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The famous "Vast Wasteland" speech that Federal Communications Commission ("FCC") Chairman Newt Minow delivered to a roomful of broadcast industry partisans in 1961 has influenced telecommunications policy, as well as perceptions of television itself.[1] Newt Minow's blunt assessment of the contemporary media fare offered by the marketplace, coupled with his stalwart defense of public interest telecommunications policy, captures the essence of many telecommunications policy debates today. Whether the subject is children's television, the E-rate, access to Internet content, labeling issues, alcohol advertising, or the general rights and obligations of FCC licensees, imbuing marketplace competitors with obligations addressing those societal needs that the marketplace fails to meet adequately is part and parcel of current debates in Congress and at the FCC.

Since 1961, public interest-based telecommunications policy has certainly had its high points and its setbacks. We have made some progress in populating the "wasteland" of the Minow FCC era with additional viewer choices of educational, cultural, and informational merit. Moreover, significant policy battles have resulted in a better articulation of the public interest obligations of recipients of FCC licenses and the public trust. Although advances have been made in certain areas, much of Newt Minow's public interest critique abides. In my view, the awesome power of

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1. Newton N. Minow, Television and the Public Interest, Speech Before the National Association of Broadcasters (May 9, 1961).

our technological resources still has not been harnessed fully to meet the challenges facing society today.

PROGRESS SINCE THE 1960S

First, I want to discuss some of the progress that we have achieved in telecommunications policy since Newt Minow's speech. America has seen the creation of the Corporation for Public Broadcasting and the development of the Public Broadcasting Service and National Public Radio. In my view, the nation's public broadcasting system stations are the brightest stars in our national constellation of viewing and listening choices. During the day, public television continues to meet the needs of children with hours and hours of educational programming, and at night it brings the adult audience unparalleled free over-the-air programming.

THE PROMOTION OF CABLE TELEVISION

In the 1970s and 1980s, Congress and the FCC facilitated the construction of the cable television infrastructure across the country through the 1978 enactment of pole attachment provisions to the Communications Act of 1934,[2] and the Cable Communications Policy Act of 1984.[3] Cable television developed many highly prized consumer programming services for news and information, which included CNN and C-SPAN. Cable television also extended cultural, educational, and entertainment programming to viewers in the form of The History Channel, Lifetime, Discovery Channel, Black Entertainment Television, Oxygen, HBO, Showtime, and Bravo. That is not to say, obviously, that all cable programming is of an elevated or enlightened quality, but I believe that consumers welcome and continue to enjoy the array of programming choices cable offers, though they all too often pay excessive rates for the service.

CHILDREN'S TELEVISION ACT OF 1990

In the early 1980s, the Reagan FCC eliminated the children's television rules that obligated broadcasters to meet the educational and informational needs of the child audience. Congress twice responded with legislation to restore the rules. On the first occasion, my bill to reinstate the rules and to make service to children a condition of license renewal was approved by Congress only to be "pocket vetoed" by President Reagan in 1988. In the subsequent Congress, I again battled successfully for passage

2. 47 U.S.C. § 224 (2000).
3. Pub. L. No. 98-549, 98 Stat. 2779.

of the Children's Television Act (the Act),[4] which President Bush signed into law in 1990.

The Act put a cap on the number of advertising minutes that could be jammed into a half-hour of children's programming, and led to the adoption of the "Three 4 Kids" rule by the FCC, which obligates every broadcaster in the United States to provide no less than three hours of educational programming for children per week.[5] The FCC had proposed such rules, but not yet adopted them, when we successfully undertook to get more than 220 members of Congress from both parties to sign a letter requiring a three-hour minimum for all commercial broadcasters.[6] This letter, unveiled at the end of May 1996, broke the stalemate at the FCC. President Clinton then called for a "summit" in the White House on the subject of children's TV for the end of July 1996, and the "Three 4 Kids" rule was adopted shortly thereafter and became effective September 1, 1997.[7]

EXPANDING TELEVISION TECHNOLOGY TO REACH MORE AMERICANS

In 1990, Congress acted again to expand access to information resources for all Americans when it approved my bill to mandate the inclusion of closed-captioning technology in television sets sold in the United States.[8] This bill addressed the needs of the millions of deaf and hard-of-hearing citizens for whom much of televised news and information was inaccessible. Later, the Telecommunications Act of 1996 would include provisions to assist the blind community by promoting the use of video description technology.[9]

4. Pub. L. No. 101-437, 104 Stat. 996.

5. Policies and Rules Concerning Children's TV Programming Revision of Programming Policies for TV Brdcst. Stations, *Report and Order*, 11 F.C.C.R. 10660; 3 Comm. Reg. (P & F) 1385 (1996) [hereinafter *Children's TV Rules*].

6. Policies and Rules Concerning Children's Television Programming Revision of Programming Policies for Television Broadcast Stations, *Report & Order*, 11 F.C.C.R. 10660, para. 119 n.280, 3 Comm. Reg. (P & F) 1385 (1996).

7. *Children's TV Rules*, *supra* note 5, para. 5.

8. Television Decoder Circuitry Act of 1990, Pub. L. No. 101-431, 104 Stat. 960.

9. Telecommunications Act of 1996, sec. 305, Pub. L. No. 104-104, 110 Stat. 56, 126 (codified at 47 U.S.C. § 613 (2000)).

PROMOTING CABLE COMPETITION AND PUBLIC INTEREST SATELLITE SERVICE

In 1992, the Cable Television Consumer Protection and Competition Act[10] was enacted over President Bush's veto. As lead sponsor, I fought hard to make sure that the final bill contained a number of provisions to enhance competition and other public interest initiatives. It voided all exclusive cable franchises, and thus increased the prospects for head-to-head wireline competition. Moreover, it contained program access provisions making satellite competition a reality, as well as an important provision requiring direct-to-home satellite competitors to set aside capacity for noncommercial, nonprofit programming.[11] Today, this four percent "set-aside" brings educational seminars from universities and growing programming from sources such as WorldLink television to millions of satellite consumers.[12]

THE E-RATE PROGRAM FOR SCHOOLS AND LIBRARIES

In 1994, part of the omnibus telecommunications legislation I drafted in the 103rd Congress contained the "E-rate" provision, obligating telecommunications carriers to extend service to schools, libraries, museums, and community colleges at discounted rates.[13] I coined the term "E-rate" as short for "education rate," to emphasize the fact that it was the educational needs of our nation that were historically underserved by our communications companies, and that such educational institutions could better serve their communities if connections to the information superhighway were as low-cost as possible.

My bill passed the House by a vote of 423-4 in June 1994.[14] Had Sen. Bob Dole (R-KS) not threatened a filibuster in the last few weeks of that congressional session, effectively killing companion legislation authored by Sen. Fritz Hollings (D-SC), we might have had the Telecommunications Act of 1994 instead of 1996. Yet when Congress did return in the next session, a bill emerged that included the E-rate and that was signed into law by President Clinton in February 1996.[15] As implemented by the Clinton

10. Pub. L. No. 102-385, 106 Stat. 1460.

11. *Id.* § 9, 106 Stat. at 1484-86.

12. 47 U.S.C. § 335(b) (2000).

13. National Communications Competition and Information Infrastructure Act of 1993, H.R. 3636, 103rd Cong.

14. H.R. 3636, 103rd Cong., Bill Tracking Report, available at Lexis-Nexis Congressional (1995).

15. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at scattered sections of 47 U.S.C.).

FCC, the E-rate has become a $2.25 billion-per-year program that has helped to wire hundreds of thousands of schools and classrooms.[16]

THE V-CHIP AND TELEVISION CONTENT RATINGS

In 1996, Congress adopted my V-chip amendment to the Telecommunications Act and, as a result, all television sets with larger than thirteen-inch screens that are sold in the United States after January 1, 2000, contained a tool for parents who wished to program the TV set to block all programs that carry ratings indicating inappropriateness for small children.[17] I coined the term "V-chip" (the "V" stands for "violence") to help focus public attention on this technology's potential to block programming that a parent deemed too violent, sexually explicit, or profane without interfering with the First Amendment.

The usefulness of the chip, however, depended on the cooperation of the industry in developing a workable ratings system. Such a system emerged from negotiations between the industry, the National PTA, pediatricians, and others, and went into effect in fall 1997. Both the ratings system and the technical specifications for the V-chip were approved by the FCC in March 1998.[18]

THE "DOT KIDS" INTERNET INITIATIVE

Most recently, on December 4, 2002, President George W. Bush signed into law legislation that would create an Internet subdomain for children.[19] As many parents today know, the Internet often appears to be a veritable jungle of Web sites. When a child logs on to search for games, stories, or educational material, search engines often turn up pages laden with pornography, violence, or other content that is simply not appropriate for young children. Under the auspices of the contract given to a private company to run America's Internet country code, *.us* ("dot U.S."), Congress requires the Department of Commerce to require the designation of a *.kids* ("dot kids") domain, where content would be available that is appropriate for children twelve years of age and younger.

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16. Federal-State Joint Board on Universal Service, *Twelfth Order on Reconsideration in CC Docket No. 96-45*, 16 Comm. Reg. (P & F) 78, paras. 1-2 (1999).

17. Telecommunications Act of 1996, § 551, Pub. L. No. 104-104, 110 Stat. 56, 139-42. The House of Representatives voted August 4, 1995, to adopt the V-chip provision by 224-199. Roll Call No. 634, 104th Cong.

18. Implementation of Section 551 of the Telecomms. Act of 1996, *Report and Order*, 13 F.C.C.R. 8232, 11 Comm. Reg. (P & F) 934 (1998).

19. Dot Kids Implementation and Efficiency Act of 2002, Pub. L. No. 107-317, 116 Stat. 2766 (codified at scattered sections of 47 U.S.C.).

The Dot Kids Implementation and Efficiency Act directs the Department of Commerce, through the National Telecommunications and Information Administration, to accelerate the creation of a "dot kids" domain by making it a secondary domain under our nation's country code top-level domain, which is "dot U.S."[20] The proposed "dot kids" domain will be a cyberspace sanctuary for content that is suitable for kids and will be an area devoid of content that is harmful to minors.

This approach departs from previous congressional activity in this policy area because the new law will not subject all Internet communications to a "harmful to minors" standard.[21] As such, the "dot kids" proposal is not aimed at censoring Internet content per se. Rather, it is crafted to help organize content more appropriate for kids in a safe and secure cyberzone, where the risk of young children clicking outside that zone to unsuitable content, or being preyed upon or exploited by adults posing as kids, is vastly diminished. Organizing kid-friendly content in this manner will enhance the effectiveness of filtering software and may better enable parents to set their children's browsers so their children can surf only within the "dot kids" domain. My efforts in passing the "dot kids" bill were meant to supplement, not supplant, initiatives under way elsewhere by ensuring that our "dot U.S." country code reflects our public interest goals as a society in a way that hopefully can harness the best of advanced technology for kids across the country.

THE AGENDA AHEAD

Although Newt Minow's "Vast Wasteland" speech was delivered forty years ago, part of the upcoming public interest agenda for the nation includes initiatives that he recently has been promoting actively. In May 2002, I introduced legislation which builds upon an idea that Newt Minow has advanced for a permanent trust fund to be created from airwave auction proceeds, to provide grants for public-interest telecommunications initiatives.[22]

The public deserves to reap the benefits of the sale of licenses to its airwaves, and those benefits should not be limited to the offering of new commercial services or the temporary infusion of cash into the federal treasury. The public should also enjoy the "dividends" that can be reaped by reinvesting money raised through use of a public asset in a manner

20. *Id.* at 2767.

21. The "harmful to minors" standard referred to here is that adopted in the Dot Kids Implementation and Efficiency Act of 2002, Pub. L. No. 107-317, 116 Stat. 2766, 2770.

22. Wireless Technology Investment and Digital Dividends Act of 2002, H.R. 4641, 107th Cong. § 309A (2002).

designed to promote educational technology projects, educational software research and development, and initiatives addressing the digital divide.

DIGITAL DIVIDENDS TRUST FUND

The bill that I introduced, and which I will reintroduce in the next Congress, creates a permanent trust fund (the Digital Dividends Trust Fund) from wireless auction revenue to fund such public interest telecommunications initiatives.[23] By splitting the grants into two general categories—human capital telecommunications investments and broadband infrastructure investments for public access and rural development—the Digital Dividends Trust Fund authorizes grants for public interest telecommunications initiatives. These grants would be used to support a variety of projects including: the training of teachers and other personnel at schools and libraries eligible for E-rate funding; research and development for cutting-edge educational software designed to enhance learning in schools; the "digitizing" of educational materials held in our nation's libraries, archives, and museums; and afterschool programs for youth.

"SPECTRUM COMMONS"

Another key public interest initiative that I will continue to advocate is the creation of a "Spectrum Commons." I believe that certain frequencies should be further researched so that high-tech manufacturers, entrepreneurs, and the proverbial "kid in the garage" could make more robust use of wireless communications even if they didn't have to go to an existing wireless company to get "on the air" every time they needed a communications link. If sufficient spectrum were available in unlicensed form, I believe the general public would be a big beneficiary. Such a public set-aside could foster the formation of an open platform for innovation, entrepreneurial activity, and public communications. It would also militate against unhealthy consolidation of spectrum in the hands of too few providers.

An unlicensed area of airwaves will permit the public, through the use of "smart" radio technology and better receiver equipment, to harness the airwaves for countless applications. From "wi-fi" technology and low-power "Bluetooth" wireless connections, to so-called "802.11b" protocols, utilization of publicly available airwaves can help connect people and businesses in cost-effective and spectrum-efficient ways. The "Spectrum

23. *Id.*

Commons" also will help propel economic growth and innovation by opening up the airwaves to new marketplace entry by individuals and entities unaffiliated with established network providers.

BACK TO THE FUTURE

Finally, some of our most important public interest initiatives, in an effort to mitigate against a "vast wasteland" existence for future generations, involve building upon, or restoring, public-interest obligations or mores from a previous era. I think we need to build upon the Children's Television Act. Three hours a week is a paltry commitment to children, especially in the digital era when broadcasters will have increased power and versatility to deliver information to our communities. The obligation and commitment to kids ought to be greater than it currently is and ought to be commensurate in the future with the increased capability that broadcasters possess.

Second, the recent appearance of advertising for liquor is especially disconcerting. A previous generation of media owners and broadcasters wisely rejected airing such marketing because of the effect liquor ads could have upon underage viewers. We need to restore the code of conduct that our parents and grandparents once adhered to in this area.

I continue to believe in the vision of telecommunications networks as a worldwide web of human connectivity. I will continue to battle in Washington to ensure that we use our telecommunications assets for both economic and social progress in the public interest. Making America the world leader, not only in the development of these technologies, but also in their universal application for the betterment of the public, is our dream and remains at the heart of Newt Minow's "Vast Wasteland" speech.

As Irish poet William Butler Yeats once said, "In dreams begins responsibility."[24] It is our responsibility to act to improve telecommunications policy to reflect our faith in free enterprise, the true reality of what the marketplace can deliver on its own, and our hopes for the future of our country.

24. WILLIAM BUTLER YEATS, RESPONSIBILITIES AND OTHER POEMS (1916).