

**"What Does \$70 Billion Buy You Anyway?"  
Rethinking Public Interest Requirements at the Dawn of the Digital Age**

**Remarks By FCC Chairman William E. Kennard**

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Thank you, Frank Bennack, for that kind and generous introduction. It is a great honor for me to speak at The Museum of Radio and Television. I thank you for the opportunity.

And a special thanks to Mark Lloyd of People for Better TV and Gigi Sohn of the Ford Foundation for their assistance and support.

The Museum of Television and Radio serves as an important reminder of the critical role that broadcasting plays in our lives.

Thanks to the power of television, we were all eyewitnesses to history last week when the people of Yugoslavia rose up against the government of Slobodan Milosevic.

Reading about the Serb revolution the next day in the Washington Post, I was struck by the story's lead. It read, "A vast citizen army of protesters seized control of key institutions of power in Yugoslavia today, torching the parliament building and state television headquarters in Belgrade."

Stop and think about that for a moment. When the Serbian people wanted to change their destiny, they knew that the "key institution of power" in their society -- after Parliament -- was the television station.

And they were right. Soon after that station was seized, the Milosevic government capitulated.

The Yugoslavs are not alone. Last summer, I visited a low power radio station in South Africa, where the station owner had operated as a "pirate" station, illegally broadcasting news and information to the black majority during apartheid. He had been jailed and tortured -- his oppressors knew as well as he the value of the media in a political revolution.

To this day, his body is crippled from the torture. But when the new democratic government defeated apartheid, he went back on the air, operating with a license -- providing the news and information -- not to mention blues and jazz -- so essential to the new democratic society.

The people of Serbia and South Africa may look to us as exemplars of democracy, but they could teach us a thing or two about recognizing the critical importance of television and radio to democratic government.

We call ourselves the greatest democracy in the history of the world, and we undoubtedly are. But, frankly, the disarray and disinterest of our mass media towards fulfilling its crucial democratic commitments give me serious pause.

For fifty years, the solemn public interest commitment of broadcasters, borne of their role as public trustees of the airwaves, has deteriorated in the face of financial pressures and an increasingly competitive marketplace.

Indeed, we reached a new low last week, when two of the four major networks – NBC and Fox -- chose to preempt the first debate of the most hotly contested Presidential election in four decades for sports and entertainment programming.

Despite the fact that the debate was scheduled not to conflict with NBC's coverage of the Olympics, NBC decided to show Game One of the American League Division Series instead. After a public outcry, NBC eventually passed the buck to their affiliates by offering feeds of both the game and the debate.

In an even more brazen decision, Fox preempted this debate to showcase the premiere of their dystopic sci-fi show *Dark Angel*. And Fox showed baseball during the vice-presidential debate, and has decided not to broadcast any of the other presidential debates this year to boot.

Some may ask, if the debates are available somewhere on the television dial, why shouldn't Fox and NBC be able to show what they wish? Simply put, broadcasters cannot delegate their obligation to act in the public interest. Consider this example: the networks delayed the 2000 season premieres until after the Olympic games. They knew that their viewers did not want to choose between watching Marion Jones go for a record five gold medals in a single Olympics and the premiere of their favorite show. Fox made that calculus by delaying the premiere of *Dark Angel* to maximize its financial interest. The presidential debates like the Olympics only air every four years. Shouldn't broadcasters make a similar calculus to serve the national interest in an informed electorate?

To my mind, this disregard for the American democratic process is unacceptable. When we've reached the point where the networks feel they can show baseball and sci-fi flicks in lieu of critical presidential debates, then I believe it's high time that we rethink the terms of broadcaster's compact with the American people.

### **The \$70 Billion Compact**

What's at stake here? Let's take a look at the numbers. More than 100 million American households – or over 98% -- have television sets. On average, nearly 85% of American TV

households watch the top three major broadcast networks each week, and over 75% watch the fourth. Television is the most dominant, ubiquitous, and powerful medium of our time.

But, with great power comes great responsibility. What does it truly mean to be a trustee of the public airwaves? As beneficiaries of this relationship, what should the American public get in return for broadcasters' use of this valuable public resource?

Unfortunately, in recent years, broadcasters have increasingly elevated financial interests above the public interest. This is particularly galling because Congress recently *gave* the television industry even more spectrum to offer digital television – spectrum valued by some industry experts at over \$70 billion dollars. This gift to broadcasters stands in stark contrast to other users of the spectrum – like wireless providers – who have paid billions for licenses to use the airwaves.

And when Congress handed broadcasters this very generous gift, Congress expressly reaffirmed the industry's long-standing compact with the American people: as broadcasters reap many billions of dollars from their use of the airwaves, they must also use the airwaves to serve the public interest.

In short, the American people have allowed the broadcasters use of a powerful national resource worth \$70 billion dollars, and the public should get their money's worth.

### **Answering the Broadcasters' Concerns**

Now, I am the first to recognize that broadcasters are increasingly subject to competitive pressures these days, especially from cable television and direct broadcast satellites (DBS). Unlike many other countries, we rightly believe in a privately-owned, commercial broadcast system. And we also believe in competition. Some broadcasters argue that there just aren't enough hours in the broadcast day to satisfy their financial interest and the public interest. Some argue, for example, that the business imperative of serving the widest possible audience is at odds with the desire to program for narrow or underserved audiences, such as young children. And that cable and DBS, as multichannel competitors, have many more hours each day to program to niche audiences.

I note, however, that cable and DBS themselves have tangible public interest responsibilities. Cable operators must pay up to a five percent franchise fee, set aside channels for educational and government use, lease channels for commercial use by the public, and carry local broadcast signals. DBS providers must also set aside channel capacity – currently 4% -- for noncommercial use.

Now, I'm sure broadcasters dispute the notion that they don't serve the public interest sufficiently. They will point, as they often do, to a report issued by the National Association of Broadcasters (NAB) which states that broadcasters provided \$8.1 billion in community service in 1999 -- public service announcements, charitable work, and coverage of political races.

To be sure, \$8.1 billion is a hefty sum. And while this contribution is commendable, it is somewhat overstated. I have worked in broadcasting for over twenty years, since my first internship at the NBC affiliate in San Francisco. I've filled out hundreds of those public interest forms in my day, and I know how often the concept of "public interest" is strained in order to label various programs and activities as contributions to the public interest. I've been there.

Besides, serving the public interest is so much more basic than what these forms often suggest.

Simply put, television should enhance our democracy.

It should inform the electorate and facilitate the democratic process. It should serve the needs of our local communities and expedite democratic deliberation at the community level. It should empower our parents and educate our children.

Television should appeal not only to our wants as entertainment consumers, but to our needs as democratic citizens.

And, now, at the dawn of the digital age, the most important question is: how can broadcasters use the new digital spectrum to achieve these goals?

### **Enhancing Democracy: Debates and Localism**

There are so many ways in which broadcasters could harness the power of television to enhance its value to America.

Most obviously, the networks should commit from now on to carry every single presidential debate. Never again should a network's contract with Major League Baseball or some other entertainment entity trump their compact with the American people.

But that's only the start. Stations should also carry debates in state and local races. Due to the high profile of the candidates in the New York Senate race this year, I doubt the residents of Manhattan have had much of a problem in this regard.

But, elsewhere in the nation, Americans hear more about Hillary Clinton and Rick Lazio than they do about their own local candidates. When Virginia Senate candidates Charles Robb and George Allen debated twice in two days a few weeks ago, not a single DC-area network affiliate carried either debate.

How are local candidates to get their positions to voters – who rely on broadcast television for their news and information -- unless local stations provide coverage? Broadcasters must televise local and state-race debates and the candidates' major speeches to help inform citizens of their important democratic choices.

And they should recommit to showing more Public Service Announcements (PSAs) and more local PSAs during peak viewing hours. When the broadcast industry commits to a public service campaign, they can literally change our country. Remember “Buckle Up for Safety?” “Only You Can Prevent Forest Fires?” Whether it’s teen smoking, teen pregnancies, or drunk driving, PSA campaigns make a huge difference in setting the national agenda.

This enhanced commitment to localism could be one of broadcasters’ greatest competitive strengths. For broadcasters’ unique ability to localize their content grants them a crucial market advantage over cable and DBS in this era of increased multi-channel competition.

And, given the multicasting ability of digital television, I’m confident that broadcasters can find a way to air this important candidate and community information without unduly harming their fiscal interests.

Indeed, the expanded capacity of digital television only facilitates stations’ fulfillment of their democratic obligations. DTV’s extended capabilities can be used to provide a "public space," like a cable system's local access, for citizens and community groups to have access to television broadcasting and to provide an additional forum for political discourse among and between citizens.

As this political season matures, I am also considering if, in the interest of enhanced democracy, we should revise and update our political editorial rules to encourage greater participation by the networks in political discourse. Last week, the Commission suspended our political editorial rules through this election season. Broadcasters have told us that these rules, intended to ensure that voters heard both sides of every debate, instead had a “chilling effect” on their ability to editorialize freely.

So, during the period when the FCC’s rule is suspended, we will assess broadcasters’ contribution to political discourse, and ways that we might modify these rules so that they make more sense in the new era of multimedia political debate.

### **Enhancing Democracy: Candidate-Centered Discourse**

Another crucial way that broadcasters can enhance the democratic process is by providing time for “candidate-centered discourse” during the last few weeks of an election season. I call it free time.

Now, I know this issue has been the Third Rail of Broadcast Politics for some time now. I myself was zapped by it two years ago, when I proposed that the FCC require broadcasters to give candidates free air time.

But today that idea makes more sense than ever as the cost of campaign advertising on television continues to spiral upward, and as the clamor for campaign finance reform grows

around the country. In short, free air time is an idea whose time has come, and I believe we should now consider a system of broadcaster provided access for political candidates.

Indeed, I am pleased that two of the three major networks – NBC and CBS -- have recognized this and have committed to provide unprecedented opportunities for candidates to speak directly to voters between now and the November 7 elections.

I also want to commend the other broadcasters - Hearst-Argyle, Scripps Howard, Capitol Broadcasting, Fox, Belo, and Bloomberg Television and Radio - who are providing similar opportunities for candidates to have an “electronic soapbox” and speak directly to voters.

This is an excellent start, but we have miles yet to go.

In a republic founded on the principles of self-government, democracy, and citizenship, the idea that the financial interests of the broadcast industry would trump the public's interest in educated voting is sounding more absurd to more ears.

Congress should require broadcasters to provide free time to candidates as part of a comprehensive campaign finance reform package and as an important way to lessen the grip of special interest money on politics in this country.

### **Enhancing Democracy: Children**

Perhaps the most important way in which television can enhance American democracy is by helping to cultivate our next generation of citizens.

Studies have shown that America’s children watch three hours of TV every day. That’s almost half a school day, every day, where children are learning from the television. TV time can entertain, but it should also teach about our democracy, our culture and our values. And, for sure, it should not hurt.

We all know from our experience that what we see as children on television shapes our consciousness and remains with us for the rest of our lives. Growing up in Los Angeles, I can vividly remember seeing Bobby Kennedy shot down before the California primary in 1968, and watching the frightening riots that followed the murder of Dr. King on my grandmother’s color TV. I know how these seminal events of our country’s political turmoil affected me. I can trace back to those days my sense of obligation to serve the public.

I recall the excitement of viewing *I Spy* with Bill Cosby, the first African-American actor on primetime. Before Bill Cosby, I could watch television all the time and never see the world I lived in, a world in which there were black architects -- like my father; black teachers -- like my mother; black ministers; storeowners; family and friends. I know how important it is for children today to see people on television who look like themselves, and who make them feel good about who they are and who they can be. Primetime television today reflects far more diversity than television did in the 1960s, but our country is even more diverse than in my childhood and we

have a long way to go until today's children see the wonderful diversity of our society on the small screen.

And diversity isn't the only area in which programming is too often deficient: Turn on the TV today, and all too often even so-called "kids' programming" at best has no educational value and at worst is filled with immature locker room humor and cartoon violence. To say nothing of the inappropriate content permeating primetime.

I challenge each of you to pick any given night on any given network and sit down with your preteen children in front of the television set. I can guarantee that within forty-five minutes of the usual sitcoms and dramas you'll be blushing, covering your child's ears, or in the midst of a "big talk" that you weren't planning to conduct for a few years to come.

It's just common sense. We have insisted that all broadcasters air educational and informational programming for at least three hours each week. But their obligations to children should not stop there. In addition, they should not air inappropriate programming at times when a significant number of children would reasonably be expected to be in the audience. And they shouldn't show inappropriate advertising during these hours either. I can't tell you how many e-mails I've received from irate parents about that Nike chainsaw killer ad that was shown during the Olympics. What might be considered harmless if shown during *Saturday Night Live* is shocking and hurtful during family viewing time.

Broadcasters should exercise their judgement as citizens and parents and impose some restraint on the content they broadcast at certain hours. In this regard, I have repeatedly urged the industry to adopt a voluntary code of conduct for good citizenship by broadcasters.

Broadcasters should also use the flexibility of digital technology to serve children in dynamic, innovative ways.

Broadcasters can use DTV to serve more educational programming to kids where specialized education services may be unavailable.

And the multicast capabilities of DTV can provide more age-appropriate programming for children, so that parents of ten-year-olds do not have to choose between allowing their children to watch *Buffy the Vampire Slayer* or *Dawson's Creek* or resigning them to cartoons.

The enhanced capabilities of DTV also permit more extensive ratings information, creating more opportunities for parents to use the V-Chip.

### **Rent Control and the Bandwidth Blues**

Finally, one of the best ways broadcasters could enhance democracy and the public interest in this digital era is by speeding up the transition to DTV and returning the valuable analog spectrum to the American people.

Since America's founding, one of the keys to our people's remarkable success and prosperity has been our vast array of natural resources at hand.

The United States has always been a country rich in fertile land and crucial minerals, in timber and fossil fuels. When other nations faced economic scarcities that impeded their growth and stymied innovation, America enjoyed a vast abundance of room and resources that fostered creativity and entrepreneurship.

But, in the digital age, the tables have turned. For the most valuable resource of the Information Age is bandwidth. And, while Europe and Japan have successfully unleashed the economic potential of 3G and the wireless web, we in America will have to move quickly to stay ahead in the New Economy.

This is where the broadcasting industry comes in.

Congress granted the networks this digital spectrum in addition to the conventional analog spectrum they already have, effectively giving broadcasters twice their allotment of precious bandwidth. And they said that the broadcasters could keep the analog portion of the spectrum until 2006, or until DTV penetration reached 85% of the American market, whichever is later.

Eighty-five percent? It took color TV 22 years and VCRs 16 years to reach that level of penetration. And if those are any indication, DTV conversion will take much, much longer than 2006, particularly given the way broadcasters are dragging their feet at the moment. We may not see that level of DTV penetration until 2025.

Basically, the broadcast networks were the beneficiaries of the biggest government giveaway since Peter Stuyvesant bought Manhattan from the Indians for \$24. You can barely buy lunch in Manhattan for that now.

And, to compound the public damage of this protectionism, the broadcasters have decided to sit on these two highly valuable properties -- licensed to them for free by Congress -- for as long as they can.

In a sense, the networks' business model for the next decade can be summed up by the slogan of Twix candy bars: "Two for me, none for you!"

Indeed, I am reminded of another commercial from a few years back, which featured now-Redskin Deion Sanders. When Deion was asked if he'd prefer to have \$5 million or \$15 million, he answered, "Both." It's no wonder they call him Primetime.

Now, spectrum-squatting may make great business sense for the broadcasters, but in terms of the public interest it makes no sense at all. Squatting on empty spectrum smothers innovation and endangers America's lead in new technologies.

To borrow another analogy which I'm sure many of you New Yorkers are familiar with, it's as if Congress donated each broadcaster two rent-controlled apartments on the Upper West Side, and the broadcaster then proceeded to leave one of them empty.

I say, if you're not going to use this valuable \$70 billion dollar resource to benefit the public interest, then perhaps you should give it back. And, if you're if going to tie up twice your allotted amount of the people's bandwidth, perhaps you should pay some rent on it.

### **Solving the Spectrum-Squatter Problem**

The way I see it, there are three things that Congress can do to eliminate the waste of spectrum by fence-straddling stations, accelerate the national transition to DTV, and buttress the current system of affirmative public interest obligations all in one.

First, Congress should reconsider the 85% loophole on the 2006 date, so that it doesn't become used as a "trick number" to justify making the double dose of spectrum a broadcaster entitlement for the next twenty-five years.

Second, Congress should direct the FCC to adopt a requirement that, by a given date – say January 1, 2003 - all new television sets include the capability to receive DTV signals. In addition to accelerating DTV deployment, this order would make DTV technology much more affordable by unleashing market forces and economies of scale to drive down the cost of equipment and receiver chips in both sets and converter boxes.

Third, Congress should require that, as of January 1, 2006, broadcasters will pay a fee for the use of the analog channel. This "spectrum-squatters' fee" would escalate yearly, until broadcasters complete their transition to digital and return the analog spectrum to the American people.

The proceeds from the squatters' fee could then be used to help fund the digital conversion of public television, especially in rural areas, or to support educational or informational programming that serves the public but is not provided by the market, through the Corporation for Public Broadcasting, or through other funding mechanism created by Congress.

I intend to forward these suggestions to Congress for their consideration when the next session of Congress convenes in January.

### **Conclusion**

In the meantime, we will be holding a Commission hearing next Monday to further explore how television can enhance democracy by contributing to political discourse, serving local communities, and protecting children. I very much hope this hearing will act as another important step in rethinking broadcasters' public interest contributions.

I want to cut the Gordian knot of public interest vs. financial interests, and outline clear, tangible public interest obligations that broadcasters can commit to.

I want to ensure that the American people are suitably compensated for the use of their valuable spectrum, and that underutilized portions of this precious resource are returned to them as soon as possible.

And I want to see that the awesome power and remarkable ubiquity of television is put to the service of our democracy, rather than at the expense of it.

We are the strongest, most vibrant democracy this world has ever seen. But we owe it to ourselves and to the nations who view us as a role model of democratic governance to realize the enormous promise of communications technologies old and new in serving and enhancing democracy.

If Yugoslavia can use TV to topple a dictatorship and establish a free government, and South Africa can use radio to rally against intolerance and hatred and promote racial harmony, surely we in America can do a better job of using our broadcasting infrastructure to serve the public interest.

When we reaffirm that television should not only entertain us as consumers, but engage and ennoble us as citizens, we will have come a long way toward establishing the 21<sup>st</sup> Century's first true Electronic Democracy.

Thank you.

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