

The Performance Rights Act Puts Local Jobs at Risk

Issue

During the past two Congresses, some members of Congress, at the behest of the big record labels, introduced a bill to impose a performance tax on local radio broadcasters. The Performance Rights Act would have imposed a devastating new fee on local stations simply for airing music on the radio – airing the music that provides free promotion to the labels and artists. A new performance fee could financially cripple local radio stations putting jobs at risk, stifle new artists trying to break into the recording business and harm the listening public who rely on local radio.

History

Because of the promotional value of free radio airplay, Congress has repeatedly rejected the record labels' attempts to impose a performance tax on local radio stations.

NAB and broadcasters have been, and continue to be, unalterably opposed to the Performance Rights Act since it was first introduced in 2007. In the 111th Congress, NAB worked with Reps. Gene Green (TX-29) and Mike Conaway (TX-11) and then-Sen. Blanche Lincoln (AR) and Sen. John Barrasso (WY) to introduce the Local Radio and Freedom Act in the House and Senate, resolutions to oppose a performance fee on local radio stations. More than 300 members of the House and Senate supported these resolutions.

In the 112th Congress, the Local Radio Freedom Act was introduced again by Reps. Conaway and Green. Additionally, Sens. Ben Nelson (NE) and John Barrasso (WY) introduced the resolution in the Senate. More than 150 members of the House and Senate currently support these resolutions.

In February 2010, at the request of congressional leaders, NAB began a constructive dialogue with musicFIRST – the organization representing artists, record labels and unions. Our goal in entering into discussions was to shape a positive outcome for the radio industry.

In late October 2010, after months of discussion and feedback from the radio industry, NAB presented musicFIRST with a legislative term sheet designed to resolve the longstanding performance fee issue. Under language included in the term sheet, music-playing terrestrial radio stations would pay a limited performance fee, which would be set at between 0.25 percent and 1 percent of a station's net revenue or less, depending on the size of a station and a provision related to the penetration of radio-activated mobile devices in the U.S. The term sheet also included provisions providing for lower streaming rates, resolution of union issues that make streaming difficult for stations and permanent removal of the Copyright Royalty Board from the rate setting process.

NAB remains unalterably opposed to the language proposed in the Performance Rights Act. However, in a good faith effort to resolve this issue in the best interests of both radio and the music industry, NAB's Radio Board of Directors endorsed a solution that provides broadcasters with a foothold in future digital platforms.

While the term sheet was not agreed to by the music industry, NAB plans to maintain discussions and continue to fight any performance fee legislation on Capitol Hill.

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NAB Position

For more than 80 years, record labels and performers have thrived from radio airplay – what is essentially free advertising – from local radio broadcasters. Free, broadcast radio touches 239 million listeners a week, a number that dwarfs the reach of Internet and satellite radio. Free radio airplay provides the recording industry increased popularity, visibility and record sales. In fact, 85 percent of listeners of all audio services identify radio as the place they first heard new music. And the promotion by local radio does not just include the music; it includes concert promotion, on-air interviews with bands and ticket and CD giveaways.

But now the record labels find themselves struggling because they have failed to adapt their business model to the digital age. While their business model suffers, they seek to recoup revenues on the backs of local radio stations that are, ironically, their greatest promotional tool. The value of free radio promotion to record labels and performers is well recognized.

Performance Rights Act legislation threatens the local radio stations on which communities depend. Broadcasters are engaged in a good faith effort to resolve this issue in the best interests of both radio and the music industry.

Action Needed

Congress should oppose a congressionally mandated performance tax on free, local radio broadcasters that would jeopardize local jobs, prevent new artists from breaking into the recording business and harm the 239 million Americans who rely on local radio. Additionally, members should cosponsor H. Con. Res. 21 and S. Con. Res. 7, opposing any new performance tax, fee or royalty on local radio stations.

Revised April 2011



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1771 N Street NW
Washington DC 20036 2800
202 429 5300 www.nab.org

Promoting Spectrum Policies that Serve the Public

Issue

Wireless companies and others claim that current amounts of spectrum allocated for high speed wireless Internet service are not sufficient to meet the expected increase in consumer demand over the next few years, and have urged the federal government to reallocate spectrum for future wireless broadband use.

When the Federal Communications Commission (FCC) staff released its National Broadband Plan last year, it reflected these arguments, calling for the reallocation of spectrum, including spectrum currently used by television broadcasters. To facilitate this reallocation, the FCC is seeking authority from Congress to hold spectrum incentive auctions. NAB is working to ensure any incentive auctions are entirely voluntary, and continues to promote spectrum policies that ensure consumer access to the full potential of digital television (DTV), including high definition (HD) and multicast programming and mobile DTV.

History

Many policymakers in Washington, D.C., view high speed broadband deployment as vital to the future of the U.S. communications and technology industries. In early 2009, Congress directed the FCC to develop a National Broadband Plan (NBP) to make recommendations that would ensure all Americans have access to broadband.

On March 16, 2010, the FCC presented to Congress its 359-page plan. FCC Chairman Julius Genachowski and others expressed concerns about a “looming spectrum crisis” – specifically, that the current amount of spectrum designated for wireless broadband is insufficient to meet rapidly increasing demand largely driven by growing sales of smartphones like the iPhone. To avoid this claimed “crisis,” the plan recommends the reallocation for wireless broadband use of 500 MHz of spectrum, with 120 MHz coming from the spectrum currently allocated to television broadcasting.

Since the release of the NBP, the FCC has issued several technical papers and initiated proceedings that would further its goals, including proposing to allow wireless broadband providers equal access to TV broadcast frequencies that could become available in spectrum auctions. Congress is considering legislation that would provide the FCC with authority to conduct incentive auctions of currently licensed spectrum, including some TV spectrum. Although details have yet to be determined, incentive auctions, if approved, may involve bidders, such as wireless companies, bidding for spectrum that is voluntarily relinquished by existing licensees. Those licensees then potentially would receive a portion of the auction revenue.

In June 2010, the White House issued a Presidential Memorandum on “unleashing the wireless broadband revolution” that promoted the idea of incentive auctions. In response to this, NAB President and CEO Gordon Smith wrote Lawrence Summers, then-director of the National Economic Council and assistant to the President for Economic Policy, outlining broadcasters’ core principles moving forward, including:

- Americans must maintain access to digital offerings currently provided by television broadcasters;
- Americans must not lose access to broadcast television based on signal strength degradations or limitations;
- Free TV viewers must continue to be the beneficiaries of video innovation; and
- Americans must not lose quality local TV because of new spectrum taxes.

In August 2010, a study released by the Pew Research Center showed that the majority of Americans do not believe broadband expansion should be a major government priority, and one in four Americans feel this should not even be attempted by government.

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NAB Position

NAB believes that broadcast innovation and broadband development are not mutually exclusive goals. The finest communications system in the world requires both free, over-the-air broadcast television and high speed broadband services. While NAB does not oppose incentive auctions, it does oppose any element of a spectrum reallocation plan that would not be completely voluntary. For example, the NBP references new spectrum fees, which could be designed to force broadcasters to relinquish their licenses.

NAB also believes that no reallocation plan should move forward without a complete accounting of how the airwaves are allocated, licensed and used. Given that wireless companies are currently in possession of spectrum that has yet to be deployed, we strongly support congressional efforts to conduct an inventory and analysis of all available spectrum and how efficiently that spectrum is used.

In considering the efficiency and productivity of the current uses of spectrum, the FCC and Congress should weigh the important public services broadcasters offer to all Americans free of charge. Broadcast television provides local and national news and information, universal service, educational programming and timely and vital emergency information. The future availability of these services could be threatened if free, local broadcast television were eliminated or confined to inadequate levels.

In addition to the services already provided by broadcasters, advances in quality of programming, new options for viewers and other services will lead to increased efficiency of spectrum use. Broadcasters are poised to do even more with their existing 6 MHz channels, offering new services to viewers like mobile digital television. These services can be provided over stations' existing spectrum assignments, further increasing the efficiency of the nation's over-the-air television service.

Action Needed

Policymakers should recognize that broadcasting and broadband are both important aspects of America's communications system and are not mutually exclusive. Congress, the FCC and the National Telecommunications and Information Administration need to work together to compile a comprehensive spectrum inventory to ensure spectrum policy is built on a solid framework. Local broadcasters who continue to operate should not be adversely affected by forced channel relocation, spectrum user taxes or other actions that will impede their ability to innovate and serve the public.

Revised April 2011



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Washington DC 20036 2800
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Providing Viewers with High-Quality Content Through Retransmission Consent Negotiations

Issue

In 1992, Congress established a process to provide local television stations the opportunity to negotiate with and seek compensation from pay-television providers (such as cable and satellite) for retransmission of stations' valuable signals to subscribers. Under the current system, broadcasters and pay-TV providers must work together to reach mutually beneficial agreements.

This process, known as retransmission consent, is critical to local TV stations' ability to provide local news, community and emergency information, as well as top-quality entertainment programming for viewers. For years, profit-driven pay-TV companies have attracted subscribers using broadcast programming. Recently, some have been urging legislators and regulators to change the system, simply because they don't want to compensate broadcasters for their signals.

Broadcast TV content is still by far the most in demand. Broadcast program ratings are significantly higher than programming offered by pay TV channels. In fact, during the 2009-10 television season, broadcast programming dominated the primetime program rankings, accounting for 98 of the top 100 programs.

The recent calls from powerful pay-TV companies for government intervention – such as the right to continue carrying broadcasters' signals without a negotiated agreement, or mandatory arbitration upon a pay-TV provider's request – do not reform or improve the current system. The possibility of government intervention would remove the incentive to fairly negotiate and would reward pay-TV providers who take negotiations out of the board room and into the media and legislature.

Late last year, Massachusetts Sen. John Kerry circulated draft legislation that would have drastically changed the retransmission consent process, putting local news and other valued broadcast services at risk.

Among the changes, the bill would:

- Introduce government arbitration to private, marketplace negotiations;
- Require continued signal carriage after expiration of existing private contracts;
- Establish less consumer notice than found under current FCC rules;
- Require public disclosure of private contractual offers and terms;
- Impose a narrow snapshot review of the actions of each party; and
- Apply these new rules only to broadcaster negotiations.

To date, that legislation has not been introduced.

Also, in December 2010, the chief of the FCC Media Bureau announced that the agency would initiate a rulemaking in early 2011 to review the rules governing retransmission consent negotiations. On March 3, the commission asked for comment on ways to improve the current good faith negotiating and consumer notice requirements, and they also asked for comment on non-duplication and exclusivity rules. Notable in the FCC announcement, however, was their declaration that they lack authority to impose proposals such as arbitration and continued carriage.

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History

Before 1992, cable companies retransmitted the signals of local television stations without the stations' consent and resold those signals to their subscribers for profit. When enacting the 1992 Cable Act, Congress created a process to allow broadcasters to negotiate for fair compensation in return for cable operators' use of stations' signals – the retransmission consent process. Congress stressed that it did not intend to dictate the outcome of the marketplace negotiations between broadcasters and cable operators; the process simply provides stations with the right to negotiate.

In recent years, the FCC reviewed the retransmission consent process and recommended no changes in a report to Congress. The FCC found that the retransmission consent has benefited broadcasters, cable and satellite operators and, most importantly, consumers.

Over the years, many thousands of retransmission consent agreements have been successfully negotiated between local television stations and cable and satellite companies, nearly all without any disruption in service. Simply put, the process is working as Congress intended. Turning back the clock will do more to restrict viewers' choice than enhance it.

NAB Position

Viewers, local broadcast stations and pay-TV operators all benefit from the retransmission consent process. These negotiations are fair and market-driven, and there is no need to change the process that Congress established and has worked well for nearly two decades.

Action Needed

Congress and the FCC should allow broadcasters and pay-television operators to continue to conduct private, market driven negotiations for retransmission consent and avoid tilting the scales in favor of either party. Government intervention would only disrupt a marketplace that has resulted in more programming choices and services for local television viewers.

Revised April 2011



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Washington DC 20036 2800
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Equipping Mobile Phones with Broadcast Radio Capability for Emergency Preparedness

Issue

Nearly everyone has a mobile phone – it's how people keep in touch with family and friends while on the go. For little cost, manufacturers can include a receiver for broadcast radio in mobile phones that would give consumers a convenient new way to access free radio service, and more importantly, improve public safety by ensuring that broadcasters' Emergency Alert System (EAS) messages and critical information reach the widest possible audience.

History

Since the 1950s, broadcasters have been the backbone of the public warning system and remain so today. Broadcasters' emergency information goes well beyond providing EAS messages. Broadcasters often go live with wall-to-wall coverage during emergencies, providing valuable information on storm paths, evacuation routes and other critical information. The next generation of public alerting was envisioned in the post-9/11 world as integrating other technologies or platforms to reach Americans that may be on the move when a major incident occurs. Broadcasters fully support this goal, which would be furthered by including radio receivers in mobile devices.

Unfortunately, the penetration of broadcast radio capability in mobile phones is substantially lower in the U.S. than in the global market. By the end of this year, global market penetration is expected to reach 45 percent of active mobile phones versus approximately ten percent (or less) for the U.S., primarily because mobile phone operators in the U.S. enjoy exclusive control over the manufacturing of handsets for their services.

NAB Position

NAB has been working to explain to both mobile telephone operators and policymakers the benefits to the American public of expanding the availability of radio service in mobile phones.

First, unlike the text-based commercial mobile alert system (CMAS) being developed by the wireless industry that may not be available for another two to three years, radio in mobile handsets is ready today. Hundreds of millions of mobile handsets in Europe already incorporate radio functionality, and in the United States, at least 30 models of mobile handsets currently have this capability.

Second, it is a cost-effective way for ensuring that the public has ready access to lifesaving information. It would cost \$1 or less per device to incorporate radio functionality in a mobile handset. Third, there is no risk that radio receivers in mobile phones will clog up the existing switched wireless networks and impede the delivery of important emergency information. Finally, and most importantly, radio reception in mobile handsets will make Americans safer. A mobile handset with FM radio reception provides consumers with one-stop shopping for both emergency alerts and in-depth emergency information. Indeed, a 2010 survey revealed that 73 percent of Americans believe having a radio-enabled mobile phone would be "important" during an emergency.

Broadcasters have been the primary source for emergency information for six decades and have saved countless lives. For the benefit of the American public, ensuring all mobile devices are broadcast radio ready should be a critical component of any next-generation wireless alerting solution.

Action Needed

Congress, the Federal Emergency Management Agency (FEMA), the FCC and the mobile phone industry should consider ways to expand the availability of broadcast radio service in mobile phones.

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