

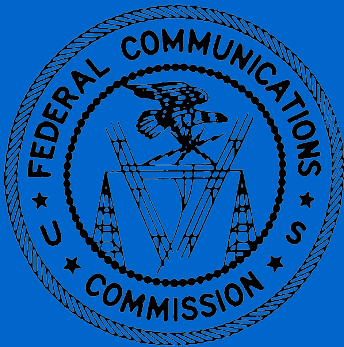
明治大学

国際交流スタッフセミナー講演会



情報通信政策の課題と実施を考える日米比較

ミラー・ジェームス



アメリカン大学法科大学院大学
アジャクットプロフェサー 兼
連邦通信委員会 弁護士顧問

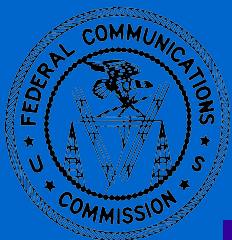
否認の告示 ...

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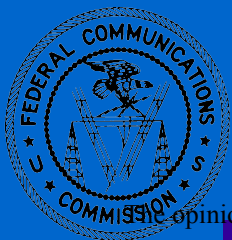
否認の告示 ...

本資料の位置付け否認の告示：
ここでは、英米法の一般的な解説を述べており、決して一定の事例に適した法律相談などではないことを承知した上で、ご参考にしてください。本人の見解によるものであり、アメリカ合衆国その他の代弁ではないこともご承知下さい。



プレゼンの流れ

- 公民制度の日米比較
- 連邦行政制度の法的根源と沿革
- FCC の要綱 FCC の電波監理要綱
- 昨今の政策課題



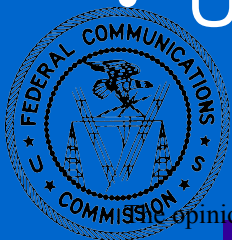
CONNECTING THE GLOBE

(米)行政制度の要綱

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公民制度の日米比較

- 契約制・終身雇用制(CAREER)
- Government Service (GS)と Senior Executive Service (SES)
- 一般、専門職
 - 技術家、弁護士、経済学者
 - ロースクールの在学中にインターン
 - 外交官・ Foreign Service Exam, U.S. Postal Civil Service, Military
- 倫理—
 - 金銭的、任務
- USAJOBSのポータル



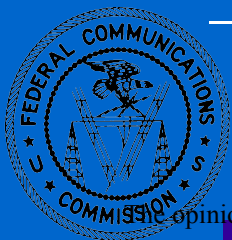
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公民制度の日米比較

- “Civil Service” という公務員制度は法律で定義付けられ：
 - "all appointive positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services." (United States Code Title 5 § 2101).
- 二つの制度があり
 - “Competitive” の一般競争採用制
 - “Excepted” 免除(特殊)採用制



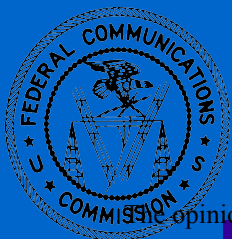
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Competitive & Excepted Service

- "competitive service" は下記のものを除き、行政のすべての公務員職を含む
 - 法律上で免除になる職種
 - 連邦議会の上院の議会により承認される任命職
 - "Senior Executive Service" の公務員職
 - 5 U.S.C. § 2102(a).
- "excepted service" とは、"competitive service" または "Senior Executive Service" 以外の公務員職(下記にて主な例)
 - Central Intelligence Agency (CIA)、Defense Intelligence Agency、Department of State、Federal Bureau of Investigation (FBI)、Federal Reserve Board、Government Accountability Office、National Security Agency、Nuclear Regulatory Commission、Tennessee Valley Authority (TVA)、United States Postal Service、United States Agency for International Development (USAID)、Department of Veterans Affairs



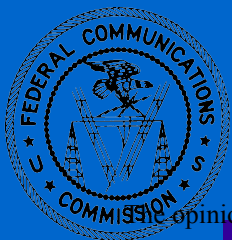
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公務員のGS制度

- GS-2 レベルは、高校卒及び3ヶ月以上の一般職務経験から
- GS-3 及び GS-4 レベルは、職務経験などがある場合
- GS-5 レベルは、一年以上の専門知識・食経験を要する
 - 経験なしで大学4年卒の学士資格取得者の場合は、GS-5 から
 - 大学での平均成績が“B”程度を越える場合は、GS-7 から
- GS-7 以上のレベルは、優秀成績、採用職についての職務経験がある場合など
- GS-9 レベルは、修士資格取得者
- GS-11 レベルは、博士資格取得者



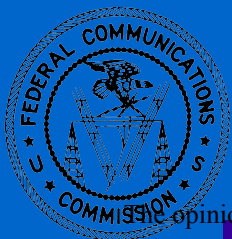
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公務員への採用

- Office of Personnel Management (OPM) は、1883年に Civil Service Act 法により United States Civil Service Commission として最初成立
 - 1978年に Civil Service Reform Act 法の法律改正によりOPMとなり
 - (日本の人事院に当たる)
- USAJOBS での採用プロセス
 - STEP 1: CREATE YOUR ACCOUNT
Set up your My USAJOBS account to:
 - Create & post resumes
 - Attract employers
 - Have jobs emailed to you
 - STEP 2: SEARCH FOR JOBS
 - Just enter your desired job information and search the database of thousands of jobs. Use your resume to apply online instantly.
 - STEP 3: MANAGE YOUR CAREER
 - Get all the **information and advice** you need on obtaining a job in the Government.



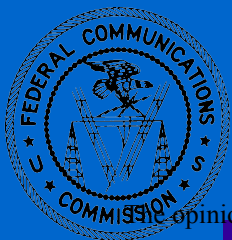
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公務員の倫理法

- **Bribery, Graft, and Conflicts of Interest**
 - § 203. Compensation to Members of Congress, officers, and others in matters affecting the Government
 - § 205. Activities of officers and employees in claims against and other matters affecting the Government
 - § 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches
 - § 208. Acts affecting a personal financial interest
 - § 209. Salary of Government officials and employees payable only by United States



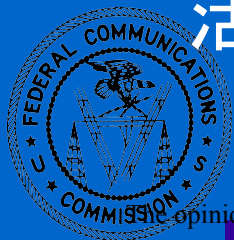
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連邦行政制度の法的根源と沿革

- 経済規制の統制
- 二つの規制
 - 独占禁止法ルート
 - あらゆる市場において使う
 - 行政監理ルート
 - 自由競争に欠けている市場で使う
- 自由放任主義経済による弊害に対し、国民の生活領域に介入する必要が認められる



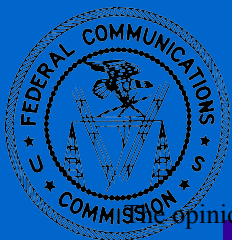
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独立行政法人の法的根源と沿革

- 憲法が定める州際通商条項「Commerce Power」に法治原理
- 業界毎への連邦実態法の成立・独立行政の普及
 - 専門的・技術的な分野の対応には、立法する議会は不十分のため、基本政策審議した上で、行政裁量を確定する根拠法を設け、独立行政を成立させる
 - 行政は法律に基づき法律に従う、基本原理を保つために行政立法を統制する手続法も設ける
- 州間通商委員会” Interstate Commerce Commission”
 - 鉄道 (1887)、固定電話 (1910)、石油パイプライン (1906)、陸上交通コモンキャリア (1935)、海上交通コモンキャリア (1940)
 - ※ 交通、通信会社などは、特定顧客に限定しない一般通信事業者の業務を行う場合、Common Carrier(コモンキャリア)と見なされる



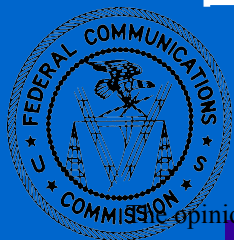
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連邦行政の立法過程について

- 法的枠組み
 - 行政手続法と FCC の手続省令
 - 行政裁量と手続法による遵法性の擁護
 - 行政手続法
 - FCC の省令
- 行政組織と政策策定の過程（文書作成）
- 文書の見本を「概観」して、FCC の公開文書の「読み解き方」を身につける

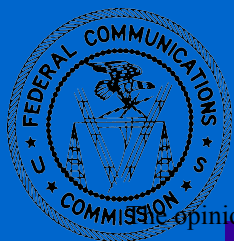


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(米)行政制度の要綱

- 行政立法手続法 (APA)「執行命令」
 - 公正な行政行為を定める
 - 省令などの作成手続きを規定する
 - 行政規則の制定
 - Adjudicationの範疇 (裁定・裁決)
 - Rulemakingの範疇
 - “Legislative Rule” (法規命令)
 - 法律効果があり、手続きに基づくもの
 - “Non-Legislative Rule” (行政命令)
 - 現行法規の解釈、ポリシー等
 - 連邦行政の立法はAPAに従う義務がある。



(米)行政制度の要綱

FCC 規則制定の要綱

- 規則制定の手続

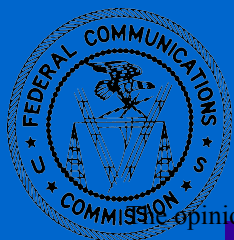
- Proceedings の開始

- FCC の職権による場合

- Notice of Inquiry（規則制定に直接つながらない、行政命令ルート）
 - Notice of Proposed Rulemaking（判決により規則が制定できる、法規命令ルート）

- 外部から依頼する場合

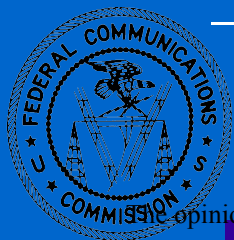
- Petition for Rulemaking（法規政策・規則制定の依頼）
 - Petition for Declaratory Ruling（宣言的・確認審決の依頼—裁定依頼）



（米）行政制度の要綱

行政手続法の553(b)条

- (米)行政手続法 553(b) 条の“ General Notice of proposed rule making” による公開文書の必要条件
 - 政策策定についての日時、開催地、内容を明言する義務
 - 政策立案の拠り所にする根拠法を明言する義務
 - 規則の内容、対象物、及び条文を明言する義務
- FCC 手続省令 1.413(d),(e) 条の要件
 - 審議録の説明
 - コメント・反論の期間・提出締切

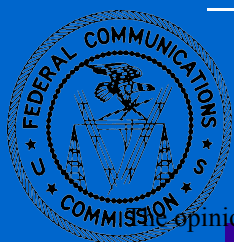


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行政手続法の553(c)条

- (米)行政手続法 553(c) 条の“ General Notice of proposed rule making” による公開文書の必要条件 (FCC 省令 **§§1.415**、**1.419 Comments and replies**)
 - 規則制定手続に国民を参加させること
 - “submission of written data, views, or arguments” (ECFS、EDOCS)
 - 規則制定についての根拠・趣旨を簡潔な概要を公開すること
 - 制定する規則が有効にする 30 日間前に公開文章を告示すること

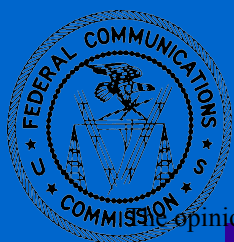


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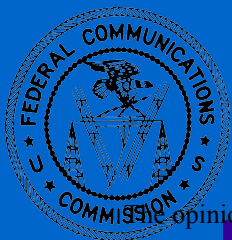
行政手続法の553(e)条

- (米)行政手続法 553(e) 条関連の公開文書
 - ”Any interested person may petition for the issuance, amendment or repeal of a rule or regulation.”
 - 政策策定の請願(§ 1.401 、 1.405 Petitions for rule making.)
 - 再審議の請願(**§1.429 *Petition for reconsideration.***)
 - (c) ***”shall state with particularity”***



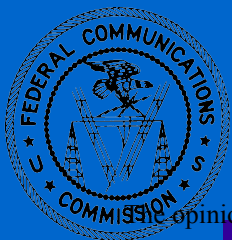
その他の連邦法律法

- “*Ordering Clauses*”
 - *Paperwork Reduction Act of 1995 (PRA)*
 - 情報収集の義務を導入することがある場合
 - *Office of Management and Budget (OMB)* が政策立案をレビュー
 - *Regulatory Flexibility Act of 1980*
 - *regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”*
- 告示、公示、公告などは *Federal Register* (官報) で公開
 - ※ *United State Code (USC)* / *Code of Federal Regulations (CFR)*



控訴へ進む

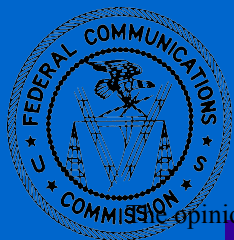
- Federal Court（訴訟提起）
- 司法の審議判定基準では、手続の遵法性を重視
- 専決且つ非合理的根拠なしのルール（専断的判決）は許されない Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).
- “Chevron Deference” という判定基準：
 - 恣意的・独断専行 ”arbitrary”
 - 急変的 ”capricious”
 - 明確に法律に判ずる作用 ”manifestly contrary to the statute”
 - 裁判所は行政庁の合理的・妥当な解釈に介入しない ”a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.”



（米）行政制度の要綱

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FCC 規則制定の要綱



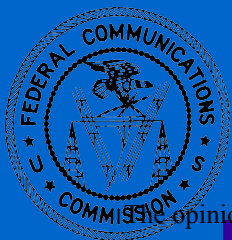
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FCC の要綱

- テレコムポリシーの基礎的趣旨
 - Communications Act of 1934
 - “... to make available, so far as possible, to all the people of the United States ... a rapid, efficient Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges...”
 - 経済的趣旨
 - “rapid, efficient” network
 - “reasonable charges”
 - 社会的趣旨
 - “make available ... to all the people...”



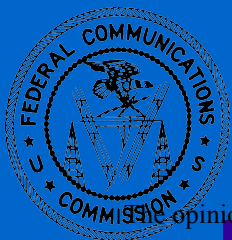
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FCC の要綱

- 1934年通信法、1996年通信法改正
 - (行政裁量を定める)
 - “for the purpose of regulating interstate and foreign commerce in communication by *wire* and *radio*...” Communications Act, Section 1
- 連邦通信委員会(FCC)
 - 委員会組織: 委員長1名、委員4名
 - 電波監理を所管する主な部署は、工学技術部、メディア部、無線通信部、国際部
 - 内容に応じ、部・課・係およびプロジェクトごとに作られるチームにより対応



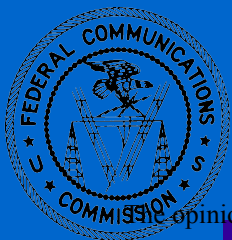
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FCC の要綱

- 主な管轄・規制業務区分け
 - Title I - 付帯的管轄件(ネット中立性)
 - Title II – コモンキャリアー(一般通信事業者)
 - Title III – 無線電波(放送、無線通信)
 - Title VI – 有線放送及び通信



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FCC の要綱

- 規則制定の手続

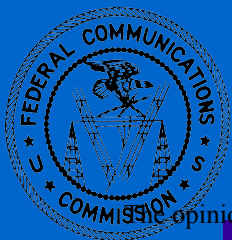
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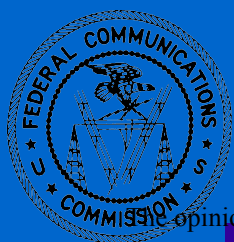
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FCC 規則制定の要綱

- Public Comment & *Ex Parte*
 - パブコメによる意見は原則公開・FCC の HP で検索・閲覧可能
 - コメント・返答・反論の期間が APA また FCC の手続法で定められている
 - コメント期間が終了すると、外部と FCC スタッフ・委員との間のコミュニケーションは、場合により束縛される
 - PermitButDisclose の通例では、接することで得た情報を文書にまとめ、コメントと一緒に公開

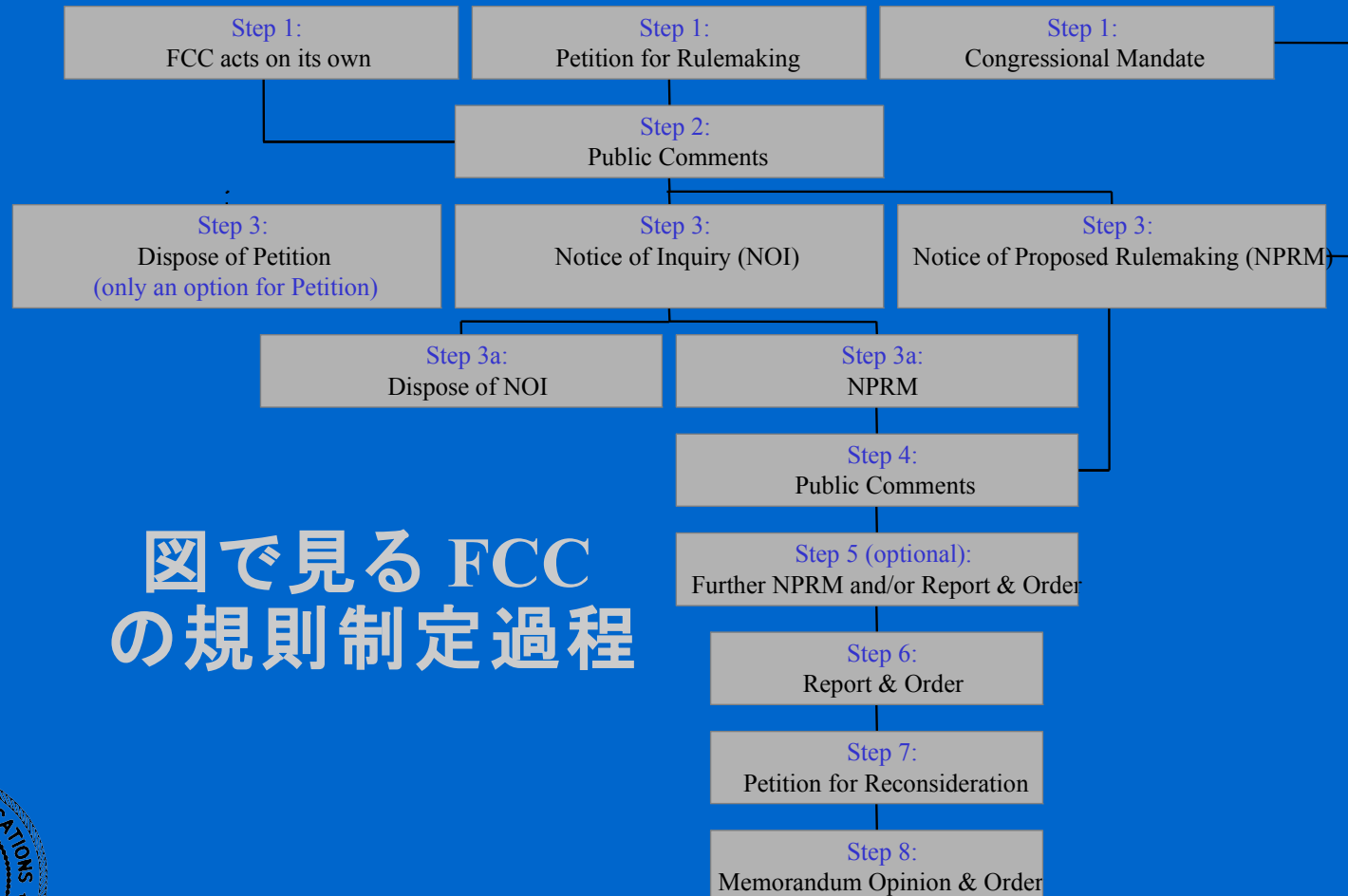


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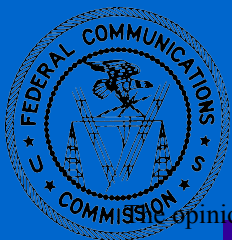
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FCC 規則制定の全体像



図で見る FCC の規則制定過程

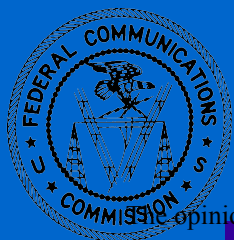


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FCC の組織と文書作成過程

- 全職員数、約 2000 人
- 局・部・室の組織の通例
 - FRONT OFFICE（部長室）
 - 副部長、次長、部長補佐、顧問、スタッフ等
 - ポリシー課
 - 規則・ポリシーの政策策定業務
 - 免許課
 - 産業組織・技術課

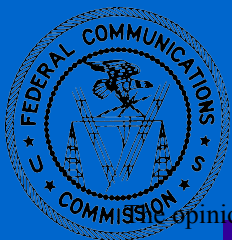


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FCC の組織と文書作成過程

- 審議の流れ
 - 開始の根拠作用
 - 告示とコメント作用
 - コメント期間後のスタッフまたは委員とのエクスパーテ
 - 議事録の審議(スタッフ、部または委員)
- 第一期
 - スタッフによる段取り
 - 係・課レベルによる審議
 - 部レベルによる審議
 - 委員長による審議で方向性を決定

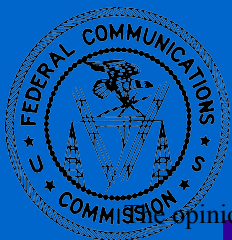


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文書作成審議の流れ

- 文書の作成
 - － 弁護士・専門のスタッフ
 - － 係り・課長、部長・FO によるレビュー
- 委員の稟議・聴聞会による審議
 - － 委員長によるレビュー
 - － 委員に回議する
 - － （場合によりサンシャイン告示）
- 委員会における投票
 - － 賛成、意義、同意意見
 - － 各委員の陳述書
 - － 成立後の編成
 - － 公開



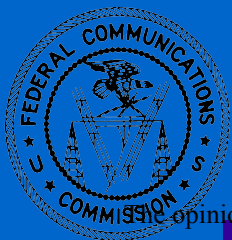
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文書の見本で理解する解き方

- ドケット (Docket) の議事録番号を確認

Federal Communications Commission		FCC 04-285
Before the Federal Communications Commission Washington, D.C. 20554		
In the matter of	)	
Revision of Part 15 of the Commission's Rules	)	
Regarding Ultra-Wideband Transmission	)	
Systems	)	ET Docket No. 98-153
SECOND REPORT AND ORDER AND SECOND MEMORANDUM OPINION AND ORDER		
Adopted: December 15, 2004		Released: December 16, 2004
By the Commission: Chairman Powell issuing a statement.		



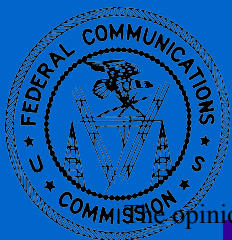
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文書の見本で理解する解き方

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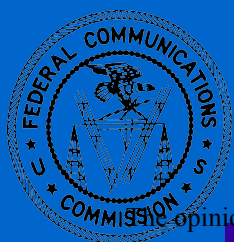
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文書の見本で理解する解き方

- 希望の

Petition、Comment、NPRM、Report & Order などかどうかを確認

Federal Communications Commission		FCC 04-285
Before the Federal Communications Commission Washington, D.C. 20554		
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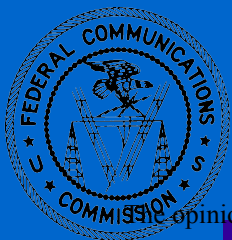
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- 公開日付を確認

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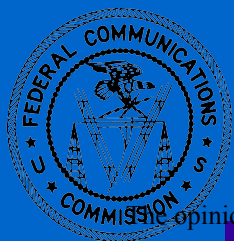
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- 目次がある場合、節で参照する

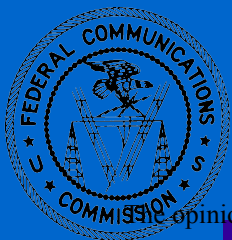
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文書の見本で理解する解き方

- Introduction
又は
Executive
Summary で
概要をつか
める

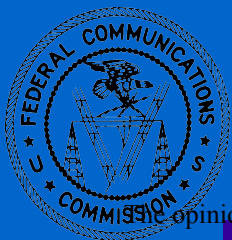
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文書の見本で理解する解き方

• 意見の 提出者 の一覧

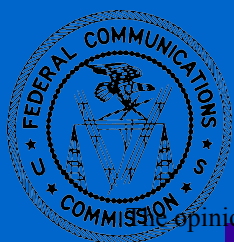
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文書の見本で理解する解き方

- 改正の規則は
本文及び
Appendix とい
われる文書の
後半の部分に
...

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FCC の組織と文書作成過程

- 文書は内容ごとにセクションに分けてある
- 各セクションが、
 - イントロ
 - コメントの要項
 - 結論
 - 等

D. Clarification of existing non-UWB peak power emission limits

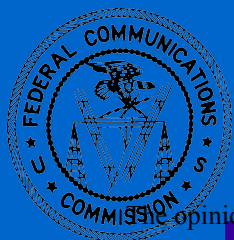
50. In its petition for reconsideration of the *1st R&O*, MSSSI requested 「...」

51. Comments/discussion. MSSSI requests an interpretation of Section 15.35(b) of the Commission's rules that a PDCF does not apply above 1 GHz, stating that this would permit it to commercially deploy its wideband devices. 「...」

52. We are denying the request from MSSSI for an interpretation of Section 15.35(b) of the Commission's rules that a PDCF does not apply above 1 GHz. MSSSI made a similar request for interpretation in its Petition for Reconsideration of the *1st R&O*. However, the Commission was clear in the *MO&O* that a PDCF does apply to the measurement of 「...」

E. UWB definition

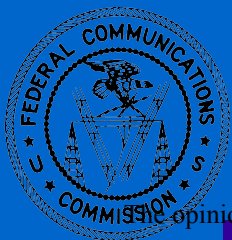
- と部分に分けることが通例
- ※ 概略する場合は、イントロと判決のところを読めば概要を把握できるのでそこを狙う



(米)行政制度の要綱

日本の APA 要綱

- 行政立法（行政手続法成立後）
 - ルール制定の根拠を明記した上で、その根拠に従う義務
 - 30 日間の意見公募する義務
 - 意見まとめの報告義務
- 主な違い
 - 受ける意見は公開しない
 - 省令による手続法はない上、法律には公募意見についての反論の攻防の機会を設ける義務はない
 - 利害関係人が政策策定の立案する手段がない



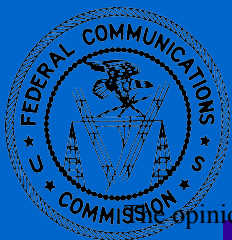
CONNECTING THE GLOBE

(米)行政制度の要綱

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FCC の電波監理要綱

- 電波監理とは、



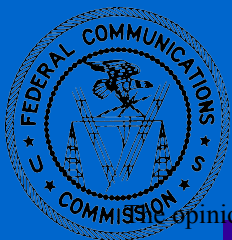
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物理的な制約と規制する基礎概念

- 電波に規制がなかった20世紀の始めに悪化した電波混信
 - タイタニックの重大事故と無線通信
 - 放送、通信による利用争い
- 当時の技術では電波共用が困難だったため、混信による公害を防ぐには、周波数、距離(最大出力)及びその他の排他的利用が必要だとされた
- 需要と利用可能性を勘案して、電波は希少性が高いものとされ、自由放任主義経済による弊害に対し、国民の生活領域に介入する必要が認められる
- 自由放任主義経済による弊害に対し、国民の生活領域に介入する必要が認められる
- 米国では、1934年国家の連邦法律である通信法によって、「電波」という資源は、国家のFCC／NTIAで監理するものとなった



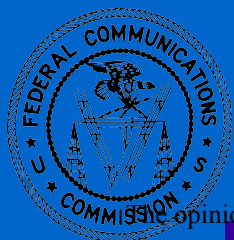
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FCC の電波監理要綱

- § 301. License for radio communication or transmission of energy
 - 以下の物は、第3章の趣旨とするものである。
 - 連邦政府によるあらゆる無線電送の通信通路に対する支配を維持する
 - 無線電送の通信通路利用を規定する
 - その利用の所有権を認めない
 - 一定の期間による利用を
 - 連邦機関が許可した免許による利用を認める
 - 免許で定められた条件及び期間を超えていかなる権利を創設するものと解釈したはならない
 - 本法の規定に基づき付与された免許に従う場合を除き、無線によるエネルギー、通信著しくは信号の伝送をいかなる措置を使用し、または運用してはならない



CONNECTING THE GLOBE

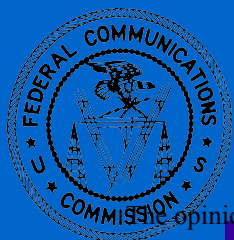
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FCC の電波監理要綱

- § 303. Powers and duties of Commission

- 無線局を分類すること
- 提供すべき業務の性質を定める
- 局種別に使用する周波数帯の割り当て、使用しなければならない出力及び各局が運用することが出来る時間・を決定する
- 混信を防止し及び本法の規定を実施するために必要と認める規則を制定する
- 無線の新しい利用方法を研究し、周波数の実験的使用についての便宜を供与し、公益のために一層広範且つ有効な利用を一般的に援助する
- (y) Have authority to allocate electromagnetic spectrum so as to provide flexibility of use, if--
 - consistent with international agreements ...; and
 - ...after notice and an opportunity for public comment, that--
 - ...would be in the public interest;
 - ...would not deter investment in communications services and systems, or technology development; and
 - ...would not result in harmful interference among users.



CONNECTING THE GLOBE

(米)行政制度の要綱

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FCC の電波監理要綱

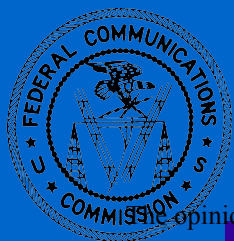
- 電波監理の規制

- Allocation

- 電波の割当ては法律、経済、技術のあらゆるノウハウが問われるもの
 - 国内の法規作成・改正により、テーブルの変更という形で行う
 - ServiceRule及びLicensingRuleは別に行うケースが多い

- Assignment — ライセンスの割振り・免許の交付の概念

- Comparative Hearing （比較審問）
 - Lottery（抽選）
 - First Come First Served（先願主義制“早い者勝ち”）
 - Auction （競売）



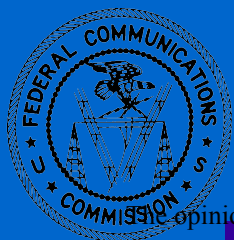
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FCC の電波監理要綱

- 技術と権利擁護の均衡
- 通信法第 1 5 7 条：新技術や新しいサービスの規定
- 通信法第 3 0 4 条：免許人による権利の放棄



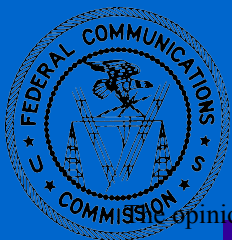
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FCC の電波監理要綱

- License (免許)の法律的定義は APA または通信法で定められている
- 通信法: 47 U.S.C. § 3(42). “station license,” “radio station license,” or “license”
 - “that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act, for the use or operation of apparatus for the transmission of energy, or communications, or signals by radio by whatever name the instrument may be designated by the Commission.”
- APA: 5 U.S.C. § 551(8).
 - “the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission.”
- 免許はサイトごと、地域帯、“blanket”、“license by rule”等
- 免許不要の利用も“ライセンス”の一種とされている。



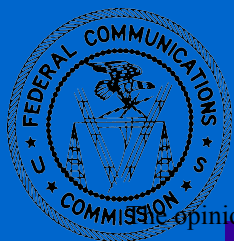
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FCC の電波監理要綱

- 免許の本質
 - 条件付の利用許可
 - 無線電波帯域に対する所有権ではない
 - 免許は電波利用の許可として、高い経済的価値がある
 - 免許に伴う権利義務は、憲法、民法(私法)などにおいて存在感がある
 - 権利義務を明確にすることに伴い、使用する価値が増加
 - 高い経済価値があるため、免許分配は社会並びに行政が重視すべき問題である。



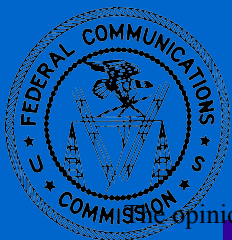
CONNECTING THE GLOBE

(米)行政制度の要綱

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電波への要求は商品経済への要求

- 経済論の代替の法則
 - 標準たる品質の定義
- 価格または物質による競争
 - 低価格するメリット、“新商品”の誕生による通信技術・サービスの向上
- 電波を“通信の代替品”と見なし
 - 代替効果が得られる
 - 電波の物理的な特徴を商品代替の弾力性でみることが可能

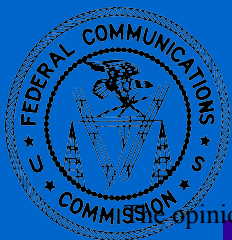


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排他的利用制度

- 高い経済価値のもの、排他的許可
 - 放送メディア集中排除の根拠
 - 携帯電話の事業者による合併買収
- 完全な自由たる権利にはならない、制約付きかつ分類化された権利制度で
- 技術、サービス、消費者ニーズに応じる免許制度



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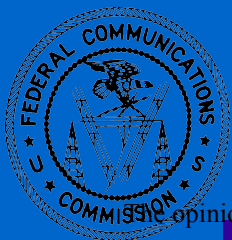
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「Auctions」競売制度

- 通信法第 309(j) (1) 条：競争的入札（競売）の一般権限

- If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.
- (6) Rules of construction Nothing in this subsection, or in the use of competitive bidding, shall--
 - (A) alter spectrum allocation criteria and procedures established by the other provisions of this chapter;
 - (B) limit or otherwise affect the requirements of subsection (h) of this section, section 301, 304, 307, 310, or 606 of this title, or any other provision of this chapter (other than subsections (d)(2) and (e) of this section);
 - (C) diminish the authority of the Commission under the other provisions of this chapter to regulate or reclaim spectrum licenses;
 - (D) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection;
 - (E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;
 - (F) be construed to prohibit the Commission from issuing nationwide, regional, or local licenses or permits;
 - (G) be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology; or
 - (H) be construed to relieve any applicant for a license or permit of the obligation to pay charges imposed pursuant to section 158 of this title.



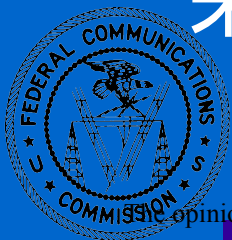
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「Auctions」競売制度

- 排他的利用についての免許申請者が複数になる場合、義務的に利用する配当手法
– 免除になる場合は比較審査などの手法をとる
- 競売の権限は最初 1993 年の Omnibus Budget Reconciliation Act 法、1997 年に成立した Balanced Budget Act of 1997 法で義務性になる
- 60年代に経済学会から提案として出る以来、激しい議論の要点として残っている



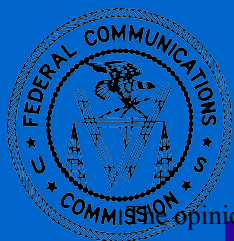
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二次的市場政策の基礎

- 利用条件における柔軟性
- 技術またはサービスを特定する制約（利用形態）
- 代替効果
- 商品経済概念
- 利用許可する相手の制約（譲渡）



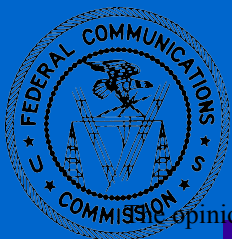
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二次的市場による譲渡制約

- 許可を取ってから、免許の譲渡
- 利用許可の適任調査
 - 免許人の資格の調査
 - そのほかの公益「パブリックインタレスト」による調査
- 通信法 310(d) Assignment and transfer of construction permit or station license
 - **No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.**



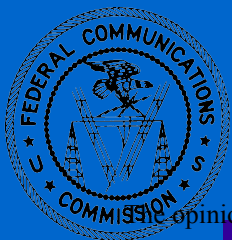
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譲渡制約基準

- 免許譲渡における二つの法律基準
 - 法律上の免許監理責任
 - de jure (legal control)
 - 資料管理、提出義務
 - 運営上の免許管理責任
 - de facto (working control)
 - 電波監理における管理責任
 - 旧制度の Intermountain Microwave 基準の適応
 - 1963年以来、通信法310(d)条の義務解釈
 - ファシリティの監理に限る deFacto 義務の解釈
- “Facility based Standard”



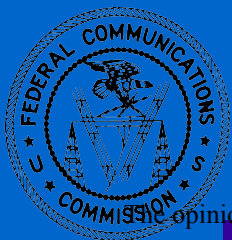
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Spectrum Leasing

- 電波利用権の第三者に対する貸し出し
 - Spectrum Manager Lease
 - De Facto Transfer Lease
 - Private Commons



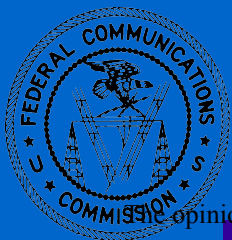
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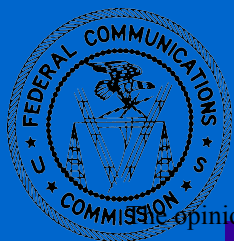
希少価値論と商品経済

- 電波利用の激増は「電波が足りない」、「電波へのアクセス」などの問題が指摘されている
- 再編の行政作用は政治的、技術的にも裁定しにくい場合があり、当事者間による交渉で侵害紛争解決や技術向上、効率利用への再編機能もあろう



市場原理における政策の日米比較

- 電波利用料制度
 - 経済価値を尊重する
 - “プライベート”の面は認めない
- 二次的政策
 - 経済価値を尊重する
 - 免許人同士及び一般の市場によるプライベート取引を中心とする



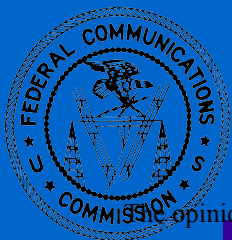
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市場原理政策における注目の訴訟

- Nextwave Personal Communications, Inc. v. FCC, 254 F.3d 130, 149-56 (D.C. Cir. 2001), aff'd, 537 U.S. 293, 308 (2003) (Nextwave).
- 行政法と民法がぶかる訴訟



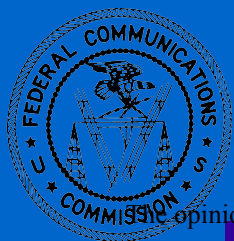
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行政法と民法がぶかる訴訟

- Nextwave は、\$50 億で PCS の C と F ブロック免許を競売で獲得したが支払に遅れてしまって、その直後、破産告知を行ったことを受け、FCC が免許を取り上げた。
- それぞれ 5 箇所の連邦裁判所で審議がされ、米最高裁判所は、担保取引においての担保権を完成したことなどを理由に、FCC が行政庁ではなく債権者として作用を行ったため、米破産法 525(a) 条の手続きに従うべきだと判断を下した。
 - NextWave Pers. Communications, Inc. v. FCC, 254 F.3d 130, 149-56 (D.C. Cir. 2001), aff'd, 537 U.S. 293, 308 (2003).
- Bryer 裁判官より反対意見もある
 - FCC v. NextWave Pers. Communications, Inc. (In re NextWave Pers. Communications, Inc.), 200 F.3d 43, 51-53 (2d Cir. 1999) aff'd 537 U.S. 293 (2003) (noting that "Congress came to the conclusion that using market forces to allocate spectrum could accomplish congressionally defined policy goals" and discussing "regulatory purpose" of "payment in full requirement").



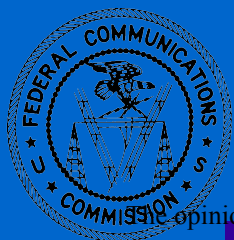
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コモンズ利用

- 参考：通信法による販売規制
- 47 U.S.C. Sec. 302a. Devices which interfere with radio reception
- (a) Regulations
 - The Commission may, consistent with the public interest, convenience, and necessity, make reasonable regulations
 - (1) governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications; and
 - (2) establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy. Such regulations shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices and home electronic equipment and systems, and to the use of such devices.
- (b) Restrictions
 - No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.
- (c) Exceptions
 - The provisions of this section shall not be applicable to carriers transporting such devices or home electronic equipment and systems without trading in them, to devices or home electronic equipment and systems manufactured solely for export, to the manufacture, assembly, or installation of devices or home electronic equipment and systems for its own use by a public utility engaged in providing electric service, or to devices or home electronic equipment and systems for use by the Government of the United States or any agency thereof. Devices and home electronic equipment and systems for use by the Government of the United States or any agency thereof shall be developed, procured, or otherwise acquired, including offshore procurement, under United States Government criteria, standards, or specifications designed to achieve the objectives of reducing interference to radio reception and to home electronic equipment and systems, taking into account the unique needs of national defense and security.



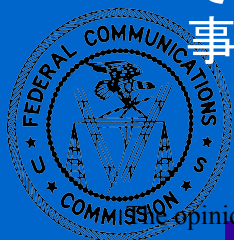
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コモンズ利用

- 60年代後半にかけて、米議会では、不正または不調な送信機による混信に対する監視・法の執行問題について審議された
- 1968年の通信法の302条の改正により、混信を対処するため、FCCに販売規制の権限が与えられた
- 監視・法の執行の沿革
 - 実利用での監視は金銭的・労働的な負担が大きい
 - 混信の監視・法の執行は“野戦からラボへ”となった
- 販売規制の権限による適合証明の認証を義務付けて、認証を受けていないものの製造、輸入、販売、広告活動などを禁止する
 - (b) Restrictions No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.
- それぞれの技術基準に適合しているかどうかの市場に出る前の事前チェック



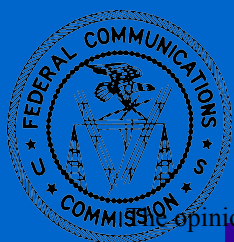
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コモンズ利用

- 規制緩和に重要な措置とバランス
 - “Flexibility に対しての Interference Protection” との均衡
- “Harmful Interference” への懸念
 - 電波利用環境の安定と新規事業への投資の発展
 - 既存免許人に対する法律上の権利の保護



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コモンズ利用

- 規制の柔軟性

- 事業者は新しい取り組み方に挑戦
- 新しい利用が生まれ易い
- 新開発にたいする負担を軽くする効果が得られる

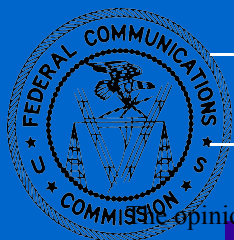
- コモンズの公用利用からも著しい経済発展も見えている

- Cisco
- VoIP
- Wifi

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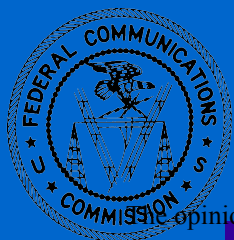
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コモンズ利用

- コモンズの利用条件
 - 混信を起こさない
 - 混信を受けても保護権がない



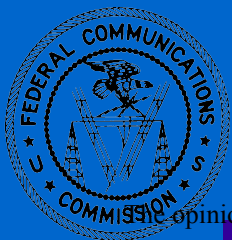
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昨今の政策課題

- 免許・割当・常時利用における空間をどう見るか
 - ホワイトスペース
- ブロードバンドの通信基盤
 - National Broadband Plan
- 放送と通信の融合とメディアの変遷
 - 地デジ

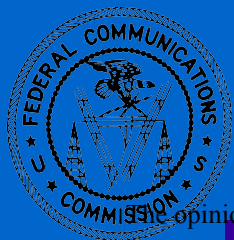


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昨今の政策課題



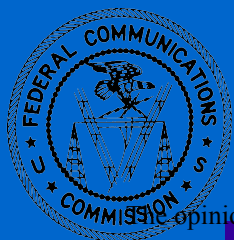
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新技術が生み出す可能性

- 混信の危機から規制への展開
- FCCの成立に伴い電波が規制される
- 技術の基盤である
無線機器による規制の重要性



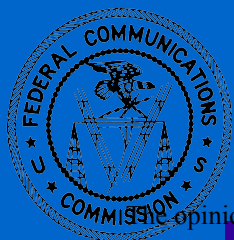
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新技術が生み出す可能性

- 2001 年のソフト無線の規則制定“ SDR” の定義づけ、柔軟性と電波環境の保護の“ バランス “への発信
- ソフト無線を定義
 - 周波数帯、変調方式および最大出力がソフトの更新のみにより、更新可能な送信機に限る
 - transmitter in which the operating parameters of frequency range, modulation type or maximum output power (either radiated or conducted) can be altered by making a change in software that controls the operation of the device without making any changes in the hardware components that affect the radio frequency emissions.
- SDRとしての適合証明を受けることは強制ではなかった
- SDRで適合証明を行うと“ Class III change” の再証明が可能になる
 - 証明の手続が簡易になる



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(米)行政制度の要綱

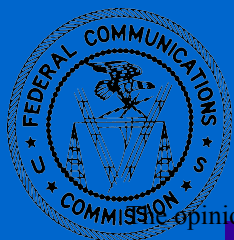
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新技術が生み出す可能性

SDRの適合証明が義務的になり、第三者によるソフトの更新が行えないようプロテクトの機能が必要とする：

“software that controls the RF operating parameters is *designed or expected to be modified by a party other than the manufacturer* to comply with the rules for software defined radios, including the requirement to incorporate security features to prevent unauthorized modifications to the software”

- ・ ソースコードの提出を不必要とするが、アルゴリズムについての説明を要する



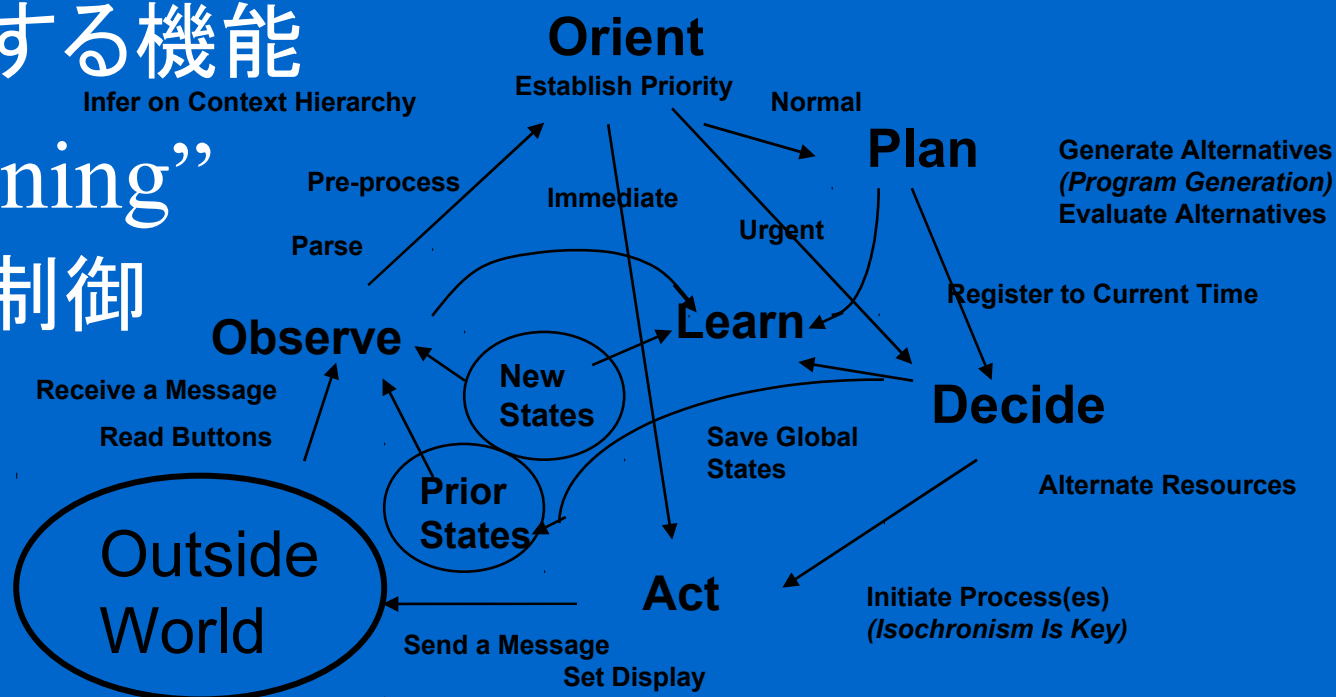
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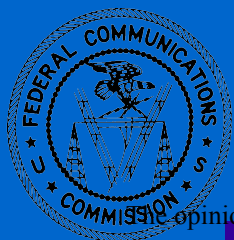
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新技術が生み出す可能性

- “Awareness”
 - 意識する機能
- “Reasoning”
 - 適応制御



The Cognition Cycle



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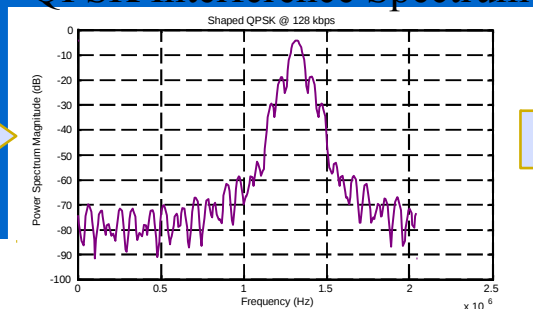
San Diego



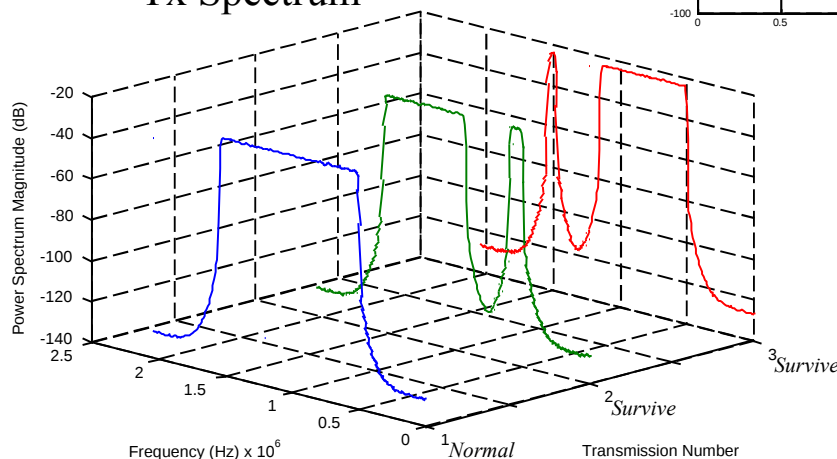
新技術が生み出す可能性

- 様々な利用形態における応用

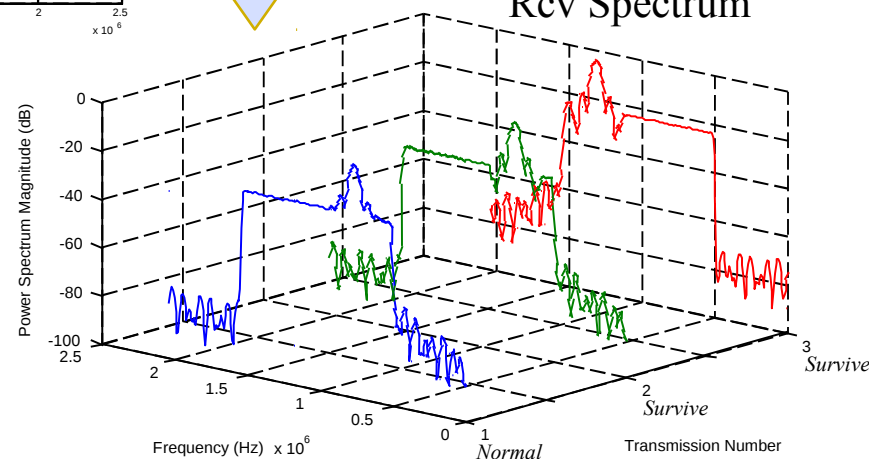
QPSK Interference Spectrum



Tx Spectrum



Rcv Spectrum



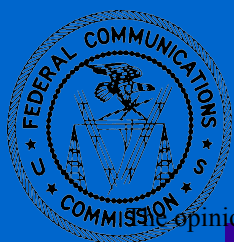
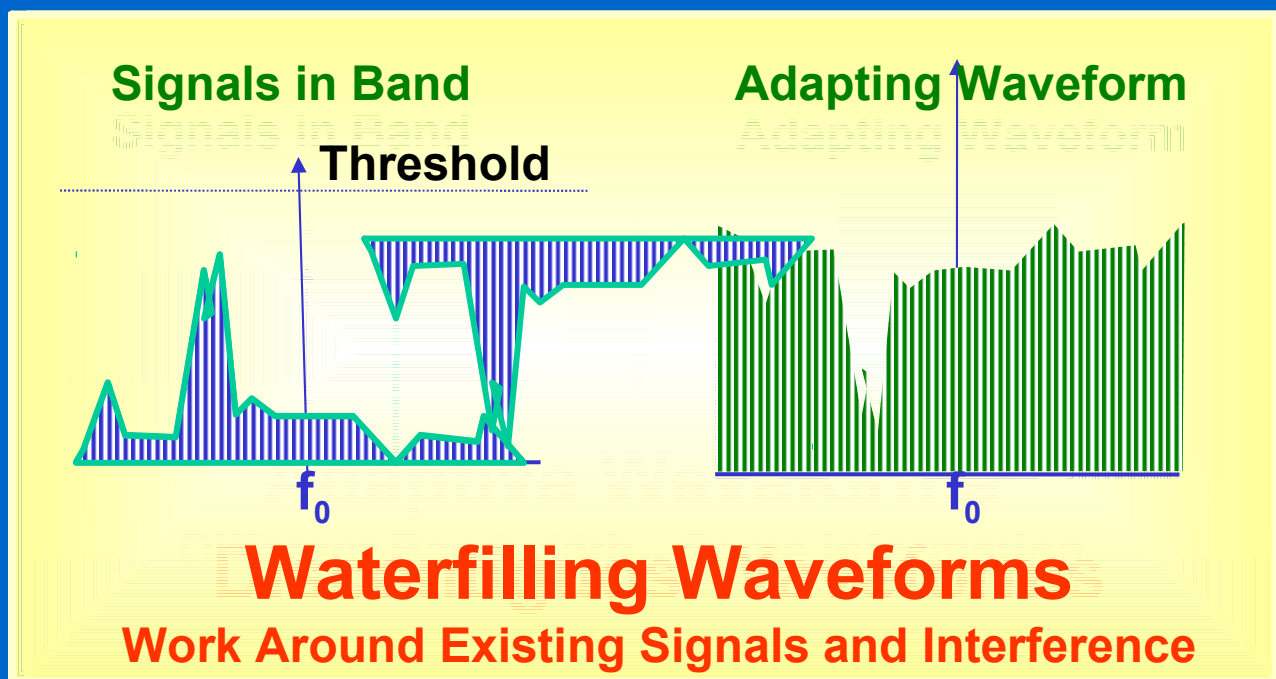
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(米)行政制度の要綱

新技術が生み出す可能性

- 様々な利用形態における応用



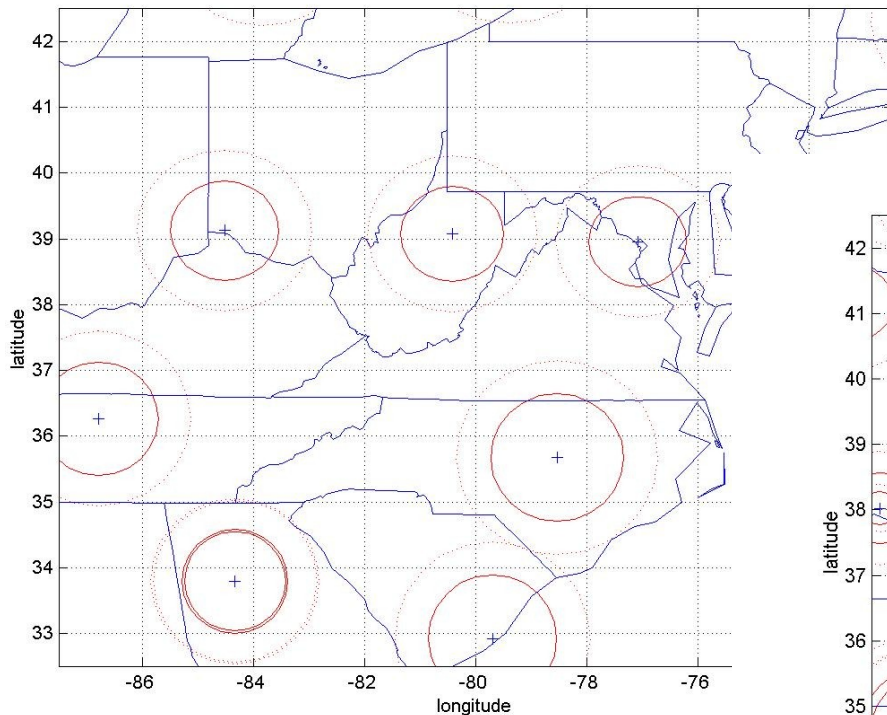
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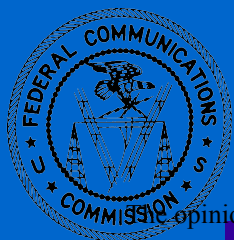
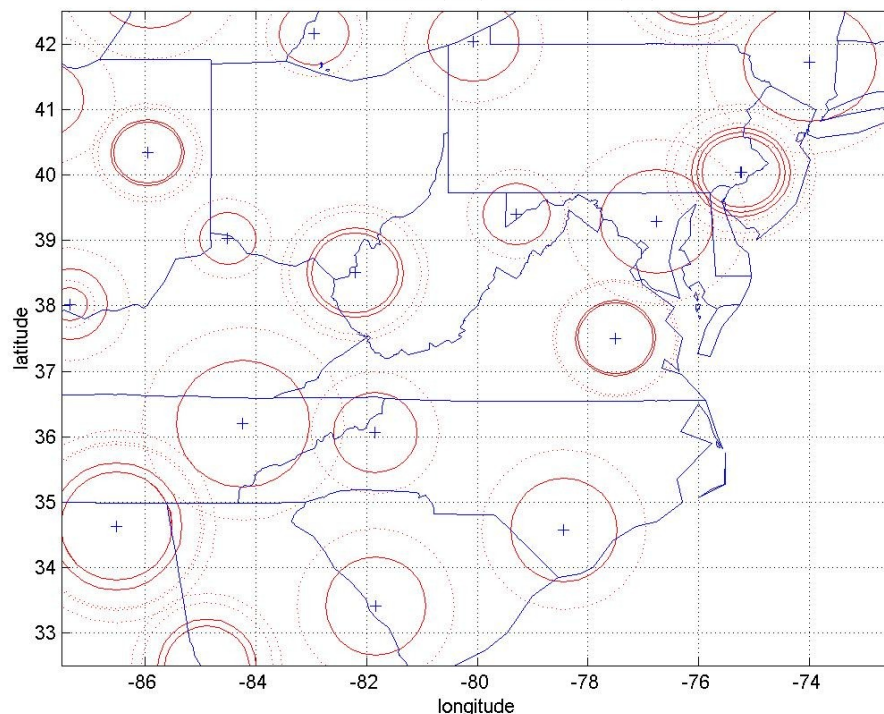
テレビ帯域内での免許不要利用

TV Channel 5, Level (dBu)=47 Min Power(kW)=100



Grade B 50% and 90% contours
Channel 5 and channel 54

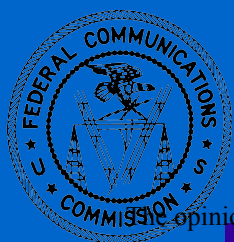
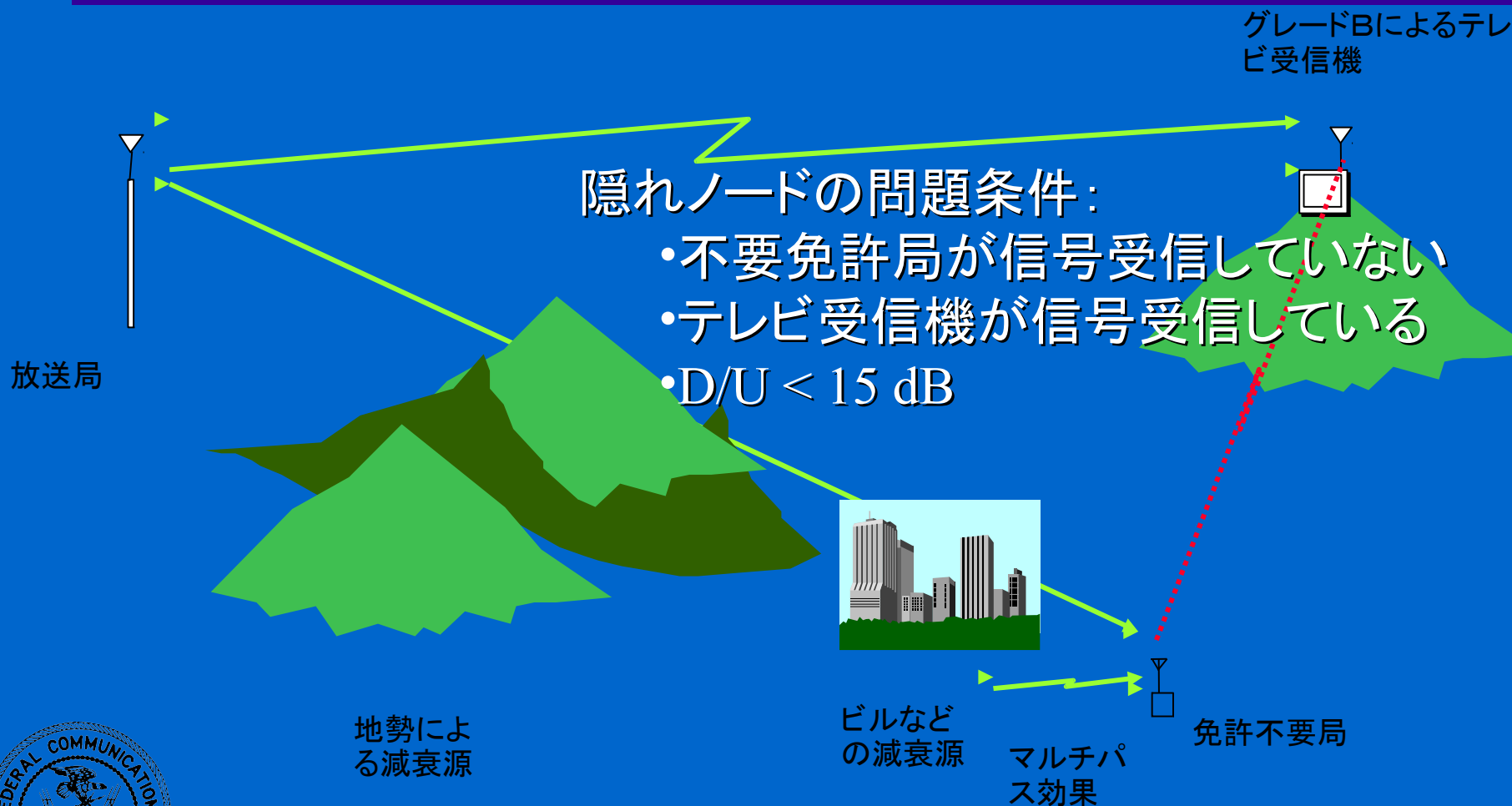
TV Channel 54, Level (dBu)=64 Min Power(kW)=100



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テレビ帯内の免許不要利用案



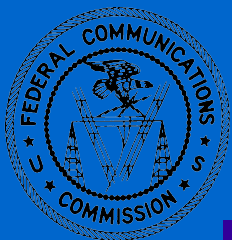
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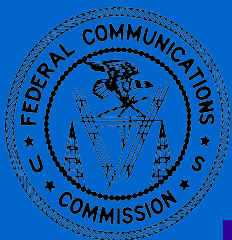
メディアの変遷

- アナログ放送からデジタル放送への移行
 - 日本：2011年7月24日
 - 米国：2009年6月12日
- 割り当て政策
 - 日本：アナログ停波完全移行後は、UHF帯域の470MHzから770MHzに亘る300MHzで本来のチャンネル13から62を活用する
 - 米国：108MHzの帯域幅を新規利用に移行した



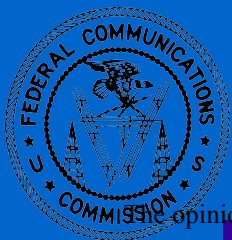
ブロードバンド政策課題

- ブロードバンド刺激ファンド
 - 民間競争と政府介入の議論
- 国家ブロードバンド計画
 - 消費者保護、競争状況、先端技術の促進
- インターネット規制 「Third Way」
 - ネット中立性



Thank You!

ご清聴、どうも有り難う
ございました！



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(米)行政制度の要綱

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