



# Institute for Policy Integrity

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*new york university school of law*

March 15, 2011

VIA ELECTRONIC COMMUNICATION

Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Future of Media and the Information Needs of Communities

Dear Chairman Genachowski,

This winter, President Obama announced a plan to hold “voluntary incentive auctions” that will enable current holders of broadcast television spectrum to realize a portion of auction revenues if they choose to participate. The White House projects that the auctions will produce nearly \$28 billion in net proceeds for the U.S. Treasury, and industry groups have estimated even higher revenues, in the range of \$36 billion.<sup>1</sup> Ultimately, this revenue should go to its highest and best use, which raises policy questions about how competing policy objectives should be weighed against each other. However, like all policymaking, telecommunications policymaking should be fact-based and take into account the potential benefits, as well as costs, of policy alternatives.

As a non-partisan think-tank dedicated to promoting economically sound communications policy who has been closely following the FCC’s Future of Media Project, the Institute for Policy Integrity at New York University School of Law urges the FCC to consider placing a substantial portion of the revenue generated by the auction of noncommercial spectrum into a trust fund for public media, similar to what the FCC’s Broadband Plan envisioned.<sup>2</sup> Dedicating these proceeds to fund multi-platform content development for public media, as well as media curation and infrastructure expansion, would be consistent with the original

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<sup>1</sup> See White House Press Release, “President Obama Details Plan to Win the Future through Expanded Wireless Access,” Feb. 10, 2011, *available at* <http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access>; CTIA WIRELESS ASSOCIATION AND CONSUMER ELECTRONICS ASSOCIATION, BROADCAST SPECTRUM INCENTIVE AUCTIONS WHITE PAPER, Feb. 15, 2011 (estimating that revenues could be as high as \$48 billion), *available at* <http://ctia.org/media/press/body.cfm/prid/2051>.

<sup>2</sup> See FCC NATIONAL BROADBAND PLAN: CONNECTING AMERICA 303-4 (Mar. 2010) (recommending that the proceeds from auctioned noncommercial spectrum be used to endow a trust fund for “the production, distribution and archiving of digital public media”), *available at* <http://www.broadband.gov/download-plan/>.

purpose for which the spectrum was allocated—a public “easement” of sorts. Perhaps more importantly, creating this support mechanism is economically justified in light of positive externalities inherent in the media market, including those generated by the production and dissemination of information by public media; given market forces, these positive externalities remain, and will likely remain, unique to government-funded programming.

### *Public Good Nature of Public Media*

In economic terms, government provisions of public media can be justified because some media content is a “public good.” Certain types of content produced by public media can be defined as public goods because they are non-rival (their value of the content does not diminish as a result of consumption by additional people) and non-excludable (everyone has access). As a result of these characteristics, the phenomenon known as the “free rider problem” exists in the media industry, a market failure that results in the under-provision of certain types of media content and infrastructure. Specifically, the “information externality” associated with content reduces the incentives of private actors to produce all of the informational content needed to maximize social welfare. One important example of this phenomenon is investigative journalism. Because consumers are free to share and redistribute news stories they have learned with their friends or even reshape the information under their own names, bankrolling investigative reporting has proven to be unprofitable for private actors, especially in smaller non-metropolitan markets.

This means that for various reasons, the market will not, on its own, generate enough of this particular good thing. This externality exists because those who are creating or producing the information (or infrastructure) being released into the market are not able to capture a benefit commensurate with the value of the benefit their programming (or infrastructure) is generating to others. Like with other public goods, such as lighthouses or national defense, there is less incentive for private actors to produce and maintain educational media or infrastructure for all sectors of society. To offset this compensation gap and ensure that, to keep with the foregoing examples, our harbors remain well lit and our borders well-defended, well-tailored government intervention is justified. While this intervention can take several forms, in certain circumstances direct financial support is the most efficient mechanism for this intervention. This is the case with national defense and lighthouses, as well as numerous other public goods like education for youth, public parks, and, the subject in issue here, public media.

Recently, some have argued that with the advent of the Internet, there is less reason for government to continue funding public media. This is unsupported by theory and available data. Although the Internet has led to an explosion in media content, at the same time it has caused large scale problems in the media market that are widely recognized. For instance, as a result of abrupt changes to the business model of newspapers, the number of professionals employed in the journalism industry has fallen precipitously in the past decade; newspaper bankruptcies have become common stories themselves, and as a result many communities have seen severe shrinkages in news coverage.<sup>3</sup> Against this backdrop,

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<sup>3</sup> See KNIGHT COMMISSION ON THE INFORMATION NEEDS OF COMMUNITIES IN A DEMOCRACY, INFORMING COMMUNITIES: SUSTAINING DEMOCRACY IN THE DIGITAL AGE 27-32 (2009), available at <https://secure.nmmstream.net/anon.newmediamill/aspen/kcfinalenglishbookweb.pdf> (noting reductions in coverage). One expert has estimated that “85% of professionally reported accountability news comes from newspapers....Everything else [television,

public media—especially its educational components and its focus on achieving universal broadband access—remains an extremely valuable public good in America today.

### *Establishment of an Independent Trust*

Government support for public media helps correct for positive externalities in the media market. Providing that support by way of a trust fund endowed through noncommercial spectrum auction proceeds has several advantages.<sup>4</sup> Proceeds from an auction of noncommercial spectrum would constitute a clear and discrete pool of public resources—resources that were generated independently from the political process. Dedicating them, from the outset, as funds for supporting public media would thus avoid the partisan wrangling and horse-trading that invariably undermines the goal of appropriating an optimal amount of funds to public media.<sup>5</sup> The creation of such a trust would also short-circuit, or at least mitigate, allegations that government-funded media is vulnerable to capture by political interests, resulting in content biased by public choice failures in the political process.

A trust fund for public media could also serve as a vehicle for ensuring that public media expenditures are being structured and managed in ways that maximize financial resources. The independent trust fund administrator could collect data from public media outlets and premise allocation decisions according to fact-based criterion, such as a community's need for connectivity, prevalence of local news coverage, et cetera. In accordance with sound regulatory review principles, the administrator would continually pose and offer recommendations in response to questions such as: Are distribution systems structured in ways that, operationally, maximize funds? Are new technologies and platforms being sufficiently utilized to reach underserved communities? Might certain mergers or partnerships make programming more cost-effective?

Public media performs a vital role in American society and its economy. And while new technology has made the communication of ideas easier and less expensive and enhanced access to knowledge, the importance of providing direct support for public media has not changed. If anything, there is an even greater premium placed on having comprehensive information—and having it quickly—than there was when the Corporation for Public Broadcasting was created. Yet the public good nature of information and externalities inherent in the marketplace mean that private actors will, for the foreseeable future, lack the financial incentive to produce the amount and type of informational content necessary to maximize social welfare. Government support for public media is therefore economically justified. Establishing a trust fund using noncommercial spectrum auction revenues would

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websites, radio] is usually just a delivery system.” ALEX S. JONES, *LOSING THE NEWS* (Oxford 2009), excerpted at “Alex Jones on ‘Losing the News’ and Why it Matters,” NPR Online, Mar. 10, 2011, available at <http://www.npr.org/templates/story/story.php?storyId=111985662>.

<sup>4</sup> Precedent for the establishment and operation of a trust fund endowed by spectrum auction proceeds already exists; the Telecommunications Development Fund is bankrolled from interest on deposits put into escrow to qualify auction bidders. See 47 U.S.C. §§ 309(j), 614 (2011).

<sup>5</sup> The FCC's initial allocations of television spectrum for educational and instructional programming, in the 1950s, reflected a policy decision about the need for government to support public media; perennial spectrum reservations since then have reinforced the rationale and resolve of that decision. See generally JOHN WITHERSPOON AND ROSELLE KOVITZ, *A HISTORY OF PUBLIC BROADCASTING* 11-30 (Current 2000). Earmarking revenue generated by the auctioning of that spectrum to serve essentially the same purpose would respect those past policy decisions.

help ensure that this beneficial system of support is kept in place and also help protect it from potentially harmful interference from the political process.

Respectfully submitted,

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