

## A BRIEF HISTORY OF THE PUBLIC INTEREST STANDARD

by Carrie McLaren

*Should corporations be free to broadcast whatever they want to broadcast? What if that means no coverage of national elections or corporate crime? Or should media be accountable to the public? (If so, how?) And what about quality? Should stations be obligated to run high-quality programs, even if they aren't profitable?*

*These questions are at the heart of the debate over "public interest" standard. As we shall see, government's response has shifted dramatically in the past three decades.*

**F**ew people know it, but radio was originally conceived as a two-way device, much like the telephone. The first fans of radio were technically minded people, "hams" or amateurs, who experimented with broadcasting and building equipment. They used the radio for transmitting messages to others, not just receiving or listening. This became a problem once amateur broadcasting became popular because the radio spectrum is limited. Whenever two or more broadcasters tried to operate on the same frequency in the same region, they would cancel each other out. The result was chaos and noise; radio messages could be sent, but there was no guarantee that anyone could receive them.

This freewheeling use of the radio spectrum came to a head in 1912, around the time of the Titanic disaster. A man who happened upon the ship's signal spread word that the ship was sinking. But the chaos that had characterized radio up to that point inhibited the rescue effort. The U.S. Department of Commercial was thus provided with a strong incentive to regulate the airwaves: lives depended on it. Shortly thereafter, the Radio Act of

---

**Under the Act of 1927, the airwaves were considered a public utility, much like electricity or water pipelines.**

---



**Former President Herbert Hoover once said about radio, "It is inconceivable that we should allow so great a possibility for service to be drowned in advertising chatter."**

1912 was born. Intended strictly for "traffic control," the law required broadcasters to apply for a license in order to transmit. There were no other qualifications; everyone who applied was accepted. As you might imagine, this did not solve the spectrum problem because there were still too many people on the airwaves. Years later, it was clear that the Act was ineffective and something else needed to be done to control the chaos.

That something else was the Radio Act of 1927, which achieved what the earlier law failed to do: it gave broad powers to the Federal Radio Commission (later, the Federal Communications Commission, or FCC) to regulate the airwaves. By the late 1920s, radio had already become fairly big business. The National Association of Broadcasters had formed to represent the industry's interests. National networks RCA and NBC were taking over the airwaves. Though such corporations and trade groups are often associated with opposing government regulation, they were eager for regulation in this case. Commercial broadcasters wanted to maximize their audiences and maintain consistent, reliable schedules for programming. Interference from small, local stations and amateur broadcasters was a nuisance and a threat to business. So industry pushed for the Act of 1927 in order to establish "clear channels" for businesses.

The 1927 act was not a giveaway to the major broadcasters, however. In order to justify broadening government powers, the Act noted that the regulations were needed to further the “public interest, convenience, and necessity.” Under the Act, the airwaves were considered a public utility, much like electricity or water pipelines:

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. (Krasnow)

Government’s treatment of the airwaves, then, was very different than how it handled print media. Government maintained a “hands off” with the press. If readers disliked what any given publisher offered, they were encouraged to read something else, or to “start your own damn paper.” If government were to regulate the press, it would interfere with free speech. The key difference between print and radio, however, was that the resources needed to publish newspapers or magazines were seen as relatively unlimited—paper “grows on trees.” The radio spectrum, on the other hand, was seen as scarce. Only a certain number of broadcasters could transmit at any given time in any given region. Otherwise, all broadcasters would be drowned out in noise. Thus, legislators and broadcasters alike felt that in this case regulation encouraged rather than hampered speech. By divvying up the spectrum on behalf of the public interest, government felt its intrusions were justified.

There was one problem. While the public interest standard sounded all well and good on paper, no one was quite sure what it meant. How did one determine whether a station operated in the public interest? And which “public” was it referring to? The heads of major corporations could be considered “the public,” but their interests were in many cases in direct conflict with the poor and uneducated.

So within two years of the 1927 act, the FRC issued statements clarifying its terms. It noted that “public interest, convenience, and necessity” referred to how well a station served its listeners as *audiences*. As Robert McChesney noted (p. 27), this effectively meant that “the FRC would favor broadcasters who seemed the most inclined toward serving the public good and the least inclined toward promoting their own ‘private or selfish interests.’ The only exception to this criteria was commercial

---

## **Under the public interest standard, government was supposed to favor broadcasters who seemed the most inclined toward serving the public good and the least inclined toward their own selfish interests.**

---

advertising, which the FRC conceded was conducted for selfish reasons.” The FRC considered advertising a necessary evil. Though annoying to most listeners, it was the financial backbone of the industry and therefore tolerated.

The FRC further defined the “public interest” by stating that stations should serve “the entire listening public within the listening area of the station.” (p. 27) To do this, as McChesney describes, the “broadcaster need to provide ‘a well-rounded’ program’ of entertainment and cultural programming.” The definition of “well-rounded” was left to the marketplace: “The commission has great confidence in the sound judgment of the listening public.” The public, it explained, could determine the type of programs that are in its own best interest.

By the FRC’s reasoning, the “public interest, convenience or necessity” was a relative and not an absolute quality. When considering which stations would be granted license renewals, the FRC would compare them to each other. Its reasoning was as such: “Since the number of channels is limited and the number of persons desiring broadcast is far greater than can be accommodated, the commission must determine from among the applicants before it which of them will, if licensed, best serve the public . . . the emphasis must be first and foremost on the interest, the convenience, and the necessity of the listening public, and not on the interest, convenience, or necessity of the individual broadcaster or advertiser.” (Quoted in Krasnow, 1998)

Now, it’s worth noting here that radio advertising up until the late 1920s was nothing like what we know today. On-air selling was widely frowned upon, even by businessmen, who were concerned that blatant opportunism would create public ill will. As a writer in *Printer’s Ink*, a leading advertising trade magazine, put it: “The family circle is not a public place, and advertising has no business intruding there unless it is invited.”

Secretary of Commerce Herbert Hoover declared, “It is inconceivable that we should allow

---

## **Broadcasters were at first willing to air a few shows at a loss. But over time, stations succumbed to the drive to get more and more efficient.**

---

so great a possibility for service to be drowned in advertising chatter.”

Even the National Association of Broadcasters—the industry’s leading voice—advised that no commercial messages should run between the “family” hours of 7 pm and 11pm.

So, up until the late 1920s, radio stations avoided direct plugging and merely identified corporations as the sponsors of particular programs. These commercial messages were different than what we have today: they were not intended to sell products themselves; but rather, to create “good will” among listeners. If audiences liked a particular program, then their appreciation was expected to transfer over to the sponsor. (All this changed in the 1930s during the depression, when commercials flooded the airwaves; but that’s another story.)

The public interest standard was further clarified in a 1929 court case, *Great Lakes Broadcasting Co v. Federal Radio Commission*, in which the FRC used the following guidelines for determining a licensee’s performance:

- (1) a station should meet the “tastes, needs, and desires of all substantial groups among the listening public. . . by a well-rounded program, in which entertainment, consisting of music of both classical and lighter grades, religion, education and instruction, important public events, discussions of public questions, weather, market reports, and news, and matters of interest to all members of the family find a place;”
- (2) programming would be considered at renewal time to determine whether a station has met public interest requirements;
- (3) where two stations apply for the same frequencies, the

station with the longest record of continuous service has the advantage; where there is a substantial difference between the programming service, the station with superior programming will have the advantage; and (4) there is no room for operation of “propaganda stations.” (Quoted in Krasnow)

Despite these high-minded guidelines, broadcasting was nevertheless dominated by commercial interests. A group of educators, religious leaders, and other reformers managed to get the Hatfield-Wagner Act introduced in the Senate in 1934. The Act would have set aside 25 percent of the spectrum for use by “educational, religious, agricultural, labor, cooperative, and similar nonprofit-making associations.” But it was defeated by business interests. (Kellner, p. 35)

In the same week, the Communications Act of 1934 set up the Federal Communications Commission (FCC) to regulate broadcasting in the “public interest, convenience, and necessity.” The FCC—which still oversees broadcasting today—was in charge of suspending or revoking licenses of stations that committed abuses (obscenity, lotteries, monopoly, etc.) (Kellner, p. 35) In later years, the FCC reiterated and clarified public interest guidelines. The commission’s 1946 “Blue Book” specified four standards for programming:

- (1) unsponsored, noncommercial programs;
- (2) local live programs;
- (3) discussion of local public issues; and
- (4) the elimination of advertising excesses.



These guidelines were never officially adopted, however. And like many of the public interest criteria, they were often ignored. For most stations, the guidelines were simply too unprofitable to follow. Broadcasters were at first willing to air a few shows at a loss. But over time, stations succumbed to the drive to get more and more efficient. In order to continually increase profits, they found themselves squeezing out money-losing programming such as news and educational shows.

So although many stations ignored “public interest” criteria, the FCC plowed ahead nonetheless. In 1948 and 1949, the commission formalized the **Fairness Doctrine**, which attempted to regulate against bias by forcing stations to air opposing sides of controversial issues. And the FCC further clarified the public interest standard in 1960 with a list of “major elements usually necessary to meet the public interest”: opportunity for local self-expression, use of local talent, programs for children and minority groups, education and political programs, etc.

These attempts to promote a civic spirit in broadcasting came to a drastic halt in the 1980s. Under President Ronald Reagan, the FCC reinter-



**The repeal of the Fairness Doctrine has profoundly affected political discourse in the U.S. Since the late 1980s, “all nationally syndicated political talk radio hosts on commercial stations have openly identified themselves as conservative, Republican, or both.”** (*The Register-Guard*, June 30, 2002)

---

## **Under Ronald Reagan, the FCC reinterpreted the “public interest” as a function of the market.**

### **According to this model, the best judge of the public interest was the broadcasting industry**

---

preted the “public interest” as a function of the market. According to this **marketplace model**, the best judge of the public interest was the broadcasting industry; companies specialized in audiences and their preferences and were considered the most qualified to determine appropriate programming. Government regulation was said to harm the flow of the market and was therefore opposed.

The marketplace model did not spring up overnight. In 1960, for example, CBS president Frank Stanton lobbied for the marketplace model, arguing that “a program in which a large part of the audience is interested is by that very fact a program in the public interest.” The FCC head under Reagan, Mark Fowler, was more blunt: “Broadcast regulation is shrouded in myths, myths about service to the community . . . The FCC must deal with the reality of broadcasting, a reality that begins with the fact that broadcasting is a business.” (Quoted in Kellner, p92)

Fowler considered television and radio programming to be just like any other product. Television was “just an appliance, like the toaster.” Regulations to promote diverse, educational, and other forms of public programming were, then, denounced and even mocked. The Fairness Doctrine was eliminated; rules on cross-ownership were gutted, leading to rapid consolidation, and financial support to public broadcasting was withdrawn.

#### **SELECTED SOURCES**

Krasnow, Erwin G., and Jack N. Goodman, “The ‘public interest’ standard: The search for the Holy Grail,” *Federal Communications Law Journal*, May 1998

McChesney, Robert W., *Telecommunications, Mass Media and Democracy: The Battle for the Control of U. S. Broadcasting, 1928-1935*, New York: Oxford University Press, 1994, p. 27.

Kellner, Douglas, *Television and the Crisis of Democracy*, Boulder, Colo.: Westview Press, 1990