

PUBLIC SERVICE ADVERTISING, BROADCASTERS, AND THE PUBLIC INTEREST

Regulatory Background and the Digital Future

By Craig LaMay

When the National Association of Broadcasters (NAB) testified before the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters (also known as PIAC, or the Gore Commission) on April 14, 1998, the Commission's co-chair Norman Ornstein commented: "We have to determine as we move – because our focus is not what broadcasters are doing now but what broadcasters will do in the digital age – what the changes in technology, the changes in the marketplace, will mean in terms of public service."¹ The subject at the time was digital television, but the issues went far beyond that. Since the earliest days of radio and television, policy leaders have grappled with what responsibility broadcasters have to serve the public interest, whether those obligations are being met, and how to make sure public service keeps pace with new technologies. While public service advertisements (also known as public service announcements or PSAs) make up a negligible slice of the literature on broadcast regulation, in many ways the subject captures the whole history of the public interest standard.

Broadcasting in the United States is based on a legal quid pro quo: In return for free and exclusive channel assignments on the public's electromagnetic spectrum, broadcasters are required to serve "the public interest, convenience, and necessity."² Those six words have been the subject of much debate ever since they were first adopted for use in the Federal Radio Act of 1927. In 1934, a reform-minded Congress

briefly considered revising the law to set aside a portion of the spectrum for educational and nonprofit use, but the networks and the NAB argued that no such set-aside was necessary. William Paley, at the time chairman of CBS, told the Senate Commerce Committee in 1930 that no more than 30 percent of his network's programming would be sold and that the balance would be available for educational and non-commercial programming, a pledge he reiterated in 1934.³ Louis G. Caldwell, the NAB's lawyer, defended the public interest language, writing in 1929: "If all this be censorship, it seems unavoidable and in the best interests of the public."⁴

In the end, the 1934 Communications Act was, so far as radio broadcasting was concerned, a near-verbatim reproduction of the 1927 law, except that it abolished the old Federal Radio Commission and established in its place the Federal Communications Commission (FCC). As television developed in the years after World War II, the public-interest requirements of the law applied to television licensees too, and though several important regulations involving station ownership, license terms, and public-interest record-keeping have been loosened over the years – most recently by the 1996 Telecommunications Act – the social compact at the heart of the regulatory scheme remains the same.

The Telecommunications Act itself was the end result of a long attempt, beginning in the mid-1970s, to redraft the law consistent with technological and economic changes in the communications industries, one of the most significant being the introduction and development of digital television. Digital television is distinct from its analog forebear in that it permits broadcasters to send multiple streams of programming, including high-definition video and interactive services – in short, to create entirely new businesses with new streams of revenue. As of March 2001, 133 digital broadcast television stations were on the air in the United States.⁵

One of many questions digital television raises is what kind of service the public should expect for this new use of its property. After examining a range of options with respect to this question, the Gore Commission urged that PSAs become a more substantial and documented part of broadcasters' community service – a departure from the way the FCC treats PSAs today.⁶ The FCC allows broadcasters to count PSAs toward their statutory public service programming obligations.⁷ However, like most FCC regulations focusing on mass media content (and thus raising First Amendment concerns), the language concerning PSAs is vague. Current FCC rules simply require commercial television broadcasters to keep in their file for public review a list of community issues addressed by the station's programming during the preceding three-month period. According to those rules, PSAs count toward fulfilling broadcasters' obligations.⁸ Yet there are no quantitative requirements for PSAs. The FCC doesn't tell broadcasters what kind of PSAs to run or when to run them, nor does it monitor their use.

Even the definition of a PSA itself has been a source of debate. A PSA, according to the FCC, is as an advertisement "for which no charge is made and which promotes programs, activities, or services of federal, state, or local governments or the programs, activities, or services of nonprofit organizations or any other announcements regarded as serving community interests."⁹ However, today many organizations purchase time for their public service campaigns. Turn on the television and one sees antitobacco or antidrug PSAs paid for by the American Legacy Foundation and the Office of National Drug Control Policy (ONDCP). Buying time is the only way PSA sponsors can guarantee placement for their spots in prime time or in programming watched by their target audience.¹⁰ It is not clear that broadcasters themselves distinguish between paid time and free time in their own accounting of public service. In the 1998 survey that the NAB presented to the Gore Commission, for example, the polling firm that conducted it, Public Opinion Strategies, did not explicitly distinguish between paid and free time in the wording of its question on the subject. Rather, it asked respondents about the number and dollar value of PSAs they aired.¹¹

Despite the confusion and controversy surrounding PSAs, only twice has our country examined what responsibility, if any, broadcasters have to air them. The first time was in the form of an FCC inquiry in the late 1970s, back when broadcast television was dominated by three national networks and cable was still a rural signal-delivery service. The second time was two decades years later, when the Gore Commission was appointed by then-President Clinton to explore these questions with respect to the emerging digital television service. The FCC examination was prompted by the San Francisco-based Public Media Center, which filed a petition with the agency in 1976 urging it to develop a quantitative PSA requirement. In 1978, the FCC opened an inquiry into the matter, examining both industry practices and the role that PSAs could or should play in the public service mix.

In its petition to the FCC, the Public Media Center claimed that broadcasters gave short shrift to PSAs generally, burying them in unfavorable hours, and to local citizens groups and charities specifically, favoring PSAs provided by the Ad Council and other nationally known and for the most part non-controversial groups. The petitioners proposed that broadcasters be required to present a minimum of three PSAs, totaling a minimum of 90 seconds, every two hours throughout the broadcast day.

They also wanted the FCC to limit the number of PSAs a licensee or network could accept from a single entity and to require that a certain percentage of PSAs be of local origin. To further that goal, the petition called on broadcasters to make available to local organizations facilities and other assistance that would help them create PSAs. Finally, the petitioners urged the Commission to study licensee and network practices governing the acquisition and airing of PSAs.

In response, broadcasters and others opposed to the petition argued two things: that decisions about PSAs fell within the bounds of editorial discretion reserved for broadcasters by statute and by the First Amendment, and that there was no evidentiary basis for the FCC to act.* The Commission agreed and at first denied the petition.¹²

It then reconsidered the issue and chose to conduct the study on PSA practice that the Public Media Center had requested.¹³ In doing so, the FCC noted that "Congress as well as governmental agencies such as the Federal Trade Commission and the Department of Health and Human Services are interested in the employment of PSAs in answering public needs."¹⁴

*Among the nonbroadcast parties opposed to any quantitative requirement were the United Way, the Boy Scouts of America, the President's Council of Physical Fitness and Sports, the Lexington League of Women Voters, and the United Negro College Fund. Nonbroadcast parties supporting the requirement included the United Church of Christ, the Federal Trade Commission, the Southern California Committee for Open Media, and the Council on Children, Media, and Merchandising.

At the time, the only data the FCC had on PSAs were those contained in license renewals, and that was not much: radio and television stations simply indicated how many PSAs they aired during a “composite” week. The FCC thus asked stations (and everyone else) to respond to its Notice of Inquiry with information about the time given to and the timing of PSAs, the nature of the PSAs aired, the sources of PSAs aired, the criteria for selecting them, and how useful such advertisements were in serving the public.¹⁵

Because of the self-selected nature of the responses, the FCC admitted, the picture that emerged was statistically flawed but nonetheless, the agency thought, revealing. The average television and radio station reported airing one to two PSAs per hour, about 200 per week, the equivalent of 1 percent to 2 percent of all broadcast time. According to the FCC, PSAs ran from 10 seconds to 60, with most running 30. These messages were “not necessarily aired in graveyard hours,” the commission reported, but nor were they “centered in drive and prime-time periods.”¹⁶ About 7 percent of all PSAs were directed to children under 12, though only 20 percent of child-oriented PSAs aired during programming directed to children.¹⁷ In 1980, the most common PSAs concerned health and safety issues, followed by social services, civic activities, and environmental concerns. “PSAs concerning controversial matters,” the FCC found, “are not usually aired.”¹⁸

Broadcasters themselves reported that local public service was the criterion by which they chose to air PSAs, though they also said they rarely solicited any PSAs but rather chose from what was provided them and usually acquired PSAs in packages rather than individually. Not surprisingly, some non-broadcast parties responding to the FCC’s inquiry were of the view that availability and convenience were the chief criteria governing PSA selection – a complaint that is still heard today.

*The Advertising Council, for example, offered this definition: “A PSA is an announcement for which no commercial charge is made by the broadcasters or by the nonprofit agency, government body, or individual providing the message, the purpose of which is to improve the health, safety, welfare, or enhancement of people’s lives and the more effective and beneficial functioning of their community, state or region. Such messages shall not be commercial, political or designed to influence legislation.”

The Committee for Open Media suggested: “A PSA is a non-routine, non-billable message which 1) informs viewers and listeners about a service, program, or activity of community interest or 2) which provides a forum for individuals or groups to express their ideas, viewpoints, or opinions. Time signals, routine weather announcements and station promotional announcements are not PSAs.”

Two years after it began, the agency terminated the proceeding, ultimately declining to set any kind of PSA requirement. In evaluating the responses it received, the FCC questioned whether the PSA definition* should be modified to reflect the particular purposes for which PSAs are aired, or perhaps to encourage attention to controversial subjects.¹⁹

In the end, the agency was convinced to avoid any such modification, but it did change its reporting procedures to enable licensees to receive greater credit for their PSAs in the “other” programming category of their annual programming report and in their renewal application forms.²⁰ The agency also abandoned its practice of distinguishing between collective PSAs (community bulletins) and individual PSAs. In either case, the agency said, licensees could receive public service credit.²¹

In an effort to be consistent with the Americans with Disabilities Act, the FCC required in 1991 that PSAs produced by the federal government carry closed captioning; otherwise the Commission exempts PSAs from closed captioning requirements.

Two years later, in 1993, the FCC noted that PSAs were among the “public interest programming” offered by home shopping channels when it qualified these channels as local commercial television stations for purposes of mandatory cable carriage.²² At one point, the FCC also accepted PSAs as legitimate programming under the 1990 Children’s Television Act.²³ In 1996, however, a divided FCC said that PSAs could not meet any part of its core children’s programming requirement under the Act.²⁴ Core programming, the Commission has said, consists of programs at least 30 minutes in length.²⁵

Other than those modifications, it wasn’t until the late 1990s that an FCC chairman and, ultimately, a Presidential Commission took another close look at the PSA obligations of broadcasters. In March 1997, then-FCC Chairman Reed Hundt complained publicly that television public service advertising on the four major networks had “dried up and disappeared like rain in the desert” following a report on the subject by the American Association of Advertising Agencies and the Association of National Advertisers.²⁶

According to the report, the amount of network time devoted to PSAs peaked in 1992 at about 11 seconds per hour during prime time but by 1995 had fallen to four seconds per hour. Over the same period, the report went on to note, time given to other kinds of commercials, and in particular network self-promotions, had increased by 8.5 percent to almost four-and-a-half minutes.

Hundt promptly asked the NAB to supply time and dollar figure data for both PSAs and network promotions for the previous 10 years and asked further whether “broadcasters have any obligation to run any PSAs as a condition of receiving a broadcast license.”²⁷ A month later, at the annual NAB convention, Hundt stated his view that “liberal use of public service announcements” were among the essential ingredients of public service, suggested that 60 prime-time seconds each night was about right,²⁸ and urged broadcasters to draft a voluntary code for their use.²⁹

Going still further, the chairman also criticized the networks’ practice of using celebrities from their own programs to discuss social issues. These spots, Hundt said, did not really count as PSAs even “by the networks’ own definition”; such ads, he said, served a “commercial purpose rather than the public interest.”³⁰

In response, ABC and NBC stated that their use of celebrities greatly improved the effectiveness of these announcements. An NAB spokesman called Hundt's attack on celebrity spots "mind-boggling" and asked rhetorically, "Who would be more effective delivering an antiviolence PSA than Bill Cosby?"³¹

The inquiry sparked a heated exchange between Hundt and the NAB, which stated that the data Hundt was seeking did not exist and implied its absence was the FCC's own fault. "Your focus on PSAs as a unique measure of public service is indeed difficult to understand in light of the Commission's outright rejection of educational PSAs [as counting toward children's programming obligations]," NAB President Edward Fritts wrote. Hundt fired back, saying that if the NAB could not provide the information the Commission wanted, "perhaps it would be a good idea to seek to gather such information as part of our larger public interest inquiry."³²

Hundt's displeasure was magnified a year later when news broke that the Office of National Drug Control Policy (ONDCP) was going to pay for prime-time network placement of its antidrug messages. Why, he asked General Barry R. McCaffrey, then head of the ONDCP, should the public have to "buy the right to use its own medium?"³³ The government had tried to allay these kinds of concerns by negotiating a "match," requiring the media to donate an equal amount of airtime on complementary topics in exchange for the government's unprecedented purchase.

By January 2000, Hundt had left the FCC and been succeeded as chairman by William E. Kennard. But as Hundt had promised, the FCC's Notice of Inquiry on the Public Interest Obligations of Television Broadcast Licensees included language concerning the role of PSAs in public service.³⁴

In April 2000, the NAB released figures estimating that the nation's radio and television broadcasters had contributed some \$8.1 billion worth of "public service" airtime to their communities between August 1998 and July 1999. Of that sum, the single largest amount, \$5.6 billion, of which \$1.8 billion was said to be from television, was, according to the NAB, "donated" to PSAs.³⁵ The data were based on a survey of broadcasters conducted for the NAB by Public Opinion Strategies, and NAB President Edward Fritts deemed them "honest, conservative, and unassailable."³⁶

Critics assailed anyway, questioning the methodology and sample used in the survey, and thus the validity of its results. The trade magazine *Broadcasting & Cable* reported that the survey's methods might have accounted for the increase over comparable data from 1998, when the NAB had valued its total public service contribution at \$6.8 billion and its PSA activity at \$4.6 billion.³⁷

At the time, critics raised questions about whether the broadcast television industry had received a financial windfall when the FCC set the terms for awarding spectrum assignments for digital television. Unlike other spectrum allotments, those for digital television were not open to competitive bidding but were available only to incumbent license holders. Congress declined to charge a fee of any kind for the spectrum in 1996, leading then-presidential candidate Bob Dole to characterize the licensing process as a "giveaway" of public property worth \$70 billion.³⁸

Many commentators at the time questioned the terms of the 1996 Telecommunications Act, pointing out that while the Act made profound changes in the regulatory regime governing virtually every other communications industry, it made no changes in the underlying system of broadcast spectrum allocation that has existed since 1927. At the same time, the law dramatically loosened ownership rules in broadcasting (radio and television), made license renewals easier, and in television extended license periods from five to eight years.³⁹

Against that backdrop, in 1997, the White House convened the President's Committee on Public Interest Obligations of Digital Television Broadcasters. Chaired by Norman Ornstein, a resident scholar at the American Enterprise Institute, and Leslie Moonves, the president and CEO of CBS Television, this advisory committee was composed of 22 representatives of the broadcasting and computer industries, the public interest and labor communities, and academics. Its charge was to examine the future of digital television and to make recommendations concerning the public service obligations that should attach to it.* In its final report, issued in December 1998, the Committee specifically identified PSAs as a potentially important component of public service.⁴⁰ It proposed that "a minimum commitment to public service announcements should be required of digital television broadcasters, with at least equal emphasis placed on locally produced PSAs addressing a community's local needs. PSAs should run in all day parts including in prime time and at other times of peak viewing."⁴¹

This recommendation, with its focus on local community needs, was augmented by two others: first, that licensees make a greater effort to disclose and publicize their public service activities and programming on a standardized reporting form; and, second, that the FCC reinstate a needs-ascertainment requirement for broadcasters, a requirement, dropped in 1984, that broadcasters actively canvass their communities to see what concerns them.⁴² Finally, PIAC recommended that PSAs be closed-captioned.⁴³

In talking about the reason behind the disclosure requirements, Ornstein explains, "We wanted first of all to create a mechanism that would realistically rely as much on public disclosure, and then pressure, as on a regulatory scheme. We thought that if we could get regular disclosure of all the things they were doing posted on the Internet, that would be a powerful weapon."⁴⁴

*Arguably, the commission's work represented the first basement-to-attic review of the social compact in broadcasting since 1946, when the FCC published its ill-fated "Blue Book," a critical review of broadcaster public service. See "The Public Service Responsibility of Broadcast Licensees," Federal Communications Commission, March 7, 1946.

The PIAC report includes a proposed “certification form” with which broadcasters can, through their responses to 24 questions and submission of several pieces of evidence, record and quantify how they are fulfilling their public service obligations on a quarterly basis. The form includes these specific questions about PSAs:

- *The licensee airs at least [-]* locally originated public service announcements during a three-month period. YES or NO*
- *At least [-] of these public service announcements are aired between 6 AM and midnight. YES or NO*
- *The licensee airs at least [-] other public service announcements during a three-month period. YES or NO*
- *List in Exhibit E a representative sample of no fewer than five local and five national issues addressed by public service announcements during the past three months.*

This standardized disclosure is now before the FCC in a Notice of Proposed Rule Making (NPRM). Broadcasters will likely object to the proposals on the grounds that, as the Supreme Court noted in *Turner Broadcasting v. FCC I*, “the FCC’s oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations.”⁴⁶ The Public Interest Council, a group of broadcast industry lawyers writing for the Media Institute, has argued that the mere provision of “free, local, universally available, over-the-air television...is an entirely sufficient payback for the so-called gift of additional spectrum for the transition to digital.”⁴⁷

Before stepping down as FCC chairman in January 2001, William Kennard urged Congress to re-examine the terms by which television broadcasters are supposed to convert fully to digital, and he blasted broadcasters for having “increasingly elevated financial interest above the public interest.”⁴⁸ Just before leaving office, Kennard released an FCC report outlining 11 principles for broadcaster public service, part of which called on broadcasters to air more PSAs of local origin and relevance. “Given the importance of PSAs to their communities,” the report said, “broadcasters should exercise their best efforts to attract and then air locally produced PSAs. Airing these announcements during peak viewing hours will ensure that such PSAs have maximum exposure for maximum service to the community.”⁴⁹

While it is too early to say how new FCC Chairman Michael K. Powell will view these recommendations, his initial public remarks on the FCC’s oversight duties suggest that he will move much more cautiously than his predecessors.⁵⁰ With respect to the disclosure NPRM now before the agency, for example, Powell said last year that “the recommendation that certain categories of programming be identified on the form raises serious First Amendment concerns” because they “involve the Commission in content-based regulations.”⁵¹

So, whatever the future holds for public service announcements in broadcasting, it will likely unfold against the same broad backdrop of public service regulation that has existed since the passage of the Radio Act, despite long-standing proposals from across the political spectrum for regulatory reform.

In 1982, for example, then-President Reagan’s FCC Chairman Mark Fowler called the fiduciary model of the public interest a collection of “legal fictions” that served primarily to insulate broadcasters from competition and, indeed, to give them certain competitive advantages.⁵² Fowler urged that broadcasters be relieved of their public interest obligations, be given “squatter’s rights” in their spectrum assignments, and pay a small fee for them, with the fee going to support public broadcasting and other broadcast services poorly served by the market.⁵³

More recently, long-time FCC counsel and broadcast lawyer Henry Geller has also urged Congress to forgo the current regulatory system on First Amendment and administrative grounds, and instead “substitute a modest spectrum usage fee based on a percentage of gross revenues.”⁵³ Geller’s proposal is briefly described and included for consideration in the Gore Commission report as an alternative to imposing public service obligations.⁵⁴ So too is a modified fee proposal known as “pay or play,” in which commercial broadcasters can essentially avoid their obligations through payment. Presumably broadcasters should embrace deregulation of this sort, particularly where, as in Geller’s case, it rests on the idea that broadcasting should enjoy the same First Amendment protections and editorial discretion as print media. Yet even in the midst of the recent FCC inquiry into the public service obligations of digital broadcasters, NAB Chairman Edward Fritts told an audience of broadcasters that the “NAB has never questioned that the FCC can and should impose on broadcasters a commitment to serve the public.”⁵⁵

* Minimums to be determined by the Federal Communications Commission.

** Fowler was the first FCC chairman to challenge directly the fiduciary model as offensive to the First Amendment, noting, as many others have, the intertwining of broadcaster influence and congressional oversight. A PSA example illustrates the point: The NAB, in partnership with the Congressional Club, has each year since 1987 offered to congressional spouses and their children the opportunity to tape PSAs on topics such as alcohol abuse, prenatal care, and cancer prevention for distribution in their home districts. Whatever the public service value of such messages, they are presumably helpful to congressional representatives eager to appear engaged with their communities but who may not themselves appear in PSAs without invoking the equal time rule. It seems reasonable to ask whether the arrangement also benefits broadcasters eager to maintain their unique status under the law. See, for example, David Rosenbaum, “TV Ads by Congressional Wives Are a Sweet Deal for All Involved,” *New York Times*, July 13, 1999, A1. More generally, PSAs have in the past been the subject of complaints under the Fairness Doctrine (13 FCC 1246, June 1, 1949), which the FCC stopped enforcing for First Amendment reasons in 1987.

As a matter of regulatory policy for broadcasters, there seem to be two possibilities for public service announcements in the digital future. One is that the PIAC proposals meet some success in the Notice of Proposed Rule Making such that PSAs are codified as a public service, with some minimum quantitative standards, or as a useful adjunct to PIAC's proposed ascertainment and disclosure requirements.

A second future scenario for regulation is not much different from the present: Broadcasters will have little incentive to air PSAs except as a matter of community goodwill, as filler for unsold advertising time, or, in the case of paid campaigns, as a source of revenue. These incentives would presumably be unchanged even if at some point Congress and the FCC were to abandon the fiduciary model, with or without spectrum fees – or, for that matter, if the FCC were to disappear tomorrow.

"Many broadcasters are doing good things," explains Ornstein. "But I think that most of what you see with broadcasters and PSAs is if they can do it in a way that doesn't cost them a dime in ad revenue and if they can use it to promote their self-interest and self-image they'll do it."⁵⁶

Yet, some parties in this debate don't see a conflict between the interests of broadcasters and those of public interest groups. "I think there is an awful lot of rhetoric out there, 'Broadcasters should do more, should do more, should do more,'" comments the Ad Council's Peggy Conlon. "I think we have to balance that with the fact that they recognize they have obligations to their communities, but they are also organizations that are in a very competitive environment, and they're businesses. I think if we don't recognize that, we'll be making a big mistake. We should be just as interested in their viability as a successful communications outlet. Because if their business model fails and they go away, who will run our spots?"⁵⁷

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ENDNOTES

- ¹ Comments by Norman Ornstein, senior fellow at the American Enterprise Institute and co-chair of the Gore Commission, on April 14, 1998. The hearing, which took place at the headquarters of the National Association of Broadcasters, featured testimony by Jack Goodman, vice president and policy counsel of the NAB, and William D. McInturff, a partner with Public Opinion Strategies, which had conducted an NAB survey on its members' public-service activities.
- ² U.S. Code 44 Stat. 1162 (1927).
- ³ William S. Paley, "Radio and the Humanities," *Annals of the American Academy of Political and Social Science*, January 1935, 23-24.
- ⁴ Robert W. McChesney, "Conflict Not Consensus: The Debate over Broadcast Communication Policy, 1930-1935," in *Ruthless Criticism*, ed. William Solomon and Robert McChesney (Minneapolis: University of Minnesota Press, 1993), 224.
- ⁵ Federal Communications Commission, "DTV Stations on the Air," available at www.fcc.gov/mmb/vsd/files/dtvonair.html, April 13, 2001.
- ⁶ Report of the President's Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, Sec. 3, "Recommendations of the Advisory Committee," (Washington, December 18, 1998).
- ⁷ See generally *In the Matter of Petition to Institute a Notice of Inquiry and Proposed Rule Making on the Airing of Public Service Announcements by Broadcast Licensees*, 81 FCC2d 346, 1980.
- ⁸ 47 Code of Federal Regulations 73.3526(e)(11).
- ⁹ FCC Rules, Section 73.1810 (d) (4).
- ¹⁰ Don Shultz, interview, October 25, 2000. Shultz is an advertising consultant and professor of Integrated Marketing Communications at Northwestern University. One kind of paid PSA is known as a "noncommercial sustaining announcement" (NCSA), and such ads typically are placed at sharply discounted rates paid not to individual stations but to state broadcasting associations, which actually place the ads. The state broadcasting associations are free to use the revenue from NCSAs as they see fit, including for lobbying activities. See Doug Halonen, "When Free Ads Aren't: Some Nonprofits Pay for Promos," *Electronic Media*, February 15, 1999, 23.
- ¹¹ *NAB Survey of Public Affairs Activities: Interview Schedule for National Report*, (Alexandria, Va: Public Opinion Strategies, August 1997). The key questions concerning PSAs in the survey instrument are nos. 11 (concerning issues addressed by PSAs); 19 (concerning the total dollar value for PSAs for 1996-97); 20 and 22 (concerning the number of PSAs aired per week and per day, respectively); and 21 (concerning the percentage of PSAs that were locally produced or concerned local issues).
- ¹² Memorandum Opinion and Order, FCC 77-865, 1977.
- ¹³ Notice of Inquiry, 43 Fed. Reg. 37725, 1978.
- ¹⁴ *On the Airing of Public Service Announcements by Broadcast Licensees*, at 348.
- ¹⁵ *Ibid.*, at 348-50.
- ¹⁶ *Ibid.*, at 352.
- ¹⁷ *Ibid.*
- ¹⁸ *Ibid.*, at 353.
- ¹⁹ *Ibid.*, at 363.
- ²⁰ *Ibid.*, at 367-68.
- ²¹ *Ibid.*, at 368.

- ²² Federal Communications Commission, *Cable Television Service; Cable Carriage of Home Shopping Broadcast Stations*, 58 Fed. Reg. 39156, 1993.
- ²³ Federal Communications Commission, *Radio Broadcast Services; Children's Television Programming*, 58 Fed. Reg. 14367, 1993.
- ²⁴ "Rules 'Mock Reason': Ex-NAB TV Chairman Gabbard Proposes Kidvid Compromise to Hundt," *Communications Daily*, July 25, 1996, 4.
- ²⁵ Federal Communications Commission, *Broadcast Services; Children's Television*, 61 Fed. Reg. 43981, 1996.
- ²⁶ "Hundt Blasts PSA Lack," *Television Digest*, March 10, 1997.
- ²⁷ Heather Fleming, "PSA slice shrinks as commercial pie grows; public service announcements are 'disappearing like rain in the desert,' Hundt says," *Broadcasting & Cable*, March 31, 1997, 19.
- ²⁸ Chris McConnell, "Got a Minute? Hundt wants 60 seconds of PSAs a night from each network," *Broadcasting & Cable*, April 21, 1997, 4.
- ²⁹ "Hundt states his public interest mandate for broadcasters," *Communications Daily*, April 9, 1997.
- ³⁰ "Mass Media," *Communications Daily*, May 5, 1997.
- ³¹ McConnell, "Got a Minute?"
- ³² "Mass Media," *Communications Daily*, May 12, 1997.
- ³³ Judy Pasternak, "Ad Plan: Your Tax Dollars on Drugs," *Los Angeles Times*, August 20, 1998, A1.
- ³⁴ Federal Communications Commission, *In the Matter of Public Interest Obligations of TV Broadcast Licensees*, MM Docket No. 99-360, *Notice of Inquiry*, 14 FCC Rcd 21633, 1999. See also Federal Communications Commission, *Public Interest Obligations of Television Broadcast Licensees*, 65 Fed. Reg. 4211, 2000.
- ³⁵ Paige Albiak, "Service with an \$8B Smile," *Broadcasting & Cable*, April 10, 2000, 24.
- ³⁶ *Ibid.*
- ³⁷ Transcript of the morning session, Open Meeting of Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, National Association of Broadcasters, Washington, D.C., April 14, 1998, 6.
- ³⁸ Edmund Andrews, "Senators Resist Both Proposals for Auctioning TV Airwaves," *New York Times*, March 16, 1996, A1.
- ³⁹ See generally Thomas W. Hazlett, "Explaining the Telecommunications Act of 1996: Comment on Thomas G. Krattenmaker," 29 *Conn. L. Rev.* 217, 1996. In the Telecommunications Act itself, see Title II, Sections 202 and 203.
- ⁴⁰ *Report of the President's Advisory Committee on Public Interest Obligations of Digital Television Broadcasters*, Sec. 3, "Recommendations of the Advisory Committee," Washington, D.C., December 18, 1998.
- ⁴¹ *Ibid.*, Sec. 3, No. 3.3.
- ⁴² *Ibid.*, Sec.3, Nos. 1 and 3.1. See also *Programming and Ascertainment Order*, 98 FCC2d 1076, 1984.
- ⁴³ *Ibid.*, Sec. 3, No. 3.5.
- ⁴⁴ Norman Ornstein, interview, American Enterprise Institute, Washington, D.C., June 29, 2001.
- ⁴⁵ *Ibid.*, Appendix A: *Public Interest Programming and Community Service Certification Form*.
- ⁴⁶ *Turner Broadcasting System, Inc. v. FCC*, 114 S.Ct. 2445, at 2463 (1994).

- ⁴⁷ Laurence H. Winer, *Statement of The Media Institute's Public Interest Council in Response to the Commission's Final Report*, Washington, D.C.: The Media Institute, December 18, 1998. Available at www.mediainst.org/gore/reaction.html.
- ⁴⁸ William E. Kennard, "What Does \$70 Billion Buy You Anyway?" *Rethinking Public Interest Requirements at the Dawn of the Digital Age*, remarks at the Museum of Television and Radio, New York, October 10, 2000, 2.
- ⁴⁹ William E. Kennard, *Report to Congress on the Public Interest Obligations of Television Broadcasters as They Transition to Digital Television*, Washington, D.C.: Federal Communications Commission, January 18, 2001, 11.
- ⁵⁰ Christopher Stern, "New FCC Chairman Favors a Non-Activist Approach," *Washington Post*, February 7, 2001, E1.
- ⁵¹ Michael K. Powell, *Statement in the Matter of Standardized Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168, September 22, 2000.
- ⁵² Mark S. Fowler and Daniel L. Brenner, "A Marketplace Approach to Broadcast Regulation," *Texas Law Review*, Vol. 60, 1982, 253-54.
- ⁵³ Henry Geller, *1995-2000: Regulatory Reform for Principal Electronic Media*, Washington: D.C.: Annenberg Washington Program in Communications Policy Studies of Northwestern University, 1994, 21-25.
- ⁵⁴ The PIAC report is available online from the Benton Foundation, at www.benton.org/PIAC/report.html. Geller's spectrum fee idea is discussed in the Section 3 of the report, "Recommendations of the Advisory Committee," under proposal 10, "New Approaches to Public Service Obligations in the Digital Television Environment." It is discussed in detail in Appendix D to the report, *Innovative Approaches to Public Interest Responsibilities: A Comparative Analysis*.
- ⁵⁵ Edward O. Fritts, Speech to Electronic Media and the First Amendment Conference, Washington, D.C., October 24, 2000.
- ⁵⁶ Ornstein, June 29, 2001.
- ⁵⁷ Interview with Peggy Conlon, Ad Council, June 15, 2001.