

PUBLIC INTEREST AND LOCALISM

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

—————
JULY 23, 2003
—————

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

87-067 PDF

WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JOHN McCAIN, Arizona, *Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina,
CONRAD BURNS, Montana	<i>Ranking</i>
TRENT LOTT, Mississippi	DANIEL K. INOUE, Hawaii
KAY BAILEY HUTCHISON, Texas	JOHN D. ROCKEFELLER IV, West Virginia
OLYMPIA J. SNOWE, Maine	JOHN F. KERRY, Massachusetts
SAM BROWNBACK, Kansas	JOHN B. BREAUX, Louisiana
GORDON H. SMITH, Oregon	BYRON L. DORGAN, North Dakota
PETER G. FITZGERALD, Illinois	RON WYDEN, Oregon
JOHN ENSIGN, Nevada	BARBARA BOXER, California
GEORGE ALLEN, Virginia	BILL NELSON, Florida
JOHN E. SUNUNU, New Hampshire	MARIA CANTWELL, Washington
	FRANK R. LAUTENBERG, New Jersey

JEANNE BUMPUS, *Republican Staff Director and General Counsel*

ROBERT W. CHAMBERLIN, *Republican Chief Counsel*

KEVIN D. KAYES, *Democratic Staff Director and Chief Counsel*

GREGG ELIAS, *Democratic General Counsel*

CONTENTS

	Page
Hearing held on July 23, 2003	1
Statement of Senator Cantwell	77
Statement of Senator Dorgan	4
Statement of Senator Hollings	2
Prepared statement	4
Statement of Senator Lautenberg	6
Statement of Senator McCain	1

WITNESSES

Bozell III, L. Brent, President and Founder, Parents Television Council	63
Prepared statement	65
Copps, Hon. Michael J., Commissioner, Federal Communications Commission	7
Prepared statement	9
Corn-Revere, Robert, Partner, Davis Wright Tremaine LLP	14
Prepared statement	16
Davis, David J., President and General Manager, WPVI—Channel 6	48
Prepared statement	51
Faber, Barry M., Vice President and General Counsel, Sinclair Broadcast Group, Inc.	45
Prepared statement	47
Kaplan, Dean Martin, Director, USC Annenberg Norman Lean Center and Associate Dean, USC Annenberg School for Communication	57
Prepared statement	59

APPENDIX

Inouye, Hon. Daniel K., U.S. Senator from Hawaii, prepared statement	93
--	----

PUBLIC INTEREST AND LOCALISM

WEDNESDAY, JULY 23, 2003

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:35 a.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

The CHAIRMAN. Good morning. Today, the Committee meets to examine the much-debated public interest standard set forth in the Communications Act of 1934. For almost 70 years, academics, Federal Communication Commission commissioners, courts, and legislators have discussed the meaning of the phrase, quote, “public interest, convenience, and necessity,” unquote. It’s mentioned almost a hundred times in the Communications Act, in one form or another, but never defined.

Broadcasters are the trustees of the public’s airwaves, and, in return, the government asks, and the statute requires, that broadcasters serve the public interest, convenience, and necessity. Critics, including several recent and former FCC commissioners, have charged that the public interest mandate is vague, providing neither guidance nor constraint on the agency’s regulatory and licensing actions.

Currently, FCC Chairman Michael Powell has stated, quote, “The lack of guidance leaves those governed by the standard at a loss as to how to structure their conduct to be compliant.” And I dare say it invites mischief by regulators and special interests to advance parochial interest under the guise of public interest.

This Committee has spent considerable time examining and debating the role of ownership limitations to achieve public interest goals. These issues will continue to be debated. I want to emphasize, they will continue to be debated.

Today’s hearing is to consider whether Congress should use other means to achieve these goals, such as putting teeth in the public interest standard. We will discuss the role that locally originated programming should play in determining whether a broadcaster is serving the public interest. Previously, the Commission’s rules included local programming mandates for radio and TV. These requirements were removed in the early 1980s, because the Commission found that during the short time the programming mandates were in place, commercial television broadcasters exceeded the

mandates in every program category, thereby making the mandates unnecessary. Recently, some legislators have discussed the return of local programming mandates for broadcasters.

Since 1996, the radio industry has experienced dramatic consolidation. Multiple witnesses before this Committee have bemoaned the negative effects they claim consolidation has had on localism. In January 2000, the FCC sought to promote the use of radio to provide local content by creating a new class of radio stations, low power FM radio services. Despite being supported by state and local governments, community organizations, musicians, religious groups, and students, low power FM was severely curtailed by a rider added to an appropriations bill late in 2000, at the behest of the powerful broadcast lobby. Broadcasters masqueraded their concern about competition from these new stations in claims that lower power FM could cause them interference. Late last month, an independent study stripped the broadcasters of this disguise by concluding that these stations would cause virtually no interference under the FCC's original rules.

While it may be too late to turn back the clock on the radio consolidation that has occurred, we should take another look at low power FM as a means of providing the public with a locally oriented alternative to huge national radio networks.

On today's second panel, we will hear from Dean Kaplan about the disturbing dearth of coverage of political campaigns by broadcasters. Next week, I'll be introducing a bill similar to the one I introduced in the 107th Congress that would establish minimum requirements for issue-centered or candidate-centered programming by broadcasters, and would also provide candidates and national committees of political parties with vouchers that they may use for political advertisements.

The purpose of the legislation is to increase the flow of political information in broadcast media, and reduce the cost to candidates of reaching voters. Our democracy is stronger when a candidate's success is achieved by ideas and not by dollars.

I appreciate our witnesses for joining us today, and I look forward to hearing your views.

Senator Hollings?

**STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA**

Senator HOLLINGS. Thank you very much, Mr. Chairman, particularly for this hearing, because it is necessary.

When it comes to the public interest, let's go back to the sinking of the Lusitania in 1912, when I think it was Sarnoff who got on top of the Wanamaker Building in Philadelphia with his wireless, receiving the list of those who were saved. And they gathered around, day and night there, for three days and three nights.

That immediately led to a overwhelming desire, of course, for wireless radio. And, by the mid-1920s, under Secretary Hoover, the Secretary of Commerce, Herbert Hoover, everyone had a wireless radio set, and everyone was—owned a set and—operating and jamming.

And I think that's a fundamental that ought not to be missed, and that is that here is an industry that came to government and

said, "For heaven sakes, regulate us." Because allowed market forces to do as we choose, no one can get through. Obviously, the airwaves belong to the public itself, and it was responded to by the 1934 Act.

But it's very good to read just one section, because those who don't want to respond and recognize pornography—for example, as Potter Stewart says, "You know it when you see it"—similarly, the public interest, you understand and know it when you see it. You know what the public interest is. We're all here, in this room, interested in the public interest. But here's what they said at the very initiation, the very beginning days there, of that 1934 Act. The conscience and judgment of a station's management are necessarily personal. The station, itself, must be operated as if owned by the public. It is as if people of a community should own a station and turn it over to the best man in sight, with this injunction, "Manage this station in our interest." The standing of every station is determined by that conception.

Now we had a Chairman come onboard, Mr. Michael Powell, who ridiculed that conception. He said he didn't know what public interest was. As far as he could understand or see, it was an empty vessel. In fact, I think it was the day after, or two days after, his swearing in, he remarked, at one conference, that he was waiting for the public interest fairy to appear, but she never showed up. And he just ridiculed the idea, let the market forces take over, let them run rampant, the heck with 25, 35, 45, 55 percent ownership, cross-ownership, or anything else. He's had the bit in his teeth to ruin a regulatory commission. There isn't any doubt in my mind.

So I think it's highly important that we come together and understand that we are operating in the public interest. I've worked—I notice Mr. Markey over there said 20-some years. I've been on this Committee since I got in here, in 1966, almost 37 years. And we have worked with John Pastore and all the people, chairmen, who have come along the line, and everything else.

And, Mr. Chairman, it's particularly to your credit that you understand this and that we're having a hearing which is very, very necessary under the circumstances, because we're suffering from monopolization.

We've got two groups. We've got that one big boy crowd. I understand one of them's here today, representing Disney. I wish I could go down and start reading the list of their ownership. It would take us until roll call, I can tell you that right now. All of them, whether it's news, AOL/Time-Warner, Viacom, whatever. Those big boys, they want to monopolize the country. But there's a similar movement of station owners around the affiliates that they want to monopolize the community.

They're saying, over on the House side, if you noticed the activity there yesterday, that, "Oh, goodness gracious, let's cut the 45 back to 35, but don't cut the cross-ownership. No, no, because we'd like our little monopoly." So it's a sort of sweetheart deal they've got going on over here. And I think under the leadership of Senator Dorgan, we may stop it.

Thank you.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

Thank you, Mr. Chairman. Today, the Committee renews its focus on the media marketplace and the fundamental obligation of all broadcast licensees to serve the public interest. From its very beginnings, our system of broadcast regulation has been built around our Nation's collective desire to ensure that the public airwaves are used to serve, educate, and inform individual citizens in local communities.

In the early days of radio, there were seemingly no limits to this desire, as broadcasting captured the public imagination and evolved from a technological novelty into a full-fledged business with mass audience appeal. But as radio grew, so too did interference. Thus, to accommodate both the needs of individual citizens to make use of technology and the needs of broadcasters to protect the commercial viability of the medium, a compromise was struck whereby government imposed a licensing scheme limiting the number of available licenses, but obligating each licensee, first and foremost, to use this privilege to meet the civic needs of local communities.

Accordingly, unlike other of their corporate kindred, broadcasters have always existed as public fiduciaries—prohibited from owning the public airwaves but granted the right to use certain frequencies for limited periods of time so long as

Such use serves the public interest. As the Federal radio commission, the precursor to today's Federal Communications Commission once explained this "public trustee" model of broadcasting:

[t]he conscience and judgment of a station's management are necessarily personal. . . . The station itself must be operated as if owned by the public. . . . It is as if people of a community should own a station and turn it over to the best man in sight with this injunction, "manage this station in our interest." the standing of every station is determined by that conception.

Unfortunately, recent action taken by the FCC to give large media corporations even greater control over the public airwaves threatens to abandon this long-standing principle.

Since the FCC's ill-fated decision on June 2, we have seen a torrent of citizen outrage aimed at rule changes that will let big media get bigger, will allow programming decisions made in New York and Hollywood to trump community standards, and will reduce the number of diverse voices available in local communities.

As the American public continues to digest details of the FCC proposal, opposition to the FCC's plan appears to be growing. Indeed, according to a recent poll conducted by the Pew Research Center, by a margin of roughly 10 to 1 (70 percent to 6 percent), Americans who have heard about the FCC's rules changes resoundingly believe that the impact on our country will be negative, not positive.

Moreover, the direction in which the FCC's decision heads is all the more disheartening given the telltale signs in today's media marketplace that consolidation is fueling a "race-to-the-bottom" with regard to broadcast programming. Parents are increasingly frustrated by the constant stream of lurid, inappropriate material broadcast on television and spewed out by radio shock jocks. Similarly, network programmers continue to demonstrate a careless disregard for the well-being of children as programs increasingly rely on graphic and excessive violence in an attempt to boost ratings points.

Mr. Chairman, today's hearing gives this committee an important opportunity to remind broadcasters that there is a difference between programming that serves the public interest and programming that attracts the most public attention. The obligation to serve the public interest extends to the *entire* public and not just the male, 18 to 30 demographic so coveted by Madison Avenue.

Accordingly, in light of the central role that our broadcast media play in keeping government and business accountable to the American people, in educating our children, and in supporting the values of deliberative democracy, I welcome our examination of current public interest obligations and look forward to the testimony of the witnesses and to their answers to our questions.

The CHAIRMAN. Our leader.
[Laughter.]

**STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, I always feel horribly inadequate following both you and also Senator Hollings. You've now

been on the Committee for—how many years is it? Thirty-seven years?

Senator HOLLINGS. Yup.

Senator DORGAN. I You've now been on the Committee for 37 years. But over those 37 years, I was reflecting, as Senator Hollings was speaking, both under Democrat and Republican Administrations, I think the American public has dis-served by decisions of the Federal Communications Commission, and especially now. We've reached kind of the apex of this irresponsibility. Instead of localism and public interest representing the timeless truths of what we have licensing for the airwaves to accomplish, localism and public interest are sort of treated as hopelessly old-fashioned virtues or values.

The FCC is making a horrible mistake. They are producing rules that will further enhance concentration, this galloping orgy of concentration and mergers. And I may be hopelessly old-fashioned, but I believe that when the American public owns the airwaves, it has a responsibility to license them with restrictions, and those restrictions say that part of the requirement to use these airwaves that belong to the American public is that they be used in the public interest and that there be localism, diversity, and competition associated with it. Frankly, we've gotten so far away from that, it's hard to describe.

Now, there are some good things going on out there. I was north of Grafton, North Dakota, in a huge storm, one of the most aggressive storms I've ever seen. And the young man that runs the radio program, the news program, in Grafton, KXPO, he was out in his car on hilltops in the middle of that storm broadcasting where the tornadoes were touching down. That's localism at its best.

A week ago, 2 weeks ago, at Bismarck, KFOR, exactly the same thing, one of the more aggressive storms I've seen. Two people out making their discussions with—or providing discussion with the public about where the storm was moving, what was happening, the size of the hail, the amount of wind, and tornado sightings. KFGO, in Fargo, with respect to the 1997 flood, wonderful public service. All of that is localism at its best.

But we've gotten so far away from that. We now have voice tracking, people pretending they're in a city, broadcasting, when, in fact, they're not. You know the description of Minot, at 2:00 in the morning, when the anhydrous-ammonia car goes off the track, explodes, and envelopes the city in a plume of deadly gas, and they call the radio station—nobody's home. You know, the same company owns six stations, all six commercial stations, in that city. There's so much wrong with what's going on. And at the root of it, I think, is that we've failed to discuss the genuine issues of public interest and localism. What should we expect, and what should be required with respect to broadcasting?

We ought to bring back the fairness doctrine. Frankly, people think Congress got rid of that. We didn't. The FCC got rid of the fairness doctrine. We tried to reinstate it, and President Reagan vetoed the bill. But the fairness doctrine ought to be reinstated. The Supreme Court, in a redline case, said it is the right of the viewers and listeners, not the right of broadcasters, which is paramount.

And, finally, we're going to have some testimony today about another aspect of localism that I think is very important, and that is local standards. And something that's produced in Hollywood or New York, and they say, "You must carry this in your community," and I'd just encourage all of you to take a look at the dialogue in Mr. Bozell's testimony, which I read last night, over one of the networks that goes out about a plot, on one of the major networks, about a band of thugs trafficking in horse semen, hiring a prostitute to perform a sex act with a horse to extract semen from the horse, and then Mr. Bozell will describe the dialogue in this piece of trash. And the fact is, many of these local stations cannot refuse to carry it, because if they do, there will be financial consequences and they could lose their affiliation with the network. This is the sort of thing that I think also moves far away from localism.

And I'm really—Mr. Chairman, I didn't mean to take this much time, but thank you for holding a hearing on this. It has been ignored far too long. Your attention to it is something I deeply appreciate. And I say the same to Senator Hollings. Perhaps, with this attention, we're going to make some progress on these issues.

The CHAIRMAN. Thank you. We'll certainly look forward to Mr. Bozell's testimony.

[Laughter.]

The CHAIRMAN. Senator Lautenberg?

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thanks, Mr. Chairman.

And I'm kind of pleased to join the chorus here of those who express the concern that we do here about localism and what takes place. And this hearing, Mr. Chairman, I think is crucial. And the public interest obligation of broadcasters have been clear over the years. But, as I reviewed the materials to prepare for this hearing, it appears equally clear that the obligations are not being met.

According to recent studies, the average American now spends 24 minutes a day reading, over 3 hours a day listening to the radio, and over 4 hours a day watching television. Fewer than one half of all U.S. households read the daily newspaper. People rely on TV and radio to find out what's going on. Children spend a bit more time reading, 44 minutes, and that's because they have to do their homework. But that, too, pales in comparison with the 6 hours they spend each day with electronic media.

So the broadcasters have our attention, and because the government grants them a license to use part of a public resource, the airwaves, they're supposed to operate as a public trustee. But it appears that fewer and fewer broadcasters are operating as a public trustee, and the FCC is giving them a free pass.

We're going to hear testimony today that programming diversity is on the decline. We'll hear that local news is often being produced, as Senator Dorgan mentioned, at a remote location, but the local audience isn't being told that. We're going to hear that the number of hours of educational programming for children is dropping, especially at stations that are part of media duopolies. And we're going to hear that local TV coverage of public-policy issues

and politics is becoming nonexistent at the same time that stations are taking in a billion dollars in potential advertising revenue.

As dependent as we are on running these ads, I doubt that anyone here would suggest that they are a substitute for civic debate. Our democracy, as Thomas Jefferson pointed out, depends on a well-informed electorate. If we're going to rely on TV and radio to be informed, the trends that I've just mentioned are truly worrisome.

And I look forward to hearing from our witnesses about whether and how these trends might be reversed.

And, Mr. Chairman, before I close, I note the long service of my colleagues on the left here, and I'm here five, six months, and it's really interesting, I can tell you, what takes place.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Lautenberg.

Our first witness is the Honorable Michael Copps, Commissioner of the Federal Communications Commission. I would note that we invited Republican members, appointed members, of the Commission to testify today. All declined to do so.

Welcome, Commissioner Copps, and we—I note you have a very long statement. I hope you'll summarize, so we'll have time for questions, as well as an additional panel.

Welcome, Commissioner Copps.

**STATEMENT OF HON. MICHAEL COPPS, COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION**

Dr. COPPS. I will.

Mr. Chairman, Senator Hollings, Senator Dorgan, Senator Lautenberg, as always I am honored to come home to the Senate. I'm particularly indebted to Chairman McCain and Senator Hollings for holding this hearing on a subject that too often doesn't get the attention it deserves.

My time is short. I don't think you've invited me here to deliver a history lecture or a philosophical discourse on the public interest, so I will just reaffirm, at the outset, the promise that I made to you when I first came up here and appeared before this Committee, that I would make the public interest the centerpiece of my commitment as a Commissioner.

The public interest is important, not just because I find it personally appealing, and I do, but because it's the cornerstone of the law of the land. As you so rightly noted, Mr. Chairman, the term "public interest" appears over 100 times in the communications law. I take Congress seriously when they tell me something once. When they tell me 112 times, I stand at attention.

Where does the Commission go from here? If the structural bars to media consolidation are going to come down, we need to ask, "What's left to protect the public interest?" I have some suggestions. I'm going to be asking my colleagues at the Commission to consider the following six things.

First, we need an effective license renewal process. As national conglomerates gobble up local stations, we need, more than ever, a process to ensure that licensees still serve the public interest, still serve their local communities. An honest to God and properly designed license renewal process would avoid micromanagement in

favor of a comprehensive look at how a station has discharged its public responsibilities over the term of its license.

This process should include going out and hearing from members of the community. That hasn't happened for years. As we begin the next round of license renewals for radio this fall, and for television in 2004, I intend to hold a series of town meetings in regions where renewals are due, in order to hear from communities how their airwaves are being used. How can we know if licensees are serving their local communities without hearing from the local community? I hope my colleagues will join me in this outreach effort. At a minimum, I hope that I will receive support, in terms of funding and staff, so that we can make these town meetings maximally productive.

Second, we need what I call "community discovery." I believe the public interest would profit immeasurably by some meaningful but user-friendly successor to the old ascertainment process. We need absentee license holders to understand the needs of the communities they serve. Let's get Clear Channel and other large station owners out among the people in the communities where they own stations. As media conglomerates grow ever bigger and control moves farther away from the local community, doesn't it make sense to require, as a condition of renewal or of new acquisitions, that the owners come to town and visit with their listeners and try to gauge their interest in what kind of programming they should be producing?

Third, we must, at long last, move against indecency on the airwaves. Every day, I hear from parents who are fed up with the patently offensive programming coming their way so much of the time. I have referred in the past to a race to the bottom. I'm beginning to wonder if there even is a bottom.

We need a number of public interest actions here. I will propose a proceeding to consider whether there is a link between increasing consolidation, on the one hand, and increasing indecency in our airwaves, on the other, and steps we should take to address any such problems. The Commission utterly failed to analyze this issue before its recent vote. That was an abdication of its responsibility. We voted without understanding how consolidation was going to affect our kids.

The Commission also needs to do a far better job of enforcing the laws against indecency on our airwaves. The process by which the Commission enforces these laws has long put inordinate responsibility on the complaining listener. That's wrong. It's the Commission's responsibility to investigate complaints.

I also believe, as I suggested in the recent WKRK-FM case, that we need to send some of these more outrageous transgressions to administrative hearing for license revocation. Taking some blatant offender's license away would let everyone know that the FCC has, at long last, gotten serious.

Also on indecency, I have long suggested, without much success, that broadcasters voluntarily tackle the issue of indecent programming. I'd like to see my friends, Eddie Fritts, of the NAB, and Robert Sachs, of the NCTA, convene a TV summit to tackle the issue of protecting our kids from broadcast indecency. And you know what? A lot of their members agree with me.

It's also time for us to step up to the plate and tackle the wanton violence our kids are served up every day. Compelling arguments have been made that excessive violence is every bit as profane, indecent, and obscene as anything else that's broadcast.

I don't know the precise mix of legislative initiative and regulatory enforcement and voluntary industry action that we need here, but millions of Americans are asking us to get on the job. I'm pleased that this Committee is on the job. I hope your Commission will get on the job soon.

Fourth, we need to do more to encourage minority and female participation in our media. I question how we can have viewpoint diversity without ownership diversity, yet the minority ownership figures are all heading in the wrong direction, arguably as a result of consolidation. Again, we should have acted before we voted.

In any event, this has to go on the front burner right away. I know that Chairman McCain, all the other Members here today, have tremendous interest in this issue, and I commend them for it. We must never forget that America's strength, after all, is its diversity, and our media have an obligation to reflect that diversity and to nourish the diversity.

Fifth, the Commission should forthwith address the issue of DTV public interest obligations. I see the light's on there. I'll just say this matter was teed up long, long ago. It's laying fallow at the Commission. We need to get those proceedings that are latent settled so that broadcasters know what public interest obligations are expected of them, and the American people know what public interest obligations those broadcasters will be performing.

Sixth, and finally, I believe that we must confront the substantial reduction in independent programming. Now that we're further loosening the concentration limits horizontally, we should address whether there's a need for more independent programming to ensure that we do not end up with nationally vertically integrated conglomerates that control not only the distribution, but the content, too.

So I present these proposals in hopes that we can build on the dialogue that has begun with media ownership. There are no doubt many other ideas that you will have that we could be pursuing, but let us begin, at least. In the past months, we have seen the media issues steam-rolling across this country, a grassroots issue like we haven't seen in many years. More than two million Americans have registered their views with the Commission now.

The right, the left, Republicans, Democrats, concerned parents, creative artists, religious leaders, civil rights activists, and labor organizations have united to fight together on this issue. The American people want action. I look forward to working with you, Mr. Chairman, and Members of this distinguished Committee, to try to deliver some action to them.

Thank you.

[The prepared statement of Commissioner Copps follows:]

PREPARED STATEMENT OF HON. MICHAEL J. COPPS, COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman, Senator Hollings, Members of the Committee, I am honored to be here this morning and I am doubly indebted to Chairman McCain and Senator Hol-

lings, first for holding this hearing on a subject that doesn't often get the attention it deserves and second, for inviting me to share some of my perspectives on this critical issue, and more importantly, to hear yours.

My time is short and I don't think you invited me to deliver a history lecture on the evolution of the public interest concept or to ramble on about its philosophical underpinnings. So, I'll just reaffirm the promise I made to you when I first appeared before this Committee that I would make the public interest the centerpiece of my commitment as a Commissioner. The public interest is important not just because I find it personally appealing—which I do—but because it's the cornerstone of the law of the land. My staff and I did a quick count and found that the term “public interest” appears approximately 112 times in the Communications Act. I take Congress seriously when it tells me something *once*. When it tells me *112 times*, I stand at attention.

I don't buy, and I never understood, the argument that the public interest is an empty vessel. We need look no further than the core principles of the Communications Act to find the oxygen that breathes life and substance into the public interest. For example, in telecommunications, Congress told us to promote consumer choice through competition and to ensure universal service so that all Americans have access to the communications networks. When it comes to media, communications law means localism, diversity and competition.

The statute further tells us that the airwaves belong to the American people. No broadcast station, no company, no single individual owns an airwave in America; the airwaves belong to all the people. Corporations are given a temporary right to use this public asset and even to profit from that use. In return, we direct these corporations to act as public trustees and to serve the public interest.

As Members of this Committee know, I am deeply troubled at the direction of the Commission's vote on June 2 to loosen the media ownership rules and caps. I had the opportunity to detail my objections on both the substance and the process of that decision when I appeared before this Committee on June 4. As that decision approached, I saw two divergent paths. Down one road was a reaffirmation of America's commitment to local control of our media, diversity in news and editorial viewpoint, and the importance of competition. This path beckoned us to update our rules to account for technological and marketplace changes, yes, but without abandoning core values going to the heart of what the media mean in our country. On this path we would also reaffirm that FCC licensees have been given very special privileges and that they have very special responsibilities to serve the public interest.

Down the other path was more media control by ever fewer corporate giants. This path would surrender awesome powers over our news, information and entertainment to a handful of large conglomerates. Here we would treat the media like any other big business, trusting that in the unforgiving environment of the market, the public interest will somehow magically trump the urge to build private power and private profit for a privileged few. On this path we would endanger time-tested safeguards and time-honored values that have strengthened the country as well as the media.

I believe that with the June 2 vote, the majority of the Commission took the latter—and in my mind, the wrong—road. The decision allows the giant media companies to exert massive influence over some communities by wielding up to three TV stations, eight radio stations, the already monopolistic newspaper, and potentially the cable system. It allows each television network to buy up even more local TV stations to cover 45 percent of the national television audience—and if you throw in the UHF discount, potentially up to 90 percent. Newspaper-broadcast cross ownership is henceforth apparently acceptable in 179 of 210 markets, and duopoly gets the green light in up to 162 of them. One broadcaster who is trying to figure out exactly what our new rules mean has told me that his preliminary numbers indicate that a single company could own up to 370 stations in 208 of the 210 markets in this country. The impact is even more dramatic when considered on a state-by-state basis. For example, in Texas, one company could own 33 television stations, the major paper in Houston, Dallas, San Antonio, and El Paso, plus numerous radio stations. That company might also own cable systems and cable channels and perhaps be the dominant Internet provider, too. Where are the blessings of localism, diversity and competition here? *I see centralization, not localism; I see uniformity, not diversity; I see monopoly and oligopoly, not competition.*

Rather than spending my few minutes this morning further going over my objections to both the substance and process of the decision or the events leading up to the media concentration vote, I would like to talk about where we go from here. This Committee, other Members of the Senate, and now the House of Representatives are actively involved in deliberations over the June 2 decision, and I will be following

what happens here with great interest. And hope. The courts will also no doubt be involved.

These ownership limits were about the last safeguards remaining against the rising tide of media concentration. This is only the latest, although perhaps most radical, step in a twenty-year history of weakening public interest protections. Step by step, rule by rule, we have allowed the dismantling of these protections and flashed a bright green light to the forces of consolidation. The Commission has allowed fundamental protections of the public interest to wither and die, relying instead on private profit as a proxy for the public interest. Requirements that we once had like ascertaining the needs of the local audience, requiring a rigorous license renewal process, providing demonstrated diversity in programming and the teeing up of controversial issues have gone by the boards. Relics, seemingly, of a distant past.

The Commission had also cut back and then eliminated important structural regulations that limited both horizontal (or distributional) concentration *and* vertical (or production) concentration, so that the same network distributing programs increasingly owned them. Nowadays, content and distribution increasingly report to the same master. On top of all this, we come now on June 2 and further weaken the horizontal caps, unleashing what many experts expect to be a great “Gold Rush” of swaps, mergers, and acquisitions. “Corporate Cupid,” one fund manager called it during the high-powered meeting of media moguls in Sun Valley the other day. “Big-lovemaking, big deals out of this thing. You are going to see a lot,” he said. Well, I don’t mind brokers being brokers—that’s what they’re supposed to do. But I do wonder who is supposed to be America’s broker in all this. Somehow I had the idea, maybe a little quaint since June 2, that the FCC had a role in all this. But we punted, and now I think a lot of it is up to you ladies and gentlemen of the Congress.

So, the question is, where does the Commission go from here? If we are going to take down the structural bars to media consolidation, then we’d better try to put some vitality back into the public interest. I am totally convinced this needs to happen. Accordingly, I will be asking my colleagues at the Commission to consider the following:

1. *An Effective License Renewal Process*: As more national conglomerates gobble up local stations, we need a process to ensure that licensees are serving their local communities. As one part of this effort, we should establish an effective license renewal process under which the Commission would once again actually consider the manner in which a station has served the public interest when it comes time to renew its license. The Commission formerly did that. But the system has degenerated into one of basically post-card license renewal. Unless there is a major complaint pending against a station, its license is almost automatically renewed. A real, honest-to-goodness and properly-designed license renewal process, predicated on advancing the public interest, would avoid micro-management on a day-to-day basis in favor of a comprehensive look at how a station has discharged its public responsibilities over the term of its license.

As part of the license renewal process, I believe it is important to go out and hear from members of the community. But that hasn’t happened for years. It’s time for that to change. As we begin the next round of license renewals for radio this fall and for television in 2004, I intend to hold a series of town meetings in regions where renewals are due in order to hear from communities how their airwaves are being used. How can we know if licensees are serving their local communities without hearing from the local community? I intend to get outside the Beltway to listen and to learn.

I hope my colleagues will join me in this outreach effort. At a minimum, I hope that I will receive support in terms of staff and funding so that we can make these town meetings maximally productive.

2. *Community Discovery*: The Commission should not be the only listening to the people. Let’s get Clear Channel and other large station owners out among the people in the communities where they own stations. I believe the public interest would profit immeasurably with some meaningful, but user-friendly, successor to the old ascertainment process. As media conglomerates grow ever bigger and control moves further away from the local community, doesn’t it make sense to require, as a condition of renewal or new acquisitions, that the owners come to town and visit with their listeners and viewers to learn about the problems, needs, and issues facing the local community, and understand what the people there really want to see and hear in their programming? An occasional visit to town by absentee station owners is not what I would call localism at its best, but at least it’s something. And the owners would then tell the Commission if and how they followed through.

3. *Eliminate Indecency on the Airwaves:* Every day I hear from Americans who are fed up with the patently offensive programming coming their way so much of the time. I hear from parents frustrated with the lack of choices available for their children. I even hear from many broadcast station owners that something needs to be done about the quality of some of the programming they are running. I've referred to a "race to the bottom," but I'm beginning to wonder if there even *is* a bottom to it. How does this serve the public interest?

We need a number of actions here.

First, I will propose a proceeding to consider whether there is a link between increasing consolidation and increasing indecency on our airwaves and steps we should take to address any such problems. In its recent decision, the Commission failed to analyze this issue. Has consolidation led to an increase in the amount of indecent programming? Intuitively, it makes sense, but I don't pretend to know whether there is a causal effect or a correlation or what. When programming decisions are made on Wall Street or Madison Avenue, rather than closer to the community, do indecency and excessive violence grow more pervasive? We need to know the answer to this question. I believe we had no business voting on June 2 without having visited this matter and amassing at least a halfway credible record as to whether all this media concentration has concentrated a lot of smut on our kids. We owe it to our children, and their parents, to explore this question before voting on whether to allow more consolidation.

Second, the Commission needs to do a far better job of enforcing the laws against indecency on our airwaves. The process by which the FCC has enforced these laws has long placed inordinate responsibility upon the complaining citizen. That's just wrong. It is the *Commission's* responsibility to investigate complaints that the law has been violated, not the citizen's responsibility to prove the violations.

I also believe, as I suggested in the recent WKRK-FM case, that we need to send some of the more outrageous transgressions to administrative hearing for license revocation. Taking some blatant offender's license away would let everyone know that the FCC had finally gotten serious about its responsibilities, and I think we would see an almost instantaneous slamming on of the brakes in the race to the bottom.

Third, I have long suggested, without much success, that broadcasters voluntarily tackle the issue of indecent programming. Many of you will remember the Voluntary Code of Broadcaster Conduct that for years and years saw the industry practicing some self-discipline in the presentation of sex, alcohol, drug addiction and much else. It didn't work perfectly, but at least it was a serious effort premised on the idea that we can be well-entertained without descending into that race for the bottom. I'd like to see my friends Eddie Fritts of the National Association of Broadcasters and Robert Sachs of the National Cable and Telecommunications Association convene a TV summit to tackle the issue. And you know what? A lot of their members agree. It wouldn't be easy, but it would certainly be welcomed by the American people.

It is also time for us to step up to the plate and tackle the wanton violence our kids are served up every day. Compelling arguments have been made that excessive violence is every bit as indecent, profane and obscene as anything else that is broadcast. Over the years, dozens of studies have documented that excessive violence has hugely detrimental effects, particularly on young people. I don't say this is a simple problem to resolve, because it is not. I do say the issue has gone unaddressed for too long.

I don't know what the precise mix of legislative initiative, regulatory enforcement and voluntary industry action should be here, but millions of Americans are asking us to get on the job, and I am pleased that this Committee is on the job. Today we have the best of television and undeniably the worst. When it is good, it is very, very good; and when it is bad, it is horrid. It's not what the pioneers of the great broadcast industry had in mind when they brought radio and television to us.

4. *Minority and Female Participation:* The Commission in the recent media ownership decision promised to initiate a proceeding to increase the participation of minorities and women in our media. I was troubled that in reaching that decision, the Commission did not even attempt to understand what further consolidation means in terms of providing Hispanic Americans and African Americans and Asian-Pacific Americans and Native Americans and women and other groups the kinds of programs and access and viewpoint diversity and owner-

ship and career opportunities and even advertising information about products and services that they need. But the Commission moved forward notwithstanding my objection. Now that the vote has taken place, we must undertake and expeditiously complete a proceeding to increase opportunities for minorities and women. I know that Chairman McCain and other Members of this Committee have tremendous interest in this issue and I commend them for it. We must never forget that America's strength is, after all, its diversity. America will succeed in the twenty-first century not in spite of our diversity, but *because* of our diversity. Diversity is not a problem to be overcome. It is our greatest strength. *And our media need to reflect this diversity and to nourish it.*

5. *DTV Public Interest:* Thanks to this Committee and its counterpart in the House, the transition to digital television has advanced on many fronts. And Congress made it clear that the public interest obligations of broadcasters would continue in the new digital world. But the FCC has not followed up on its responsibility to update its rules for those who are given the right to use spectrum for digital television. We have just recently managed to get a couple of proceedings, now more than three years old, dusted off and put out for further comment. We need to push these to conclusion and take a good, broad look at this so (1) the American people will know how digital TV will serve their interests and (2) broadcasters will know and understand the rules of the road.
6. *Independent Programming:* I will also propose a proceeding to examine independent programming on our airwaves. Numerous commenters urged us to include this in the recent ownership proceeding but the majority felt it didn't belong there. I disagreed. But now that we are further loosening the concentration limits, we should address whether there is a need for independent programming requirements to ensure that we do not end up with national vertically integrated conglomerates that control the distribution channels *and* all the content we see and hear. Network ownership of the full range of prime time programming constrains competition, consigns independent production to oblivion or, at best, minor and marginal roles, cripples the production of diverse programming, and also entails widespread job losses for workers, including creative artists, technicians and many, many others.

Members of this distinguished Committee, I present these proposals in the hope that we can build on the dialogue that has begun with media ownership. In the past months, we have seen this issue steamrolling across this country—a grassroots issue like we haven't seen in many years and one that developed without the FCC doing its part to spark it or Big Media doing its part to cover it at all adequately.

More than two million Americans have registered their views with the Commission now—more than for any proceeding in our history. In these times when many issues divide us, citizens from right to left, Republicans and Democrats, concerned parents and creative artists, religious leaders, civil rights activists, and labor organizations have united to fight together on this issue. I believe the American people want action on how their airwaves will be used. Who is going to control the media? How many—or, rather, how few—companies? How do we protect local broadcasting, diversity of programming and opinion, and the ability of local broadcasters to compete with the huge companies?

I read some inspiring words the other night from a former President who I think understood radio, back when radio pretty much was all of broadcasting. The spectrum is, he said, "a public medium and its use must be for public benefit. The use of a radio channel is justified only if there is public benefit. The dominant element for consideration in the radio field is, and always will be, the great body of the listening public, millions in number, countrywide in distribution." That wasn't my hero, FDR, but his Republican predecessor, Herbert Hoover, serving as Secretary of Commerce in 1925. Those words ring now truer than ever. I don't know who your heroes are, Members of the Committee, but I do believe that working together, in bipartisan fashion, we can once again propel the liberating spirit of the public interest to the forefront of our great country's media.

Thank you very much for this opportunity and I am anxious to hear your further thoughts and to try to answer any questions that you may have.

The CHAIRMAN. Yes. Panel Number 2 is Mr. Corn-Revere, Partner, of Davis Wright Tremaine LLP; Mr. Barry M. Faber, Vice President and General Counsel, Sinclair Broadcasting Group; Mr. Dave Davis, the General Manager of WPVI-DT; Dean Martin Kaplan, Associate Dean and School Director, University of South-

ern California, Annenberg School for Communication; and Mr. L. Brent Bozell, President of Media Research Center, Parents Television Council and the Conservative Communications Center. Welcome to the witnesses, and Mr. Corn-Revere, we will begin with you. Thank you, and welcome.

**STATEMENT OF ROBERT CORN-REVERE, PARTNER,
DAVIS WRIGHT TREMAINE, LLP**

Mr. CORN-REVERE. Thank you, Mr. Chairman, Members of the Committee. I appreciate your inviting me to testify about public interest obligations of local broadcasters and the role the broadcasters play in the delivery of local news and public affairs programming.

The CHAIRMAN. Could you pull the microphone a little closer, please. Thank you.

Mr. CORN-REVERE. Specifically, I have been asked to focus my testimony on the history and constitutionality of the broadcast public interest standard as it applies to programming mandates. Accordingly, my written testimony concentrates on that history in general and its relationship to First Amendment concerns. Before I begin, I want to just stress that this testimony represents my personal views and should not be attributed to any clients or any other parties.

As has already been expressed this morning, the public interest standard is the touchstone of authority for the Federal Communications Commission. The standard was first adopted as part of the Radio Act of 1927, which created the Federal Radio Commission. It was perpetuated by the Communications Act of 1934, when Congress consolidated the communications regulatory functions with the FCC.

The Communications Act uses many different formulations of the public interest language in various sections of the law, and I guess, as has again been mentioned earlier, occurs some 100 times in the act. Like the Radio Act before it, the Communications Act does not define these terms. I believe Senator Hollings mentioned that Chairman Powell has said that the standard is vague.

He's not the only FCC Commissioner who has expressed that thought. Former FCC Commissioner Glenn O. Robinson has noted the frequent criticism that the public interest standard is vague to the point of vacuousness, providing neither guidance nor constraint on the agency's action. He added that what the act itself does not define, the legislative history does not illuminate. Many other Commissioners have made the same point over the years, including former Chairman Newton Minow.

Before starting law school, I received a master's degree focusing on broadcast history and regulation, and during my studies I recall one enterprising graduate student saying that he was going to finally determine the meaning of the public interest standard in the Communications Act, and he proposed to do that by programming every FCC decision ever made into a program that he was devising, and he would use that process to determine what the public interest meant.

Now, little did he know that the public interest appears in every FCC decision. It rarely means the same thing twice in any two decisions. I really don't know whatever became of that project.

The very general mandate of the Communications Act has a special application when it comes to the regulation of broadcast programming. There is an inherent tension in the FCC's mandate to regulate in the public interest and the First Amendment command that Congress shall make no law abridging freedom of speech or the press. Among other places, this tension is recognized in section 326 of the act, which prohibits censorship and expressly withholds from Government the power to interfere with the right of free speech by means of radio communications.

Based on this dual obligation, the Supreme Court has stressed that the First Amendment must inform and give shape to the manner in which Congress exercises its regulatory power in this area. It is said that the FCC must walk a tightrope to preserve the First Amendment values written into the Communications Act and has described this as a task of great delicacy and difficulty.

That being said, the FCC historically has directly exercised greater supervision of broadcast content than would be permitted in other media, and the Supreme Court in the past has approved this regulation, although with some notable exceptions. The Commission has moderated the inherent tensions in this arrangement by showing a certain degree of restraint and sensitivity to competing values at stake.

In 1960, the FCC emphasized that in considering the extent of the Commission's authority in the area of programming, it is essential for us to examine the limitations imposed upon it by the First Amendment to the Constitution and section 326 of the Communications Act.

After an extensive analysis of the meaning of the public interest, the FCC found that the required constitutional and statutory balance barred the Government from implementing programming requirements that were too specific. In response to proposals to require licensees to present specific types of programs on the theory that such action would enhance freedom of expression, rather than to abridge it, the commission explained that the First Amendment forbids governmental interference asserted in aid of free speech, as well as governmental action repressive of it.

The protection against abridgement of freedom of speech in the press flatly forbids governmental interference, benign or otherwise. In the past, the Commission has relied upon processing guidelines, rather than programming mandates, to reach this kind of balance. Whether or not Congress or the FCC at the present time could constitutionally adopt more detailed requirements under the public interest standard is not an easy question to answer.

To begin with, it's difficult to assess the constitutionality of content regulations in the absence of a concrete proposal. Although the prevailing standard for broadcast regulation articulated in *Red Lion* has permitted the Government to regulate broadcast content more intensively than other media in the past, the courts have never defined just how far this power might extend. Additionally, it has been 34 years since the Supreme Court decided *Red Lion*, a case that it said was based on the state of commercially accept-

able technology as of 1969. Since then, both Congress and the FCC have found that the media marketplace has undergone vast changes. For example, the legislative history of the Telecommunications Act of 1996 suggested that the historical justifications for the FCC's regulation of broadcasting required reconsideration.

Given these changes, and in light of evolving case law, which is described in more detail in my written testimony, it is far from clear how new programming requirements would be evaluated by reviewing courts.

Thank you, and I would be happy to answer any questions.
[The prepared statement of Mr. Corn-Revere follows:]

PREPARED STATEMENT OF ROBERT CORN-REVERE, PARTNER,
DAVIS WRIGHT TREMAINE LLP

Mr. Chairman, and Members of the Committee. Thank you for inviting me to testify about the public interest obligations of local broadcasters and the role of broadcasters in the delivery of local news and public affairs programming.¹ Specifically, I have been asked to focus my testimony on the history and constitutionality of the broadcast public interest standard as it applies to programming mandates. Accordingly, my written testimony concentrates on the history of the FCC's public interest standard and its relationship to First Amendment concerns.²

Broadcast Regulation and the Public Interest

A. The Elusive Public Interest Standard

The public interest standard is the "touchstone of authority" for the Federal Communications Commission ("FCC").³ The standard was first adopted as part of the Radio Act of 1927, which created the Federal Radio Commission ("FRC"). Recognizing the importance of the new medium of communications, the *Washington Post* described the Radio Act as the "most important legislation of the session."⁴ The Act directed the FRC to perform various tasks, including classifying radio stations, describing the type of service to be provided, assigning frequencies, making rules to prevent interference, establishing the power and location of transmitters and establishing coverage areas in a way that maximized the public good. But this did not address the larger question of what constitutes "the public good." The FRC took the position that the Supreme Court eventually would define the public interest case by case. Nevertheless, it outlined the primary attributes of the public interest in its policy statements and licensing decisions.⁵

Congress borrowed the expression "public interest, convenience or necessity" from the field of railroad regulation, and its use in the context of radio regulation was almost accidental. The terms had been used previously in the Transportation Act of 1920.⁶ Senator Clarence C. Dill, who drafted the Communications Act, later recounted that "[a] young man on the Committee staff had worked at the Interstate Commerce Committee for several years . . . and he said, 'Well, how about "public

¹This testimony represents my personal views and should not be attributed to any clients or other parties.

²My testimony draws heavily from Chapter 14 of Zuckman, Corn-Revere, Frieden and Kennedy, *MODERN COMMUNICATIONS LAW* (West Group 1999 & Supp.). In addition, I have attached two more recent articles: *Avast Ye Wasteland: Reflections on America's Most Famous Exercise in "Public Interest" Piracy*, *FEDERAL COMMUNICATIONS LAW JOURNAL* 481 (May 2003) and *The Public Interest, the First Amendment and a Horse's Ass*, 2000 *MICH. ST.-DETROIT COLL. L. REV.* 165 (Spring 2000).

³*FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940).

⁴See Philip T. Rosen, *THE MODERN STENTORS: RADIO BROADCASTING AND THE FEDERAL GOVERNMENT* 106 (Greenwood Press 1980).

⁵*E.g.*, *Great Lakes Broadcasting Co.*, *F.R.C. Ann. Rep.* 32 (1929), *aff'd in part and rev'd in part Great Lakes Broadcasting v. FRC*, 37 F.2d 993, 59 App. D.C. 195 (D.C.Cir.), *cert. dismissed*, 281 U.S. 706, 50 S.Ct. 467, 74 L.Ed. 1129 (1930). The *Great Lakes* decision established programming service as one of the public interest criteria governing radio station renewal. See generally Robert Corn-Revere, *Economics and Media Regulation*, in *MEDIA ECONOMICS THEORY AND PRACTICE* 71-90 (Alexander, Owers & Carveth, eds, 1993).

⁶41 Stat 456 (1920), *codified at* 49 U.S.C. § 10901. For a general discussion see Glen O. Robinson, *The Federal Communications Act: An Essay on Origins and Regulatory Purpose in A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934* (Max Paglin, ed. 1989) pp. 3-24.

interest, convenience and necessity”? That’s what we used there.’ That sounded pretty good, so we decided we would use it, too.”⁷

By shifting the context of the regulatory mandate from railroads to radio, however, its meaning became less certain. Judge Henry Friendly wrote in his classic study *The Federal Administrative Agencies* that the use of the “public convenience and necessity” standard “conveyed a fair degree of meaning” in the Transportation Act “when the issue was whether new or duplicating railroad construction should be authorized or an existing line abandoned.” However, the standard “was almost drained of meaning” in the context of radio regulation “where the issue was almost never the need for broadcasting service but rather who should render it.”⁸

The Communications Act of 1934 uses various formulations of the “public interest” language,⁹ and like the Radio Act before it, does not define the terms.¹⁰ The absence of specific statutory direction has been a distinguishing characteristic of communications regulation. As one contemporary observer wrote regarding the standard as employed in the Radio Act, “[p]ublic interest, convenience or necessity” means about as little as any phrase that the drafters of the Act could have used. . . .¹¹ The Communications Act did not improve the situation. Professor of law (and former FCC Commissioner) Glen O. Robinson has noted the frequent criticism that the public interest standard “is vague to the point of vacuousness, providing neither guidance nor constraint on the agency’s action,” adding that “[w]hat the Act itself does not define, the legislative history does not illuminate.”¹²

Accordingly, “[b]ecause the act did not define what the public interest meant,” former FCC Chairman Newton Minow has written, “Congress, the courts, and the FCC have spent sixty frustrating years struggling to figure it out.”¹³ Two prominent communications lawyers have suggested that “[p]erhaps no single area of communications policy has generated as much scholarly discourse, judicial analysis, and political debate over the course of the last 70 years as has that simple directive to regulate in “the public interest.”¹⁴ It has also generated conflict. Since broadcast regulation began, the meaning of the public interest has been the focal point for the clash of values at the FCC, and at the FRC before it.¹⁵

But there is another eye-of-the-beholder problem embedded in this regulatory puzzle. Not only does the public interest standard provide scant guidance for selecting among particular policy options in a given instance, there is robust debate as to whether it is a “good” standard. At one end of the spectrum, it has been described as the “intellectual knife of collectivism’s sacrificial guillotine.”¹⁶ At the other, it has been said that all of the FCC’s actions would be “without meaning” in the absence of the public interest standard.¹⁷ As a consequence, the FCC has been “a storm cen-

⁷Newton N. Minow and Craig L. LaMay, *ABANDONED IN THE WASTELAND* 4 (Hill and Wang: New York 1995).

⁸Henry Friendly, *THE FEDERAL ADMINISTRATIVE AGENCIES* 54–55 (Harvard University Press 1962). See also Robinson, note 6 *supra* at pp. 14–16.

⁹See, e.g., 47 U.S.C. §§ 201(b), 215(a), 319(c) and 315(a) (“public interest”); §§ 214(a) and 214(c) (“public convenience and necessity”); § 214(d) (“interest of public convenience and necessity”); §§ 307(c), 309(a) and 319(d) (“public interest, convenience and necessity”); § 307(a) (“public convenience, interest or necessity”); §§ 311(b) and 311(c)(3) (“public interest, convenience or necessity”).

¹⁰*Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1429, (D.C.Cir. 1983) (“the [Communications] Act provides virtually no specifics as to the nature of those public obligations inherent in the public interest standard”). Despite the lack of a categorical definition of the public interest, various provisions of the Act operationally define at least part of what Congress intended. For example, the Act directs the FCC to provide, to the extent possible, rapid and efficient communication service, adequate facilities at reasonable charges, provision for national defense and safety of lives and property, and a fair, efficient and equitable distribution of radio service to each of the states and communities.

¹¹Louis Caldwell, *The Standard of Public Interest, Convenience or Necessity as Used in the Radio Act of 1927*, 1 *AIR LAW REV.* 291, 295 (1930).

¹²Robinson, *supra* note 6 at 14.

¹³Minow and LaMay, *supra* note 7 at 5.

¹⁴Erwin G. Krasnow, and Jack Goodman, *The “Public Interest” Standard: The Elusive Search for the Holy Grail*, 50 *FED. COMM.L.J.* 606, 606 (1998).

¹⁵Newton N. Minow, *EQUAL TIME, THE PRIVATE BROADCASTER AND THE PUBLIC INTEREST* 4 (New York: Athenaeum 1964).

¹⁶Ayn Rand, *CAPITALISM: THE UNKNOWN IDEAL* 121–122 (New American Library 1966) (“the ‘public interest’ . . . amounted to a blank check on totalitarian power over the broadcasting industry, granted to whatever bureaucrats happened to be appointed to the Commission”).

¹⁷Newton N. Minow, *Commemorative Messages*, in *A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934* (Max Paglin, ed. 1989) at p. xvi.

ter of criticism from the left and the right.”¹⁸ One thing that all can agree on, however, is that the meaning of the “public interest” has changed over time.

The nature of the public interest has fluctuated in part because of the political outlook of those who administer the law. “At various times in its history the Federal Communications Commission has taken a broad view of its power and responsibility to further what it deemed to be in the public interest” while at others it has promoted “rapid moves toward deregulation.”¹⁹ As former FCC Commissioner Ervin Duggan put it, “successive regimes at the FCC have oscillated wildly between enthusiasm for the public interest standard and distaste for it.”²⁰ While this has led some to criticize the FCC for being overly political, Judge E. Barrett Prettyman of the United States Court of Appeals for the District of Columbia Circuit has described it as being “political in the high sense of that abused term.”²¹ Still, the inherently political nature of the regulatory mandate creates special tensions since “the ‘public interest’ standard necessarily invites reference to First Amendment principles.”²²

The invitation to apply First Amendment principles, however, has done little to clarify the statutory mandate or reduce the Commission’s political mood swings. From the beginning, the public interest standard permitted the government to regulate broadcast content to an undefined degree while simultaneously prohibiting censorship. Section 29 of the Radio Act, and Section 326 of the Communications Act, specifically prohibited “giv[ing] the licensing authority the power of censorship over the radio communications. . . .”²³ At the same time, the FCC promulgated as an early statement of policy that programming would be considered in license renewal decisions, that stations should meet the “tastes, needs and desires of substantial groups among the listening public” as opposed to “propaganda”²⁴ and that operators that failed to meet the Commission’s expectations could lose their licenses.²⁵ The Commission and the courts resolved this evident paradox by concluding that the “application of the regulatory power of Congress in a field within the scope of its legislative authority” is not “a denial of freedom of speech.”²⁶ Similarly, comparing the FCC to a “traffic cop,” the Supreme Court decided that the Act “does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic.”²⁷ What none of the decisions established, however, was how far the cop could go in issuing citations, or whether this power would continue forever.

The meaning of the public interest also varies because of the nature of technology. Congress purposefully left the regulatory standard open, with the details to be filled in by the FCC over time because radio was a new and complicated technology. The FCC’s broad powers were based on the assumption that “Congress could neither foresee nor easily comprehend . . . the highly complex and rapidly expanding nature of communications technology.”²⁸ The Supreme Court described the public interest standard in *FCC v. Pottsville Broadcasting Co.* as “a supple instrument for

¹⁸J Roger Wollenberg, *The FCC as Arbiter of “The Public Interest, Convenience, and Necessity,”* in A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934 (Max Paglin, ed. 1989) p. 77.

¹⁹*Id.* at 77–78.

²⁰Ervin Duggan, *Congressman Tauzin’s Interesting Idea*, BROADCASTING & CABLE, Oct. 20, 1997 at S18.

²¹*Pinellas Broadcasting Co. v. FCC*, 230 F.2d 204, 206 (D.C.Cir. 1956), *cert. denied*, 360 U.S. 1007 (1956) (“Commissions themselves change, underlying philosophies differ, and experience often dictates change. Two diametrically opposite schools of thought in respect to the public welfare may both be rational.”).

²²*BS, Inc. v. Democratic National Committee*, 412 U.S. 94, 122 (1973). See Wollenberg, *supra*, note 18 at 61 (“[I]t seems passing strange that a society traditionally fearful of government should have subjected one of its major communications media to sweeping, vaguely defined administrative powers”).

²³47 U.S.C. §29 (West 1927); 47 U.S.C. §326.

²⁴*Great Lakes Broadcasting Co.*, 3 FRC Ann. Rep. 32.

²⁵See *KFKB Broadcasting Ass’n v. FCC*, 47 F.2d 670, 671 (D.C.Cir. 1931) (self-promoting program the “Medical Question Box” which aired on station licensed to a controversial doctor held to violate the public interest); *Trinity Methodist Church, South v. FCC*, 62 F.2d 850 (D.C.Cir. 1932), *cert. denied*, 288 U.S. 599 (1933) (license renewal denied to radio minister who campaigned against corruption and attacked the Catholic Church, Jews, local law enforcement officers and public officials). Compare *Near v. Minnesota*, 283 U.S. 697 (1931) (injunction against “nuisance publication” that attacked local public officials struck down as prior restraint).

²⁶*Trinity Methodist Church, South*, 62 F.2d at 852.

²⁷*National Broadcasting Co. v. United States*, 319 U.S. 190, 215–216 (1943).

²⁸*National Ass’n of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 638 n.37 (D.C.Cir. 1976).

the exercise of discretion” that is “as concrete as the complicated factors for judgment in such a field of delegated authority permit.”²⁹

At various times the underlying focus on technological issues has been made explicit. For example, in 1983 Congress added a new section to the Communications Act establishing “the policy of the United States to encourage the provision of new technologies and services to the public.”³⁰ The Telecommunications Act of 1996 also placed great emphasis on promoting innovation and technology. Consistent with these statutory goals, the Supreme Court has recognized that “because the broadcast industry is dynamic in terms of technological change[,] solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence.”³¹ Similarly, it had noted in *National Broadcasting Co. v. United States* that “[i]f time and changing circumstances reveal that the ‘public interest’ is not served by application of the regulations, it must be assumed that the Commission will act in accordance with its statutory obligations.”³²

For all of these reasons, in seeking to apply a general statutory mandate, the Commission has revised its substantive public interest requirements over time. In 1941, for example, the Commission decided that broadcast editorials violated the public interest, only to reconsider that policy eight years later.³³ Similarly, in 1945 the Commission withheld renewal of a radio station license until the station agreed to sell time for paid editorials to the United Auto Workers.³⁴ Since then, however, the Commission determined that licensees cannot be forced to sell time to a particular group. This more current view of the public interest was upheld by the Supreme Court.³⁵

B. Regulation of Broadcast Content

1. The Public Interest Standard and the First Amendment Tightrope

Broadcasters historically have been subject to various forms of content regulation under the public interest standard of the Communications Act. The Act imposes certain specific requirements, such as those for educational programming as well as general public interest mandates that are unlike regulations that may be applied to the print media. The Supreme Court upheld this differential level of protection because of spectrum scarcity in *Red Lion Broadcasting Co. v. FCC*.³⁶ At the same time, Congress recognized that broadcasters “are engaged in a vital and independent form of communicative activity”³⁷ and conferred upon licensees “the widest journalistic freedom consistent with their public [duties].”³⁸ For example, Section 326 of the Communications Act prohibits censorship and expressly withholds from government the power to “interfere with the right of free speech by means of radio communication.” This denies to the FCC “the power of censorship” as well as the ability to promulgate any “regulation or condition” that interferes with freedom of speech.³⁹ These policies “were drawn from the First Amendment itself [and] the ‘public interest’ standard necessarily invites reference to First Amendment principles.”⁴⁰ Consequently, the Supreme Court has stressed that “the First Amendment must inform and give shape to the manner in which Congress exercises its regulatory power in this area.”⁴¹

This obvious tension between public interest regulation and traditional First Amendment concepts has been blunted somewhat to the extent the FCC approached broadcast licensees with a certain degree of sensitivity to the competing values at stake. From the beginnings of broadcast regulation, Congress and the FCC (and its predecessor agency, the Federal Radio Commission), appeared to approach the busi-

²⁹ 309 U.S. at 138.

³⁰ 47 U.S.C. § 157.

³¹ *Democratic National Committee*, 412 U.S. at 102.

³² 319 U.S. at 225.

³³ Compare *Mayflower Broadcasting Corp.* 8 F.C.C. 333 (1941) with *Opinion on Editorializing by Broadcasters*, 13 F.C.C. 1246 (1949). See also *Syracuse Peace Council*, 2 FCC Red. 5043 (1987), *aff’d sub nom. Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C.Cir. 1989), *cert. denied*, 493 U.S. 1019 (1990) (fairness doctrine does not serve the public interest); *FCC v. League of Women Voters of California*, 468 U.S. 364 (1984) (ban on editorials by public broadcast stations is unconstitutional).

³⁴ *E.g., United Broadcasting Co.*, 10 F.C.C. 515 (1945).

³⁵ *Democratic National Committee*, 412 U.S. 94 (broadcasters may not be compelled to provide a generalized right of access to discuss controversial issues).

³⁶ 395 U.S. 367 (1969).

³⁷ *League of Women Voters of Cal. v. FCC*, 468 U.S. 364, 378 (1984).

³⁸ *CBS, Inc. v. FCC*, 453 U.S. 367, 395 (1981), (quoting *Democratic National Committee*, 412 U.S. at 110).

³⁹ 47 U.S.C. § 326.

⁴⁰ *CBS, Inc.*, 412 U.S. at 121.

⁴¹ *League of Women Voters of Cal.*, 468 U.S. at 378.

ness of regulation with the understanding that constitutional limitations might prevent too great a reliance on specific programming mandates. One of the bills submitted prior to passage of the Radio Act of 1927 included a provision that would have required stations to comply with programming priorities based on subject matter. However, the provision was eliminated because “it was considered to border on censorship.”⁴² Similarly, the Federal Radio Commission sought to “chart a course between the need of arriving at a workable concept of the public interest in station operation, on the one hand, and the prohibition laid on it by the First Amendment to the Constitution of the United States . . . on the other.”⁴³

In 1960 the FCC emphasized that “[i]n considering the extent of the Commission’s authority in the area of programming it is essential [first] to examine the limitations imposed upon it by the First Amendment to the Constitution and Section 326 of the Communications Act.”⁴⁴ After an extensive analysis of the meaning of the public interest, the FCC found that the required constitutional and statutory balance barred the government from implementing programming requirements that were too specific. It noted:

[S]everal witnesses in this proceeding have advanced persuasive arguments urging us to require licensees to present specific types of programs on the theory that such action would enhance freedom of expression rather than to abridge it. With respect to this proposition we are constrained to point out that the First Amendment forbids governmental interference asserted in aid of free speech, as well as governmental action repressive of it. The protection against abridgment of freedom of speech and press flatly forbids governmental interference, benign or otherwise. The First Amendment while regarding freedom in religion, in speech, in printing and in assembling and petitioning the government for redress of grievances as fundamental and precious to all, seeks only to forbid that Congress should meddle therein.⁴⁵

Such considerations led the Commission to conclude that it could not “condition the grant, denial or revocation of a broadcast license upon its own subjective determination of what is or is not a good program.”⁴⁶ To do so, the Commission concluded, would “lay a forbidden burden upon the exercise of liberty protected by the Constitution.”⁴⁷ In order to maintain a balance between a free competitive broadcast system, on the one-hand, and the requirements of the public interest standard on the other, the Commission found that “as a practical matter, let alone a legal matter, [its role] cannot be one of program dictation or program supervision.”⁴⁸

Over the years the FCC has attempted to balance the constitutional imperative of the First Amendment with the public interest aspirations of the Communications Act. It has found that while it may “inquire of licensees what they have done to determine the needs of a community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.”⁴⁹ In particular, public interest “standards or guidelines should in no sense constitute a rigid mold for station performance, nor should they be considered as a Commission formula for broadcasts in the public interest.”⁵⁰ The Commission emphasized that it did “not intend to guide the licensee along the path of programming.” On the contrary, “the licensee must find his own path with the guidance of those whom his signal is to serve.”⁵¹

Recognizing this delicate balance, courts have noted that the Commission must “walk a tightrope” to preserve the First Amendment values written into the Radio Act and its successor, the Communications Act.⁵² The Supreme Court has described this balancing act as “a task of great delicacy and difficulty,” and stressed that “we would [not] hesitate to invoke the Constitution should we determine that the [FCC] has not fulfilled with appropriate sensitivity to the interest of free expres-

⁴² See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 597 (1981).

⁴³ *Report and Statement of Policy re: Commission En Banc Programming Inquiry*, 44 F.C.C. 2303, 2313 (1960).

⁴⁴ *Id.* at 2306.

⁴⁵ *Id.* at 2308 (citation omitted).

⁴⁶ *Id.*

⁴⁷ *Id.* quoting *Cantwell v. Connecticut*, 310 U.S. 296, 307, 60 S.Ct. 900, 906, 84 L.Ed. 1213 (1940).

⁴⁸ *Id.* at 2309.

⁴⁹ *Id.* at 2308.

⁵⁰ *Id.* at 2313.

⁵¹ *Id.* at 2316.

⁵² *Democratic National Committee*, 412 U.S. at 117; *Banzhaf v. FCC*, 405 F.2d 1082, 1095 (D.C.Cir.1968), *cert denied sub. nom. Tobacco Institute, Inc. v. FCC*, 396 U.S. 342 (1969).

sion.”⁵³ The Court found that the Communications Act was designed “to maintain—no matter how difficult the task—essentially private broadcast journalism.”⁵⁴ For that reason, licensees are to be held “only broadly accountable to public interest standards.”⁵⁵ Thus, in *Turner Broadcasting System, Inc. v. FCC*, the Supreme Court quoted the 1960 *En Banc Policy Statement*, and reiterated that “although ‘the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.’”⁵⁶

Specific program requirements generally are considered the most constitutionally suspect among the requirements imposed by broadcasting regulations. The United States Court of Appeals for the District of Columbia Circuit has noted that the “power to specify material which the public interest requires or forbids to be broadcast . . . carries the seeds of the general authority to censor denied by the Communications Act and the First Amendment alike.”⁵⁷ Public interest requirements relating to specific program content create a “high-risk that such rulings will reflect the Commission’s selection among tastes, opinions, and value judgments, rather than a recognizable public interest,” and “must be closely scrutinized lest they carry the Commission too far in the direction of the forbidden censorship.”⁵⁸

In those instances in which Congress has adopted affirmative obligations—such as the requirement of Section 312(a)(7) of the Communications Act that broadcast licensees provide “reasonable” access to Federal political candidates—it has stressed that the requirement must be implemented “on an individualized basis” and not on the basis of “across-the-board policies.”⁵⁹ The Commission has never attempted to specify what amount of candidate access is “reasonable” and the Supreme Court’s First Amendment analysis of the law assumed that the broadcaster’s editorial discretion would be accorded appropriate deference.⁶⁰

In *Turner I*, the Supreme Court emphasized “the minimal extent” that the government may influence the programming provided by broadcast stations. The Court noted that “the FCC’s oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations.”⁶¹ Similarly, the United States Court of Appeals for the District of Columbia Circuit expressly avoided approving “a more active role by the FCC in oversight of programming” on educational stations because it would “threaten to upset the constitutional balance struck in *CBS v. DNC*.”⁶² The challenge facing broadcast content regulation is the need to reconcile public interest mandates with constitutional commands and statutory restrictions.

2. Affirmative Programming Mandates

As a general matter, broadcast licensees have a public interest obligation to provide programming that is responsive to the needs of the community of license.⁶³ To ensure compliance, the FCC requires radio and television broadcasters to file quarterly reports listing the programs that have provided the station’s most significant treatment of community issues during the proceeding three month period. This list must include a brief narrative statement describing what issues were given significant treatment and which programs addressed the particular issues. The report must list the air date, day part, as well as program length and title of the programs.⁶⁴ The station’s overall performance in serving the community is evaluated at license renewal time.

⁵³ *Democratic National Committee*, 412 U.S. at 102.

⁵⁴ *Id.* at 120.

⁵⁵ *Id.*

⁵⁶ 512 U.S. 622, 650 (1994) (“*Turner I*”) (citation omitted).

⁵⁷ *Banzhaf*, 405 F.2d at 1095.

⁵⁸ *Id.* at 1096. See also *Public Interest Research Group v. FCC*, 522 F.2d 1060, 1067 (1st Cir.1975), cert. denied, 424 U.S. 965 (1976) (“[we] have doubts as to the wisdom of mandating . . . government intervention in the programming and advertising decisions of private broadcasters”); *Anti-Defamation League of B’nai B’rith v. FCC*, 403 F.2d 169, 172 (D.C. Cir. 1968) (“the First Amendment demands that [the FCC] proceed cautiously [in reviewing programming content] and Congress . . . limited the Commission’s power in this area”).

⁵⁹ *CBS, Inc.*, 453 U.S. at 387.

⁶⁰ *Id.* at 396–397.

⁶¹ 512 U.S. 622, 650–652.

⁶² *Accuracy in, Media v. FCC*, 521 F.2d 288, 296–297 (D.C. Cir. 1975). See also *Community-Service Broadcasting of Mid-America v. FCC*, 593 F.2d 1102, 1115 (D.C. Cir. 1978) (*en banc*) (FCC and courts have generally eschewed “program-by-program review” schemes because of constitutional dangers).

⁶³ 47 C.F.R. §§ 73.3526(e)(11)–(12), 73.3527(e)(8) (2002).

⁶⁴ *Id.*

The FCC previously enforced such programming requirements in a far more detailed way. In its 1960 *En Banc Programming Inquiry*, for example, the Commission listed 14 categories of programs generally considered necessary to serve the public interest, including programs that provided an opportunity for local self-expression, programs that used local talent, children's programs, religious programs, educational programs, public affairs programs, editorials, political broadcasts, agricultural programs, news, weather and market reports, sports programs, service to minority groups and (finally) entertainment programming.⁶⁵ Although the Commission did not prescribe the transmission of particular programs, noting that the specified categories should not be considered "a rigid mold of fixed formula for station operation," it nevertheless concluded that the listed programming types, provided in some reasonable mix, provided evidence that a licensee was operating in the public interest.⁶⁶ This was enforced through the use of formal ascertainment procedures, which required applicants for broadcast licenses to interview community leaders in 19 specified categories ranging from agriculture to religion.⁶⁷

In 1981 the FCC eliminated its rules and policies that required radio stations to keep program logs and conduct ascertainment of community problems, imposing non-entertainment programming requirements and limiting the amount of commercial time.⁶⁸ The FCC similarly deregulated television, eliminating ascertainment and other requirements in 1984.⁶⁹ The Commission also simplified the renewal process, eliminating the detailed program-related questions that had accompanied the ascertainment process.⁷⁰ Generally, the FCC moved away from examining the programming formats chosen by broadcast stations, leaving such decisions to marketplace forces.⁷¹

C. *The Prospect for Expanded Public Interest Mandates*

Whether or not Congress or the FCC at the present time could constitutionally adopt more detailed content requirements under the public interest standard is not an easy question to answer. As a threshold matter, it is difficult to assess the potential constitutionality of content regulations in the absence of a concrete proposal. Although the prevailing standard for broadcast regulation articulated in *Red Lion* has permitted the government to regulate broadcast content more intensively than other media in the past, the courts have never defined how far this power might extend. Additionally, it has been thirty-four years since the Supreme Court decided *Red Lion*, a case based on 'the present state of commercially acceptable technology' as of 1969.⁷²

Since then, both Congress and the FCC have found that the media marketplace has undergone vast changes. For example, the legislative history to the Telecommunications Act of 1996 suggested that the historical justifications for the FCC's regulation of broadcasting require reconsideration. The Senate Report noted that "[c]hanges in technology and consumer preferences have made the 1934 [Communications] Act a historical anachronism." It explained that "the [Communications] Act was not prepared to handle the growth of cable television" and that "[t]he growth of cable programming has raised questions about the rules that govern broadcasters" among others.⁷³ The House of Representatives' legislative findings were even more direct. The House Commerce Committee pointed out that the audio

⁶⁵ *En Banc Programming Inquiry*, 44 F.C.C. at 2314.

⁶⁶ *Id.*

⁶⁷ See *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 F.C.C.2d 650 (1971).

⁶⁸ *Deregulation of Radio*, 84 F.C.C.2d 968 (1981), *af'd. in part and remanded in part*, *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983).

⁶⁹ *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Requirements for Commercial Television Stations*, 98 F.C.C.2d 1078 (1984); *Revisions of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, 96 F.C.C.2d 74 (1984). See *Action for Children's Television v. FCC*, 821 F.2d 741 (D.C. Cir. 1987) (remanding FCC decision to eliminate commercial guidelines for children's programming).

⁷⁰ See *Black Citizens for a Fair Media v. FCC*, 719 F.2d 407 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1255 (1984).

⁷¹ See *FCC v. WNCN Listeners Guild*, 450 U.S. at 604.

⁷² *News America Publishing, Inc. v. FCC*, 844 F.2d 800, 811 (D.C. Cir. 1988), quoting *Red Lion*, 395 U.S. at 388. See *Meredith Corp. v. FCC*, 809 F.2d 863, 867 (D.C. Cir. 1987) ("the Court reemphasized that the rationale of *Red Lion* is not immutable"). See also *Banzhaf*, 405 F.2d at 1100 ("some venerable FCC policies cannot withstand constitutional scrutiny in the light of contemporary understanding of the First Amendment and the modern proliferation of broadcasting outlets").

⁷³ Telecommunications Competition and Deregulation Act of 1995, S. Rpt. 104-23, 104th Cong. 1st Sess. 2-3 (Mar. 30, 1995).

and video marketplace has undergone significant changes over the past 50 years “and the scarcity rationale for government regulation no longer applies.”⁷⁴

The FCC has reached similar conclusions over the years. In the mid-1980s, for example, the Commission “found that the ‘scarcity rationale,’ which historically justified content regulation of broadcasting . . . is no longer valid.”⁷⁵ Most recently, in complying with the congressional mandate to conduct a biennial review of broadcast regulations, the FCC once again found that the media landscape has been transformed.⁷⁶ It concluded that “the modern media marketplace is far different than just a decade ago,” finding that traditional media “have greatly evolved” and “new modes of media have transformed the landscape, providing more choice, greater flexibility, and more control than at any other time in history.”⁷⁷ People coming of age in this environment enjoy an “extraordinary level of abundance in today’s media marketplace” and thus “have come to expect immediate and continuous access to news, information, and entertainment.”⁷⁸ Of course, if Congress or the FCC chose to adopt new public interest requirements, they would be expected to adopt new legislative or regulatory findings. But any new rules regulating broadcast content would necessarily implicate the First Amendment, and reviewing courts would not be required to defer to the policymakers’ findings.⁷⁹

In this context, it is not easy to predict how the Supreme Court might treat new content regulations. It has been a long time since the Court has directly confronted the constitutional status of broadcasting, and where the issue has come up in dictum, its endorsement of *Red Lion* has been lukewarm at best. In *Turner I*, for example, the Court rejected the government’s bid to extend the principles of *Red Lion* to the regulation of cable television. After noting the Commission’s “minimal” authority over broadcast content, the Court pointed out that “the rationale for applying a less rigorous standard of First Amendment scrutiny to broadcast regulation, whatever its validity in the cases elaborating it, does not apply in the context of cable television.”⁸⁰

Lower court decisions in this area have reached mixed results. The case that provides the strongest support for some type of expanded public interest requirement is *Time Warner Entertainment Co. v. FCC*, which used a straightforward application of *Red Lion* to uphold a 1992 Cable Act provision requiring Direct Broadcast Satellite (“DBS”) operators to set aside four to seven percent of their channel capacity for “noncommercial programming of an educational or informational nature.”⁸¹ The panel reasoned that the provision “should be analyzed under the same relaxed standard of scrutiny that the court has applied to the traditional broadcast media.”⁸²

However, a deadlocked court of appeals denied rehearing in that case, and five judges endorsed a dissenting statement that casts a shadow over the panel’s strong endorsement of *Red Lion*.⁸³ The five dissenters pointed out that “[e]ven in its heartland application, *Red Lion* has been the subject of intense criticism,” noting that the assumptions underlying spectrum scarcity are suspect in light of the scarce nature of all economic goods.⁸⁴ Judge Williams noted that the *Red Lion* Court suggested that the reason for such relaxed treatment would vanish along with the end of scarcity, and pointed out that, even in its nascent state, “[t]he new DBS technology already offers more channel capacity than the cable industry, and far more than tradi-

⁷⁴ Communications Act of 1995, H. Rpt. 104–204, 104th Cong. 1st Sess. 54 (July 24, 1995).

⁷⁵ *Meredith Corp.*, 809 F.2d at 867, citing *Report Concerning General Fairness Doctrine Obligations of Broadcast Licensees*, 102 F.C.C.2d 143 (1985) (“1985 Fairness Doctrine Report”). See *Syracuse Peace Council*, 867 F.2d at 660–666 (discussing 1985 Fairness Doctrine Report and upholding FCC’s decision to repeal the fairness doctrine).

⁷⁶ 2002 Biennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, FCC 03–127, ¶ 4 (released July 2, 2003) (“Biennial Regulatory Review”).

⁷⁷ *Id.* at ¶¶ 86–87.

⁷⁸ *Id.* ¶ 88.

⁷⁹ *Playboy Entertainment Group*, 529 U.S. at 817–818; *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115, 129 (1989) (“Deference to a legislative finding cannot limit judicial inquiry when First Amendment rights are at stake.”) (citation omitted).

⁸⁰ *Turner I*, 512 U.S. at 637 (emphasis added).

⁸¹ 93 F.3d 957 (D.C. Cir. 1996) (upholding 47 U.S.C. § 335(b)(1) against a First Amendment challenge).

⁸² *Id.* at 975.

⁸³ Judge Steven Williams, joined by Judges Edwards, Silberman, Ginsburg, and Sentelle, sharply questioned the central premises of extending the constitutional rationale of broadcast regulation. *Time Warner Entertainment Company v. FCC*, 105 F.3d 723 (D.C. Cir.) (Williams, J., dissenting).

⁸⁴ *Id.* at 724 nn. 1–2.

tional broadcasting.”⁸⁵ The dissent further reasoned that the DBS set-aside requirement for “educational” or “informational” programming is content-based, and that “as a simple government regulation of content, the DBS requirement would have to fall.”⁸⁶ In light of the 55 deadlock among the D.C. Circuit judges, the *Time Warner* case represents more of a hung jury than it does a constitutional mandate for new content regulations.⁸⁷

Other cases further suggest that reviewing courts will closely scrutinize any new regulation of broadcast content. In *MPAA v. FCC*, the D.C. Circuit vacated the Commission’s video description rules.⁸⁸ Although the court analyzed only the question of whether the FCC had been given statutory authority to adopt the rules, it explained that it interpreted the Commission’s powers narrowly because any regulation of programming content “invariably raise[s] First Amendment issues.”⁸⁹ It expressed no opinion on the constitutional issues, but the thrust of the holding was that the FCC’s general public interest authority over programming is far less expansive than was previously assumed.

The same conclusion follows from the D.C. Circuit’s decision in *RTNDA v. FCC*, where the court ordered the Commission to repeal the personal attack and political editorial rules.⁹⁰ There, the court held that the FCC had the burden to justify rules that “interfere with editorial judgment of professional journalists and entangle the government in day-to-day operations of the media.”⁹¹ Although the court did not decide whether such rules are constitutional or would serve the public interest, it was unwilling to allow the FCC to continue to enforce the content restrictions (that already had been subject to protracted review) while the Commission assessed their validity.

Conclusion

The First Amendment and the public interest standard require Congress and the FCC to “walk a tightrope” between the enforceable public obligations of broadcast licensees and the Constitution’s command that “Congress shall make no law . . . abridging the freedom of speech, or of the press. . . .” That task is made more difficult by rapidly changing technology that alters the assumptions upon which previous theories of regulation were grounded. It is especially problematic since the regulations at issue uniquely apply to only one medium—broadcasting—that is less and less unique in an age of convergence. Accordingly, it would be prudent for policymakers to proceed cautiously in this area.

⁸⁵*Id.* at 725.

⁸⁶*Id.* at 726.

⁸⁷Other lower courts have declined to apply the *Time Warner* panel’s analysis of *Red Lion*. See *Satellite Broadcasting & Communications Ass’n. of America v. FCC*, 146 F. Supp. 2d 803, 823 (E.D. Va. 2001) (rejecting *Time Warner* analysis and applying intermediate scrutiny) (“numerous courts have questioned and/or declined to extend the *Red Lion* rationale”).

⁸⁸309 F.3d 796 (D.C. Cir. 2002).

⁸⁹*Id.* at 805.

⁹⁰*Radio-Television News Directors Assn. v. FCC*, 229 F.3d 269 (D.C. Cir. 2000) (per curiam).

⁹¹*Id.* at 270 (it is “incumbent upon the Commission to ‘explain why the public interest would benefit from rules that raise these policy and constitutional doubts’) (citation omitted).

FEDERAL COMMUNICATIONS LAW JOURNAL

AVAST YE WASTELAND: REFLECTIONS ON
AMERICA'S MOST FAMOUS EXERCISE IN
"PUBLIC INTEREST" PIRACY

ROBERT CORN-REVERE

Reprinted from the
Federal Communications Law Journal
© 2003 by the Federal Communications Law Journal

Volume 55

May 2003

Number 3

Published by
Indiana University School of Law—Bloomington
Federal Communications Bar Association

Avast Ye Wasteland: Reflections on America's Most Famous Exercise in "Public Interest" Piracy

Robert Corn-Revere*

You have to admire Newton Minow. You really do. On May 9, 1961, JFK's youthful FCC Chairman strode confidently to the podium at the National Association of Broadcasters Convention and delivered a stinging rebuke of his hosts' business. Right there, in the very Belly of the Beast, Minow branded television with a label that still resonates after the passage of four decades: TV, he said, is a "vast wasteland" of "game shows, violence, audience participation shows, formula comedies about totally unbelievable families, blood and thunder, mayhem, violence, sadism, murder, Western badmen, Western good men, private eyes, gangsters, more violence and cartoons."¹

The move was bold, the speech pithy, and in every important respect, wrong. The television marketplace at the time was neither vast nor as much of a wasteland as the Chairman claimed. More importantly, the speech itself was an exercise in public interest piracy—a naked effort to coerce broadcasters indirectly into doing what the government could not compel directly. It is the kind of speech that puts the bully in the bully pulpit.

The message itself was pretty unremarkable if you don't think about who delivered it, and where. After all, you don't have to be too smart to

* Robert Corn-Revere is a partner at Davis Wright Tremaine LLP in Washington, D.C. He previously served as Chief Counsel to interim Chairman James H. Quello at the Federal Communications Commission.

1. Newton N. Minow, Television and the Public Interest, Speech Before the National Association of Broadcasters (May 9, 1961) [hereinafter Vast Wasteland Speech].

know that TV can be dumb. As the popular euphemisms of the time made clear—like “idiot box” and “boob tube”—the ideas in the speech were not exactly original. Noted personages of the day also had made the same point: Frank Lloyd Wright called TV “chewing gum for the eyes”;² Ernie Kovacs said that television is called a medium “because it is neither rare nor well done”;³ and David Frost said that television is an invention “that permits you to be entertained in your living room by people you wouldn’t have in your home.”⁴

But the message carries far more weight when delivered not by an architect, a comic, or a journalist, but by the Chairman of the agency that grants, and, more to the point, denies broadcast licenses. The expression itself—“vast wasteland”—is positively Churchillian. Like “Iron Curtain” it is rich with imagery and can fit on a bumper sticker. And it is absolutely breathtaking to combine this memorable turn of phrase with the masterful stroke of delivering such an unwelcome message at the annual celebration of commercial broadcasting.

The “Vast Wasteland” speech, as it has come to be known, is nothing less than the regulator’s manifesto. For those who think the government should have a greater role in controlling what we see on TV and hear on the radio, the speech was the background theme for the journey to *Red Lion Broadcasting Co. v. FCC*.⁵ Of course, Minow disclaimed any intent to engage in censorship: “I am in Washington to help broadcasting, not to harm it; to strengthen it, not to weaken it; to reward it, not punish it; to encourage it, not threaten it; to stimulate it, not censor it.”⁶ In this respect, perhaps the speech should be considered Shakespearian (“I come to bury Caesar, not to praise him.”)⁷

But this was hardly a subtle exercise of regulation by raised eyebrow, either. The Chairman told the broadcasters that their obligation to serve the public trust was imposed by law, and that they should not expect automatic renewal of their licenses if their programming failed to improve. “I say to you now: renewal will not be *pro forma* in the future. There is nothing

2. THE PORTABLE CURMUDGEON 267 (Jon Winokur ed., 1987).

3. *Id.* at 268.

4. *Id.* at 269.

5. 395 U.S. 367 (1969). It is well beyond the limited scope of this Essay to critique the “public trustee” doctrine of broadcast regulation. For a more thorough treatment of the subject, see MEDIA INSTITUTE, RATIONALES & RATIONALIZATIONS: REGULATING THE ELECTRONIC MEDIA (Robert Corn-Revere ed., 1997).

6. Vast Wasteland Speech, *supra* note 1.

7. WILLIAM SHAKESPEARE, THE LIFE AND DEATH OF JULIUS CAESAR, act 3, sc. 2 (Marc Antony’s funeral oration).

permanent or sacred about a broadcast license.⁸ He also scoffed at those who asked the Federal Communications Commission (“FCC” or “Commission”) to establish clear standards to qualify for license renewal. “My answer is: Why should you want to know how close you can come to the edge of the cliff?”⁹

In this regard, Minow was not suggesting that he wanted to impose his personal programming preferences on broadcasters. Heavens, no. That would be censorship, which, he said, “strikes at the tap root of our free society.”¹⁰ Rather, the Chairman said he wanted to hold public hearings on license renewals to determine “whether the community which each broadcaster serves believes he has been serving the public interest.”¹¹ In such hearings, Minow said he wanted “the people who own the air and the homes that television enters to tell you and the FCC what’s been going on”; that it would be up to the people “to make notes, document cases, tell us the facts.”¹²

What could be more democratic than that? Well, people’s actual viewing preferences, for one thing. However, what interests the public has never been of much interest to “public interest” regulators. As the Chairman told the assembled broadcasters, “[y]ou will get no argument from me if you say that, given a choice between a Western and a symphony, more people will watch the Western.” “But,” he added, “your obligations are not satisfied if you look only to popularity as a test of what to broadcast.” Accordingly, he warned, “[i]t is not enough to cater to the nation’s whims—you must also serve the nation’s needs.”¹³

This is the enduring dilemma that confronts the “public interest” regulator. In order to avoid the well-founded charge that governmental mandates about programming quality would violate basic First Amendment principles, he must claim that he is not imposing his own tastes, but is merely regulating on behalf of “the people.” The problem with this argument is that the facts refuse to cooperate. In reality, people’s choices are so, well, *disappointing* to the refined mind of the regulator. As theatre critic Clive Barnes put it, “[t]elevision is the first truly democratic culture—the first culture available to everybody and entirely governed by what the people want. The most terrifying thing is what the people want.”¹⁴

8. Vast Wasteland Speech, *supra* note 1.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. THE PORTABLE CURMUDGEON, *supra* note 2, at 269.

Writer Paddy Chayefsky was even more blunt: "Television is democracy at its ugliest."¹⁵ Accordingly, the theory goes, it is the regulator's job to ensure that broadcasters rise above mere public "whims" and offer programs that meet the people's "needs."

So, rather than determining the public interest by asking what shows people actually want to watch, the determined regulator seeks to divine what the public *should* see through administrative hearings in which the loudest pressure groups set the agenda. This may not represent the direct imposition of "bureaucratic tastes," which Minow eschewed, but it is awfully far removed from people's actual preferences. In such a scheme, the public interest is determined by governmental selection from among the various views presented at public hearings and in written comments. While it is true that most license renewals have never lead to hearings, the FCC's public interest determinations nevertheless are institutionalized in the form of administrative decisions and rules that apply to all broadcasters.

Come to think of it, this pretty much *is* the imposition of "bureaucratic tastes." To the bureaucratic mind, the public interest should not be gauged by the desires of those rubes who watch TV, but by the views of an enlightened "public" that cares about television, but would not be caught dead watching it. Or, at least, wouldn't want to admit watching, much less liking it. No FCC commissioner would be so rude as to say these things, but the true "public interest" regulator certainly believes them. One giveaway is the lack of any discernable difference between the personal tastes of the typical reform-minded FCC commissioner and those of the idealized viewers he or she claims to represent.

THAT WAS THEN, THIS IS NOW?

It is tempting to think of the "Vast Wasteland" speech as simply a period piece that belongs to an era when there were only three television networks and the broadcast day began at 6 A.M. and ended at midnight. But as this collection of Essays proves, the continuing appeal of Minow's words transcends the limited media landscape of the early 1960s. Indeed, the main attraction of the speech has very little to do with facts and everything to do with mindset. Its attitude is, if television is bad, it is the government's job to make it better. Or, as Chairman Minow suggested, licensees have an obligation to make it better . . . or else.

Given this premise, perhaps a look at the facts might be instructive. A network executive who accepted Minow's challenge to "sit down in front of your television set when your station goes on the air . . . and keep your

15. *Id.* at 270.

eyes glued to that set until the station signs off¹⁶ would find a quite different picture than the one sketched in the "Vast Wasteland" speech. On May 14, 1961, five days after the speech, the viewer would have to choose between *Washington Conversation* on WCBS-TV, featuring none other than FCC Chairman Newton Minow, and *Meet the Professor* on WABC-TV, in which the former President of Sarah Lawrence College discussed American education. The third (and only other choice) for that time period was *Oral Roberts* on WOR-TV.¹⁷

Just on that May 14 alone, the television viewer in New York would have had the following programming choices during the rest of the day in addition to the three just mentioned: *Let's Look at Congress*, with Senator Kenneth B. Keating and guest (WOR-TV); *Camera Three*, featuring Mozart's comic opera *The Impresario* (WCBS-TV); *Accent*, with a discussion among architects (WCBS-TV); *Dorothy Gordon's Youth Forums*, discussing whether the Peace Corps will serve a purpose (WNBC-TV); *UN International Zone*, a tour of the United Nations headquarters with Alistair Cooke (WNBC-TV); *Directions '61*, discussing rare books and manuscripts from the vaults of the Jewish Theological Seminary of America (WABC-TV); *Catholic Hour*, exploring man's dignity in the face of death as described in modern dramas (WNBC-TV); *Direct Line*, a discussion with the New York State Housing Commissioner (WNBC-TV); *Congressional Conference*, with Representative John V. Lindsay (WOR-TV); *Youth Wants to Know*, with Senator Henry Jackson of Washington (WABC-TV); *WCBS-TV Views the Press*, with Charles Collingwood (WCBS-TV); *Open Mind*, with reflections on the social, political, and economic changes of the past fifty years by theologian Dr. Reinhold Niebuhr, Socialist Party leader Norman Thomas, NAACP counsel Thurgood Marshall and Professor Eric F. Goldman (WNBC-TV); *Eichmann on Trial*, featuring highlights of the week's war crimes tribunal sessions (WABC-TV); *American Musical Theatre*, with Alan J. Lerner discussing his career (WCBS-TV); *Issues and Answers*, with Treasury Secretary Douglas Dillon (WABC-TV); *College Bowl*, pitting Johns Hopkins University against Montana State University (WCBS-TV); *Chet Huntley Reporting*, showing a Cuban propaganda newsreel about the Bay of Pigs invasion (WNBC-TV); *Meet the Press*, an interview with Dr. Jonas Salk, inventor of the polio vaccine (WNBC-TV); *Recital Hall*, featuring baritone Theodor Uppman (WNBC-TV); *On Call to a Nation*, reporting on socialized medicine in Great Britain (WNTA); *A Way of Thinking*, with Dr.

16. Vast Wasteland Speech, *supra* note 1.

17. *Television Programs: Sunday, Monday, Tuesday*, N.Y. TIMES, May 14, 1961, at X14-X16.

Albert Burke (WNEW-TV); *Between the Lines*, discussing the "parochial school question" (WNTA); *Open End*, exploring the "Pro and Con of the New Frontier" (WNTA); and *Winston Churchill* (WABC-TV).¹⁸

Admittedly, these programming choices were on a Sunday, the day of the week when most issues-oriented and educational programming was clustered. Yet during the week, when entertainment predominated, the commercial networks also presented news reports and commentary, as well as special reports. WABC, for example, broadcast a report on the Adolph Eichmann war-crimes trial each evening just before the 7 P.M. newscast. While some well-meaning FCC commissioners no doubt would have preferred that every day's programming schedule be more like the one on Sunday, this was no "wasteland." Nor was it vast. In 1961, the largest media marketplace in the world—New York—had seven television stations, only five of which were full time (which means they signed off at 1 or 2 A.M. with the national anthem before beginning the next broadcast day at 6 A.M.).¹⁹ At that time, all of New York City's television stations combined presented fewer programs in a given week than there are different channels in 2003.

Today, the television marketplace is indeed vast, and it is no longer possible to complain about a lack of high-quality alternatives. In a study that encompassed both broadcast and multi-channel television sources, Professor Eli Noam of Columbia University found that "public interest" programming on commercial television is both abundant and growing.²⁰ Defining such programs as those that "go beyond pure entertainment and provide a cultural, civic, informational or educational function,"²¹ he found that the share of public interest programming hours compared to total program hours grew from 28.2% to 43% between 1969 and 1997.²²

Professor Noam identified a significant number of cable television networks that provide what he considered to be public interest programming, including A&E Television, Bravo, C-SPAN, CNN, CNBC, Court TV, Disney Channel, Discovery Channel, The History Channel, the FOX News Channel, The Learning Channel, The Weather Channel, Mind

18. *Id.*

19. *Id.*

20. Eli M. Noam, *Public-Interest Programming by American Commercial Television*, in *PUBLIC TELEVISION IN AMERICA* 145-176 (Eli M. Noam & Jens Waltermann eds., 1998). The study examined the growth of public-interest programming available on cable television systems in New York City between 1969 and 1997. See *Role of Commercial TV in Public Interest Programming Hotly Debated*, *COMM. DAILY* (Warren Publ'g, Washington, D.C.), Mar. 9, 1998, at 6.

21. Noam, *supra* note 20, at 146.

22. *Id.* at 169.

Extension University and others, including regional news channels. He also identified several channels, such as Black Entertainment Television, that address the interests of ethnic minorities. In total, the number of channels found to provide "primarily public-interest programming" was considered to be quite large, representing almost half of the available cable channels.²³ Since that study, even more such channels have been launched, including National Geographic Channel, History Channel International, Discovery Civilization Channel, The Science Channel, Discovery Kids, Biography Channel, and others.

Professor Noam also attempted to quantify the growth rate of "public interest" programming availability, and found that the annual growth rates for various programming categories were "extraordinarily high," such as 12.86% for news programs, 13% for documentary/magazine programs, 12.4% for health/medical programs, 12.7% for programs on science/nature, 8.8% for cultural programs, 7.62% for quality children's programming, 9.41% for programs devoted to education, 8.8% for religious programming, and 9.48% for foreign language programming.²⁴

The market for public-interest programming is not limited to cable television. Professor Noam also found that the news coverage of traditional local broadcasters "has expanded considerably in terms of hours," and that serious news magazine programs have proliferated on the broadcast networks.²⁵ A study by Belo Corp., which in 2000 owned eighteen full-service television stations, found that the amount of time devoted by the four major broadcast network affiliates to news, public affairs, and educational programming in a sample of its markets ranged from 24.5% to 31.2% of the total broadcast schedule (excluding commercial time during those programs).²⁶

23. *Id.* at 169-70.

24. *Id.* at 168-69.

25. *Id.* at 170-71. He acknowledged that increased competition had led some news magazines to focus on more sensationalist subjects, particularly among syndicated "tabloid" shows, but found that this "pales in comparison" to the growth of serious news magazine programs on the networks. *Id.* at 171.

26. See Public Interest Obligations of TV Brdcast. Licensees, MM Dkt. No. 99-360 (Comments of A.H. Belo Corp., Mar. 27, 2002), available at <http://www.fcc.gov/cgb/ecfs>. The study measured broadcast time, discounted for commercials, devoted to newscasts, informational programs (exclusive of tabloid and talk shows), public affairs, educational, and religious programs in various markets during selected weeks in the period from November 1997 through January 1998. Belo calculated the time allocated to such programming for all network affiliates as a percentage of total programming: first including, then excluding, commercial time in the total. Those numbers follow: Dallas-Ft. Worth (41.0%, 31.2%); Houston (34.7%, 26.4%); Seattle-Tacoma (34.5%, 26.2%); Hampton-Norfolk, VA (32.7%, 24.8%); Boise (32.2%, 24.5%); and Phoenix (34.4%, 26.1%). *Id.* at app. A.

None of this makes a difference to the determined “public interest” regulator, however, for no amount of improvement will ever be enough to free the medium from the need for regulation. This point was made most forcefully by Newton Minow himself in a 1991 speech commemorating the thirtieth anniversary of the “Vast Wasteland” speech. Noting the advent of new programming services and VCRs, Minow said:

[Y]ou can watch a program when you want to see it, not just when the broadcaster puts it on the schedule. If you are a sports fan, a news junkie, a stock market follower, a rock music devotee, a person who speaks Spanish, a nostalgic old-movie buff, a congressional-hearing observer, a weather watcher—you now have your own choice.²⁷

Indeed, he noted that “[t]he FCC objective in the early ‘60s to expand choice has been fulfilled—beyond all expectations.”²⁸

Not that the FCC actually had anything to do with this. The current transition to digital television notwithstanding, the Commission has very little role in the world of consumer electronics, and deserves no credit whatsoever for the VCR’s development and popularity. Nor can the government claim that “its goals” were met by the proliferation of hundreds of cable channels. The cable industry grew and succeeded not because, but in spite, of FCC intervention. And this medium made possible all these choices in the total absence of the type of “public interest” regulation over programming that Minow advocates.

But no amount of improvement will ever be sufficient to blunt the zeal of the determined regulator. As Minow noted in his 1991 speech, “to many of us, this enlarged choice is not enough to satisfy the public interest.”²⁹ He rejected the “ideological view that the marketplace will regulate itself and that the television marketplace will give us perfection.”³⁰ He challenged “the men and women in television . . . to make it a leading institution in American life rather than merely a reactive mirror of the lowest common denominator in the marketplace.”³¹ In this view of the world, the developments of the past decade, including satellite television, DVDs, the Internet, and personal video recorders will have made no difference, either. In the mind of the regulator, there will always be a reason to regulate.

27. Newton N. Minow, *How Vast the Wasteland Now?*, Address at the Gannett Foundation Media Center, Columbia University (May 9, 1991).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

WHOSE WASTELAND?

What we are left with is an “eye of the beholder” problem. It appears that television will always be a wasteland from someone’s perspective. In 1961, Newton Minow called it a wasteland because the choices were few and, in his view, of insufficient quality. In 2003, the choices are plentiful—too plentiful, according to some, because they include so many “unwholesome” programs. Michael J. Copps, the latest FCC Commissioner to make stamping out broadcast “indecent” a principal priority, has argued that the public interest and responsible broadcasting require broadcasters to offer “programming that appeals to something other than the lowest common denominator that some advertiser can find to exploit.”³²

In other words, the problem with television in 2003 is precisely the same as in 1961—broadcasters are giving the people what they want. Or, as Professors Thomas Krattenmaker and Lucas A. Powe put it, “viewers . . . watch or read what critics and regulators like with insufficient frequency and . . . enjoy too often what commissioners and columnists abhor.”³³ The issue is not, and has never been, whether there is too little “good” programming on TV or too much “bad” programming. The essential question is: Who should decide?

From the regulator’s perspective, whether or not an unregulated marketplace produces “enough” valuable speech, or conversely, “too much” worthless or harmful speech, assumes an ability to determine the optimal amount separate from the voluntary choices of speakers and listeners.³⁴ It presumes that the “public interest,” however it may be defined, should outweigh basic First Amendment concepts of speaker and listener autonomy. But this presumption is difficult to justify either in theory or in practice.

Traditional First Amendment doctrine considers it a “fixed star in our constitutional constellation” that “no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”³⁵ The same is true in matters of taste and entertainment choices.

32. Press Release, FCC, Commissioner Michael J. Copps Calls for Re-Examination of FCC’s Indecency Definition, Analysis of Link Between Media Consolidation and “Race to the Bottom” (Nov. 21, 2002), available at <http://www.fcc.gov>.

33. Thomas G. Krattenmaker & L.A. Powe, Jr., *Converging First Amendment Principles for Converging Communications Media*, 104 *YALE L.J.* 1719, 1725-26 (1995).

34. See Robert Post, *Equality and Autonomy in First Amendment Jurisprudence*, 95 *MICH. L. REV.* 1517, 1538 (1997) (“To cast the state as a teacher is to permit the state to define the agenda and parameters of public debate; it is to presuppose an Archimedean point that stands outside of the processes of self-determination.”).

35. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

The Supreme Court has stressed that:

[t]he Constitution exists precisely so that opinions and judgments, including esthetic and moral judgments about art and literature, can be formed, tested, and expressed. What the Constitution says is that these judgments are for the individual to make, not for the Government to decree, even with the mandate or approval of a majority.³⁶

Freedom of speech and of the press “may not be submitted to vote; they depend on the outcome of no elections.”³⁷ No matter how well-intentioned proposals to improve the quality of television may be, to the extent they conflict with the choices of speakers and viewers, they are inconsistent with a concept of freedom in which “no one has a right to press even ‘good’ ideas on an unwilling recipient.”³⁸

Using the amorphous notion of the “public interest” as a fig leaf to cover regulators’ personal programming preferences does not fare well when measured by such well-established constitutional principles. Nor are such matters of taste easy to enforce, as illustrated by the classic television series *The Twilight Zone*. In 1961, Newton Minow praised it as one of a few programs he considered “dramatic and moving,” adding that “[w]hen television is good, nothing—not the theater, not the magazines or newspapers—nothing is better.”³⁹ But how does this judgment apply today?

As it happens, UPN reintroduced *The Twilight Zone* in 2002. Although it lacks the quality of the original series (How could it be otherwise since Rod Serling is no longer with us?), *The Washington Post* television critic Tom Shales wrote that the program “is not devoid of respectable qualities and nifty touches.”⁴⁰ For a critic like Shales, this is high praise indeed for a TV show in an otherwise mediocre review, but another point in his article raised an important issue that is relevant here. He described a story in the premiere episode involving the moral question of whether “virtual sex” with a computer-generated woman is consistent with a prenuptial vow of celibacy. Shales quite rightly pointed out that the original *Twilight Zone* could not have told this story: “There would have been no way of dealing with that setup in the original show because on television of that era, nobody talked about having sex before, during or

36. *United States v. Playboy Entm’t Group, Inc.*, 529 U.S. 803, 818 (2000).

37. *Barnette*, 319 U.S. at 638.

38. *Rowan v. U.S. Post Office Dep’t*, 397 U.S. 728, 738 (1970).

39. *Vast Wasteland Speech*, *supra* note 1.

40. Tom Shales, “*Twilight Zone*: A Dim Shadow of its Former Self,” *WASH. POST*, Nov. 13, 2002, at C1, C8.

after marriage—or at any other time, either. Television characters, like Barbie dolls, were not equipped with genitalia.”⁴¹

So, which is the wasteland? Is it a medium that can tell powerful stories but is strictly limited in the range of subjects it may address, or is it one in which it is up to the viewers to set the boundaries? To the avid regulator, of course, the answer in both cases is an emphatic “yes”; television desperately needs the government’s seal of approval. In this view, Chairman Minow’s speech is as relevant today as it was in 1961.

But this vision of perpetual government oversight of television content itself plays like a *Twilight Zone* episode. In fact, on May 5, 1961, the week of the “Vast Wasteland” speech, the show presented an episode entitled “Shadow Play” in which a condemned prisoner claims his life is a dream—a recurring nightmare that finds him unable to wake up. Each time he is executed, the nightmare begins again.⁴²

And so it is with “public interest” regulation. No matter how much the television medium changes, or fulfills the FCC’s dream of expanded choice, or provides high-quality programming, it will wake up to find a new regulator determined to pull the switch of government control.

Perhaps instead, it is finally time to put the concept of the “vast wasteland” to sleep.

41. *Id.* at C8.

42. The *Twilight Zone*, Shadow Play, available at <http://www.tvtome.com/TwilightZone/guide.html> (last visited Mar. 4, 2003).



THE INAUGURAL
TELECOMMUNICATION
POLICY AND LAW
SYMPOSIUM

Quello Center
TELECOMMUNICATION
MANAGEMENT & LAW

 **LAW REVIEW**
MICHIGAN STATE UNIVERSITY
DETROIT COLLEGE OF LAW

APRIL 18, 2000
WASHINGTON, DC

THE PUBLIC INTEREST,
THE FIRST AMENDMENT AND A HORSE'S ASS

*Robert Corn-Revere**

2000 L. REV. M.S.U.-D.C.L. 165

When I was asked to talk about the First Amendment and the future of regulation, I quite naturally began to think about railroads.

One reason for this, apart from the fact that both railroads and the public interest standard are innovations of the nineteenth century, was an e-mail I recently received that discussed the origins of the standard railroad gauge. This is what it said: "[T]he U.S. standard railroad gauge – the width between the two rails – is 4 feet, 8.5 inches." That is a pretty odd number. Why was that gauge used? Because, according to the e-mail, that is the way railroads were built in England, and the U.S. railroads were built by English expatriates. So far, so good. But why did the English build them like that? Because the first rail lines were built by the same people who built the pre-railroad tramways, and that is the gauge they used. OK, fine. Why did they build the tramways using that gauge? Because the people who built the tramways used the same jigs and tools that were used for building wagons which used that wheel spacing.

So, why did the wagons have that particular odd wheel spacing? Because if they used a different dimension, the wagon wheels would break on some of the old, long distance roads in England, due to the spacing of the wheel ruts. Those old rutted roads, the first long distance roads in Europe, were built by Imperial Rome for its legions. Roman war chariots first formed the initial ruts, which everyone else had to match for fear of destroying their wagon wheels. Since the chariots were made for Imperial Rome, they were

* Mr. Corn-Revere is currently a partner in the Washington, D.C. law firm of Hogan and Hartson L.L.P., where his major practice areas include First Amendment Law, Internet Law, and Communications Law. He served as the Legal Advisor to FCC Commissioner James H. Quello from 1990 to 1994, serving as Chief Counsel to Interim Chairman Quello in 1993. Since 1987, he has been an adjunct faculty member at the Catholic University School of Law. Mr. Corn-Revere holds a B.A. from Eastern Illinois University, an M.A. from the University of Massachusetts Amherst, and a J.D. from the Catholic University of America, Columbus School of Law. The following was presented at the inaugural Telecommunications Policy and Law Symposium, held jointly by The Law Review of Michigan State University-Detroit College of Law and the James H. and Mary B. Quello Center for Telecommunication Management and Law at Michigan State University, on April 18, 2000, in Washington, D.C.

all alike in the matter of wheel spacing. This means that the United States standard railroad gauge of four feet, eight and one-half inches derives from the original specification for an Imperial Roman war chariot. Those chariots were made just wide enough to accommodate the back ends of two war horses.

It is a nice story, but there are a lot of interesting urban legends out there on the Internet, like the ring of kidney thieves or the \$250 Nieman-Marcus cookie recipe. So I checked a few of the excellent Internet sites that debunk urban legends.¹ I found only one that mentioned the rail gauge story, and while it raised some significant questions about its authenticity, it was not conclusive.² Using more conventional research methods, I was able to confirm that the standard rail gauge of four feet, eight and one-half inches originated with George Stephenson's Liverpool & Manchester line in 1829, and it was exported to the United States along with the Stephenson Locomotive.³ This peculiar standard width was common on English tramways before the invention of the steam locomotive, and there is some basis for tracing it back to the cartwheel spacing of the old Roman grooved pavements.⁴ As one would expect, the truth is more complex than the e-mail story suggested. A wide variety of railroad gauges were used in the United States until the standard gauge was selected during construction of the transcontinental railway.⁵ Other nations use various gauges, but about three-fifths of the world's railroads use the standard gauge.⁶ The story does not end there; specifications and bureaucracies live forever.

The e-mail I received continued, stating that when you see a space shuttle sitting on its launch pad, there are two solid rocket boosters, called SRBs, attached to the sides of the main fuel tank. The SRBs are made by Thiokol Propulsion at its factory in Utah. The engineers who designed the SRBs might have preferred to make them a bit wider, but the SRBs had to be shipped by train from the factory to the launch site. The railroad line from the factory had to run through tunnels in the mountains, and the SRBs had to fit through those tunnels. The tunnels are slightly wider than the railroad track,

1. See, e.g., *The San Fernando Valley Folklore Society Urban Legends Reference Page* <<http://www.snopes.com/>>; *The Urban Legends Research Centre* <<http://www.ulrc.com.au/>>; *The AFU and Urban Legends Archive* <<http://www.urbanlegends.com/>>.

2. See <http://www.urbanlegends.com/misc/railroad_gauge.html>.

3. See 5 THE NEW ENCYCLOPAEDIA BRITANNICA 147 (15th ed. 1998).

4. See JOHN H. ARMSTRONG, *THE RAILROAD – WHAT IT IS, WHAT IT DOES: THE INTRODUCTION TO RAILROADING* 1, 30 (1978).

5. See *id.* at 30; see also 28 THE NEW ENCYCLOPAEDIA BRITANNICA 795-97 (15th ed. 1998).

6. See 5 THE NEW ENCYCLOPAEDIA BRITANNICA 147 (15th ed. 1998).

and the railroad track is about as wide as two horses' behinds. So, a major design feature, of what is arguably the world's most advanced transportation system, was determined over two thousand years ago by the width of a horse's ass. This final part of the story is most certainly apocryphal. While it is true that the SRBs are manufactured by Thiokol and shipped by train from its Corinne, Utah railhead to Cape Canaveral, Florida,⁷ it appears doubtful that the circumference of the rocket boosters was dictated by the size of railroad tunnels, which in turn were based on the four foot, eight and one-half inch standard gauge. Among other reasons to question this conclusion is that the SRBs are twelve feet in diameter.⁸

Even though this aspect of the story is almost certainly a myth, it does provide an important parable about the way we apply old regulatory constructs to advanced technologies. In fact, this story of the standard rail gauge came sharply into focus when the Federal Communications Commission (FCC) launched its inquiry into the public interest obligations of digital broadcast licensees.

In the final days of the twentieth century, the FCC wrote in its Notice of Inquiry that "[a]t this, the advent of the digital age, we seek comment on how broadcasters can best serve the public interest during and after the transition to digital technology."⁹ The FCC noted that "[f]or over seventy years, broadcasters have been required by statute to serve the 'public interest, convenience, and necessity.'"¹⁰ Such obligations include requirements that broadcasters cover issues facing their communities and that they disclose their treatment of such issues in their public inspection files.¹¹ They also include political broadcasting requirements, including equal opportunities¹² and reasonable access¹³ rules, children's educational broadcasting requirements,¹⁴ sponsorship identification requirements,¹⁵ restrictions on indecent programming,¹⁶ and closed captioning requirements¹⁷ among others.¹⁸

7. See < <http://www.thiokol.com/RSRMcycl.htm>>.

8. See < <http://www.thiokol.com/Shuttle.htm>>.

9. Public Interest Obligations of TV Broadcast Licensees, 14 F.C.C. REC. 21,633 ¶ 9 (1999) [hereinafter *Public Interest NOI*].

10. *Id.* at ¶ 1 (quoting 47 U.S.C. § 309(k) (1991)).

11. See 47 C.F.R. § 73.3527(a)(8) (1999).

12. See 47 U.S.C. § 312(a)(7) (1991).

13. See 47 U.S.C. § 315 (1991).

14. See 47 U.S.C. §§ 303a, 303b, 394 (West Supp. 2000).

15. See 47 U.S.C. § 317 (1991).

16. See 18 U.S.C. § 1464 (1991).

17. See 47 U.S.C. § 613 (1991).

18. See *Public Interest NOI* at ¶ 2.

The FCC pointed out in its notice that Congress decreed in the Telecommunications Act that broadcasters are subject to the public interest standard in their DTV operations.¹⁹ Section 336 of the Telecommunications Act states that “[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience and necessity,”²⁰ and the FCC has affirmed that “digital broadcasters remain public trustees with a responsibility to serve the public interest.”²¹ In the *Public Interest NOI*, the FCC is looking for ways to translate existing public interest obligations to the digital medium.²² The purpose of the *Public Interest NOI* is to translate existing public interest obligations to the digital medium. Possible enhancements of the public interest standard may include requirements that programming obligations attach to DTV multicast channels, that the current voluntary V-chip ratings could be improved with greater informational capacity, or that broadcasters could be required to engage in datacasting on behalf of schools, libraries, governmental bodies, and other community organizations. In addition, it has been proposed that DTV licensees might be subjected to more intensive requirements of disclosure for public interest programming, perhaps by requiring more information to be disseminated on websites. Other possible requirements might include minimum quantified public interest programming obligations, disaster warnings, enhanced access requirements, i.e., closed captioning and video description, diversity rules, and, of course, the Holy Grail of public interest requirements: free time for politicians.

In short, the FCC is seeking ways to perpetuate and expand a regulatory construct that permits it to exert unique control over the content of communications that otherwise would be impermissible under the First Amendment. In this regard, it is important to recall that the public interest standard is not the norm by which to evaluate a medium of communication. Rather, it is an historical anomaly that is inconsistent with traditional understandings of the First Amendment.

The history of the public interest standard indicates why this is so, and why the comparison of communications law and railroads is appropriate. Congress borrowed the expression “public interest, convenience, or necessity” from the field of railroad regulation, and its use in the context of radio law was almost accidental. The terms had been used previously in the

19. See 14 F.C.C. REC. 21,633 at ¶ 2.

20. 47 U.S.C. § 336(d) (West Supp. 2000).

21. *Advanced Television Systems and Their Impact Upon the Existing Television Service*, 12 F.C.C. REC. 12,809, 12,810-11 (1997).

22. See 14 F.C.C. REC. 21,633 at ¶ 10.

Transportation Act of 1920.²³ Senator Clarence C. Dill, who drafted the Communications Act, later recounted that “[a] young man on the committee staff had worked at the Interstate Commerce Committee for several years . . . and he said, Well, how about ‘public interest, convenience and necessity’? That’s what we used there. That sounded pretty good, so we decided we would use it, too.”²⁴

By shifting the context of the regulatory mandate from railroads to radio, however, its meaning became less certain. Judge Henry Friendly wrote in his classic study of the federal administrative agencies that the use of the public convenience and necessity standard “conveyed a fair degree of meaning”²⁵ in the Transportation Act “when the issue was whether new or duplicating railroad construction should be authorized or an existing line abandoned.”²⁶ However, the standard “was almost drained of meaning”²⁷ in the context of radio regulation “where the issue was almost never the need for broadcasting service but rather who should render it.”²⁸

The almost accidental nature of the public interest standard, and the vacuousness of its mandate, have led various members of the FCC (and the regulated industries) to fight about its meaning ever since it was adopted. The underlying premise of those who would extend the public interest standard to cover new forms of communication is that the technologies will never fully develop, or truly serve the public, without the guiding hand of government regulation.

Now, you can argue endlessly, and we all have argued endlessly, about spectrum scarcity or the obligations that come with being a public trustee or even about whether in-kind payments should be extracted for use of a public resource. But, whatever conclusion you might reach from such discussions, there is very little basis for suggesting that the market for communications has been improved by regulation. Try to name a single advanced communication technology that has sprung into being by government decree and that has gained mass acceptance. It would not be Video Dial Tone or Open Video Systems. Both are regulatory constructs in search of a mission and a market.²⁹

23. See 41 Stat. 456 (1920), now codified at 49 U.S.C. § 1(18). For a general discussion, see GLEN O. ROBINSON, *The Federal Communications Act: An Essay on Origins and Regulatory Purpose*, in A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934, 3-24 (Max Paglin ed., 1989).

24. NEWTON N. MINOW & CRAIG L. LAMAY, *ABANDONED IN THE WASTELAND* 4 (1995).

25. HENRY FRIENDLY, *THE FEDERAL ADMINISTRATIVE AGENCIES* 54-55 (1962).

26. *Id.*

27. *Id.*

28. *Id.*; see also GLEN O. ROBINSON, *supra* note 23, at 14-16.

29. See generally Annual Assessment of the Status of Competition in Markets for the

What about digital television and HDTV? After more than a decade of government nurturing and standard-setting, they are inching into the marketplace. Yet we still do not know how people will value high definition capability or what services will be provided through multicasting.

Compare this record with the development of the Internet and World Wide Web, which exploded onto the scene as a result of unplanned private initiative. The Internet has been called "the premier technological innovation of the present age,"³⁰ and there is little reason to doubt it. As the United States Supreme Court explained in 1997, the Internet is a unique and wholly new medium of worldwide human communication.³¹ It found that the information available on the Internet is as "diverse as human thought"³² with the capability of providing instant access on topics ranging from "the music of Wagner to Balkan politics to AIDS prevention to the Chicago Bulls."³³ Judge Stuart Dalzell characterized the Internet as "a never-ending worldwide conversation"³⁴ and "the most participatory form of mass speech yet developed."³⁵

This, by now, is old news. But what about broadcasting? Do we not need a public interest mandate to ensure that broadcasters will serve notions of Madisonian democracy by providing a forum for public discourse?

Once again, I think history demonstrates that it is an absence of public regulation that better promotes such First Amendment values. Take, for example, the political broadcasting rules. Historically, robust political debate has been promoted by the absence of these rules, not by their enforcement. The Great Debates of the 1960 presidential election were made possible by Congress' suspension of § 315 requirements.³⁶ In 1971, former Chairman Dean Burch pointed out that television networks provided more than thirty-nine hours of free time for political broadcasts in 1960, but only four and one-half hours in 1964 and three hours of free time in 1968. He attributed the

Delivery of Video Programming, F.C.C. 99-418 (released January 14, 2000).

30. *American Libraries Ass'n v. Pataki*, 969 F. Supp. 160, 161 (S.D.N.Y. 1997). While it is true that an early version of the Internet began as a government research project, its expansion into a mass medium was never planned or envisioned by government officials.

31. See *Reno v. ACLU*, 521 U.S. 844 (1997).

32. *Reno v. ACLU*, 521 U.S. at 851.

33. *Id.*

34. *ACLU v. Reno*, 929 F. Supp. 824, 883 (E.D. Pa. 1996) (Dalzell, J.), *aff'd*, 521 U.S. 844 (1997).

35. *ACLU v. Reno*, 929 F. Supp. at 883.

36. See *Federal Election Campaign Act of 1971, Hearings before the Subcomm. on Communications of the Senate Comm. on Commerce*, 92nd Cong., 1st Sess. 387 (1971) ("Federal Election Campaign Act Hearings") (statement of Dr. Frank Stanton).

difference to the absence of § 315 obligations in 1960.³⁷ Since then, the FCC has promoted expanded election coverage by further relaxing the rules, not by increasing the public interest obligation.³⁸

Compared to this, a free time obligation imposed on digital broadcasters would do little to promote Madisonian values. Instead, a subsidy for professional politicians, in the form of free time extracted from broadcast licensees, would produce more face time for the leading candidates, but I expect little that could be considered actual discourse. Free time would be likely to produce content-free showcases for which candidates can dress in earth tones and claim to be the most compassionate.

Finally, there has been one very tangible result of the public interest standard that is, once again, well-illustrated by the history of railroads in America. In January 1829, Martin Van Buren, then Governor of New York, wrote to President Andrew Jackson, urging him to forestall the development of "a new form of transportation,"³⁹ the railroad. If railroads were to supplant canal boats, he warned, serious unemployment would result.⁴⁰ "Captains, cooks, drivers, hostlers, repairmen, and lock tenders will be left without means of livelihood, not to mention the numerous farmers now employed in growing hay for horses. Boat builders would suffer and towline, whip and harness makers would be left destitute."⁴¹

Finally, he warned of the dangers of the technology itself:

As you may well know, Mr. President, 'railroad' carriages are pulled at the enormous speed of 15 miles per hour by 'engines' which, in addition to endangering life and limb of passengers, roar and snort their way through the countryside, setting fire to crops, scaring the livestock and frightening women and children. The Almighty certainly never intended that people should travel at such breakneck speed.⁴²

37. *Id.* at 188 (statement of Dean Burch).

38. See *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666 (1998) (during the 1996 campaign, the Commission issued advance rulings approving non-traditional formats for providing free time to candidates, thus facilitating enhanced campaign coverage); see *Fox Broadcasting Co.*, 11 F.C.C. REC. 11,101, 11,105 n.10 (1996); *A.H. Belo Corp.*, 11 F.C.C. REC. 12,306, 12,309-10 (1996). See also *Chisholm v. FCC*, 538 F.2d 349, 352 (D.C. Cir. 1976) (debates are exempt from equal opportunities requirements); *King Broadcasting Co.*, 6 F.C.C. REC. 4998, 5000 (1991); *U.S. News and World Report, L.P.*, 2 F.C.C. REC. 7101 (1987).

39. Letter from Gov. Martin Van Buren to President Andrew Jackson (Jan. 31, 1829) in *HAGERSTOWN (MD) MORNING HERALD*, June 29, 1990, at A4.

40. See *id.*

41. *Id.*

42. *Id.*

I suspect that Governor Van Buren's concern had more to do with preserving the economic superiority of his state's canal industry than it did with genuine fears about the rate of human travel and its relationship to a supreme being. But, whatever may have been his motivation, he employed a technique that has become the one true legacy of the public interest standard, regulated industries tend to compete most vigorously on paper as supplicants before an agency that will define the public interest, rather than as marketplace competitors who will prosper, or not, by whether they meet the public's needs and expectations. Now, as we enter a new millennium, it is high time to break this cycle and give this regulatory mindset a well-deserved rest.

The CHAIRMAN. Thank you. Mr. Faber.

**STATEMENT OF BARRY M. FABER, VICE PRESIDENT AND
GENERAL COUNSEL, SINCLAIR BROADCAST GROUP, INC.**

Mr. FABER. Good morning. My name is Barry Faber. I'm Vice President and General Counsel of Sinclair Broadcast Group. Sinclair is one of the Nation's largest independent free over-the-air television broadcasters, owning and/or providing services to more than 60 television stations in 39 markets across the country.

At Sinclair, we take our commitment to meeting the locally based needs of all of our communities very seriously. Each of our market-based station general managers makes a myriad of decisions, from media sponsorship of local charitable events to carriage of community-based programming, from the publicizing of the local activities to the broadcast of community calendars, to serving the informational needs of the community through the presentation of news programming.

I understand that this last topic, news, is the primary reason Sinclair was invited to participate in today's hearing. More specifically, the Committee is interested in the implementation of a centralized news service, News Central, that Sinclair is currently rolling out to a number of its markets.

News Central is simply a service pursuant to which nonlocal news stories, that is, certain national and international news, are written and produced a single time in a centralized location for use in a number of stations. Rather than 39 reporters in 39 markets researching, writing, and producing 39 stories on a single national or international news event, the story is produced a single time for broadcast in our markets.

I am well aware that there are some who criticize News Central for a variety of competitive or philosophical reasons, or because they do not understand how News Central works. I welcome the opportunity to be here to set the record straight by explaining the significant contributions that News Central is making to localism.

Nationally, most ABC, CBS, and NBC affiliates have numerous hours of local newscasts each day across which they can spread the cost of producing news. In contrast, only a handful of WB and UPN stations in only the largest markets have any newscasts at all. As

a case in point, News Corporation's UPN-20 and Tribune's WB-50 here in Washington, D.C., a Top 10 market, do not have any news.

Many Fox affiliates in medium and smaller markets also do not have news, and even where they do, it is typically limited to 1 hour per day. Sinclair has television stations affiliated with all six of the major networks, ABC, NBC, CBS, Fox, WB, and UPN, and I believe our levels of news operations have historically mirrored that of the rest of the industry.

Going forward, however, our News Central model is designed to achieve certain efficiencies so that we can provide viewers with more choices for local news, particularly in the smaller markets, where choices are currently limited. These efficiencies have been made possible in part by recent technological advances. News Central will allow Sinclair to launch local newscasts on Fox, WB, UPN, and independent stations in medium and small markets, as well as to relaunch newscasts on Big Three affiliates where we have previously discontinued local news operations due to financial and competitive concerns.

Significantly, however, each market served by News Central will have its own complete, separate, locally based news team, consisting of reporters, producers, anchors, photographers, et cetera, and these news rooms will focus 100 percent of their attention and resources on local news only. As a result, we believe these local news operations will provide a better focused and more locally tailored newscast than our competitors, who will continue to devote local resources to producing national and international news stories that have no local impact.

At each News Central station, the local portion of the news is independently produced by the local staff based on their decision as to which news is of greatest interest to their specific community. Then, at a commonly prescribed time, each of the stations turns the newscast over to the national-international news desk, at which point the single, centrally produced news report will be broadcast at each of the stations.

The current economic and advertising climate, combined with the increasing popularity of national cable news networks, has not been kind to local news operations. As I referenced earlier, Sinclair was forced to shut down local news operations on three Big Three network affiliates between the end of 2000 and the beginning of 2002, and we are not alone. For example, example, a major network-owned news operation was shut down in a Top 10 city late last year.

News Central, however, is allowing Sinclair to change direction. Rather than news shutdowns, we anticipate that by the end of this year, Sinclair will have added news programming in eight markets, resulting not incidentally in a net increase of more than 200 news jobs since last summer, with more growth to come, and we expect to continue to grow our news force over the coming years, as we roll out News Central to additional markets.

I note, by the way, that the News Central model is far from revolutionary. For many years, the use of shared stories has been the newspaper model. Similarly, in television, local stations have relied on news services such as CNN to provide national and international news stories for use in a large number of stations across

the country. CNN was built on the same model as is News Central, namely, the efficiency of having a single report prepared for many stations.

An even closer analogy to News Central can be seen in the network news model that hundreds of ABC, CBS, and NBC affiliates followed every day for decades. Under that model, these stations present a half-hour of primarily local news produced in the various communities, followed by a half-hour national and international newscast produced a single time by their network in New York for broadcast in virtually every community in the United States.

Let me conclude by again noting how pleased I am to have had the chance to appear here today. Sinclair takes very seriously its responsibility to the many communities it serves, and believes that News Central will allow us to better serve the public interest of the various localities. I hope my explanation of how the News Central model works has illustrated why this is the case, and has cleared up any misperceptions that may have existed.

Thank you.

[The prepared statement of Mr. Faber follows:]

PREPARED STATEMENT OF BARRY M. FABER, VICE PRESIDENT AND GENERAL COUNSEL, SINCLAIR BROADCAST GROUP, INC.

Good morning. My name is Barry Faber and I am the Vice President and General Counsel of Sinclair Broadcast Group. Sinclair is the Nation's largest, independent, free, over-the-air television broadcasters, owning and/or providing services to more than 60 television stations in 39 markets across the United States.

At Sinclair, we take our commitment to meeting the locally-based needs of all of our communities very seriously. Each of our market-based station general managers makes a myriad of decisions from media sponsorship of local charitable events to carriage of community based programming, from the publicizing of local activities through the broadcast of community calendars to serving the informational needs of the community through the presentation of news programming.

I understand that this last topic—news—is the primary reason Sinclair was invited to participate in today's hearing. More specifically, the Committee is interested in the implementation of a centralized news service, known as News Central, that Sinclair is currently rolling out to a number of its markets. News Central is simply a service pursuant to which non-local news stories, that is certain national and international news, will be written and produced a single time at a centralized location for use at a number of stations. Rather than thirty-nine reporters in thirty-nine markets researching, writing and producing thirty-nine stories on a single national or international news event, the story will be produced a single time for broadcast in each of the markets.

I am well aware that there are some who criticize News Central for a variety of competitive or philosophical reasons or because they do not understand how News Central works. I welcome the opportunity to be here to set the record straight by explaining the significant contributions that News Central is making to localism.

Nationally, most ABC, CBS and NBC affiliates have numerous hours of local newscasts each day, whereas only a handful of WB and UPN stations in only the largest markets have any newscasts at all. Many FOX affiliates in medium and smaller markets also do not have news and even where they do, it is typically limited to one hour per day. Case in point, News Corporation's UPN 20 and Tribune's WB 50 here in Washington, DC—a top ten market—do not have news. Sinclair has television stations affiliated with the six major networks: ABC, NBC, CBS, FOX, WB and UPN and I believe our news operations have historically mirrored that of the rest of the industry.

Going forward, however, our News Central model is designed to achieve certain efficiencies so that we can provide viewers with more choices for local news particularly in the smaller markets where choices are already limited. News Central will allow Sinclair to launch local newscasts on FOX, WB, UPN and independent stations in medium and smaller markets, as well as to relaunch newscasts on big 3 affiliates where we previously discontinued local news operations due to financial and competitive concerns.

Other operating efficiencies are achieved by capitalizing on the newest technologies as we continue to build brand-new, state-of-the-art news facilities in numerous cities. All of these efficiencies allow us to launch local news on stations that have neither had news in the past nor were expected to add news using the 50-year old news model.

Significantly, however, each market served by News Central will have a complete locally-based news team, consisting of reporters, producers, anchors, photographers, etc and these news rooms will focus 100 percent of their attention and resources on local news only. As a result, we believe these local news operations will provide a better-focused and more locally-tailored newscast than our competitors, which will continue to devote resources to producing national and international news stories that have no local impact.

At each News Central station, the local portion of the news is independently produced by the local staff based on their decision as to which news is of greatest interest to their specific community, then, at a commonly prescribed time, each of the stations turns the newscast over to the national/international news desk at which point the single, centrally-produced news report will be broadcast on each of the stations.

The current economic and advertising climate, combined with the increasing popularity of national cable networks, has not been kind to local news operations. For example a major network-owned news operation was shut down in a top 10 city late last year. And last fall, two media giants discussed combining their cable and broadcast news operations with an aim toward saving \$100 million. A large portion of those savings would most likely have been in jobs and not equipment. However, we anticipate that by the end of this year Sinclair will have had a net increase of more than 200 news jobs since last summer with more growth to come. And we expect to grow our news force over the coming years as we continue to roll-out News Central.

I note, by the way, that the News Central model is far from revolutionary. For many years, like the newspaper model, local stations have relied on news services, such as CNN, to provide national and international news stories for use on a large number of stations across the country. CNN was built on the same model as is News Central, namely the efficiency of having a single report prepared for many stations. An even closer analogy to News Central can be seen in the network news model that hundreds of ABC, CBS and NBC affiliates have followed every day for decades. Under that model, these stations present a half-hour of primarily local news produced in their various communities, followed by a half-hour national and international newscast produced by their network in New York for broadcast in virtually every community in the United States.

Let me conclude by again noting how pleased I am to have had the chance to appear here today. Sinclair takes very seriously its responsibility to the many communities it serves and believes that News Central will allow us to better serve the public interest of these various localities. I hope my explanation of how the News Central model works has illustrated why this is the case and has cleared up any misperceptions that may have existed.

The CHAIRMAN. Thank you. Mr. Davis, welcome.

**STATEMENT OF DAVID J. DAVIS, PRESIDENT AND GENERAL
MANAGER, WPVI—CHANNEL 6**

Mr. DAVIS. Thank you, Senator McCain. Thank you to the rest of the Committee.

The CHAIRMAN. Well, pull the microphone over in front of you. Thank you.

Mr. DAVIS. Is that better?

The CHAIRMAN. Thank you.

Mr. DAVIS. I want to thank Senator Specter who came in. Senator Specter is one of our more informed attentive viewers. He certainly doesn't agree with everything we do every time, but he's been a great friend of this station, and I also acknowledge Senator Lautenberg, who I knew—I was his director during his first term in the Senate, and he knows our connection to South Jersey and has taken advantage of our studios in Trenton a number of times.

You've got my written testimony, so I won't read it right now. I'd just like to talk as long as I can about two things that I'm very fond of, of Channel 6 and the Greater Philadelphia region. We are owned by ABC, the same company that owns our network, but I do not just represent the hundreds of broadcasters, employees at Channel 6, but also the thousands of dedicated local broadcasts at our other nine television stations across the country.

We all have a similar operating philosophy. Even though we don't have a group news director, group program director, we are independent, but we share some common causes. Our first priority is news. Let me take that back. Our first, second, third, fourth, and fifth priority is news. Two-thirds of our employees work in the news department, the rest work in some regard to support them.

We produce over 30 hours of live local news per week. It's done right there at the television station. Senator Hollings, we are open 24 hours a day, 7 days a week. You're always welcome. The door is always open.

Local news is supplemented by 30 hours per week of network news from ABC, which produces high quality programs like Good Morning America, Nightline, World News Tonight, and we benefit from that relationship.

We also have a very active public affairs department. We produce 7 weekly shows. We locally program the prime access time period on Saturday. We have a magazine show, "Prime Time," that highlights the positive accomplishments of schools, businesses, and human interest stories, followed by "Visions," a long-running program that highlights concerns of our many minority populations. We produce half-hour shows called "Perspective New Jersey" and "Perspective Delaware," that focus on our issues in those states. Because we cover parts of three states, we have an obligation to those states.

We also have in addition news bureaus in Trenton and the Jersey Shore. We have studio facilities in Trenton and in Wilmington, Delaware, better to serve those local communities and those cities.

We also have the longest-running Hispanic theme show in the country, Puerto Rican Panorama, 33 years on our air. We produce, with the cooperation of the Archdiocese of Philadelphia, weekly mass on Sunday mornings. We also allow that time period to be used by other religions during their holiday periods. We produce shows weekly, quarterly, and annually for children and their parents, Perspective Youth, Children First, Fast Forward. We just finished our Best in the Class program. Every year we invite about 300 of our high schools to submit their best students, bring them all together at Longwood Gardens, tape a show of them, then we feature them in 60-second vignettes for the whole month of June, so every parent gets to see their child's picture on Channel 6.

We do live interview shows Sunday morning, 8 a.m., take viewer call-ins, also an opinion show on Sunday mornings for the local opinion leaders to discuss issues.

We're proud to be known as the debate station. Last election cycle we held debates not only for the general election but for the primary for the Pennsylvania Governor, the New Jersey Senator, and 13 Congressional districts. We've done DA's races, attorneys general races in Delaware.

Last May in Philadelphia, we held 4 hour-long debates, some of those in cooperation with our sponsors, League of Women Voters, NAACP. We work with the Annenberg School at the University of Pennsylvania. I have a letter from Dean Jamieson of the Annenberg School that gives more explanation of how we work with Penn to better improve not just our debates, but our political coverage within our newscasts.

We're proud to be the community station of major events. We just opened up the new Constitution Center in Philadelphia, the first museum dedicated to the Constitution. If you haven't seen it yet, it's a great facility. I think it's going to be a great national attraction.

We did a prime time special, preempting the network July 3 to preview that facility for our viewers, did a Liberty Medal ceremony where we honored Justice O'Connor in the morning, then we did a parade, fireworks, concert at night. We do that every year. For that, we did the pro cycling bike race, the largest bike race in the country, brings 200,000 people out in the City of Philadelphia. We cover that for 6 hours, preempt the network sports program that day.

We love parades. We did do a lot of parades, because it's important. We serve a lot of different ethnic communities. We do the St. Patrick's Day Parade, we do the Puerto Rican Day Parade, we do the Pulaski Day Parade—you get about 12 people marching in the same direction, we'll be likely to cover it.

[Laughter.]

Mr. DAVIS. We enjoy doing that, and it reflects the effort of those communities to put on their best effort on those days.

Thanksgiving Day Parade is the oldest Thanksgiving Day Parade in the country. It used to be Gimbel's. It was before Macy's. Then Gimbel's went out of business in 1987. The person that had my job then said, we'll do that parade. He hired four producers from Gimbel's, put them down on that first floor. That parade office is still there. He hired the bands, brought up floats, put that on every year as a benefit to the City of Philadelphia, and it's a great event.

It creates goods for infants and mothers with the Girl Scouts. We have the biggest food drive of the Boy Scouts. If the Fire Chief were here, he'd say that our fire safety program—we give away 100,000 smoke detectors—has cut the fire death and injury rate in Philadelphia.

We're proud of all those things. I heard Commissioner Powell talked about ascertainment. I was around when ascertainment was around. We do a little bit better than that. We have a standing Community Advisory Board made up of about 10 members of the community. They're freely chosen and elected. They do their own choosing of who's on that Board. They meet every month. They invite leaders of the television stations, including myself, to their meetings and tell us what we're doing right and what we're doing wrong.

I see my time is up. I would just like to say that you folks are going to make important decisions on media ownership in this country, and I respect that. I would just ask if you please not make any of that decision based on the fact that we're not good broadcasters just because we also happen to own the network.

Thank you very much.
 [The prepared statement of Mr. Davis follows:]

PREPARED STATEMENT OF DAVID J. DAVIS, PRESIDENT AND GENERAL MANAGER,
 WPVI—CHANNEL 6

Good Morning Chairman McCain, Senator Hollings and members of the Committee. Thank you for the opportunity to address your committee.

My name is Dave Davis. I am the President and General Manager of WPVI, Channel 6, in Philadelphia, and I am here to represent the thousands of dedicated local broadcasters at WPVI and the other ABC Owned TV Stations.

The ABC Owned stations are industry leaders in local news and community service. Anyone who tells you that an ABC Owned station is not committed to local service is not speaking the truth. Our commitment to localism is *not* the result of government regulation. We strive to be the most locally relevant station because we believe that is the surest path to commercial success. A station that is #1 in local news and community service will almost always rank among the most commercially successful stations in the market.

WPVI was first licensed in 1947 to Walter Annenberg, whose family owned the Philadelphia Inquirer, among other media properties. In 1953, we became the first affiliate of the ABC network. In 1970, the station was sold to Capital Cities Communications, which grew to buy ABC in 1985, and in 1995, The Walt Disney Company bought ABC.

Even as the names on the license have changed, our operating philosophy through the years has stayed the same. We try very hard every day to be the best possible community television station for our viewers. That's a tall order, because there are 2.8 million television homes within our Nielsen-designated market. Besides Philadelphia, we cover seven other counties in southeastern Pennsylvania, the southern half of New Jersey, and the state of Delaware. We have a saying at the station that acts as our guide—"take care of the viewers, and everything else will take care of itself". Let me explain how we try to do that.

We try to provide the right combination of news, information, and entertainment programming. If you have a TV set with a rabbit ear antenna, you can sit there and watch Channel 6 twenty-four hours a day, seven days a week, and enjoy the most expensive programming in the television industry—for free.

Our most important priority is news. We produce more than thirty hours per week of live, local news. More than half of our employees work in the news department, and many of the rest of us work to support the news programs. Our local news is supplemented by the ABC Network that provides more than thirty hours per week of national and world news. So during a normal broadcast day, on average, approximately half of our time is devoted to news.

Although we have won numerous awards from industry peers, our most important judges are the viewers, and we are proud of the fact that they have made Channel 6 the leading source for news in our tri-state region, reaching more than three million people in a normal week.

Of course, most weeks in the news business are not normal, so we frequently program news outside its normal time periods. Everyone at the station knows if there is an emergency or major event—anything that we think our viewers need to know now—we tell them. We will pre-empt the most popular syndicated or network programs to inform our viewers when we feel it is necessary, and those decisions are made at the station level, either by me or one of our department heads—NOT by anyone at the ABC Network. We have produced hours of continuous, often commercial-free news programming during weather emergencies, natural or man-made disasters, major elections, and times of civic celebration.

In addition to news, we produce significant local programming from our public affairs department. We are one of the few stations in the country to locally program the prime access time period every Saturday, instead of using reruns of syndicated programs. Our viewers enjoy a half-hour magazine show—"Prime Time"—that highlights achievements of local people in their schools, communities or businesses. That's followed by "Visions," a half-hour program designed to focus on issues important to the many minority communities in our region. Other weekly programs include "Perspective New Jersey" and "Perspective Delaware", interview shows with newsmakers in those states, produced at our Trenton and Wilmington news bureaus. In addition to news personnel, we maintain studios at those sites to better serve those areas. We also staff a news bureau at the Jersey shore.

We produce weekly, monthly, and quarterly programs aimed at young people and their parents. We just finished our annual "Best of the Class" program, where we

feature three hundred of the best high school students in our region in an hour-long prime access program, then during the month of June, we produce and air one-minute vignettes of every student. Of course, we let the proud parents know when their kids will be on Channel 6.

We produce the longest running Hispanic-themed show in the country—"Puerto Rican Panorama" has been on Channel 6 for 33 years. We produce a weekly Catholic mass on Sunday mornings, and substitute specials from other religions during their holiday periods.

Later on Sunday morning, we air an hour-long live, local interview show to expand on major stories of the week, and take phone calls from viewers. We also have "Inside Story", a weekly panel of local opinion leaders giving their take on current events.

We are proud of the fact that Channel 6 is known as the place for local political debates. In the most recent election cycle, we produced and aired hour-long, commercial free debates for both the primary and general election for Pennsylvania governor and New Jersey Senate. In 2000, we held debates for New Jersey governor and statewide races in Delaware, and in the last Philadelphia mayor's race, we hosted four hour-long debates. For most of our debates, we partner with groups like the League of Women Voters, the NAACP, and the Chamber of Commerce. We have also hosted them at places like the College of New Jersey, Drexel University, and the University of Pennsylvania to give students more of an opportunity to see these debates in person. And like everything else we do, our debates are designed to attract viewers. We promote and air them in high-visibility time periods, like prime access. Right now we are working on two debates for the upcoming Philadelphia mayor's race. We also work with the Annenberg Public Policy Center and School for Communication at the University of Pennsylvania, both as a partner for political debates, and as a source for improving the quality of political coverage at the local level. A letter with more details from its director, Kathleen Hall Jamieson is attached to my testimony.

If there is a big event in our region, we want to be part of it. We just finished six hours of live programming around Philadelphia's Fourth of July celebration, starting with the Liberty Medal ceremony in the morning, and the parade, concert, and fireworks in the evening. This is something we do every year. This year we also televised the opening of the National Constitution Center, including a prime time special on July 3 to preview the museum for our viewers. The month before, we produced six hours of live coverage of the big pro bike race that circles Philadelphia. Also in June, we feature the non-profit Philadelphia Zoo in a half-hour program to highlight its attractions. In March, we previewed the annual Philadelphia Flower Show in an hour prime access special, and we are now preparing to produce coverage of the Marian Anderson award ceremony in November.

And we do love a parade. One of our largest productions each year is the city's Thanksgiving Day Parade, the oldest in the country. It started out as the Gimbels parade, but when that department store went out of business in 1987, Channel 6 stepped in to produce the parade. We actually have a parade office at the station, because it is a year-round job to bring in the bands, floats, balloons, and other attractions in the parade. We also broadcast the annual Puerto Rican Day parade, the Pulaski Day parade, the St. Patrick's Day parade, and the Columbus Day parade, each live for two hours, usually at the expense of pre-empting network programming.

In addition to special programs, there are other station efforts during the year to partner with non-profit organizations. We produce a fire safety campaign every January to educate viewers, and with the cooperation of local fire departments, Channel 6 has given away more than 100,000 smoke detectors and 50,000 batteries. Philadelphia Fire Commissioner Harold Hairston gives us credit for helping to cut the city's fire death and injury toll during the program's ten-year history. With the local Boy Scouts, we operate the largest single food drive every year for the Philadelphia Food Bank. With the Girl Scouts, we collect more than 40,000 items for infants and new mothers in our annual Baby Bundles campaign. With the American Cancer Society, we help raise awareness and funding for breast cancer research.

In the unlikely event that we would neglect any of our commitment to our local communities, we have a built-in safeguard. For more than thirty years, Channel 6 has maintained a Community Advisory Board, made up of about ten community members and leaders, representing different ethnic groups and geographical areas. They are independently elected for several year terms, and meet on a monthly basis to discuss station programming and employment issues. They share those discussions with the department heads, and me and we value their input.

So that is a glimpse of how we operate WPVI-TV. But I also represent today the other nine ABC Owned Television Stations and from them you would hear the same

speech. Even though we have no group program director, no group news director, no shared theme music, no shared technical hub—we do have a similar operating formula. Do what is in the best interest of your local communities, and the company will back you up.

All of our stations invest heavily in local news and local programming. That IS our core operating philosophy. Attached to my testimony are typical and illustrative examples of the outstanding local service rendered by each of the ABC Owned stations. Let me mention a few highlights. KTRK presents the 4th of July celebration in Houston, does the rodeo parade, and carries a large commitment of public affairs programming. KFSN in Fresno just pre-empted prime access for a one-hour town hall meeting on air quality in the Central Valley of California. Maybe the best example of what it means to be an ABC owned station comes from the two stations we most recently purchased, WTVG in Toledo, and WJRT in Flint. On its first day as an ABC owned station, WTVG bought more than a million dollars worth of additional newsgathering equipment, and within a year, added twelve hours of local news per week. Let me say that again, *after* ABC bought this local Toledo station; the station *added* 12 hours of additional local news each week. Our manager there pre-empts the ABC network to carry the Toledo Mud Hens baseball game on opening day, Bowling Green football, and political debates. And after ABC bought WJRT in Flint, that station added similar amounts of local news, and invested more than seven million dollars in a new broadcast facility in a redevelopment area of Flint.

So now the question is—why do ABC owned stations have such a strong commitment to local service? We certainly take seriously the service to community standard in our license, but I think you would agree that our record of outstanding local community service goes way beyond legal license requirements. Pardon me, but forget the government. We have to answer to our viewers. And we have to do that every day. When they have more than a hundred channels to choose from, and we want them to choose us, we think the best way to do that is to provide the best possible service. We don't get any subscriber fees, or have a dual revenue stream—one hundred percent of our revenue comes from advertising that is totally dependent upon viewership. If people don't watch, we don't get paid, and if you aren't the best local station, people don't watch. It's that simple.

Mr. Chairman, I have been going to work at a local television station every day for the last 26 years, assigned to a lot of different jobs. Sometimes I worked at a station that was co-owned with a network and sometimes I didn't. The feeling towards my job never changed. The most enjoyment came from knowing that you were helping to supply something of value to lots of people—valuable news information, positive public service programming, a chance for local companies to market their products, and just good, solid, quality entertainment, available free to all the homes in our community.

You are going to make decisions on media ownership in this country based on your collective wisdom, and I respect that. I am only asking you to please not base any decision on the false premise that Network Owned stations like Channel 6 in Philadelphia do not do their best to serve their local community.

Thank you again for the opportunity to speak to you today, and I would be glad to try and answer any of your questions.

THE ANNENBERG PUBLIC POLICY CENTER
UNIVERSITY OF PENNSYLVANIA
Philadelphia, PA, July 18, 2003

Mr. DAVE DAVIS,
General Manager,
WPVI,
Philadelphia, PA.

Dear Dave,

In the process of clearing out fourteen years of files in the dean's office, I realized that I had one called "WPVI" that is filled with evidence of your station's dedication to public service and willingness to assist us in our scholarship. For both, my colleagues and I are grateful.

At a time when access to much of political discourse comes at the price of purchasing cable, WPVI's commitment to political access deserves special notice. Whether audiences reward you with ratings or not, WPVI anchors, carries, and promotes debates by candidates for the Senate and governorships from each of the states in the tri-state area. In the late afternoon time slot, you also have pioneered alternative ways of offering detailed looks at candidate positions on issues.

You also have sought ways to give the citizens of Philadelphia a stake in political debates. When the Student Voices project was launched in the Philadelphia high schools four years ago, it was WPVI that sponsored a debate that permitted students to question the candidates. It was WPVI that aired a debate in which citizens from the Philadelphia Inquirer's Citizen Voices project served as questioners. As important was the fact that the station promoted both. Unsurprisingly, WPVI carried the Liberty Medal ceremony live, as well.

On a personal note, when, critique in hand, scholars at the Annenberg School or Policy Center have asked to talk with you about the station's work, they have been welcome in your office. You've also helped us search for solutions. When we thought there might be a more effective way to present political news, instead of watching bemused as we struggled to create instances of it, your anchors and reporters retaped stories for us to test. Without them we could not have generated the research reported in *Spiral of Cynicism: The Press and the Public Good*.

So, if you have a file marked "Annenberg School" filled with critiques, please place this fan letter ahead of them as a reminder that, despite our cantankerous nature, some of the scholars in your audience are grateful that WPVI sees its viewers as citizens as well as consumers.

Sincerely,

KATHLEEN HALL JAMIESON
Professor,
 Annenberg School for Communication,
Director,
 Annenberg Public Policy Center.

ABC-OWNED TELEVISION STATIONS COMMITTED TO LOCALISM

KABC-TV Glendale, California

KABC-TV's tradition of public service involves all of Southern California's diverse communities. From its 34 hour per week of locally produced news coverage to its decades of support to organizations throughout the region, KABC-TV's community efforts are proposed by the local station, approved by the local station, planned by the local station, and implemented by local station personnel. This commitment to the community has forged its stature in the region as a successful and involved local broadcaster.

KABC-TV has created long-term community programs that have benefited millions of local viewers. It started "The Spark of Love Toy Drive" to provide a happy holiday season for underserved families, implemented "Women's Health Month" to raise funds for and awareness of women's health issues and for 14 years have run the KABC-TV Kids Care Fair to provide free health screening and immunizations for underserved children and their families.

Besides its ongoing community projects, KABC's commitment to local viewers is evident in their regular programming schedule. *KABC-TV produces more local news than any other station in the Southern California viewing area.* KABC-TV Eyewitness News has regular features every week highlighting the good work of community organizations and volunteers. The station also produces local programming and special shows that serve the community, such as "Vista L.A.," a weekly magazine show that highlights the Latino community in Southern California.

KFSN-TV Fresno, California

KFSN-TV is the leading television station within the six counties of Central California and fulfills its responsibility to those communities by compiling a long and honorable record of news coverage and public service to its various constituencies.

Producing and airing 22 hours of local news every week, KFSN has received numerous honors and awards. *The station recently received two RTNDA "Edward R. Murrow" Awards and an Emmy Award for best newscast.* It has also produced numerous specials beneficial to their viewing audience such as "The Air We All Breathe," an hour-long special examining the air quality issues of the Central San Joaquin Valley and "Valley Focus," a weekly 30-minute program featuring community organizations, issues and events.

KFSN has been a major provider of video presentations for local non-profit organizations. These presentations are produced at no cost and are used to raise funds and awareness for these community organizations. It has produced videos for Children's Hospital Central California, United Cerebral Palsy of Central California, the Marjaree Mason Center, and the Fresno County Office of Education "Educator of the

Year” events. KFSN has also aired a variety of Public Service Announcements on topics as diverse as Black History Month and Drug-Free America.

KGO-TV San Francisco, California

KGO-TV is proud of its strong relationship with the market it serves. Annually, it dedicates millions of dollars in airtime and production costs to provide non-profit organizations as well as civic organizations a strong voice in their community. KGO-TV provides regular public service time for thousands of Public Service Announcements and donates a large amount of high profile airtime and productions to many local events and non-profits.

KGO-TV produces 4.5 hours per day and 27 hours per week of local news. *In the past 18 months, it has interrupted regularly scheduled programming 110 times for a total of 24 hours and 15 minutes of additional breaking news coverage.* In addition to the daily local newscasts, KGO-TV also produces 2 local half-hour programs per week and a wide variety of local programs from sports shows to people profile shows to town hall meetings to “fun” events in the area.

A truly unique community based effort of KGO-TV is “ABC-7 Listens,” an expansive effort to solicit viewers’ thoughts, opinions and news story ideas through feedback from contacting the station or through monthly town meetings. KGO is also known throughout the industry for its strong investigative unit, The I-Team, which regularly breaks big news stories in the market. They’re also known for their very strong consumer unit. Through “7 On Your Side,” a team of employees and volunteers solve thousands of consumer complaints every year and many consumer stories have led to legislative action.

KTRK-TV Houston, Texas

KTRK-TV, ABC-13, has long believed that local community involvement is core to the station’s overall market success. Annually the station strives to offer the best local news coverage as well as showcasing Houston’s unique special events. *The most watched news station for over two decades, ABC-13 produces more regularly scheduled hours of news than any other Houston TV station—34½ hours each week.*

ABC-13’s top newscasts are complimented by more special event programming than anywhere else. In 2003 alone, ABC-13 will produce more than 30 hours of special event programming and will be the only Houston television station providing live coverage of the Houston Marathon, Houston’s Rodeo Parade, The Rodeo’s scholarship fundraising art and steer auctions, and Houston’s 4th of July Concert and Fireworks. It will also once again produce and broadcast the Houston Texans four preseason NFL football games and a weekly half hour wrap-up show on Sundays during the NFL season.

ABC-13’s contributions to the community extend beyond programming. ABC-13 helped collect over 1,000,000 pounds of food and \$50,000 in contributions to help feed hungry families last December during the station’s annual Holiday Food Drive. The station’s annual blood drive netted nearly 1,000 pints for the Houston Blood Center and their annual “Caring Cradles City Wide Baby Shower” brings in thousands of dollars worth of baby items for March of Dimes to distribute to families in need.

WABC-TV New York, New York

As the broadcaster of 28.5 hours of live, local news every week, *WABC is the Tri-State’s largest TV news team and has the biggest live newsvan fleet.* Daily local shows such as “7 On Your Side,” address the needs, interest and concerns of communities throughout New York, New Jersey and Connecticut. The WABC news team has recovered untold thousands of dollars for local consumers through solving legal problems and exposing countless frauds, scams and schemes.

The station regularly organizes high-profile public service campaigns, reaching out to tri-state viewers and community organizations where the need is great and timely. Highlights of its numerous outreach activities include a schedule of about 1,100 public service announcements each month. Employees at the station also volunteer in the community through station-organized efforts such as “Principal for a Day.” It has also held workshops such as a “Smarter Surfing” Internet workshop, offered to viewers and community groups free-of-charge.

WABC-TV has a commitment to excellence built on the foundation of social responsibility. The station’s outreach efforts are linked to public service on and off the airwaves. Examples of WABC-TV’s commitment to public affairs programming and campaigns include “Like It Is,” a one-hour program that takes an in-depth look at various topics of concern on the tri-state areas African-American community and “Operation 7: Save a Life,” a one-hour special focusing on the work of area fire fighters.

WJRT-TV Flint, Michigan

WJRT-TV is the most watched television station in the Flint-Saginaw-Bay City, Michigan television market. The station has long been recognized as a community leader because of their commitment to support community organizations, not-for-profit agencies and local events of importance and interest to the people living in Mid-Michigan.

Since ABC's acquisition of WJRT in 1995, they have underwritten \$10.8 million in technical and news gathering capital investments and \$5.6 million in a building expansion and renovation. ABC has also invested \$4.8 million in the new digital high definition transmission system (HDTV), making it the first and still the only Mid-Michigan television station to offer full HDTV service to Mid-Michigan viewers. *Since 1995, WJRT has also added 19 half hours of news programming per week and daily broadcast four and one-half hours of local news.*

WJRT-TV also locally produces and broadcasts public affairs and special programming such as the "Life From a Teen's Perspective" series and the Children's Miracle Network Telethon. Employees of WJRT also have a personal commitment to the local community. Over the past two years, WJRT staff have served on more than 40 different boards and working committees, including United Way, American Red Cross, Habitat for Humanity and Big Brothers and Big Sisters. The station also works to regularly support and participate in special events for not-for-profit agencies through on-air promotion, news interviews, serving as master of ceremonies and organizing volunteers.

WLS-TV Chicago, Illinois

Since March 1986, WLS-TV has dominated the Chicago local news market. *From sign-on to sign-off, ABC7 is the most watched station in the market including all key newscasts.* The station leads the market in local and breaking news coverage, as well as special local programming and community involvement. This is a direct result of their more than 30 hours of local news every week, broadcasting more than 100 hours of local programming per year, running an average of 600 PSAs per year and offering direct financial support through cash donations to local community groups and charitable organizations.

Converted in August 2002, WLS-TV now runs a fully digital, tapeless editing and playback system. The newscasts provide viewers with important local, national and international breaking news events as well as on-going coverage of local and state politics, weather and the day in sports. Additional information is also provided through special segments such as the daily "HealthBEAT" segment that provides perspective on medical breakthroughs and the latest health-related information available to Chicagoans.

In addition to news, ABC7 produces more than 30 compelling, entertaining, and thoughtful local television programs for their viewers. The station broadcasts more than 100 hours of local specials per year, including the award-winning weekly program, "190 North" and the long-running "Chicagoing," among many others.

WTVD-TV Raleigh, North Carolina

WTVD is an organization distinguished by dedication and responsiveness to its viewers and by a strong appreciation of the diversity within its community. WTVD's hands-on public service projects, daily newscasts, and quality programming demonstrate its commitment on a daily basis. *Serving 22 counties, WTVD's Eyewitness News provides 4.5 hours of local newscasts daily Monday through Friday with one hour on Saturday and three hours on Sunday.* It also frequently interrupts network and syndicated programming to broadcast bulletins on severe weather and local news.

In addition to daily interaction with viewers by phone and e-mail, WTVD has developed a community outreach initiative called "Contact ABC 11" where the News Director, General Manager and other top managers of the station gather with viewers to listen to their thoughts, opinions and news story ideas. It also has extensive involvement with the community through a variety of service projects such as the "ABC 11 Blood Drive" and "Best of the Class" where it produced and aired 30-second vignettes to recognize valedictorians from high schools in its viewing area.

WTVD's commitment to serve all segments of the community is evident through its work with the station's Minority Advisory Committee. This committee consists of 15 African-American community leaders who meet bi-monthly with station management to share their thoughts and ideas. It has also established a Latino roundtable made up of 9 community leaders who share information and story ideas to ensure the station provides accurate, inclusive, and informative news and information to its viewers.

WTVG-TV Toledo, Ohio

WTVG-TV provides more news, more local specials, more local sports, more community affairs, more local parades and has won more awards than any other station in town. *Each week WTVG provides twenty-six and a half hours of regularly scheduled news—more than any other Toledo television station.* It also frequently produces special reports on major breaking news stories and emergency weather information. This commitment has resulted in numerous prestigious awards including the RTNDA “Edward R. Murrow Award” for Outstanding News Operation.

The station’s broadcasts often include exclusive investigative material that benefits the public. It has assisted people with consumer problems, identified dangers posed to the public through unscrupulous business practices and educated viewers about threats to public health. WTVG-TV has also assisted police as they search for criminal suspects or seek public help in solving crimes. Action News also gives viewers an opportunity to interact with guest experts on a daily basis during their noon news segment. Its commitment to responsible, complete and accurate coverage also includes the area’s only weekly community affairs program that features detailed discussions about local matters of public importance.

WTVG’s commitment to the community goes beyond its coverage of news. Each year, it produces and broadcasts several specials addressing concerns of Northwest Ohio and Southeast Michigan and airs “fun events” such as the “Foodtown Holiday Parade and Preview” and the “Fiesta Championship Pregame.” WTVG also responds to local concerns by helping to raise hundreds of thousands of dollars through its annual broadcast of the 21-hour Jerry Lewis Labor Day Telethon. It also brings viewers the annual Children’s Miracle Network Broadcast and educates viewers on how they can protect the environment through a station-wide campaign during April and May for Earth Day.

WPVI-TV Philadelphia, Pennsylvania

WPVI-TV has been serving the Delaware Valley since 1947. The leading station in the region, Channel 6 continues to build on its long-standing commitment to local viewers through an emphasis on local news and information, public affairs, community projects and special local programming.

Action News is the cornerstone of WPVI-TV’s commitment to the community. *Encompassing thirty hours of local news every week, Action News is the leading news programs with its daily newscasts reaching an average of 1.4 million households per week. Along with its Philadelphia-based newsroom, Action News has three regional news bureaus to allow the most complete coverage of the tri-state area.* These bureaus, and their studios, also serve as the sites for public service programs and debates relevant to that particular state.

WPVI also continues to have one of the most active public affairs departments in the country, with a staff dedicated solely to producing local programming, public service announcements and regional specials. Examples of public affairs programming include “Prime Time Weekend,” a half hour magazine-format program addressing the positive aspects of a variety of topics and “Inside Story,” a weekly half-hour program featuring local opinion-leaders commenting on issues and events of the week. WPVI also has an equally strong commitment to public service announcements, airing approximately 100-150 PSAs every week.

In addition to a commitment to public service initiatives, WPVI-TV has an equal dedication to broadcasting big events in the Delaware Valley, allowing all residents to have equal access to the shared traditions of the region. The greatest example of this is the annual Thanksgiving Parade, the longest running Thanksgiving Day parade in the Nation. On the verge of being lost to the city in 1986, this tradition was rescued by WPVI, which now produces the parade, as well as broadcasts it, live every Thanksgiving morning.

The CHAIRMAN. Thank you, Mr. Davis. Dean Kaplan.

STATEMENT OF DEAN MARTIN KAPLAN, DIRECTOR, USC ANNENBERG NORMAN LEAN CENTER AND ASSOCIATE DEAN, USC ANNENBERG SCHOOL FOR COMMUNICATION

Mr. KAPLAN. Thank you, Mr. Chairman, for the invitation to testify here today. My name is Martin Kaplan. I’m the Associate Dean of the Annenberg School for Communication at USC, and my comments this morning, while they report on academic research, also draw on experience in the trenches of politics, news, and entertain-

ment. I spent 8 years here in Washington, where I was chief speech writer to Vice President and then Presidential candidate Walter Mondale, so I know something from the candidate's point of view about how hard it is to earn media coverage on television. I've also had stints as a journalist, in print, on television and radio, and for 12 years I worked at the Walt Disney Company as an Executive Screenwriter and Producer, so I also know something from the communication company's point of view about the need to compete in the marketplace.

Today, most Americans say they get most of their news from local television. Is local TV news providing voters the information they need to know? A broadcast license is a contract between media owners and the public. Serving the public interest does not mean maximizing profit, however happy that may make owners and shareholders. Nor does it mean sponsoring charity benefits or blood drives, however happy that may make communities. Serving the public interest, as the Supreme Court said in *Red Lion*, means that the broadcaster must give adequate coverage to public issues. That's what media owners promise in exchange for their licenses.

Since 1998, my colleagues and I have been studying campaign and election coverage on local television. In the 2000 campaign, we studied all the programming from 5 p.m. to 11:30 p.m., the interval, Senator McCain, in the bill you'll be introducing, to look for candidate discourse, and we did that in 58 markets, and what we discovered was that the average amount of candidate discourse on stations in this country was 74 seconds, all candidates, dog-catcher to President, put together.

In 2002, we set out to learn how much and what kind of election news most Americans were actually exposed to. We recorded and analyzed more than 10,000 top-rated early and late evening half-hour news broadcasts on 122 stations in the top 50 U.S. media markets over the 7 weeks leading up to Election Day. Again, we counted all races at all levels.

What did we find? This is how well the current marketplace is doing. Almost 6 out of 10 top-rated news broadcasts contained no campaign coverage whatsoever. Most of the campaign stories that did air were broadcast during the last 2 weeks of the campaign. Nearly half the stories that aired were about horse race and strategy, and not about issues. The average campaign story was less than 90 seconds. Fewer than 3 out of 10 campaign stories included candidates speaking. The average sound bite was 12 seconds.

Even when counting U.S. House races as local elections, only 14 percent of all the campaign stories in our sample focused on local races, races for the State legislature, 3 percent, regional, county, or city elections, 4 percent, and campaign ads outnumbered campaign stories by nearly 4 to 1, so while there are some encouraging exceptions, most local stations largely ignored the 2002 campaign on their top-rated broadcasts.

At the same time, those stations took in a recordbreaking \$1 billion of political advertising revenue. Among the 122 stations we studied, there's a wide range of performance. For example, 10 stations covered no local races at all during their top-rated half-hours. Five stations devoted more than half their political coverage to local ratings.

What explains disparities like these? They can't be attributed to differing local appetites for public issues, because these stations can exist side by side. In Greenville, South Carolina, for example, WSPA, a Media General station, aired 146 campaign stories at the top end of our country in our sample, while WLOS, the Sinclair station, aired 40. The average candidate sound bite at the Sinclair Station was 7 seconds, which put it in the bottom 10 percent of our national sample, while the Media General sound bite averaged 36 seconds, at the top of the country.

Does ownership make a difference? Our sample wasn't designed to study that, but it does include stations with large owners, medium owners, and small owners, and you can make a comparison of them. What we discovered when we did that was that large owners in our study carried a lower percentage of local campaign news than the national average, while the small and midsized owners carried a higher percentage.

What causes stations to excel? A commitment by ownership leaders can count for a lot, as demonstrated by the 10 Hearst-Argyle stations in our study, which were impressively head of the pack, and the priorities of individual station managers and news directors can also make a difference, but across the country, the murderous pressure for ratings has largely trumped every other goal.

Politics is ratings poison. This belief, which apparently does not extend to the airing of paid political ads, is promoted by the television news consulting industry, whose advice dominates local decisions. In my view, these consultants are selling dangerous nonsense. Good reporters working for good managers can make politics and public affairs just as compelling to audience as news about celebrity crimes or teasers for prime time voyeurism. Let's not blame the audience for what appears on local television.

Programmers aren't just delivering what people want, they are accomplices in manufacturing that desire. Americans aren't just consumers. We're also citizens. Broadcasters have more than an obligation to make money and win Nielsen wars. They have an obligation to inform us about public issues. That's what they promise in order to get their licenses. Today, the ability of Americans to get the information they need from the sources they turn to most about some of the most important choices they face, that ability depends on a marketing culture that puts sensationalism ahead of substance and dollars head of democracy. Surely Americans deserve better from the industry they've entrusted with the airwaves, and from the agency they've entrusted with monitoring it.

Thank you very much.

[The prepared statement of Mr. Kaplan follows:]

PREPARED STATEMENT OF DEAN MARTIN KAPLAN, DIRECTOR, USC ANNENBERG NORMAN LEAN CENTER AND ASSOCIATE DEAN, USC ANNENBERG SCHOOL FOR COMMUNICATION

Thank you, Mr. Chairman, for the invitation to testify. The question I want to try to answer today is this: Under current legislation and current FCC regulations, what kind of job are local television stations doing in fulfilling their public interest obligations?

More than two centuries ago, Thomas Jefferson said that the strength of our democracy would depend on how well-informed the American electorate is. Today, most Americans say they get most of their information from local television news. Is local TV news actually telling voters what they need to know? How well are local

broadcasters living up to the public interest promises they made in order to get their licenses?

My answer to these questions is based on academic research. My academic background includes a summa cum laude from Harvard College, a graduate degree from Cambridge University, and a Ph.D. from Stanford. I'm now associate dean of the Annenberg School at the University of Southern California, one of our Nation's leading schools of communication and journalism.

But I have experience in three other realms that also bear on my testimony.

My professional background includes eight years here in Washington, where I was chief speechwriter to Vice President Walter F. Mondale, and also his deputy presidential campaign manager. So I know something from the candidate's point of view about the challenges of earning media coverage on television.

I've also had stints in print and broadcast journalism. I've been a columnist, feature writer, and editor at *The Washington Star*; a regular contributor to All Things Considered and Marketplace on public radio; and a commentator on the CBS Morning News. My career also includes the entertainment industry. For twelve years I worked at the Walt Disney Studios, both as a senior motion picture executive, and as a screenwriter and producer. I believe that entertainment—the need to grab and hold audiences—has come to dominate every other realm of contemporary American life, for better and for worse, from news and politics to education and religion. Studying the impact of entertainment on society is the mission of the Annenberg School's Norman Lear Center, which I direct.

So my comments this morning, while they report on empirical research I've done, also reflect some first-hand experience in the trenches of politics, journalism, and show business.

Since the Radio Act of 1927, the possession of a broadcast license has been a contract between media owners and the public. In order to use the electromagnetic spectrum, which belongs to the public, the broadcaster promises to serve the public interest. From then to now, serving the public interest does not mean maximizing profit, however happy that may make owners and shareholders. Nor does it mean sponsoring charity benefits or street fairs, however happy that may make communities. Serving the public interest, as the Supreme Court said in *Red Lion v. FCC*, means that "[t]he broadcaster must give adequate coverage to public issues." Giving adequate coverage to public issues is what media owners promise the public to do in exchange for getting their licenses.

Since 1998, my colleague Dr. Matthew Hale and I have been investigating what kind of attention broadcasters have been paying to public issues. In particular, we've been looking at the quantity and quality of campaign and election coverage on local television.

This research is not a snap to do. Broadcasters are not required to keep tapes of their news programming or time logs of what they cover. Under current FCC regulations, all that stations must do is maintain in their offices "a list of programs that have provided their most significant treatment of community issues." These lists are next to useless for empirical research. The FCC's single study of "The Measurement of Local Television News and Public Affairs Programs" under its current ownership rulemaking illustrates this inadequacy. FCC researchers watched not one minute of local news or public affairs programming. Instead, they simply added up the raw number of minutes that stations labeled news or public affairs on their broadcast schedules. No matter that anyone who has actually watched local news knows how much of it is given over to empty happy talk, cross-promotion of network entertainment, and coverage of serial murders half a continent away. No matter that much public affairs programming airs not when ratings are high, but when only insomniacs are watching. As a proxy for quality, FCC researchers counted the number of awards given by members of an industry trade group, the Radio and Television News Directors Association, to itself, and by a journalism school (the DuPont Silver Batons at Columbia). If more industry votes go to network owned-and-operated stations than to other stations, does that really make the O&O's better? Three-quarters of the Silver Batons the FCC counted went to individual reporters and producers for individual pieces, not to stations, and all the awards to stations were given for specific stories. If the DuPont jurors aren't pretending to compare the quality of one station's total news programming with another, why should the FCC? Yet this is the study that the FCC Chairman frequently cites as justification for lifting the ownership caps.

In fact the only way to conduct scientific research on the content of local news and public affairs coverage is to get people in each market being studied to record that programming, or to purchase it from commercial vendors, and then to have analysts log and code every single broadcast. That's what we've been doing.

This is the third nationwide study we have conducted. In 2000, we studied local news campaign coverage both in the primaries and in the general election. That research, funded by the Ford Foundation, came in the wake of the recommendation of the Presidential Advisory Commission on the Public Interest Obligations of Digital Television Broadcasters, co-chaired by CBS president Leslie Moonves and American Enterprise Institute resident scholar Norm Ornstein. Their proposal was a voluntary five minutes of candidate-centered discourse on each station, on each night between 5 p.m. and 11:30 p.m., for the last 30 days before each election. To see how that voluntary standard was working on selected stations, we taped all news coverage between those times in the month before Election Day. We counted candidate-centered discourse under a generous definition, which included issue-centered stories, and we counted all candidates for all offices at every level, dogcatcher to president.

We did the study twice—in the primaries, and in the general election. In the primaries, we studied 19 top-rated stations in 11 markets around the country. Two groups of stations emerged. Typical stations—16 of the 19—aired an average of just 39 seconds of candidate discourse a night. Only three stations aired over 3 minutes a night, and two of them included New Hampshire in their markets. (The study can be found at <http://www.learcenter.org/pdf/tvnews.pdf>.)

During the 2000 general election, we expanded our sample to include 74 stations in 58 markets. Twenty-three of those stations had made a public commitment to the voluntary five-minute standard; we found that they aired an average of 2 minutes and 17 seconds of candidate discourse a night. The remaining 51 stations, which had been silent on the voluntary standard, aired an average of 45 seconds of candidate discourse a night. All candidates, all races, all evening, all month: 45 seconds a night. (The study can be found at <http://www.learcenter.org/pdf/campaignnews.pdf>.)

By 2002, the five-minute-a-night voluntary goal had all but disappeared from discussion. The public interest obligation has today essentially been entrusted to an unregulated and unmonitored market. So in this most recent campaign, we set out to learn how much and what kind of election news most Americans were actually exposed to in that marketplace. Our research was funded by the Pew Charitable Trusts, and done in collaboration with Professor Ken Goldstein of the University of Wisconsin-Madison. (Our report can be found at www.localnewsarchive.org/pdf/LocalTV2002.pdf.)

We recorded and analyzed more than 10,000 top-rated early-and late-evening half-hour news broadcasts on 122 stations in the top 50 U.S. media markets over the seven weeks leading up to Election Day. This representative national sample is the most ambitious quantitative study of local news coverage of politics ever undertaken. Not only were the stories logged and coded; those video clips have also been archived online on a unique searchable database, at www.localnewsarchive.org, which is now available to any registered user.

Here is some of what we found in 2002. This is the how well the marketplace is actually doing at fulfilling the public interest obligation of broadcasters:

- Only 44 percent of the more than 10,000 broadcasts we studied contained any campaign coverage at all. In other words, almost six out of ten top-rated news broadcasts contained no campaign coverage whatsoever.
- Most of the campaign stories that did air were broadcast during the last two weeks of the campaign.
- Nearly half of the stories that aired were about horse race or strategy, and not about issues.
- The average campaign story was less than 90 seconds.
- Fewer than three out of ten campaign stories that aired included candidates speaking, and when they did speak, the average candidate sound bite was 12 seconds long.
- Even when counting U.S. House races as local elections, only 14 percent of all the campaign stories in our sample focused on local races. Races for the state legislature only accounted for three percent of the stories, and stories focused on regional, county or city offices made up only four percent of the stories.
- Campaign ads outnumbered campaign stories by nearly four to one. While little more than four out of ten of the broadcasts analyzed contained at least one campaign news story, eight out of ten of those broadcasts contained at least one campaign ad. Just seven percent of the broadcasts analyzed contained three or more campaign news stories, while almost half of these same broadcasts contained three or more campaign ads.

So what kind of job are local stations doing to fulfill the public interest promises they made when they applied for their licenses? If you look at the campaign coverage they provided in 2002, the answer is grim. While there are some encouraging exceptions, most local television stations largely ignored the 2002 campaign on most of their top-rated broadcasts. At the same time, those stations took in a record-breaking billion dollars of political advertising revenue. It is striking that while general managers and news directors often fret that covering politics may be an audience turnoff, they have no compunctions about barraging that same audience with political ads.

Among the 122 stations we studied in 2002, there is of course a wide range of performance. Some stations aired a campaign story on less than 20 percent of their top-rated half-hours; other stations had campaign stories on more than 70 percent of those broadcasts. Some stations spent only 1 percent of this most-watched news time on campaigns; other stations spent as much as 9 percent. On some stations, an average campaign story was well over two minutes long; on other stations, it was just 40 seconds. Ten stations covered no local races at all during their top-rated half-hours; five stations devoted more than half their political coverage to local races. One station's average candidate sound bites were over half a minute long; another station's sound bites averaged just 4 seconds. One station ran no stories about issues; on another station, 75 percent of the campaign stories were about issues or adwatches.

What explains disparities like these?

They can't be attributed to differing local appetites for the coverage of public issues, because these station differences can exist side by side in the same communities. In Greenville, South Carolina, for example, WSPA, a Media General station, aired 146 campaign stories on their top-rated early and late half hours of news during the seven weeks before Election Day, at the top end of the country in our sample, while WLOS, a Sinclair station, aired 40. The average candidate sound bite on the Sinclair station in Greenville was 7 seconds long, which put it in the bottom 10 percent of our national sample, while the Media General station candidate sound bite averaged 36 seconds, at the top of the country.

Does ownership make a difference in campaign coverage? Our 122-station sample wasn't designed to study that. But our sample does include 45 stations owned by large owners (with audience reach above 20 percent, based on percentage of U.S. household coverage as calculated by the FCC, discounting UHF coverage by 50 percent), 54 owned by mid-sized owners (audience reach between 20 percent and 6.2 percent), and 23 by small owners (audience reach below 6.2 percent). It turns out that the large owners in our study carried a lower percentage of local campaign news than the national average, while the small and mid-sized owners carried a higher percentage of local stories. The same pattern appears in individual media markets: in 16 of the 22 markets where we can make the comparison, stations with small or mid-sized owners provided more coverage of local elections than stations with large owners. If a national study designed to correlate ownership with localism came up with similar numbers, it would have inescapable implications for the regulations now in play.

What causes some stations to excel? My school is proud to award the USC Annenberg Walter Cronkite Awards for Excellence in Television Political Coverage, and the journalists and stations that win it prove what good work can be done. In our study, some stations, even in the absence of contested political races, nevertheless did a top-tier job of offering campaign coverage to their viewers. A commitment by ownership-group leaders to fulfill their public interest obligations can count for a lot, as demonstrated by the ten Hearst-Argyle stations in our study, which were impressively ahead of the pack. The priorities of individual station managers and news directors can also make a difference, as can making the financial commitment of assigning experienced producers and talented correspondents to cover a political beat.

But the sad truth is that across the country, the murderous pressure for ratings has largely trumped every other goal. The conventional wisdom among general managers and news directors is that politics is ratings poison. This belief—that public issues are boring, that viewers would rather watch car chases than candidates—is promoted by the television news consulting industry whose advice dominates local programming decisions. In my view, those consultants are selling dangerous nonsense. The truth is that good reporters working for good managers can make politics and public affairs just as compelling to audiences as news about celebrity divorces or teasers for prime-time voyeurism.

Let's not blame the audience for what appears on local television. Programmers aren't just delivering what people want. They are accomplices in manufacturing that desire. Americans aren't just consumers; we are also citizens. Broadcasters have

more than an obligation to make money. They have an obligation to inform us. That's what they promise in order to get their licenses. Today, the enforcement of that promise is alarmingly inadequate. Right now the ability of the American people to get the information they need, from the sources they turn to most, about the most important choices they make together as citizens: today that ability depends on a marketing culture that too often puts sensationalism ahead of substance, fear ahead of reason, and dollars ahead of democracy. Surely Americans deserve better from the industry they've entrusted with their airwaves, and from the agency they've entrusted with monitoring it.

Thank you very much.

The CHAIRMAN. Thank you, Dean Kaplan. Mr. Bozell.

**STATEMENT OF L. BRENT BOZELL III, PRESIDENT AND
FOUNDER, PARENTS TELEVISION COUNCIL**

Mr. BOZELL. Chairman McCain, Senator Hollings, and Members of the Committee. I appreciate the opportunity to appear before you to testify on this important issue. Today, I represent the Parents Television Council's 800,000 members, and untold millions of parents who, like me, are disgusted, revolted, fed up, horrified—I don't know how to underscore this point strongly enough—by the raw sewage, the ultraviolence, graphic sex, and raunchy language that is flooding into our living rooms night and day by media, by giant media corporations with no concerns whatsoever for community standards.

That's why I strongly support the effort to return the media ownership cap to 35 percent. Citizens not only have a right, but also have a need to have a voice in their local communities.

In 1989, the Big Three networks, NBC, ABC, and CBS, held a 17 percent ownership share in TV programming. By 2002, it had increased to 48 percent. Now add Fox, AOL-Time Warner, and AT&T Liberty, and these six megacorporations today control two-thirds of all viewers on television.

Let's be clear here. Further deregulation will give them even further control of the airwaves, and the losers are the local communities whose standards of decency are being ignored, completely ignored by these media giants. There will be the same old tired voices that will say that this is only about competition, but let's be clear on this, there is no competition here. You can't compete against multibillion dollar oligopolies.

There are many reasons not to give these six megacorporations even more control of our airwaves. One of them, which is what I'd like to speak on, is their utter lack of attentiveness to community standards. In the last year, the PTC has sent out over 1.5 million community standard audits, of which 128,000 have been returned. The numbers speak for themselves. 94.2 percent of the public believes there shouldn't be graphic violence during children's viewing time. 94.3 percent are against descriptions of sexual encounters on television. 94.6 percent are opposed to strong sexual language during children's viewing times. These are no-brainers, but guess what, all these things can be found on television courtesy of these six megacorporations. They could care less who they offend, and now want even more control of the airwaves, where they can offend even more.

This is a First Amendment issue. It's about the right of citizens to speak up about what they want coming across the broadcast air-

waves they own in their local communities, where their voice should count the most, without being silenced by the corporate executives in New York and Los Angeles. This is how the networks feel about local community standards.

In a PTC survey of network-owned and operated affiliates, not one told us it had willingly ever preempted network programming on the basis of community standards. Some told us that because of network contractual obligations, they could not preempt network programming. In fact, some Fox and CBS affiliates said they weren't even allowed to see the advance copies of reality programming they were going to have to put on television.

When NBC aired Maxim's Top 100, which Senator Hollings referred to, 26 independent NBC affiliates chose not to telecast the program that many believe bordered on the pornographic and which was certainly not in keeping with the community standards, and yet not one NBC owned and operated affiliate preempted it based on community standards. In a 43-page petition brought to the FCC on behalf of more than 600 affiliates nationwide, the Network Affiliate Stations Alliance, NASA, complained that under virtually every current affiliation agreement, an affiliate risked losing its affiliation if it preempts more than a few hours of network programming without approval. The president of NASA said this: We are partners with the networks, but we cannot stand by and let them control our local stations. We know what works best for our local communities, and by law these decisions cannot be made in Hollywood or New York.

Now ask those New York or Hollywood media behemoths how important the issue of indecency is to them. I wonder if you'll find one executive—I don't know of one—who will even speak out about it publicly, much less do anything to stop it.

Consider Keen Eddie, a new show on the Fox Entertainment Network, which aired on June 10 at 9 p.m. I don't mean to offend—Senator Dorgan brought this up. I don't mean to offend, but you must know what is being broadcast over the public airways to millions of impressionable children, perhaps your own children or your own grandchildren in their living rooms.

Keen Eddie featured a plot about a band of thugs trafficking in horse semen and hiring a prostitute to perform a sex act with a horse so as to extract the semen from it. Here's the actual dialogue.

Prostitute: No, that's not natural.

Thug: Extraction for insemination? If you look at the picture on page 45, you'll see how natural it is.

Second Thug: You're a 40-year-old filthy slut. You'll do anything.

Prostitute: With a human.

But the prostitute agrees to go through with it, except the horse suddenly drops dead, at which point she says, "I never laid a finger on it. I lifted up my blouse, that's all. He needs to get aroused."

A horse, on national television, in front of millions of impressionable children, over the public airwaves, into the family home, the one place, according to the Supreme Court, quote, "where people ordinarily have the right not to be assaulted by uninvited and offense sights and sounds."

Chairman Powell has called it, quote-unquote, “garbage that anyone would suggest the FCC cares as little about community concerns as the networks it’s meant to be monitoring.” Well, let’s see about that. Over 10,500 complaints were sent to the FCC about Keen Eddie. Now, it’s actually 11,000. I’ve got the numbers right here, and the names. 11,000 complaints. Not one person, to my knowledge, has heard back, not one. Now, this show aired on June 10. How long does it take to decide that this is indecent? Apparently, they’re still debating it.

And guess how many stations the FCC has fined for indecent broadcasting in the history of the FCC in the continental U.S.? Answer, not a single one. In other words, according to the FCC nothing, but nothing on television has ever been indecent. You’d be hard-pressed to find a parent anywhere in America to agree with that assessment. It’s not garbage to say that the FCC doesn’t care and is not doing its job. There are some in the FCC who are trying, but they are the minority. You heard one of them, Commissioner Copps, today.

It’s my fervent hope that Congress will tell the FCC that it will not permit its Pontius Pilate-like decisions to allow these media titans, who have so badly abused their privilege to broadcast on the public airwaves, even more access to them. It’s my further hope that the Congress will demand that the FCC instead start doing its job.

Thank you.

[The prepared statement of Mr. Bozell follows:]

PREPARED STATEMENT OF L. BRENT BOZELL III, PRESIDENT AND FOUNDER,
PARENTS TELEVISION COUNCIL

Chairman McCain, Senator Hollings and Members of the Committee, I appreciate the opportunity to appear before you to testify on this important issue.

Today I represent the Parents Television Council’s 800,000 members, and untold millions of parents who, like me, are disgusted, revolted, fed up, horrified—I don’t know how to underscore this enough—by the raw sewage, ultra violence, graphic sex, and raunchy language that is flooding into our living rooms night and day by giant media corporations with no concerns whatsoever for community standards.

That’s why I strongly support the effort to return the media ownership cap to 35 percent. Citizens not only have a right but also a need to have a voice in their local communities.

In 1989 the Big Three networks—NBC, ABC, and CBS—held a 17 percent ownership share of TV programming. By 2002 it had increased to 48 percent. Now add Fox, AOL/Time Warner, and AT&T/Liberty, and these six megacorporations today control two-thirds of all viewers on television. Let’s be clear here: further deregulation will give them even further control of the airwaves. And the losers are the local communities whose standards of decency are being ignored, completely ignored, by these media giants. There will be the same old tired voices that will say this is about competition. Lets be clear on this—there is NO competition here. You can’t compete against multi-billion dollar oligopolies.

There are many reasons not to give these six megacorporations even more control of our airwaves, one of them being their utter lack of attentiveness to community standards. In the last year the PTC has sent out over 1.5 million community standard audits, of which over 128,000 have been returned. The numbers speak for themselves: 94.2 percent believe there shouldn’t be graphic violence during children’s viewing time, 94.3 percent are against descriptions of sexual encounters, and 94.6 percent are opposed to strong sexual language during children’s viewing times. Guess what? All these things can now be found on television, courtesy of these six megacorporations. They could care less who they offend and now want even more control of the airwaves where they can offend even more.

This is a first amendment issue. It’s about the right of citizens to speak up about what they want coming across the broadcast airwaves they own, in their local com-

munities, where their voice should count the most, without being silenced by corporate executives in New York and Los Angeles.

This is how the networks feel about local community standards. In a PTC survey of network owned-and-operated affiliates, not one told us it had willingly preempted network programming on the basis of community standards. Some told us that because of network contractual obligations, they *could* not preempt network programming. In fact, some Fox and CBS affiliates said they weren't allowed to see advance copies of reality programming.

When NBC aired *Maxim's Top 100*, 26 independent NBC affiliates chose not to telecast the program that many believed bordered on the pornographic and which was certainly not in keeping with their community standards. And yet not one *NBC owned and operated* affiliate preempted it based on community standards.

In a 43-page petition brought to the FCC on behalf of more than 600 affiliates nationwide, the Network Affiliated Stations Alliance (NASA) complained that under virtually every current affiliation agreement, an affiliate risks losing its affiliation if it preempts more than a few hours of network programming without approval.

The president of NASA said, "We are partners with the networks, but we cannot stand by and let them control our local stations. We know what works best for our local communities, and by law those decisions cannot be made in Hollywood or New York."

Now ask those New York and Hollywood media behemoths how important the issue of indecency is to them. I wonder if you will find one executive—I don't know of a one—who will even speak out about it publicly, much less do a thing to stop it.

Consider *Keen Eddie*, a new show on the Fox entertainment network which aired on June 10, at 9:00 p.m. I don't mean to offend, but you *must* know what is being broadcast over the public airwaves to millions of impressionable children—perhaps your own children—in their living rooms. *Keen Eddie* featured a plot about a band of thugs trafficking in horse semen and hiring a prostitute to perform a sex act with a horse, so as to extract the semen from it.

Here is the actual dialogue:

Prostitute: "No, that's not natural!"

Thug: "Extraction for insemination. If you look at the picture on page 45 you'll see how natural it is."

Second Thug: "You're a 40-year-old filthy slut, you'll do anything."

Prostitute: "With a human."

But the prostitute agrees to go through with it, except the horse suddenly drops dead, at which point she says, "I never laid a finger on it. I lifted up my blouse, that's all . . . He needs to get aroused."

On national television. To millions of impressionable children. Over the public airwaves, into the family home, "The one place," according to the Supreme Court, "where people ordinarily have the right not to be assaulted by uninvited and offensive sights and sounds."

Chairman Powell has called it "garbage" that anyone would suggest the FCC cares as little about community concerns as the networks it is meant to be monitoring. Let's see about that.

Over 10,500 complaints were sent to the FCC about the *Keen Eddie* sewage. Not one person, to my knowledge, has heard back. Not one. And guess how many stations the FCC has fined in the continental United States for airing indecency in the entire history of the FCC? Are you ready? Not a single one. In other words, according to the FCC, nothing, but nothing, on television has ever been indecent. You would be hard pressed to find a parent anywhere in America to agree with that assessment. It is NOT "garbage" to say the FCC doesn't care and is not doing its job.

There are some at the FCC who are trying to do their job regarding the filth coming across our airwaves, but as a whole, this Commission has failed.

It is my fervent hope that Congress will tell the FCC that it will not permit its Pontius Pilate-like decision to allow these media titans—who have so badly abused their privilege to broadcast on the public airwaves—even more access to them. It is my further hope that the Congress will demand that the FCC start doing its job.

The CHAIRMAN. Thank you very much, Mr. Bozell.

Mr. Davis, have you ever preempted network programming because you didn't believe it met your community standards?

Mr. DAVIS. If you're talking about an entire entertainment programming, not since I've been general manager in 1997. We have

asked on occasion and received from the network if they had copies to look at in their discussions about certain scenes——

The CHAIRMAN. My question was, have you ever preempted network programming because you didn't believe it met your community standards, yes or no?

Mr. DAVIS. No.

The CHAIRMAN. Thank you.

As general manager, how do you decide whether Disney's programming meets Philadelphia's community standards?

Mr. DAVIS. Well, we obviously serve a very large community. We have 2.8 million homes. As Mr. Hollings——

The CHAIRMAN. My question is, how do you determine whether it meets Philadelphia's community standards?

Mr. DAVIS. Based on my 13 years of living there, working there, raising my family there, talking to people in the community, which I avail myself—I answer every piece of mail, every phone call, every e-mail from viewers, we have a Community Advisory Board that I talked about, I'm on boards of four or five nonprofit organizations involved in the community, I encourage other employees to do the same thing, we tend to hire people who are part of the community, who stay there. We have a very stable workforce and work very hard to reflect the community.

I don't operate the station in how I personally, my own personal standards and tastes. Those would be rather narrow, compared to our total audience, so I try to operate in such a way as to give the viewers the benefit of the doubt, to choose the programming that they want to watch. We are very careful. If we don't think the network has done a good enough job of notifying people ahead of time about some content within the shows, we do that ourselves.

I remember when *NYPD Blue* started, we got a lot of concern ahead of time before it even aired, from interest groups, from citizens. We responded to all those complaints. We looked at the episodes ahead of time, talked to the networks, and after it aired, we have yet to receive any large complaints about the quality of that show.

The CHAIRMAN. Thank you, Mr. Davis.

Mr. Faber, Sinclair's CEO, David Smith, is quoted in the article in the *Washington Post* dated May 31 as stating, and I quote, "if I go into the marketplace with an old-line view of how to do news, I don't see how it works. The first analysis is the business analysis. The second one is, how does what we're doing serve the public?"

How in the world do you justify a statement like that, Mr. Faber, when you are receiving the spectrum for free, and you are committing in writing to serve in the public interest? How do you justify a statement, the first analysis is the business analysis? We're talking about news now. According to Mr. Smith, if I go into the marketplace with an old-line view of how to do news, I don't see how it works. The first analysis is the business analysis—of news. The second one is, how does what we're doing serve the public?

Mr. FABER. Well, I think that our view is that generally those two goals are very compatible with one another. Typically, serving the public interest leads to better viewership, which we leads to, you know, the business running better. We find them very compatible goals.

The CHAIRMAN. But that's not what Mr. Smith said. That's a wonderful response, but it's not what Mr. Smith said.

Mr. Smith says, if I go into the marketplace with an old line view of how to do news, I don't see how it works. The first analysis is the business analysis. The second one is, how does what we're doing serve the public, and the reason why I ask that is because you've done really incredible things with local news, having the broadcaster dress up and say, here we are in—I've forgotten, I'll find it here—weatherman Vigus Reed is bundled in a black overcoat and plaid muffler as he delivers a frigid forecast on Fox 66 in Flint, Michigan. Although he was forecasting for Central Michigan, Reed was actually hundreds of miles away in a TV studio north of Baltimore. Is that how you make it business work first?

Why don't you have a local weatherman at these stations, Mr. Faber? That's localism at its best.

Mr. FABER. I'm not sure I agree with that. I mean, a local weatherman at a television station typically is relying on weather data that's provided from a weather service that's not located in his market.

The CHAIRMAN. Sometimes he's relying on somebody like Senator Dorgan says who is out there outside, watching the weather.

Mr. FABER. And in every market where we do news we have local people in that market. We're not simply sitting in Baltimore doing the news from there.

The CHAIRMAN. Do you have local weather people in that market?

Mr. FABER. No, we don't, but if you can let me answer the question, the weather person is in contact every day with the people in that station, so to the extent that weather people need the reality check of looking outside and seeing what the weather's like, that reality check goes on every single day.

The data that they use to predict the weather and do their weather report is, as I said, it's not coming from that market. It's coming from a National Weather Service that is located in another market, and we use the exact same data in Baltimore.

The other thing that's important to remember with a company like Sinclair, of the 62 television stations that we own or provide services to, 46 of them, I believe, are affiliated with the Fox, WB, or UPN networks, and two of them are independent, so 48 of our 62 stations that we either own or provide services to are not Big Three affiliates. It is very difficult to justify having a weather person at a television station when you're going to have 1 hour of news a day. It's very different—as Mr. Davis said, they have 30 hours a week on a Big Three affiliate so they can afford to have somebody doing weather, because they're doing 4-1/2 hours of news a day.

The only way we can even make this work economically, typically, is to have an hour of news a day, to give people a choice an hour earlier from the normal network news, which airs at 11 East Coast Time or 10 Central, and we air news typically on those stations, the Fox-WB-UPN stations, at 10 or 9 Central, and that's the only news we do during the day. It's too expensive.

The CHAIRMAN. The *New York Times* quotes Scott Paget, a Sinclair anchor located in Baltimore, stating, there will be a high of

57 for us here in Flint, during a broadcast submitted to Sinclair's Flint station.

Mr. Kaplan states, in his testimony, that the Media General station in Greenville, South Carolina aired 146 campaign stories 7 weeks before Election Day, compared to the Sinclair station in that same community that aired 40 stories.

Dean Kaplan also stated the average candidate sound bite on the Sinclair station in Greenville was 70 seconds, which places that station in the bottom 10 percent of the national sample, where the Media General station candidate sound bite averaged 36 seconds.

Would you like to respond to that finding?

Mr. FABER. Well, it's difficult to respond because I haven't looked at the facts of all of our stations.

The CHAIRMAN. I just gave you the facts.

Mr. FABER. Well, you've given me one station.

The CHAIRMAN. Would you like to respond to that station?

Mr. FABER. Well, that station, just so you know, is not a News Central station, so it has nothing to do with the News Central operations, and no, it's a decision that's made by the local news director there as to how to best serve the needs of this community.

The CHAIRMAN. Does Sinclair broadcast any public affairs shows in its local stations, such as Mr. Davis' station does?

Mr. FABER. I don't have a list of them. Some of our stations do present public affairs programming.

The CHAIRMAN. Please provide us a list for the benefit of the Committee. I thank you. My time has expired.

Senator Hollings.

Senator HOLLINGS. What is a News Central station, because I know those stations. LOS is up in Asheville. It covers the Greenville—actually, SPA is over in Spartanburg. It covers the Greenville area, but what do you mean—the excuse you gave, it wasn't a News Central station. What does that mean?

Mr. FABER. Well, it wasn't intended as an excuse. It was just simply that I was talking about News Central, and I wanted to make clear that that station was not News Central.

What a News Central station is, is a station that has a locally based group of reporters and producers and a news director focusing solely on local news in that community. Then they also present as part of their news programming when they go to the national and international news, that comes out of a central location in Baltimore.

So for example, just to give you an example, I watched last night—I went to our station in Baltimore. I watched them produce it. I also watched on a computer the news coming from each of our different News Central stations. We currently have six of them, I believe, and in Flint, Michigan, which never had news before, it starts out, there is a local person in Flint, Michigan reporting on the day's events in Flint, Michigan and the surrounding area.

At the same time, in Rochester, New York, there is a local Rochester-based anchor, and as well as Rochester and Flint-based reporters that are included as part of this, who will say, now we go to so-and-so, reporting at the city council meeting, or whatever you have. In Rochester during that same period that Flint is reporting

on what's going on in Flint, they're reporting in Rochester about what's going on in Rochester.

After a certain period of time where they've presented the amount of local news that we have time for, they say something along the lines of, now for a national—

Senator HOLLINGS. Mr. Faber, I'm sorry I asked that question.

[Laughter.]

Senator HOLLINGS. I mean, you have me lost between three communities. All I know is that LOS and SBA compete in the same market, and now there's all this News Central and stuff, and everything else like that, and one is given 40-some and the other is given only 7 and to go right to the point, on your Sinclair stations I have just a regular news release of a business journal here in March, where it says Sinclair's KOAH station, Oklahoma City, instead of local news and Sinclair's Baltimore-based News Central, the station aired Andy Griffith when they suffered a major meltdown last night while a tornado swept through the town.

Otherwise, you have again in Oklahoma City, one Oklahoma station said tennis ball-size hail was raining down in the southwest part of the viewing area, and power poles were snapped, and I turned it over to the Sinclair station to find—nothing. No map, nothing. It went on that way until later on.

Again, I can go to Raleigh, North Carolina, I can go to Pittsburgh, the news director Poister is leaving Sinclair's station there, Sinclair recently dropped weekend weather at the station, and many believe that Poister's jumping ship before the company guts the entire news department. Alan Frank has told his staff that Poister's leaving has nothing to do with the news, but in Oklahoma City they canned at KOAH the entire sports department, the entire weather department, one photographer, one reporter, six other full-time, part-time workers—I can go right on down to Rochester and all of these other things—I'm just quoting, Sinclair is becoming the expert on news light. That's the problem. That's the problem.

Mr. FABER. Well, Sinclair's increased—by the end of this year we will have increased by over 200 people the number of people working for us in the news operation.

Senator HOLLINGS. Well, they must be turning into witnesses to come to Washington, because they're not putting on the news—

Mr. FABER. No, that's not true, because we're adding news.

Senator HOLLINGS.—I can tell you that.

Mr. FABER. No, News Central is allowing us to add news in a large number of markets that otherwise would not have any news on those stations.

Senator HOLLINGS. Well, put a release out on it, because I'm only reading the release. With respect to Mr. Bozell, that's outstanding testimony. Here—and have that filth on television, and you say not one, not one has been fined for indecency, yet the Supreme Court has confirmed that responsibility in the Federal Communications Commission.

And Mr. Kaplan, right to the point, I'll never forget during that campaign my California friends say, they just don't cover politics any more. They all hire a helicopter. They all hire a helicopter and they run out and they cover some kind of wreck, or whatever it is, or crime story, because they just don't cover it any more, and what

you've done is, you've given me the actual studied fact that the large owners carry a lower percentage of news than the national average, while the small-size owners carry a higher percent of the local story, so as we get larger, what we are allowing is an elimination of news coverage and localism and everything else like that, and that's coming from your expert study.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lott.

Senator LOTT. I'll pass.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much.

Mr. Davis, first of all, I enjoyed your testimony, and it seems to me your station does a lot of good things, and let me ask you a question, because the chairman asked you a question about local standards, and your judgment about these programs.

You heard Mr. Bozell talk about a program called Keen Eddie and describe part of the dialogue in Keen Eddie. Would you have aired that on your station, had you taken a look at that prior to its airing?

Mr. DAVIS. Fortunately I wouldn't have to make that type of decision. We would not air it because I don't believe our network would produce a program that contained that material. I have good faith. I know the people that run our network, and I just don't think that that would be something that they would produce.

Senator DORGAN. So, because you feel that way, you would not have run Keen Eddie if it had been presented to you?

Mr. DAVIS. No, I would have to make that decision once I saw the entire program in context.

Senator DORGAN. But the reason I'm asking the question is, Senator McCain, you say you make a decision based on 13 years of your experience living in the area, and I think Senator McCain was trying to get at the notion of how do you make that judgment?

Mr. DAVIS. I don't want my answer to Senator McCain to give you the impression that I don't feel that I have the independence or the ability to make those decisions. We happen to run the network. I think Disney has established itself. We certainly exceed the amount of quality and quantity of children's programming.

The Disney Corporation in Florida as far as its regard to family dealing has been well-established, and fortunately I don't work for a company that has to make those type of decisions, but if I were, if that were presented to me, I would certainly have the ability to not air something that I did not think—

Senator DORGAN. Mr. Davis, the reason I asked the question is, this hearing is about localism, and standards, and so the question has been asked about standards, and a specific example was given. You came here as a broadcaster and I was hoping you might use that specific example and tell me whether it's something you thought you would air in your market or not.

Mr. DAVIS. Just based on what I heard, it doesn't sound like something that I would look forward to presenting to the viewers in the Greater Philadelphia region, no.

Here's the—I remember, we heard earlier about the NAB code of conduct. My understanding, and my history may not be entirely correct, but I think a producer named Norman Lear was instru-

mental in a lawsuit that specifically did away with that code, and do you remember All in the Family? And some of those shows at the time were considered very controversial, had language, and I'm not defending this show or this dialogue.

Senator DORGAN. I understand.

Mr. DAVIS. It's not produced by our company.

Senator DORGAN. I understand, but you're here as a broadcaster. I was just trying to get a sense of that.

Also—and as I said when I started, it sounds to me from your recitation of what you do, your company does a lot of public-spirited things. Would you do me a favor with respect to your company as well. We have this publication, "Profiteering on Democracy." Would you take a look through this and then give the Committee an analysis of what your company does with respect to rates for campaign ads?

Mr. DAVIS. Sure.

Senator DORGAN. I think one of my colleagues suggested that what is happening to politicians and to campaigns for elective office in this country is, they are being fundraisers now for broadcast companies who deliberately and in a very concerted way raise their rates in order to profiteer with respect to election campaigns. Just take a look at this. I'm not suggesting that your company's involved.

But Mr. Faber, this is most interesting to me, your discussion of Central Casting. You said, you can't justify a weather person for 1 hour a day. Well, I come from North Dakota. Bismarck, North Dakota is a town of about 40,000 to 50,000, now it's over 50,000, but Bismarck has always had a weather person. From the day it started, KFOR television had a weather person, a colorful, interesting person whose job it was to present the weather. In North Dakota weather sometimes in the middle of the winter with a fast-moving, devastating snowstorm can be life or death.

So most television stations around the country have always had a weather person. When did it become something that is a part of the discussion that it's too expensive to have a weather person? When did that become a part of the discussion about owning a television station?

Mr. FABER. I don't know the station that you're referring to in Bismarck, but I'm going to assume that it's an NBC, ABC, or CBS affiliate. I'm also going to assume that it has several hours of news a day, and what Sinclair typically owns, again, are these Fox, WB, and UPN.

We typically borrowed the third or fourth or fifth rated newscaster in the market. It is a difficult proposition when you're only polling 1 hour a day—I mean, I will tell you, when I got to Sinclair—I've been at Sinclair for 7 years, and when I started at Sinclair our corporate offices were located in the same building where one of our stations broadcast in Baltimore, Maryland, the Fox affiliate there, and at the time that station had 1 hour of news at 10 during the day.

I'd never been in the industry, and I would spend a little bit of time wandering around the building and the people who were running the television station, trying to learn the industry, and I have to tell you, I couldn't imagine—I mean, from being in Washington

and being down there, I remember asking somebody, what does a weather person do all day, and the answer was, not much. I mean, there's just not enough time. When you're only doing an hour of newscasting a day, it doesn't justify it.

And I remember, when you have a major news weather story, if we're having blizzards in one of our markets or any serious weather, we cover that as a news story, locally in the market. I mean, Senator Hollings—

Senator DORGAN. You could do your weather from Singapore, couldn't you?

Mr. FABER. We could do weather from anywhere you want, just like the Weather Channel does, for example.

Senator DORGAN. So then what about Senator Hollings' description—well, I think he was describing one of your stations from a viewer saying, on one station we see the devastation of this storm, we see the physical impact of this storm, the effect on people of this storm, it's being broadcast live by people who are explaining the consequences of it, and you have a meteorologist describing where the storm is moving, what it might mean to people, and on your station, what do you have on there? I hope it's not Keen Eddie, but you're running I love Lucy rerun as if there is a storm.

Mr. FABER. Well, you're relying on, I guess, one e-mail from somebody. In Oklahoma City we covered the tornados that happened in Oklahoma recently extensively with local newscasts, so it's just not true what you've been told, it's simply not true. We covered it extensively in Oklahoma City.

Senator DORGAN. Well, are you going to believe me, or your own eyes? I mean, is that what you're telling me? We've got the evidence here, and you said yourself that somehow—you said, the fact is, news in some cases too extensive. It seems to me that part of the ability that the American people give you to use the airways encumbers you with the responsibility to provide certain things to the people. One of them, in my judgment, is localism, and that means news coverage.

Mr. FABER. But you don't require every television station in this country to have news. We're moving in the direction of putting news on, unlike other companies, who own WB and UPN and Fox affiliates who don't put them on. We're increasing the news.

I mean, the alternative isn't having a full-blown news staff with an anchor there and a weather person there. The alternative is having no news there.

Senator DORGAN. Mr. Faber, the point of this hearing is about the FCC rules and about localism and how you're antithetical to each other, and the fact is, you know and I know that we're moving in the opposite direction. We don't have massive amounts of stations out there adding people to the newsrooms. We have virtual news rooms these days with nobody present. That's why we're concerned about it.

Mr. FABER. Not on television that I know of.

Senator DORGAN. I understand your testimony. Your testimony is, this is a business, the question is, are we making money, and that's all that matters.

Mr. FABER. That's not my testimony.

Senator DORGAN. Well, that's what I heard, and what matters to some of us is, there are public interest requirements, and requirements of localism and diversity from a public policy standpoint that we must be concerned about, and there are some out there owning these stations that don't give a rip about it, don't give a rip, and we are moving so far away from it, and in fact the majority of the FCC doesn't care about it, and that's why the folks, Mr. Bozell, that have complained with respect to your issue haven't received a postcard back, because we've got people that don't understand they're supposed to be referees here, and there are basic requirements of localism.

I appreciate your testifying, Mr. Faber, but in my judgment, Central Casting is part of the problem that we confront here in losing localism in broadcasting, and you say—let me just make one final point. You say, if you have a news story, and you can Central Cast it to 39 stations, it's more efficient. What about, in one of those 39 stations, having somebody interpret that national news story in terms of what does it mean to Charlotte, what does it mean to Bismarck, what are its consequences for Tulsa? What about that interpretation of local news?

Mr. FABER. I think that the important thing, the point I'm trying to make is, in the absence of Central Casting, with the type of news stations that we have, the type of television stations that we have, there has to be—we believe news is important. We believe in the public interest, and we believe providing news is an important thing that we do to serve the public interest of our communities. We truly believe that.

Unfortunately, at some point the business of running television stations has to enter into the picture, and from an economic standpoint the choice becomes in many instances, have news with the Central Casting model that we're using, or don't have news at all. If you look in markets of similar size, where we're starting the news on a Fox or a WB or a UPN, and you stop, and you look at other owners who own a WB or Fox or UPN in a similar size market, you'll find they simply don't have news.

Senator DORGAN. Mr. Chairman, I regret my time is up. I had wanted to ask Mr. Kaplan something, but I think your testimony—I read it last evening, Mr. Kaplan. I think you do a real service in the studies that you prepared and presented to us, and I mean, I think we have to track these further. We need more national analysis of the kinds of studies that you have begun to present this morning, and look, I think these are really, really important issues.

It just is not satisfactory to me, especially coming from a State that has some weather issues out there from time to time—rarely, I should say, for the tourism standpoint.

[Laughter.]

Senator DORGAN. But we do have some weather issues, and it is not satisfactory to say there's only one set of weather data and that comes from some national source. If that's the belief, you can just go to the Internet and broadcast from Singapore and tell us what the weather is going to be in Mission Ridge, South Dakota, or New Town, North Dakota, but it is not satisfactory to me, so that's what localism is about.

So I'm so pleased, Mr. Chairman, that you've decided to hold this hearing. It's the first one I've seen of this type since I've been on this Committee, and we need to keep pushing on these issues, because otherwise this inevitably moves in the wrong direction, and localism gets lost because it's tirelessly old-fashioned, and this is all about profit and business practices, and the American people lose because they owned the airwaves in the first place, and there ought to be some payback with respect to the use of those airwaves.

The CHAIRMAN. Senator Lautenberg.

Senator LAUTENBERG. Yes, thanks, Mr. Chairman. I wanted to ask Mr. Davis, who I do know, and over a long period of time, and I never saw a bias in your campaign reporting that favored me, but—

[Laughter.]

Senator LAUTENBERG. But we did well, and I thank you for your hard work, and I was kind of musing with my colleague over here as you were talking about all the parades and all the other things you do. The question is, do you have any time left for revenue-producing programming?

But your presence, of course, in my state is critical in terms of the population there, because we don't have the television coverage in that part of our State.

How do you decide how you cover New Jersey? Is there a percentage of the effort that is devoted there? You have an office in Trenton, I think.

Mr. DAVIS. Yes, we know approximately 28 percent of our television homes are in the southern half of New Jersey. As you know, our coverage area goes from roughly Trenton over to the coast, and we try to make sure we have the distance of, like I say, the two news bureaus with dedicated reporters and photographers in Trenton and in Margate, on the Jersey Shore.

We also have Philadelphia-based Kathy Gandolfo, who covers parts of New Jersey to Philadelphia, and in addition to the half-hour public affairs show we focus on New Jersey, so we're certainly sensitive to New Jersey, who through no fault of its own doesn't have its own Philadelphia television stations, and of course our station in New York, Channel 7 is responsible for covering the northern half of New Jersey, and has the same commitment to the State through their facilities.

Senator LAUTENBERG. I noted one thing here with your sister station, and that is that campaign time, that in PBI your rate over a period of time from August, September to just before the election takes place October 28, November 4, the rate per 30-second candidate had reduced by 8.8 percent. Your New York affiliate, or vice versa, the New York headquarters main station, went up by 67 percent in the same period of time. Was business bad down in your area, or what happened up in the New York area that did this to those who wanted to have the news and those who wanted to give some of the news about the campaign?

Mr. DAVIS. Well, I would say, without knowing specifically the time periods and those stations, I've always said, if you all can schedule elections in August and January, you would probably have a certainly lower demand for advertising. The fall and the

spring when primary and general elections are held are the same times you have back to school and retail operations, local merchants advertising the most, the heaviest.

You know, on political advertising, I can honestly say we've never gone out and solicited or made presentations to media buyers to buy political advertising. We obviously give discounted rates. It's not necessarily the best way to operate from a business standpoint. I don't know the particulars about WABC. I do know they have the policies that they work very closely to make sure we're within every FCC guideline on campaign and political advertising, so I suspect that it is a reflection of that particular marketplace and the demand of the marketplace in that timeframe.

Senator LAUTENBERG. Well, what happens when we have, let's say, a gubernatorial campaign in New Jersey? It doesn't necessarily run in the same cycle—it doesn't run in the same cycle as Pennsylvania. Do you then stretch that percentage of coverage of New Jersey because the event is that much more—

Mr. DAVIS. Oh, sure. Oh, absolutely. When there's a high profile race, or a high profile, a major story in New Jersey. We don't look every day and say, only 28 percent of our story can be from New Jersey. That goes up or down throughout the year.

Senator LAUTENBERG. What kind of latitude do you have as you try to meet the audience views of what's taking place? Have you made your statement about your personal involvement in community and so forth. Are you in New Jersey when that's being done, too?

Mr. DAVIS. Oh, absolutely.

Senator LAUTENBERG. Are the appetites are exactly the same?

Mr. DAVIS. Absolutely, and we have a good number of our employees that live and work in New Jersey, who are members of the New Jersey Association of Broadcasters. We worked in the New Jersey League of Women Voters on the debates and on the campaign coverage so absolutely, very sensitive, and also to Delaware, I should say. We're responsible for the northern two counties of Delaware.

Senator LAUTENBERG. I want to thank you for your presentation. I thought it was very good.

I want to ask Mr. Bozell a question here, and that relates to—and I couldn't agree with you more in your statements about what's appropriate and so forth, and the example that Senator Dorgan used is disgusting. I mean, it's just awful to put that kind of material out there for, I don't know how it generates any interest, but it's just vulgar, I think.

But here's where I find a little inconsistency. Shows, for instance, on the Fox Network are widely regarded as leading the way in defining deviancy and indecency. Now, ironically, Fox News and the network's founder, Rupert Murdoch, are unabashedly conservative. Is there a contradiction here, or have you taken your fellow conservatives at Fox to task for claiming family values while working for a network responsible for so much of the trash that's currently on TV?

Mr. BOZELL. Well, sometimes I think it's a network badly in need of lithium, but you have to understand, Senator, it is two very different operations. What goes on on the East Coast is completely

different than what goes on on the West Coast. It is two completely separate management entities. At the very top you have an owner who does control both who ought to be held accountable, and as a conservative myself who has been very supportive of many things he may have done in a political sense, I'm appalled at what he's done with the popular culture, and I think that fairness demands that one say that.

It's not just Keen Eddie. I mean, there are plenty of other shows on that network where there are programs that, Senator, are aimed at children. They're not aimed at adults. They are not aimed at you, they're aimed at your children. Do you know what preceded this show that led the viewing audience into Keen Eddie? American Juniors, I believe it is, which is another one of these American Idol things, but now aimed at teenagers. It was designed to bring that audience into the 9 hour for Keen Eddie.

There is something almost sick about this, and I think that it's extraordinary that the Federal Communication Commission that is empowered by law to do something about this has never, ever said anything about any program ever, and every survey in the world shows you, 97 percent or more of the public is fed up with this, and yet the FCC won't do anything.

Senator LAUTENBERG. Thank you, Mr. Chairman. Thanks to all of you.

The CHAIRMAN. Thank you. Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thanks, Mr. Chairman, and I'd just like to add my appreciation for you holding this important hearing on this issue. It's something that the State of Washington cares a great deal about.

I guess Mr. Faber and Mr. Davis had a recent experience in our media market where there was a story about the signing of the President's tax package, and at the signing of that tax package the broadcast said, the President's signing the tax cut passed by Congress today, and it showed a picture of several of my colleagues, some from Washington State, some not from Washington State, who did not support that tax package. Do you think that that's accurate broadcasting, or in the public's interest?

Mr. FABER. I'd have to see it, I think, before I could comment on that.

Senator CANTWELL. Because showing a picture of a Member of Congress at the same time the content says the President's signing the tax package isn't clear?

Mr. FABER. I just feel like I'd have to see it. I don't quite—I mean, I understand what you're saying, but I don't—

Senator CANTWELL. Do you think it would be inaccurate if you made a statement that the President was signing the tax package and it showed a picture at the signing of the White House of another bill and it was, in fact, giving the viewers the impression—

Mr. FABER. I'm sorry, so it was showing another bill. There were people there standing next to the President—

Senator CANTWELL. Yes, they would show the President signing a bill, and it showed Members of Congress standing next to him.

Mr. FABER. It doesn't sound—I mean, again, I wouldn't want to criticize them without actually seeing it, but it doesn't sound like good journalism, no.

Senator CANTWELL. Do you think that's in the public's interest, when you have inaccuracies?

Mr. FABER. Absolutely I don't think it's in the public interest to have inaccuracies in your news, no, I don't.

Senator CANTWELL. A recent study by Children Now found that the hours of programming for children's content in Los Angeles decreased by half between 1998 and 2003, and at the same time in that media market, the number of station owners in the media market went from seven to five. Do you think that the decrease in that amount of content is in the public's interest?

Mr. FABER. I don't know what is the right amount of children's programming on broadcast television.

If I can—you didn't quite ask this question, but you mentioned the decrease in the number of owners.

Senator CANTWELL. No, increase in the number of owners, decrease in the amount of children's programming during that same period.

Mr. FABER. I thought it was a consolidation you were talking about.

Senator CANTWELL. Oh, yes, sorry. Sorry.

Mr. FABER. And I just, I will comment that I don't believe that the consolidation of the industry has anything to do with the reduction of children's programming on broadcast television. I believe the growth and tremendous popularity of children's programming on cable networks has led to the decrease of children's programming on broadcast television.

Senator CANTWELL. But availability in that market actually decreased.

Mr. FABER. Locally, I mean, yes, it sounds like it did. They reduced the number of hours. I'm just saying it had nothing to do, in my view, with the fact that it was consolidation of the industry. It had to do with the fact that it has become tremendously difficult to find advertisers for children's programming on broadcast television stations because they're putting all their money on cable.

Senator CANTWELL. Well, shouldn't something like that be part of how you would measure public interest in programming of content, a variety of content?

Mr. FABER. I think it is. I think it is, and I think that again I'm just saying that I don't know how many hours they started with and how many hours they ended up with, so I don't know that necessarily reducing the number of hours that they had—they may have had too much. I mean, I don't disagree that it's in the public interest to have a certain amount of educational children's television programming on television stations. I don't know the exact right number. The FCC has rules about what you should have on. Whether that's the right number or not, I mean, we comply with those rules and sometimes exceed them.

Senator CANTWELL. Would you be willing to put your content that you think meets the public interest standard, would you be willing to put that in some sort of documentation, or online, that shows this is how you're meeting the public interest?

Mr. FABER. Well, with regard to children's programming, there's actually a form that every television station completes quarterly detailing how they've met what is called core programming, which is programming aimed at children between the ages, I believe of 2 and 12—2 and 16, and that's educational and informative in nature. This is called a form 398. Every television station in the country does it quarterly, and those are filed with the FCC and are available publicly on the FCC's database currently.

Senator CANTWELL. Are you willing to put other content, Mr. Faber and Mr. Davis, online as to what you think your stations are meeting the public interest standard with?

Mr. FABER. I'd certainly look into it. I mean, we also did what's called a quarterly programming report that is similar to the children's—I believe Commissioner Copps mentioned it earlier, that all stations do, and put in their public file quarterly detailing the programming that they believe met the public interest during that quarter and what their plans are for the upcoming quarter, and I just need to look into whether—I mean, it would be a lot easier if the FCC frankly made that so that you could just do it like the children's—we don't have any problem with making that available.

I mean, it's on the public file, which is available to any member of the public. It's just a question, again, we are running a business, and before I'd say yes, we'll go do that, I'd be interested to find out from our intellectual technology people what the cost and difficulty of doing that would be.

As I said, if the FCC could just set it up so that you'd do it just like you do the children's I think it would be much easier, and every television station in the country could do it.

Senator CANTWELL. I know my time has expired, Mr. Chairman, but Mr. Davis, would you like to comment on that?

Mr. DAVIS. Well just, this is our most recent quarterly programming report. Obviously it's in the public file and we could submit it to the Committee or anybody else that wants to look at it. We're proud of it. We have no reason not to let anybody see it.

Senator CANTWELL. That's all your programming you think meets the public interest—

Mr. DAVIS. It's the quarterly listing of community related programming. It's an FCC-directed form where we document all of the programming and things that we do within the news and public affairs programming that we have that in our opinion serves the public interest.

Senator CANTWELL. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Cantwell.

According to this study, conducted by the Alliance for Better Campaigns, they studied 37,000 political ads on 39 local television stations in 19 states, and found that the average price of a candidate ad rose 53 percent from the end of August to the end of October of last year, and of course we all know that we passed the lowest unit charge statute in 1971, where broadcasters are prohibited from charging candidates more for ad time than they charge their high volume year-round advertisers. Obviously, that's not working, because no candidate now can have their spot guaranteed, so therefore they will not take advantage of the lowest unit rate rule.

Mr. Corn-Revere, do you think we ought to tighten the law, and Dean Kaplan, in order to make sure that candidates can get the lowest unit rate?

Mr. CORN-REVERE. I really don't have an opinion on whether Congress should make changes in that law.

The CHAIRMAN. You have no opinion?

Mr. CORN-REVERE. No.

The CHAIRMAN. Thank you. Dean Kaplan.

Mr. KAPLAN. Certainly the law should be enforced. Whether it requires tightening beyond stringent enforcement, I don't know.

The CHAIRMAN. Well, it's very unfortunate that the law seems to be avoided because no one who's running for office wants to have their commercial run at a time when nobody is watching.

Mr. Corn-Revere, Dean Kaplan states, "the public interest obligation has today essentially been entrusted to an unregulated and unmonitored market." Do you believe this unregulated market is performing in a fashion that serves the public interest?

Mr. CORN-REVERE. Well, again, that goes back to the question of defining the public interest in the first place, and as a regulatory matter it's something that the FCC and the courts have tried to do case by case.

When you look at the various mechanisms that have been employed over time, ranging from direct content regulations that have more of a First Amendment difficulty with them to the option that you describe at the outset of the hearing, of providing more spectrum for low power FM stations, for example, all of those are ways of providing greater public interest programming. Some of them present more constitutional difficulties than others.

The focus of my testimony was to suggest that the closer you get to content regulation, the closer you increase the tensions, the constitutional tensions between the law and the Constitution.

The CHAIRMAN. You heard Mr. Bozell's example of sexual innuendo being aired at 9 p.m. on Fox. Do you believe that there's anything Congress can or should do to prevent this?

Mr. CORN-REVERE. Well, rather than just look at that one example, this opens up a whole additional area that we could spend a great deal of time with.

To begin with, Mr. Bozell is incorrect when he says that there have been no indecency fines for television broadcasts. I know of at least two, one in 1988 and one in the mid-nineties, and part of that goes to the difference between television programming and radio programming.

It is true that most of the indecency cases have involved radio programming. There have been a number of other cases where the FCC has investigated, and it goes to the difficulty of applying the kind of standard that the FCC has employed. I'll give you a good example. In 1990, the FCC investigated a San Francisco public television station for broadcasting the miniseries, the Singing Detective. This was produced by BBC. It was a winner of the Peabody Award.

The reason it came to our attention, and I was at the FCC at the time, was because in the course of 7 hours there were maybe three scenes that had questionable material, questionable depending on your perspective.

The CHAIRMAN. Of course, that was 13 years ago, Mr. Corn-Revere, and things have changed rather dramatically.

Mr. CORN-REVERE. But because of the FCC's investigation, which required the station to spend about a year responding to it, that miniseries has not appeared on television in America since. It is the application of that standard, no matter how bad a particular example you may want to talk about here today maybe, but it is the application of that standard that creates significant constitutional tensions.

The CHAIRMAN. Do you believe Congress could legislate a family viewing hour that could stand a constitutional challenge?

Mr. CORN-REVERE. No, I do not.

The CHAIRMAN. On the issue of cross-ownership very briefly, the reason why I'm very concerned about it is I have a letter from a gentleman who is running for office, and in his case—a quote from his letter—a Baltimore TV station involved in a campaign of misleading and false allegations about my Navy service a few days before the 2002 elections. Instead of exercising journalistic integrity, the station, using blatantly intimidating tactics, made the charges even after authoritative Navy documents were given to the station showing the allegations were false.

But then he goes on to say, of great interest, the station tried unsuccessfully to persuade local newspapers to print the same false charges. I wonder, if the television station had owned the newspaper, whether those false charges would have been printed in the newspaper, and that is an issue of, I think, significant concern.

Mr. FABER. Can I respond just very briefly to that?

The CHAIRMAN. Sure.

Mr. FABER. Just so you know, we stand by the allegations. The person that you're talking about—

The CHAIRMAN. Stand by the allegations?

Mr. FABER. Yes, absolutely.

The CHAIRMAN. Even though the United States Navy responded?

Mr. FABER. The United States Navy responded by—the candidate that you're talking about stated on his website that he had won the Silver Star. It was not true. What he had won was—and I'm not a military person, and I know you have a history and a background in that, but my understanding is there are certain medals that you can win, and then you can get a silver star added to those ribbons. It's different from what people generally think of as a Silver Star.

The Navy technically said that—and he changed his website because of the reports. He also said that he had served in Desert Storm, which he had never served in.

The CHAIRMAN. Well, I didn't particularly want to get into it, but the Navy's official response, quote, allegations that the captain wore unearned military decorations proved to be unsubstantiated.

[The information referred to follows:]

SINCLAIR BROADCAST GROUP
 Cockeysville, MD, August 13, 2003

Hon. JOHN MCCAIN,
 Chairman, Committee on Commerce,
 U.S. Senate,
 Washington, DC.

Dear Senator McCain,

I am writing in regards to recent statements you made during a hearing before the Committee on Commerce, Science and Transportation on July 23, 2003. During the hearing you repeated unsubstantiated allegations from a letter addressed to you. This letter included allegations made against me. I am not aware of any attempt by your office and/or the Committee staff to verify these unsubstantiated allegations. Accordingly, I believe it only fair that I have an opportunity to respond and that you have an obligation to include this letter in the official hearing record.

You referenced a letter addressed to you from Mr. C. Richard D'Amato. Mr. D'Amato is not the first, nor will he likely be the last politician that is unhappy with an investigative news story that reported on the veracity of campaign claims he made.

In his letter, Mr. D'Amato referred to WBFF-TV as having ". . . used false information . . ." in a news story regarding his claims of military service. The facts are simple. Mr. D'Amato claimed in campaign material to having won three Bronze Star and the Armed Forces Expeditionary Medals for service while serving on board the USS King (DLG-10) off the coast of Vietnam between 1971 and 1973. He also claimed in his official Maryland House of Delegates website to having "served in . . . Operation Desert Storm" and to having received the Southwest Asia Service Medal for this service.

A Freedom of Information Act request was filed for his service record. A thorough review of his service record was made, inquiries were made of the Navy Awards Office, his service record was reviewed by Mr. B.G. Burkett, a recognized expert in reviewing suspect military service claims, telephone discussions were held with Mr. D'Amato and his attorney, and Mr. D'Amato provided additional military records for our review. The following was learned.

- (1) Mr. D'Amato never received one Bronze Star Medal, let alone three.
- (2) According to the *Navy and Marine Corps Awards Manual* (SECNAVINST 1650.1G), Navy units were not eligible for the Armed Forces Expeditionary Medal for Vietnam service between July 3, 1965 and April 29, 1975. The Navy Awards Office confirmed this exclusion.
- (3) Mr. D'Amato did not serve in Operation Desert Storm. He did perform part of his annual two weeks of active duty for training in August 1990, the period of Operation Desert Shield, onboard the USS Dwight D Eisenhower (CVN-69), but he did not have the minimum 30 days necessary to have earned the Southwest Asia Service Medal as a Naval reservist. The USS Dwight D Eisenhower did not participate in actual combat operations so the time minimum could not have been waived.
- (4) Mr. B.G. Burkett who authored the book *Stolen Valor* conducted the independent review of Mr. D'Amato's service record. Mr. Burkett questioned the authenticity of some of the documents provided by Mr. D'Amato. In addition, Mr. D'Amato refused our request to provide the DD-214 covering his six years of active duty service, the period of time in which he claimed to have originally won the three Bronze Star and Armed Forces Expeditionary Medals. While the news investigation was underway, Mr. D'Amato deleted these various claims from his campaign material, changed his campaign and official House of Delegates websites and issued a statement referring to these unsupported claims as "minor ambiguities."

Finally, while we appreciate Mr. D'Amato's assertion that no investigation was launched by the Navy regarding his wearing of unauthorized medals, no such claim was ever made. However, during the course of our inquiries, the Commander, Naval Reserve Forces Judge Advocate General (CNR JAG) requested certain documentation from us, which we provided. The CNR JAG informed us that he had forwarded the documentation to the Navy Inspector General's office with a recommendation it be forwarded to the Department of Defense Inspector General's office to begin an investigation. CNR JAG officials were concerned over the unusual circumstances regarding Mr. D'Amato's return to active duty for two brief periods of time after he had retired. The Navy IG office recently informed us that it will discontinue pur-

suing the investigation as it does not investigate retired officers below the rank of rear admiral except under extraordinary circumstances.

In conclusion, we continue to stand by the investigative news story. Extensive research and independent, third party review of his military records found that several of Mr. D'Amato's claims of military service and military decorations were unsupported by Navy records or by his military service records. We have enclosed just a sampling of some of this extensive documentation.

The fact that Mr. D'Amato deleted these claims from official state government and campaign material and ceased making these claims while campaigning speaks volumes.

Sincerely,

MARK E. HYMAN.

ATTACHMENTS

Subject: RE: Navy Awards Office Determination
Date: Mon, 8 Jul 2002 08:42:26 -0400
From: [REDACTED]@HQ.NAVY.MIL
To: "Mark Hyman" <mhyman@sbgnnet.com>

The Armed Forces Expeditionary Medal cannot be awarded to a member who was ship's company. An active duty personnel cannot qualify for both the Armed Forces Expeditionary Medal and the Vietnam Service Medal. A member can receive the VN in lieu of but, cannot wear both for the time frame of 1 July 1958 to 28 Mar 1973. A drilling reservist needs 30 days consecutive of 60 nonconsecutive days to qualify for the Southwest Asia Service Medal.

-----Original Message-----
 From: Mark Hyman [mailto:mhyman@sbgnnet.com]
 Sent: Wednesday, July 03, 2002 3:37 PM
 To: [REDACTED]
 Subject: Navy Awards Office Determination

Navy Awards office

Ms [REDACTED]

I have three general questions regarding unit and personal awards that I would like to get answered.

1. Could an active duty naval officer have qualified for the Armed Forces Expeditionary Medal while a member of ship's company on a ship deployed off the coast of Vietnam between 1971 and 1973?
2. Could an active duty naval officer have qualified for BOTH the Armed Forces Expeditionary Medal and the Vietnam Service Medal for qualifying service during the period of 1971 to 1973 while assigned as a member of ship's company?
3. The USS Dwight D Eisenhower (CVN-69) was in the Red Sea from August 8, 1990 to August 22, 1990. Would a drilling reservist temporarily assigned to the embarked staff (Commander, Cruiser-Destroyer Group Twelve) while performing his annual active duty for training during this time period have had sufficient time to have qualified to wear the Southwest Asia Service Medal?

Thank you in advance,

--
 Mark E. Hyman
 Vice President for Corporate Relations
 Sinclair Broadcast Group, Inc.
 10706 Beaver Dam Road
 Hunt Valley, Maryland 21030
 410.568.1565 - Direct
 410.568.1555 - Facsimile

1	2	3	4	5
NAME (LAST, FIRST, MIDDLE)	STATION	DUTY	DATE OF REPORT	NO. OF MONTHS
DAMATO				
	USNA, ANN APOLIS	ACINST	1088	01
	OFFICE OF THE CNO	ACDUTR	1288	00
	OFFICE OF THE CNO	ACDUTR	0189	00
	USNA, ANN APOLIS	ACINST	0889	01
	157TH IMA (USAR) W	MEMB-M	0989	12
	NR, GVTU 0614, NEM	UNIT M	1089	12
	COMCRUDES GRU THELV	ADT/OJ	0890	00
	NR GVTU-0 614 WASH	SUB-AS	1090	12
	USNA, ANN APOLIS	ACINST	1090	01
	COMNAVSPEWARCOM	ADT/OJ	0891	00
	USNA, ANN APOLIS	ACINST	1091	01
	CINCPACFLT PEARL H	ADT/OJ	0892	00
	USNA, ANN APOLIS	ACINST	1092	01

← DAMATO'S RECORD OF DUTY.

"00" INDICATES SERVICE OF LESS THAN ONE MONTH

PERIOD OF SERVICE: AUGUST 1990

DAMATO WAS ASSIGNED TO COMMANDER, CRUISER DESTROYER GROUP TWELVE ONBOARD USS DWIGHT D EISENHOWER IN AUGUST 1990 FOR LESS THAN 30 DAYS.

Maryland

HOUSE OF DELEGATES



C. RICHARD D'AMATO, Democrat, District 30, Anne Arundel County.

Lowe House Office Building, Room 212B
84 College Ave.
Annapolis, MD 21401 - 1991
(410) 841-3211, (301) 858-3211
1-800-492-7122, ext. 3211 (toll free)
e-mail: richard_damato@house.state.md.us
fax: (410) 841-3386

Member of House of Delegates since 1999. Member, Appropriations Committee, 1999- (education & economic development subcommittee, 1999-; oversight committee on pensions, 1999-; oversight committee on personnel, 1999-).

Member, Chesapeake Bay Trust, 2001-; Task Force to Study Lighting Efficiency and Light Pollution in Maryland, 2001-. Born in Hackensack, New Jersey, September 28, 1942. Cornell University, B.A., cum laude (government), 1964; Fletcher School of Law and Diplomacy, Harvard University and Tufts University, M.A., M.A.L.D. (law & diplomacy), 1967. Captain, U.S. Navy Reserve (served in Vietnam & Operation Desert Storm), Assistant Professor of Government, U.S. Naval Academy, 1968-71. Serving Officer, U.S.S. King, 1971-73. Legislative Director, U.S. Representative James Jeffords of Vermont, 1975-78. Legislative Assistant and Chief of Staff, U.S. Senator Abraham Ribicoff of Connecticut, 1978-80. Georgetown University Law Center, J.D. 1980. Member, Maryland State, District of Columbia and Colorado Bar Associations. Staff Director and Counsel to U.S. Senate Majority Leader Robert C. Byrd of West Virginia, 1980-87. Chief Democratic Counsel, U.S. Senate Appropriations Committee, 1988-98. Adjunct Assistant Professor of Political Science, U.S. Naval Academy, 1998-. Chair, Taste of the Nation, Annapolis Share Our Strength, 1996-. Member, Eastport Civic Association; Severn River Association; Chesapeake Bay Foundation; South County Democratic Club. Married.

Senate
House of Delegates
General Assembly
Legislative Committees
Legislative Process
Maryland Government
Maryland Universities & Colleges
Maryland Counties
Maryland Municipalities
Maryland at a Glance

NAME (LAST, FIRST, MIDDLE)			
DAMATO, C			
STATION	DUTY	DATE OF REPORT	NO. OF MONTHS
USNA, ANNAPOLIS	ACINST	1088	01
OFFICE OF THE CNO	ACDUTR	1288	00
OFFICE OF THE CNO	ACDUTR	0189	00
USNA, ANNAPOLIS	ACINST	0889	01
157TH IMA (USAR) W	MEMB-M	0989	12
NR, GVTU-0614, HGM	UNIT M	1089	12
COMCRUDES GRU TWELV	ADT/OJ	0890	00
NR GVTU-0614 WASH	SUB-AS	1090	12
USNA, ANNAPOLIS	ACINST	1090	01
COMNAVSPECHARCOM	ADT/OJ	0891	00
USNA, ANNAPOLIS	ACINST	1091	01
CINCPACFLT PEARL H	ADT/OJ	0892	00
USNA, ANNAPOLIS	ACINST	1092	01

DAMATO PERFORMED ONE MONTH OF ACTIVE DUTY FOR TRAINING AT U.S. NAVAL ACADEMY ENDING IN OCTOBER 1990

HIS NEXT PERIOD OF SERVICE IS AUGUST 1991.

 All About Dick
 Join Dick
 Dick's Agenda
 Press Releases
 Contact Dick
 Dick's Fun Photos
 Your Ideas
 Home
ccccceck-mail



Although what follows is pretty interesting reading, if you're in a hurry, some great bio stuff about Dick can be read in a [National Journal](#) article & the [Capital](#)

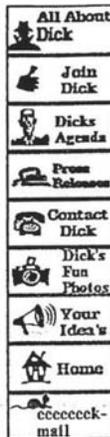
Dick D'Amato has been an active resident of Annapolis for some 30 years, 24 of which has included service as a Legislative Counsel in the U.S. Congress, and as a Navy Reserve Officer. He grew up in New Jersey, the son of a town doctor, went to public schools, and graduated with honors from Cornell University in 1964. He then went to Boston for graduate school, receiving a Masters degree from the Fletcher School of Law and Diplomacy. He attended Harvard Law School, but interrupted his studies during the Vietnam conflict to go to Navy Officers Candidate School in Newport, where he was commissioned as an Ensign. He later completed his law school education at Georgetown Law School, and became a member of the Maryland and D.C. bars. He is married to Dorothy Walsh.

Dick first came to Annapolis in 1967 as a Navy Ensign assigned to teach government at the U.S. Naval Academy. During a three-year tour at the Academy he taught a wide range of courses in Government and Economics, and served as Assistant Varsity basketball coach under Dave Smalley for two years. He also served as a Sailing Coach and recruited for Navy Athletic Teams. He received a special letter of commendation from Admiral James Calvert at the conclusion of his tour of duty at the Academy.

Dick left the Academy in 1971 for two years of duty in Vietnam. He was assigned to the USS KING, (DLG-10), a frigate operating out of San Diego and did two full deployments to the Western Pacific and Gulf of Tonkin. He is a decorated Vietnam veteran, having received three bronze stars, a combat action award, Navy Unit commendation, Armed Forces Expeditionary Medal, and the Vietnam campaign Medal.

After nearly 6 years of active duty, he remained in the Navy reserves, and rose to the rank of Captain. As a current member in the Reserves, he served on the aircraft carrier USS Eisenhower during the early weeks of Operation Desert Shield in the Red Sea, and served twice on Admiral Boorda's planning staff with Operation Provide Promise, directing the air drops of humanitarian aid to the people of the former Republic of Yugoslavia. In 1997, he served on the military attache staff of our embassy in Beijing, China. He also teaches government on duty at the Naval Academy. He has received the Southwest Asia Service Medal for Operation Desert Shield and the Joint Meritorious Unit Award for his service in Joint Task Force Provide Promise in Bosnia.

Since his return to Annapolis from active duty in 1974, he has participated in community affairs. For several years he served as a radio color commentator for Navy basketball, and recently has been appointed as an Adjunct Assistant Professor in the Political Science department at the Naval Academy, teaching courses on American government and foreign policy.



Dick D'Amato

District 30 • Anne Arundel County



Dick's Bio

Page Two

From 1974 through the present, Dick has served on the staff of the U.S. Congress, first serving as Legislative Director for Republican Congressman James Jeffords of Vermont (1974-78), then as Chief of Staff to Senator Abraham Ribicoff of Connecticut (1978-81), and from 1981 to the present as a key aid to the Senator Democratic Leader, now Ranking Democrat on the Appropriations Committee, Senator Robert Byrd of West Virginia. In his capacity as chief of staff for international policies to Senator Byrd, and as chief Democratic counsel to the Senate Appropriations Committee, Dick has actively worked on issues ranging from Annapolis military construction projects, to arms control and environmental policies, to preserving the SR-71 Blackbird reconnaissance aircraft.

He has worked closely with the offices of both Senator Paul Sarbanes and Senator Barbara Mikulski to protect Maryland's interests in the legislative process. For the last 10 years, he has participated in writing the budgets and overseeing projects of the intelligence community ranging from CIA operations to spy satellites. He staffed the first Senate trip to meet with Soviet Leader Gorbachev when political change gripped the Soviet Union, and authored a variety of legislation to protect U.S. business from unfair trade competition by foreign nations.

As Senate Counsel for military construction projects, he has helped to fund numerous projects at the U.S. Naval Academy, including an innovative proposal to build the Visitors Center based on a long-term federal loan arrangement, a new technique in project financing. He also created legislation introduced by Senators Sarbanes and Mikulski to allow the Academy to provide excess food to the needy in Annapolis by protecting the academy from the threat of liability lawsuits. The Public Enterprise editorialized this idea: "Good news arrived the other day from Annapolitan Dick D'Amato ... We applaud the efforts of D'Amato and his Share Our Strength and other hunger relief colleagues, Senators Mikulski and Sarbanes, and the Naval Academy to develop a relatively simple yet potentially very effective means not only of helping the hungry inexpensively...but also helping to curb waste by putting food surpluses to good use in the community." After the Iran-Contra scandal, Dick authored a legislative initiative to require ethics training for midshipmen in the curriculum.

Recently, he has initiated legislative action to add money to the current budget to protect local Greenbury Point from development, remove the obsolete radio towers, and protect it as a wildlife refuge with public access and educational programs. For his work in overseeing the Department of Defense's environmental programs, he has been named an official judge of DoD's annual Environmental Awards contest.

As a result of his work on global warming legislation, he was appointed a member of the American delegation which negotiated the world global warming treaty at Kyoto last December. The April/May issue of Inside Annapolis published Dick's article "Global Warming and the Bay."

Dick authored the U.S. Senate Resolution to require a rapid exit strategy for our troops out of Somalia, and to develop burden sharing mechanisms from our allies during Desert

 All About Dick
 Join Dick
 Dick's Agenda
 Press Releases
 Contact Dick
 Dick's Fun Photos
 Your Ideas
 Home
 cccccck-mail



Dick D'Amato

D'Amato
District 30 • Anne Arundel County



Dick's Bio Page Three

Storm and the current U.S. deployment to the Middle East and Bosnia, arguing that our friends and allies need to share the burden of financial sacrifice to defend the free world.

As a local community activist, Dick helped start the organization known as Annapolis Share Our Strength in 1996, associated with the most successful anti-hunger organization in the country. In Annapolis, Dick put together the annual Taste of the Nation anti-hunger charity dinner on City Dock, now in its third year. All proceeds of the dinner, which draws over a thousand people from Anne Arundel County, are contributed to Food Link and other local food distribution organizations. He has been commended in local newspapers for his work in this area -- The Evening Capital editorialized in 1997 that, "We were amazed at how successful last year's event was, and feel sure even more people will turn out this year."

Locally, he serves on the Unity Rally Steering Committee, the planning group that effectively challenged the recent Klu Klux Klan's demonstration in Annapolis. He created an annual scholarship for talented African-American women, selected by the YWCA and the Women of Color, and presented it in March, 1998.

Dick is a member of Eastport Civic Association, the Severn River Association, the Chesapeake Bay Foundation, and is Minister of Constitutional Affairs of the Maritime Republic of Eastport. He is an Alternate for the Anne Arundel County Democratic Central Committee, a member of the South County Democratic Club, and the Almost 7:30 a.m. Annapolis Democratic Club. He served on the Annapolis Comprehensive Plan Citizens Advisory Committee. He worked with the Merrythought Foundation to bring inner city Baltimore children to Annapolis to teach them navigation and Seamanship skills on Navy Academy boats and classrooms. He also serves on the Annapolis Yacht Club Whitbread Committee. He is a parishioner at St. Mary's Catholic Church. He is a member of the Anne Arundel County Bar, the Maryland Teachers' Association, the Anne Arundel County Association of Realtors, and serves on the Anne Arundel County 4-wheel drive vehicle emergency transportation program. He serves on the Navy League and is a member of the Veterans of Foreign Wars. He is a member of the Anne Arundel County League of Women Voters.

- All About Dick
- Join Dick
- Dicks Agenda
- Press Releases
- Contact Dick
- Dick's Fun Photos
- Your Ideas
- Home
- e-mail



D'Amato declares — will run for House of Delegates

Annapolis Dick D'Amato recently announced his candidacy for the Maryland House of Delegates from District 30. A 50-year resident of Annapolis with 24 years of experience as a legislative counsel in the United States Congress, D'Amato, a Democrat, is a decorated Vietnam War veteran, a captain in the U.S. Naval Reserves, an adjunct professor at the Naval Academy, and co-chair of the annual Annapolis Taste of the Nation anti-burger-chesity dinner. He says he is running "to make a difference."

D'Amato grew up in New Jersey, son of a town doctor, attended public schools and graduated with honors from Cornell University in 1964. He received a master's degree from the Fletcher School of Law and Diplomacy, and attended Harvard Law School, but interrupted his studies during the Vietnam conflict to attend Navy Officer Candidate School in Newport, where he was commissioned as an ensign. He later completed his law school education at Georgetown Law School, and became a member of the Maryland and D.C. bars. He is married to the former Dorothy Walsh. D'Amato first came to Annapolis in 1967 as a Navy ensign assigned to teach government at the Naval Academy. During

a three-year tour at the Academy, he taught a wide range of courses in government and economics, and served as assistant varsity basketball coach under Dave Smith for two years. He also served as a sailing coach and recruited for Navy athletic teams. He left the Academy in 1971 for two years of duty in Vietnam. For his service there, he received three bronze stars, a combat action award, a Navy Unit commendation, Armed Forces Expeditionary Forces Medal, and the Vietnam Campaign Medal.

After nearly six years of active duty, he remained in the Navy Reserves, and rose to the rank of captain, taking part in both the early weeks of Operation Desert Shield in the Red Sea and on the planning staff of Operation Provide Promise, directing the air drops of humanitarian aid to the people of the former Republic of Yugoslavia. In 1997, he served on the military attaché staff of our embassy in Beijing, China.

Since his return to Annapolis from active duty in 1974, D'Amato has participated in community affairs. For several years he served as a radio-caster commentator for Navy basketball, and recently was appointed an Adjunct Assistant Professor in the Political Science department of the Naval Academy, teaching courses on



Dick D'Amato

American government and foreign policy.

From 1974 through the present, D'Amato has served on the staff of the U.S. Congress, most recently as chief Democratic counsel to the Senate Appropriations Committee. He has worked closely with the offices of both Sen. Paul Sarbanes and Sen. Barbara Mikulski to protect Maryland's interests in the legislative process, and for the past 10 years he has participated in writing budgets and overseeing projects of the intelligence community.

In his capacity as Senate Counsel for military construction projects, he has helped fund numerous projects at the U.S. Naval Academy, including an innovative proposal to build the Visitors Center based on a long-term federal loan arrangement, a new technique in project financing. Recently, he initiated legislative action to add money to the current budget to protect local Greenbury Point from development,

remove the obsolescent it as a wild, access and educat

As a community

helped start the c

Annapolis Share t

associated with its

burger organizati

Annapolis, he put s

of the Nation burg

Doc, now in his

also serves on the

Committee, the pib

lively challenged if

demonstration here

Eastport Civic Ar

River Association,

Foundation, and is

tional Affairs of th

Eastport. He serv

Democratic counte

to the Senate App

ropriations Com

mittee. He has wo

ked closely with

the offices of bot

h Sen. Paul Sarban

es and Sen. Barba

ra Mikulski to prot

ect Maryland's in

terests in the leg

islative process,

and for the past

10 years he has pa

rticipated in wri

ting budgets and

overseeing proje

cts of the intelli

gence community.

In his capacity

as Senate Counsel

for military const

truction projects,

he has helped

fund numerous

projects at the U

.S. Naval Acad

emy, including

an innovative

proposal to bui

ld the Visitors

Center based

on a long-term

federal loan ar

rangement, a

new technique

in project fina

ncing. Recentl

y, he initiated

legislative acti

on to add mone

y to the current

budget to prot

ect local Green

bury Point fro

m development,

- [Dicks Agenda](#)
- [All About Dick](#)
- [Press Releases](#)
- [Contact Us](#)
- [Photo Album](#)
- [Volunteer](#)

Mr. FABER. That's not the allegation we made on the air. We did not make an allegation that he wore decorations he had not earned. We made an allegation that he stated he had won decorations that he had not.

The CHAIRMAN. Well, I'd be glad to pursue it later on, but it seems to me that the Navy's official response is important here, but I won't go into it.

Mr. Bozell, what do you want Congress to do?

Mr. BOZELL. Senator, I think there are certain steps that can be taken. First, I think Congress needs to signal to the FCC that it needs to start doing its job, and since my data was questioned, I have to say that the data that I used, when I say that no station in the U.S. has ever been fined, that comes from the FCC. Go to the FCC. That's what they claim. If they're wrong, then that's something we ought to ask them. The only station that's ever been fined was one in Puerto Rico, which I found rather interesting.

First of all, the Congress should go to the FCC and tell the FCC that it wants it to get serious about it. It should raise the fines that you, Senator, are pushing, from that silly \$27,000 figure, which is

utterly inconsequential, to \$250,000, as you've suggested, and then make those fines applicable to every affiliated station that carries something that is finable, that is found to have been worthy of a fine. If that were to happen, those affiliate stations immediately would stop airing this garbage on television. They would stop abusing the privilege. They would do it immediately if they knew the FCC was going to be serious.

But in fact, every time the FCC comes forward and says anything, within minutes, guaranteed that talk radio is just having a field day. The Howard Sterns are laughing on the air. They're laughing at the FCC, and, Senator, they're laughing at you. They're laughing at this whole idea that they might be constrained from what they're doing, and they continue doing it.

The CHAIRMAN. Final comments. Dean Kaplan.

Mr. KAPLAN. I believe sunlight is the best disinfectant. Right now, stations are required to file quarterly reports on paper and keep them in their offices that talk about their public interest programming. They're not required to keep program logs with time codes. As a consequence, it's next to impossible for anyone to do the kind of research to create the kind of public pressure to encourage or shame stations to live up to their obligations. I believe that asking stations to disclose what their public affairs programming is, not in general terms but in specific terms with time codes, and to put that on the Internet, is a small step that will serve the public.

The CHAIRMAN. Mr. Corn-Revere, final comments?

Mr. CORN-REVERE. When I was invited to testify at this hearing, and heard that it was sort of a review of the good old days of regulation, and whether or not those days should be brought back, there tends to be sort of a gauzy memory of how well that regulation worked.

For those of us that have been at the FCC and seen it first-hand, I think it bears a closer examination of whether or not the various mechanisms that you would use to bring broadcasters to account to see how well they worked in the past just to see where there was greater participation in the renewal process and the ability of interest groups to challenge renewals, that led to a process of green mail, where people were essentially in the business of challenging license renewals until they got their payoff. That was something that the FCC was called upon to address and finally was able to put a stop to that.

If you take any one of these proposals, whether it's greater oversight of programming or other measures that you would sort of reimpose to enforce a vision of the public interest, you have to consider the unintended consequences of those actions.

The CHAIRMAN. Well, I thank you, Mr. Corn-Revere, and I'm sorry if you were given the impression that this was a desire to return to the old days. It was not. The purpose of this hearing is to ascertain whether the licensees who receive spectrum for free, which are owned by the taxpayers of America, were living up to their public interest obligations as we see them, so I'm sorry you were misinformed as to the intent of this hearing.

Mr. Faber, a final comment?

Mr. FABER. Yes. I would just like to veer off slightly from the News Central topic that I focused on in my comments and just

mention something in regards to something Commissioner Copps said, which is, he has mentioned on numerous occasions, including today, the 2 million public comments and 99 or something percent of them are opposed to further deregulation, and several Members of the Committee seem impressed by this and impressed by the idea of this rising up of this national interest against this.

I will tell you, having gone through an awful lot of what's on the FCC's website that's available, what I believe probably 99 percent of them are, are simply the exact same form letters that were created by three or four organizations. Hundreds of thousands of these simply came from members of the National Rifle Association, who sent out a mass e-mailing to their membership saying, we have to stop media consolidation, here's an e-mail, please just click here and this will send it to the FCC. I don't believe there was a national uprising.

The CHAIRMAN. Well, as an elected official I can tell you that everywhere I go, I'm astonished to hear about the concern that people have, and that's been voiced on this issue, including the one that Mr. Bozell raises, so you and I have a very different view of public opinion and their concern on this issue, but I appreciate your view.

Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. I was born in 1952, about 15 miles south of Cleveland, Ohio. I remember seeing a little black-and-white television. We could get maybe one or two channels if the wind was blowing in the right direction. There was no UHF stations. There was no FM radio. There certainly was no DVD, VCR, satellite television, satellite video. All of those things I believe were created by private industry, who had the benefit of people like yourself creating the proper atmosphere for those things to grow, and technology to develop. I would just like you to consider some of those things going forward, and I appreciate the opportunity to be here.

The CHAIRMAN. I thank the witnesses. It has been a very interesting hearing. This hearing is adjourned.

[Whereupon, at 12:02 p.m., the Committee adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

I want to thank Chairman McCain for holding today's hearing on media ownership. This hearing is especially timely in the wake of the FCC's June 2 decision, which relaxed many of the remaining structural limitations imposed on broadcast companies. Given the alarming implications of this decision, it is extremely timely that we begin today to review the behavioral as well as the structural limitations that serve as a check on large media conglomerates.

Over seventy years ago, broadcasters were made trustees of the public spectrum. In return for this privilege, came a responsibility to use the public's airwaves in a manner that would principally serve the public, not the balance sheets of publicly traded companies. Toward that end, reasonable limits on media ownership coupled with requirements encouraging broadcasters to cover issues that are important to their local communities have historically helped to maintain a critical balance between the drive for commercial success and the preservation of a free marketplace of ideas.

Over the last twenty years, there have been sweeping deregulatory changes in the broadcast market. In the 1980s, the FCC eliminated many of its public interest rules based on the rationale that competition in the market would force broadcasters to serve the public interest. With the significant relaxation of the rules since that time, I question whether the lack of both structural limitations and behavioral obligations on broadcast companies can continue to be justified.

I look forward to the testimony of the witnesses today and hope that this hearing will result in recommendations that will be examined by the FCC and the Congress to ensure that America's broadcast system continues to serve the people of this diverse nation. Thank you, Mr. Chairman.

○