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

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

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

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

WHEREAS, the scarcity of access to the airwaves also justifies the continuing application of the public interest
standard to ensure that broadcasters serve as public trustees of the airwaves; and

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

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

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

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

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

WHEREAS, the Commission rescinded the fairness doctrine in 1987 and now renews broadcast licenses with few exceptions, and requires broadcasters to submit little information on how they are fulfilling their public interest requirements, prompting critics to complain that the Commission has relied on market forces rather than the public interest standard when awarding initial or renewed broadcast licenses; and
WHEREAS, codifying a definition of the "public interest standard" would promote fairness and objectivity in news reporting; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2018, that Congress and the Federal Communications Commission are urged to codify a definition of the "public interest standard" for the broadcasting industry; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Majority Leader of the United States Senate, Speaker of the United States House of Representatives, the members of the Hawaii congressional delegation, and the Chair of the Federal Communications Commission.

OFFERED BY: [Signature]

[Signature]

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