

Regulatory Stacking: Policy Integration by Ownership or Contract?

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Time Warner/Comcast Merger: The US Regulatory Stack

- Department of Justice, Antitrust Division
- Federal Communications Commission
- State Attorneys General (e.g., New York)
- State Public Utility Commissions
- [Private Rights of Action]

Origins and Consequences of the Stack

- Historical Roots
- Political Determinants
- Suitable in Face of
 - Technological change
 - Growing economic interdependency

Why Care?

- Improve Quality of Regulation
- Minimize Costs
 - Public: Agencies
 - Private: Specialists for each domain

Which Configuration Makes Sense?

- Toward a Theory of the Agency
- Framework for Design Choice
- Joint Work with David Hyman
 - Hyman & Kovacic, *Why Who Does What Matters: Governmental Design and Agency Performance*, 82 *George Washington Law Review* 1446 (2014)
- Caveat: Personal Views Only
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Context: Seven Major Design Decisions

- Autonomy/Accountability Tradeoff
- Own Agency or Part of Another
- Governance: Board or Hierarchy
- **How Many Enforcement Agents**
- **N or N+ Functions**
- Integrate or Unbundle Decisionmaking Tasks
- Which Policy Tools

Who Should Do What: Five Factors

- Diversification/Decentralization Rationales
- Spillovers and Policy Coherence
- Branding and Credibility
- Public Administration Capability
- Implementation Costs

Toward Deeper Policy Integration

- By Ownership: Reallocation of Tasks
 - Example: Australia
- By Contract
 - Networked governance (e.g., ECN, UKCN)
 - Coordination
 - Convergence on Superior Concepts/Processes
 - Interoperability

Virtuous Regulatory Cycle

- Experimentation
- Periodic Evaluation
 - Reexamine priors
 - Assess performance effects
- Refinement