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## In the Public Interest: An Argument Calling for an Amendment to the Federal Communications Act Requiring More Public Service Announcements in the Broadcast Media, 6 Computer L.J. 223 (1985)

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## NOTE

# IN THE PUBLIC INTEREST: AN ARGUMENT CALLING FOR AN AMENDMENT TO THE FEDERAL COMMUNICATIONS ACT REQUIRING MORE PUBLIC SERVICE ANNOUNCEMENTS IN THE BROADCAST MEDIA

A Public Service Announcement is a non-billable broadcast message which informs viewers or listeners about a service, program, or activity of community interest. Public Service Announcements (hereinafter "PSAs") are usually produced by charities and public service groups. The producer of a PSA distributes the message to radio and television stations in the hope that they will broadcast the message free of charge. Virtually every radio and television station in America airs some of the PSAs it receives—not out of generosity, but because of obligations under Federal Communications Commission (hereinafter "Commission" or "FCC") regulations. The Commission requires all broadcasters to air a minimum amount of "community service" or "informative" programming.<sup>1</sup> This obligation is often at least partially fulfilled by airing PSAs.

The community service requirement stems from the two-pronged theory that (1) it is a good idea to use the broadcast media to inform the public about non-profit services and organizations, and (2) the requirement is necessary because the majority of broadcasters would not voluntarily air PSAs free of charge. This second assumption is based on the probability that, all other things being equal, a station would rather air a sixty-second paid advertisement than a sixty-second free-of-charge PSA.<sup>2</sup>

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1. See Pub. Serv. Announcements, 81 F.C.C.2d 346 (1980).

2. Like commercial advertisements, PSAs provide the audience with a brief message; they can be characterized as a sort of "idea advertisement." A. SHAPIRO, *MEDIA ACCESS: YOUR RIGHTS TO EXPRESS YOUR VIEWS ON RADIO AND TELEVISION* 169-79 (1976).

This Note takes the viewpoint that the FCC should increase air time requirements for PSAs. In the current age of deregulation, the Commission places very few restrictions on broadcasters. This Note suggests that some program regulation is necessary if the Commission's mandate of serving the public interest<sup>3</sup> is to be fully realized. Therefore, the author proposes that the Federal Communications Act be amended to require increased airing of PSAs.

For purposes of this Note, the author assumes that the FCC has incorrectly interpreted its mandate of ensuring diversity, competition, and efficiency in the broadcast market.<sup>4</sup> The author argues that the current Commission has placed too much emphasis on increasing competition and efficiency, at the expense of diversity. The argument suggests that increasing the air time devoted to PSAs will increase diversity and will thus allow the Commission to fulfill its public interest mandate. This Note is critical of the Commission for following contemporary economic theory in the sole interest of furthering the financial goals of broadcasters.

The argument is presented as follows: Part I seeks to show that PSAs have a beneficial effect on society. Part II examines current FCC policies and explains why they do not require an adequate amount of PSAs or other informative programming. Part III considers the Communications Act of 1934 and the case law on PSAs, and concludes that both strongly favor the public's right to see and hear PSAs as well as the PSA producers' right to have more PSAs broadcast over commercial radio and television. Part III also includes a first amendment analysis which concludes the following: (1) contemporary first amendment theory supports a PSA producer's right of access to the broadcast media, and a listener's right to hear PSAs; (2) the issue of "commercial speech" does not alter these rights with respect to PSAs; and (3) the fact that the broadcast media are essentially a public trust weighs in favor of increased airing of PSAs. Finally, Part IV proposes methods to ensure increased airing of PSAs.

## I. PSAs' BENEFICIAL EFFECT ON SOCIETY

PSAs affect viewers and listeners in positive and beneficial ways.

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In contrast to commercial advertisements, PSAs are given a very low broadcast priority and are rarely aired during prime time, probably because they do not produce revenue for the broadcasters.

3. The Communications Act of 1934, Pub. L. No. 73-416, 48 Stat. 1064 (codified as amended at 47 U.S.C. §§ 151-611 (1982 & Supp. II 1985)) [hereinafter cited as Communications Act, with references to United States Code sections only], instructs the FCC to serve the "public interest, convenience, and necessity." *Id.* at § 309.

4. These goals were defined in *Nat'l Broadcasting Co. v. United States*, 319 U.S. 190 (1943) [hereinafter cited as *NBC*].

From an educational standpoint, PSAs inform and enlighten. Most of them involve practical advice or suggestions upon which the viewer may act if he or she so desires. PSAs inform viewers and listeners how to participate in community programs. They tell people where to go for help in treating an illness. In an increasingly complex and information-oriented world, PSAs offer the public a roadmap to their community. One need only consider the large number of alcoholics, potential suicides, and teenagers in trouble to realize the numbers of viewers who could be helped if they were told how to contact the appropriate service agency in their community. Increasing PSA air time would help to achieve the first step for these people.

On a more speculative basis, increased airing of PSAs might have the positive effect of causing television viewers to think about reality in the midst of escapist entertainment programming. Furthermore, some PSAs are comprised of pro-social messages which may help to counter some of the negative feelings viewers may experience after watching violent programs.

These justifications for increased airing of PSAs are based on the assumption that programming which brings about education, positive feelings, and a sense of helping others is beneficial. A valid justification, however, must establish not only the desirability of the result of airing more PSAs but also the probability that PSAs will, in fact, affect the viewing and listening public in these positive ways.<sup>5</sup>

There can be no doubt in our society today that what is broadcast over the mass media has a direct effect on its audience. The average family watches six hours of television each day.<sup>6</sup> The literature on the issue is replete with studies which indicate that television has definite effects on both children and adults.<sup>7</sup> Many experiments have been done on this subject, and they often show a direct correlation between

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5. One commentator has noted that when discussing an argument favoring media content regulation, it is helpful to look at "an example where taste formation is more plausible—education markets. Clearly, a justification and explanation of the collective subsidy for public education is that taxpayers have certain preferences for what children learn . . . [and as to] what kinds of people our society should produce, *i.e.*, in terms of acculturation, ethical values, and personal ambitions." Brennan, *Economic Efficiency and Broadcast Content Regulation*, 35 FED. COM. L.J. 117, 131 (1984).

As Brennan points out, "[t]here are obvious differences between educating children in schools and exposing society at large to television programming." *Id.* One must ask whether television can alter the preferences of viewers, and, if so, whether we want to live in a society which endeavors to bring about certain "desired" results through the broadcast media. Of course, as Brennan notes society has been instilling certain values through the public schools for some time, with little criticism.

6. G. COMSTOCK, *TELEVISION IN AMERICA* 31 (1980).

7. See, *e.g.*, G. COMSTOCK, *supra* note 6; L. BOGART, *THE AGE OF TELEVISION* (1972); M. McLUHAN, *UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN* (1973).

*messages* observed on a television screen and *actions* subsequently undertaken by the viewer.<sup>8</sup> This "effects" theory of communication is illustrated, for example, by a viewer who sees a PSA announcing a "give blood" campaign and subsequently decides to donate blood.<sup>9</sup> Many of the advertising companies have conducted research on the effectiveness of televised spots, but, for competitive reasons, the results of such surveys are not published. One can only conjecture that the evidence supporting the "effects" theory is convincing, since advertisers continue paying high prices for advertisements.<sup>10</sup>

Even legal scholars have recognized the mass media's important effect on our thinking process. D.C. Circuit Judge David Bazelon has clearly outlined the effect of the electronic media on its audience: "It is simply impossible to exaggerate the impact of TV in particular on our lives and the lives of our children. . . . It has both broadened and numbed our experiences with persons and events outside our normal range of acquaintance. TV is an acculturizer—even more so than public schools—and thus has an immense but largely unascertainable impact on the motivations and beliefs of our children."<sup>11</sup>

Thus it is established that the following two assumptions have merit: (1) PSAs promote positive values, and (2) the broadcast media (*i.e.* radio and television) have an enormous effect on the public. Linking these two assumptions together, one is faced with the inescapable conclusion that PSAs have a positive and beneficial effect on society. Therefore, this author believes that PSAs should be broadcast often, during peak audience hours, on radio and television. Unfortunately, the reality of the situation is that most members of the public are rarely exposed to PSAs, which are generally aired during non-peak hours, such as very late at night.<sup>12</sup>

Of course, there are costs which broadcasters would incur with an imposition of required PSA time. These costs are of two types: financial and ideological. The financial costs would arise if broadcasters must sell air time at below market rates, or if stations must provide reply

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8. See, *e.g.*, Gerbner & Gross, *Living with Television: The Violence Profile*, 26 J. COM. 173 (1976).

9. Proponents of the "effects" theory have also suggested that less violence on television would result in less real-life violence. See G. COMSTOCK, *supra* note 6, at 99-109.

10. Television stations charge up to \$26,000 for a 60-second spot. See, *e.g.*, Standard Rate & Data Service, Inc., SPOT TELEVISION RATES & DATA, Dec. 15, 1985, at 34.

11. Bazelon, *FCC Regulation of the Telecommunications Press*, 1975 DUKE L.J. 213, 221.

12. Because PSAs do not generate revenue, stations air the shortest possible PSAs *they* feel convey the message. It is this author's experience that, while a charity might provide a package of PSAs ranging from 10 to 60 seconds, stations will air one short statement. Often the message states that a community problem exists, but does not offer any information as to where help is available.

time at no charge to PSA producers. Of course, time given to PSAs is time which the station cannot sell to regular corporate sponsors. In addition, programs may have to be cut short or disrupted more often; this can reduce the quality of programming.

Even harder to assess are the possible ideological costs to station owners who may not agree with the views expressed by certain PSAs. There is a question whether a harm such as this is a first amendment violation. The answers are nebulous in this area, and the harms are extremely difficult to prove. Generally, courts have held that the first amendment rights of the audience are paramount to those of the broadcasters.<sup>13</sup>

Regardless of the fact that increased airing of PSAs would impose costs on broadcasters, it is this author's contention that the costs would be outweighed by the benefits to the public.

## II. THE FAILURE OF CURRENT POLICIES TO REQUIRE AN ADEQUATE SUPPLY OF PSAs

The argument which follows assumes that an "adequate" supply of PSAs would be equal to the public's demand or need for PSA content. An adequate supply would fully and completely inform viewers and listeners about community programs. In this author's experience, most people are uninformed—rather than fully informed—in this respect, so it is assumed that the supply of PSAs is inadequate. An adequate supply of PSAs is not currently being aired because (1) the FCC is not requiring broadcasters to air PSAs in large numbers, and (2) it is not economically efficient for broadcasters to air more PSAs than are required by the FCC.

Current policies do not require an adequate amount of PSA programming for several reasons. First, the current FCC trend toward deregulation leaves the airing of PSAs up to the "invisible hand" of the marketplace. Second, the fairness doctrine does not require the airing of most PSAs. Finally, the doctrine of spectrum "scarcity" provides a justification to keep PSAs off the air. In order for an adequate supply of PSAs to be aired, the FCC has an obligation to the public to intervene and further regulate the broadcast market.<sup>14</sup>

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13. See *infra* notes 80 & 81 and accompanying text.

14. The FCC is the regulatory agency created by the Communications Act, *supra* note 3. The FCC establishes guidelines for what is broadcast through the mass media. The landmark case announcing the FCC's broad regulatory powers was *NBC*, 319 U.S. at 190. The *NBC* Court quoted *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 137 (1939), in recalling the origin and purpose of the FCC:

In its essentials the Communications Act of 1934 [so far as its provisions relating to radio are concerned] derives from the Federal Radio Act of 1927 . . . . By this Act Congress, in order to protect the national interest involved in the new and

## A. CURRENT FCC POLICIES; DIVERSITY SACRIFICED FOR EFFICIENCY

Generally, the FCC looks to the Communications Act of 1934<sup>15</sup> for guidance in making policy decisions. The Act charges the Commission with "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges . . . ."<sup>16</sup> In carrying out the mandate of its enabling Act, the FCC is instructed to determine whether its actions will serve "the public interest, convenience, and necessity."<sup>17</sup> Since the term "public interest" is not defined in the Act, the FCC has been afforded a great deal of discretion in particularizing its own standards.

The Commission has articulated three goals—diversity, efficiency, and competition—in formulating an overall media framework which is "in the public interest." The goal of diversity arises from the first amendment and has been pursued by the Commission in decisions dating back to its creation.<sup>18</sup> The term "diversity" broadly describes "the goal of increasing the number and types of programs produced by different suppliers and offered to viewers" through a variety of outlets.<sup>19</sup> Diversity has been achieved to some extent with respect to public interest programming. Currently, there are several licensing guidelines which television stations must meet. At least five percent of a station's air time must be devoted to local programming; at least five percent to news, public affairs, and informational programming; and at least ten percent overall to "nonentertainment" programming. Television stations must carefully log all programming, and station executives must formally interview local officials and residents to ascertain the needs and interests of local audiences.<sup>20</sup>

In addition to diversity, the FCC must consider the goals of effi-

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far-reaching science of broadcasting, formulated a unified and comprehensive regulatory system for the industry.

*NBC*, 319 U.S. at 214.

15. Communications Act, *supra* note 3. When television was introduced in the late 1950's, the Act was amended to apply to television as well as radio. Act of July 10, 1962, Pub. L. No. 87-529, 76 Stat. 150 (amending 47 U.S.C. § 303 and adding 47 U.S.C. § 330).

16. 47 U.S.C. § 151 (1982).

17. *Id.* § 309.

18. *See, e.g., NBC*, 319 U.S. at 190.

19. 1 NETWORK INQUIRY SPECIAL STAFF, FEDERAL COMMUNICATIONS COMMISSION, NEW TELEVISION NETWORKS: ENTRY, JURISDICTION, OWNERSHIP AND REGULATIONS 469 (1980).

20. Black, *Broadcasters Want to Drop T.V. Rules*, L.A. Times, Jan. 23, 1984, § 6, at 10, col. 1.

ciency and competition when making policy decisions.<sup>21</sup> In recent years, however, the FCC has improperly ranked these goals higher than the goal of diversity. The Commission's interpretation of its efficiency mandate, consistent with that of contemporary economic theory,<sup>22</sup> adopts the view that "the Commission should not intervene in the market except where there is evidence of a market failure and a regulatory solution is available that is likely to improve the net welfare of the consuming public, *i.e.*, does not impose greater costs than the evil it is intended to remedy."<sup>23</sup>

By allowing the market to govern broadcasting trends, the Commission has abandoned the goal of diversity. This policy has further reduced the chances that PSAs will be broadcast, since radio and television stations recognize that a Commission which adopts a *laissez-faire* policy is unlikely to criticize or penalize a station which neglects its community service obligations. In fact, as explained in the following section, broadcasters have very little fear of sanctions by the Commission.

#### B. THE LACK OF MARKET INCENTIVES TO AIR PSAs

D.C. Circuit Judge David Bazelon has commented that it is unrealistic to expect broadcasters to air PSAs voluntarily, since "[n]ews and public affairs programming does not attract as large an audience as entertainment programming. This sort of programming is thus a perennial loss leader and arguably without FCC intervention to insist upon it, a requirement found in the Fairness Doctrine, licensees might just do away with it."<sup>24</sup> Even market-oriented economists admit that broadcasters will never air public affairs programming without governmental regulation: "If one can reach the qualitative judgment that, for example, political information broadcasts are socially beneficial, it follows that the existing television system, in the absence of governmental regulations or subsidies, will produce too little such programming."<sup>25</sup>

The FCC, however, continues to take a marketplace approach to the broadcast spectrum. Although by definition a "regulatory" agency,

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21. The Commission is directed to act so as to develop a "rapid, efficient" communications system that provides service at "reasonable charges." 47 U.S.C. § 151 (1982).

22. In general, economists today are opposed to regulation. For a discussion of the effects of regulation on efficiency, see Noll, *Government Administrative Behavior: A Multidisciplinary Survey and Synthesis* in REGULATORY POLICY AND THE SOCIAL SCIENCES 58 (R. Noll ed. 1985).

23. Tentative Decision and Request for Further Comments, 48 Fed. Reg. 38,034, para. 107 (1983) (adopted Aug. 4, 1983; released Aug. 12, 1983).

24. Bazelon, *supra* note 11, at 230.

25. R. NOLL, M. PECK, & I. MCGOWAN, THE ECONOMIC ASPECTS OF TELEVISION REGULATION 55-56 (1973) [hereinafter cited as ECONOMIC ASPECTS].



the FCC currently does very little regulating. In fact, FCC Chair Mark Fowler and attorney Daniel Brenner recently proposed that television be considerably deregulated, indicating that a marketplace approach to broadcasting would solve many of the "inefficiencies" created by the current regulatory mechanism of the FCC.<sup>26</sup>

Many of Fowler and Brenner's assumptions, however, are incorrect, and many of the conclusions they reach do not necessarily follow from their criticisms. For instance, one way for the FCC to supervise broadcasters and ascertain whether stations are meeting community service requirements is through the licensing and license renewal process. Even Fowler and Brenner admit that there is a problem with the current system's ascertainment requirements.<sup>27</sup> They point out that, despite the fact that the ascertainment process "typically produces a perfunctory listing of community needs and of standard programs to fulfill those needs," the industry has a nearly perfect renewal record.<sup>28</sup> Yet they assume that the only solution must be to eliminate the ascertainment requirement. They ignore the possibility of improving the ascertainment process so that it could accomplish its original purpose of supervision of broadcasters.

Fowler and Brenner stress throughout their article that "traditional broadcasting is just one of many information delivery systems" available to the public.<sup>29</sup> They ignore the fact that commercial television remains the most watched and most influential message bearer in our society, despite the recent development of cable T.V. and broadcast satellites. Fowler and Brenner's thesis that public "perception of broadcasters as community trustees should be replaced by a view of broadcasters as marketplace participants"<sup>30</sup> will never be defensible until the public perceives commercial television as a perfect substitute for other forms of information dissemination. It is this author's contention that society is not currently operating under such a perception.

Fowler and Brenner's marketplace argument also fails because in seeking to invalidate the public trust model of broadcasting, the authors view broadcasting from a traditional microeconomic position. They fail to acknowledge the unusual indirect consumer-advertiser-broadcaster relationship which exists in the commercial television industry. In most industries, consumers have a direct influence over a company; they can boycott products to protest high prices or to make a political statement, or they can choose superior brands over others, thus pushing

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26. Fowler & Brenner, *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. 207 (1982).

27. *Id.* at 208-09.

28. *Id.* at 209.

29. *Id.* at 209 *passim*.

30. *Id.* at 209.

certain products out of the market. But because advertisers pay the broadcasters, the television industry is one based on indirect sponsorship. Viewers and listeners have only an indirect and nonspecific influence on what programs are aired, since it is the advertisers who purchase programs for the viewers. Since the public does not have a direct say in what is broadcast, a regulatory agency is necessary to promote the public interest. Moreover, Fowler and Brenner do not take into account the fact that television programming is a public and not a private good.<sup>31</sup> This is another reason why the broadcasting industry does not neatly fit into a traditional free market model.

Fowler and Brenner argue that broadcasters' first amendment rights should prevail over those of consumers,<sup>32</sup> yet their analysis of this issue lacks depth and substance, amounting to little more than a historical review. They criticize the public "trusteeship" model for not operating as a free market.<sup>33</sup> Yet the system is structured as a regulated industry, and thus is not intended to operate as a free market would. Because Fowler and Brenner do not point out flaws in the values or rationales of the system, but only in the way it operates, their argument is naturally incomplete.

Many communications scholars have referred to the broadcast media as a public trust.<sup>34</sup> Fowler and Brenner criticize the validity of the various theories supporting the public trust model. One such supporting theory is that of "scarcity."<sup>35</sup> The scarcity theory concludes that because there are a limited number of mass media channels, the mass media should be used to further the public interest. Fowler's argument against the scarcity rationale for the broadcasting industry breaks down

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31. A public good "is one whose cost of production is independent of the number of people who consume it." B. OWEN, J. BEEBE & W. MANNING, *TELEVISION ECONOMICS* 15 (1974) [hereinafter cited as *TELEVISION ECONOMICS*]. Television programs are public goods. Owen, Beebe, and Manning explain the relevance of the public good issue for PSAs when they state: "There is reason to believe that a decentralized competitive private market system will not produce an adequate supply of pure public goods." *Id.* at 16.

32. Fowler & Brenner, *supra* note 26, at 217-18.

33. *Id.* at 220. Fowler and Brenner's "public trusteeship" model is equivalent to this author's "public trust" model.

34. See *infra* note 53. Proponents of a public trust theory argue that the mass media, especially television, are unlike other private industries in that they provide the most effective means in our society for distributing information to the public. Therefore, television station owners owe a special duty to their audiences to act in the public interest. This Note assumes the validity of the public trust theory.

35. The scarcity theory is discussed *infra* notes 50-52 and accompanying text. Briefly, it argues that government regulation of broadcasting is necessary to preserve diversity, since there is only a finite amount of air time available. For a discussion of the scarcity argument, see *ECONOMIC ASPECTS*, *supra* note 25. Some authors have suggested that the scarcity argument is flawed. See, e.g., Spitzer, *Controlling the Content of Print and Broadcast*, 58 S. CAL. L. REV. 1349 (1985); Fowler & Brenner, *supra* note 26, at 221-30.

with the admission that "scarcity does exist in the sense that there is no room for additional full-power VHF stations in the largest markets under current levels of permitted interference."<sup>36</sup>

By admitting that there are a limited number of full-power stations, Fowler is acknowledging that there are a limited number of widely used channels over which to air messages which are in the public interest. Because this Note is concerned only with commercial radio and television, the scarcity argument, which Fowler admits is valid for traditional stations, is entirely applicable to the PSA issue. Simply put, the scarcity of mass media channels hurts PSAs. Even scarcity's harshest critics cannot refute its obvious validity in the area of widely-watched commercial television.<sup>37</sup>

Fowler and Brenner list the many "substitutes for over-the-air distribution"<sup>38</sup> such as cable, low-power television, cassette and disc, and direct broadcast satellite.<sup>39</sup> They assume that these services provide a complete range of alternatives to full-power stations. Yet with the exception of low-power television, this list does not contain a single carrier of PSAs. This omission is not surprising; PSAs are of little concern to Fowler and Brenner.

Fowler and Brenner also argue that other media such as newspapers or popular motion pictures are as influential or "pervasive" in a community's value system as is television.<sup>40</sup> They cite no evidence for this statement, yet they base many of their conclusions on this assumption. Moreover, Fowler's argument is contradicted by much of the communications literature, which indicates that television is significantly more influential than other media forms.<sup>41</sup> Additionally, the United States Supreme Court ruled in *FCC v. Pacifica Foundation*<sup>42</sup> that because radio and television come into the home, they are governed by a different regulatory standard than other media forms. The *Pacifica*

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36. Fowler & Brenner, *supra* note 26, at 225. It must be remembered that Fowler wants only to deregulate television, not to change television's currently allotted portion of the electromagnetic spectrum. For a detailed discussion of the way the spectrum is allocated, see TELEVISION ECONOMICS, *supra* note 31, at 10-12; ECONOMIC ASPECTS, *supra* note 25, at 3-5.

37. There are several commentators who have argued that scarcity should not be a strong factor in telecommunications policy formation. See, e.g., Spitzer, *supra* note 35. Certainly it is true that even if the scarcity argument had merit previously, the outlets for telecommunication have become less scarce with the advent of satellite and cable television as well as increased use of the UHF frequencies. At the same time, if PSAs are to have any meaningful impact, they must be aired on full-power VHF stations.

38. Fowler & Brenner, *supra* note 26, at 225.

39. *Id.*

40. *Id.* at 228.

41. See, e.g., G. COMSTOCK, *supra* note 6, at 47-49.

42. 438 U.S. 726 (1978).

court emphasized that television and radio are legitimately subject to broad regulation, in part because "they have established a uniquely pervasive presence in the lives of all Americans."<sup>43</sup> Many of the forms of media cited by Fowler and Brenner do not come directly into the average home. Thus, television and radio remain the only media channels which the FCC can—and should—legitimately regulate in the public interest.

Finally, Fowler and Brenner give no credence to the non-economic justifications for broadcast regulation. Yet in an article also based on conservative economic arguments, economist Timothy Brennan correctly notes that "even if broadcast markets can be pronounced efficient, those concerned about 'rights' of media access or the public's viewing choices may still find government intervention in the public interest. Hence, economic analysis, although a powerful analytical tool, cannot be the final arbiter."<sup>44</sup> Brennan, while espousing contemporary economic theory throughout much of his article, admits that "if one holds that speakers have rights to speak or viewers have rights to see and hear that are independent of their ability or willingness to pay the broadcasting costs, then some content prescription or subsidy might be ethically, if not economically, justified."<sup>45</sup> Because the market will never give broadcasters enough incentives to air more PSAs, this author submits that the FCC is ethically obligated to regulate broadcasters to insure that PSAs are seen and heard on commercial television and radio.

### C. THE FAIRNESS DOCTRINE AND THE AIRING OF NON-CONTROVERSIAL PSAS

The "fairness doctrine" is not found in the Communications Act of 1934; rather, it is the result of various FCC rulings over the past four decades which have held that providing adequate public service involves broadcasting all sides of controversial issues. The doctrine has two prongs. First, broadcasters must devote a reasonable amount of time to the coverage of controversial public issues. Second, broadcasters must be certain that all views that have a significant measure of support are included in the discussion of public issues.<sup>46</sup>

Broadcasters dislike the fairness doctrine because it is difficult to

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43. *Id.* at 748. The *Pacifica* case is famous for holding that George Carlin's monologue on "Seven Dirty Words," while not constitutionally obscene, could be regulated more strictly than other forms of speech in its transmission over the electronic media, specifically radio. The Court indicated that time, place, and manner restrictions may be placed on offensive speech presented over the airwaves. *Id.* at 750.

44. Brennan, *supra* note 5, at 118.

45. *Id.* at 137.

46. D. PEMBER, *MASS MEDIA IN AMERICA* 291 (1977).

work with; moreover, they consider the doctrine an infringement of their first amendment rights.<sup>47</sup> The doctrine has been eroded over the years and is no longer applied to commercial advertising. It does, however, apply to editorials or idea advertisements like PSAs which deal with controversial issues. Some PSA producers have won court cases based on the fairness doctrine.<sup>48</sup> Because the fairness doctrine applies only to issues of public controversy, however, it does not compel the airing of health-oriented or public service PSAs.<sup>49</sup> Thus, because these PSAs are not controversial, valuable information is kept off the air. A stricter application of the fairness doctrine is needed to insure that non-controversial PSAs will be broadcast.

#### D. THE SCARCITY THEORY AND INCREASED AIRING OF PSAS

The "scarcity" theory is based on the assumption that the broadcast spectrum is scarce, *i.e.*, more people want to use the spectrum for broadcasting purposes than there are frequencies to allocate.<sup>50</sup> Because of scarcity, the FCC was created to regulate the airwaves.

The doctrine of "scarcity" often serves as a justification for keeping PSAs off the airwaves. Broadcasters argue that there is simply not enough "room" for PSAs. Yet courts have held that the fact that the broadcast spectrum is scarce means that the broadcast media can be more completely regulated than the print media. Because of scarcity, more restrictions—such as required airing of PSAs—can be placed on broadcasters than can be placed on print media producers.<sup>51</sup> Therefore, one might expect that because the broadcast spectrum is scarce, PSA producers will be ensured air time by the regulatory activities of the FCC. The FCC does not, however, mandate PSA airtime. Thus PSA producers cannot look to the FCC to ensure their access to the scarce spectrum. Yet because broadcasters would rather use scarce time to air revenue-producing commercial advertisements, PSAs are rarely seen or heard.

Thus the PSA producer faces a contradiction on the issue of scarcity. If the spectrum is scarce, the Commission should require that PSAs be broadcast, but it has not done so. If the spectrum is not scarce, an adequate number of PSAs should be reaching the public, but this is

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47. *Id.*

48. *See, e.g.*, *Friends of the Earth v. FCC*, 449 F.2d 1164 (D.C. Cir. 1971); *Avco Broadcasting Co.*, 32 F.C.C.2d 124 (1971).

49. Examples of non-controversial PSAs are "Give to the American Cancer Society" or "Easter Seals benefit dance this Sunday."

50. *See supra* note 35.

51. *Compare* *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969) (broadcaster must allow a message producer access to television forum) *with* *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974) (newspaper is not required to print all points of view).

not the case. Whether or not the electromagnetic spectrum is scarce, it is this author's belief that the spectrum is not so scarce as to preclude increased airing of PSAs. In any sensible broadcast policy, room can and should be made for PSAs, simply because they do not take up much time, and they greatly benefit the public.<sup>52</sup>

### III. STATUTORY, CASE LAW, AND CONSTITUTIONAL SUPPORT FOR INCREASED AIRING OF PSAs

#### A. THE SPECTRUM AS A PUBLIC TRUST

The Communications Act is based on a public interest theory of broadcasting which argues that, because electronic mass media are used by so many people, an appropriate broadcast policy is one which acknowledges that broadcasters have a greater responsibility to the public than does private industry. In essence, proponents of this line of thinking view the airwaves as a public trust. A broadcasting entity therefore has a responsibility not only to its shareholders to make profits, but also to the general public, to provide valuable community information.<sup>53</sup> The public trust theory recognizes the important role television and radio play in our society. No other entities are capable of processing information, shaping public opinion, serving the economic system, and entertaining the public to the extent that the electronic mass media accomplish these tasks.<sup>54</sup>

The impact the electronic mass media would have on the American public was foreseen early in the development of the media regulatory system which became the FCC. Even before the FCC was created in 1934, the Federal Radio Commission was dedicated to the idea that the spectrum was to be used as a public trust. In 1928, the Federal Radio Commission stated the basic policies behind government control of broadcasting:

Broadcasting stations are licensed to serve the public and not for the purpose of furthering the private or selfish interests of individuals or groups of individuals . . . . The tastes, needs and desires of all substantial groups among the listening public should be met, in some fair proportion, by a well-rounded program . . . of interest to all members of

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52. The average PSA and the average commercial message are of the same length: 30 to 60 seconds. It is interesting that the spectrum is never too "scarce" for commercials, but almost always is too "scarce" for PSAs.

53. For a discussion of the relationship between the Act and public trust theory, see TELEVISION ECONOMICS, *supra* note 31; ECONOMIC ASPECTS, *supra* note 25; D. PEMBER, *supra* note 46. For criticism of the public trust theory, see Fowler & Brenner, *supra* note 26.

54. For an in-depth analysis of the impact television has on society, see G. COMSTOCK, *supra* note 6.

the family . . . .<sup>55</sup>

Thus it has been established from the beginning that broadcasters must serve the public.<sup>56</sup>

## B. THE COMMUNICATIONS ACT AND THE CASES INTERPRETING IT

### 1. *The Act: Enforcement or Amendment*

The FCC is guided in its decision-making by the Communications Act of 1934.<sup>57</sup> As mentioned previously, the Commission is instructed to determine whether its actions will serve "the public interest, convenience, and necessity."<sup>58</sup> To accomplish this, the FCC can either pass amendments to the Act, or use a variety of sanctions against errant broadcasters to enforce the Act and its own administrative rulings. Fines and penalties may be assessed against broadcasters who do not comply with FCC regulations. The most important sanction, in theory, is the Commission's power to divest broadcasters of their licenses either at renewal time or during the three-year license period. The main offense for which a broadcaster can lose his or her license is failure to serve the public interest.<sup>59</sup> Thus it is theoretically possible that failure to provide public service messages and programming could result in loss of a license. This is not, however, a practical expectation. There is virtually no chance that the FCC would revoke a station's license for failure to air PSAs; nearly all licenses are renewed, and critics of the license renewal process have labeled it a sham.<sup>60</sup> Thus, while the threat of non-renewal of a station's license should theoretically force the station to broadcast public interest messages, because the FCC has not strictly enforced its public interest mandate and has allowed high license renewal expectation, the process of license renewal has not assured adequate broadcasting of PSAs.

It is clear that current FCC rules and policies do not result in sufficient airing of PSAs. The Commission was created to serve the public interest, and because increased airing of PSAs would be in the public interest, the Commission should adopt an amendment calling for in-

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55. R. ELLMORE, BROADCASTING LAW AND REGULATION 164 (1982).

56. The public trust theory has long been held to apply to both television and radio. *Id.* at 19 (citing *Allen B. Dumont Lab's v. Carroll*, 184 F.2d 153 (3d Cir. 1950), *cert. denied*, 340 U.S. 929 (1951)).

57. Communications Act, *supra* note 3.

58. 47 U.S.C. § 309 (1982).

59. See R. ELLMORE, *supra* note 55, at 17.

60. FCC Chair Mark Fowler has noted that current ascertainment procedures for license renewal or new licenses may consist of simply five-minute interviews with community leaders and a general summary of community demographics prepared by a commercial research firm. Fowler & Brenner, *supra* note 26, at 208-09.

creased airing of PSAs.<sup>61</sup>

## 2. *The Case Law: The Right of Access to the Broadcast Media*

There are very few cases concerning PSAs; the analogous cases deal primarily with commercial advertising. Taken as a group, these cases tend to show consistent support by the courts of the right of PSA producers to have their messages broadcast.

The case of *Donald A. Jelinek*<sup>62</sup> held that a controversial issue of public importance must be raised before "reply time" must be granted to a PSA producer. This case arose when several San Francisco radio and television stations were criticized by a group of PSA producers for broadcasting military recruitment spots as PSAs, while refusing to broadcast PSAs which complainants offered to supply, which opposed the viewpoints expressed in the recruitment announcements.<sup>63</sup>

Complainants in *Jelinek* argued that their point of view:

[was] entitled to exposure through spot announcements rather than news and discussion coverage because of the more effective motivating factors inherent in an "uninterrupted" "pre-packaged message" which "allows the sponsor . . . to prepare the announcements in such a manner as to have a desired psychological effect" rather than the "straight-forward manner aimed at persuading the listener's rational sense" which is the way views are presented on news and talk programs. Finally, complainants argue[d] that the fairness doctrine applies to public service announcements because, as opposed to normal commercial announcements, the broadcaster is making an editorial judgment in

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61. The FCC has adopted amendments increasing the time allotted to other types of program segments, specifically political messages. In 1972, the "reasonable access" amendment was added to the Communications Act. This section allows for sanctions against a station "for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy." 47 U.S.C. § 312(a)(7) (1982).

Much has been written in scholarly legal journals about the ramifications of this amendment. This Note, however, does not consider political announcements equivalent to PSAs; section 312(a)(7) is mentioned simply as an example of reform legislation.

Of course, one similarity between PSAs and political announcements is the potential impact each type of statement may have in inducing the viewer to act (*e.g.*, send money or volunteer for Charity X; send money or vote for Candidate Y). If political announcements should in fact be classified as PSAs for doctrinal purposes, then this Note outlines only a portion of the argument which justifies more airing of PSAs. An analysis which classifies political announcements as PSAs must consider the effects of political announcements on voters, and the issue of mandatory availability of time—"equal access"—for candidates. Because this Note defines PSAs as announcements from charitable and public interest organizations which inform the consumer and provide a social service to the community, these issues are not relevant.

62. 24 F.C.C.2d 156 (1970), *aff'd sub nom.* Green v. FCC, 447 F.2d 323 (D.C. Cir. 1971).

63. *Id.* at 156.



choosing the particular spot announcement and must therefore be more cognizant of his fairness obligations to preserve his facilities as an "uninhibited market place of ideas". . . .<sup>64</sup>

The FCC held against the complainants in *Jelinek*, stating that no fairness doctrine violation had been demonstrated since no issue of public controversy had been raised. The Commission did, however, allow for the possibility that a future PSA case could be decided differently: "[W]e do not mean to imply that nothing connected with a public service announcement could bear up on a controversial issue of public importance. Such announcements, in particular instances, may present one side of a controversy."<sup>65</sup>

Then Commissioner Nicholas Johnson strongly dissented from the *Jelinek* decision. Johnson found that the military recruitment announcements raised a controversial issue of public importance.<sup>66</sup> The recruitment spots, according to Johnson, conveyed "the rather blatant message . . . that it is 'desirable,' for a multitude of reasons, for a young man to join the military."<sup>67</sup> For Johnson, the "desirability" message starkly contrasted with his own view that "the military conscripts men against their will, forces them to kill and destroy, and subjects them to the omnipresent threat of death."<sup>68</sup>

Finally, Johnson based part of his dissent on the Commission's earlier position in *Banzhaf v. FCC*.<sup>69</sup> *Banzhaf* had held that the FCC may require stations which broadcast cigarette advertisements to air anti-smoking information, in the interest of the public's health.<sup>70</sup> The reasoning was based on the Surgeon General's report that smoking is dangerous to one's health.<sup>71</sup> The FCC had suggested, in its decision upheld by the Court of Appeals, that stations might discharge their responsibilities by presenting "each week . . . a number of the [PSAs] of the American Cancer Society or HEW in this field."<sup>72</sup>

Johnson's dissent in *Jelinek* sought to show on a statistical basis

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64. *Id.* at 156-57 (quoting *Red Lion Broadcasting Co.*, 395 U.S. at 390).

65. *Id.* at 158.

66. *Id.* at 164.

67. *Id.* at 163.

68. *Id.*

69. 405 F.2d 1082 (D.C. Cir. 1968), *cert. denied*, 396 U.S. 842 (1969).

70. *Id.* at 1083. Soon after *Banzhaf* was decided, legislation was passed prohibiting the advertising of cigarettes over the electronic media, thus eliminating the "need" for the PSAs. See 15 U.S.C. § 1335 (1982). Ginsburg has pointed out that because of the *Banzhaf* decision and the threat to the tobacco industry posed by anti-smoking PSAs, the tobacco industry supported the legislation. Only the broadcasters, who received 7.2% of their television advertising revenues from the tobacco industry, opposed the legislation. D. GINSBURG, REGULATION OF BROADCASTING 580-81 (1979).

71. *Banzhaf*, 405 F.2d at 1086.

72. *Id.* at 1087.

that a controversy *had* been raised by the military recruitment announcements. Johnson argued that if cigarette smoking is an issue of controversy then joining the Army is also controversial, because it is at least as hazardous to one's health as cigarette smoking. Johnson pointed out that while 1 out of 1300 smokers died of lung cancer in 1969, 1 out of 275 American servicemen lost his life in Vietnam in 1969.<sup>73</sup> Thus Johnson concluded that a public health question was presented in *Jelinek* which created a sufficient controversy to mandate airing of opposing viewpoints.

It is difficult to derive from the case law the suggestion that non-controversial PSAs must be broadcast. As discussed earlier, the fairness doctrine does not apply to non-controversial PSAs. Therefore, a PSA producer who wants to base his right of access on the case law must look to cases like *Banzhaf* which have held that public health issues can be controversial.

The issue of the public's health and the right to air viewpoints opposite to those implied or expressed in a commercial advertisement was again raised in *Friends of the Earth v. FCC*.<sup>74</sup> In the lower court, the Friends of the Earth organization had argued that advertisements for full-size cars and high-test gasoline were promoting pollution, which the Surgeon General had determined to be harmful to the public health.<sup>75</sup> Thus the Friends of the Earth wanted to air PSAs exposing the air pollution problems caused by big automobiles. The Court of Appeals held that when there is undisputed evidence that advertised products are hazardous to health, then a controversial issue of public importance has been raised, and the rule in *Banzhaf* applies.<sup>76</sup> Thus the PSA producer was given access to the spectrum.

Other case law on PSAs has continued to hold that a controversial issue must be raised if free air time is to be granted to those with opposing views. In *Avco Broadcasting Co.*,<sup>77</sup> the Commission found that a public service announcement supporting the United Appeal in Dayton, Ohio presented a controversial issue of public importance.<sup>78</sup> The controversy in *Avco* arose from the campaign of the "United People," which urged community members to give directly to their favorite charities and not to the United Appeal, charging that the United Appeal did not allocate its funds to the most important community needs, and was governed by a board unrepresentative of workers, the poor, and young

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73. *Jelinek*, 24 F.C.C.2d at 166.

74. 449 F.2d 1164 (D.C. Cir. 1971).

75. *Id.* at 1165.

76. *Id.* at 1169.

77. 32 F.C.C.2d 124 (1971).

78. *Id.* at 126.

people.<sup>79</sup>

Thus, the cases on PSAs and commercial advertisements have held that a right of access does exist for producers of controversial PSAs. Additionally, some issues of public health have been found to be "controversial." The airing of non-controversial PSAs, however, is not required by the cases, although it may be mandated by the first amendment. If non-controversial PSAs are seen to be in the public interest, contemporary first amendment interpretation acknowledges a right of access.

### C. FIRST AMENDMENT ANALYSIS OF THE PSA ISSUE

#### 1. *The Message Producer's Right of Access to the Media*

First amendment analysis of the PSA issue must balance the free speech rights of the television and radio stations against the free speech rights of the people who want broadcasters to air their PSAs. The United States Supreme Court has never held that the Constitution creates a right of access to privately owned media. The Court has, however, sustained laws giving individuals access rights to the broadcast media. Numerous decisions have supported the viewers' first amendment rights over the broadcasters' autonomy. Probably the most significant of these cases was *Red Lion Broadcasting Co. v. FCC*.<sup>80</sup> The *Red Lion* ruling was based on the following idea:

[T]he people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.<sup>81</sup>

It would therefore be in agreement with *Red Lion* to suggest that the PSA producers' first amendment rights have greater weight than those of the broadcasters. This conclusion is also consistent with the fact that the law treats the electronic media far differently than it treats the print media. Then Circuit Court Judge Burger clearly outlined this difference when he wrote:

A broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations. A newspaper can be operated at the whim or caprice of its owners; a broadcast

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79. *Id.* at 124.

80. 395 U.S. 367 (1969). See also *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). These cases established that a right of reply statute may be unconstitutional for a newspaper but that the fairness doctrine will be strictly applied to television. In other words, a law which ensures a right of access to the broadcast media will be upheld, but there is no similar right of access to the print media.

81. *Red Lion Broadcasting Co.*, 395 U.S. at 390.

station cannot.<sup>82</sup>

Thus the first amendment does not preclude, and may, in fact, encourage the adoption of requirements calling for increased access rights for PSA producers. Many commentators have argued that the "right of media access [is] an extension of freedom of speech; minority groups and other aspiring speakers should have the right . . . to use the technical apparatus of the media, which provides the only way to reach a mass audience."<sup>83</sup>

## 2. *The Public's Right to Hear*

In addition to the right of access, the first amendment may also encompass another right: that of the public's right to hear PSAs. In contrast to the right of access, the right to hear has been said to imply:

that owners of the mass media have an affirmative obligation to provide listeners with a certain range of ideas and experiences. Presumably this obligation would accrue even when no aspiring speaker has yet sought access to the media. If so, a broadcaster may not assume that his obligation ends when he permits aspiring speakers to use the media. The right to hear suggests that a broadcast station has an affirmative obligation to recruit spokesmen for, or offer its own interpretation of, a viewpoint or event that viewers desire to learn about.<sup>84</sup>

Under this rationale, it can be argued that the FCC should adopt a regulation calling for increased airing of PSAs because the public has an interest, and perhaps a first amendment right, to hear public service messages.

If there is a valid right to hear messages which are in the public interest, it has not been recognized by the courts, or distinguished from the right of access.<sup>85</sup> It is, however, a separate and distinct right which should be considered by the FCC.

## 3. *The Issue of Commercial Speech*

A final first amendment issue relevant to the discussion of PSAs is the issue of "commercial speech." "Commercial speech" is a category of speech which is not entitled to as much first amendment protection as "regular" speech.<sup>86</sup>

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82. *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1003 (D.C. Cir. 1966). See also R. ELLMORE, *supra* note 55, at 21.

83. Note, *The Listener's Right to Hear in Broadcasting*, 22 STAN. L. REV. 863, 867 (1970) (citing Barron, *An Emerging First Amendment Right*, 80 HARV. L. REV. 1641 (1967)).

84. Note, *supra* note 83, at 867-68.

85. *Id.* at 868.

86. *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748 (1976); *Cent. Hudson Gas v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980). Examples of "regular"

A critic of the argument that PSA producers are entitled to a right of access to the media might argue that PSAs are commercial speech and, as such, may be restricted more than regular speech. The critic would say that broadcasters' first amendment rights to decide not to air PSAs are therefore paramount over the PSA producers' rights of access to the media.

For several reasons, however, PSAs cannot be characterized as commercial speech under contemporary first amendment analysis. PSAs are not straightforward proposals to purchase a product, as are most standard commercial advertisements. Additionally, most PSAs do not have any of the characteristics of commercial speech which have been outlined by the United States Supreme Court. Three criteria which are necessary, but not sufficient, for speech to be considered "commercial" are: (1) the message is conceded to be an advertisement, (2) there is reference to a specific product, and (3) the entity which produces the message has an economic motivation.<sup>87</sup> These criteria do not apply to PSAs for the following reasons: (1) PSAs are labeled as PSAs, not advertisements, (2) there is usually reference not to a product but to an event or service, and (3) non-profit entities produce PSAs. Therefore, under contemporary analysis, PSAs are not commercial speech. Because they are not commercial speech, they are entitled to full first amendment protection.

It should be noted that even if PSAs could be considered commercial speech, this fact would not decrease their right to be aired over the broadcast media. This is because the right of the broadcasters to restrict PSAs does not increase as messages become more commercial. Rather, the authority of the FCC increases as messages become more commercial. As previously discussed, the Commission was created to serve the public interest, and PSAs are in the public interest. Therefore, the FCC has an obligation to adopt regulations calling for increased airing of PSAs regardless of whether PSAs are considered to be commercial speech. The broadcasters have no increased rights in this matter since their actions, like those of the PSAs producers, become subject to increased FCC regulation as PSAs become more commercial.

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speech entitled to full first amendment protection are educational, political, and religious speech. Other examples of less protected categories of speech are obscene speech, "fighting words," and speech advocating the use of force or crime which is likely to produce imminent lawless action. *See, e.g.,* Roth v. United States, 354 U.S. 476 (1957) and Miller v. Cal., 413 U.S. 15 (1973) (obscenity); Chaplinsky v. N.H., 315 U.S. 568 (1942) (fighting words); Brandenburg v. Ohio, 395 U.S. 444 (1969) (speech advocating the use of force which is likely to produce imminent lawless action).

87. These criteria were established in *Bolger v. Youngs Drug Prod's Corp.*, 463 U.S. 60 (1983).

Therefore, it remains the Commission's province to ensure increased airing of PSAs.

#### IV. PROPOSED METHODS TO ENSURE INCREASED AIRING OF PSAs

The FCC should adopt an amendment to the Communications Act of 1934 requiring that more PSAs be broadcast. This Amendment would force the broadcasters to meet the community service obligations which are mandated by the Act. As with any change to a working system, the Amendment would be difficult to implement. Broadcasters may be flooded by PSAs, sent by various charities and public service groups. Obviously, every PSA could not be aired immediately.

The Amendment should call for specific daily time requirements (*e.g.*, a total of fifteen minutes for each station) for PSA broadcasting. As long as the broadcasters met the time requirements, they would not be sanctioned. It is also suggested that the airing of PSAs be required throughout the day so that all members of the viewing public would be exposed to PSAs. Allowing a station to air PSAs for fifteen minutes consecutively at three o'clock in the morning would not accomplish the Amendment's purpose. Undoubtedly, some PSAs would not be aired, even under the new Amendment. This is due to the fact that television and radio must function primarily as news and entertainment distributors, financially supported by producers of commercial advertisements.

How will the PSAs to be broadcast be chosen?<sup>88</sup> One proposal would be a lottery system, with interested organizations applying once a term (a year, six months, or three months) to stations of their choice. In lieu of a lottery system, a less random selection process could be established. PSAs could be classified according to category, *e.g.*, general health, environment, disease research. A certain number of PSAs from each category would be required to be aired daily by the stations.

If stations did not comply with the requirements of the new Amendment, they would be subject to sanctions. A possible sanction is non-renewal of a station's license, but this should probably be reserved for the most egregious cases of non-compliance. Sanctions for the station with a substantial, but not overwhelming, number of violations could include short-term renewal, fines, and/or reprimands. For stations with only a few violations, it would be more reasonable to simply force the stations to air the PSAs. In light of the admitted costs of airing PSAs, this punishment is probably sufficient. Moreover, such a

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88. The charities and public interest groups would continue, as they do today, to be responsible for submitting PSAs to the stations in playable form; broadcasters would be responsible for PSA distribution only, and not PSA production.

sanction would also accomplish the original goal of increased airing of PSAs.

Finally, it would be unnecessary to apply the fairness doctrine to PSAs and to argue in terms of "issues of public controversy." The Amendment would acknowledge that many PSAs are non-controversial.

### CONCLUSION

An amendment to the 1934 Communications Act calling for increased airing of PSAs will not guarantee air time for every charity and public interest group. Some of these groups simply do not have the resources to produce a PSA for television. Nearly all, however, are able to submit a prepared, readable, informative statement to local radio stations. Nevertheless, even some of these statements will go unread.

The proposals of this Note seek to work within the current system, and not to initiate a more radical change. Because of the non-radical nature of the proposed changes, new problems will be kept to a minimum. Moreover, the proposals seek to accommodate the concerns of all interested parties by not unfairly favoring the rights of the public interest groups; they merely give these groups a little extra weight in striking a balance among the trilogy: the broadcaster, the advertiser, and the public. The supervisor is the Federal Communications Commission. It is hoped that the suggestions included here will be advocated by lobbyists in seeking reform of FCC rules, and an amendment will be adopted which is truly responsive to the "tastes, needs and desires" of the public.

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