

WASHINGTON STATE ASSOCIATION OF BROADCASTERS

2011 CONGRESSIONAL POLICY BRIEFS



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Introduction

The Washington State Association of Broadcasters was formed in 1935 and represents the more than 250 television and radio stations, both commercial and noncommercial, serving local communities throughout the state of Washington.

We appreciate the time that our Members of Congress and their telecommunications advisors take to better understand our business and our issues. If you have questions or concerns about the broadcasting industry, we encourage you to contact the Association, your local broadcaster or a WSAB Board member from your District. He or she will gladly provide whatever assistance possible.

The WSAB Board of Directors annually reviews the congressional issues most likely to demand the attention of our Members of Congress and establishes the Association's official position on each. With this set of *Policy Briefs*, WSAB presents the thoughts of the hundreds of Washington broadcasters on the critical issues facing both broadcasters and lawmakers.

CAMERAS IN FEDERAL COURTROOMS

The Issue

While cameras and recording equipment are permitted in courtrooms in every state, most federal courtrooms remain closed to broadcast coverage. Legislation has been introduced in Congress during past sessions to provide federal judges with the discretion to allow cameras in their courtrooms.

WSAB Position

WSAB supports legislation to provide all federal courts with the authority to allow cameras and recording devices in the courtroom.

Background

Experience in state courts, including more than 30 years in Washington, has shown that it is possible to permit the public to see trials on television without imperiling the right of a defendant to a fair trial, jeopardizing the safety or privacy interests of witnesses and jurors, compromising the dignity of the court, or disrupting the orderly conduct of the proceedings. The history of cameras in state trial courts is one of cooperation between the bench, bar and press, and the education of the public about the justice system. Hundreds of criminal and civil trials are covered every year without controversy over the media's role.

The Federal Judicial Center concluded in 1994 that there were "small or no effects of camera presence on participants in proceedings, courtroom decorum, or the administration of justice." From 1991 to 1994, the Center conducted a pilot program that allowed camera coverage of civil proceedings in certain federal trial courts, including the U. S. District Court for the Western District of Washington. In this limited program, the courts granted access to more than 200 civil proceedings. Judges and attorneys involved in the program generally observed that the cameras presented little or no impediment to courtroom proceedings.

Common concerns about cameras in the courtroom do not stand up to scrutiny.

•*Defendant's Constitutional Right to a Fair Trial.* *The U. S. Supreme Court held in Chandler v. Florida that the mere presence of a camera in the courtroom does not deny a defendant the right to a fair trial.* Moreover, the Sixth Amendment also guarantees a defendant a public trial. The courts have a long list of tools to use to ensure a trial by an impartial jury, such as in-depth *voire dire*, sequestration, and change of venue. Overlooked, perhaps, is the role of public scrutiny in helping to ensure a fair trial.

•*Effect on Trial Participants.* *Studies conducted by states prior to allowing cameras in the courtroom, including in Washington, have found universally that witnesses and jurors behave the same whether or not there is a camera in the courtroom.*

Witnesses: Fears about witness distraction, nervousness, distortion of testimony, fear of harm and reluctance or unwillingness to testify are unfounded.

Jurors: Fears about juror distraction, effect on deliberations or case outcome, making a witness seem more or less important depending on camera coverage, and reluctance to serve with cameras present are unsupported. Any legislation would give the trial judge wide discretion in protecting witnesses and jurors from exposure on camera.

•*Prolonging Trials & Testimony.* *Cameras tend to keep trials moving.* Many cases, by their very nature are complex, drawn-out affairs. But neither the California "Hillside Strangler" case which took 23 months, nor the Charles Manson trial which lasted 9 months, was televised.

•*Media Circus.* *The camera inside the courtroom has been the unemotional carrier of truth and education about what is actually happening at the trial.* Sensational trials and press coverage existed long before cameras entered the courtroom. Cameras act as an antidote to the abuses of the "circus" by allowing viewers to make their own judgments about the conduct of the trial.

Advances in technology have made cameras much less intrusive. Many courtrooms are now wired for audio and video with cameras mounted unobtrusively on walls. The big, old, noisy film cameras have been replaced

by much smaller, silent video cameras. Digital video and photography continue to reduce the impact of cameras in the courtroom.

"Bench-Bar-Press" type Principles reduce the impact of cameras in the courtroom. Pooling requirements; advance notice of desire to cover a trial session; specific camera location requirements; and, behavior guidelines for camera operators and reporters are all typical of methods used cooperatively by the bench, bar and press under state cameras in the courtroom rules to limit the impact of camera presence.

Camera coverage of federal court proceedings will enhance public education about the legal system and the public's trust and confidence in the legal system. The more transparent the workings of the legal system, the better the public will understand and more thoroughly and constructively participate in it. Denying access to people who either could not travel to, or get a seat in, the courtroom accomplishes nothing; but, the broadcast of the trial will further the interests of justice, enhance public understanding of the judicial system and maintain a high level of public confidence in the judiciary.

We have lost an invaluable treasure of history-making court decisions. Picture in your mind the Watergate Hearings or the impeachment trial of President Clinton in the United States Senate. Vivid. Dramatic. Historic. Educational. Now, try to picture the testimony in the Timothy McVeigh trial, the Microsoft anti-trust case or the argument in *Bush v. Gore*. In 2011, the trial of "The Barefoot Bandit" Colton Harris Moore will take place in the Federal District Court in Seattle and, despite extremely high interest in the case, the only people who will be able to see it occur are those who are fortunate enough to get a seat in the courtroom. No transcript, not even the best sketch artist, can convey the immediacy, the voice and demeanor of witness, litigator and judge that is captured by a camera in the courtroom.

CAMPAIGN REFORM & POLITICAL BROADCASTS

The Issues

The role that broadcast political advertising plays in campaigns is central to the debate over campaign finance reform. Congress continues to wrestle with issues such as whether candidates should receive free airtime and whether broadcasters should pay a spectrum use tax to fund "free time."

WSAB Position

WSAB opposes the creation of additional "free" time, further discounted airtime for political candidates and a spectrum use tax on broadcasters to fund federal candidates' ad buys.

Background

Proponents of free airtime trivialize or ignore the substantial free time already dedicated by local stations to candidates. Washington broadcasters provide hundreds of hours free time opportunities for candidates to share their views and for voters to examine their candidacies in news and public affairs programming, interviews and debates. *Unfortunately, candidates reject many of these opportunities.*

Lowering the cost of broadcast airtime for candidates will not lower the cost of campaigning. Broadcasters already provide candidates with their lowest rates. Candidates would buy more spots with the same amount of money, or put the extra cash into additional print advertising, more yard signs, mailings, polls, consultants, or other campaign expenses; but, no less money would be spent. According to a survey conducted between November 3-5, 2006 by APCO Insight, 69% of voters believe that candidates would continue raising campaign funds, even if they did not have to spend it on political advertising, and would spend it on something else. *Candidates will raise as much money as they can and spend as much money as they raise (or more), regardless of any amount of free airtime they receive.*

According to the *Campaign Study Group*, a typical House campaign spends only about 27% of its budget for ads; a typical Senate campaign only about 40%. These percentages are relatively unchanged in more than a decade. A report by the *Committee for the Study of the American Electorate* concluded that increased media costs are due to the increased use of media, not an increase in the cost of buying time.

Free time would mean more spots. The number of political candidate and ballot issue advertisements already is staggering. If candidates are given free spots, they will simply spend the same amount and broadcast many more ads. More spots make it more difficult for any particular spot to cut through the clutter and be effective in carrying its message. *It is hard to imagine more political ads.*

More Ads Means More Negative Campaign Ads. The public is sick of negative campaign ads. Attack ads reinforce the cynicism they exploit, driving the public away from the political process. Citizens complain about the lack of substantive issue discussion, not the lack of political ads. They do not believe attack ads help them to make informed choices. During campaigns, radio and TV stations are deluged with calls from irate viewers and listeners demanding that the stations take these kinds of ads off the air.

Free Airtime For Federal Candidates Will Crowd State & Local Candidates Off The Air. There is only so much airtime to sell or give away. Once regular advertisers, local car dealers or furniture or grocery stores, have been bumped to accommodate federal candidates' free time, the next endangered species will be state and local candidates running for Governor, the legislature, mayor or city council.

Local Advertisers Will End Up Paying Twice for Candidates' Free Airtime. First, they will be crowded off the air and will lose valuable exposure for their products and services, especially since political campaigns take up the first half of the fourth quarter when holiday advertising is at its peak. Second, there is no free lunch. Broadcasters have bills to pay, too, and have to make up the revenue lost to campaign spots somewhere. Former Representative Neil Abercrombie (D-HI), during one of the debates on free airtime, said on the House floor, *"What is going to happen is that the local advertisers are going to have to make up the difference. I'm not*

going back to my district and tell people that are trying to make a living that they have to pay more for advertising so people can listen to me!" Representative John Dingell (D-MI), in the same House debate said, *"We are literally putting our hands in the pockets of local folks to get ourselves a special benefit. I do not have the arrogance to vote for a proposal of this kind, or to say that this is in the public interest."*

Free Airtime is Unconstitutional. Political speech is at the core of First Amendment protection and its regulation must meet three tests: 1) substantial governmental interest; 2) narrowly tailored; and, 3) no less intrusive alternatives.

Substantial Governmental Interest: In *Buckley v. Valeo* the U. S. Supreme Court rejected campaign cost reduction as a substantial governmental interest. The Court has held time and again that the quality of political debate is none of the government's business.

Narrowly Tailored to Achieve Goal: Free time will not reduce campaign spending.

No Less Intrusive Means: Many other less intrusive alternatives exist to reduce campaign spending: Public funding, limiting the level of contributions, limiting expenditures, and lowest unit rate given only to candidates who abide by voluntary spending limits. Free airtime also fails to address other causes of increasing campaign spending, such as the escalating costs of campaign overhead.

A Tax On Radio and Television Stations' Spectrum to Fund Free Time Is Unconstitutional. Discriminatory taxes on media are unconstitutional. In *Grosjean v. American Press Co., Inc.*, the U. S. Supreme Court held unconstitutional a tax on only one news medium (certain newspapers, but not broadcasters or other print media) that had the effect of imposing a discriminatory burden on the medium that was singled out for taxation. It was described by the Court as a "license tax for the privilege of engaging in such business," much the same as the proposed spectrum fee on broadcasters.

Free Time Constitutes a "Taking" of Broadcasters' Property and is Unconstitutional. Broadcasters enjoy no property right in the use of the spectrum. It belongs to the People. The property that broadcasters do have, though, is their stock-in-trade, airtime. Free airtime for candidates forces broadcasters to give up their economically valuable inventory without compensation. In its editorial of March 29, 1998, the *Seattle P-I* said:

"Free time may seem innocuous, but it is not. It is the commandeering of an independent news organ by politicians. It should not matter that radio and television use the public spectrum. Newspaper trucks use the public streets, and our coin boxes use the public sidewalks. That does not give the City Council the right to demand free space in the B Section....A public purpose might be served for every hardware store to be forced to donate a lawnmower for the city parks. But the hardware stores would complain, as well they should."

Broadcasters Are Not "Gouging" Candidates. Lowest Unit Charge (LUC) is working exactly as Congress intended. The cost of a broadcast advertisement, and therefore the LUC which is simply the lowest cost paid by a regular advertiser, is not a static number. It changes with the level of demand for airtime. The rising tide of demand for airtime lifts all rates, including the LUC. During campaign periods candidate and ballot measure airtime purchases, as well as regular advertisers' needs, drive up demand for airtime and therefore the unit rate for all spots, from lowest to highest. Free airtime will only exacerbate the demand, while doing nothing to increase the inventory. Spots will cost even more.

Not Only Do Broadcasters Not "Profiteer" From Political Advertising, They Lose Money on Every Candidate Spot. Every LUC candidate spot runs at a huge discount from the price that a normal commercial advertiser would pay for that same spot. Many stations are normally "sold out," i.e., they could sell all of the spot airtime they have available to regular commercial advertisers at rates higher than the candidate rate. However, every LUC candidate spot replaces a full rate spot, and costs the broadcaster the difference.

FAIRNESS DOCTRINE

The Issue

Some Members of Congress have called for the re-imposition of the Fairness Doctrine.

WSAB Position

WSAB opposes reinstatement/codification of the Fairness Doctrine. *“Balance may be a laudable goal, but there are grave dangers when the government tries to strike that balance.”* FCC 1985 Fairness Doctrine Report, (Paragraph 136)

Background

Codification of the Fairness Doctrine would deprive the public of its opportunity to participate meaningfully in the discussion of important community issues. In the 20+ years since the repeal of the Fairness Doctrine, discussion of controversial issues of public importance on radio and television has become a mainstay of civic discourse. The growth of liberal and conservative political talk radio evidences the soundness of the Commission’s conclusion. Such programs have become the public’s town forum, 24 hours a day, 7 days a week. The obligation to air issue-responsive programming has not been changed by the FCC’s action.

After an exhaustive study, the FCC concluded that the Fairness Doctrine abridged even the limited First Amendment rights of broadcasters. The Commission’s findings in the Fairness Doctrine Report of August, 1985 and its 1987 Order repealing the Doctrine, clearly and convincingly demonstrate that the Fairness Doctrine is both unconstitutional and contrary to the public interest. *“...the fairness doctrine inextricably involves the Commission in the dangerous task of evaluating the merits of particular viewpoints,”* the Report said.

The Fairness Doctrine discouraged, rather than encouraged, the vigorous exchange of ideas. Whatever interests may be served by the Fairness Doctrine, they are more than outweighed by its adverse, chilling effect on public discussion of important issues. The repeal of the Fairness Doctrine has not denied the public access to programming addressing community issues. On the contrary, it has opened up the airwaves for robust discussion of controversial issues of public importance as never before.

The Fairness Doctrine makes the government the ultimate editor. The Fairness Doctrine would return the FCC to the constitutionally disfavored role of overseeing program content by requiring judgments as to the reasonableness of selected programs, formats and spokespersons. The FCC’s 1985 Report concluded that the pervasive regulation of broadcasters, *“including the intrusive power over program content occasioned by the fairness doctrine, provides governmental officials with the dangerous opportunity to abuse their position of power in an attempt to either stifle opinion with which they disagree or to coerce broadcasters to favor particular viewpoints which further partisan political objectives.”*

The Fairness Doctrine would place an unreasonable burden on local stations. Stations incurred large legal costs defending against complaints, of which only a handful were ever sustained. The fear of generating a complaint, with its attendant costs, made stations less willing to delve into controversial issues. KREM-TV, Spokane could find no spokesperson to present an opposing viewpoint on a local bond issue. The FCC engaged the station in a 21-month defense of its actions, costing the station more than \$20,000 and 480 hours of management and executive time, then, ultimately exonerated the station.

The Fairness Doctrine provided enormous leverage for special interest groups to coerce broadcasters into censoring specific programming or to harass broadcasters into presenting a particular spokesperson or broadcast. When the Fairness Doctrine was in effect, broadcasters were commonly whipsawed between special interest groups. Sometimes the group really wanted its viewpoint on-the-air but, more often, it wanted the opposing viewpoint off-the-air. On some occasions, the special interest group simply wanted to reach a monetary “settlement” with the broadcaster in lieu of filing a Fairness Doctrine complaint. The Fairness Doctrine required broadcasters to provide airtime only to major or significant contrasting viewpoints, which opened the door to opportunity for mischief that special interest groups found irresistible.

FIRST RESPONSE BROADCASTERS

The Issue

Ensuring that local radio and television stations have the ability to provide critical life and property-saving information during time of emergency and disaster.

WSAB Position

WSAB supports legislation that would provide “First Response Broadcasters” with appropriate priority status for fuel, food, water and other necessary supplies to continue broadcasting during emergency conditions; and, would provide access for critical-to-air personnel to keep the station operating and gather and broadcast life and property-saving information.

Background

Washington state is vulnerable to earthquakes, tsunamis, volcanic eruptions, wildfires and other natural and human-caused disasters. Washington’s local radio and television stations have played a critical role in communicating life and property-saving information for more than 55 years, since the creation of the CONELRAD warning system, but they, too, are vulnerable.

Broadcasters are able to provide essential public information services in a disaster only if they are able to stay on-the-air. A “*First Response Broadcaster*” is a local or television or radio broadcaster that provides essential disaster-related public information programming (such as evacuation route instructions, safety information, utility status reports, etc.) before, during or after the occurrence of a natural or manmade disaster.

During a disaster, many stations struggle to keep broadcasting - keep emergency information flowing - and could contribute significantly to disaster response efforts. Passage of such legislation will put local broadcasters on the roster of first responders so the public can receive the life-saving information that they desperately need.

- In the aftermath of Hurricanes Katrina and Rita, many local broadcasters could not access fuel, water, food and other supplies critical to keeping vital public information flowing. In some cases, supplies that stations procured elsewhere were confiscated by local, state or federal authorities. Emergency services and public safety needs should take precedence over private industry interests, but broadcasters should also be given special consideration following a disaster if they maintain essential disaster-related public information services.
- Local journalists are issued press credentials and granted access to a disaster area by local authorities; but, in the wake of Hurricanes Rita and Katrina those credentials were disputed and, in some cases, not honored by state or federal authorities operating in the same area. Further, the restoration of critical broadcast facilities in the region was also inhibited as engineers and technicians were, in many cases, denied access to their facilities in the disaster area.
- Many transmitters, towers and key broadcast facilities are not sufficiently protected against potential threats.
- A Primary Entry Point (PEP) station is a radio broadcast station designated to provide the President access the airwaves nationwide following a national emergency. These stations have protected, government-funded circuits connecting them to emergency command centers. However, there are twenty states without PEP stations, although Washington is among the states that have a PEP station (KIRO-AM, Seattle).

Such legislation supports the vision of the federal Partnership for Public Warning: “*Every person shall have the information needed in an emergency to save lives, prevent injury, mitigate property loss, and minimize the time needed to return to a normal life.*”

FM CHIPS IN MOBILE PHONE DEVICES

The Issue

Legislation could be introduced in 2011 that would provide for the inclusion of FM receiver chips in mobile phone devices.

WSAB Position

WSABS supports the inclusion of FM receiver chips in mobile phone devices.

Background

Incorporating FM radio tuners in mobile phones will help achieve the goal of the Warning Alert and Response Network (WARN) Act of 2006, in which Congress authorized the commercial mobile telephone industry to create an emergency alerting system. Radio's emergency alert system (EAS) is a proven, reliable service. The most technically and financially appropriate method for cellular carrier compliance with the WARN Act is to utilize the current FM radio-based EAS platform by providing cellular subscribers with handsets equipped with FM radio receivers.

Emergency information is critical to public safety, but cell phones themselves are the first communication device to fail in an emergency due to overload of the system. With an FM chip in a mobile phone, emergency information would be available via FM radio. Delivery does not rely on the wireless system, but on regular FM transmission and reception, even if the phone portion of the device were inoperable because the cell system was down. If FM radio were universally included in cell phones, then following a text-based alert, users would always be able to tune to their local FM stations for detailed, lifesaving information during emergencies.

The structure needed to implement a text messaging-based alert system will not be in place for several years, while FM radio-based EAS is available and in use today. When dealing with public safety and warnings, a several-year wait for cellular phone-based alerting is not acceptable. There is no risk that FM radios in cell phones will clog up the existing switched wireless networks and impede the delivery of important emergency information unlike alternatives such as a text messaging-based alert system. FM tuners will not interfere with cell phone operations, thereby allowing Americans to continue using their cell phones during emergencies while also accessing critical instructions from public safety officials over radio's Emergency Alert System.

For little or no cost, manufacturers can include an FM radio receiver in cell phones that would ensure that broadcasters' Emergency Alert System (EAS) messages reach the widest possible audience. There are well over seven hundred million cell phones with FM radios globally. Currently, only a handful of FM radio enabled cell phones are in the U.S. market. There is no excuse for American consumers' access to advanced technology to lag behind that available worldwide.

PERFORMANCE ROYALTY FOR BROADCAST OF SOUND RECORDINGS

The Issue

Legislation has been introduced in past Congresses that would impose upon radio broadcasters a royalty paid to record companies and performers for the broadcast of their music. Legislation has also been introduced in past Congresses that would establish Congress' opposition to such a performance royalty.

WSAB Position

WSAB opposes a performance royalty for sound recordings.

Background

Performers and recording companies receive an enormous financial benefit from the broadcast of their recordings. Performers receive continual promotional exposure of their recordings with every broadcast, for which they pay nothing. The value of this publicity to performers and recording companies is enormous. Local radio stations contribute more than \$2.4 Billion in promotional value to the record labels by promoting their recorded music, concerts, merchandise and careers, at no cost to the performer or record label.

Radio airplay is the most effective method by which a performer's recordings are exposed to the public.

In their own words, record company executives and artists recognize the promotional value of free radio airplay.

"If a song's not on the radio, it'll never sell." -- Mark Wright, Senior Vice President, MCA Records, 2001

"Air play is king. They play the record, it sells. If they don't, it's dead in the water." -- Jim Mazza, President, Dreamcatcher Entertainment, 1999

"Radio is king, so obviously we need country radio support." Scott Borchetta, President & CEO, Big Machine Records/Valory Music Co.

"If you don't get yourself on the radio, then you won't draw bodies at the clubs and you won't sell records." -- 'Another Animal' drummer Shannon Larkin, *Drum Magazine*, 2008

"I have yet to see the big reaction you want to see to a hit until it goes on the radio. I'm a big, big fan of radio." --Richard Palmese, Executive Vice President of Promotion, RCA, 2007

"It is clearly the number one way that we're getting our music exposed. Nothing else affects retail sales the way terrestrial radio does." --Tom Biery, Senior Vice President for Promotion, Warner Bros. Records, 2005

"That's the most important thing for a label, getting your records played." -- Eddie Daye, recording artist, 2003

"Country radio, thank you so much for being our mouthpiece. You know what we do means nothing if it never gets played, and no one gets to hear it." -- 'Rascal Flatts,' Vocal Group of the Year, Country Music Awards, 2007

"I am so grateful to radio. Their support has truly changed my life, and I hope they know how appreciative I am for that." -- Jo Dee Messina, recording artist, 1999

"Radio has proven itself time and time again to be the biggest vehicle to expose new music." -- Ken Lane, Senior Vice President for Promotion, Island Def Jam Music Group, 2005

*"[R]adio remains the best way to get new music into the listeners' lives." --Sony BMG Executive VP Butch Waugh as quoted in *Radio & Records*, January 11*

"I have to thank... every DJ, every radio guy, every promotions guy, everybody who ever put up a poster for me and spread the word." -- Alicia Keys, recording artist and Grammy winner, 2008 Grammy Awards, February 2008

Fundamental fairness requires that if broadcasters are subject to a performance royalty, then other businesses that promote recording artists by publicly performing their recordings should contribute their fair share to any performance royalty pool. Recording artists reap great promotional value from the exposure of their songs in restaurants, bars, convention centers, grocery stores, gas stations, theaters and myriad other venues.

License fees paid to composers through ASCAP, BMI and SESAC do not justify a performance royalty windfall for recording artists. Composers receive no promotional value from radio airplay of their songs; does not turn a composer into a mega-star; and, most work in near total anonymity, which is why they are compensated by a license fee.

The fees paid by subscription based technologies, such as satellite and Internet radio do not justify a performance royalty on local radio stations. Congress has found that Internet and satellite radio providers threaten the sales of recorded music, whereas local radio stations enhance record sales. In addition, subscribers actually pay those providers for the recorded music delivered into their homes, offices and vehicles, in contrast to local radio stations who provide their listeners with music for free.

Congress already has considered and rejected the issue of performance fees at least three times (1971, 1976 and 1995). Congress concluded that such fees would jeopardize "the mutually beneficial economic relationship between the recording and traditional broadcast industries" (House Report 104-274, 1995).

Establishment of a performance right in sound recordings will not, necessarily, make funds from foreign countries, which recognize such a right, accessible to American performers. An American performance right ignores the significant differences between American and other countries' broadcasting and copyright structures. Many countries radio broadcasting has been traditionally government subsidized. The performance right is simply a way for a foreign government to subsidize its culture, a system which the United States neither needs nor should create.

Radio broadcasters are engaged in good-faith, productive negotiations with the recording industry to resolve this issue in the best interests of both radio and the music industry. The National Association of Broadcasters has presented the music industry with a legislative term sheet designed to put this longstanding performance royalty issue to rest.

PUBLIC BROADCASTING FUNDING

The Issue

Some Members of Congress have proposed to eliminate the funding for public broadcasting.

WSAB Position

WSAB supports a strong and robust public broadcasting sector and opposes any attempt to eliminate funding to the Corporation for Public Broadcasting, the Public Broadcasting System or National Public Radio.

Background

Reducing or eliminating the funding of public broadcasting ultimately would sacrifice the enrichment local citizens count on from their public broadcasters. Continued federal funding provides the best mechanism for public broadcasting to thrive by providing the stable base from which local public broadcasters can leverage local support from non-governmental sources to multiply Congress' investment.

Washington's public broadcasting stations are community-based service organizations that address issues of importance, concern and interest to their local viewers. Public radio and television stations are locally governed, locally programmed, and locally staffed. They work with each other and hundreds of national and local producers and community partners to ensure that Americans have universal access to high-quality non-commercial programming with a particular focus on the needs of underserved audiences, including children, minorities, and low-income Americans.

Public broadcasting is a great investment. Unlike public broadcasting systems throughout the world, America's public broadcasters do not rely upon the government as their primary source of funding. On average, federal funding amounts to less than 14% of a station's budget, with the remaining 86% coming from local sources. However, this federal support is critical seed money for local stations which leverage each federal dollar to raise over six more dollars from local sources in order to provide the American public with the highest quality programming and services.

Public broadcasting is more important than ever. The rapidly changing media environment is making public broadcasting more and more vital as a source of news, local cultural programming, and non-commercial educational programs designed to enhance the quality of life in our local communities. Public broadcasting is a rich source of children's programming, public affairs, music, and culture information.

Public broadcasting provides vital programming for parents and children. Public broadcasting has the best interests of children as its sole objective. This is one reason why parents and teachers trust public broadcasting, and why maintaining our public broadcasting system is so important.

Public Media Embraces the Digital Future. Public broadcasting content is now available through broadcast, cable, satellite, satellite radio, the Internet, and wireless devices. Public broadcasting is committed to a multi-platform presence, to be available anywhere at anytime to the public it serves. Local stations partner with museums, libraries and other community organizations to make great content available to the public for free on mobile devices and online. They are teaming up with start-ups and innovators to break new ground in educational and informational materials.

REPORTER'S SHIELD LAW

The Issue

Reporters continually come under intense pressure to reveal the identity of confidential sources, threatening the public's right to know, and leaving the reporters open to incarceration. Legislation has been introduced in past Congresses that would ensure that journalists and others involved in newsgathering and dissemination are not inhibited, directly or indirectly, by threat of governmental sanctions.

WSAB Position

WSAB supports legislation that would protect reporters from forced disclosure of confidential sources, unpublished reporter's notes and outtakes.

Background

Ensuring the free flow of news and information, and promoting a free and unfettered atmosphere in which news can be gathered and disseminated is the highest priority of Freedom of Speech. The press is a vital link between the people and their freedom, and the ability of a free press to report the truth to the public sometimes requires the participation of those who fear for their personal or professional safety if their identities were to become known. The confidentiality standard between reporter and source is as important to the protection of personal and national freedom as are the confidentiality standards between attorneys and clients, doctors and patients, and ministers and parishioners. Reporters recognize that defense of their assurances of confidentiality represent a sacred trust held on behalf of the public.

There are countless examples of information that Americans have received because confidential sources have been willing come forward: Watergate, Whitewater, Iran-Contra, the Iraq prison scandal, Enron, WorldCom, corporate governance issues, the list is almost endless. Those with knowledge of what the public needs to know are often "insiders," fearing for their jobs, futures, reputations or safety if they were to be identified publicly as the source of news. Stripped of the ability to protect the identity of a confidential source, the reporter is nearly always denied critical information. When that happens, all Americans suffer because they are deprived of knowledge and information which affects their lives.

A federal reporter's shield law will provide uniformity of expectations at both the state and federal levels for sources, reporters, law enforcement officials and parties to legal actions. 32 States and the District of Columbia have passed legislation that would protect a reporter from charges of contempt of court, and possible incarceration, for refusing to reveal a confidential source or other material or information sought by civil or criminal litigants. A strong federal reporter's shield law would provide protection for sources and reporters' work product in litigation in federal cases as a complement to the protection already afforded to confidential sources that now exists for state actions in most states.

When law enforcement officials or litigation adversaries are allowed to force the news media to be an extension of their investigation, public trust of the media as impartial providers of news is endangered. Reporters are subpoenaed frequently to appear in court and threatened with fines and/or imprisonment if they refuse to reveal a confidential source to the prosecutor or attorneys involved in the lawsuit. In some instances, the prosecutor or attorneys might also request the reporter's notes, video outtakes, or other unpublished information.

RETRANSMISSION CONSENT

The Issue

Cable operators seek the extraordinary, government-mandated right to carry broadcast signals for free, even though they compete with broadcasters and gain enormous economic value from carrying broadcast signals.

WSAB Position

WSAB opposes any change to the retransmission consent process, including granting multichannel video programming distributors the right continued signal carriage after expiration of existing retransmission contracts.

Background

Retransmission consent negotiations are private, market-based negotiations between broadcasters and multi-channel video programming distributors. Congress should not alter a system that has evolved to benefit consumers as well as broadcasters, cable and satellite companies. In 1992, Congress overwhelmingly adopted the retransmission consent principle which created a marketplace where cable operators and stations could bargain freely. There has never been an adjudicated complaint at the FCC of any broadcaster refusing to negotiate in good faith under the retransmission consent principle.

Contrary to popular belief, all but an infinitesimally small fraction of retransmission consent negotiations are concluded without even the threat of disruption of service to cable or satellite subscribers. Thousands and thousands of retransmission consent agreements are successfully concluded every year. However, those very few instances in which service disruption does occur magnify enormously out of proportion the true picture of retransmission consent negotiations.

Since retransmission consent was created almost twenty years ago, hundreds, if not thousands, of retransmission consent agreements have been entered into between Washington broadcasters and multichannel video programming distributors. There are currently more than 350 retransmission consent agreements in place between Washington TV stations and cable and satellite systems. In nearly twenty years, there have been only four instances of a station being taken off of a cable or satellite provider because of an impasse in retransmission consent negotiations. The retransmission consent system is working exactly as Congress intended it to and anticipated it would.

Following a thorough study, the FCC concluded in 2005 that “[o]ur review of the record does not lead us to recommend any changes to the retransmission consent regime at this time.” *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA Report”)* (Sept. 8, 2005). The Report said that the, “carefully balanced combination of laws and regulations governing carriage of television broadcast signals, with the must-carry and retransmission consent regimes” complement one another. The Report went on strongly to oppose altering the retransmission consent regime unless the entire regulatory relationship between broadcasters and cable operators is re-examined and re-structured to ensure that the careful balance established by Congress in 1992 was not disrupted. The Commission is currently revisiting updating the record regarding its authority over retransmission consent negotiations.

No other industry is asked to give their valuable product away for free to a competitor, so that the competitor can then resell it. Broadcast programming is the backbone of every programming package sold by cable and satellite. Eliminating retransmission consent would turn back the clock to the days when cable operators simply took broadcasters’ signals and profited from them without compensating broadcasters. Cable and satellite companies cannot, without consent, retransmit and sell the signals of cable networks, such as ESPN, CNN, USA, The Food Network, HGTV or the History Channel. Why then should these same companies be able to retransmit broadcast channels for free?

Both cable operators and broadcasters derive enormous value from carriage by cable systems of local broadcasters' signals. Despite having available scores and in some cases hundreds of channels, cable subscribers spend well over 40 percent of their time watching *broadcast* signals. Even more to the point, this dispute over the value of broadcast signals can and should be resolved in marketplace negotiations that the retransmission consent principle makes possible.

Retransmission consent does not lead to "higher consumer bills." The continuing escalation of cable's prices to consumers has occurred even when virtually no broadcaster received any retransmission consent payments.

TELEVISION DESIGNATED MARKET AREA (“DMA”) MODIFICATION

The Issue

Many TV markets (“Designated Market Areas” or “DMAs”) straddle state lines, including all three of Washington’s TV DMAs (Seattle; Spokane; Yakima/Tri-Cities). Legislation has been introduced in past Congresses that would have permitted the importation of distant in-state signals of out of DMA stations by multichannel video program distributors (“MVPDs”).

WSAB Position

WSAB opposes legislation that would permit the manipulation of cross-border DMAs by the importation of distant signals of out-of-DMA stations.

Background

Every DMA accurately reflects viewer preferences, local marketplace conditions, population concentrations, economic connections, and vital geographic links that tie communities together. Those commonalities of community would be severely disrupted by permitting MVPDs to import distant signals whose only relation to the area is that they are licensed to the same state, but hundreds of miles away.

Viewers will miss important local news, weather, school closings and emergency information if out-of-market stations are imported into a distant DMA. Boise stations cannot and will not cover the local news for Post Falls or Coeur d’Alene. Those communities are thoroughly covered by their “local” stations in Spokane. Portland stations cannot and would not provide coverage of local emergencies at Umatilla or local sports in Pendleton or Milton-Freewater. Importing such stations on the theory that viewers in northeast Oregon or northern Idaho will be better served with in-state news disenfranchises those viewers from the thorough coverage of their communities provided by local stations.

Local viewers would be deprived of local advertising, including advertising by political candidates running in local elections. Importation of Boise TV stations into the Spokane DMA counties of northern Idaho would result either in Coeur d’Alene’s local businesses being required to buy advertising on Boise stations nearly 300 miles away, or be unable to reach their local communities. Candidates for office in northern Idaho would have no way to reach their constituents via television without buying advertising on Boise stations. Similarly, in northeastern Oregon, Congressman Greg Walden would have to buy time on Portland stations in order to reach the voters in Umatilla County again nearly 300 miles away.

Duplicative national programming would undercut the ability of local, home-market stations to attract viewers and advertisers. For example, if MVPDs in northeastern Oregon were allowed to import network-affiliated stations from Portland, stations in the Yakima-Pasco-Richland-Kennewick DMA (which includes several Northeastern Oregon counties) carrying the same network programming would be financially harmed, and be less able to carry local programming relevant to Northeastern Oregon viewers.

Market manipulation would destroy the contractual rights that local stations have purchased from networks and other program suppliers. Importation of out of DMA stations would eviscerate the provisions of the current network non-duplication and syndicated exclusivity rules that support local stations’ ability to ensure that they are the sole outlet for a particular network or syndicated program. Imported stations would bring in duplicative programming, making the home-market station’s expensive network non-duplication and syndicated exclusivity right worthless.

Congress should not act to revise the television DMA structure until the FCC has reported its findings on the issue to Congress. The Commission has issued a Public Notice requesting Comments on extent to which consumers in each local market have access to in-state broadcast programming either over-the-air or from an MVPD and alternatives to the use of DMAs to define local markets that would provide more consumers with in-state broadcast programming.

TELEVISION SPECTRUM REALLOCATION FOR WIRELESS BROADBAND

The Issue

In 2010, the Federal Communications Commission unveiled its National Broadband Plan, which included a recommendation that the FCC reallocate a significant portion of the free, over-the-air television spectrum for wireless broadband use. The Plan also proposes that television licensees could voluntarily relinquish their spectrum in exchange for payment from the proceeds of an auction of that spectrum.

WSAB Position

WSAB opposes any attempt to reallocate the spectrum used by free, over-the-air television stations before a complete survey of spectrum usage is completed. In addition, WSAB opposes any spectrum reallocation that is not entirely voluntary.

Background

The “choice” between broadcast and broadband is unnecessary. In the future, the communications infrastructure of the United States will require both free, over-the-air broadcast television (point to multi-point) and high speed broadband (point to point) services, which are complementary. Eliminating or reducing broadcast television spectrum will dramatically strain wireless broadband networks, as customers accessing video and other content are increasingly forced to rely on inefficient point-to-point distribution models in which each additional user puts more strain on the network.

In planning for the future telecommunications infrastructure of the United States, Congress should embrace broadcasters’ Core Principles.

- Americans must maintain access to digital offerings currently provided by television broadcasters;
- Americans must not lose access to broadcast television based on signal strength degradations or limitations;
- Free TV viewers must continue to be the beneficiaries of video innovation; and,
- Americans must not lose quality local TV because of new spectrum taxes.

Local television stations will increasingly rely on digital over-the-air distribution to innovate and bring new services to consumers. The pace of innovation will only quicken as broadcasters experiment with new technologies like 3D and Mobile DTV. If broadcast spectrum is limited or eliminated these innovations will not occur and the viewing public will suffer. By taking spectrum away from television stations wireless providers can forestall competition for the delivery of video to mobile devices.

The assumption that services provided by local TV stations, especially news, emergency information and public interest programs, will continue if spectrum were taken away from local stations is incorrect. The services provided for free by local broadcasters are a public good - including high quality local news, emergency information, weather information, public service announcements, local sports and, of course, entertainment. The services provided by local television stations cannot be duplicated in an all-cable world.

Creating a pay television-only regime would hurt consumers. Free over-the-air television is a valuable option for every consumer and Americans should not be forced to pay for expensive cable or satellite television. They will lose access to free over-the-air HDTV and new multiple free channels. With current federal budget constraints, it is unrealistic to expect that the government could subsidize cable and satellite bills. Over-the-air broadcast television is also heavily relied upon by rural, minority and Spanish-speaking households. If free broadcast television were severely cut back or eliminated, another digital divide would be created.

There is no solid evidence of a looming spectrum crisis. The claims of a “looming spectrum crisis” are shaky and misleading. Even small changes to the underlying assumptions regarding future spectrum needs can drastically alter the numbers. In fact, the same model that the wireless industry uses to show an alleged

shortfall of 800 MHz in 2015 indicates that in 2010 there was a shortfall of 300-500 MHz – a demonstrably false conclusion. Until the federal government completes a comprehensive spectrum inventory, any suggestion that there is a “looming spectrum crisis” is very premature.

A Distributed Transmission System may not be the answer. Broadcasters are examining very closely a proposal by CTIA and CEA that broadcasters switch to a Distributed Transmission System (DTS). There are interference issues to be addressed. Each transmission site has to be perfectly synchronized to avoid interference. As a result, each tower will have to be connected by fiber, an incredibly expensive option. The power levels contained in the proposal will require far more tower/transmitter sites, thereby increasing costs. The proposal by CEA and CTIA assumes a need for only one transmitter for each location. However, if there are 26 stations in a market, there will be a need for 26 transmitters at each transmitter site, thereby grossly increasing the costs of the proposal. The CEA/CTIA proposal is unlikely to secure the amount of spectrum claimed in the proposal.

TAX DEFERRAL

The Issue

From 1978 to 1995, the FCC's "tax certificate" program allowed broadcast owners to defer capital gains taxes for two years when a station was sold to qualified minorities or females and the proceeds re-invested in a qualified property. In 1995, Congress repealed the program.

WSAB Position

WSAB supports legislation that would revise and re-enact the tax certificate program as a way to enhance diversity of ownership in the broadcasting industry.

Background

Broadcasters and the FCC want to ensure that ownership diversity of broadcast properties continues. The tax certificate program made it easier for minority entrepreneurs to purchase broadcast properties by providing them with a bargaining chip in negotiations. It also provided benefits to station owners who sold their properties to minority entrepreneurs, by allowing a tax deferral on any gain from the sale. And, reinvestment in communications businesses provided long-term financial strength for the entire industry.

The tax certificate is an effective, non-intrusive way of increasing the number of minority owners in broadcasting, thereby furthering the nation's policy favoring diversity in the expression of views on the nation's airwaves. Prior to the adoption of the tax certificate program in 1978, members of minority groups owned only 40 out of 8,500 broadcast stations. During the program's existence, the issuance of tax certificates resulted in the acquisition of 288 radio stations 43 TV stations, and 31 cable companies by members of minority groups.

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