

The Case for Free Air Time
**A BROADCAST SPECTRUM FEE
FOR CAMPAIGN FINANCE REFORM**

By Paul Taylor and Norman Ornstein*

“Popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge brings.”

—James Madison

In our democracy, speech is free but communication is expensive—and never more so than during the campaign season. This is the paradox that lies at the heart of our problems with money and politics. As the cost of political communication keeps rising, the competitive playing field of campaigns keeps tilting toward candidates who are wealthy or well-financed. Not only does the better-funded candidate almost always win in our system, but increasingly, these victories come at the end of campaigns that are so lopsided that they rob voters of genuine choice. In the 435 races for U.S. Congress in 2000, for example, the typical winner outspent the typical loser by nearly three to one during the campaign, and on Election Day, piled up a victory margin of 70 percent to 30 percent—a landslide. A staggering 98 percent of all incumbents seeking reelection were successful.¹

In our gilded age of politics, if you’re a challenger who can’t write a big check to your local television station to pay for a nightly bombardment of ads, you’ll still have your freedom of speech. You just won’t have the ability to be heard, much less elected.

Election campaigns are democracy’s crown jewel, the indispensable moment when the “outs” clash with the “ins” over their competing visions for a better society. They allow for disagreements to be ventilated, fresh starts to be launched, or the status quo to be affirmed. They build mandates and provide for accountability. At their best, they transform a population into a citizenry—and, come Election Day, a citizenry into a sovereign. But when money becomes the arbiter of who gets heard and who gets elected, citizens are denied the contest of ideas and range of choices that are supposed to be what elections are all about. And once the election is over, the public is too often left with elected officials who are more beholden to their contributors than to their constituents.

* Paul Taylor is President of the Alliance for Better Campaigns and Norman Ornstein is a Resident Scholar at the American Enterprise Institute.

This breeds a cynicism that drives citizens away from politics—pushing the cost of communicating to them even higher.

Our democracy has struggled with this dilemma for a long time and for a good reason: It presents a clash of core democratic values. On the one hand, we resist limits on what candidates can say or how loudly they can say it; it offends our cherished principle of free speech. On the other hand, when some candidates can shout and others only whisper, all depending on the size of their wallets, it offends the values of equal access and fair play we also prize in our democracy.

The recently enacted Bipartisan Campaign Reform Act of 2002 (BCRA), commonly known as McCain-Feingold, is the most important effort by Congress in a generation to confront this dilemma. It outlaws the largest and most potentially corrupting campaign contributions, the unlimited “soft money” donations to political parties. It also places contribution limits on the financing of electioneering ads by unions, corporations and interest groups. But the main focus of BCRA is to reduce the supply of big money; it will do nothing to reduce the skyrocketing demand. Nor will it ensure that adequate resources are available for candidates, including challengers, to get their messages across to voters in competitive elections around the country.

For this, we need a second round of reform. But in seeking to level the playing field, we must be mindful of the U.S. Supreme Court’s admonition in its 1976 *Buckley v. Valeo* decision that restricting the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. Rather than restrict speech, we should expand speech. Rather than build ceilings, we should build floors. This approach will not guarantee absolute equality in the volume of speech enjoyed by rival candidates. But it *will* have a powerful leveling effect. For, as political science research makes clear, the most effective way to make campaigns more competitive is to ensure that the less well-financed candidate at least has the seed resources to get a message out.

The best way to build such a floor is to create a system of free air time on broadcast television, as is done in virtually all of the world’s other democracies. The broadcast airwaves are not only the most important communications medium for politics and democracy, they are also a publicly owned asset—like the oceans, the atmosphere and the national forests. Indeed, the airwaves are the most valuable resource of the Information Age, a core ingredient for a variety of emerging, innovative technologies. But broadcasters, who earn huge profits from this public resource, pay the public nothing in return for its use.

In the land of free speech, we have permitted a system of “paid speech” to take hold during political campaigns on the closest thing we have to a public square—our broadcast airwaves. This not only restricts access to our political process, it’s also poor stewardship of a precious public asset. For decades we’ve permitted the broadcast industry to profiteer on our airwaves at the expense of our democracy.

Let’s follow the bouncing ball. Our government gives broadcasters free licenses to operate on the public airwaves on condition that they serve the public interest. During the

A Message from Walter Cronkite

Honorary Co-chairman, Alliance for Better Campaigns

There is no more important challenge facing our democracy than to free our political system from the chokehold of money and special interests.

Candidates should not have to put themselves on the auction block to raise the resources needed to communicate in the modern era. Our politics should be driven by ideas, not money.

One place to look for solutions to these challenges is in my own industry. Broadcast television has become the leading cause of the high cost of modern politics. It makes windfall profits from selling campaign ads, but too often it fails to invest sufficient time or resources in the sort of issue-based news coverage that helps create a better-informed electorate.

Broadcasters have been given billions of dollars worth of exclusive licenses, free of charge, to use our scarce public airwaves—but only on the condition that they serve the public interest.

The best way for this great medium to discharge its responsibility under the law is by providing free air time before elections so that, without having to raise money from special interests, candidates can deliver—and citizens receive—the information needed for our democracy to flourish.

campaign season, broadcasters turn around and sell access to these airwaves to candidates at inflated prices. Meanwhile, many candidates sell access to the government in order to raise special interest money to purchase access to the airwaves. It's a wonderful arrangement for the broadcasters, who reap windfall profits from political campaigns. It's a good system for incumbents, who prosper in the big-dollar, high-ante political culture of paid speech. But it's a lousy deal for the rest of us. It is time for the public to reclaim a share of the airwaves we collectively own to strengthen our democracy.

To best achieve this goal, a free air time system should require television and radio stations to devote a reasonable amount of air time during the campaign season to issue-based candidate forums such as debates, interviews, town hall meetings, etc. And it should require stations to pay a small user fee for the airwaves that would be used to provide qualifying candidates and parties with vouchers to run a reasonable number of free ads in the period before an election. These requirements could be imposed on the broadcast industry as a reasonable part of the seven-decade-old public interest obligation broadcasters have pledged to fulfill in return for the free use of the increasingly valuable public airwaves. Or they could emerge as part of a new compact between the public and commercial spectrum licensees that better fits a 21st century concept of how best to allocate the airwaves.

Free air time is not a panacea; it will not drive money out of politics altogether. But by providing all credible candidates access to the broadcast media regardless of their financial circumstances, it would open up the political process to those currently priced

out of the market. And by creating forums that allow for a free exchange of ideas among competing candidates, it would reduce the relative importance of monied special interests. These steps would provide citizens with more choice, more information, and more power.

Broadcasters and the Public Interest

Virtually all Americans watch television; most watch quite a lot. But when Americans turn on their television sets, they do not automatically think about who is providing the entertainment or news they are watching, or how the stations they watch got the right to send signals to them. Only 31 percent of Americans know that the public owns the airwaves that broadcasters use to transmit television and radio signals. Even more staggering, a full 70 percent of Americans believe that the stations pay the government for their valuable broadcast licenses—only 11 percent know that the stations get their licenses for free.² No wonder—common sense would suggest that commercial enterprises would pay for the exclusive use of a hugely valuable asset they obtain by license.

The public's lack of knowledge in this area notwithstanding, for 75 years, radio and then television broadcasters have had a compact with the federal government: They receive scarce and extraordinarily valuable exclusive space on the public asset of the airwaves—more technically described as the electromagnetic spectrum—in return for obligations to behave in ways that protect and enhance the public interest. Regular commercial television watchers might be excused for missing out on this bargain—there are few occasions where civic, educational and other public interest programming on commercial stations is evident. If they did decide to examine the relationship between broadcasters and the public interest, they would find a fascinating history with at best a mixed record when matching the intent of policymakers and the reality of broadcasting.

By the dawn of the 20th century, the world had been transformed by two dramatic technological advances—the telegraph and the telephone, each relying on wires to create near-instantaneous communications. The next dramatic advance came through wireless means, using electromagnetic waves instead of wires. Italian inventor Guglielmo Marconi created an antenna to send and receive signals from these waves in 1896. In 1900, he obtained a patent in America to allow stations to transmit radio signals using different wavelengths. By 1901, he was sending Morse signals across the Atlantic.

Soon afterward, American physicist Lee DeForest developed the Audion tube that allowed quality sound for live radio broadcasting; by 1910, his company was broadcasting a performance of the Metropolitan Opera live on radio from New York City. Radio was a reality. Few people imagined at the time that a new industry was about to be born. When the U.S. government first responded to the new technology and its use of the airwaves to transmit signals and voices, in the Radio Act of 1912, there was no expectation that the use of the technology would become widespread. The Radio Act empowered the Secretary of Commerce and Labor to issue radio licenses to any citizen upon request—there was no provision to deny such licenses, since the supply of broadcast spectrum was so plentiful, and demand for it relatively weak.

But as with the telegraph and telephone, public demand for radio soon took off. By the mid-1920s an explosion of radio stations in an unregulated spectrum was causing massive interference and no legal authority existed to reduce or eliminate the resulting cacophony. The usable frequencies, it turned out, were not unlimited but relatively scarce, given the available technology at that time. Some plan was needed to allocate and regulate its use, or the public would be denied the benefits of wireless communications, and the nation's economy would be deprived of a new thriving commercial industry, radio broadcasting.

What to do? With no regulatory framework in place, the nation began a debate about how to utilize a valuable public resource for the public good, while at the same time a variety of claimants, commercial and otherwise, vied to capture the valuable right to broadcast without interference on a particular frequency. One way was to license exclusive rights to different frequencies along this wireless spectrum. But not-for-profit groups like educators, labor and religious entities feared that they would be shut out of opportunities to use the new technology by commercial interests, curtailing their free speech opportunities. The nonprofit sector pushed instead for a common carrier system, like the one used for mass transportation (and for telegraphs and telephones). As it applied to radio broadcasting, the common carrier model would have required broadcasters to allow any group or individual to buy air time, ensuring their access to the airwaves. The control over transmission and content would have been separated, as it is today for dial-up Internet access over the phone lines, permitting extensive content and viewpoint diversity.

Commercial broadcasters successfully killed the common carrier idea, working through their National Association of Broadcasters (NAB), formed in 1922 to lobby for rules that would benefit the industry. At their behest, the Radio Act of 1927 adopted a different model: the licensing of individual broadcasters who were granted exclusive rights to use a specific frequency, in return for their commitment to be “public trustees.” Radio broadcasters would neither have to buy spectrum space nor rent it. Like other media, they would have speech rights, including editorial freedom, but they would not be required to grant speech rights—automatic access—to everybody who wanted it. Their privileged, exclusive access to these valuable public forums would come in return for fulfilling certain public interest obligations. This model was reaffirmed and fleshed out in the Communications Act of 1934, which is still the basic framework for all broadcast regulation today.

The Public Trustee Model

The 1927 Act created the Federal Radio Commission, the precursor to the Federal Communications Commission (FCC). It described the “public trustee” model in this way:

[Despite the fact that] the conscience and judgment of a station's management are necessarily personal...the station itself must be operated as if owned by the public....It is as if people of a community should own a station and turn it over to the best man in sight with this injunction: 'Manage this station in our interest.' The standing of every station is determined by that conception.³

However, neither in the 1927 Act nor in the 1934 Act, nor subsequently, did Congress define clearly what actions by broadcasters would represent managing their stations in the public interest—or, as the 1934 Act phrased it, “in the public interest, convenience and necessity.” Congress has from time to time legislated a public interest obligation for broadcasters, but more generally has delegated vast authority to the FCC to determine what the public interest obligations of broadcasters would be. For the most part, though, the stations themselves have defined their own public interest activities and obligations.

As radio expanded to include FM in 1933, and when television emerged after World War II, the same basic model was applied. And the same model was regularly tested in the courts, and upheld. The Supreme Court has made clear that the First Amendment can be applied in different ways to broadcasters compared to newspapers and other print media, because of their exclusive licenses to access the scarce public resource of the airwaves, and that the licenses issued to broadcasters do not create any property rights beyond the limited term of the license.

The landmark Supreme Court decision in this area was the 1969 *Red Lion Broadcasting Company v. FCC*. While that decision has come under criticism in recent years, it remains the law of the land. In *Red Lion*, the Court said:

When there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish.... A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens.⁴

In other words, because an exclusive public license to broadcast denies other citizens direct access to the airwaves, the U.S. government may require a broadcast licensee “to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves.”⁵

As early as 1929, two years after the passage of the Radio Act of 1927, the Federal Radio Commission (FRC) laid out some of the activities that would qualify for the public interest standard in *Great Lakes Broadcasting Co.* The FRC said a station should present diverse programming with diverse voices, including entertainment, music, education and instruction, important public events and discussions of public questions.

In 1946, the FCC issued its own policy directive on the public interest standard, known as “The Blue Book.” It mandated four basic activities stations must demonstrate they had engaged in when they applied for license renewal, including live local programming and public affairs programming. In 1960, the Federal Communications Commission offered a more elaborate description of 14 public interest activities for broadcasters. The definitions changed over time, as did the vigor of FCC oversight and regulation, but the concept of public trustee in return for free use of the airwaves remained.

Many regulations have been relaxed in recent years—a trend exemplified by the federal government’s decision during the Reagan Administration to repeal the Fairness Doctrine, which had required broadcasters to air reports about important public issues and to ensure that a full range of viewpoints were represented.⁶ But there also has been a stiffening up in some areas. For example, the FCC imposed a new rule in 1996 which requires that a station must air at least three hours a week of educational children’s programming if it wants to qualify for an expedited review of its license renewal application.

In the area of political discourse, there are three laws on the books. A *reasonable access* provision requires that stations sell commercial air time to candidates who can afford to pay for it; an *equal opportunities* provision requires that stations which have sold spots to one candidate must provide his or her opponent with the chance to purchase comparable air time at a comparable price; and the *lowest unit charge* provision is supposed to assure that candidates receive the same low rates as stations’ best, year-round product advertisers. Evidence strongly suggests that the laws do not work well; candidates struggle to get prime spots close to the election and have to pay substantially more than lowest unit charge to obtain them.

Broadcasters often complain about their special burdens as public trustees—even as the National Association of Broadcasters regularly trumpets exaggerated estimates of the billions broadcasters commit every year to meet their public interest obligations. Whatever they spend, and whatever the burden, it has become clear that the value to the public has become less and less, even as the financial value of this compact to the industry has grown astronomically. In 2001, a leading Wall Street analyst estimated that if the airwaves used by the broadcasters were sold at auction—the way the federal government has been auctioning off other portions of the spectrum in the last decade to cellular phone companies and other wireless communications firms—it would bring in a staggering \$367 billion to the public treasury.⁷

Not only do broadcasters continue to pay nothing, but Congress and the courts have continued to confer new benefits on the industry to ensure that the “public trustee” model remains viable in a world brimming with new technologies.⁸ In 1992, for example, Congress passed a law requiring that cable operators must carry all the programming of the local broadcast stations in their geographic area. The cable industry tried to block this law (citing its First Amendment rights), but the U.S. Supreme Court ruled it was necessary in light of the broadcasters’ unique obligation to serve the public interest (*Turner Broadcasting System v. FCC, 1994*). Then in 1996, the NAB convinced Congress to loan all television license holders an additional six megahertz (MHz) of spectrum in order to facilitate the industry’s transition to digital technology.

A Corporate Welfare Grant to Broadcasters

Sen. John McCain [R-AZ] called this new grant “one of the greatest scams in American history”; then-Senate Majority Leader Bob Dole called it a “giant corporate welfare program”; and William Safire of *The New York Times* wrote that it was “a rip-off on a scale vaster than dreamed of by yesteryear’s robber barons.” But Congress went ahead,

once again basing the grant on the broadcasters' public trustee status. Six years later, most of the additional spectrum space loaned to broadcasters lies fallow because high definition television sets are still priced far beyond the reach of the typical consumer. Meantime, a severe spectrum shortage in this country has hobbled the development of the wireless Internet. As a result, some broadcasters are now lobbying the federal government for permission to sell to other commercial users—presumably for tens of billions of dollars—those excess spectrum rights the government gave them for free.⁹ That's public service?

Apart from broadcast television and radio, the United States has moved to different models in recent years to allocate its scarce and valuable spectrum. Auctions have been the primary means; wireless services, among others, have paid tens of billions of dollars into the public treasury in return for their airwaves. Satellite television providers have had to submit to government regulation and provide space for other public purposes. In light of those experiences, the continued heavy demand for spectrum space, and the broadcasters' hold over 12 MHz of the most desirable frequencies, it is time to step back from the antiquated broadcast compact and reconsider its terms.

Bush: Charge an Annual Spectrum Rental Fee

The Bush Administration has taken a step in that direction; its 2003 budget includes several billion dollars in projected rent from broadcasters for continued occupation of both the analog and digital allocations of spectrum after 2006. The Administration's proposal is a way to encourage the rapid transition of broadcast television to a digital format, and the timely return of the analog spectrum for auction. But the plan might also serve as a precursor of a broader policy change: The government could start charging broadcasters annual rent for the licensed use of spectrum, instead of giving it free in return for vague and diffuse public interest responsibilities.

This is not a new idea—it was proposed many years ago and again recently by former FCC General Counsel Henry Geller.¹⁰ But it may be an idea whose time has come. Broadcasters would continue to have exclusive access to valuable public spectrum, to use as they see fit—but without the artificial constraints of public interest obligations. In return, they would pay a reasonable rent, with the proceeds going to make sure that the public interest is served on television and radio. That rent may come in the form of dollars—or partially in the form of in-kind contributions, including free time for political discourse.

Whether it is achieved through a re-invigorated public interest standard or through a new spectrum usage fee, it's clear that free air time will *only* come about over the strenuous opposition of the broadcast industry. It has opposed dozens of free air time proposals through the decades, most recently in 1998, when President Clinton devoted a portion of his State of the Union speech to a call for the FCC to adopt such a rule. "The airwaves are a public trust, and broadcasters also have to help us in this effort to strengthen our democracy," Clinton said. But the proposal never got out of the starting gate. Key Congressional leaders who are friendly to the broadcast industry and averse to the idea of

free air time going to their campaign opponents threatened to cut off appropriations to the FCC if it proceeded with a free air time rulemaking. In addition, the idea of having the FCC develop a free air time system was opposed by some congressional leaders, such as Sen. John McCain, who supported the concept but felt strongly that it should come about through legislation rather than regulation.

In short order, the FCC backed off. With Clinton distracted that year by the Monica Lewinsky scandal and impeachment proceedings, the White House never put any political muscle behind its proposal. The closest it came to reviving the idea was later in the same year, when it appointed a White House advisory panel, co-chaired by a co-author of this paper, Norman Ornstein of the American Enterprise Institute, and Leslie Moonves, the president of CBS Television, to update the public interest obligations of broadcasters in light of their recent grant of additional free spectrum to facilitate their transition to digital technology.

Clinton and Vice President Al Gore made it clear they wanted the panel to develop a free air time proposal. But the 22-member panel had seven broadcast industry representatives on it, including panel co-chairman Moonves. While all of the panel's 15 representatives of the public supported a free air time mandate, all of the broadcasters were opposed. In an effort to break the impasse and encourage some behavioral change among broadcasters, the panel came forward with a compromise, strongly supported by both co-chairs and endorsed by the full committee. It recommended that television stations voluntarily air a minimum of five minutes a night of "candidate-centered discourse" in the month preceding all elections. With just a handful of exceptions, however, the nation's 1,300 local television stations roundly ignored this call for voluntary action. The typical local station aired just 45 seconds a night of candidate discourse in the month before the 2000 election—far short of the modest five-minute a night standard. If ever an opportunity existed for broadcasters to show that the compact they have with the public trust still works, it was here. Clearly, if there is to be behavioral change, it will have to come as a result of legislation rather than persuasion.

Television, Money and Politics

Until now, the search for answers to the problems of money and politics hasn't taken most reformers to the doorstep of the local television station. But it's time that it did, because that's where the biggest chunk of money in modern campaigns winds up. Money and election campaigns appear to be in a perversely symbiotic relationship for broadcasters: The less "free" news coverage of elections they offer, the more money stations make selling political ads to candidates who need to reach the big audience that only broadcast delivers.

Gouging Democracy: Campaigns as "Collection Agencies" for Broadcasters

"Today's political campaigns function as collection agencies for broadcasters," former Sen. Bill Bradley quipped as he sought his party's presidential nomination in 2000. "You simply transfer money from contributors to television stations." During that campaign year, television stations took in an estimated \$1 billion of the estimated \$4 billion in overall campaign spending by candidates, parties and issue groups at all levels of politics—federal, state and local. Among competitive races for all federal offices and governorships in 2000, and among winning U.S. Senate candidates that year, television ads accounted for more than 50 percent of total campaign spending.¹¹

Television's haul from politics has been rising at breakneck pace. Between 1980 and 2000, the amount of money spent on political ads more than quadrupled, even after adjusting for inflation. One reason is that there are far more political advertisers than ever before. A generation ago, political advertising was pretty much the exclusive province of candidates. Since then, however, a series of administrative and court rulings have opened campaign finance loopholes that permit parties and interest groups to pay for campaign ads with funds that are not subject to the regime of contribution limits that applies to candidates. By 2000, more than 40 percent of the 880,172 campaign ads that aired in federal races in the nation's top 75 media markets were sponsored not by candidates but by interest groups and parties.¹² And because a high percentage of these party and group ads consisted of attacks on a candidate, these candidates found themselves under more pressure to spend more money on more ads to defend themselves.

This arms race of political ad spending has had a predictable impact on the unit cost of air time during the height of the campaign season: It has soared. The Center for the Study of Elections and Democracy at Brigham Young University looked at 17 media markets across the country in 2000 where there were competitive congressional and senatorial races and found that the average cost of a 30-second political spot tripled from the end of August through the end of October. In non-election years, ad prices during that same time period increase by roughly 20 percent (reflecting the start of the holiday shopping season). This suggests that virtually all of the price spike in those markets in the fall of 2000 resulted from stations profiteering on the election-driven demand.

"The rates are becoming extortionist," James Jordan, director of the Democratic Senatorial Campaign Committee, said during the 2000 campaign. "They can charge the moon and get it," lamented David Keating, executive director of the Club for Growth, a

group that ran political spots. Dan O'Connor, general sales manager of WSYT-TV in Syracuse, New York, mused in 1999 about what it was like to sell air time in the heat of an expensive statewide political campaign: "It's like Santa Claus came."¹³

This gouging by stations occurred despite a law Congress passed in 1971 that was designed to insulate candidates from these classic supply-and-demand pressures. Known as the "lowest unit charge" law, it requires that television stations, as a condition of receiving free licenses to use the public airwaves, must offer candidates the same low rates they give their high volume, year-round commercial advertisers. But the law was poorly drafted and has never provided candidates with the safeguards that its name promises. That's because candidates have unique needs as advertisers. In the heated thrust-and-parry of a political campaign, they need assurances that their ads will run exactly where and when they place them. If the opponent launches an attack in an ad on the six o'clock news, the candidate wants to be sure his or her response ad will air in the same time and place. Stations charge high premiums for such "non-preemptible" time slots and nothing in the lowest unit charge law prevents them from doing so.

After the 2000 campaign, the U.S. Senate took a step toward closing this loophole. In March, 2001, it approved an amendment to the McCain-Feingold campaign finance bill that would have allowed candidates to purchase "non-preemptible" time at the lower "preemptible" rates most product advertisers are content to use. The lopsided vote in favor of this amendment—69 to 31—was a powerful testament to just how fed up members of the Senate have become at stations' gouging.¹⁴ However, the broadcast industry successfully lobbied to remove that provision when the companion Shays-Meehan campaign finance bill was taken up in February, 2002, by the House of Representatives.

Even if the 1971 lowest unit charge provision had been improved, it will always be more bandage than cure. It is essentially a system of price controls, and over time, such mechanisms invariably fall prey to evasion. For a more market-friendly and sustainable way to lower the cost of campaign communication on the broadcast airwaves, the system of vouchers for free political ads described later in this paper would work far better.

Tuning Out Democracy: The Decline in Substantive Campaign Coverage

The trouble at the intersection of television, money and politics isn't limited to the rising cost of ads. The other problem is the declining amount of time that broadcast television devotes to substantive coverage of issues, debates, conventions, candidate speeches and the like. These two problems feed off one another. The less exposure candidates receive from "free media" coverage, the more they must rely on paid ads to reach the broad audience that only television delivers.

To cite one striking example: During the final three months of the 1998 California governor's race, stations in that state's seven largest cities devoted, on average, just *one half of one percent* of their news coverage to what was arguably the most important political race in the country that year.¹⁵ The California gubernatorial candidates, in turn, spent most of the campaign season dialing for dollars to pay for the nearly \$100 million

worth of political ads they ran on those same stations in hopes of getting their names and ideas out across the state. “The political unit of today’s commercial TV station is the sales department, not the news department,” Gov. Gray Davis’s campaign manager Garry South complained after the election was over.

The broadcast industry’s retreat from substantive campaign coverage isn’t just a California phenomenon. It stretches from coast to coast; it has affected the national networks as well as local stations; and it has been exhaustively documented over the years by scholars as well as watchdog groups. A summary of findings from the 2000 campaign:

- The three national network nightly newscasts devoted 28 percent less time to coverage of the 2000 campaign than they did to the 1988 campaign, the last open-seat contest for the presidency.¹⁶
- The time devoted by the networks to coverage of the two national party conventions in 2000 was down by two-thirds from 1988.¹⁷
- Just 12 percent, a record low, of all presidential campaign coverage on the nightly network newscasts was devoted to the candidates’ own words. Reporters received 74 percent of election news air time and the remaining 14 percent was divided among voters, pundits, pollsters, campaign staffers and others.¹⁸
- The length of the typical presidential candidate sound-bite on the nightly newscasts also set a record for brevity—7.8 seconds. In 1968, it was 43 seconds.¹⁹
- Of the campaign stories that the national network nightly newscasts did air in 2000, 71 percent focused on the horserace rather than on the issues.²⁰
- A total of 22 television debates were held by presidential candidates during the 2000 primary campaign, but of these, just two aired on a national broadcast network, neither in prime time. The other 20 were shown only on cable, public television or a local broadcast station in the city where the debate was held.²¹
- For the first time ever, two of the four national networks (Fox and NBC) declined to carry all of the general election presidential debates—opting instead to counter-program with sports and entertainment.
- The typical local television station in a large or medium sized city aired just 45 seconds a night of candidate discourse in the month before the 2000 election,²² and the national networks aired just 64 seconds a night²³—both far below a five-minute a night voluntary standard recommended by a White House advisory panel charged with updating the public interest obligations of broadcasters.

In the early decades of television, the national network newscasts provided substantive political coverage not just out of a commitment to public service, but as a badge of journalistic excellence. Their cameras transformed debates and conventions and election nights into something they had never been before—mass spectacles. Their anchormen served as tour guides, deciphering the speeches and platforms and infighting for the uninitiated. Up until the late 1970s, ABC, CBS and NBC between them attracted 75 percent of the nightly television audience to their newscasts, and their close attention to campaigns helped to anchor politics on center stage of our national life. “If it didn’t happen on television,” went a favorite political aphorism of the era, “it didn’t happen.”

Much has changed in the generation since then. Campaigns have lost both their novelty and lure as television events; today’s audiences find them dull, grating, synthetic. The broadcasters have lost substantial slices of their audience, first to cable and more recently to the Internet. And politics has lost its pride of place, struggling to keep its head above water in a popular culture more consumed by money and entertainment.

Rather than resist these dynamics, broadcasters have given in to them—and in the process made them stronger. They have offered up what amounts to a Let-’Em-Eat-Cable defense for their abandonment of political coverage. Veteran ABC correspondent Sam Donaldson ruefully acknowledged during the midst of the 2000 primaries that his network’s nightly newscasts had “simply forfeited the field” of campaign coverage to CNN, MSNBC and the Fox News Channel. “For us to run long programs in prime time as a public service doesn’t make a lot of sense anymore to our bosses,” he said.

The New Media: An Uninformed Electorate

One of the paradoxes of this new era of “technological plenty” has been that as more political information has become more readily available on more different kinds of media, fewer people have chosen to avail themselves of it. Polls taken throughout 2000 showed a decline in citizen interest in that presidential campaign compared to previous ones, even though it was apparent from Labor Day forward that the contest between George W. Bush and Al Gore was headed for a tight finish.²⁴ Because so few people were interested, not many took the time to bone up on the issues. A nationwide survey taken two days before the election found that more than half of those polled could not answer basic questions about Bush’s position on taxes, abortion and gun control, or about Gore’s position on Medicare prescription drug plans, Social Security, school vouchers and affirmative action.²⁵ These findings came at the end of a campaign in which fewer people than ever in the television era followed the campaign on broadcast television, while more people than ever followed it on cable and the Internet.²⁶ The lesson seems clear: If politics cannot win the battle for eyeballs in the broadcast world, it cannot recover in the narrowcast world.

A quick look at viewership levels drives the point home. Even after a generation of declining ratings, the ABC, CBS and NBC nightly network newscasts still draw a combined audience of 30 million. Meantime, CNN and the Fox News Channel each average about 1 million viewers in prime time, but during slow news periods, those numbers drop sharply. Network television may not be the colossus it once was, but it’s

still the place that sets the tone for our ongoing conversation of democracy. NBC chief executive officer Robert Wright had it right when he told a gathering at the National Press Club in January, 2000: “Only the NBCs, ABCs and CBSs of the world can provide a shared experience that affects and influences our collective identity as a nation.”

And even if one day all the political niches on cable and the Internet were somehow to aggregate a mass audience that rivals the one that broadcast now delivers, there would still be the troubling issue of cost. Only broadcast comes into everyone’s home for free; that’s why it has achieved 99 percent market penetration, and it’s one of the reasons it receives such friendly treatment from lawmakers and regulators. Cable and Internet connection fees start at about \$40 a month and range upwards. Left unchecked, the broadcasters’ Let-‘Em-Eat-Cable rationale for abandoning political coverage would lead to a “subscription democracy” in which the only citizens who had a front row seat to their presidential campaign would be those who could pay a monthly fee for the privilege. Surely that’s not progress.

Television isn’t the only guilty party here; political campaigns also have had a large hand in shrinking their own audience. The irony is that in their very effort to turn themselves into made-for-television spectacles, modern campaigns have managed to make themselves less rather than more appealing to the general public. Synthetic candidates, scripted conventions, programmed sound-bites and incessant attack ads turn out not to be the way to win loyal viewers—especially not viewers primed by television pundits to be on the lookout for the packaging in politics.²⁷ On the other hand, these often are the winning tactics in low-turnout campaigns, where the name of the game is to drive down your opponent’s vote total rather than to build up your own.

It is not television’s job to teach politicians how to run campaigns that make for better television and a more engaged citizenry. But it is the job of journalism, including broadcast journalism, to make what’s important interesting. A political campaign is inherently important. It can have a direct impact on those things that most of us hold dear—health, wealth, security, environment, education. A political campaign also has all the ingredients to be interesting—character, plot, drama, a suspenseful ending and an important underlying purpose. Moreover, it is the only story for which the audience chooses the ending—and, by so doing, chooses its own future. Yet somehow when all of these elements are tossed into the broadcast media blender, the whole concoction comes out as “ratings poison.” This is not merely a failure of politics; it is also a failure of journalism.

Many leading broadcast journalists have reached the same conclusion and point an accusatory finger at their industry’s fixation on profits. Network-affiliated local television stations across the country typically run operating profit margins of 30, 40 and even 50 percent annually, yet these high margins have served mainly to whet the appetite for more of the same in the boardrooms of the corporations that own them.²⁸ “Ratings are about all that most people in television give a damn about,” CBS anchorman Dan Rather told a symposium at Harvard in 1998. “... [Business pressures] overwhelm journalistic instincts.” These sorts of alarm bells have been sounded for years, by critics both in and out of broadcast television, and still the industry continues its retreat.

The best remedy is to enact free time legislation that would require broadcasters to air forums that would open up the discourse of campaigns to something more nourishing than attack ads, sound-bites and synthetic spin. Such forums may not transform campaigns overnight, but at least they'd create a healthier set of incentives than now exists. Broadcasters would want to attract viewers and candidates would want to win votes—so they'd both have a stake in finding ways to make good television. It may seem counterintuitive to try to revive campaign discourse on the very medium that's contributed so much to its demise. But any real hope for reform will have to start there—for that's where the most important political conversation still takes place.

A Free Air Time Proposal

Any free air time system should have six related—but distinct—objectives. First, it should reduce the cost of candidate communication. Second, it should increase the flow of political information on the broadcast media. Third, it should strengthen, not weaken, political parties. Fourth, it should strengthen, not weaken, political competition—it should not be yet another incumbent protection mechanism. Fifth, it should not be “welfare for politicians,” simple grants of time given to all candidates without any effort in return. Sixth, as important as any other goal, it must be workable—flexible enough to fit in a system where different districts and states have different television markets and costs, and where candidates may have very different communications needs. What works in South Dakota, where there are a few clear media markets and one congressional seat, may not work at all in the New York metropolitan area, covering two or three dozen congressional districts across three states. What follows is an outline of one workable and flexible approach to achieve these goals.

1. A VOUCHER SYSTEM FOR FREE POLITICAL ADS

The free air time system would provide vouchers for a reasonable amount of free advertising time to candidates and to political parties. The only candidates who would receive direct grants of vouchers would be those running for U.S. House and Senate seats who had first raised a threshold amount of contributions in small donations. In addition, each of the two major political parties would receive large block grants of broadcast vouchers in each election cycle—which the parties could use to air their own ads, or pass along for use by any general election candidate the party supported for any local, state or federal office. Minor parties that met qualifying thresholds would receive smaller blocks of free air time vouchers.

The voucher system would be financed by a spectrum usage fee amounting to roughly one half of one percent per year on the gross annual revenues of the nation's 1,300 local television station licensees and 13,000 local radio station licensees, either as a new form

AND NOW A WORD FROM THE REST OF THE WORLD

From South Africa to Sweden, from Australia to Israel, from Brazil to Japan, virtually all of the world's democracies require broadcasters to provide free political air time during the campaign season. Indeed, a 2001 cross-national survey found that free air time is the most widely used campaign finance regulation in the world—more common than disclosure regulations, bans on corporate contributions, spending limits, contribution limits or public financing. Of the 60 countries surveyed, the United States was one of just seven nations that did not have free air time in some form.*

The details of the free air time systems used around the world vary according to each country's political culture, electoral system and regulatory regime. In countries that have parliamentary democracies, the free air time typically goes to parties rather than to candidates. Some countries (such as Britain and France) prohibit paid broadcast advertising on top of the free air time; others (such as Canada and Venezuela) allow for both. Some countries impose format and content restrictions on the free time segments; others don't.

Perhaps the best-known free air time system is the one used in Britain. In the 2001 campaign, the Labor and Conservative Parties were each allotted five five-minute segments for the five-week campaign, and the smaller Liberal Party was allotted four segments. The segments aired on the state-owned broadcaster (BBC) as well as on the commercial networks. They included everything from celebrity endorsements to footage of candidates shaking hands, making speeches and discussing issues. In addition, the party leaders held a televised press conference each morning, and they routinely submitted to in-depth interviews on television and radio.

One result of all this free broadcast exposure was that the price tag of the entire 2001 election campaign for Britain's 651 member House of Commons (which, in turn, elected the prime minister) was \$60 million. That's 1.5 percent of what we spent on our 2000 national election. Yes, Britain is a smaller country and its campaigns don't last nearly as long as ours do. But if they can pull off a national election for less money than a single candidate here spent getting elected mayor of New York City, maybe the Brits jolly well know something we don't.

of public interest obligation, or as a portion of a spectrum rental fee in lieu of those obligations.²⁹ Based on 2001 advertising revenues alone, a 0.5 percent spectrum usage fee could finance broadcast vouchers with a market value of at least \$640 million per two-year election cycle.

2. A VOTERS' TIME REQUIREMENT

All television and radio licensees would be required to air a minimum of two hours a week of candidate discussion of issues in the four to six weeks preceding every election. At least half of these segments would have to be aired in prime time or drive time; no segment that aired between midnight and 7 a.m. would count toward meeting this obligation. The formats would consist of debates, interviews, candidate statements, town hall meetings, mini-debates or any other similar news or public affairs programming of a broadcaster's choosing. Within these broad guidelines, all decisions about when the segments should air, how long they should be, what races they should focus on and what formats should be used would rest with local stations.

Taken together, these two provisions would make political campaigns more informative and more competitive. They would be especially helpful to challengers, who often struggle to raise money and as a result have difficulty being heard by the broad public. By removing this barrier to entry, these provisions would open political campaigns up to the vitality that comes from fresh ideas, new candidates, and greater competition. But most of all, they would be helpful to the public. During the campaign season, citizens would receive a far richer diet of political information than they now get from television and radio. This would place them in a better position to cast an informed vote.

In the form outlined above, such a free air time system would not place limits on how much additional broadcast advertising a candidate could purchase. Some would argue that the absence of such a limit fatally detracts from the ability of the proposal to reduce the role of money in politics. There would be nothing, these critics would point out, to prevent well-financed candidates from airing a barrage of paid ads on top of the free ads they would air with their vouchers. Money would continue to dictate how loudly a candidate could speak.

An alternative view, however, is that by at least providing a floor of communication resources to candidates, this approach would help level the playing field. Research on campaign spending shows that the most important variable in determining whether a race will be competitive is not how much money the better financed candidate spends, but how much money the less well financed candidate spends. If that candidate, typically a challenger, has enough resources to get a hearing, he or she is in a much better position to make a strong race.³⁰ Moreover, the "voters' time" provision of this free air time system would also provide opportunities for many more candidates, regardless of the size of their campaign war chests, to get their message out over the airwaves in debates, issue forums, town hall meetings and other formats.

A Spectrum Fee for Free Air Time: Key Questions

There are many important policy questions raised by this free air time proposal:

Would a free air time bill be constitutional?

The broadcast industry maintains that such a measure would violate its First Amendment rights to free speech and its Fifth Amendment protections against a “takings” of its property.³¹ But more than 70 years of legislation, regulation and court rulings argue strongly against its position. In the *Red Lion* ruling in 1969, which we discuss above and which remains the key Court doctrine on broadcasting and the First Amendment, the Supreme Court held that when the government regulates access to the spectrum, it must balance the First Amendment rights of broadcasters against the First Amendment rights of the public, and that when these rights come into conflict, the rights of the public are “paramount.” The court reasoned that “it is the purpose of the First Amendment to

A GENERATION AGO, CONGRESS TRIED TO LIMIT POLITICAL ADVERTISING

In 1970, a Congress that was alarmed at the rising cost of campaign communication enacted the Political Broadcast Act (S. 3637), which imposed limits on television and radio spending by all candidates for federal office and for governorships. But President Nixon vetoed it, arguing that the bill would still allow for unlimited spending on non-broadcast media. “This bill plugs only one hole in a sieve,” Nixon said in his veto message.

The following year Congress passed the 1971 Campaign Act, which resurrected and broadened the spending limits in the vetoed measure. The 1971 law limited federal candidates to spending no more than ten cents per eligible voter or \$50,000, whichever was greater, on all communications media, including print and billboards as well as broadcast. Not more than 60 percent of these expenditures could go to television and radio.

These limits were in effect only for the 1972 election, and contributed to a sharp decline in broadcast spending on congressional races that year compared to 1970 (political factors also played a role).

In 1974, Congress enacted the FECA amendments, which replaced the communication limits in the 1971 law with a broader overall mandatory spending limit on all federal candidates. But these new mandatory limits never went into effect. In *Buckley v. Valeo* (1976), the U.S. Supreme Court, equating spending with speech, struck down mandatory spending limits as an abridgement of the speech rights of candidates.

The high court did let stand two other parts of the 1974 act: The system of mandatory contribution limits for federal candidates, and the system of public financing and voluntary spending limits for presidential candidates.

Since the landmark *Buckley v. Valeo* decision, however, all proposals for mandatory spending limits in political campaigns have been regarded as constitutionally off-limits.

preserve an uninhibited marketplace of ideas ... rather than to countenance the monopolization of the market,” and thus, it is “the right of the viewers and listeners, not the right of the broadcasters, which is paramount.”

In the *FCC v. League of Women Voters of California* (1984), the court reinforced this doctrine, holding that the government has a compelling interest in ensuring that “the public receives through the [broadcast] medium, a balanced presentation of information on issues of public importance that otherwise might not be addressed if control of the medium was left entirely in the hands of those who own and operate broadcasting stations.”

In *Buckley v. Valeo* (1976), the court observed that “efforts to ‘enhance the volume and quality of coverage’ of public issues through regulation of broadcasting may be permissible where similar efforts to regulate print media would not be.” And in upholding the “reasonable access” provision of existing law against the broadcasters’ First Amendment challenge, the court noted that the provision makes “a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process.” (*CBS v. FCC*, 1981). Over the years, the broadcast industry has mounted multiple challenges to the “scarcity rationale” for regulation, arguing that in an era of proliferating information technologies, what broadcasters provide is neither scarce nor unique. But the court has taken the view that scarcity persists because there are still many more people who want to broadcast over the airwaves than there are available frequencies.

As for the Fifth Amendment “takings” argument, the Communications Act is clear and the courts have long held that broadcasters have no “property interest” as a result of their licenses to use the airwaves, and thus there could be no takings.³² Other industries, including cell phone and satellite broadcasting companies, have been required to pay billions of dollars to the federal government for spectrum licenses assigned by auction since 1994.

How would the voucher system work?

Candidates could use their vouchers on whatever television or radio station was most advantageous to them, but they would “pay” prevailing market rates. So, for example, it might cost a candidate in New Mexico \$300 worth of vouchers to air a 30-second spot on the local 6 o’clock news, while a candidate in New York City might have to spend 10 times that many vouchers for a similar spot on the local news there. This creates real-world pricing incentives that will result in the most politically efficient and market-friendly use of the vouchers.³³ Moreover, because the vouchers would be financed by a gross revenue tax on broadcasters, all local stations would share an equitable financial burden, regardless of how many candidates redeemed vouchers at their stations.

How would Congressional candidates qualify for vouchers, and how many could they receive?

To qualify, a Congressional candidate would have to raise at least \$25,000 in donations of not more than \$200 apiece. Once the candidate met that qualifying threshold (e.g., \$25,000 in small contributions), all donations of \$200 or less would be matched in broadcast vouchers on a two-for-one basis, up to a limit of \$250,000 per House candidate.³⁴ So if a House candidate raised \$125,000 in small donations, he or she would receive the maximum of \$250,000 in broadcast vouchers. The limits for Senate candidates would vary according to the population of the state, most likely based on a multiple of the number of House districts in that state. In a mid-sized state with ten House districts, for example, a Senate candidate would be able to receive up to \$2.5 million in broadcast vouchers.

Of course, there can be many variations on these thresholds and limits. Whatever the variation, the important policy goals should be, first, to maximize the clout of small donations from individuals and, second, to strike a reasonable balance between reducing barriers to entry and assuring that vouchers only go to candidates who have met a threshold test of political viability. This system would have the added virtue of providing an assist to candidates running against self-financed multi-millionaires—who could not easily raise large sums from small contributors.

Aren't these vouchers public financing of campaigns by another name?

In a sense they are. The difference is that public financing systems are paid for by taxpayers, whereas vouchers represent a return to the taxpayers on a public asset they already own, the broadcast spectrum. At the same time, candidates have to work to receive the vouchers; they come as a reward for expanding the base of political contributors to more small donors. Given the opposition of many members of Congress to taxpayer-supported public financing systems, vouchers may be a more politically achievable way to put public resources into the hands of candidates. But there is no reason that free air time and public financing cannot co-exist, or be blended into one system.

Why distribute additional large blocks of vouchers to the political parties?

Several reasons. First, it is a way to get vouchers to thousands of state and local candidates without having the federal government trying to micromanage which races in which states in which years should get what quantity of vouchers. Let the parties make those allocation decisions; it's their business.³⁵ Second, it is a way to create a "secondary market" in vouchers—in effect, turning them into a fungible communications asset. Suppose a U.S. House candidate is running in an urban district where it doesn't make sense to use broadcast advertising because the cost is prohibitive. That candidate trades her vouchers into her party, in return for an asset that the candidate would find more cost-effective, such as direct mail. The party, in turn, makes her unused vouchers available to a candidate in another district who can make more efficient use of them.

Finally, a political party is the one permanent political institution that has an ongoing interest in electing challengers. If parties distribute their vouchers wisely, more campaigns will become more competitive. One way to think of these large block grants of party vouchers is as a clean replacement for soft money. What is objectionable about soft money is less how it is spent (helping candidates get elected) than how it is raised (in large donations from contributors with special interests).

Won't the free vouchers mean more political ads, on top of the glut we already have?

Perhaps. For better or worse, political ads are what most candidates want to spend their money on—the brevity, the repetition and the emotional punch make them the campaign weapon of choice in our noisy, short-attention span culture. But it would not be a one-for-one increase. For one thing, if broadcasters are required to distribute a minimum of \$640 million in free ad time during the campaign season, it will shrink the stations' remaining air time inventory and drive up the price of paid ads, making them less cost-efficient. Also, the law of diminishing returns operates with political advertising, as it does with most things. In the 2001 New York City mayoral race, for example, self-financed billionaire candidate Michael Bloomberg spent the last marginal dollars of his \$69 million campaign on direct mail brochures. He'd concluded he'd reached his saturation point on ads.

Would the vouchers be available for use in primaries as well as the general election?

Candidates could use their vouchers in primaries, once they met qualifying thresholds. But party vouchers should not be available for use in primaries. Parties tend to support incumbents over challengers in intra-party fights; they would have an inherent bias problem if they were in a position to distribute vouchers to primary candidates.

What about third party candidates—should they be included in the voters' time segments, and should they get vouchers for free ads?

Any third party congressional candidate on the general election ballot would qualify for vouchers in the same way the major party candidates would qualify—by meeting the threshold and raising money in small donations. As for those large block grants of party vouchers, third parties should be treated in a similar fashion to the way they qualify for funding under the presidential election grant system. They would receive vouchers proportionate to the aggregate vote totals they received for U.S. House races in the previous election, once they achieved a threshold of support of 5 percent. As for the voters' time segments, there would have to be qualifying thresholds, but the system should tilt toward inclusion rather than exclusion.

Should the free air time requirements be applicable to cable systems as well as to broadcasters?

Because cable television is not constrained by the scarcity of the electromagnetic spectrum, a free air time mandate imposed on cable (or satellite) operators would most likely be subject to a more exacting judicial review than would a mandate imposed on

broadcasters. The government would have to show that it has a compelling interest in the regulation and that the regulation is narrowly tailored to achieve the government's purposes. It would probably take a court test to determine whether that strict standard could be met. Moreover, cable operators already pay a terrestrial right-of-way fee of up to 5 percent to local governments, while broadcasters pay no user fee for the airwaves. On a more practical level, the slice of political advertising budgets that goes to cable, while on the rise, is still well below 10 percent. For the foreseeable future, most candidates who advertise will continue to want to reach the broad audience that only broadcast television delivers.

APPENDIX

POLITICAL SPENDING ON BROADCAST TELEVISION IN 2000

Top 10 Station Groups

Ownership	Cost of Ads	# Ads
1. NBC	\$83,031,180	56,145
2. ABC	\$82,429,321	52,373
3. Paramount/CBS	\$68,133,713	69,669
4. Gannett	\$49,605,994	75,485
5. Fox Television	\$46,905,461	70,109
6. Hearst-Argyle	\$42,020,558	75,600
7. A.H. Belo Corporation	\$37,578,442	62,481
8. Cox Broadcasting	\$28,028,160	35,377
9. Scripps	\$24,528,035	39,991
10. Post-Newsweek	\$24,182,071	25,722

Top 10 Markets For Political Ad Sales

Market	Cost of Ads	# Ads
1. New York	\$70,876,045	21,969
2. Los Angeles	\$63,329,661	25,968
3. Philadelphia	\$40,781,450	26,408
4. Detroit	\$33,523,259	32,810
5. Seattle	\$29,693,344	30,150
6. San Diego	\$22,491,289	32,763
7. San Francisco	\$22,220,711	17,997
8. St. Louis	\$21,619,964	34,889
9. Minneapolis	\$19,666,109	20,540
10. Boston	\$18,461,145	22,765

Source: Campaign Media Analysis Group, a private firm which monitors political ad spending on television for political clients and academic researchers.

**PERCENTAGE OF CAMPAIGN SPENDING ON BROADCAST ADS
BY U.S. SENATE CANDIDATES, 2000**

Candidate:	State:	Total Spent:	Spent on B'cast Ads:	% Spent on B'cast Ads:
Jon Kyl (R)	AZ	\$2,720,966	\$1,227,176	45.10%
Dianne Feinstein (D)	CA	\$11,604,749	\$5,126,440	44.18%
Tom Campbell (R)	CA	\$4,527,167	\$1,809,135	39.96%
Joseph Lieberman (D)	CT	\$4,398,341	\$419,635	9.54%
Thomas Carper (D)	DE	\$2,565,838	\$1,539,226	59.99%
William Roth (R)	DE	\$4,422,348	\$2,177,819	49.25%
Bill Nelson (D)	FL	\$6,674,656	\$5,043,704	75.57%
Bill McCollum (R)	FL	\$8,798,354	\$4,687,966	53.28%
Zell Miller (D)	GA	\$2,517,702	\$1,910,144	75.87%
Mack Mattingly (R)	GA	\$1,019,524	\$662,653	65.00%
David Johnson (D)	IN	\$1,173,299	\$736,649	62.78%
Richard Lugar (R)	IN	\$4,889,576	\$2,697,589	55.17%
Edward Kennedy (D)	MA	\$5,881,765	\$211,928	3.60%
Paul Sarbanes (D)	MD	\$1,891,258	\$1,002,696	53.02%
Olympia Snowe (R)	ME	\$2,318,741	\$810,149	34.94%
Debbie Stabenow (D)	MI	\$8,013,758	\$4,478,402	55.88%
Spencer Abraham (R)	MI	\$14,415,920	\$7,961,319	55.23%
Mark Dayton (D)	MN	\$11,957,115	\$7,722,091	64.58%
Rod Grams (R)	MN	\$7,523,708	\$1,998,051	26.56%
Mel/Jean Carnahan	MO	\$7,702,160	\$3,527,276	45.80%
John Ashcroft (R)	MO	\$9,742,579	\$5,568,434	57.16%
Trent Lott (R)	MS	\$4,260,678	\$631,080	14.81%
Brian Schweitzer (D)	MT	\$2,012,419	\$1,201,360	59.70%
Conrad Burns (R)	MT	\$4,989,872	\$2,438,074	48.86%
Kent Conrad (D)	ND	\$2,563,713	\$1,399,739	54.60%
Ben Nelson (D)	NE	\$2,988,285	\$1,607,266	53.79%
Don Stenberg (R)	NE	\$1,828,965	\$1,024,468	56.01%
Jon Corzine (D)	NJ	\$63,202,492	\$39,999,560	63.29%
Bob Franks (R)	NJ	\$6,595,862	\$2,913,225	44.17%
Jeff Bingaman (D)	NM	\$2,929,932	\$979,008	33.41%
Ed Bernstein (D)	NV	\$2,446,048	\$1,570,727	64.21%
John Ensign (R)	NV	\$4,988,054	\$2,665,726	53.44%
Hillary Clinton (D)	NY	\$29,595,761	\$16,530,095	55.85%
Rick Lazio (R)	NY	\$43,038,453	\$20,935,067	48.64%
Mike Dewine (R)	OH	\$6,527,687	\$3,247,604	49.75%
Ron Klink (D)	PA	\$3,641,097	\$2,150,091	59.05%
Rick Santorum (R)	PA	\$12,826,761	\$6,290,145	49.04%
Bob Weygand (D)	RI	\$2,291,469	\$1,210,271	52.82%
Lincoln Chaffee (R)	RI	\$2,226,935	\$1,277,364	57.36%
Bill Frist (R)	TN	\$6,930,932	\$2,607,737	37.62%
Kay Bailey Hutchison (R)	TX	\$4,091,429	\$2,455,278	60.01%
Orrin Hatch (R)	UT	\$3,462,034	\$517,210	14.94%
Charles Robb (D)	VA	\$6,778,099	\$4,539,343	66.97%
George Allen (R)	VA	\$9,894,904	\$5,650,709	57.11%
Ed Flanagan (D)	VT	\$1,094,078	\$426,996	39.03%
James Jeffords (R)	VT	\$2,040,290	\$498,653	24.44%
Maria Cantwell (D)	WA	\$11,538,133	\$7,007,000	60.73%
Slade Gorton (R)	WA	\$6,945,101	\$3,549,466	51.11%
Herb Kohl (D)	WI	\$5,535,630	\$3,385,991	61.17%
Robert Byrd (D)	WV	\$1,239,838	\$629,004	50.73%
Total		\$383,264,475	\$200,656,739	52.35%

Source: Campaign Study Group, a for-profit consulting firm specializing in campaign finance research and public opinion analysis. List excludes 18 candidates who spent less than \$1 million.

END NOTES

¹ Center for Voting and Democracy, *Dubious Democracy 2001*, 2001. Money is not the only factor in the dearth of competitive congressional campaigns. The prevalence of safe seats created by incumbent-friendly redistricting procedures plays a major role as well. <http://www.fairvote.org/2001/index.html>

² Pew Research Center for the People and the Press, *Public's News Habits: Little Changes by September 11*, June 9, 2002. <http://people-press.org/reports/display.php3?ReportID=156>. While 31% of those polled knew the public owns the airwaves, 25% believed the stations owned the frequencies they used, while 44% said they did not know or refused to answer.

³ *Shaeffer Radio Co.* (FRC 1930), quoted in John W. Willis, *The Federal Radio Commission and the Public Service Responsibility of Broadcast Licensees*, 11 FED. COM. B.J. 5, 14 (1950).

⁴ *Red Lion Broadcasting Co v. FCC*, 395 U.S. 367, 388-89 (1969.)

⁵ *Ibid*, 389.

⁶ The broadcasters argued that the Fairness Doctrine chilled speech because it made broadcasters reluctant to air coverage of controversial issues for fear of being accused of imbalance. Its repeal opened the floodgates to the talk show and pundit culture that has flourished on radio and television in the past 15 years, but the industry would be hard pressed to argue that the repeal has also led to more substantive, in-depth, impartial journalism.

⁷ Thomas Wolzien, "Whose Bandwidth is it Anyway?" Speech at the National Association of Broadcasters Futures Summit, Bernstein Research, April 2001.

⁸ See J.H. Snider, "The Myth of 'Free TV'," Working Paper, New America Foundation, June 2002.

⁹ Michael Calabrese, "Battle Over the Airwaves: Principles for Spectrum Policy Reform," Working Paper, New America Foundation, September 2001.

¹⁰ An updated version of Geller's proposal is in Henry Geller and Tim Watts, "The Five Percent Solution: The Case for a Spectrum Fee to Replace the 'Public Interest Obligations' of Broadcasters," Working Paper, New America Foundation, May 2002.

¹¹ This one-in-four percentage surprises most people, who assume the ratio is higher because television ads loom so large as the public face of political campaigns. At \$1 billion, the price tag for television ads is easily the biggest single expense item in campaigns. But candidates also spend a great deal of money on fundraising, travel, staff, overhead and direct mail. Moreover, the vast majority of political races are uncompetitive, meaning the loser can't afford television ads and the winner doesn't need them. If one looks only at competitive races in 2000 (those in which the loser came within 10 percentage points of the winner) for all federal offices and governorships, the amount of overall campaign spending devoted to television ads is more than 50 percent. Similarly, winning U.S. Senate candidates in 2000 spent an average 52 percent of their overall campaign budget on broadcast ads (see Appendix). And if one considers the amount of money spent only on political advertising per se, television accounts for more than 80 percent of those budgets, with radio and print dividing the rest, according to a 1998 report by Competitive Media Research of New York.

¹² Ken Goldstein, *Campaign Advertising in the 2000 Election*, University of Wisconsin, (2001).

<http://www.polisci.wisc.edu/tvadvertising/>

¹³ "People [ad buyers for candidates] call you up and say 'Can you clear \$40,000 next week?' It's like, 'What? Am I dreaming? Of course I can clear that!' And they send you a check in the overnight mail. It's like Santa Claus came. It's a beautiful thing." Dan O'Connor of WSYT-TV, quoted in *Electronic Media*, June 14, 1999.

¹⁴ For excerpts of Senate floor debate, see *The Case for Free Air Time*, Alliance for Better Campaigns, 2002.

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- ¹⁵ University of Southern California, Annenberg School for Communication, *Television News Coverage of the 1998 California Gubernatorial Election*, 1998. <http://entertainment.usc.edu/indexf.html?/publications/publications.html>
- ¹⁶ Center for Media and Public Affairs, "Campaign 2000 Final," *Media Monitor*, November/December 2000. <http://www.cmpa.com/Mediamon/mm111200.htm>
- ¹⁷ Alliance for Better Campaigns, "Networks, Parties Trade Charges Over Plunge in Convention Coverage," *The Political Standard*, August 2000.
- ¹⁸ Center for Media and Public Affairs, "Campaign 2000 Final," *Media Monitor*, November/December 2000. <http://www.cmpa.com/Mediamon/mm111200.htm>
- ¹⁹ Ibid.
- ²⁰ Ibid.
- ²¹ Alliance for Better Campaigns, "Broadcasters: Debates Not Yet Ready for Prime Time," *The Political Standard*, February 2000.
- ²² Norman Lear Center, Annenberg School for Communication at the University of Southern California. *Local TV Coverage of the 2000 General Election*, February 2001. <http://entertainment.usc.edu/indexf.html?/publications/publications.html>
- ²³ Annenberg Public Policy Center, University of Pennsylvania, *Are Voluntary Standards Working?: Candidate Discourse on Network Evening News Programs*, December 20, 2000. <http://www.appcpenn.org/political/freetime/>
- ²⁴ Vanishing Voter Project, Joan Shorenstein Center on the Press, Politics and Public Policy, John F. Kennedy School of Government at Harvard University, December 2000. <http://www.vanishingvoter.org/graphs/vi-current.shtml>
- ²⁵ Vanishing Voter Project, Joan Shorenstein Center on the Press, Politics and Public Policy, John F. Kennedy School of Government at Harvard University, November 2000. <http://www.vanishingvoter.org/data/cand-knowledge.shtml>
- ²⁶ Pew Research Center for the People and the Press, *Despite Uncertain Outcome, Campaign 2000 Highly Rated*, November 16, 2000. <http://people-press.org/reports/display.php3?ReportID=23>
- ²⁷ To be sure, people have been complaining about artifice in politics since long before the advent of radio and television. But the way those media enable a candidate to barge uninvited into a voter's living room takes the phenomenon to a new level.
- ²⁸ Chicago Tribune media reporter Tim Jones, quoted in Common Cause, *Channeling Influence: The Broadcast Industry and the \$70 Billion Free Ride*, April 1997.
- ²⁹ In 2000, the broadcast industry took in \$64 billion from advertising revenues (\$44 billion on television, \$20 billion on radio), meaning that a 0.5 percent tax would generate \$640 million in broadcast vouchers per two-year election cycle. BIA Financial Network, Inc., *State of the Television Industry: Television Revenues 2000 & Beyond*, 2001.
- ³⁰ Committee for Economic Development, *Investing in the People's Business: A Business Proposal for Campaign Finance Reform*, Figure 3, 1999. Most research shows that \$250,000 for a House race is the threshold level at which a challenger starts to become a viable candidate.
- ³¹ To read the constitutional arguments presented by the National Association of Broadcasters, go to http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts
- ³² For more on these constitutional issues, see Alliance for Better Campaigns, *The Case for Free Air Time*, 2002.
- ³³ Consider the problems created by a less market-sensitive free air time system—one in which all candidates were given a fixed number of minutes of free ads. In a large media market such as New York City that encompasses dozens of congressional districts, this would result in a glut of ads running on a limited number of stations.
- ³⁴ In 2000, the typical winning candidate for the U.S. House spent \$840,300 and the typical losing candidate spent \$305,600. On the theory that the "first dollars" in politics are more important than the "last dollars," a grant of \$250,000 in broadcast vouchers would go a long way toward enabling under-funded challengers to mount viable campaigns.
- ³⁵ With, say, \$125 million in vouchers to dispense per election cycle, a national party might decide to divide \$75 million among its 50 state parties to distribute however they wish, and to split the remaining \$50 million between their congressional and senatorial campaign committees.

Campaign Finance Reform. Constitution. On the private side, broadcast television, land mobile radio, and direct broadcast satellites are obvious examples of rapidly growing services that make intensive use of the radio spectrum. Spectrum Fees—Small and Large. First, of course, there is the proposal that, for want of a better term, both the Carter and the Reagan administrations have labeled the “equity principle”—namely, that in the interest of fairness, if not greater economic efficiency, radio frequency users should have to pay a fee at least large enough to recover the out-of-pocket costs of administering the current regulations. At present, private users of the radio spectrum—which are among the most prosperous elements of American business—do not pay even nominal filing fees. The second part outlines the conceptual tools of the new institutionalism approach and discusses its application for the study of regime change in telecoms and media. The third part presents an abbreviated example of such application to the case of U.S. spectrum policies and the licensing of digital broadcasting. This article examines the theoretical assumptions generally used in communication and information policy studies, and suggests that more attention to the institutional determinants of public policies is needed. The first part discusses three alternative theoretical approaches: the interest-group approach, the ideological approach, and the technology-centered approach.