

# The Fairness of Spectrum Leases?

by Harold Hallikainen, San Luis Obispo, CA

(Originally printed in Radio World, October 1993. Reprinted with author's permission as given to Hanno Beck.)

We're going to take a short detour from our normal path of trying to keep the local FCC inspector happy. Instead, let's take a short look at where broadcasting might be heading. I hope to provoke some discussion on the future of broadcasting.

The First Amendment I see the first amendment's provisions for freedom of religion, speech and the press as an expanding sphere of freedoms. It starts with freedom of thought, freedom to express that thought, then allows the use of available technology to further express that thought. At the time of the writing of the constitution, "the press" was the only mass communications medium available, yet the constitution was written to not restrict it, as they may have been tempted to because of its power. As additional media have been introduced, some have argued that these new media need governmental control (content regulation) because of their powerful influence, the "scarcity of voices", or because of the use of a public resource (the electromagnetic spectrum). As just discussed, it appears that the "powerful influence" argument justifying governmental regulation of content didn't seem to be a strong enough argument for the framers of the constitution to put content control on the print media. Although a free press may be dangerous, it is necessary for a free society. It appears the same argument could be used to support the government staying out of broadcast content regulation, the current "powerful medium". The second argument in favor of broadcast content regulation is that there are only so many broadcast channels to go around. While each of us could start a newspaper with a circulation of five or ten, economics tends to limit the number of print publications. By decreasing broadcast station power, a larger number of stations could be supported by the spectrum without interference, each with a "smaller circulation." We can get a rough idea of the relative scarcity of the various media by checking the yellow pages of the phone book. Here, in San Luis Obispo County, about 22 radio stations are listed. Six television stations are listed. For those subscribing to cable, probably another 30 to 40 signals are available. Without cable, perhaps 28 "voices" are available.

Checking under newspapers, we find about the same number (28) publishers. Is there more "scarcity" of voices in the electronic media than in the print media? If there were, would that justify overriding the first amendment? The third argument in favor of government content regulation (use of a public resource) seems to have some merit. The Lowest Unit Rate rules seem to be an attempt at getting broadcasters to pay the public for use of the spectrum. It does seem, however, that a much more direct solution to this problem is available. The solution would be for broadcasters to pay for use of the spectrum. Perhaps if such payment were made, there would be no strong argument in favor of content regulation (whether through lowest unit rate, fairness doctrine, or whatever).

Spectrum Leasing Broadcasters are typically buying spectrum, as it currently stands. If they buy an existing station, they pay the previous licensee for the channel. If they apply for a new channel, they end up paying substantial legal fees and buying out other applicants in an effort to show they are the most qualified applicants. Another approach would be to offer a fixed term lease on a channel (perhaps 20 years). These leases would then be auctioned off. At the end of the lease term, the current leaseholder would be welcome to rebid for the channel. A leaseholder could also see the unused term of a lease to another wishing to get into broadcasting. Existing "anti-monopoly" rules available for all business could be applied to keep one broadcaster from taking over all the stations in one market. I don't believe the costs involved in such a leasing arrangement would be substantially different from prices currently being paid for stations. A major difference would be, however, that the public, rather than a private individual or corporation, could be paid for the use of the spectrum. This should remove the "need" for governmental regulation of content, giving broadcasters full first amendment rights. Such a radical change would certainly disrupt the existing station trading market. It could, however, be introduced several years in the future (perhaps ten years) to avoid "changing the rules in the middle of the game."

MicroBroadcasting? Spectrum leasing could perhaps result in full first amendment rights for broadcasters. MicroBroadcasting could allow a multitude of voices, allowing broadcasting to serve very small specialized audiences (a sort of neighborhood radio) as "zines" serve small specialized audiences in print.