
HOUSE RESOLUTION

URGING CONGRESS AND THE FEDERAL COMMUNICATIONS COMMISSION TO
CODIFY A DEFINITION OF THE "PUBLIC INTEREST STANDARD" FOR
THE BROADCASTING INDUSTRY.

1 WHEREAS, the so-called "public interest standard" has
2 governed communications policy decision-making at the Federal
3 Communications Commission for more than seventy years; however,
4 there are questions as to whether this "standard" does indeed
5 serve the public, or if it has instead served only the interests
6 of regulators and companies that stand to gain from the
7 regulatory process; and

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9 WHEREAS, ever since the passage of the federal Radio Act of
10 1927, as amended, federal regulators were given broad authority
11 and discretion to regulate in the name of communications
12 consumers if the regulators found it was in the "public
13 interest, convenience, or necessity"; and

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15 WHEREAS, on the other hand, the Radio Act of 1927, as
16 amended, also banned the common carriage regime, thereby
17 prohibiting non-licensees from having free speech rights in the
18 broadcast medium except as authorized by the "public interest
19 standard", and giving free speech rights in broadcasting only to
20 licensees; and

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22 WHEREAS, the scarcity of access to the airwaves, which
23 results in only a limited number of licenses granted by the
24 Commission, is attributable to both the physics of the
25 electromagnetic spectrum, which limits the number of broadcast
26 stations that may operate without chaos resulting, and the
27 prohibition of the common carriage regime, which tends to invite
28 arbitrary divisions of spectrum space for particular reserved
29 uses; and

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31 WHEREAS, the scarcity of access to the airwaves also
32 justifies the continuing application of the public interest



1 standard to ensure that broadcasters serve as public trustees of
2 the airwaves; and

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4 WHEREAS, however, it is precisely because Congress has
5 never defined what exactly is "in the public interest" that the
6 phrase lacks any definite meaning; furthermore, the many
7 inconsistencies in Commission decisions have made it impossible
8 for the phrase to acquire a definite meaning in the process of
9 regulation; and

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11 WHEREAS, critics have recently pointed out that regulation
12 "in the public interest" has come to mean whatever is in the
13 interest of regulators to do at a given time; therefore, the
14 standard is a non-standard because it has no fixed meaning; and

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16 WHEREAS, for many years, the chief legal vehicle for
17 citizens to gain direct access to the airwaves, or hear diverse
18 viewpoints on controversial public issues, was the fairness
19 doctrine, which was once seen as a primary feature of the public
20 interest standard, because a broadcaster's compliance with the
21 fairness doctrine was considered a major performance criterion
22 for the broadcaster to renew its federal broadcast license;

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24 WHEREAS, the fairness doctrine required broadcasters to
25 devote a reasonable amount of time to cover controversial issues
26 of public importance and provide a reasonable opportunity for
27 the presentation of contrasting viewpoints; and

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29 WHEREAS, some broadcasters complained that the fairness
30 doctrine had a "chilling effect" on their free speech by
31 discouraging them from airing programming on some controversial
32 issues; and

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34 WHEREAS, the Commission rescinded the fairness doctrine in
35 1987 and now renews broadcast licenses with few exceptions, and
36 requires broadcasters to submit little information on how they
37 are fulfilling their public interest requirements, prompting
38 critics to complain that the Commission has relied on market
39 forces rather than the public interest standard when awarding
40 initial or renewed broadcast licenses; and

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1 WHEREAS, codifying a definition of the "public interest
2 standard" would promote fairness and objectivity in news
3 reporting; now, therefore,
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5 BE IT RESOLVED by the House of Representatives of the
6 Twenty-ninth Legislature of the State of Hawaii, Regular Session
7 of 2018, that Congress and the Federal Communications Commission
8 are urged to codify a definition of the "public interest
9 standard" for the broadcasting industry; and
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11 BE IT FURTHER RESOLVED that certified copies of this
12 Resolution be transmitted to the Majority Leader of the United
13 States Senate, Speaker of the United States House of
14 Representatives, the members of the Hawaii congressional
15 delegation, and the Chair of the Federal Communications
16 Commission.
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OFFERED BY:





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