The Decline of Broadcasters' Public Interest Obligations*

The Communications Act of 1934 and its predecessor, the Radio Act of 1927, mandates that the Federal Communications Commission regulate broadcasting in the "public interest, convenience, or necessity." This continues to be the mandate of the FCC, and the "public interest" part of the phrase appears 40 times in the Telecommunications Act of 1996.

The "public interest" mandate is notoriously vague. Contentious debate over its meaning has been almost continuous since passage of the Communications Act 70 years ago.

For purposes of this historical account of the public interest mandate, we give it the meaning: "compensation to the public for the use of the public airwaves." This interpretation provides a simple framework to explain how the public interest mandate has evolved since it was first embedded as the foundation of broadcast law.

Regulation of the public airwaves grew out of the chaos that engulfed radio broadcasters in the 1920s. In the early days of unregulated radio, there were too few radio broadcasters to cause interference with each other. But as more radio broadcasters got on the air, the signals of broadcasters began to conflict with each other. As a result, incumbent radio broadcasters begged the government to give them exclusive access to the public airwaves. That way new broadcasters who might cause them interference would be kept off the airwaves. In return for this exclusive government license, incumbent broadcasters offered to provide public service. These later became known as the broadcasters "public interest obligations." The trade of public airwaves for public interest obligations was the "social contract" between broadcasters and the public.

In the beginning, the government had very little substantive idea what the broadcasters' public interest obligations might be. But this was considered a virtue rather than a vice. It was considered premature to know what the broadcasters' public interest obligations should be, so the key feature of the public interest standard was a process. The process was that every three years a broadcaster's license to use the public airwaves would expire. At that time there would be a comparative hearing to find out who would get the next three-year license to use the airwaves. All bidders would be on an equal footing, and the one that offered the best proposal would get the license.

Over time, the FCC began codifying in law the judgments used in making these determinations. Thus, a body of law developed concerning the public interest obligations of the broadcasters. Incumbent broadcasters didn't like public interest obligations, but they didn't necessarily object to their codification because it provided them with more certainty about the standard by which they would be judged at renewal time. And, of course, they continued to use prime broadcast frequencies free of charge.

What broadcasters really hated, however, was the prospect that they might lose their licenses. Licenses to use the airwaves were hugely valuable. In one famous phrase, they were described as a "license to print money." Thus, incumbent broadcasters did everything they could to reduce the threat that at the end of their license term they might lose their license. In other words, they attacked the essence of the public interest standard, which was fundamentally procedural rather than substantive in nature.

Their lobbying was highly successful. Over time, the duration of broadcast licenses was increased from 3 to 5 to 8 years. And through a series of clever laws over a period of decades, comparative renewals were defanged to the point that it became virtually impossible for an incumbent broadcaster to lose his license.

As the renewal process became a charade, all the laws that had given it substance—such as the ascertainment and disclosure obligations—could be ridiculed as useless red tape, which they were. So they, too, were, as a practical matter, discarded.

But the public interest obligations have not died. At the very time that the public interest doctrine was being made toothless and irrelevant to the day-to-day decision making of broadcasters, the broadcasters began to make more and more claims on the government in the name of those same public interest obligations.

Broadcasters feared that technological change would make their business into a dinosaur. As each new wave of technology has come in—cable, satellite, and the Internet—broadcasters have run scared and sought protections and handouts from the government. Today, the broadcasting industry is one of the most protected and subsidized industries in the U.S. The most valuable subsidy is free and expanding use of the most valuable bandwidth of airwaves in nature. But broadcasters also benefit from a welter of copyright, zoning, tax, and airwaves use laws designed to bolster the profitability of their business and keep competition at bay.

To justify these subsidies, broadcasters have used their public interest obligations. For example, when broadcasters have been asked to pay for their rights to use the public airwaves, they have replied that this would void

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their social compact to provide public interest obligations in return for use of public airwaves. Broadcasters have also been willing to take on new public interest obligations in return for new handouts. For example, broadcasters accepted the v-chip at the same time that the government awarded them free use of approximately $70 billion worth of spectrum to transition to high definition TV. The v-chip obligated broadcasters to rate program content so that parents could filter out objectionable content. More recently, broadcasters want digital multicasting must-carry rights on cable TV. This would give them rights to demand that cable companies carry free of charge all their digital TV programming. These rights are worth tens of billions of dollars. In return, broadcasters may be willing to accept more public interest obligations.

Today, most public interest obligations are neither verifiable nor enforceable. Broadcasters have fought against clear, quantifiable programming requirements, partly on the grounds that such requirements would violate their First Amendment free speech rights. At the same time, broadcasters no longer have to fear losing their licenses. At worst, they must fear getting slapped on the wrist with a fine.

Broadcasters continue to be willing to take on public interest obligations that are not costly and do not risk license revocation. Indeed, sometimes they have fought to keep public interest obligations from being taken away from them. For example, broadcasters have frequently testified in Congress and at the FCC that their government mandated Emergency Alert System provides a vital public service worthy of public subsidy. The Emergency Alert System requires broadcasters to interrupt their regularly scheduled programming in case of natural and human disasters.

But cable operators are better positioned than broadcasters to insert local emergency alert information such as school closings and tornado warnings for a particular community. Cable TV is a much more local medium than broadcasting. There are only 211 TV markets in the U.S. but more than 10,000 cable TV systems. And more than four times as many Americans now get their broadcast TV over cable TV than the airwaves. But broadcasters oppose allowing cable TV operators to insert localized Emergency Broadcast Alerts. They want to keep full control of their programming.

The most publicized public interest obligations typically concern restrictions on sex and violence on TV. Every few years Congress seems to hold hearings criticizing rising levels of sex and violence on TV. This generates headlines but rarely any substantive legislation. The recent proposed increase in FCC fines for indecent programming may be an exception to this long established pattern.

Perhaps the most rigorous and best-enforced broadcaster public interest obligations are the political broadcasting rules. Members of Congress care deeply about these rules because they affect their reelection prospects. As a result, these rules are relatively clear, detailed, and verifiable. Most rules are designed to prevent broadcasters from using their control of the primary gateway into constituents' homes to favor one candidate over another. For example, broadcasters are required to keep a detailed political file including the rates charged individual candidates for political ads, for public inspection. They are also required to sell all political ads at the "lowest unit charge" for a comparable time slot. These two laws together prevent broadcasters from secretly subsidizing one candidate at the expense of another.

Despite all these cross currents, the long-term trend has been clear: meaningful public interest obligations have declined over time. This trend has occasionally been punctuated by new public interest obligations. As broadcasters seek tens of billions of dollars worth of new spectrum rights, we might well be entering a period of increased obligations. But if the past is any guide, these obligations will later be renegotiated, reduced, and in many cases rendered meaningless or eliminated altogether.

The Decline of Broadcasters' Public Interest Obligations: Issue Review

A. Fairness Doctrine

1. Editorializing by Broadcast Licensees (1940): Established the Fairness Doctrine which required broadcasters to cover public issues of importance to the local community and to provide reasonable opportunities for contrasting and dissenting views on controversial topics. More specific rules were adopted over time including the personal attack and political editorial rules.

The Decline in Media Interest Obligations: A Chronological Review

1929	1934	1940	1960	1965
National Association of Broadcasters adopts the Voluntary Code of Conduct.	Communications Act mandates that the FCC consider the "public interest, convenience and necessity" in its decision to grant or deny license requests and renewals.	The Supreme Court upholds its first public interest standard, describing it as the touchstone of authority for the FCC.	The Fairness Doctrine requires broadcasters to cover public issues of importance to the community and to provide reasonable opportunities for contrasting and dissenting views.	The FCC outlines 14 elements that are required to meet the public interest.

2. Fairness Doctrine Report (Oct. 7, 1985): In this report, referred to as the 1985 Fairness Doctrine Report, the FCC stated that as a matter of policy, the Fairness Doctrine was no longer necessary to further the public interest and that it unnecessarily restricted the journalistic freedom of broadcasters. Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees.

3. In re Syracuse Peace Council (August 4. 1987): Repealed the Fairness Doctrine. The FCC found that the Fairness Doctrine inhibited broadcasters from covering controversial issues. It concluded that the doctrine contravened the First Amendment and its enforcement was no longer in the public interest. The case was appealed to the D.C. Circuit which upheld the Commission's public interest finding but declined to address the constitutional issues.

B. Public Interest Requirements and Ascertainment

4. Programming Policy Statement (July 29, 1960): Report and Statement of Commission en banc Programming Inquiry. The FCC outlined 14 elements that are usually necessary to satisfy public interest obligations, including children's programming, political broadcasts, news programs, sporting events, weather information and the development and use of local talent. These types of programs, among others, were considered evidence that broadcasters were serving the public.

5. Primer on Ascertainment of Community Problems by Broadcast Applicants (February 18, 1971): In its 1960 Programming Policy Statement, the FCC concluded that broadcasters should determine the tastes, needs and desires of the community and design programming to meet those needs. This led to the FCC's adoption of formal ascertainment requirements, which were clarified in this Primer. Under the ascertainment requirements, broadcasters were obligated to determine community problems and needs in order to propose programming to meet those needs. The ascertainment requirements further required the broadcaster to specify what broadcast matter he proposed to meet the problems, needs and interests of the community.

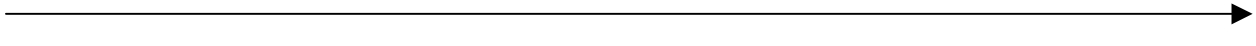
6. Ascertainment of Community Problems by Broadcast Applicants (December 15, 1975): The FCC adopts a Primer on Ascertainment of Community Problems by Broadcast Renewal Applicants. Under these procedures, each commercial broadcast licensee was required to conduct annual interviews with members of the general public and with leaders of significant community groups. From these interviews, the licensee was to list significant community problems and needs and to develop and air programming addressing at least some of those problems and needs. The written records from the interview, the list of problems and needs, and the description of the programming were reviewed when the station's license came up for renewal.

7. Ascertainment of Community Problems by Broadcast Applicant (September 15, 1976): Clarified ascertainment requirements and requirements from the Broadcast Renewal Applicants Primer.

8. Deregulation of Radio (January 14, 1981): Eliminated radio rules and policies concerning programming logs, commercial time limitations, ascertainment of community problems, and non-entertainment programming requirements. The Commission stated that Congress had deliberately placed the public interest standard in the Communications Act to provide the Commission with maximum flexibility in dealing with the ever changing field of broadcasting: "Congress established a mandate for the Commission to act in the public interest. We conceive of that interest to require us to regulate where necessary [and] to deregulate where warranted..."

9. Revision of Programming and Commercial Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations (June 27, 1984): Deregulated commercial television and non-commercial broadcasters, just as radio stations had been deregulated in 1981. The Commission stated that the public interest no longer required adherence to the ascertainment requirements, as licensees would become aware of and responsive to important issues and interests of their communities for reasons independent of the requirements. Therefore, the existing procedures were neither necessary nor appropriate.

The Decline in Media Interest Obligations: A Chronological Review



1965	1971	1974	1975	1977
FCC establishes guidelines and criteria for use in its comparative broadcast hearings.	FCC adopts formal ascertainment requirements under which broadcasters were obligated to determine community problems.	FCC formally recognizes that broadcasters have a special obligation to to serve the needs of children.	Commercial broadcast licensees are required to conduct interviews with the public and list significant community problems.	NAB releases an updated version of the Voluntary Code of Conduct establishing programming and advertising standards.

C. License Renewal Procedures

10. Policy Statement on Comparative Broadcast Hearings (July 28, 1965): Established guidelines and decision criteria for comparative broadcast hearings in license renewal procedures. The decision-making body, most often the Review Board, was to ensure the best practicable service to the public and a maximum diffusion of control of the media and mass communications. The Statement lists seven factors which should be considered in this analysis.

11. Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licenses (May 11, 1981): Eliminated the previous license renewal process, in which the Commission engaged in a detailed inquiry into whether the licensee had fulfilled its public interest obligations. Instead, the Commission created a Simplified Renewal Application (SRA), the use of which has come to be known as the "postcard renewal process." The SRA contains only five questions, and does not require any detailed submissions. The old renewal form was turned into a longer audit form and sent to a random subset (initially 5%) of licensees.

12. Revision of Programming and Commercial Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations (June 27, 1984): Repealed the Commission broadcast guidelines which gave broadcasters specific quantitative programming and commercialization standards. These guidelines had indicated that a renewal application required Commission action on any application which proposed: 1) greater than 85% commercial programming; 2) less than 5% local live programming; 3) greater than 90% network programming; 4) less than 10% sustaining programming between 6-11 p.m.; 5) greater than an average of 12 commercial spots during an hour; and 6) no programming in entertainment, religious, agricultural, educational, news, discussion, and talks unless adequate explanation was given. The public interest protection of a full *en banc* Commission review of license renewal applications was no longer necessary even in situations which may have warranted review.

13. FCC 303-8: Application for Renewal of Broadcast Station License: The current form for license renewal. When printed, it fits on a piece of paper about the size of a large postcard.

Some Leading Court Cases

- FCC v. Pottsville Broadcasting (1940): The Supreme Court upheld the public interest standard. It described it as the "touchstone of authority" for the FCC. The Court said that "the Commission's responsibility at all times is to measure applications by the standard of 'public convenience, interest, or necessity.'" The public interest standard, the Court said, is "as concrete as the complicated factors for judgment in such a field of delegated authority permit" and the approach is "a supple instrument for the exercise of discretion."

- National Broadcasting Co. v. U.S. (1943): The Supreme Court upheld the FCC's "chain broadcasting" network rules which were designed to allow network affiliates to select programming free of network constraints. This case represents the most sweeping statement ever made by the Supreme Court in support of the FCC's authority to regulate the electronic media because it affirmed the right of the FCC to exercise broad powers over the broadcasting industry, affirmed that the public interest standard is the touchstone of FCC authority to exercise broad regulatory powers, held that the public interest standard is not unconstitutionally vague, offered a scarcity rationale, and ruled that regulations that may result in license revocation or non-renewal do not violate broadcasters' First Amendment rights.

- Red Lion Broadcasting Co. v. FCC (1969): The Supreme Court upheld the FCC's Fairness Doctrine as well as its related personal attack and political editorializing rules. In unanimously affirming the FCC, the Court emphasized the principle of the public interest: "It is the right of the viewers and the listeners, not the right of the broadcasters, which is paramount." The Court added one significant caveat: if experience with broadcast technology post-1969 proved that "the net effect of [administration of the Fairness Doctrine was to reduce] rather than [increase] the volume and quality of coverage there [would] be time enough to reconsider the constitutional implications."

The Decline in Media Interest Obligations: A Chronological Review

1978	1981	1981	1981	1983
FCC Children's TV Task Force release a study demonstrating that licensees are not meeting expected levels of children's programming.	NAB abandons Code of Conduct after its advertising portions are found illegal on antitrust grounds by the DC District Court.	FCC eliminates radio rules and policies concerning programming logs, commercial time limitations, ascertainment of community problems and non-entertainment requirements.	FCC creates a Simplified Renewal Application containing five questions.	FCC refuses to establish concrete requirements for children's programming.

D. Voluntary Code of Conduct

14. The NAB Television Code (1977 Version): The NAB's Voluntary Code of Conduct, first adopted in 1929, established programming and advertising standards through industry self regulation. The advertising portions of the Code were later declared to illegal on antitrust grounds in *U.S. v. Nat'l Assn. of Broadcasters* in 1981 and in response the NAB abandoned the entire Code. However, recent years have seen renewed calls for the reimplementation of an industry code, typified in the findings of the Gore Commission on DTV public interest obligations in 1998.

E. Children's Television Rules

15. Children's Television Report and Policy Statement (October 24, 1974): Recognized that broadcasters have a special obligation to serve the specific needs of children. Although the Policy Statement did not create specific minimum obligations for broadcasters, it emphasized the importance of self-regulation in children's programming and concurrent advertising, and incorporated service to children as an element of the Commission's public interest.

16. In the Matter of Children's Television Programming and Advertising Practices (The 1984 Report) (December 2, 1983): Refused to establish concrete requirements for children's programming by Commission licensees, instead finding that market forces were sufficient to protect the public interest. The Report effectively nullified the Commission's 1979 NPRM, issued after the Children's Television Task Force specifically found that industry self-regulation had not provided adequate levels of children's programming or protections.

17. In the Matter of Policies and Rules Concerning Children's Television Programming (April 9, 1991): Implemented provisions of the 1990 Children's Television Act, including limitations on the amount of commercial advertising permissible during children's programming. Also, required the Commission to review whether broadcasters had served the educational and informational needs of children during license renewal.

18. In the Matter of Policies and Rules Concerning Children's Television Programming (August 8, 1996): Established processing guidelines for license renewal applications based on licensee satisfaction of minimum

Some Leading Court Cases (continued)

- FCC v. Pacifica (1978):

By a five to four vote, the Supreme Court affirmed the decision of the FCC that George Carlin's "filthy words" monologue was "indecent." Justice Stevens, in the prevailing opinion, explained that Carlin's words might be appropriate on other media, but not over the radio: "[w]e have long recognized that each medium of expression presents special First Amendment problems. And of all forms of communication, it is broadcasting that had received the most limited First Amendment protection."

- FCC v. League of Women Voters (1984):

For the first time, the Supreme Court found a broadcast regulation unconstitutional: Section 399 of the Public Broadcasting Act which forbade editorializing by any noncommercial station receiving funds from the Corporation for Public Broadcasting.

- Turner Broadcasting Systems v. FCC (1994):

In its initial decision upholding FCC's rules requiring cable systems to carry the signals of local television stations, the Supreme Court gave only lukewarm support for *Red Lion* and other decisions, noting that "the rationale for applying a less rigorous standard of First Amendment scrutiny to broadcast regulation, whatever its validity in the cases elaborating it, does not apply in the context of cable regulations."

- Action for Children's Television v. FCC (1995):

The D.C. Circuit upheld the Commission's safe harbor rules, stating that the regulations were sufficiently narrowly tailored to serve government's compelling interest in the well-being of the children under the age of 18 for First Amendment purposes. The Court held that the safe harbor hours for broadcasters, regulating when indecent materials could be shown, would be 10 pm until 6 am, instead of midnight to 6 am as the Commission had previously determined.

- Time Warner Entertainment v. FCC (1996):

The D.C. Circuit held that DBS regulations were entitled to less demanding First Amendment scrutiny applied to the broadcast medium, and therefore upheld the requirement that DBS operators reserve a percentage of their channel capacity for noncommercial educational and informational programming.

The Decline in Media Interest Obligations: A Chronological Review

1984	1987	1990	1992	1996
FCC deregulates commercial TV and non-commercial broadcasters, finding market forces to be sufficient.	FCC repeals the Fairness Doctrine, finding it is no longer necessary to further the public interest, it unnecessarily restricts journalistic freedoms and violates the First Amendment.	Congress passes the Children's Television Act, imposing limits on advertising during children's programming and requiring the FCC to review whether broadcasters have served the educational and informational needs of children.	Public Telecommunications Act of 1992 is adopted Section 16(a) provided that indecent material could only be broadcast between the hours of midnight and 6AM, known as the safe harbor.	FCC establishes processing guide-lines for license renewal applications based on license satisfaction of minimum kid's programming levels.

children's programming levels. Licensees are expected to air a minimum of three hours of children's educational programming per week, or to demonstrate sufficient commitment to children's broadcasting through an alternate package of educational and informational programming.

19. Guidelines Concerning Commercialization of Children's Programming (March 25, 2004): The FCC applied the Commercial Broadcast Children's Advertising rules to DBS, stating that providers cannot air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, and more than 12 minutes of commercial matter per hour on weekdays.

F. Advisory Committee on Public Interest Obligations of Digital Television Broadcasters

20. Charting the Digital Broadcasting Future, Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (1998): The Presidential Advisory Committee's 1998 Final Report recommended the reimplementation of many of the public interest protections eradicated by the Commission. The full report can be accessed at http://www.ntia.doc.gov/pubintadvcom/piacreport.pdf.

G. Political Advertising Rules

21. Use of Broadcast Facilities by Candidates for Public Office (April 27, 1966): The last major Commission action addressing political advertising rules from the 1960's. The Order is typical of the Commission's promulgation of rules under 47 U.S.C. §315, which guarantees all legally qualified candidates for federal office equal access to broadcasting facilities, as well as the lowest unit charge available for commercial purchasers for political advertising.

22. Political Primer 1984 (1984): Compiles Commission interpretations of its regulations implementing 47 U.S.C. §§312(a)(7), 315 and specifically discusses the application of these regulations to the cable industry.

23. Codification of the Commission's Political Programming Policies (January 3, 1992): An updated version of the 1984 Primer. The new Order imposed more detailed political file requirements on broadcasters and cable operators, in order to more accurately account for new pricing policies and practices in Commission rules.

24. Direct Broadcast Satellite (DBS) Public Interest Obligations (November 19, 1998): Purported to fulfill Congress's mandate under the 1992 Cable Act to apply the political advertising protections of 47 U.S.C. §§312(a)(7), 315 to DBS broadcasting. Essentially, the Order refused to promulgate specific rules to that effect, instead deferring to DBS operators, and opting to determine the reasonableness operator behavior on a case-by-case basis.

25. Direct Broadcast Satellite (DBS) Public Interest Obligations (March 2003): The FCC clarified that political broadcasting obligations were similar to those applied to cable and terrestrial broadcasters. Stating that "all federal candidates are entitled to reasonable access" to DBS facilities with equal opportunity, the FCC afforded all candidates equal access to audience potential. Candidates are also entitled to the lowest unit charge for advertising if a DBS provider sells advertising time on its system. Finally, DBS providers must maintain records on requests for time and sales of candidate ads in their public files.

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The Decline in Media Interest Obligations: A Chronological Review

1996	1998	1998	2003	2004
Congress passes the Telecommunications Act of 1996, favoring increased competition in the telecom marketplace	The FCC refuses to apply the political advertising protections to DBS broadcasting, despite Congress's instructions to do so in the 1992 Cable Act.	The Political Advisory Committee releases its Final Report, recommending the reimplementation of many of the public interest protections eliminated by the FCC throughout the 1990s.	FCC eliminates a wide range of media concentration protections allowing a single company to own 8 radio stations 3 TV stations, the only daily paper, the dominant cable TV provider and the largest Internet Service Provider in the community.	Congress rebukes the FCC and rolls back the national TV owner-ship cap from the new 45% level to 39.5% This number allows the networks to keep the stations they own.

Appendix 1:

Public Interest Obligations Across TV Platforms

Commercial Broadcasting (Terrestrial)[1]

[1] General Obligation to Provide Programming Responsive to Local Community [2]
Pertinent authority: 47 C.F.R. §§ 3526(a)(8)(i), 3527(a)(7).

[2] Educational and Informational Programming Requirement: A licensee must provide a minimum of three hours per week of children's educational and informational programs. *Pertinent authority:* Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996; 47 C.F.R. § 73.671; 47 C.F.R. § 73.673(b); 47 C.F.R. § 73.3526(a)(8)(iii).

[3] Parental Choice (V-Chip) & Television Program Ratings: The "Parental Choice in Television Programming" provision of the 1996 Act (Section 551) encourages the television content providers and distributors to develop a voluntary rating system, and directs the FCC to oversee the television receiver industry's development of technical standards for blocking technology.

[4] Indecency and Obscenity Standards: Broadcasters are forbidden to transmit any obscene, indecent, or profane language over the airwaves from 6:00 a.m. to 10:00 p.m. Indecency is defined by the Commission as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs."

[5] Television Advertising:

a) *Sponsorship Identification:* Must identify over air the sponsoring entity.
b) *Refusal to sell advertising time:* Licensees can refuse to sell airtime to any particular entity, with the exception of qualified candidates.
c) Tobacco: Prohibition on advertisement of tobacco products on any medium of electronic communication regulated by the FCC.
d) *Advertising During Children's Programming:* Commercial television stations cannot present more than 10.5 minutes of commercials per hour during weekend, and no more than 12 minutes per hour during weekday.

[6] Access to Broadcast Facilities by Candidates for Elected Political Office:

a) Reasonable Access: Licensees are required by statute to afford "reasonable access" to legally qualified candidates for federal elected office to their facilities, or to "permit purchase of reasonable amounts of time."
b) Equal Opportunities: Whenever a broadcaster permits a "legally qualified candidate for any political office" to "use" a station it must "afford equal opportunities to all other such candidates for that office" the use of the station.
c) *Lowest Unit Charge (LUC) and Comparable Use Rates (CUR)*: LUC and CUR applies to candidates for local, state and federal elected office. If a broadcaster offers to sell time to political candidates, the broadcaster has a statutory obligation to charge political candidates the "lowest unit charge of the station" for the "same class and amount of time for the same period," during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election.
d) *Repealed*: *Political Editorials and Right of Reply*: This obligation was repealed by the FCC in response to a 2000 decision by the Court of Appeals for the D.C. Circuit on the basis of a lack of evidence of its effectiveness. *See* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-00-386A1.pdf

Repealed: **Personal Attack Rule:** This obligation was repealed by the FCC in response to a 2000 decision by the Court

[1] The definitions of the Principle PIOs provided here are in some cases abbreviated, as this document is intended to provide a basic and general reference to PIOs across platforms. For a more comprehensive treatment of individual PIOs see the cited source materials or cited statutes.
[2] Excerpted and adapted from "A Primer on the Public Interest Obligations Of Television Broadcasters," United States Department of Commerce, National Telecommunications and Information Administration, Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters (PIAC), October 22, 1997. Available at http://www.mediainstitute.org/gore/STUDIES/primer.html - [1].

of Appeals for the D.C. Circuit on the basis of a lack of evidence of its effectiveness. *See* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-00-386A1.pdf

[7] "Fair Break" Doctrine: Requires that broadcaster give a "fair break" to groups which do not share broadcaster's views.

[8] Video Programming Accessibility: Closed Captioning & Video Description (insertion of audio narrated descriptions of a television program's key visual elements. While the FCC is not required by statute to promulgate regulations for the provision of a video description service by broadcasters, the FCC is directed by statute to prepared a report to Congress on the status and feasibility of video description

[9] Main Studio Location and Local Public Inspection File: Main studio rule requires that each broadcast licensee locate its main studio within its principal community signal contour. Commercial and noncommercial stations must maintain public files that include: applications and related materials filed with the Commission, ownership reports, employment reports, a list of programs aired by the stations during the previous three months that provided its most significant treatment of community issues, a separate "political file" documenting requests for broadcast time made by or on behalf of candidates for public office, information on children's educational and informational programming;

Additional item of interest:
Definition of Obscenity and Indecency: In 1973, the U.S. Supreme Court established the following criteria: (1) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to prurient interest; (2) whether the work depicts or describes in a patently offensive way sexual conduct specifically defined by applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. The Commission's generic definition of "indecency" is one that applies to language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs.

Non-Commercial Broadcasting[3]

[1] General Obligation to Provide Programming Responsive to Local Community[4]

[2] Educational and Informational Programming Requirement: Noncommercial television licensees must serve the educational and informational needs of children 16 years of age and younger through overall programming including that designed specifically for children's informational and educational edification. *Pertinent authority:* Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996; 47 C.F.R. § 73.672.

[3] Parental Choice (V-Chip) & Television Program Ratings

[4] Indecency and Obscenity

[5] Television Advertising:
- *a) Sponsorship Identification* (Noncommercial stations cannot interrupt programming to acknowledge sponsors and contributors)
- *b) Refusal to sell advertising time*
- *c) Tobacco*

[6] Access to Broadcast Facilities by Candidates for Elected Political Office:
- *a) Reasonable Access*
- b) *Equal Opportunities*

[7] "Fair Break" Doctrine

[8] Video Programming Accessibility: Closed Captioning & Video Description

[9] Main Studio Location and Local Public Inspection File

[3] To avoid repetition, non-commercial public interest obligations that conform to those of the commercial broadcasters are left undefined, and those that differ are defined.

Direct Broadcast Satellite (DBS)[5]

[1] Access to Broadcast Facilities by Candidates for Elected Political Office:[6]

a) *Reasonable Access*
b) *Equal Opportunities*
c) *Lowest Unit Charge (LUC) and Comparable Use Rates (CUR)*

[2] Carriage obligation for noncommercial programming:

a) *Reservation requirement* – 4% for noncommercial, educational programming
b) *Qualified noncommercial programmers* (as defined in Communications Act and accredited educational, non-profit, and noncommercial educational entities)
c) *Editorial control* – DBS operators are required to make capacity available only to qualified programmers and may select among such programmers when demand exceeds the capacity of their reserved channels.
d) *Non-commercial channel limitation* – DBS operators cannot initially select a qualified programmer to fill more than one of its reserved channels except that, after all qualified entities that have sought access have been offered access on at least one channel.
e) *Rates, terms and conditions* – DBS providers cannot charge rates that exceed costs that are directly related to making the capacity available to qualified programmers.
f) *Public file*

[3] Television Advertising:

a) *Advertising During Children's Programming:* Cannot present more than 10.5 minutes of commercials per hour during weekend, and no more than 12 minutes per hour during weekday.

Cable[7]

[1] Educational and Informational Programming:[8] **Local** franchises may require cable providers to produce local PEG programming within viewing community, but the amount of local programming is not federally mandated.

[2] Parental Choice (V-Chip) & Television Program Ratings

[3] Indecency and Obscenity: Both 47 U.S.C. §559 and 18 U.S.C. §1468(a) respectively bar the transmission of obscene material over a cable system and the knowing utterance or distribution of obscene matter by means of a cable television system or subscription service.

[4] Advertising:

a) *Sponsorship Identification*
b) *Refusal to sell advertising time*
c) *Tobacco*
d) *Advertising During Children's Programming*

[5] Access to Broadcast Facilities by Candidates for Elected Political Office:

a) *Reasonable Access*
b) *Equal Opportunities*

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[4] *See* "A Primer on the Public Interest Obligations Of Television Broadcasters," United States Department of Commerce, National Telecommunications and Information Administration, October 22, 1997.
[5] To avoid repetition, DBS public interest obligations that conform to those of the commercial broadcasters are left undefined, and those that differ are defined.
[6] *See* Federal Communications Commission, *Report and Order: Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, MM Docket 93-25, November 25, 1998. Available at: http://www.mediaaccess.org/programs/broadcastingoblig/fcc98307.pdf
Also See: 47 C.F.R. § 25.701, *Available at:* http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=47&PART=25&SECTION=701&YEAR=2002&TYPE=TEXT
[7] To avoid repetition, cable services public interest obligations that conform to those of the commercial broadcasters are left undefined, and those that differ are defined.
[8] Compiled from FCC Cable Television Fact Sheets: "Program Content Regulations," *Available at:* http://www.fcc.gov/mb/facts/program.html, "Public, Educational, and Governmental Access Channels ("Peg Channels")," *Available at*: http://www.fcc.gov/mb/facts/pegfacts.html.

For Further Reading:

Broadcaster Public Interest Obligations: Local, Civic, Electoral and Independently Produced Programming

General

"Policy Backgrounder: The Decline of Broadcasters' Public Interest Obligations." New America Foundation. March 29, 2004.
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"Looking Back at PIAC: The Unfinished Business of Ensuring the Public Benefits from DTV." Benton Foundation. December 2003.
http://www.benton.org/publibrary/issuesinfocus/piac.html

Local, Civic and Electoral Programming

"Issue Summary: Declining Broadcast Coverage of Campaign and Election Discourse." Campaign Legal Center. February 2004.

"The State of the News Media 2004." Project for Excellence in Journalism.
http://www.stateofthenewsmedia.org/execsum.pdf

"Market Conditions and Public Affairs Programming: Implications for Digital Television Policy." Benton Foundation.
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"Media Coverage of Weapons of Mass Destruction." University of Maryland, Center for International and Security Studies. March 9, 2004.
http://www.cissm.umd.edu/documents/WMDstudy_short.pdf

"All Politics is Local: But You Wouldn't Know it by Watching Local TV." Alliance for Better Campaigns. February 2004.

"Local TV News Coverage of the 2002 General Election." USC Norman Lear Center.
http://www.localnewsarchive.org/pdf/LocalTV2002.pdf

"Local TV Coverage of the 2000 General Election" by USC Norman Lear Center. February 2001.

"Are Voluntary Standards Working?: Candidate Discourse on Network Evening News Programs." University of Pennsylvania, Annenberg Public Policy Center. December 20, 2000.
http://www.annenbergpublicpolicycenter.org/03_political_communication/freetime/2000-voluntary%20standards%20report.pdf

"What's Local About Local Broadcasting?" A Joint Report of the Media Access Project & Benton Foundation. April 1998.
http://www.benton.org/publibrary/television/whatslocal.html

"Channeling Influence Report." Common Cause. 1997.
http://www.commoncause.org/publications/040297_rpt.htm

Independently Produced Programming

"Appendix to FCC Reply Comments 2002 Biennial Regulatory Review, MB Docket Docket No. 02-277." Coalition for Program Diversity. January 28, 2003.

"Comments to the FCC on the Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03-15 and Carriage of Digital Television Broadcast Channels CS Docket No. 98-120" Center for the Creative Community. December 12, 2003.

"Returning Oligopoly of Media Content Threatens Cable's Power." Bernstein Research. February 7, 2003.