

December 22, 2008

Memo

To: President-elect Obama's Federal Communications Commission Transition Team

From: Benton Foundation

RE: Public Interest Obligations of Broadcasters (MM Docket No. 87-268 for Digital Television, MB Docket No. 04-233 for Localism Proceeding and MM Docket No. 99-325 for Digital Audio Radio)

Recommendation

The Federal Communications Commission should issue clear guidelines to ensure that broadcasters adhere to the law and serve the local educational, informational, civic, diversity, and disability needs of the children and adults in the communities that TV and radio stations are licensed to serve.

Background

- While considering the transition from analog to digital television for over 20 years, the FCC has failed to definitively address the public interest obligations of digital television broadcasters.
- The American public deserves to know how television broadcasters will fulfill their role as public trustees of the airways in the digital age. Broadcasters have an obligation to serve the public's interests, not just their own commercial interests.¹
- Specifically, the Commission has asked but not acted on questions about multicasting:

“Should a licensee’s public interest obligations depend on the nature of the services it chooses to provide and, if that is the case, how so? For example, if a broadcaster chooses to provide multiple standard definition services, should public interest obligations attach to each one? [S]hould public interest obligations be seen as attaching not to services but to licensees, each of whom would be required to operate the facilities associated with its 6 MHz [digital] channel in the public interest?”²

¹ The Communications Act of 1934 authorizes the FCC to regulate broadcast licenses “as the public convenience, interest, or necessity requires.”

² In the Matter of Advanced Television Services and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87-268). Adopted July 28, 1995 (see http://www.fcc.gov/Bureaus/Mass_Media/Notices/1995/fcc95315.txt).NPRM at 35.

Outstanding Issues

Minimum public interest obligations:³ The Commission asked for comments on the Presidential Advisory Committee recommendation that “[t]he FCC should adopt a set of mandatory minimum public interest requirements for digital broadcasters . . . that would not impose an undue burden on digital broadcast stations, . . . should apply to areas generally accepted as important universal responsibilities for broadcasters,” and should be phased in over several years.⁴ ***The Commission has not reported on its findings on minimum public interest obligations.***

Access to the media:⁵ One of the Commission’s long-standing goals in the area of broadcast regulation is to enhance the access to the media by all people, including people of all races, ethnicities, and gender, and, most recently, people with disabilities. The Commission sought comment on the ways broadcasters can use this technology to provide greater access to the media for people with disabilities and innovative ways unique to DTV that the Commission could use to encourage diversity in the digital era. ***The Commission has not issued a report on its findings.***⁶

Enhancing political discourse:⁷ The Commission has long interpreted the statutory public interest standard as imposing an obligation on broadcast licensees to air programming regarding political campaigns.⁸ The Supreme Court likewise has recognized the impact television broadcasting has on our political system.⁹ The Commission sought comment on ways that candidate access to television and thus the quality of political discourse might be improved. ***The Commission has not reported on its findings.***

³ In the Matter of Public Interest Obligations of TV Broadcast Licensees (MM Docket No 99-360), adopted December 15, 1999 (see http://www.fcc.gov/Bureaus/Mass_Media/Notices/1999/fcc99390.doc). (“NOI”) at 20.

⁴ Advisory Committee on Public Interest Obligations of Digital Television Broadcasters. “Charting the Digital Broadcasting Future” at § III.3.

⁵ NOI at 24-28.

⁶ This has become a particular problem for individuals who rely on captioning to view television programming because some broadcasters have taken the position that when they convert a standard definition analog network to a high definition (HD) channel, they are creating a “new network” that automatically qualifies for an exemption from the FCC’s captioning rules for a four year period, even when the HD channel is substantially similar to its analog counterpart. The consequence is that programming captioned in its analog version is no longer captioned when provided over a digital stream.

⁷ NOI at 34-38.

⁸ See, e.g., Licensee Responsibility as to Political Broadcasts, 15 FCC 2d 94 (1968).

⁹ “Deliberation on the positions and qualifications of candidates is integral to our system of government, and electoral speech may have its most profound and widespread impact when it is disseminated through televised debates. A majority of the population cites television as its primary source of election information, and debates are regarded as the ‘only occasion during a campaign when the attention of a large portion of the American public is focused on the election, as well as the only campaign information format which potentially offers sufficient time to explore issues and policies in depth in a neutral forum.’” *Arkansas Educational Television Commission v. Forbes*, 118 S.Ct. 1633, 1640 (1998).