

Time to Apply Constitutional First Amendment Rights to Broadcasting

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The recent FCC Notice of Proposed Rulemaking on localism released concurrently with the Report and Order regarding revised Form 355 mandating more detailed programming and ascertainment than ever required before, represent grossly untimely and blatant government mandated violations of the First Amendment.

The excessive burdensome additional governmental FCC requirements are counter to the urgent need to update regulatory and ownership rules of the past. It is time to recognize the current era of superabundant programming and multi-channel transmissions of the omnipresent internet, TV, cable, satellite, and DSL, along with upcoming increases in digital channel availability.

In this surging competitive multi-channel communication world, the government should lend some priority to assuring the future viability of television and radio's expensive but vital emergency, news, local information and community services.

The internet alone is now utilized by over 100 million people according to published reports. It is by far the fastest growing communications entity in advertising as well as in public usage. It provides an amazing variety of local news and information and personal interexchanges. In fact, the internet has practically preempted the media consolidation issue - - all media - - newspaper, TV, radio, magazine, periodicals etc. are immediately available to all the public on the net.

The NPRM by over-emphasizing the need for government mandated localism and advisory boards, is especially untimely and burdensome.

Government mandating localism for broadcasters is like government mandating breathing for human beings. Localism is the very lifeblood of broadcasting.

Everyone should realize that not only the success of broadcasters, but their very survival relies on serving and attracting their local audiences as measured by impartial public audience rating services. In

the case of networks or station groups survival relies on attracting an essential national gross number of measured local audiences.

Thus, the American public is actually in final control of broadcast programming through public audience measurements. Programs only survive with overall public acceptance.

It should also be noted that even well meaning professional public interest activists do not represent the overall public interest. They represent their own private version of the public interest, which they have a constitutional right to do. Sometimes they provide useful programming proposals and sometimes they urge excessive, unconstitutional government mandates or controls to further their own private interest agenda.

In fact, professional public interest groups have been very effective in promulgating the misconception that broadcasters received broadcast stations free and are using public spectrum for free. It has caused some strange misguided statements from some usually responsible sources. . . . Such as, referring to the proposed new programming and reporting requirements, "citizens will have the tools necessary to see whether or not local broadcasters are living up to their end of the bargain to serve the public interest for free use of the people's property". Another usually responsible but misdirected FCC source has said "The American people have a right to know how broadcasters, TV and Radio alike, are using the public airwaves. This is akin to Wall Street investors receiving quarterly reports on their investments". The current climate of unwarranted misguided criticism has encouraged competitive malice like this outlandish quote from a formidable cable source "I am not sure why broadcasters are allowed in any way to restrict the right of any consumer to get their free over the air publicly owned broadcast spectrum by invoking things like retransmission consent. I believe advertising time as well should be free on the public's spectrum"!!

Let's get the facts straight. First, broadcasters today did not acquire stations free. They paid the full marketplace price. Second, the general public never paid for or invested in the initial radio and TV station operations. They were financed by risk capital investments. Radio in the initial broadcast stages, in 1919-1920, was financed by private capital utilizing vacant spectrum. Nothing happened on that vacant spectrum until investors bought or rented buildings and engineering equipment, hired talent and initiated radio broadcasting, the first wireless wonder. Initial investors lost money developing the radio medium. Government licensing was necessary to prevent interference and licenses were issued to serve "the public interest, convenience and necessity". TV spectrum risk capital investors also lost money developing television.

The relative “scarcity” of broadcast frequencies was the rationale used by the courts to justify government regulation of the medium. We are now in a 1000 channel universe of superabundant programming. Thus the “scarcity” used to justify government regulation and limited non-monopoly ownership no longer exists.

Overall, there is no reason in the current multi-channel multi-faceted era of programming and internet superabundance to return to outdated government mandated ascertainment and program content regulation once applied discriminatorily to broadcasting. Such ill-conceived mandates were eliminated over thirty years ago.

In my opinion, with the cataclysmic communication advances in the past ten years, a compelling case exists for a well reasoned relaxation of burdensome government control. Today the public has access to a super abundance of programming, views, information and election year political opinion exchange. The internet alone has made available an unprecedented proliferation of news and ideological opinion. According to figures in trade publications there are millions of local political blogs, podcasts and blog based operations providing every variety of political and ideological analysis. Also note the local information and public interchange available through e-mail and sophisticated cell phones. Then consider the bountiful diversity of local and national news and political opinions available on cable, satellite, TV, radio, newspapers, magazines, newsletters, periodicals, etc. Plenty of local and national news and information for everyone.

Special note on broadcast deregulation: The most vital usage of spectrum for information and news for consumers remains two of the very first wireless communications entities - - radio in the early 1920’s and television later. Broadcasters remain the prime originators and providers of emergency warnings, local news, information and community service integration. Why should they continue to be the most regulated, with only circumscribed First Amendment rights?

If broadcasting had existed in 1776, it certainly would have been a prime beneficiary of constitutional guarantees of free speech and freedom of the press. Print existed at that time, so newspapers have operated with First Amendment rights and deservedly so. It is past time to extend those constitutional freedoms to TV and radio, the most vital and pervasive news and information mediums.