

Sputtering to a start: the history and future of radio spectrum regulation in Uruguay

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Abstract

While the radio spectrum has been used for communication in Uruguay since the early 1900s, its regulation remains very much in development. This article traces the history of spectrum regulation in Uruguay from its inception through 2013. A case study of Uruguayan spectrum policy, it documents the practices that have led to the development of the current system and continue to drive it forward in the context of convergence. In it, I analyze recent efforts to introduce formal regulatory systems and new mechanisms for public participation in policy-making. I draw upon secondary sources as guides for historical analysis while evaluation of the current system relies largely upon extensive primary data gathered between 2009-2012. Primary sources include parliamentary records and other documentation, interviews undertaken with government ministers, law-makers, civil society organizations, regulators, union organizers, independent experts and the private sector, and follow-up communication with interview subjects.

Keywords: Broadcasting, radio, regulation, spectrum, Uruguay

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Introduction

The radio spectrum is quickly becoming the primary medium through which humankind communicates. According to the International Telecommunications Union (ITU), there are almost as many cellphone subscriptions in the world as people (6.8 billion subscriptions, 7.1 billion people) (ITU, 2013, p. 1). Additionally, people increasingly connect to the internet through mobile connections, especially in developing countries (ITU, 2013, p. 6). Access to the spectrum, and the ability to partake in decision-making around its use, is thus becoming increasingly important. This article details the history of radio spectrum regulation in Uruguay. It shows that in order to comprehend future debates, issues and power relations, one must understand the processes of the past. While much similar work tends to focus exclusively on either telecommunications or broadcast media, I propose that in order to address converging media, technology and policy, the communicative uses of the spectrum should be considered as a whole.¹

While wireless communication has been used in Uruguay since the early 1900s, regulation is still in development. Uruguay presents a case where commercial and state-operated telecommunications companies compete with one another, hundreds of community radio stations requested licenses during a recent legalization process, and potentially hundreds of other stations operate as “pirates”. Uruguay became the world's first country with an entirely digitized wire-line communications infrastructure in 1997 (ANTEL, 2012). Since 2005, the cellphone penetration rate has increased from 34.9% to 141.2% (URSEC, 2011) and the federal government has implemented the One Laptop Per Child program in all public elementary students.² Wireless is the way forward, yet its users operate in a policy framework that is in constant, stuttering, evolution. This case study of Uruguayan spectrum policy documents the practices that led to the development of the current system and continue to drive it forward. It analyzes recent efforts to introduce formal regulatory systems and new mechanisms for public

¹ For a detailed literature review, see (Author, 2012b) and (Author, 2013).

² A penetration rate above 100% means does not mean that every individual possesses a cellphone but instead that people use multiple phones/SIM cards.

participation.

This article has seven sections. Section one presents the theoretical and methodological approaches used in this research. Section two examines the history of Uruguayan communication law and policy from the early 1900s -1990s. Section three maps out the evolving regulatory system and analyzes the introduction of communications regulation in the 2000s. Section four examines the distribution of the spectrum in Uruguay, while section five analyzes participation in spectrum law-making. Section six examines recent policy reform experiments. Finally, I analyze obstacles impeding the development of a more democratic approach to communications policy-making.

1. Theoretical and methodological approach

Given the radio spectrum's pervasiveness and its ever-growing centrality to our lives as communicative social beings, access to the spectrum and its regulatory processes is politically, economically and ethically important. Regulation of the spectrum, thus, must be as democratic, transparent and participatory as possible. This work is undertaken in the tradition of political economy research in communication, seeking to understand how the spectrum acquires value. I rely on previous work (Garnham, 1990; Graham, 2007; McChesney, 2007) while adapting this approach to compensate for a previous over-emphasis on dominant socioeconomic structures and an absence of the individual in political economic analysis in communication studies (Author, 2013, p. 55-85). In this way, I conduct a classical political economic analysis of the regulatory systems while placing everyday people at the centre of discussion. Rather than describe the alienation of the individual from her communications regulatory system, I seek practical avenues for improvement.

The scope of this study is broad: it examines all legislation and regulatory processes concerning the radio spectrum in Uruguay. I use secondary sources as guides for historical analysis. Evaluation of the current system relies largely upon primary data gathered between 2009-2012. Primary sources include parliamentary records and other documentation. In 2010, 28 semi-guided interviews were conducted with government ministers, law-makers, civil society organizations, regulators, union organizers, independent experts and the private sector.

2. Legal frameworks and regulatory histories

Unlike countries such as Canada and the United Kingdom, policy-making in Uruguay has not been accompanied by processes of examination and consultation that provide an evidentiary foundation for laws and policy frameworks. Instead, there is a history in which laws and Presidential decrees are scattered about, evidence perhaps of a law-making apparatus unable or unwilling to make communication a focal point. The disjointed nature of this history presents an opportunity to appreciate the evolution of communications policy and law as a narrative strongly connected to the evolution of a society as it moves into and out of dictatorship (1973-1985), through neo-liberalism (the 1980s and 1990s) and into its current process of democratization. This phenomena has been observed around the world (Price et al., 2002) with Faraone (2002) noting that “media reform has paralleled Uruguay's transition to democracy” (p. 222). This article evaluates the current state of the regulatory system in terms of democratic transition by assessing citizens' ability to participate in substantive ways. This section lays the historical groundwork necessary for interpreting the current situation.

Wired telephony developed in Uruguay in the 1870s. The country's first phone call was made in 1878 (ANTEL, 2012). In 1896, the first state telecommunications network, the National Mail and Telegraph Directorate, was created by Presidential decree. Uruguay joined the International Telecommunications Union (ITU) in 1903 (ITU, 1903). The government then adopted a strategy of strengthening state institutions, nationalizing key private industries and developing the early framework for a social welfare state (Frega, 2008). In 1915, Parliament created the General Mail, Telegraph and Telephone Administration, granting a state monopoly over postal, telegraph, and telephone service (Parlamento del Uruguay, 1915).

In 1922, Radio Pradizábal, Uruguay's first commercial radio station, began operating in Montevideo (Maronna & Rico, 2007, p. 396; Maronna & Sánchez Vilela, 2006, p. 106). CX14 El Espectador and Radio Montecarlo followed in 1924, and CX30 Radio Nacional in 1925 (Maronna & Rico, 2007, p. 396). The *Radiocommunication Act* was passed in 1928 and the Radiocommunication Services Directorate was given the task of spectrum management, although

in some (unspecified) cases the Minister of Public Education would participate (Bouissa, Curuchet, & Orcajo, 1998, p. 102; Inchausti, 2010; Parlamento del Uruguay, 1928). In 1929, the government created the public broadcaster, SODRE, giving it preference in the granting of frequencies, a practice still in place today (Parlamento del Uruguay, 1929). Finally, the General Administration of State Electrical Plants and Telephones was created and given powers over the national telephone system and electrical plants. Private telephone companies were permitted to continue operating with the warning their licenses were “precarious and revokable” (Parlamento del Uruguay, 1931).³

Times were tranquil for spectrum policy from 1931-1974, although Uruguayan history was otherwise tumultuous. Uruguay endured a brief dictatorship in the 1930s, and political reconstruction ensued in the 1940s and 1950s. A 1952 plebiscite resulted in the creation of a nine-member presidential council that replaced a President (Ruiz, 2008, p. 149). While left-wing political parties had been active in Uruguay since at least the 1920s, the political system remained controlled by the two centrist parties – the Partido Nacional and the Partido Colorado. Throughout the 1950s and 1960s, Uruguay was increasingly part of the Cold War and, perhaps mirroring global tensions, the 1960s were punctuated by regular violent episodes between ultra-right and ultra-left groups, exemplified by the new Tupamaro guerrilla movement and the formation of the national central union (Ruiz, 2008, pp. 140–160). In 1967, the Uruguayan government began an economic reform process designed by the International Monetary Fund and organized labour resisted this first attempt at liberalization. Violent reaction on the part of the state (including torture) led to further instability (Ruiz, 2008, pp. 140–166). During this time, communication policy fell by the wayside while successive governments focused on fundamental matters of economic and political stability.

In 1974, one year into Uruguay's 13-year long dictatorship (1973-1985), the telecommunications corporation ANTEL was created as a state monopoly (Parlamento del Uruguay, 1974). In 1975, a new broadcasting act defined the first normative framework for broadcast licensing. This law, still in effect today, provides the presidency with exclusive power to grant and revoke broadcast licenses (Parlamento del Uruguay, 1977). The mechanisms by which this might occur remain

³ Today, commercial broadcasting licenses are known to be “precarious and revokable”.

non-codified and subject to the interpretation of each President.

The introduction of regulation

In the 1980s, the Presidency further concentrated power over the spectrum, first creating the National Communications Directorate within the orbit of the Department of National Defence as a specialized entity for spectrum management. This was done by Presidential decree in 1984, shortly before the end of the dictatorship (Alonso et al., 2010; Parlamento del Uruguay, 1984). In 1985, the Senate unanimously approved legislation moving the National Communications Directorate within ANTEL and away from Presidential influence. Ultimately, it was vetoed by the President, assuring that the technical management and licensing of the spectrum would remain under Presidential power (Bouissa et al., 1998, p. 103). Over three decades, spectrum control became more centralized and rigidly defined.

While the political establishment strengthened its hold on the radio spectrum, numerous social movements in the 1980s collaboratively organized around the theme of communication. Uruguay's community media movement began then and numerous community newspapers and radio stations were formed (Bouissa et al., 1998; Author, 2012a; Robledo, 1998). In 1989, the *Press Act* was passed and today serves, in part, as legal grounding for independent media and communications movements by declaring that in order to satisfy a citizen's defined right to free expression, everyone has the right to "found a medium of communication". However, it also codified defamation as a criminal offence and broadly defined it, allowing it to become a tool of censorship (Gómez, 2005, sec. 2.1; Parlamento del Uruguay, 1989). Thus, legislation ensuring free speech also places strict limits on it, the ultimate penalty being imprisonment.

The concentration of power over wireless communications continued into the 1990s against the backdrop of privatization efforts in Uruguay and neighbouring countries. A 1990 Presidential decree declared that all wireless communication be licensed directly by the presidency (Alonso et al., 2010; Parlamento del Uruguay, 1990). This solidified an enduring practice whereby the regulator assures proper technical operations while the presidency manages licensing. In 1991, the *State Corporations Act* established a technical definition for telecommunications and gave

the presidency direct decision-making powers over it (Alonso et al., 2010; Parlamento del Uruguay, 1991). Telecommunications is defined as: “all transmission, emission or reception of signs, signals, texts, images, sounds or information of any sort by wire, radio, optical media or other electromagnetic systems” (Parlamento del Uruguay, 1991). As we can see, the executive branch of government held enormous power. While citizens were afforded the right to found communications media in order to facilitate free expression, the bounds of free expression were quite limited. This tension, between a powerful executive branch that treats rights in modest if not contradictory ways, and a empowered citizenry demanding explicit recognition of rights but settling for less, permeates recent communication policy-making in Uruguay.

Government, meanwhile, has made efforts to introduce private market reforms into the communication system. A prime example is cellular telephony. Following the 1991 passage of the *State Corporations Act*, this same law was rejected by popular referendum. Nevertheless, the government sought to open the telecommunications market to competition. Antel created a secret subsidiary for cellular telephony in 1992 and awarded a private contract to Aviatar S.A. (later called Movicom) and today owned by Telefonica. This, however, was illegal and the arrangement kept secret. “The public face of cellular telephony was ANTEL, but in reality it was all Movicom. Two years later, Antel began to offer cellular telephone service of its own under the name Ancel. The general public thought there were two separate companies and there were, except that juridically there was only one” (Riccardi, 2010). Eventually this arrangement ended and Movicom became Uruguay's first private telecommunications provider, breaking the state monopoly on telecommunications against the explicit will of the public.

3. Regulators, policy-makers and advisers

In 2001, Uruguay created its communications regulator, the Unidad Reguladora de Servicios de Comunicación or URSEC. This section details the problem of regulatory institutionality. It then examines an important and innovative extension of regulation into the public realm and the integration of civil society into positions of authority through the Honorary Community Radio Commission.

URSEC

The new millennium has been a time of broad reform with successive governments developing communications law and policy (Riccardi, 2010). This began with URSEC's creation in 2001 (Parlamento del Uruguay, 2001). Spectrum regulators were shifted from the Department of National Defence to URSEC which gradually gained funding, infrastructure and responsibility, including control of the spectrum and licensing of telecommunications undertakings (Alonso et al., 2010; Budé, 2010; Parlamento del Uruguay, 2003a, 2003b). Due to the constitutional organization of the State, all regulatory bodies must fall within the orbit of the presidency and it is impossible to have a regulator reporting to Parliament. URSEC is directly responsible to the Minister of Industry, Energy and Mining (MIEM) with regards to communications regulation, and the Ministry of Education and Culture, with regards to postal service regulation (Budé, 2010).

URSEC did not gain its own organizational structure until 2008 and until then relied on staff “on loan” from ANTEL. In 2010, URSEC was still experiencing severe staffing shortages; of 145 positions granted in 2005-2006, only 85 were filled. Although Uruguay received World Bank financing to strengthen their telecommunications regulator and hired PricewaterhouseCoopers to manage their executive hiring process, two of the four most senior management positions remained vacant, including the legal department (Riccardi, 2010). Its historic lack of resources has meant that while it is a regulator, URSEC wields no palpable power. According to the Chief of Radio Frequencies, broadcast licenses have only been revoked twice – this because in the twenty years since the licenses had been granted, neither station had engaged in a single act of broadcasting (Budé, 2010). Additionally, although an estimated 300 illegal FM radio broadcasters operate in Montevideo alone (Gesuele, 2010), the regulator has only two trucks to monitor unlicensed broadcasting.⁴ This lack of ability to punish, an act often seen as central to the ability to regulate, impacts the regulator's social place; URSEC simply does not exist in the public consciousness (Riccardi, 2010).

URSEC manages all use of the radio spectrum in Uruguay. While the presidency grants television and radio broadcast licenses, URSEC administers the rest by managing and granting

⁴ Montevideo is a city of 1.5 million people. The broadcasters are generally small unlicensed commercial or religious radio stations. Regulators were unaware of, but not surprised by, their presence.

cellular telephone licenses, CB radio, satellite, etc. (Budé, 2010; Riccardi, 2010). Thus, the spectrum is managed by two separate yet connected entities, each subject to its own particular forms of political pressure. Lobbying is known to occur (Imaz, 2010), but more widespread is a kind of political power connected to wealth, political parties and media ownership (Yanes, 2010).

URSEC holds no public audiences for licensing. This is not because it is impossible, but because “nobody ever wanted it that way. Quite simply, it's a political decision” (Budé, 2010). Uruguay has no system for domestic consultation regarding ITU policy decisions (Budé, 2012). Ultimately, the spectrum is regulated in a number of locations, each closed to public intervention. To date, community radio stations and related NGOs are the only civil society organizations to regularly interact with URSEC. Those interviewed for this study with the most knowledge of the regulator are members of the Honorary Community Radio Commission (CHARC) as representatives of community radio associations or NGOs concerned with freedom of expression. Generally, their perception is that URSEC lacks the resources needed to be an effective, competent regulator (Lanza, 2010; Prats, 2010). URSEC is inaccessible to civil society organizations and the general public with neither staff nor resources available to either (Fernandez & Almeida, 2010; Imaz, 2010; Prats, 2010). There is also a strong belief that URSEC is permanently co-opted by the presidency. For example, early in its existence, it was understood that URSEC was created to liberalize the telecommunications market (Lanza, 2010; Molina, 2010). As political winds have changed, its task has been reoriented to assure a competitive marketplace and a strong state telecommunications corporation (Jurado, 2010; Molina, 2010).

URSEC's lack of status as a “respected” regulatory institution is related to questions of democracy, transparency and political will and touches on a subject often avoided in Uruguay – the anti-democratic tendency to centralize discretionary executive power (Lanza, 2010). Yet while politics may slow down cycles of change, other realities, such as issues of education and finances, also affect the ability of regulators to emerge. Shortly after URSEC's creation, Uruguay experienced a severe economic crisis that saw its currency devalued, massive emigration and sudden growth in extreme poverty (Departamento de Historia del Uruguay, 2008). The state lost massive financial resources, and many educated professionals. Multiplying the problem is the perception that Uruguay's universities do not necessarily have programs to qualify professionals

to work for a telecommunications regulator (Riccardi, 2010).

While the *Broadcasting Act* of 1977 provides a general regulatory framework for radio and television, no further policy had been developed until recently. In 2008, Daniel Martínez, then MIEM, decided to develop a more elaborate communications policy framework. This resulted in a Presidential decree that provided a basic commercial radio licensing procedure (Parlamento del Uruguay, 2008a) but nothing more (Martínez, 2010). Finally, through a process initiated in 2005 and ending in 2010, community radio was legalized, resulting in a policy framework that is uniquely elaborate in the Uruguayan context (Author, 2012a). The 2007 *Community Radio Act* created a volunteer-based commission overseeing the licensing and regulation. The Honorary Community Radio Commission – or CHARC – is supposed to be participatory and representative.⁵ To fulfil this mandate, it includes members from social movements, the university sectors, and different sectors of government (Parlamento del Uruguay, 2007). There are no private sector representatives.

In 2010, a Presidential decree reserved “at least one-third of the radio spectrum in every locality, on all analogue and digital frequency bands, and all broadcast modalities” for community broadcasting (Parlamento del Uruguay, 2010). Part of the broader work informing the initial legislation (AMARC-ALC, 2008), this spectrum reservation was removed either before proposal to Parliament or during debate and revision. If it had been included in the 2007 *Community Broadcasting Act*, the act itself would have surely met political resistance. Without the inclusion of the spectrum reservation clause, the Act essentially satisfied the most powerful parties involved. Reinforcing political support on the left, the Act formally recognized community radio broadcasting. For those opposed to pirate broadcasters, the Act imposed a regulatory structure upon formerly unregulated broadcasters and mandated the regulator to shutdown those operating outside the law (Gómez, 2010). The decree reserving the spectrum was discretely made two years later, on December 30, 2010, by a new President acting, in part, on counsel of the National Director of Telecommunications, Gustavo Gómez.⁶ Gómez, in a former activist role, was responsible for the passage of the 2007 *Community Radio Act*. It is difficult to discern whether

⁵ CHARC: Comisión honoraria asesor de radiodifusión comunitaria.

⁶ January is vacation time in Uruguay and government functions close or slow down.

spectrum reservation is a serious proposition or political posturing. As of 2013, no transition framework had been created to make available of this “third” of broadcast frequencies. Ultimately, the transition would require a re-writing of the *Broadcasting Act* of 1977 which entitles commercial broadcasters to “life-term” licenses.

While the communication and media infrastructures in Uruguay are well developed, regulation has never quite taken hold and is thus in a perpetual state of invention. Communications policy-making has been sporadic, relying on Parliament or the presidency for occasional bursts of legislation and direction. While technical regulation of the spectrum shifted from the Ministry of National Defence to URSEC in 2001, spectrum policy matters in 2005 remained a defence matter. To resolve this, the office of the National Director of Telecommunications was created within the Ministry of Defence in 2005 to develop communications policy as a civil, rather than defence, matter (Ponce de León, 2010). Demonstrating willingness by the government to address communication policy-making, it was nonetheless under-resourced and ineffective during its first three years of existence (Martínez, 2010; Ponce de León, 2010). It was decided that the post remain essentially powerless while the MIEM worked to introduce the idea of telecommunications policy into the broader political culture, providing what was believed to be a necessary period of adaptation. According to Martín Ponce de León, then president of OSE (the state water company) and a director of Antel, creating an immediately powerful policy-maker “would be like killing them” because of the political pressure. “Sending somebody to do nothing wouldn't be worth it. Sending somebody to get something done, they're not going to last” (Ponce de León, 2010).⁷ Gustavo Gómez, former head of legislation and policy for the World Association of Community Broadcasters – Latin America and Caribbean (AMARC-ALC), was appointed National Director of Telecommunications in early 2010. Previously the driving force behind the legalization of community radio, Gómez was then tasked with developing a comprehensive communication and media legal framework. In the interim, Gómez advised the MIEM on developing and implementing more comprehensive communication policy (Martínez, 2010).

In May 2010, Gómez stated that two central laws were needed: “one for telecommunications and

⁷ Ultimately this is what occurred and Gustavo Gómez was replaced in September 2011 (Franco, 2011).

a law for audiovisual communication services. The first will regulate the entirety of the telecommunications infrastructure and the second will regulate the services that utilize this infrastructure” (Gómez, 2010). Two months later, the DINATEL struck a multisectorial committee to undertake the collective development of a potential audiovisual communication services law (Comité Técnico Consultivo, 2010). It was implemented by presidential decree in 2013.

The Honorary Community Radio Commission

The Honorary Community Radio Commission (CHARC) was created by the *Community Broadcasting Act* of 2007. Its purpose is consultative – it reviews applications by community radio stations and then recommends to the presidency whether or not to grant licenses. The CHARC only makes recommendations; it does not have the power to *do* anything (Prats, 2010). The initial work of the Commission consisted of processing 412 applications following the passage of the law, a census of currently operating stations and a call for applications (Author, 2012a). Before the 2009 election, it recommended 38 of these, intending to recommend a total of 84 (Gómez, 2010).⁸ There are currently nine members including representatives from the following organizations: the MIEM; the Minister of Education and Culture; Parliament; AMARC-Uruguay; Ecos; IELSUR; APU; the private university sector; and the Universidad de la República. All seats are permanent except for those held by AMARC-Uruguay and Ecos, whose representative bodies may change (Prats, 2010). A remarkable integration of a recently clandestine and outlawed community into a regulatory body, the CHARC would appear, according to Gustavo Gómez, to be an exemplary model due to its participatory design (2010). Given the preceding analysis of URSEC, how does the CHARC function internally? What does this mean for both the democratic project of this regulatory experiment and the general effort of the government to “democratize”?

The CHARC was proposed and created as a volunteer organization with no budget, the strategy being “to take advantage of political conditions to create a tool, a defective tool but a tool all the same” (Lanza, 2010). Lack of funding seems to be the root of several problems. URSEC

⁸ The president cannot issue broadcast licenses within 6 months before and 6 months following an election.

provided the commission with a meeting place, but no human or material resources. Eventually it was granted use of a telephone and computer. While one member believes it imperative that the commission be able to personally visit stations before approving applications (and even did so on his own time), no vehicle or travel funds have been provided (Orcajo, 2010). Members also spoke of being buried under applications and subject to direct political pressure from elected politicians.

Most of the burden has been shouldered by a few members as participation by state and university actors has been poor. Parliament never appointed a representative; the Minister of Education and Culture representative has never attended a meeting; and IELSUR and the private university sector seldom participate. Conclusions of active members demonstrate that this “proof of concept” has been undertaken as a labour of love. In either case it has reached its limits. For Edison Lanza, private university representative, any sort of institutionalization is impossible without financial resources (Lanza, 2010). Oscar Orcajo, representative for the Universidad de la República, described the situation as “intolerable” and believes that the fundamental ability to satisfy the demands of the *Community Broadcasting Act* is at risk. Lack of participation by organizations that fought to attain positions on the commission also creates problems of legitimacy and transparency (Orcajo, 2010). Ultimately, the CHARC is the skeleton of a bold proposition for civil society integration into regulation and a group of individuals exhausted by an enormous effort as the literal cogs of democratic reform.

4. Distribution and use of the spectrum

Radio spectrum use is typically granted through license by a central regulatory authority according to clear, standard rules. However, the Uruguayan case has lacked transparency and standard licensing practice.

Although the spectrum has been used for communication in Uruguay for nearly 100 years, academics and members of civil society have only recently begun documenting its history, ownership, and regulation. In 2003, Barreiro et al. (2004) documented five families dominating ownership of the Uruguayan media including the press, radio and television (2004). Later work analyzed spectrum regulation practices and concentration of ownership (Lanza & Goldaracena,

2009) and further scholarship focuses on Uruguayan media concentration in comparison with other Latin American countries (Becerra & Mastrini, 2010), and ownership of commercial television (Lanza & Buquet, 2011). URSEC only began to collect documentation on the ownership of licensed entities in 2009 (URSEC, 2009). While this data is available for public use, minimal analysis of it is publicly available.

Today, Uruguay has three cellular carriers. State-owned Antel has 46% of the market, Movistar (owned by Telefónica) claims 38%, and AM Wireless, known as Claro and property of Mexican businessman Carlos Slim, maintains 16%. There are no standard procedures for granting cellular telephony licenses and each entity received its license in a different way. Antel has the exclusive and democratically determined mandate to provide telephony in Uruguay. Nevertheless, it contracted a private company then known as Aviatar S.A. in 1993 to construct a cellular network. Once Antel developed its own network, Aviatar S.A. was purchased by Telefónica and a second cellular carrier (Movicom) was given legal status. AM Wireless entered in 2004 when the government decided to further open the cellular market (Riccardi, 2010). The number of licenses held by each is not public information. In terms of coverage, Antel covers 95% of the country (El Espectador, 2012). It is assumed that the other providers acquired the necessary licenses to offer similar service.

Since the return of democracy in 1985, license attribution has been far from transparent and commercial radio licenses have been awarded by the President in exchange for political favours (Lanza, 2010; Lanza & Goldaracena, 2009; Martínez, 2010). Broadcast licenses are complex political tools as they are granted forever but can be revoked anytime, at the discretion of the President. While this practice began during the dictatorship, no democratic government has attempted to change it. Recent research documented the attribution of 30-40 radio licenses during the Lacalle government of the 1990s (Lanza & Goldaracena, 2009, p. 240) and more than 50 licenses between 2000 and 2005 by the second Sanguinetti government (Lanza & Goldaracena, 2009, p. 241; Lanza & Gómez, 2007). Of licensed radio stations today, 271 are commercial, 9 are public, and 92 are community (URSEC, 2012a, 2012b, 2012c, 2012d). The current government has shown modest reform in this area. In addition to introducing legislation legalizing community radio, the Presidency revoked four radio licenses from the Rupenián family and

charged their company with income tax fraud. Two other radio stations' licenses were revoked during Justice Department investigations (Lanza & Goldaracena, 2009, p. 246). However, there is suspicion the governing Frente Amplio has been co-opted and, in terms of communication policy, is operating like previous right-wing governments. According to investigations by Edison Lanza, civil society organization Grupo Medios y Sociedad (GMS) and independent daily paper *La Diaria*, Mexican media magnet Ángel González has spent the past four years establishing a radio network, in clear violation of the foreign ownership limits of Uruguay's 1977 *Broadcasting Act*. In 2008, the Presidency authorized the transfer of ten licenses to González (Lanza & Goldaracena, 2009, pp. 245–247). More recently, González was documented meeting with the MIEM and has shown an ability to evade Uruguayan foreign ownership laws by collaborating with government and obfuscating his legal arrangement with Uruguayan radio stations through various contracts and power-sharing arrangements (Rodríguez, 2012).

Recently, Lanza and Buquet (2011) documented how three corporations have come to dominate over-the-air, satellite, and cable television broadcasting. Known by their television channels (4, 10, and 12), they have developed an elaborate network of over-the-air and cable television broadcasters over which they have direct or indirect corporate control, allowing content-production centralization. Through a web of partnerships, they control 95.5% of the television market (Lanza & Buquet, 2011, p. 23), own numerous radio stations and are expanding into the online content market (Lanza & Buquet, 2011, pp. 16–21).

5. Law-making and participation

Citizen participation in law- and policy-making is not a given, even in the most democratic political systems where participation and democracy are given lip-service while regulators provide a friendly face to ultimately inaccessible regimes. The current section details law- and policy-making practices and traditions in Uruguay. It then presents a case study of the *Community Broadcasting Act* of 2007, analyzing the parliamentary process and citizens' ability to take part in it.

General law-making

Laws originate in Parliament or by Presidential decree. Certain mechanisms allow for oversight and intervention by the electorate. Elected representatives from both houses may propose laws that are then studied in committee. If both houses agree on content, it is sent to the presidency for final approval. If they do not agree, Parliament must meet in a general assembly to debate and agree on content. The President may veto all or part of any law, but may be defeated by a 3/5 vote in Parliament. The President makes decrees in consultation with his cabinet. Decrees can be overturned by the citizenry through referendum or plebiscite.

As in other parliamentary systems, proposed legislation is studied by specialized committees. Committees do not necessarily publish calls for comments or notices of hearings in advance. However, civil society organizations typically follow proceedings and often request an invitation (Yanes, 2010). Legislators also ask people and organizations to attend. The political parties composing each committee must agree on which witnesses to invite (Abdala, 2010).

Constitutionally, citizens have oversight power through plebiscites and referenda. Often treated equivocally, here they are distinct procedures (Urruty Navatta, 2009). A plebiscite is a pronouncement by the electorate concerning a constitutional change. Constitutional reforms may originate through various Parliament-centric processes, but require the electorate's approval. A referendum is a popular vote that may alter or annul a new law, enacted either by Parliament or Presidential decree, within one year of its initial approval (Urruty Navatta, 2009). For constitutional changes, signatures must be collected from 10% of the electoral body while the threshold is 25% for laws (Gallardo, 2006, p. 461).

Both mechanisms have been used to various degrees and have lengthy histories. In 1980, the Uruguayan dictatorship held a plebiscite on constitutional reforms that would have given the military veto power over all government policy. It was defeated and this defeat was partially responsible for the end of the dictatorship and transition to democracy (Library of Congress, 1992). A citizen's referendum in 1989 approved a law granting amnesty to all involved in armed conflict during the dictatorship, while giving the President power to investigate illegal acts (Gallardo, 2006, p. 462). A 1992 referendum successfully annulled the then-president's plan to privatize state services through the *State Corporations Act* of 1991. This made Uruguay "the

only country in the world that has been consulted on full-scale privatization and which has rejected the possibility by referendum” (Barrett et al., 2008, p. 101). In 2003, the government introduced legislation that would have opened up the state monopoly on fuel to competition and joint ventures with foreign partners, but this, too, was overruled by a citizen-initiated referendum (Rilla, 2006, pp. 339–340). Most recently, civil society organizations organized a plebiscite that effectively inserted the human right to water into the constitution with the assurance that it never be privatized (Santos & Villareal, 2005, p. 173). Thus, while there is a strong executive with veto power and a strong law-making structure in the body of Parliament, legal, social and political structures permit the electorate to be the ultimate decision-maker, albeit with considerable effort.

Based on interviews with key informants, it can be assumed that the laws underlying Uruguay's radio spectrum are ripe for revision (Gómez, 2010; Kaplún, 2009, 2010; Martínez, 2010). Many civil society organizations interviewed consider the broadcasting act an illegitimate remnant of the dictatorship. The legislative process that produced Uruguay's most recent spectrum-oriented law - the *Community Broadcasting Act* of 2007 - can thus be seen as the beginning of a reform process. Two further developments: the *Audiovisual Services Act* and digital television legislation, represent the continuation of this reform.

The Community Broadcasting Act of 2007

Community radio broadcasting began in the 1980s, after the dictatorship, and served as common ground for social movements working to rebuild Uruguayan society. Until the election of the left-wing Frente Amplio government in 2004, these stations were regularly persecuted by a government regulator that often closed them down and confiscated equipment (Bouissa et al., 1998; Curuchet, Girola, & Orcajo, 2006; Robledo, 1998). During the presidential campaign of 2004, the Frente Amplio stated it would legalize community radio. The process, however, dragged on until 2008. The inability of the government to act quickly disappointed some advocates who believed there was a limited window for action (Kaplún, 2005). However, Daniel Martínez, parliamentarian, leader of the Socialist Party and MIEM from 2008-2010, believed the delay was due to an over-loaded Parliament. “Never has there been a legislative period in the history of Uruguay that had as many laws approved and that has worked as much as this previous

one” (Martínez, 2010). The parliamentary record shows that community radio legislation was introduced eight months after the new government came into power in March 2005. It was examined by two parliamentary committees before gaining Presidential approval in December, 2007. It was studied in committee over 22 individual sessions, 16 of which included testimony witnesses (Parlamento del Uruguay, 2012). Analyzing the consultation process and its ability to integrate diverse stakeholders helps to establish that this process was a step toward the political goal of “democratization”. It also provides an ethical template against which future law- and policy-making processes can be measured.

<u>Witness Category</u>	<u>Number of Witnesses</u>
Civil society	16
Regulators	8
Private sector	8
Human rights law	5
University sector	5

Table 1: Community broadcasting act hearing participation, Uruguay, 2005-2007

The witness pool composition and testimony presented demonstrate numerous things. First, while civil society organizations represent the largest number of intervenors, these groups and their inputs are not homogenous. The two associations representing community radio stations were present. AMARC-Uruguay supported the legislation while the other, Ecos, was opposed.⁹ Other groups included Uruguay's central union PIT-CNT; the Evangelical Christian Community Radio Network; and the Uruguayan Institute of Legal and Social Studies (IELSUR) (Prats, 2010). Three commercial radio organizations intervened in opposition. Commercial broadcasting organizations each sent two to five representatives while civil society was represented by smaller numbers, usually one person per group. Therefore, while commercial groups demonstrated “strength in numbers”, civil society organizations provided a greater variety of perspectives that were nonetheless oriented in support of the proposed legislation. The entire process was “book-ended” by specific types of legal counsel. In 2006, the Commissioner of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States, Victor Abramovich, informed the committee the law would not create a precedent for the commission.

⁹ Since their formation in the 1990s, Ecos has argued that the entire media system should be overhauled. They opposed any regulation of community radio before of this process.

This was important as certain laws adopted in member states may create legal precedence for other members of the IACHR, obliging them to adopt similar legislation (Loreti, 2011). The same day, the UNESCO Chair for Freedom of Expression, Analia Eledias, told the committee how the law could foster freedom of expression. Towards the end of committee process, external legal counsel was invited to provide judgement on the integration of this law into the national legal framework and a number of international human rights organizations appeared (Parlamento del Uruguay, 2012). The *Community Broadcasting Act* of 2007 officialized a previously illegal communication act and created a new, participatory regulatory structure. By creating the CHARC, the law extended the regulatory system into the domain of civil society. While the President still grants licenses, regulation is no longer exclusively in the hands of the State.

Examination of the parliamentary record and interviews with informants reveals a productive and respected extra-parliamentarian system of legislative development (Imaz, 2010; Kaplún, 2010; Lanza, 2010). The original *Community Broadcasting Act* was crafted by civil society organizations including AMARC-Uruguay, the Uruguayan Press Association (APU), IELSUR, the Universidad de la República, and the Universidad de la República communication studies program (Imaz, 2010). It benefited from the legal expertise and coordination of Edison Lanza (a law and communications professor, journalist and member of APU), and Gustavo Gómez. Its success was also the result of a multi-pronged strategy that included an international study on broadcasting legislation and public workshops organized with the government and the international community (AMARC-ALC, 2008; Lanza, 2010; Author, 2011).

6. Ongoing experiments in policy reform

Following the passage of the *Community Broadcasting Act* of 2007 and the appointment of Gustavo Gómez as National Director of Telecommunications, two further processes of policy reform were undertaken – the development and introduction of a law on converged media, and the development and passage of a law on digital television broadcasting. Each is central to the government's convergence strategy in that they address critical points of physical and legal infrastructure and the future of spectrum management. These processes and their results are emblematic of Uruguayan communication policy-making in that their chronologies are often

disjointed, and that highly participatory processes are ultimately over-ruled by executive authority.

The Audiovisual Communication Services Act

The Technical Consultative Committee for a new *Audiovisual Communication Services Law* was convened by the DINATEL in 2010. The membership consisted of 15 individuals from a range of private, political and university groups. Gustavo Gómez was the only state representative. Gabriel Kapún, communications professor at the Universidad de la República del Uruguay, was the committee chair. Telecommunications corporations were not represented although Sutel, the union of ANTEL, was included. The committee began as a discussion forum to explore initial steps towards legislation. Its final report states that differences in opinion between members were to be “treated in a climate of dialogue and respect” (Comité Técnico Consultivo, 2010, p. 2). The committee met 15 times over four months and its general theme of discussion was “how to guarantee diversity and pluralism in the media: contributions to the revision and reform of the *Broadcasting Act* (of 1977) in Uruguay” (Comité Técnico Consultivo, 2010, p. 2). Given the high level of media concentration in Uruguay, recent changes in media law in Argentina (Loreti, 2011), and the closeness of actors in both countries' media reform movements (Lanza, 2010), diversity and pluralism can only be attained through the introduction and safeguard of new and independent media actors.

As with the *Community Broadcasting Act*, discussion was framed by international standards for freedom of expression. Through discussions on the attribution of frequencies, it was decided that adjudication procedures must be “competitive, public, just and transparent, assuring equal opportunity and without discrimination of any sort”. It was further decided that, in competitive applications, the central evaluative element should be the “communicational proposition” and that economics should play a small role in application review, as this could limit new entrants. It was also noted that the Inter-American Human Rights Commission (IAHRC) considers spectrum auctions to be “anti-democratic” (Comité Técnico Consultivo, 2010, p. 4) again displaying respect for the ethical standards of this international body.¹⁰ This is important and appears to

¹⁰ Spectrum auctions are generally the public sale, by a central government, of licenses to use designated portions

demonstrate a desire by the policy-maker to include a range of actors in the development of a legislative framework. However, the complexity of this task and the incongruities of powers are evident in the committee's composition, namely the exclusion of telecommunications providers and the inclusion of private sector actors who have made statements contrary to this goal.

The Uruguayan media and communications system is highly concentrated in very few private corporations and there is much cross-ownership between broadcast media and the press. Therefore, an audiovisual communication services law would need to address this situation. The committee agreed that a “reasonable equilibrium” should be established between the public, private, and community media sectors, again mirroring the spirit of the *Community Radio Act*. To enable this, limits would need to be imposed on the current ownership concentration and the committee suggested UNESCO's media development indicators as a model (Comité Técnico Consultivo, 2010, p. 5; Unesco, 2008). UNESCO's indicators advise the creation of laws to prevent monopoly domination of the media and monopoly cross-ownership. UNESCO also recommends laws that force divestment to neutralize existing concentration (Unesco, 2008, pp. 33–36). The integration of international human rights standards into the *Community Broadcasting Act* law-making process and the incorporation of UNESCO's indicators demonstrate a sophisticated, engaged approach to creating communications law.

The *Audiovisual Communication Services Act* was introduced into Parliament in May, 2013 (Presidencia de la República Oriental del Uruguay, 2013c). Should it become law, it will be partially the result of the discussions presented above and subject to further examination and debate. While too early to evaluate the ultimate role of the consultative committee, it has proposed a new space for debate and exploration while serving as an opportunity for groups usually opposed to one another to work collectively toward consensus. This was done in earnest over a lengthy period of time. The exclusion of public and private telecommunications corporations from this consultative group may show a determination by the policy-maker (DINATEL) to consider them primarily as providers of communication infrastructure, and an understanding that these actors would undermine the group's collaborative ability. The absence of law-makers ensures that the process will inform rather than take the place of law-making

of the radio spectrum for telecommunications.

processes. The choice to exclude these powerful actors may also demonstrate an effort by the National Director of Telecommunication to solidify political power among allies. While the committee demonstrates general consultative potential, it is limited and should be considered a tool of orientation, not a form of public, democratic and representative consultation. However, forging personal bonds and encouraging constructive debate among opposing forces can be understood as a political strategy to avoid future conflict. Ultimately, the proposed bill is examined by parliamentary committees with their own consultative processes. While the consultative committee is a novel approach to exploration and the beginning of a collaborative relationship between the policy-maker and stakeholders, it would be useful to develop further consultation with the general public, the results of which could provide further insight into the desirable content of such legislation.

Digital television

Digital broadcasting uses the radio spectrum in a more efficient manner than analogue broadcasting. Internationally coordinated plans have been in development since the 1990s to transition both radio and television to digital broadcasting (Author, 2010). Before a country's radio or television broadcasting system migrates, policy and technical standards must first be determined. In Uruguay, digital television migration first entered public discourse as part of the Frente Amplio political agenda developed between 2003 and 2004. Here, it was considered a subject of strategic importance that should be studied further. Gradually, digital television became a trade issue with Brazil, which had developed its own technical standard and was undertaking efforts to ensure that other Latin American countries, especially its fellow trade partners in MERCOSUR, adopted it (Kaplún, 2008, p. 4). Uruguay's move towards transition has been marked by much debate and false starts. In 2006, the President convened a national committee to examine the issue and practices undertaken elsewhere (Kaplún, 2008, p. 6). By August 2006, the President had decided to adopt the European standard, based on this committee's recommendations (La República, 2007). Eventually, the government reversed its position, adopting the Brazilian standard by Presidential decree in 2011 (Parlamento del Uruguay, 2011). There are few differences between the two digital television standards and the choice was based more on geopolitics than superior technical suitability. With the Brazilian

standard, Uruguay can profit from economies of scale generated by a continental market and generate business for its developing software industry. The technical standard finally chosen, DINATEL initiated a public consultation on digital television. This was an opportunity to engage the Uruguayan public on the topic of radio spectrum and to establish a process capable of disrupting the monopolistic tendencies of the current media system.

The digital television consultation consisted of two processes. The first was organized online and the second was a public call for letters detailing personal positions on digital television. Both were unveiled with a one-month deadline for submissions. This limited time period, coupled with the topic's complexity, was a barrier to public participation. The process was ultimately dominated by experts and commercial entities. Recent research has shown that the consultation process was fundamentally broken when, in mid-process, Gustavo Gómez was ousted, demonstrating the extent to which this consultation was associated with an individual (Gómez) rather than wholly integrated into the government's policy-making approach (Author, 2012b; Beltramelli, Alonso, & Steibel, 2012).

The President of Uruguay, José Mujica, introduced Uruguay's digital television broadcasting law in May, 2012. It was issued by presidential decree, a process that obfuscates the origins of its contents; it was ultimately crafted behind closed doors. The bill provides for 21 digital television channels in Montevideo, the capital city: seven for public television, seven for commercial television, and seven for community broadcasters. In other cities and towns, channel distribution is similar but adjusted to 9 per locality given the lower population. One digital television channel was designated for use by the national television broadcaster throughout the rural interior of the country. The legislation introduced important changes for television broadcasters' licensing. To obtain a digital channel, existing broadcasters must respond to a call for applications. The license has a 15-year term limit, after which the station must apply for renewal. Digital television broadcasters also must provide free and equal airtime to all political candidates during election campaigns. Finally, ANTEL is permitted to enter the digital television market on its own or in collaboration with TV Nacional (Presidencia de la República Oriental del Uruguay, 2012a).

In the year following Uruguay's digital television law, it has become subject to critical

observation, demonstrating the extent to which control of the spectrum – and thus the ability to communicate in a quickly changing technological landscape – remains difficult and non-transparent terrain. First, in December, 2012, the president issued a decree excluding the largest television broadcasters from four key clauses in the digital television act. It absolves them from requirements to demonstrate financial solvency, to submit a financial deposit in exchange for their license, and to submit an application to an independent evaluative committee (Presidencia de la República Oriental del Uruguay, 2012b). In January, 2013, the open call for applications that accompanied the law was suspended by presidential decree (Presidencia de la República Oriental del Uruguay, 2013a). Following this, the Coalition por una Comunicación Democrática filed a complaint with Uruguay's Institución Nacional de Derechos Humanos y Defensoría del Pueblo (INDDHH) claiming that, among other things, the government had violated the constitutional principles of equality and transparency by favouring three incumbents, thereby disadvantaging all other potential broadcasters. The Coalition was also critical that the law had been fully implemented before the introduction of the audiovisual services law which itself should provide a broad framework for a democratic and accessible communications and media system (INDDHH, 2013).¹¹ The INDDHH conducted a hearing, calling representatives of the Presidency, the MIEM and the Coalition to respond to one another. Following this process, the Presidency reopened the call for applications (Presidencia de la República Oriental del Uruguay, 2013b) and sent the *Audiovisual Communication Services Act* to parliament. The INDDHH, in its final ruling, rejected arguments by the State that the three incumbent broadcasters should be treated differently than new ones, ruling this discriminatory and contrary to national and international human rights standards (INDDHH, 2013).

7. Conclusion: Obstacles and openings

While the need to communicate “over-the-air” evolves rapidly, Uruguay's ability to regulate the spectrum remains minimal, obtuse, and ultimately undemocratic. This is not for lack of trying, but due to the inability to identify and rectify glaring and established obstacles to democratic practice. The most important obstacle is unchecked executive power and the ability to rule the airwaves by Presidential decree. Safe-guarding the spectrum in such an opaque and politicized

¹¹ The INDDHH is an independent body created in 2008 and charged with ensuring the recognition of human rights throughout Uruguay.

location works against all efforts to set it free, and to regulate it in a transparent, democratic and just manner. Such issues are not simply spectral; they speak to the reality of a society still very much in democratic transition, no matter its lofty discourse, vibrant political sphere and exemplary demonstrations of participatory governance. The recent work of the Coalition por una Comunicación Democrática demonstrates the important role of watchdog organizations and the potential they have to keep government in check. Unlike government, however, their existence is never guaranteed and often dependent on piecemeal funding and unpaid labour. The definitive ruling by Uruguay's human rights body that the granting of television broadcast licenses is a human rights issue creates an important precedence which could very well have repercussions nationally and throughout Latin America.

Regulation should never be limited to experts and nor ultimately oriented towards profit and while the outcomes of democracy should not necessarily be predictable, the democratic processes that lead to these outcomes must be so. Undertaken in a democratic, transparent, participatory, and *consistent* manner regulation assures that a common good is shared equitably and justly. For this to happen, those with power and those in search of power must find a collaborative way forward. Some parts of the story told here move in this direction but appear more as experiment than respected practice. These experiments are an initiation to a further phase in a process of democratization and should be seen as examples to learn from, in Uruguay and elsewhere. If democratic practice is to be replicated and refined, it must begin with a solid legislative foundation. Attempts at reform will otherwise continue to be powerless. These are experiments of the Left in power for the first time, trying to alter a legacy that, in terms of communication policy, has been the corrupt antithesis of a democratic apparatus. While growing pains may be a valid excuse in the beginning of reform, three years into their second mandate, the Left appears to have adopted certain practices of the Right. The state has fallen victim to the seemingly greater powers that dominate spectrum policy worldwide and it will be up to civil society and citizens to recognize the spectrum as their own and to make it so.

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