exact science, and every day you have to do something a little different to improve or enhance your chances with policy. So, you constantly try to figure your lobbying goals and

priorities in to it and you also have to figure out, where are those areas worth pursuing because you know, they potentially could provide some pay off or some advancing your policy, and that changes.

Campaign Contributions

In terms of government relations activities, the role campaign contributions played in corporations varied more than the role of lobbying. Two of the corporations interviewed, one broadcast and one wireless, did not have PACs, while the rest of the corporations did have company PACs. The reason for not having a PAC was primarily ethical, with the broadcast respondent explaining, “[Our corporation] has no PAC, that’s a conscious design by the most senior management because the idea of going to the members of [our corporation] and saying it’s voluntary, but we think you ought to do this, strikes them as inherently very difficult to do because it’s inherently involuntary.”

Of the corporations that did have PACs, a common theme existed of supporting candidates that supported the corporations’ interests. The respondents tended to allocate PAC funds to the House and Senate, Democrat and Republicans fairly evenly, with more money going towards the party in power. However, the corporations were also pragmatic regarding their PACs and campaign contributions and understood that contributions did not equate to unwavering support from the candidates to whom the corporation provided funds. One broadcast respondent explained,

You can look, and we’ve given money to members because of their positions, but they don’t support us on eight out of 10 things. But, they hold the gavel and they’re important to our industry and we need to make sure they understand that our company is here and that the broadcasting industry is important and that we’re advocating for it. So they’re separate parallel tracks, and for us they don’t often overlap and there’s not a thought of, oh we have to get to such and such member, we need them to vote in the right way, so let’s give them a PAC contribution, that’s not how it works, we’re very clear about that.

Use of External Lobbyists

All of the respondents either currently used outside consultants as an additional resource for government relations activities, or had used outside consultants in the past. The main occasions respondents used outside lobbyists for was when an external consultant had more knowledge about specialized policy issues than the internal lobbying staff, or when the government relations staff needed extra people to make contact with legislators. One of the broadcast respondents summed up the position of several respondents when explaining, “I get an outside lobbyist when it is clear I don’t have as much knowledge as someone on the outside.” Topics cited that required specialized help included traffic pumping and complex taxation issues, with a wireless respondent echoing, “We bring in people with a specialty working on certain aspects of the industry.” The need for consultants to serve as extra bodies to make contact with legislators was explained by another broadcast respondent, “We have a small handful of external consultants that end up being our arms and legs, there are a lot of offices to cover on the Hill. Our outside people tend to work more with legislators, while the inside employees work more with business leaders.”

Respondents that did not currently use outside consultants cited the recession as the reason for no longer having the extra resources, and several respondents noted that the use of outside consults had been limited due to the current economic climate. Not being able to hire outside consultants was viewed as an obstacle for the corporation, with a wireless respondent stating,

I would love to have extra help again, it’s really hard to stay on top of anything. Being a one man show, it’s hard to keep on top of everything, in the past we were able to pick a couple issues and really focus on them and we could do the outside issues, like if there was a tax issue I wasn’t an expert on, we could have the outside consultants do the tax issues and keep me apprised on what’s going on. These days, it’s more like we’re a

triage in a medical facility, where we're just dealing with the topics that come in the best we can. We've got a ton of issues, but our expertise is not as deep as we'd like it to be.

The corporations were not the only respondents that used outside consultants, the broadcast trade association also utilized outside lobbyists when needed. In addition to outside lobbyists, the trade association was also able to work with other trade associations and affiliated state groups when it needed extra resources. The broadcast trade association respondent described the decision making process for when to use external sources as being based on the level of competition surrounding the policy issue explaining, "How aggressively we use our external forces depends on the level of legislation and the threat."

Venue

When asked about the choice of deciding what venue(s) to lobby to, respondents made it clear that the venues used were not generally considered as mutually exclusive choices, but rather there was a feedback loop between lobbying to Congress and the FCC that made both venues important to stay connected to. One of the broadcast respondents explained, "There's a big feedback loop and that dictates where you choose to lobby. You may start at the FCC and DOJ, and then move to the Hill if the issue is getting attention there as well and you need to add your two cents." A trade association respondent echoed,

Venue choices aren't mutually exclusive. A lot of times, we'll be communicating with both Congress and the FCC." The respondent also noted that the current legislative climate made lobbying to both sources more vital than ever, "Especially with the split Congress, a lot of the action is happening at the FCC and in the regulatory world, so we oversee what's happening there.

However, respondents did note that tactics did change based on the venue they were lobbying, and that the FCC was considered the most important place to lobby, other than Congress. One of the wireless respondents explained, "Lobbying the FCC is more of a one-on-one process. Even though we may go in with a trade association, the FCC has the ability to

impact individual businesses. We probably go the FCC more than we visit other [venues] expect for the Hill.”

Overall, the second research question provided support for the notion that competition was impacting lobbying activities. In terms of both inter and intra-industry isomorphism, government relations activities remained fairly isomorphic, but some differences are beginning to appear between the broadcast and wireless industries. In terms of lobbying activities, the primary difference was the formality of the activity process. While the broadcast corporations and trade association primary stick to a structured approach of visiting Capitol Hill and providing education to government officials, the wireless respondents described a more flexible outlook towards lobbying activities and a pragmatic viewpoint regarding the need for flexibility in an industry that changes quickly due to continued technological innovation in the wireless industry. In terms of campaign contributions, the majority of the respondents had company PACs, with only one broadcast corporation and one wireless corporation lacking a PAC. Among the corporations that did have PACs, the rationale for campaign contributions, and expectations placed on government officials receiving contribution funds remained similar between corporations in both industries, demonstrating a great deal of institutional isomorphism on the topic of campaign contributions.

In terms of external consultants, the respondents for the wireless and broadcast corporations also demonstrated isomorphic actions. All of the respondents liked the extra help afforded by external consultants, and tended to use the outside help for similar circumstances, primarily when a complex policy topic arose that the respondent was not an expert in, or when more people were simply needed to bring a corporation’s policy message to government officials. Deciding on the venue to lobby was also a fairly isomorphic activity, with none of the

respondents favoring one venue over the other, but rather reiterating the importance of lobbying to more than one venue at a time and viewing the lobbying of multiple venues as not mutually exclusive. Overall, while some differences existed in the philosophies and actions of the broadcast and wireless industries, the majority of lobbying activities appear to still be fairly isomorphic.

Research Question 3: How does competition for regulatory favoritism impact the organizational support to government relations departments receive?

Overall, the respondents represented relatively small government relations staffs, but the small staff size did not indicate relative importance to the corporation. The government relation departments tended to have direct access to top executives, and monetary resources to achieve policy goals. The small size of the corporations was also supplemented by hiring outside consultants and working through trade associations to make the corporation's voice larger on policy issues. One of the broadcast respondents explained the dichotomy between corporate size and corporate importance as,

So we don't have a lot of bodies, we're like lean and mean, but we do have a lot of resources, and we deal with the senior levels of our company. So if there's a problem in DC, I better be telling the CEO directly, and our general counsel. They don't like when there are problems in DC, so they pay us enough attention and make sure to get me what I need.

A wireless respondent with a small staff also reflected the ability to gain resources for lobbying stating,

I think large corporations especially understand the need for being involved, actively involved with the governments in the regions, with policy makers and regulators. Large corporations know that even small decisions can have rippling effects on whether or not they locate facilities in those regions, or how they structure deals as far as borrowing money.

The contrast between the small size of the government relations departments and their corporate importance was also discussed by the respondent from the broadcast trade association. “[Due to the small size of our staff] if you look at it from the outside, you’d think the government relations aspect of the [trade association] is quite small, but that’s not the case. If we lose a couple high-profile issues, then we might as well sell the building and go home.”

In order to receive resources from the executive level, the broadcast respondents also expressed the view that it was necessary to develop relationships with the senior levels of leadership, particularly when the broadcast division of the corporation was part of a larger conglomerate,

So we have the luxury of being able to do that [work closely with senior management], we’ve always worked with our general counsel, who has purview over government relations in Washington and the series of senior executives that deal with the different divisions. Your ability to navigate among the business leaders and top leadership is really important, to know what your North stars are when you lobby.

While the respondents shared an ability to receive company resources, a broadcast respondent cautioned that this ability was not given carte blanche in the current economic climate.

If it’s going to be a very heavy legislative year, you have to have that discussion, the need for additional lobbying resources or even head count. But generally in the corporate world, the head count, and number of people you can hire has been on the downward trend as companies have cut costs and the economy has gotten worse and even the outside consultants have been cut back recently. But absolutely, you know we’re another cost center just like any other in the company so you have to justify your work load and what you do with your discretionary dollars, as well as the dollars allotted for lobbying.

While the respondents received corporate support, the recession also impacted the amount of time and money the government relations departments were able to spend on each policy issue, with the respondents sharing that they were often forced to prioritize issues due to limited resources. Limited amount of funds and employees made it difficult for the corporations

to devote the desired time, money and attention to all of the issues that could benefit their corporate environment. In order to prioritize issues, respondents had to determine what issues benefited their corporations and issues they felt they were likely to influence legislation. A broadcast respondent described the process as “We talk to our business units, we talk to our trade association to see what other companies are doing, and we all try to then make a list of priorities and only focus on the ones we think we can really have an impact on.” The wireless trade association respondent also reflected on the necessity of prioritizing in order to create optimal government relations strategies.

I try to identify those areas that are the most pressing, significant issues that the members seem to be finding consensus around. Then it’s up to the association and the staff here to drill down into those and really figure out, what’s really driving the policy initiatives and concern, and what is it you hope to change in terms of policy or regulation that provides some relief to the industry. Once you have that idea of what is it, it makes it a lot easier to decide how many of those issues become the priority issues, and how can you decide, not to experience what I call mission creep, which further dilutes your potential to put policy in place.

Structurally, the government relations departments tended to divide up responsibility by having different employees target different venues or working on different issues. The smaller offices tended to have one person be the point of contact for regulatory agency lobbying, and another employee be the point of contact for legislative lobbying. Other offices with state and federal policy issues structured their departments based on federal and state issues, but still had different lobbyists assigned to working on the Hill and others responsible for regulatory agency lobbying.

The broadcast corporations interviewed appeared similar in structure and corporate importance, and the broadcast respondents inferred that their corporate structure and importance were shared by other broadcast corporations in the industry. However, the wireless respondents mentioned that not all wireless corporations were similar in terms of corporate structure and

importance. The wireless industry was described by one of the respondents as “a duopoly versus everyone else,” with the two largest wireless corporations often dictating the pace and trends of the industry and having substantially more resources than the other corporations in the industry. While neither of the two largest wireless corporations agreed to be interviewed for this study, descriptions of their corporations structure were of shared by the wireless respondents.

Describing the structure for the duopoly corporations, one of the wireless respondents shared,

I know one of the two big wireless companies has about 21 lobbyists, four lobbyists for the House Republicans, four lobbyists for the House Democrats, four lobbyists for the Senate Republicans and three lobbyists for the Senate Democrats. They’re able to break it down by issue. It’s nice, but you can also get pigeon-holed into one or two issues.

This information indicates that while the structure and importance of the wireless corporations interviewed was consistent, the structure of the wireless industry and fact that the largest two corporations likely have different corporate set-ups and relationships with their government relations departments must also be considered when examining the way government relations strategies are impacted by competition for regulatory capture.

Overall, the third research question suggests that the competition between the broadcast and wireless industries contributed to the organizational support the government relations departments received from their corporation. While the government relations departments were not immune to cutting back resources or having to justify their resource requests, overall the respondents described an environment of organizational support and importance placed on the government relations department. While many of the government relations departments were smaller than may be anticipated, the value placed on the government relations departments became clear during the interviews. The departments had clear and frequent access to senior

levels of leadership in the corporation, had to ability to receive resources, and were considered an integral part of the corporation.

Research Question 4: How does competition for regulatory support impact involvement in trade associations?

All of the corporations interviewed were members of multiple trade associations and listed the benefits of trade association membership as similar to those benefits found in the literature, including information sharing, policy expertise, legitimacy and networking opportunities. However, the respondents also mentioned several benefits specific to their industries not discussed in trade association literature. These unique benefits including using the trade association as a way to provide additional resources to the small government relations staffs, the ability of the trade association to serve as a political shield for a controversial policy stance, and to help keep corporations abreast of constantly changing technologies in the broadcast and wireless industries.

In terms of providing a political shield for controversial legislation, several respondents in both the broadcast and wireless industry noted that the trade association was beneficial in deflecting a negative impression from an individual corporation. One broadcast respondent explained, “It depends on how hot that issue is. If there’s an issue you’re involved in that’s difficult politically, you make the trade association be the voice on the issue.” A respondent from a wireless corporation echoed this sentiment, explaining,

Another reason to go through a trade association is when it’s an issue that is somewhat prickly from a public relations standpoint. One good one is distracted driving. We as a company think that your primary goal when operating a vehicle is to operate a vehicle safely. However, there’s a lot of positive aspects that having a cell phone brings, in case of an emergency or it’s better to have your map give you audible directions than a map open in the car. But from a public relations standpoint, you don’t have to be out there arguing that yeah, people should use their cell phones while driving a vehicle. So you get a trade association to carry your water on issues like that.

In the wireless industry, the issue of information advantage afforded through trade associations took on special significance. As an industry categorized as a duopoly versus everyone else, information sharing in the wireless industry is both difficult to achieve due to the unwillingness of the duopoly carriers to share information with others in the industry. This information is sorely missed by other wireless corporations due to the rapid pace of technological development, and it is often the responsibility of the wireless trade association to attempt to gain information to share with other members. The wireless trade association respondents shared the unique challenges of attempting to get information shared in the wireless industry, and being able to offer an information advantage to its trade association members.

In this case [the duopoly] controls 80 percent of the market, [and they] are not particularly interested in making sure that those who compete with them have access to technology and data and information and understand more about where the big guys are going to go so they can compete with them. All the sudden there's no longer this need to have this connectivity of the industry through exchange of data and information and new and innovative processes. All the sudden, if you're the mega company, everyone's going to beat a path to your door and tell you about all the things that are coming out and they're not going to be talking to the small guys that, even if you win conceptually, you win the idea to put this new app on your network, you can't get more than five or 10 percent, 20% at max, of the market. What are the things you can sell to the big guys that can get 40 – 80% of the market? So, what's going to happen? Well you could have a real flip in the telecom world, you could have the Googles and the Ciscos and the Microsofts and all those guys recognizing that the only way they can get their apps and their innovative ideas out and deployed is if they go through the smaller guys or if they own an access channel to the consumer. As a trade association, you really want some view of what's over the horizon.

In terms of providing additional resources to small government relations staffs, the respondents were unanimous in stating that the trade associations helped make their small staffs seem larger, and magnified the voice for the policy issue being lobbied on. One of the broadcast respondents explained,

Trade associations are what makes it possible to have a small lobbying staff. I spend a lot of time lobbying trade associations on issues we care about that ought to be broad and

principled enough for them to be concerned about for their broader membership. If you convince them, than you have a fantastic ally.

In addition to being able to magnify their voice through involvement with the trade association, one of the wireless respondents noted that in addition to being able to combine resources with the trade association, involvement in the trade association also meant that the corporation would be able to also combine resources with other companies that were also in the trade association.

However, while the trade association did provide a way to magnify their voice on a policy issue, the corporation and trade association needed to coordinate on the policy stance taken, and that the corporation would attempt to influence the trade associations' stance on an issue. Despite this attempted influence, the trade association was noted as often taking what one broadcast respondent referred to as the "lowest common denominator" position on the issue.

When the divide between the trade associations' stance and the corporations' stance on a policy did occur, the corporation tended to supplement the trade associations' lobbying position with the corporations' more nuanced policy stance. One broadcast respondent explained,

Often you have to downplay the things you'd prefer to emphasize and emphasize the things you'd downplay [when lobbying with a trade association]. And invariably, more often than not it advances the ball. Because you get to have the trade association engaged, even if there not engaged precisely on your point, you can go back and make your point precisely. And it will be assisted by the fact that you have the validation that you have a large group of other people that have conveyed concerns on the same underlying issue, even if their emphasis is something different than yours.

A wireless respondent echoed the importance of supplementing trade association lobbying with personal lobbying, especially when policy nuances occurred, explaining, "So there are times where you might not all agree on all the goals, but you can focus on the high level ones and then after meetings, individually lobbyists will go in and say, [my corporation] totally supports what

[the trade association] came in and talked about, however, we would like to educate you on some nuances where we might differ from other people in the group.”

If the divide between the trade association and corporation was more than slight nuances in the policy formation, one broadcast respondent explained “you try to get the trade association to stay neutral if there’s major dissent. But either way, companies generally supplement trade association lobbying.” A wireless respondent noted that another tactic the corporation would do. “We find ourselves in that position at times. Sometimes, we align with more with one trade association than another, and than most likely, we just don’t work with a certain trade association on a certain issue. One of the wireless respondents noted that there were rare cases when a trade association would take up an issue only a few members care about, but those kinds of actions were rare in the industry.

Now I’m not saying that a trade association won’t sometimes take up an issue that only two or three members care about and portray that as the trade association line, that’s happened in the past and it causes them tremendous headaches after they do it, but some people do it. Sometimes, it’s just companies that may be on the board of directors, sometimes if it’s a trade association that charges for membership based on sales, it’s a company that pays more. It’s not always the case, but it does occur occasionally.

Overall, this research question found support for the notion that competition between the broadcast and wireless industries forged stronger ties between corporations and trade associations, and that the benefits trade associations offered were valued by corporations when competing for regulatory capture. The corporations viewed trade associations as an integral portion of the government relations activities, and for the most part considered the trade associations as strong allies in the fight for regulatory capture. Engaging with trade associations appeared to decreased uncertainty for the corporations and strengthen ties to external environments. The particular ways that trade associations could reduce uncertainty for the wireless industry (attempting to increase information sharing in the industry and strengthening

their lobbying voice) made the non-duopoly members of the wireless industry even more reliant and invested in the relationship they have with their trade association. Even when the corporation and the trade association differed on policy topics, the corporation tended to continue to lobby with the trade association and either supplement the trade associations' stance with corporate specific policy points, or distance themselves from the trade association for that particular policy issue. In general, the corporations all spoke enthusiastically about the benefits of trade association membership and viewed the trade association relationships as a key component of government relations activities and integral way to reduce uncertainties in the external environments.

Discussion

The interviews found support for the notion that competition for regulatory favoritism has impacted nearly all of the facets of the lobbying environment for broadcast and wireless lobbyists. In terms of strategy formation and lobbying actions, competition has impacted the extent to which corporations are able to set, and government relations staffs are able to carry out, their desired policy agenda. While each corporation interviewed conducted individual policy formation and had specific policy goals the corporation hoped to achieve, the government relations staffs were also dealing with a new reality in which competition often dropped unexpected policy battles onto their laps, forcing the government relations departments to spend less time on corporation-specific policy goals and more time on industry wide policy battles. It is likely that few of the lobbyists interviewed for this dissertation anticipated a year ago the amount of interest spectrum incentive auctions would receive from Congress and the FCC in 2011, and the other policy issues the lobbyists would have to table to take either a defensive or offensive stance on the issue. However, this competition was not found to impact the

corporations to the extent that corporations in the broadcast and wireless industries exhibited drastically different behaviors for either lobbying strategies or lobbying activities. This finding suggests that while competition is making lobbying behaviors somewhat less homogenous, isomorphic tendencies still run strong for both the broadcast and wireless industries.

Theoretically, this portion of the interviews found some support for the argument that competition was motivating corporations to move away from isomorphic lobbying activities in the attempt to work harder and with different tactics to achieve regulatory favoritism. While a large amount of isomorphism is still occurring, there are areas where corporations appear to be moving away from isomorphic activities. Competition is impacting isomorphism because lobbyists are not able to follow their usually corporate strategies and patterns when they have to ignore previously planned policy work to focus on a serious policy battle, such as the incentive auction fight. However, the fact that a large amount of isomorphic activity still occurs is perhaps not surprising due to the fact that the industries are subject to normative, coercive and mimetic isomorphic pressures.

The coercive pressures include the fact that all of the corporations in each industry operate under the same legal framework for lobbying. The normative pressures include that the lobbyists have similar backgrounds and tend to bounce between jobs in the broadcast and wireless industries, as well as between jobs in Congress and as lobbyists. The mimetic pressures include the high risk of uncertainty that exists in both industries, particularly at a time when both industries are fighting to be considered as the dominant communications industry. Even though the policy goals for the industries are different, the industries face uncertainty and pressure related to two sides of the same coin, to either get policy passed or defeated. Overall,

competition appears to be impacting the isomorphism of lobbying strategies, but only to a certain degree.

The interviews found stronger support for the argument that competition was playing a factor in providing the government relations departments with enough resources to strengthen external ties and reduce environmental uncertainties. The government relations departments interviewed indicated that they were satisfied with the corporate resources they received to achieve policy goals through strengthening external ties and reducing environmental uncertainties. The interviews attempted to gain a more specific sense of monetary and personnel support received by government relations departments, and way competition had impacted monetary and personnel numbers. However, the interview respondents declined to answer specific questions regarding the amount of corporation's overall budget given to the government relations departments, so no quantitative conclusions regarding organizational support were able to be derived from the interviews.

While no exact numbers were provided during the interviews, all of the respondents were in agreement regarding the fact that they received sufficient organizational support and were able to access senior levels of leadership, and receive additional funding and/or employment help for policy battles prioritized by the corporation. As competition between the broadcast and wireless industries increased, the respondents indicated that organizational support levels had either held steady or increased in an attempt by the corporation to reduce the environment uncertainties created by an atmosphere in which neither the broadcast nor wireless industries could depend on the FCC for regulatory favoritism on desired policy outcomes. These environmental uncertainties are reduced by having the funds and work force to meet with government officials on Capitol Hill, educate the officials on preferred policy stances, pay for trade association

memberships and receive additional resources, such as external consultants and additional funds for lobbying expenditures and campaign contributions, when needed.

The organizational desire to reduce environmental uncertainties through political action was also demonstrated by the relationship the corporations had with the trade associations. All of the respondents valued their involvement in trade associations and viewed trade associations as important allies in a competitive regulatory environment. While previous time periods, in which competition between the industries was not a serious issue, saw organizations leave trade associations when policy stances did not line up, the current competitive environment caused member organizations to act in less extreme manners. For the most part, when member organization policy stances did not line up with a trade association policy stance, organizations engaged in additional organization-specific lobbying in order to make more nuanced policy stances known to legislators and regulators. In more extreme cases, where the organization and trade association did not agree on a policy stance, the organization would simply not lobby with the trade association on the particular issue.

None of the respondents interviewed for this study discussed dropping out of a trade association as an option when policy desires did not line up, and generally spoke of the relationship between the organization and trade association in appreciative terms. This appreciative point of view can be attributed, at least in part, to the increased reliance organizations have towards their trade associations as competition between the broadcast and wireless industries occurs. As competition between the industries increases, organizations can rely on the trade association to take on the more controversial policy stances, serve as a united voice for the industry, and fight for industry favoritism at the FCC.

Theoretically, the fourth research question found support for resource dependence theory in a competitive political environment. Support was found for the incorporation of resource dependence theory in this study as a reason for why organizations feel that spending time and money on trade association membership was a worthwhile business activity, despite the uncertainty of being able to completely line up organization policy stances with the more general trade association policy stance. While being a part of trade associations does not guarantee favorable policy decisions, the ability to reduce uncertainties with external environments through trade association membership is highly valued by organizations.

The respondents' discussion of government relations strategy formation also fits in with Kingdon's model of policy development.²⁶⁰ Kingdon's model argues that three things need to happen in order for a desired policy to develop. The political stream (the process whereby policy problems are defined and rise to a sufficient level of urgency that they find a place on policymakers' agenda), the policy stream (the process of developing and selecting alternative policy solutions through consensus within the policy community), and the problem stream (the process of developing consensus on policy issues in the broader political environment through coalition building) must all be encountered and ideally coupled with a window of opportunity. The window of opportunity occurs when allies to the desired policy are in power, and a change has occurred in the problem or political stream to make the policy development more likely to occur. The coupling of the three streams by lobbyists during windows of opportunity is viewed as a critical step for producing policy outcomes. Kingdon's model implies that policy development is dominated by political considerations and effective government relations strategies and activities. These political considerations are developed through government relations departments' efforts and the support of their corporations. These political

²⁶⁰ Kingdon, J.W. (1984). *Agendas, Alternatives and Public Policies*, 2nd edition. Harlow: Longman.

considerations also align with the processes of strategy formation and considerations shared by the government relations respondents during the interviews.

CHAPTER 5

DOES REGULATORY CAPTURE EXIST?: AN INSIDERS' PERSPECTIVE

As noted previously, the FCC is considered an economic regulatory agency because it limits the number of participants in the industry, distributes benefits to a limited number of corporations in a single area of the economy and can impose technological requirements on the industry.²⁶¹ For these reasons, receiving regulatory capture is a goal of the communication industries because being on the favorable side of these economic benefits can translate to increased success, while being on the non-favored side can lead to a decrease in relevance and profitability. A recent example of a FCC policy that could translate into enormous economic benefits for the favored industry is the National Broadband Plan. The National Broadband Plan promotes the expansion of broadband services, accessibility and affordability across the country. While the National Broadband Plan can also be argued to benefit the public, and was created per a Congressional request,²⁶² the primary beneficiaries will be the wireless corporations that profit from receiving additional spectrum to increase wireless use across the country. The conception and development of the National Broadband Plan can be viewed as a recent example of regulatory capture, and perhaps of a shift in the FCC to favor the wireless industry at the expense of the broadcast industry.

²⁶¹ Comanor, W.S., & Mitchell, B.M. (1972). The costs of planning: The FCC and cable television. *Journal of Law and Economics*, 15(1), 177-206; Eisner, M.A. (2000). *Regulatory politics in transition*. Baltimore: The Johns Hopkins University Press; Noll, R.G. (Ed). (1984). *Regulatory policy and the social sciences*. Berkeley: University of California Press.

²⁶² The FCC developed the National Broadband Plan per the request of the American Recovery and Reinvestment Act of February 2009, which tasked the FCC with developing a detailed plan for the affordable expansion of broadband in the United States.

The National Broadband Plan is one example of a policy that would benefit one industry the agency oversees (in this case, the wireless industry) while harming another industry overseen by the industry (the broadcast industry). The creation and support of the National Broadband Plan by the FCC indicates that, at least in some policy areas, the FCC favors the wireless industry over the broadcast industry. What remains to be seen, and what this chapter begins to examine, is if this regulatory support is indicative of a larger trend where the wireless industry will be able to fully capture the FCC, or if the circumstances occurring when regulatory agency oversees more than one dominant industry will remain a more nuanced situation.

The concept of regulatory capture has been applied theoretically by policy scholars, and more colloquially by both journalists and former employees of regulatory agencies. Regulatory capture is a difficult label to definitively apply to agencies due to the fact that it is difficult for empirical studies to definitively trace complex policy decisions back to the industry's influence over an agency. However, the belief that the FCC is captured by the industries the agency oversees is considered a given in academic literature²⁶³ and by some former FCC staffers. While the FCC is officially known as the Federal Communications Commission, the acronym has been given more cynical names by former staffers, including "Firmly Captured by Corporations"²⁶⁴ by former Commissioner Reed Hundt and "Forever Captured by Corporations"²⁶⁵ by former FCC chief economist Thomas Hazlett.

The purpose of this chapter is two-fold: to examine the way competition for regulatory capture impacts the broadcast and wireless industries' lobbying strategies, and to examine the

²⁶³ Emery, W. (1971). *Broadcasting and government*. East Lansing: Michigan State University Press; Hillard, Robert L. (1991). *The Federal Communications Commission: A primer*. Boston: Focal Press; McChesney, R. (2004). *The problem of the media: U.S. communication policies in the twenty first century*. New York: Monthly Review Press; Smith, R. W. (2010). Regulating the regulators: Conflict between the Congressional Oversight Subcommittee and the FCC. *Journal of Broadcasting & Electronic Media*, 54(2), 194-210.

²⁶⁴ Weiser, P.J. (2009). *FCC reform and the future of telecommunications policy*, paper presented at the Reforming the Federal Communications Commission conference, Washington D.C 3

²⁶⁵ Weiser, 2009.

way broadband and wireless lobbyists view the current state of capture at the FCC. One of the primary assumptions of this dissertation is that the FCC is captured by one or more dominant industries, and that the FCC will rule in the interest of the industries even if these decisions are at the expense of the public. As the broadcast and wireless industries have conflicting policy goals and compete for regulatory favoritism, this chapter studies if the capture relationship at the FCC is changing. This examination will be carried out in this chapter by first examining capture at the FCC, both theoretically and colloquially. The chapter will then examine the counter-point to capture, the public interest standard at the FCC to briefly examine the philosophy of the interest in which the FCC is obligated to serve, and if previous literature has found support for the notion that the FCC acts in the public interest.

The bulk of this chapter will share the results of interviews with lobbyists employed by broadcast and wireless corporations on the topics of competition and regulatory capture. The chapter concludes with an analysis of the interviews and a discussion of whether the interview responses indicate a need for an extension of capture theory when a regulatory agency oversees two dominant industries with conflicting policy demands.

Capture and the FCC

Theoretically, capture theory provides explanatory power for the question, “what motivates a regulator faced with a regulatory decision?” The theory argues that over time, the interests of a regulatory agency will become aligned with the interests of the industry it oversees, and the regulatory agency will prioritize the interests of the industry when making policy decisions.²⁶⁶ The theory also argues that regulatory agencies are not motivated by democratic

²⁶⁶ Kolko, G. (1970). *Railroads and regulation*. Abingdon: Greenwood Publishing Group; McCraw, 1975; Stigler, G. (1971). The theory of economic regulation. *Bell Journal of Economics*, 2, 29-51.

ideas and an interest in public welfare, but rather by self interest.²⁶⁷ Favoring a dominant industry over the public is in the self-interest of the regulatory agency because the industry can reward employees of a regulatory agency in ways that the public cannot (e.g., future job opportunities, the information advantage of the industry, and lobbying expenditures).²⁶⁸ Capture theory also argues that instead of being resistant to the idea of regulation; industries want to be regulated to receive competitive advantage and have a role in shaping policy outcomes.²⁶⁹ A primary benefit of regulatory capture is economic because regulatory policies promote stability and profitability in an industry.²⁷⁰

Capture theory assumes that individuals working at regulatory agencies have self-interested goals (e.g., job retention or reelection) and that these personal goals are acquired by using regulatory powers to help industry members achieve goals. While capture theory has received its fair share of criticism over the past several decades, including the claims that the theory is difficult to apply empirically, and does not take in to account situations where an industry resists regulation, or situations where a regulatory agency oversees more than the one dominant industry, the strong explanatory power and heuristic power associated with the theory have kept it in widespread use.²⁷¹ The fact that agencies are captured by industries is widely accepted by government officials,²⁷² and capture theory is considered to explain a great deal of regulatory activity and history.²⁷³

Gaining regulatory capture is critical for industries, not only to achieve competitive advantage and a voice in policy formation, but because the adoption of programs created or

²⁶⁷ McCraw, 1971

²⁶⁸ Barkow, 2010

²⁶⁹ Stigler, 1971

²⁷⁰ Eisner, 2000.

²⁷¹ McCraw, 1975

²⁷² Barkow, 2010

²⁷³ Levine, M.E., & Forrence, J.L. (1990). Regulatory capture, public interest, and the public agency: Toward a synthesis. *Journal of Law, Economics & Organization*, 6, 167-198.

championed by an industry is often determined by the extent to which the measure is institutionalized, either by law or gradual legitimation.²⁷⁴ Tolbert and Zucker's empirical study on the adoption of civil service reform by cities found that when civil service procedures were required by the state, there was a rapid diffusion and procedures transmitted directly from the state to each city. When procedures were not backed by government support, they spread gradually and the underlying source of adoption changed over time. Industries are especially reliant on regulatory agencies when relying on regulatory approval to help legitimize a new product or technology.²⁷⁵ Having a regulatory agency stand behind a new technology provides the technology with legitimacy, as can be seen with the recent efforts concerning the National Broadband Plan.

Colloquially, there are many examples used to cite the existence of capture at the FCC and the FCC's history of agreeing with the desires of a dominant industry when making policy decisions. Policy decisions made by the FCC impact the communication products and services available to the public, and can also influence the public financially, through losses in potential revenue to the United States Treasury and overall economy. A notable example of the regulation that benefited that broadcast industry is the decision not to include the broadcast stations in spectrum auctions when the auctions began in 1994. The expectation of free spectrum space provided to the industry by the FCC in exchange for meeting fiduciary duties caused the broadcast industry to resist spectrum auction legislation when the idea first gained popularity in the 1980s. While both the FCC and Presidential administrations began to push for spectrum auctions in the early 1980s and included the estimated revenue from auctions in yearly

²⁷⁴ Tolbert, P.S., & Zucker, L.G. (1983). Institutional sources of change in the formal structure of organizations: The diffusion of civil service reform, 1880-1935. *Administrative Science Quarterly*, 28, 22-39.

²⁷⁵ Garud, R.G., & Rappa, M.A. (1994). A socio-cognitive model of technology evolution: The case of cochlear implants. *Organization Science*, 5(3), 344-362.

budgets²⁷⁶, the broadcast industry used its influence to prevent the auctions from occurring until 1994. Arguing that the financial investment broadcasters needed to make for HDTV equipment and other new technologies that would cause broadcasters to not have enough money to bid on licenses,²⁷⁷ and that paying spectrum licenses would make it difficult for broadcasters to continue to function in the public interest,²⁷⁸ the broadcast industry was able to delay the introduction of spectrum auction legislation, and not participate in the auctions once the legislation was passed.

While the ability of the broadcast industry to postpone spectrum auction legislation may not seem to have a direct impact on the public interest, the ability of the industry to delay the implementation of spectrum auction legislation resulted in the loss of billions of dollars to the U.S. Treasury that could have been used to pay for a variety of taxpayer services. Economists have estimated that the government gave away \$46 billion of licenses in the 1980s by having spectrum be allocated through a lottery system, rather than through an auction system.²⁷⁹

After the spectrum auction legislation was passed in 1994, broadcasters continued to use their favored status to achieve regulation that would allow them to not pay for spectrum space. A 1996 Congressional bill that provided the broadcast industry with an estimated \$70 billion of spectrum space at no charge was passed after the NAB was able to have its version of the bill reach Congress,²⁸⁰ and the most recent incentive auction legislation, while taking spectrum space away from the broadcasters, will pay broadcasters for the spectrum they give away and does not

²⁷⁶ 1987-89 Reagan Administration budget proposals; Reagan offers final budget legacy: 1990 edition includes plan to auction off nonbroadcast spectrum. 1989, January 16. *Broadcasting & Cable*.

²⁷⁷ Sukow, R.M. (1990, February 19). House is on course to okay spectrum reallocation. *Broadcasting*, 77.

²⁷⁸ Up to speed at the Ferris FCC. (1980, April 14). *Broadcasting*, 58-78.

²⁷⁹ McMillan, J. (1994). Selling spectrum rights. *The Journal of Economic Perspectives*, 8(3), 145-162.

²⁸⁰ Layton, 2004

contain any indication that broadcasters will have to begin paying for spectrum space in the future.²⁸¹

Regulatory capture can also help dominant industries when they wish to delay new technologies and competitors that are potential profit makers from gaining a foothold in the industry. The delayed introduction of cell phone services and development in the United States is one example of the FCC towing the line of a dominant industry rather than acting in the best interest of the public. The development of cellular technologies in the United States is considered to have been delayed due to preferences of telecommunications leader AT&T.²⁸² The telecommunications leader had little incentive to quickly develop and deploy cellular service, which it viewed as a potential competitor to AT&T's landline services. Neither AT&T nor the FCC made cell development a priority and the lack of interest shown to the development of the technology has been estimated to have cost consumers up to \$33 billion in productivity gains.²⁸³

While the broadcast industry's influence over the FCC appears to be waning, especially in the area of spectrum allocation legislation, it is primarily considered to be losing regulatory favoritism to the wireless industry and not any sort of public interest standard. The broadcast industry stills holds influence at the FCC however, and this chapter aims to examine the way the broadcast and wireless industries interpret the influence both industries hold over the regulatory agency, and if the industries view the FCC as also making any sort of public interest considerations when making policy decisions.

²⁸¹ Eggerton, J. (2012, February 16). Incentive spectrum auctions are part of payroll package. *Broadcasting & Cable*

²⁸² Weisel. 2009

²⁸³ Weisel. 2009

Public Interest Standard

The public interest standard has long served as the official guiding principal for the regulation of electronic media.²⁸⁴ The mandate has been in place since the Federal Radio Commission oversaw the broadcast industry, and is laid out in the 1934 Communications Act, which requires the FCC to determine “whether the public interest, convenience, and necessity will be served.”²⁸⁵ This instruction is thought to be the source of more communication policy discussion, judicial analysis and political debate than any other phrase used in communications policy, primarily due to the amorphous nature of the phrase public interest.²⁸⁶ While capture theory explains that regulatory agencies tend to favor a dominant industry over the public interest when making policy decisions, work using the theory tends not to define the public interest. The lack of a concrete definition of the public interest provided in capture theory literature is indicative of an overall inability to provide a satisfactory and agreed upon definition for the public interest, especially when the term is applied to the FCC and communication industries.

The lack of a concrete definition of the public interest often sets up a false dichotomy of the public interest versus industry interests in capture theory work, in which the desires of the public are pure and idealistic, and the interests of the industry are tainted with greed.²⁸⁷ This over-simplification often belies the complex nature of policy formation, in which the motives of any public interest group or industry group are likely to be nuanced, and the interests of the groups can overlap. The distinction between the public interest and industry interests has been

²⁸⁴ Napoli, P.M. (2006). Issues in media management and the public interest. In Albarran, A.B., Chan-Olmsted, S.M., & Wirth, M.O. (Eds.), *Handbook of media management and economics*, 91-114. Mahway, NJ: Lawrence Erlbaum.

²⁸⁵ 1934 Communications Act

²⁸⁵ 1934 Communications Act

²⁸⁶ Krasnow, E., & Goodman, J. (1998). The “public interest” standard: The search for the holy grail. *Federal Communication Law Journal*, 50, 605-636.

²⁸⁷ Barkow, 2010; Obar, 2009

aided by the longstanding mandate of the FCC to place the public interest ahead of corporate interests.²⁸⁸

This dissertation argues however, that the public interest and industry interests are not mutually exclusive, due to the fact that both lobbyists and industry groups are part of the overall public, and because industry interests can serve and benefit the public. The public interest can be applied to any group or individual, including lobbyists, and policies that benefit both the public and a dominant industry can be enacted. The industry stability and economic strength desired by dominant industries can also carry benefits for the public (e.g., stable and dependable communication structures), making it impossible to distinguish industry interests from an amorphous public interest. Despite the fact that the public interest can mean anything and be applied to any person or group, the FCC and academic literature often view the public interest and industry interests as separate entities, contributing to the difficulty of forming a commonly agreed upon definition of the public interest.

Communication scholars have categorized the public interest standard in two primary ways. The dominant viewpoint is that the public interest notion was developed as a purposely vague term that would be able to fit the best interests of the regulatory agency.²⁸⁹ This viewpoint argues that the public interest model stems from the nineteenth century when industries offered public services (e.g., banking) that some believed needed regulation in order to prevent corruption and a failure of self government.²⁹⁰ This viewpoint also argues that the public interest

²⁸⁸ Krasnow & Goodman, 1998

²⁸⁹ Dennis, E. (2002). The press and the public interest: A definitional dilemma. In McQuil, D. (Ed.), *McQuil's Reader in Mass Communication Theory*. Thousand Oaks, CA: Sage Publications; Krasnow, E., Longley, L., & Terry, H. (1982). *The politics of broadcast regulation*. New York: Palgrave Macmillan; McCraw, T.K. (1975). Regulation in America: A review article. *The Business History Review* 49(2), 159-183.

²⁹⁰ McCraw, 1975

standard has provided confusion at the FCC and is, from a policy perspective, is drained of its original meaning.²⁹¹

However, an alternative point of view considers the public interest as easily captured by an industry. This view argues that a historical analysis of the public interest finds that the term was not vague, but rather had an established practical meaning by the time it was introduced to the broadcast industry.²⁹² This established public interest standard came from the transportation industry and was geared towards the interests of the industry.²⁹³ As the public interest standard came to be used by the broadcast and telecommunications industry, the term came to be interpreted as interests that would benefit the public by providing economic efficiency to the regulated industries.

Public Interest and the FCC

Virtually all FCC decisions hinge on the interpretation of the concept of public interest.²⁹⁴ As the regulatory agency that oversees electronic media, the cultural and political influence of this media is recognized by policy makers and the public interest mandate is provided to increase the chances that media corporations act in the public interest.²⁹⁵ Public interest is an abstract concept defined as what the majority of commissioners decide it is on any given day, but it is still a conscious ideal that the FCC describes itself as attempting to achieve when forming policy.²⁹⁶

²⁹¹ Krasnow, Longley, & Terry, 1982

²⁹² Rowland Jr., W.D. (1997). The meaning of "The public interest" in communications policy, Part II: Its implementation in early broadcast law and regulation. *Communication Law & Policy*, 2(4), 364-396.

²⁹³ Rowland, 1997

²⁹⁴ LeDuc, D.R. (1972). *Cable television and the FCC*. Philadelphia, Temple University Press.

²⁹⁵ Napoli, P.M. (1999). The unique nature of communications regulation: Evidence and implications for communications policy analysis. *Journal of Broadcasting & Electronic Media*, 43, 565-581.

²⁹⁶ Krugman, D. M., & Reid, L.N. (1980). The 'Public Interest' as defined by FCC policy makers. *Journal of Broadcasting*, 24(3), 311-325.

While scholarly debates over the meaning of the public interest are ongoing, interviews with FCC Commissioners, not surprisingly, indicate that they do not view themselves as captured by an industry. When interviewed, FCC Commissioners and staffers argued that decisions favoring one industry or another were not meant to be viewed as pro-industry, but rather pro-public interest.²⁹⁷ During the interviews, many respondents offered unprompted responses that they did not consider themselves as “in bed with the industry,”²⁹⁸ and explained the processes they went through to make public interest decisions.²⁹⁹ FCC Commissioners have defined the public interest as having the constructs of balance of opposing viewpoints, heterogeneity of interests, dynamism, localism and diversity.³⁰⁰ Of these constructs, diversity and localism have emerged as the items most often studied to determine if the FCC and media owners are acting in the public interest.³⁰¹

Recent literature has also examined if the FCC acted in the public interest when modifying cross-ownership rules between the newspaper and broadcast industries. A study of the relaxation of the cross-ownership rules that viewed the public interest and the interest of media lobbyists as separate entities found a lack of empirical evidence demonstrating that the public interest was considered when making the policy change.³⁰² Operationalizing the public interest as aiding competition, diversity and localism, the work suggests that the FCC may have been influenced by corporate media lobbyists when formulating the policy and did not rule in the

²⁹⁷ Krugman & Reid, 1980

²⁹⁸ Krugman & Reid, 1980, p. 316

²⁹⁹ Krugman & Reid, 1980

³⁰⁰ Krugman & Reid, 1980

³⁰¹ Napoli, P.M. (2001). *Foundations of communications policy: Principles and process in the regulation of electronic media*. Cresskill, NJ: Hampton Press.

³⁰² Obar, J.A. (2009). Beyond cynicism: A review of the FCC’s reasoning for modifying the newspaper/broadcast cross-ownership rule. 14 *Communication Law & Policy*, 479-525.

public decision. The work does not consider media lobbyists as operating in, or being part of, the public interest.³⁰³

Research Questions

Theoretically, this chapter applies capture theory to the situation of a regulatory agency overseeing more than one dominant industry. Since capture theory does not provide explanatory power for situations where a regulatory agency oversees more than one dominant industry, this chapter aims to extend the theory by asking research questions and conducting interviews examining what happens when this scenario is in place and the way capture could work under this scenario.

Research Question 1: How does competition at the FCC impact lobbying activities for the broadcast and wireless organizations?

This dissertation also examines the notion that the main facet that contributes to the FCC overseeing more than one dominant industry with competing policy objectives is the blurring of the lines between the broadcast and wireless industries for services and products. This blurring of lines between the industries is thought to contribute to the sense of competition between the industries. This blurring of the lines between the industries is also thought to increase the monitoring of competitors, the motivations for monitoring competitors, and the very notion of who the corporations consider their competitors to be.

Research Question 2: How does the blurring of the lines between the broadcast and wireless industries impact the relationship between the industries?

This dissertation also examines if the interview respondents will view the FCC as a captured agency and will consider the FCC as primarily captured by either the wireless or the

³⁰³Obar, 2009

broadcast industry. In addition to considering if the FCC will become primarily captured by either the broadcast or wireless industry, the interviews also ask if respondents believe that, over time, one of the industries will become the new ‘super-dominant’ industry and will achieve regulatory capture when conflicting policy goals are in play.

Research Question 3: How does competition between the industries impact regulatory capture at the FCC?

Method

In this chapter, in-person interviews were conducted with government relations executives at broadcast and wireless corporations and broadcast and wireless trade associations. These interviews are with the same respondents as the responses shared in chapter four and were conducted at the same time. The interview responses are divided up between two separate chapters due to the different topic and theoretical focus of the sets of questions. Similar to the interviews in chapter four, the interview questions were semi-structured, with different follow-up questions asked of different respondents, depending on respondents answers.

This set of interview questions aimed to shed light on whether the respondents considered competition for regulatory capture at the FCC to exist, the ways (and motivations for) monitoring the activities of competitors, and the respondents overall feelings regarding capture at the FCC, including whether they felt the FCC was captured by a single dominant industry. The goal of this set of interview questions was to learn more about an abstract concept, regulatory capture, from lobbyists who dealt frequently with the FCC, and see if the situation of two dominant industries competing for regulatory capture lent itself to an extension of capture theory.

Findings

Similar to chapter four, due to time constraints and the semi-structured nature of the interviews, not all of the respondents answered each pre-determined question in detail. In situations where the interview went off-script and veered into other areas of the nature of competition and regulatory capture, comments were weaved in with other similar areas of conversation, when applicable. Due to the high-stakes nature of the lobbying profession, which often includes sharing sensitive corporate information, pressure placed on the lobbyists to help achieve corporate policy goals, and increased competition between the broadcast and wireless industries, conducting seven fairly frank conversations was considered a successful sample for this dissertation research.

However, it is acknowledged that the information gathered in the interviews can only be used to suggest patterns in regulatory capture and competition for regulatory favoritism with another dominant industry. No statistically significant findings or sweeping trends can be gathered from the small sample used for these interviews. While no absolutes can be stated from these interviews, the interviews do serve as important information in a new area of study. Also similarly to chapter two, the respondents gave similar answers to the questions. While their responses to the nature of capture at the FCC were at times surprising and deviated from most of the literature on the subject, there was internal consistency between the respondents on the topics of regulatory capture and the way the respondents considered competition and their competitors in the other dominant industry. While some of the responses were surprising, the interview responses did appear to be sincere. In addition to sincerity, there was also a sense that this set of questions struck a more personal chord with the respondents and many of the answers in this chapter garnered more emotional responses than the conversations documented in chapter four.

Research Question 1: How does competition at the FCC impact lobbying activities for the broadcast and wireless organizations?

All of the respondents reported that competing for regulatory favoritism with another dominant industry impacted government relations strategies at their corporations. Overall, the respondents reported that competition has changed the amount of effort lobbyists had to expend in order to gain access to government decision makers and persuade the decision makers of the merits of their policy position. One of the broadcast respondents noted,

I think everybody has to work harder to make their lobbying stand out. I think part of it is that the wireless industry is growing, it has more assets in terms of numbers of people, compared to the broadcasting industry, in boots on the ground in DC. A lot of it is, you're just trying to find, get on member's radar screens. They sit on multiple committees, if they're on judiciary committees, which is important to us. Commerce is an A committee, so they can only sit on that committee, but then they sit on a number of subcommittees and they deal with big ticket items. So even though I have something that might be very important to me, say an FCC issue and I need Congress to weigh in, it's hard to get their attention sometimes when they're dealing with Health Care repeal, or dealing with the tragedy in Japan and what does it mean to our nuclear power situation in the United States. Those types of things, it's just hard to get members' attention because they're expected to do so much in a limited day.

The respondents attributed competition not only to singular policy issues, such as incentive auctions for spectrum space, but also due to the fact that media consumption habits and technological innovations were changing the landscape for both the broadcast and wireless industries. Respondents from both industries acknowledged the similarities between the products and services offered by both industries, and viewed the blurred lines between the industries as a new reality and a key challenge in their lobbying efforts. One of the wireless respondents found it difficult to pinpoint the exact reason for the increased competition and impact the competition has had on lobbying strategies, explaining, "I'm not sure if it's the competition that's changed the way we lobby, or it's just the political dynamics as a whole. The incentive auctions are a good example [of that]."

One of the broadcast respondents attributed the blurred lines of competition not only to technological innovations, but also to the impact of the 1996 Telecommunications Act.

You know, it's very interesting, ever since the 1996 Act that let everyone get into the other's business, I think it's been successful. So the phone companies are now offering video services and the cable companies are offering phone services and broadband deployment and we're even finding the hardware companies and cellular companies are now worried about their intellectual property, where they never did before. But I think all the sectors are still highly competitive. In some ways, I think the 96 Act was successful in permitting that more robust competition.

The wireless trade association respondent also pointed out that the impact of competition was also between corporations in the industry and that for most corporations, protracted policy battles were not of as much concern as maintaining their business in the tough economic climate,

You also have to look at what's really important to our members. What's really important to AT&T and Verizon may not be what's really important to our members. Our members are more tactical and functional because they're looking at the immediate threat of disillusion every day. So they're more concerned about getting access to the spectrum they already have and fully utilizing the spectrum they already have than they are where's the next batch of spectrum coming from, and can we plan now for the spectrum we'll be able to utilize 5 or 10 years from now to enhance our spectral efficiency so we can move from 15 mgs to 100 mgs. Our guys are thinking about that, but they have a much more immediate threat in, are we going to be around five years from now.

While the wireless respondents acknowledged the competition between their industry and the broadcast industry, they often viewed the broadcast industry's inability to adapt to a changing media environment to be the impetus of the competition, rather than the increased ability of the wireless industry to receive regulatory favoritism and hone in on products and services that had previously been offered solely by the broadcast industry. The wireless trade association respondent noted,

Actually, the broadcasters have more in common than they think, because they need to be thinking about the same thing, are they going to be around in five or ten years. And the answer is no, not in their current structure, they'll be providing services differently than they are now. Are they going to survive the transition? I don't know. But they seem to be willing to take a stand and here's the problem is that they can take a stand and they

might win a delay of the incentive auction or voluntary auction process today this year, next year, but over time, it's a trend that's not going to diminish, it's a trend that's only going to get more and more intense. And unless they find a solution and unless they find what their new mission is, what is it that, what are the policy issues that are most significant to your members and ensure your continued viability as an industry. Until they figure those out, they don't have an answer to how you handle the issues of incentive auctions and the constant threat of reducing the level of spectrum that broadcasters have access to.

While the wireless respondents were often critical of the broadcast industry and the industry's business models, the broadcast respondents shared a different point of view, noting that the notion of the broadcast industry as the only dominant communications player was no longer a new phenomenon and broadcast lobbyists had already altered their lobbying strategies and grown accustomed to increased competition for regulatory favoritism. These respondents also noted that lobbyists for broadcast corporations were working hard to keep pace in the changing media landscape. One broadcast respondent who had worked as a lobbyist since 1995 noted,

I have never had the luxury of working for a broadcast company when they could just say, this is the way we want it because, and that was it. Those days are gone. I feel that in general, that the better lobbyists that get what they want and need to have, the backslapping days are gone I think, and you really have to have a business reason for your rationale, what you're asking for, you have to explain why it's not a sweetheart deal for you vis-à-vis the rest of the industry, why it's better for consumers vis-à-vis comparing what they're giving to other competitors. I feel like because of all this competition and the pressure on members' time, that broadcasters can't say we're the only game in town and that's why we want something. I definitely feel like competition has made policy issues much more substantive when we lobby them.

The broadcast trade association respondent also believed that the days of broadcasters enjoying cozy relationships and comprehensive support from government officials was over, and the broadcast industry has to compete with an increasingly powerful wireless industry, particularly when opposing the largest wireless corporations on policy issues, including spectrum auctions. The broadcast trade association respondent stated, "The wireless industry these days

consists of two or three of the largest companies in the world. AT&T and Verizon have a lot of influence on the Hill. They have a huge consumer customer base.”

When discussing specific policy issues that beget competition for regulatory capture, the incentive auctions were the most referenced topic by the respondents. Discussion of the incentive auctions incited strong emotions from respondents in both the broadcast and wireless industries. The broadcast trade association respondent referred to the trade association as being in “full battle mode” against the incentive auction legislation, and took particular issue with the FCC’s rationale in the National Broadband Plan’s that incentive auctions can promote and increase broadband use in rural areas,

I think one of the biggest policy goals on the Hill right now is rural broadband, and to ensure that we don’t fall behind in broadband as a country. When you take that into consideration with spectrum allocation it’s hard to argue that they want to conduct incentive auctions in the top 25 markets to enhance rural broadband. If you look at Manhattan, KS, there’s no shortage of spectrum in Manhattan and there’s no shortage of spectrum in New York. So there’s increased competition from them and that definitely impacts the way we do business in Washington and at the commission.

While the respondents did view competition as occurring and impacting lobbying strategies, the wireless respondents appeared to view the increased competition as a purely professional issue, while the broadcast respondents attached more personal feeling and intensity to the issue. One of the wireless respondents offered up an analogy to explain the way competition works in Washington, DC.

I don’t know if you’ve ever seen that old cartoon where it’s the sheep dog and the wolf and they’re going to work. And they’re friends outside of work and they go in and they punch the clock and they go into the farm and all day long they’re fighting one another because that’s their job. And at the end of the day, they punch the clock and they go home together, or they go out and have a beer together or something like that. I think that’s the way it is in our industry, and probably true with everything across Washington. I’ve worked in other industries and I’ve worked on Capitol Hill and I think you always find that one day you’re friends with somebody and you’re partners and allies, and the next day, you’re bitter enemies fighting tooth and nail against one another. It’s just the way of the world and it’s just typically when there’s policy being developed.

In response to the research question, the interviews provided some support for the idea that competition between the broadcast and wireless industries existed and had changed the way lobbying strategies were created and carried out. The respondents attributed the rise of competition due to both specific policy issues, primarily the National Broadband Plan and spectrum incentive auctions, and also to a more general blurring of the lines between the industries. Respondents from both industries noted that policy requests had to be more substantive in the current environment, and that industries could no longer take regulatory support for granted and expect to receive support due to relationships with FCC staffers or lawmakers.

It can also be taken away from the interviews that the wireless industry respondents feel more comfortable about their industry's future in the overall communications environment, and are taking a longer view of the changing nature of the communications industries. While the wireless respondents offered up big picture perspectives, the broadcast respondents did not seem to have the luxury of looking at the big picture perspective, and rather were more focused on the day-to-day issues threatening the relevance of their industries norms and standards. The broadcast lobbyists noted that they were forced to work harder to receive the same amount of attention received previously from government officials, and tended to take a more emotional viewpoint of the role competition played in the overall communications industry, while the wireless respondents tended to be more pragmatic.

Research Question 2: How does the blurring of the lines between the broadcast and wireless industries impact the relationship between the industries?

In light of the competition arising for regulatory favoritism, respondents were also asked if and how they monitored the government relations activities of their competitors, and who they

considered their competitors to be now that the lines between the industries had become blurred. The respondents generally answered that they tended to monitor the lobbying activities of their competitors, but not the campaign contributions. While all of the respondents answered that they did keep tabs on the lobbying strategies and activities of their competitors, their views regarding their competitors and keeping up with the competition were pragmatic. One of the broadcast respondents explained, “Having good relations even with your competitors is important. You know that you’ll be fighting on the battlefield, but when the day is done, you still have an ability to communicate and keep the channels open so that it doesn’t become personal.” While the lobbyists were often on opposite sides of policy battles, the respondents noted the importance of staying on good terms with competitors and not allowing professional battles to cloud personal relationships and future partnerships.

The motivations for monitoring competitors were to learn more regarding competitors’ stances on various policy issues. This knowledge was sought in order to determine when a respondent’s corporation could ally with other corporations and when to lobby on their own. One of the broadcast respondents noted,

I have never looked up another company to see PAC [information]. For lobbying, we have to factor in what other people are doing. I do look to see, if I care about indecency a lot, I look to see, can I figure out what [another broadcaster] is doing, are they being active in this or not? Can I carry the water by myself?

A wireless respondent also highlighted the importance of monitoring as a means of knowing when and with whom to form alliances by sharing a story about the formation of a group in favor of spectrum incentive auctions, and the information sharing values of such a group,

A good example is the high tech spectrum coalition going on right now for incentive auction authority at the FCC. It’s just a group of us that have gotten together, and actually as we’ve gone on, we’ve gotten more and more people. It was an issue we identified, we formed a little group and it’s gathered some steam, it’s gathered more participants and now it’s actually gathering legislation on Capitol Hill for deficit

reduction as opposed to just spectrum reallocation. I think we started our coalition meetings with a political intel roundup, where we all shared you know like, we saw so and so coming out of Senator X's office or we heard that NAB met with the Energy and Commerce staff recently and bashed our report... We shifted how we've been proposing how incentive auctions be adopted from, it's a national good, it creates jobs, it builds the economy to it also pays down the national debt, it gives you a pot of money, it's non-controversial for the most part, except for broadcasters who, even though we say that they voluntarily get to give up their spectrum, they see it in a different way. It's just the politics of the issue have caused us to shift the way we see the entire issue, to a way we actually think we might get adoption sooner rather than later, as opposed to a national spectrum reform package, that might take two years.

The other trend that emerged during this portion of the interviews was who the respondents identified as competitors. While the previous questions concerned the competition between the wireless and broadcast industries, this area of conversation demonstrated that the respondents took a more comprehensive view of what the corporations constituted as competitors. Respondents discussed monitoring the activities of other corporations in the same industry, as well as corporations in other, similar industries.

The broadcast trade association respondent identified competition as, "Broadcasting is a very competitive industry, we don't just compete against other industry, it's also that NBC competes against Fox and CBS competes against ABC. [It's] a hyper competitive industry." One of the wireless respondents summed it up by stating, "As far as following our competitors, [that] would be just about everybody." The wireless trade association respondent also felt like numerous corporations from various industries could be viewed as competitors, with the view that rather than being in competition with each other, all the corporations were "[in] competition for the heart and soul of that consumer." The blurring lines between the industries made the respondents view all other corporations with similar or peripheral lines of businesses as competitors.

The respondents noted that monitoring for this purpose was particularly vital in the communications industry because the line between which corporations are competitors and which are allies is thin and changes often based on the policy issue. The broadcast trade association respondent explained, “DC’s kind of a weird town, it’s like you’re friends on specific issues one day and the next day you’re bitter enemies and fighting each other to death. Our strategy is we like to run our own race.” One of the wireless respondents had a similar sentiment, sharing, “In this crazy world of communications, at times [our competitors are] also our business partners.”

The respondents also noted that the need to know what competitors were doing was helped by the fact that secrets were difficult to keep in Washington, DC overall, and especially in the communications industries, due to the fact that workers often move from corporation to corporation within the industries. One of the wireless respondents shared,

We all, the tech community in general and the wireless telecom community specifically, we’re all pretty much in tune with the same issues. We have generally the same goals and priorities. It’s not as large and complex a group as you might think or get in other places. So we all know the issues at any given moment and we can see either by what’s going on in hearing rooms, or seeing people walking around on the Hill, or just taking place in our trade associations, what the topics are and where people stand. We all share the intelligence. It’s hard to mask what you’re doing in this town. It really is because people see everything and people want to let you know what information they have, so they can be seen as kind of a player. It’s hard to keep things quiet in this town. It is, it’s almost incestuous [how small of a group communications lobbyists are]. People change jobs, but they stay in the same industry, so you see people go from this company to this company, but all in the telecom world or all in the wireless world.

In response to the research question, the interviews provided some support for the idea that the blurring of the lines between the industries altered the notion of competition and who the respondents categorize as competitors in the broadcast and wireless industries. The blurring of the lines between the broadcast and wireless industries also impacted the monitoring conducted by the respondents. In general, the respondents noted that they tended to categorize both other

corporations in the same industry, corporations in other industries, and current, former, and future allies as competitors.

In short, the respondents considered all other corporations producing similar products and services as either competitors or potential competitors worthy of monitoring. The monitoring of lobbying activities was conducted to gain information in an increasingly turbulent business environment and to help the respondents determine when to partner with corporations, and when to view them as competitors. Both the broadcast and wireless respondents were pragmatic about the nature of competition between and within industries, and did not view competition as a personal attack, but rather viewed competition as an inevitable part of business in the communications industry, and as such, one that should not be taken personally since the line between competitor and ally was constantly shifting.

Research Question 3: How does competition between the industries impact regulatory capture at the FCC?

In response to the third research question, all the broadcast respondents felt like the FCC is subject to capture, but that regulatory capture was never totally achieved by one industry. The respondents did not portray regulatory capture as the black-and-white issue that it appears to be in academic literature. Rather, the respondents described the FCC as being captured by different industries depending on the policy issue. The respondents also considered which industry achieved regulatory capture as a condition subject to change depending on the make-up and leadership of the FCC. The broadcast trade association respondent explained, “Well, I think it [regulatory capture] fluctuates depending on the presidency and who controls the FCC, so it fluctuates with who’s the favorite.” Another broadcast respondent echoed the sentiment,

I think [it depends on this issue]. I think you have to establish those relationships, and sometimes it changes with the policy of the administration and policy of the chairman

because it is a partisan majority based on the party that's in power, so that usually then reflects whether they think Google is the future or maybe they think Facebook is the future or maybe they think, we still believe in broadcasting. So some of that public policy and philosophy will affect which of the industries are favored.

One of the broadcast respondents offered a similar response to way FCC favoritism impacted the industries, explaining,

I think in general, the past few Chairman that I've seen [have been captured]. There's only one since I started lobbying and working on the Hill, there has been one Chairman where I haven't felt like he had a pet industry or a pet passion, priority, or conversely, one who had a bull's-eye on its back. So sometimes they do stuff for you, just because they don't like who your competitor is. So it's not like, they like you, it's that they dislike someone more. And we'll take that, but we realize that what goes around comes around, and pretty soon you'll have the bull's-eye on your back.

The tendency of the FCC to promote favored projects was also mentioned by another of the broadcast respondents, who provided the example of the National Broadband Plan. The broadcast trade association respondents explained,

The Commission, they have their sights set on broadband and rural broadband specifically. If you look at the National Broadband Plan, which is almost a 400 page document, and the word broadcasting isn't mentioned once. So I don't know if that's favoritism for the other side, but I think it's a clear indication of an agenda that they have and it's pretty clear.

One of the broadcast respondents also attributed the increased difficulty in achieving capture to the increased competition between the industries, which subsequently increased the difficulty in gaining access and favoritism with government officials, explaining,

Members still remember us when it's time for reelection because it's still the best way for them to reach their constituents, on TV and on radio. But it is harder because they are attracted to the unregulated promise of the Internet and wireless carriers and all these bell and whistles, so it's definitely more difficult that it used to be.

The wireless respondents had more mixed impressions on the topic of capture, with some of the respondents viewing capture as occurring, and others viewing the FCC as deciding each policy issue on a case-by-case basis. A respondent who did not view the FCC as a captured

agency described FCC decisions as being made more by considering the public interest and less from lobbying efforts. One of the wireless respondents stated,

I don't see that any industry is favored more than another. Not by the current FCC makeup or previous FCC makeup's. I think they favor the public interest more than any certain area or any certain industry player. And as a citizen, I think that's a good thing.

Another wireless respondent echoed the comments, stating, "I really can't say if the FCC has any bias, but it is challenging to come up with policy that has to be in the public interest for everyone, the majority of the people in the country."

Even when the wireless respondents did not consider the FCC as captured by one industry, they did acknowledge the changing fortunes of the broadcast industry at the FCC and understood why the broadcast industry would feel like regulatory capture did exist and why the broadcasters were upset to be losing sole possession of regulatory capture at the FCC. The wireless trade association felt that capture was a difficult condition to identify and that not receiving favorable policy decisions often led an industry to feel like the FCC favored the other dominant industry, even if that industry won other policy battles. The wireless trade association respondent continued,

But I think you can make some trends, and broadcasters in my mind, they do feel under siege and they would feel under siege by logically the most sensible and most pragmatic, logical utilization of the resource that they own right now, or excuse me that they're squatters on, that they have license to. So anyone that's a potential challenge to their continued existence, they have to feel threatened by, and that's a new feeling for them because for the last 50 years, they've been not only the dominant user of spectrum, but they've also been the policy maker in the communications world and they're finding that both of those positions of leadership are being eroded by technology and the consumers themselves... So yeah, they should feel threatened because their entire business model is like sand, just eroding away underneath them and they haven't been fast enough to figure out the solutions, and now they're finally focusing on solutions and they realized that what they need more than anything is time, and time has sort of come and gone for most of their business plans. And very few of them are willing to really embrace change.

Regardless of the amount of capture the broadcast and wireless respondents viewed as occurring at the FCC, the respondents were also generous regarding the work and effort FCC staffers put into making policy decisions. The respondents believed the FCC staffers legitimately considered the policy stances of the lobbyists' corporations, as well as the public interest, even if the FCC had certain policy goals the agency hoped to achieve. A broadcast respondent explained,

Generally you're given a very fair shake, you go in and you make your case to the FCC and none of them work in a vacuum, they're all affected by Congressional oversight and the activities of the developing committees, so you really can't just work the regulators, you got to work the legislators and you got to work the Executive branch as well, so it's pretty comprehensive.

Another one of the broadcast respondents, who had recently engaged in a policy battle against a cable corporation (and won) stated, "I think it's fair to say, it's a much more reassuring and heartening process when you get into it and see [it]." The same broadcast respondent continued,

But the reality is that the professional staff at the agencies, in this instance, we believe attempted to make sure that what they ultimately did, promoted the underlying goals of the statute, and if you make a series of strong, coherent arguments, you have the chance of prevailing. So, we're certainly not unhappy with the process that's undertaking here. I would say that's not always the case that that's the way things pan out. Often you do have agencies that are captive. We've dealt with some, but in this instance, our experience with the FCC was very positive.

The responses to this research question indicate that capture of the FCC is a complex relationship, and that neither industry expected to fully capture the FCC for regulatory favoritism. Contrary to general opinion, not all of the respondents viewed the FCC as being captured by one or more dominant industries. In general, the broadcast respondents viewed the FCC as a captured agency, but were quick to note that the agency was not always captured by the same industry. Rather, capture of the FCC shifted according the leadership and make-up of the FCC, and was not a static entity. The wireless corporations tended to not view the FCC as a

captured agency in the same vein, viewing the FCC as either ruling in the public interest or making policy decisions on a case by case basis.

The difference of opinions between the broadcast and wireless respondents may be due to either the current favoritism that the FCC appears to be showing towards the wireless industry that the respondents either are not aware of (it may be easier to notice capture when you are not the industry receiving the favoritism) or are not willing to admit in interviews. The broadcast respondent's tendency to notice the capture relationship more often may also be due to the longer and more complex relationships the FCC has had with the more heavily regulated broadcast industry, resulting in the broadcast industry having more instances to experience a captured agency at the FCC.

The respondents, particularly the wireless respondents, did not view the FCC as harshly as anticipated by the researcher either. A few of the respondents viewed the FCC as considering, and even ruling in, an amorphous public interest when making regulatory and policy decisions, and all of the respondents gave more credit to the FCC staffers and their decision making processes than was expected going into the interviews. The respondents' answers to the notion and nature of capture make the phenomenon to appear as not as black and white of an issue as discussed in some of the previous literature. Rather, the nature of capture is more complex than the black box perspective of capture theory, and requires further empirical study to learn more about the complexities that go into the capture relationship on both the industry and the regulatory agency sides.

Due to the fact that the respondents were not unanimous in whether the FCC is a captured agency and what industry has captured the agency, the responses also did not indicate whether the respondents anticipated either the broadcast or the wireless industry as fully capturing the

FCC in the future. The growing influence and dominance of the wireless industry was alluded to by respondents from both broadcast and wireless corporations and it appears that some of the respondents viewed the wireless industry as receiving more regulatory favoritism in the future; however the wireless industry was by no means viewed as the inevitable industry to achieve full capture of the FCC. Rather, the respondents appeared to believe that capture of the FCC would continue to be a more flexible relationship, based on the make-up of the FCC, personal goals of the FCC commissioners, and industry achievements of both the broadcast and wireless industries.

Discussion

The information gathered in these interviews suggest than an extension of capture theory is needed to provide explanatory power for situations when a regulatory agency oversees more than one dominant industry. The responses of the lobbyists indicate that capture is not the static or constant relationship that previous interpretations of capture theory have made it out to be, but rather is a more flexible relationship that varies depending on the composition of the FCC, party in power in government, goals and agenda of the FCC administration, and events that occur without the planning or expectation of any of the industries overseen by the regulatory agency (e.g., the economic recession helped spur support of incentive auctions). These variables require further empirical examine to determine the extent to which each of them impact a shift in regulatory favoritism, and if all variables carry equal weight in regulatory favoritism, but the identification of variables from the interviews in this chapter is an important beginning towards moving towards a more completed understanding of the regulatory agency and dominant industry relationship. It should be noted that the respondents also considered the FCC to rule in favor of either “us or them,” with “them” rarely meaning the general public. This response

indicates that while the same dominant industry may not always capture the FCC, the FCC is generally captured by an industry's preference, rather than the any sort of public interest preference separate from industry interests.

It may be that an extension of capture theory will consider that more than one industry can come to dominate a regulatory agency, and the FCC should be considered as captured by the overall communications industries, rather than by specific industries and sectors of industries that are quickly growing increasingly similar. While this bigger picture of capture was not offered up by any of the respondents, it may be the way the decision making at the regulatory agency is heading. However, an alternative view of capture theory can also be offered, given the fact that factions of the communications industry have diametrically opposing viewpoints on policy issues and often bitter words to speak about the other industry. In this view, the communication industries should still be viewed as separate industries competing for regulatory favoritism.

The respondents' views convey a future where capture will never be totally achieved by one industry. Having the communications industries continue to battle for regulatory favoritism on policy issues translates to a new reality where competition continues and corporations in both industries continue to increase lobbying expenditures and campaign contributions in order to attempt to achieve regulatory favoritism. Based on these interviews, an extension of capture theory is proposed that posits that when a regulatory agency oversees more than one dominant agency, regulatory capture will no longer be a static relationship. The inability to count on regulatory capture will lead to an environment of increased competition between the industries.

The blurring of the lines between the wireless and broadcast industries was also a popular topic during the interviews, and the respondents' contributed much of the competition for

regulatory favoritism to the growing inability to differentiate the industries' products and services. The competition for regulatory favoritism and access to lawmakers is the new normal of broadcast and wireless industry lobbyists, and instead of expressing anger over the competition and new competitors, the respondents were surprisingly pragmatic when discussing the role competition plays in their day-to-day business dealings. A key reason for this pragmatic viewpoint was the thin line that determined whether another corporation was a competitor or ally, and how quickly this line could move. Recognizing that the distinctions between corporations and industries are moving quickly created a new definition of competitors for the respondents, as well as new, more focused way of monitoring competitors' activities. Further research in this area, with an integration of resource dependence theory and capture theory is also likely to yield rich results in terms of the implications a blurring between the industries has on the need to strengthen external ties, and the way this need relates to corporations' political actions and attempts to achieve regulatory capture.

The other issue arising from the interviews is that the hesitancy on the part of some of the lobbyists to label the FCC as a captured agency, and the praise they gave to FCC staffers for making thoughtful and analytical decisions on policy issues is a far cry from the perception of the FCC given in academic and popular press accounts. For the most part, these accounts are negative and depict an ineffective agency, miles apart from the perception given by the respondents. The question remains if the respondents were honest and trustworthy during their interviews. While the intentions of the interview responses cannot be fully vouched for, the fact that several respondents reiterated the same type of thoughts and views regarding the FCC suggests that the decision making process at the agency may be more complex, and positive, than more general accounts give it credit for. These interviews recount personal experiences with the

FCC that hopefully provide a more nuanced view than a general dismissal of the usefulness of the agency.

CHAPTER 6:

CONCLUSION

The goal of this dissertation was to examine the impact competition has on the government relations practices of the broadcast and wireless industries when the industries compete for regulatory capture. This examination was conducted through an analysis of the legal framework in place for government relations activities, and an examination of the way lobbyists operate within the legal context. This examination was conducted through the interviews with lobbyists in the broadcast and wireless industries, and the analysis of the lobbying expenditure and campaign contribution data sets. As the distinctions between the industries blur and policy and regulatory interests come into conflict, corporations in both industries are being forced to reexamine and redefine lobbying strategies in order to attempt to continue to receive regulatory capture at the FCC and favorable policy development. After the interviews with lobbyists in the broadcast and wireless industries, and analysis of the lobbying expenditure and campaign contribution behavior of the industries, this dissertation can offer several initial conclusions to this burgeoning and complex topic.

Most obviously, corporations in the wireless and broadcast industries were found to view competition as occurring between the industries, and attributed competition as the primary reason both industries are continually outspending themselves in government relations activities. The source of the competition was recognized as being due to new technologies and needs for spectrum space, as well as the desire to be viewed as the dominant communications medium for consumers in order to either increase or restrict the ‘changing of the guard’ mentioned by a

Washington insider that appears to be occurring in terms of what communication industries are achieving favoritism in Washington.

Chapter Conclusions

Chapter two detailed the legal framework by which corporations must carry out lobbying expenditure and campaign contribution activities, and provided an overview to the lobbying expenditure and campaign contribution spending by corporations in the broadcast and wireless industries. This overview found that corporations in the industries are tending to increase lobbying expenditure and campaign contribution spending, and that the top spenders amongst the broadcast and wireless industries also rank amongst the top spenders for any industry. After examining the legal frameworks surrounding corporate political activity, the remaining chapters examine the nuanced ways in which government relations activities are conceived and carried out.

Chapter three found that the lobbying and campaign contribution strategies of the broadcast and wireless industries, while still isomorphic, show some divisions in terms of government relations activities. Isomorphic lobbying and campaign strategies still occur frequently, but some efforts are being made to distinguish lobbying efforts in the areas of policy focus, internal versus external lobbying and campaign contribution strategies. However, it appears that only so many non-isomorphic lobbying strategies can be carried out if corporations want to have an effective political presence in Washington, and that completely non-isomorphic lobbying activities are unlikely to occur between the broadcast and wireless industries.

The data in the chapter also suggests that it may be easier for trade associations to differentiate lobbying and campaign strategies, and that it may also be easier for the wireless corporations to differentiate themselves from the other groups due to the higher level of

monetary resources and more proactive lobbying stance the wireless industry is able to take.

While the wireless industry lobbies in similar fashion to the older broadcasting industry in some regards, including trying to mimic strategies to gain legitimacy, the wireless industry is able to operate under less institutional pressure due to its shorter history in Washington.

Chapter four examined the day to day operations and strategy development of broadcast and wireless lobbyists and found that corporate lobbying differs dramatically from the public perception of lobbying. Strategy formation was found to be a mix of corporate level objectives and dealing with problems voiced by lower-level employees, and both the wireless and broadcast corporations viewed competition as having impacted the corporate structure and activities of their government relations departments. As competition was encountered, the corporations were forced to engage in more substantive, policy driven lobbying, and also deal with a constantly changing priority list for lobbying objectives. Corporations also had to spend more time lobbying on unexpected topics that arose due to competition and had less time and resources for organization-specific policy objectives.

Theoretically, chapter four provided some support for the argument that competition is motivating corporations to move away from isomorphic lobbying activities. While a large amount of isomorphic still occurs, the interview participants expressed a desire to make their lobbying and policy preferences stand out from those of competitors. Stronger support was found for resource dependence theory and the argument that competition plays a factor in providing government relations departments with enough resources to strengthen external ties and reduce environmental uncertainties. The lobbyists interviewed received resources, both in terms of monetary funds and some additional employees or outside consultants when needed, to

carry out effective lobbying. The lobbyists also had access to top tiers of management at their corporation to communicate lobbying trends and receive support.

The interviews that comprise chapter five suggest that an extension of capture theory is necessary for the situations when a regulatory agency oversees more than one dominant industry. The capture relationship that exists when a regulatory agency oversees more than one dominant industry is no longer the static relationship it is when an agency only oversees one dominant industry. Rather, the industry receiving regulatory favoritism changes based on the policy issue, composition of the FCC, political party in power and events that occur without the planning of corporations overseen by the industry (e.g., incentive auctions being introduced as a way to reduce the deficit). While the broadcast and wireless respondents generally viewed regulatory favoritism as being directed to an industry, and not the public interest, the respondents did not predict a future in which one industry would be able to completely capture the agency. Rather, the respondents see capture as changing based on the issue, leading to more competition between the industries.

While both the broadcast and wireless corporations attempted to achieve their policy goals through lobbying and other government relations activities in the attempt to achieve regulatory capture, the interviews with members of the broadcast and wireless industries suggest that full regulatory capture of the FCC by one dominant industry is an extremely difficult goal to reach, and the industry achieving regulatory capture is likely to change based on the issue at hand and the make-up of the FCC.

The recognition that no one dominant industry can fully capture the FCC in this era of competition suggests that the cycle of competition, increased spending on government relations activities, and attempts to receive regulatory favoritism is likely to continue, and even increase as

other previously separate industries (e.g., the Internet industry) begin to have their own conflicting policy goals for communication issues. It appears that an era of increased competition for FCC favoritism is here to stay, and the spending and increased effort needed to achieve regulatory favoritism will not make any industry with communication interests the clear-cut regulatory favorite to achieve full and long-term regulatory capture.

Theoretical Contributions

This dissertation offers a more nuanced view of capture theory for situations where a regulatory agency oversees more than one dominant industry and the interviews developed variables that can be further examined in future work to continue to study the way competition impacts regulatory capture. The primary facet of capture theory, that a regulatory agency will side with the desires of a dominant industry when making policy decisions, was supported by this dissertation. However, when a regulatory agency oversees more than one dominant industry, the dominant industry the agency sides with will change depending on the policy issue at hand, makeup of the FCC, and overall political atmosphere. By continuing to side with a dominant industry when making policy decisions, but having the dominant industry subject to change, no industry will be able to fully capture the FCC and count on the agency's unwavering support for policy desires in the same manner a solo dominant industry can count on capturing a regulatory agency.

Despite the fact that the days a single industry fully capturing the FCC on desired policy issues may be drawing to a close, this dissertation did find that the industries are still attempting to achieve some degree of non-isomorphic lobbying activity in order to stand out and increase the chances of achieving regulatory favoritism. While fully non-isomorphic lobbying activities appear to be impossible to conduct, due to both the mimetic, normative and coercive pressures

inherent in the communication industries and the fact that the world of Washington, DC lobbyists is insular and altering lobbying choices in the extreme is likely to hinder the ability to achieve regulatory favoritism more than help it, lobbyists are conducting some non-isomorphic activities and thinking strategically about what tactics will provide their corporation and industry with the greatest likelihood of regulatory capture.

Support was also found for the incorporation of resource dependence theory in this dissertation as a reason for why corporations feel that spending record breaking budgets on government relations expenses is a worthwhile business activity, despite the unpredictability of receiving regulatory favoritism and achieving capture. While spending on lobbying expenditures and campaign contributions and expenditures does not guarantee favorable policy decisions, the ability to reduce uncertainties with external environments through government relations activities is highly valued by corporations. The continued blurring of the lines between the industries provides additional ways to incorporate resource dependence theory and capture theory in future research. As the lines between the industries continue to grow hazy, both the ability to reduce external uncertainties, and the definition of where external uncertainties begin will continue to grow in importance and the ability to temper environmental uncertainties through political action and regulatory importance are likely to grow in importance.

Continuing Competition for the Industries

The sense of competition between communication industries, the desire to conduct some non-isomorphic government relations activities, the desire to fund activities that reduce external environmental uncertainties, and the desire to achieve regulatory capture appear to be conditions that are here to stay. Recent policy decisions for communication industries, including the passage of the incentive auctions as part of a Payroll package, and the SOPA/PIPA legislative

battles favoring Internet industry, reflect an environment with several dominant communication industries that cannot count on the FCC for regulatory support. While the incentive auctions legislation was passed as part of the spending bill passed to cover payroll tax cuts and long-term unemployment benefits and not as part of Congressional efforts to address communication policy,³⁰⁴ the fact that the revenue raising ability of incentive auctions was appealing to both Democrats and Republications reflects the difficult challenge of the broadcast industry to continue to lay claim to spectrum rights.³⁰⁵

However, the ability of the broadcast industry to receive monetary payback for airwaves they never paid for also implies that the broadcast industry still holds power in Washington and will remain a political force in the future. The bill allots approximately \$1.75 billion of the auction revenue to the FCC to give to television stations that give up spectrum space, and also allows the FCC to move the spectrum space of some stations around in order to have wider chunks of spectrum available for the auction. In the event that not enough broadcasters volunteer to give up spectrum space, non-voluntary moves of stations will be conducted in order to free up wide enough swaths of spectrum to auction off.³⁰⁶ Stations that are moved non-voluntarily will be compensated for the moves. The incentive auctions are expected to raise more than \$25 billion in government revenue and are viewed as a “rare instance of the government compensating private companies with the proceeds from an auction of public property – broadcast licenses—once given for free.”³⁰⁷

³⁰⁴ Passing the incentive auctions legislation as part of a spending bill is similar to the passage of the initial spectrum auction legislation as part of an Omnibus Budget bill, rather than as part of communications legislation. The passage of both the 1994 spectrum auctions legislation and the 2012 incentive spectrum auctions may reflect Congress’ consideration of auction revenue as more of a budgetary issue than a strict communications policy issue.

³⁰⁵ Wyatt, E., & Steinhauer, J. (2012, February 16). Congress will auction public airwaves to pay for benefits. *The New York Times*, A1.

³⁰⁶ Eggerton, February 16, 2012

³⁰⁷ Wyatt & Steinhauer, February 16, 2012

While the decision to pass the incentive auctions had more monetary motivations than communication motivations, the passage of the auctions still reflects a shift in the media landscape.³⁰⁸ The new landscape no longer places the broadcast industry as the most powerful communications industry, nor as the most powerful lobbying group. Rather, passing legislation that auctions public airwaves to create more spectrum space for wireless Internet systems and faster connection speeds for mobile devices reflects the reality of what the National Broadband Plan mentioned in abstract, that wireless communications are the dominant communications platforms of the future.

Future Research

This dissertation serves as the beginning to a potentially large and fruitful body of research examining the impact increased competition for regulatory capture and the blurring of communication industries will have on the government relations activities of communication industries, as well as the ability of communication industries to receive regulatory favoritism. Beyond the confines of this dissertation a plethora of future research opportunities exist. Future research can go beyond the broadcast and wireless industries to examine the lobbying strategies and impact competition has on other industries with communication interests, including the cable industry and the Internet industry.

As referenced several times in this dissertation, powerful corporations in the Internet industry, including Facebook and Google, have been establishing their Washington offices in recent years and beginning to make political activity an important part of the corporate strategy and framework, and are quickly becoming a powerful lobbying force.³⁰⁹ The Internet industry appears to be embracing a mix of old and new lobbying techniques and would make for

³⁰⁸ Wyatt & Steinhauer, February 16, 2012

³⁰⁹ Martinez, J. (2011, November 16). Shootout at the digital corral. Politico.com.

interesting research in institutional practices. In terms of new behaviors, the Internet industry is using its products to reach consumers directly during policy battles and are not concerned with lobbying to protect stagnant business models.

However, the corporations are making isomorphic decisions and falling in line with other industries in terms of hires made to establish a presence in Washington. Rather than bringing over representatives from Silicon Valley, Internet corporations tend to hire established Washington lobbyists to create and/or grow the corporations' political presence.³¹⁰ Despite the success of its lobbying against SOPA/PIPA legislation and successful business models, the Internet industry is still considered somewhat of an underdog in Washington due to the fact that the broadcast, and wireless industry to a lesser extent, have been reinforcing connections to Congress and regulatory agencies for longer than most of the Internet corporations have been in existence. Future studies could examine the hiring practices of the Internet industry for lobbyists and way hiring established Washington insiders impacts the organizational practices at corporations with relatively new political presences.

Future research directions also include the future of spectrum auctions and the impact the voluntary incentive auctions have on the broadcast industry in terms of industry standing and political presence. Other future research could examine the corporate governance of communication industry trade associations to examine the impact board members have on the lobbying strategies and policy priorities of the trade association. Examining if the policy preferences of a trade association are more in line with the interests of the broad of directors and the corporations they represent, or if the policy preferences are more in line with the overall desires of the industry could add to knowledge about policy building and government relations

³¹⁰ Facebook has hired former White House Press Secretary Joe Lockhart as part of its lobbying team and Google employs former Senate Judiciary Committee member Ryan Triplette. Martinez, November 16, 2011; , Stewart, C.S., Fowler, G.A., & Schechner, S. (2012, January 18). New, old media battle over net rules. *The Wall Street Journal*.

activities among communications trade associations. Historical research avenues in this area also abound, including an in-depth study of the lobbying activities of the broadcast industry to examine if and how the activities transitioned from proactive to reactive, as well as a more nuanced examination of the way the wireless industry first developed lobbying strategies and the extent to which the wireless industry attempted to line lobbying strategies up with the broadcast industry.

Conclusion

Overall, the topic of increased competition between communication industries and the impact this competition has on government relations activities, is viewed as a sustainable topic of research that can be added to in coming years. The competition between communication industries increased steadily throughout the two years spent researching, gathering data and writing this dissertation, and stories about spectrum policy, broadband development and increased lobbying and campaign contribution activities continually appear in popular press and trade magazine sources. The attention paid to the topic, as well as the continued competition between the industries for regulatory favoritism suggest that this issue is merely beginning to emerge as a complex area of policy study, and continued research at the intersection of media policy, management and government relations activities will result in meaningful and impactful research findings.

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APPENDIX

INTERVIEW QUESTIONS

Purpose of government relations strategies

- How are your overall government relations strategies developed?
- How are your strategies carried out?
 - How does lobbying fit in with the overall government relations program?
 - What about campaign contributions?
- Are the government relations strategies your company uses similar to the strategies of other companies in the industry?

Organizational fit

- What kind of role do government relations play in your overall corporation?
- At what level in your company decides the budget for lobbying expenditures? Campaign contributions?
- How are the lobbying strategies determined (e.g., deciding to conduct internal or external lobbying, what venues to lobby to, etc.)?
- What are the organizations goals in regards to lobbying expenditures? Campaign contributions?

Impact of competition

- Has increased competition from the broadcast/wireless industry on policy issues like spectrum allocation impacted your government relations strategies?
- Overall, does it feel like the TV and radio broadcast and wireless industries compete for regulatory favoritism?
- What industry do you think is more favored by the FCC?
- Does this favoritism impact your government relations strategies? If so, in what ways?
- Do you consider the way the broadcast/wireless industry is lobbying when forming your government relations strategies on issues you compete on?
- Do your strategies change in response to the strategy of your competitors?

Trade Associations

- When do you decide to lobby through a trade association?
- When lobbying as part of a trade association, do you also lobby at the organizational level for the same topic?
- Does lobbying with a trade association change in importance when competition increases?

- What are the benefits of the trade association?