



The University of Texas at Austin
Center for Media Engagement
Moody College of Communication

PUBLIC INTEREST STANDARD ROUNDTABLE

SUMMARY

The Center for Media Engagement at The University of Texas at Austin hosted a roundtable to discuss its current state and what, if any, improvements need to be made. The virtual event took place on May 10, 2021 and was moderated by Marley Duchovnay, Caroline Murray, and Talia Stroud. Experts who participated drew from their experience in the professional fields of law, government, research, education, advocacy, and journalism. Experts in attendance included:

- **Christopher Ali**, Associate Professor in the Department of Media Studies at the University of Virginia;
- **Yosef Getachew**, Media and Democracy Program Director of Common Cause;
- **Catherine Sandoval**, Associate Professor of Law at Santa Clara University;
- **Steven Waldman**, President and Co-Founder of Report for America.

BRIEF HISTORY OF THE PUBLIC INTEREST STANDARD:¹

The roots of the public interest standard trace back to the 1920s when the government first set out to address problems with radio signal interference and sparse radio spectrum with the passage of the Radio Act of 1927. The Act established a relationship between government and radio stations where the government would assign frequencies and licenses to stations and, in return, stations were expected to serve “the public interest, convenience or necessity.”

Years later, to improve upon the Radio Act of 1926, Congress passed the Communications Act of 1934. This Act established the Federal Communications Commission (FCC), which still governs radio and broadcast television licenses today, and established criteria to guide the Commission’s licensing powers. The law again emphasized that license recipients should operate in “the public interest, convenience or necessity.”

While the language of the public interest standard has always been vague, there was at first some guidance on which programs counted as in the public interest. For example, in 1939 the FCC issued a memorandum that dictated 14 types of material that were not in the public interest (i.e., racial and religious intolerance, obscenity, and defamation.) In 1946, the FCC created a guidebook called *Public Service Responsibility of Broadcast Licensees* which stressed the importance of meeting the needs of the local community by providing informational and news programming that was relevant to the community being served. Simply put, this guidance stated that stations were responsible for determining the needs of their communities. The process by which they determined these community needs was called ascertainment.

In 1971, the ascertainment process was comprehensively outlined in the FCC’s *Primer on Ascertainment of Community Problems by Broadcast Applicants*. The Primer specifically required management-level employees to meet with community members and leaders to determine the information needs of the community. In addition to ascertainment, throughout the 1970s, the FCC implemented policies to require licensees to commit 10% of their airtime to non-entertainment programming. However, an era of deregulation that loosened many of these restrictions began in 1981 under President Jimmy Carter and continued through President Ronald Reagan’s administration.

What is left of the public interest standard today? Each quarter, licensed stations are required to file an issues/programs list detailing examples of their programming addressing community issues. It is crucial to note that this list is only filed internally at the station and is not filed with the FCC. When stations renew their radio or broadcast television license, the FCC only asks them to confirm that the list exists and meets requirements. If a member of

¹ This brief summary of the public interest standard’s history is based upon the 2011 FCC report, “The Information Needs of Communities: The changing media landscape in a broadband age” by Steven Waldman. For a more in-depth explanation of the history of the public interest standard, you can read the report [here](#).

the public wants to see this file, they have to request it in person at the station's main studio, as it is not available online. Due to the fact that these filings are seldom reviewed, some stations take liberties with what programming is listed as addressing community issues. For example, Steven Waldman's 2011 FCC report, "The Information Needs of Communities" cites examples of issues/programs lists that included advertisements for an America's Next Top Model audition and a contest to win a Dairy Queen cake as serving the public interest.

ROUNDTABLE Q & A:

Our roundtable conversation focused on eight questions about the public interest standard. The quotes below are organized to show the main takeaways from the conversation.

THE BASICS: What is the Purpose of the Public Interest Standard?

- "I think the intent of the public interest standard was to ensure that the spectrum was used for the public. And that's important to underscore because the United States chose a system of licensing ... they made it clear from the beginning that media licenses are not actually owned, that the spectrum is a resource that is to be harnessed for the benefit of the public." - **Catherine Sandoval**
- "When it comes to the media particularly, I look at the public interest standard ... [as] what are the critical information needs of our society, of our country ... What are the key pieces of information everyone needs to be informed and to actually engage in our democracy." - **Yosef Getachew**

TAKEAWAY 1: The Public Interest Standard Lacks 'Teeth'

- "I think the public interest standard is largely a sham at this point. And the sooner we kind of grasp that, the faster we'll come up with some solutions ... In the first 75 years of the FCC's existence it granted over 100,000 license renewals. In only four cases was a renewal application denied because the licensee failed to meet its public interest programming obligations ... The stations every year pretend that it's important and they go through the motions. But when we were doing the research on this we saw all sorts of ridiculous examples of things that were getting cited as meeting public interest obligations, in terms of just running reruns of game shows and stuff like that." - **Steven Waldman**

- “Part of the problem is that it’s hard to pinpoint any actual FCC interventions that were done entirely under the auspices of the public interest ... What we’ve seen, really since 1984 is a shift from — if there was any belief that the public interest was actually meant to be about a broadcaster’s relationship and a broadcaster’s responsibility to the public, to its community, and the FCC’s relationship and responsibilities to viewers and to communities, that is shifted dramatically in favor of the market ... This idea that whatever we consume means it must be in our interest, which negates all other forms of programming.” - **Christopher Ali**
- “One obvious thing is that whatever the [public interest] standard is, the FCC should actually apply it. The lack of enforcement of the standard made it almost irrelevant what the standard was.” - **Steven Waldman**

TAKEAWAY 2: Diversity is Lacking Among Broadcast and Radio Licenses

- “[It took the FCC] between 1934 to 1949 to award even the first broadcast license to a person of color. And they didn’t award the first television license until 1973 ... This has led to where we are today with a skewed media distribution ... where you have 92% of all the radio licenses allocated to White, Non-Hispanic, predominantly men and 94% of the television licenses allocated White, Non-Hispanic, predominantly men. And you’re at that level only because the FCC really started to make an effort between 1978 and 1995.” - **Catherine Sandoval**
- “It’s clear that principles of equity were not necessarily embedded within the public interest standard at the FCC historically. And so because of that ... we’re now in a situation where there has been a disproportionate allocation of resources, goods, and services to certain communities versus others. That’s not just in media but also in other communications ecosystems, when we’re talking about broadband, when we’re talking about local news.” - **Yosef Getachew**
- “Equity. As we look back at the different eras of FCC jurisprudence, that was part of what was missing — that they completely missed the boat from the dawn of television until 1973 ... when they first gave a license to a minority — is attention to equity ... this is part of what COVID has punctuated is that if all of us are not healthy, all of our health is at risk ... If all of us don’t have access to a robust media ecosystem that serves our community information needs, democracy is at risk and each of us is at risk.” - **Catherine Sandoval**

TAKEAWAY 3: Media Consolidation Further Endangers the Public Interest

- “When we’re looking at mergers, one of the things that is part of the criteria is ‘Does this merger actually benefit the public interest?’ ... Not only does it not harm the public interest, does it actually have an improvement or some impact that will help communities in one way or the other. And I’ve looked at a lot of these merger filings that have come before the FCC and their public interest filings are two, three pages at most. And they’ll have basic criteria like ‘Well, we’ll create a Washington D.C. news bureau.’ Which in my opinion doesn’t actually help the local community when it comes to local news and information. Or they’ll have very small things like ‘We’ll have updated equipment or networking standards.’ ... But there’s very little actual information that they provide when they say ‘We’re going to help the public interest.’ So, that’s just one area where we can rethink ‘Are these mergers going to improve the public interest?’ and if not, let’s not necessarily ‘greenlight’ them.” - **Yosef Getachew**
- “In the Level 3 Century Link merger that was approved at like midnight, the FCC basically said that any transfer [of license] is by default in the public interest ... that basically obfuscates the need for license transferring companies to have to justify in the public interest what it is that they’re doing, right?” - **Christopher Ali**
- “It always struck me that any time there was any debate about changing merger rules ... that the chains would argue that consolidation would be good for journalism and the public interest groups would argue the opposite, that it would be bad for journalism. And, you know, I tend to agree with the public interest groups on that. But the truth is you can find examples in either case. So it seemed to me that the approach of the FCC should just be to require it not predict it...In other words, make it that the term of the consolidation is that you have to invest in more journalism in the community. Now, you have difficult questions of enforcement of that because it’s not just a one-shot thing where you approve it ‘yay or nay’. You have to have some mechanism where the FCC can keep tabs on it and punish an already merged entity after they’ve lost their key point of leverage.”- **Steven Waldman**

IMPROVEMENTS: What Should We Do to Address These Issues?

Although there are many possible improvements, we include here a subset of those addressed in the roundtable conversation.

Reshape the Conversation to Prioritize Quality Local Journalism

- “The collapse of local reporting is now ... as big a problem as competition and diversity of voices. And so I think communications policy should have that in mind, that when you’re looking at consolidation rules or merger rules, potentially public interest standard rules. But the informational health of a community as defined by the reporting assets should be part of what is in the conversation about public policy.” - **Steven Waldman**

Request More Data on Demographics of License Owners

- “Let’s do more when it comes to diverse ownership. A lot of us, Catherine’s been a lead on this, among others, is asking for more data when it comes to who are the owners of our traditional media ... there is data out there, it’s not perfect, it needs to be improved on and we need to figure out the best solutions out there to act on that data.” - **Yosef Getachew**

Hold Companies Accountable for the Promises They Make During the Merger / Acquisition Process

- “When companies make promises within the public interest, or use that language ... that the FCC’s actually keeping them to that language. And they have a bad track record doing something like that ... There’s always a laundry list of promises. Sinclair Tribune had those promises too, right? Comcast NBCUniversal had these promises. And many of them go unfulfilled.” - **Christopher Ali**
- “It’s like there needs to be an old mergers department at the FCC.” - **Steven Waldman**
- “When I was at the California Public Utilities Commission, we created a system called COPS which stood for Compliance with Ordering Paragraphs. So the idea was to institutionalize that tracking so that it’s not just this crazy negotiation that goes on ... and then they vote for it and you’re done. And then it’s left to organizations like Yosef’s [Common Cause] to figure out that there’s a problem and bring up a petition which the FCC ignores. But to systematically have compliance with ordering paragraphs and to report on that.” - **Catherine Sandoval**

Reinstate Regulations that Prioritized the Public Interest (Ascertainment & Main Studio Rule)

- “My work has always been on localism, so one thing that I think worked really well was the ascertainment rules, which mandated that broadcast stations have a community advisory board. I think that was really great ... The Main Studio Rule, I also thought was really valuable. It forced stations to have a presence [in their community of license]. And maybe, by and large, you’ll say, ‘Oh what does it matter if a station is located not in downtown but in the suburb of a different city or a different part of the town?’ The larger part of the problem is, on top of the consolidation, what happens when companies just start shutting down stations and having one regional station? One super-station but they might just have transmitters? What’s happening to localism, competition and diversity when the entire state of Virginia for Sinclair can be broadcast out of Richmond? ... When we start chipping away at things like ascertainment, and Main Studio Rule, and we used to give preferential treatment for local owners, it starts to mean that the station itself can get further and further away from the community to which it is licensed. It starts to mean we see even larger drop off in reporters, in editorial staff, in managerial staff.” - **Christopher Ali**