

**How Mass Media Use Crisis Communications for Political Gain:
The Broadcast Industry, 9/11, and Hurricane Katrina**

by

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It's a common observation that crises such as wars, recessions, stock market meltdowns, ethics scandals, and natural catastrophes often drive the public policymaking process. A crisis reveals a problem and then a public consensus emerges that policymakers must do something about it. The policy debate then centers on the best means to solve the problem.

Interest groups well understand the political logic of such crisis moments. Accordingly, they reframe their own self-interested agendas to be in accord with the new crisis induced agendas. Although these reframed agendas may help solve the stated problem, they are likely to do so relatively inefficiently and ineffectively, and, when mere rationalizations, may aggravate the problem. Nevertheless, when backed by powerful interest groups and concerning relatively technical issues where the links between means and ends are not widely understood, their reframed agendas may be highly persuasive or at least provide political cover for actions that would otherwise be discredited as special interest politics.

In this paper, I explore how local TV broadcasters framed the communications crisis revealed by 9/11 and Hurricane Katrina for their own political gain.

Broadcasters' Public Service Claims

Local TV broadcasters use tens of billions of dollars worth of government assets, mostly in the form of spectrum (popularly known as the "public airwaves"), but do not pay monetary compensation to the government for their use. Instead, broadcasters claim to "pay" with various kinds of public service. For example, every two years since 1998 local TV broadcasters have tallied their annual public service contributions in a report that is widely used in their lobbying campaigns, especially in Congress and at the FCC. For 2005, the claimed figure for the combined public service of local TV and radio broadcasters was \$10.3 billion,¹ which comes to a present value of \$129 billion, using an 8% discount rate. Some would consider that a fairly close approximation for the market value of the spectrum the broadcasters occupy. Broadcasters also claim to provide a "free" information service, which they argue is of inestimable value for poor people and the preservation of American democracy.²

In addition to free use of government owned assets, broadcasters ask the government to regulate and restrict potential competitors, lest the competitors kill the golden goose providing the public with so much service. Recent examples of such regulation include preventing satellite radio broadcasters from providing either local or free ("ad-

¹ National Report on Broadcasters' Community Service (National Association of Broadcasters: Washington, D.C., June 2006).

² See J.H. Snider, "The Myth of Free TV," Spectrum Series Working Paper #5 (Washington, D.C.: New America Foundation, June 2002).

supported”) programming;³ and requiring cable, satellite, and telephone companies to carry local TV broadcasting stations free of charge.⁴ At the moment, there are more than a half dozen major rulemakings at the FCC where the broadcasters are asking for special treatment at least in part because of their public service contributions.

One of the most important and frequent public service claims broadcasters make is that they provide exceptional service to the American public in times of local crises. Here’s a typical formulation of the broadcasters’ public service contributions from the President of the National Association of Broadcasters (NAB), Eddie Fritts, in the aftermath of 9/11:

"Is the American public better served by television now than it was forty years ago?" The answer, resoundingly, is "Yes." ... Every day and in every community, local broadcasters serve the public interest in a variety of ways....

Several years ago, the National Association of Broadcasters undertook a program to systematically document the amount of public service generated by over-the-air radio and television stations. In our last census, we discovered that in one year alone, broadcasters generated \$ 9.9 billion in public service in the form of donated airtime for PSAs--money raised for charity and disaster relief.

Broadcast public service also encompasses the coverage of emergency weather alerts that can mean the difference between life and death for viewers in the path of a tornado or hurricane....

Broadcasters also chronicled the events of September 11, 2001, with a degree of commitment and professionalism that drew universal praise. In the midst of the worst media recession in fifty years, stations all over America provided viewers with round-the-clock, advertising-free coverage of the horrific attack for nearly a week.

In the aftermath of September 11, stations rallied the American spirit with PSAs, charity fundraising appeals, blood drives, and pleas for tolerance for our immigrant neighbors. I could not have been more proud to be associated with the broadcasting community at that time. Indeed, it was broadcasting's finest hour.⁵

The 9/11 and Hurricane Katrina (“Katrina”) cases are the two most prominent recent examples of the broadcasters’ use of crisis communications in their lobbying efforts. Broadcasters used those cases to make three controversial public service claims, what I

³ Woolley, Scott, “Broadcast Bullies,” *Forbes*, September 6, 2004, p. 134.

⁴ J.H. Snider, “Should DTV Must-Carry be Expanded, Sunset, or Preserved As-Is?” Spectrum Series Working Paper # 12 (Washington, D.C.: New America Foundation); Testimony of David L. Donovan, President, Association for Maximum Service Television, before the Senate Commerce, Science, and Transportation Committee, September 8, 2004; and Comments of Eddie Fritts, President of the National Association of Broadcasters, at the hearing on the Digital Television Transition before the Senate Commerce Committee, U.S. Senate, July 12, 2005.

⁵ Edward O. Fritts, “TV: A Vast Oasis of Public Interest Programming,” *Federal Communications Law Journal*, No. 3, Vol. 55; May 1, 2003, Pg. 511.

call: 1) The Charity Claim, 2) The Emergency Information Claim, and 3) The Spectrum Use Claim. These public service claims were then incorporated into their overall lobbying strategy for preserving and expanding their current government granted privileges.

Generally, these crises revealed broadcasters' diminished role in communicating crisis information and sent a striking message that America's traditional reliance on broadcasters for emergency information was based on obsolete technology and an outdated vision of the threats facing America. The broadcasters' PR task was to turn these perceived deficits—while never quite admitting that they were deficits—to its own political advantage. Of their three claims, they emphasized the charity claim the most, perhaps because they recognized it was least susceptible to attack. The spectrum use claim was the only one of the three to come under vigorous, direct, public attack.

The Charity Claim

Local TV broadcasters have made their charitable fund raising for victims of 9/11 and Katrina a centerpiece of their lobbying campaigns. The National Association of Broadcasters (NAB) in 2002 released figures showing that both radio and TV broadcasters had raised \$1.2 billion for disaster victims during 2001, and in 2006 released figures showing that they had raised \$1.3 billion for disaster victims during 2005.⁶ The figure for 9/11 fundraising was \$1 billion and for Katrina and Tsunami fundraising, combined in one figure, also \$1 billion.⁷ Broadcaster claims concerning such contributions can be found in Congressional testimony, written comments submitted to FCC rulemakings, testimony at FCC hearings, an NAB publication called *At Your Service* sent to members of Congress and FCC commissioners, the NAB's glamorous annual Service to America Summit attended by famous media personalities and top policymakers (this year featuring former President Bill Clinton), in one-on-one handouts distributed to members of Congress, and in the broadcast industry trade press.

For example, here is the wording of the disaster charity claim contained in the broadcasters' glossy 98-page report covering the year 2005. The claim is followed by a special nine-page section of the report called "Katrina: A Special Report," which provides anecdotes illustrating how broadcasters' helped during Katrina.

[L]ocal radio and television broadcasters raised a projected \$1.2 billion for victims of disasters such as earthquakes, tornadoes, hurricanes and flooding. Included in this figure are funds raised by local radio and television stations in their relief efforts for victims of the September 11 terrorist attacks. Approximately

⁶ National Report on Broadcasters' Community Service (National Association of Broadcasters: Washington, D.C., June 2006); A National Report on Local Broadcasters' Community Service (National Association of Broadcasters: Washington, D.C., April 2002).

⁷ The \$1 billion figure was prominently cited at the NAB's annual Service to America Celebration in Washington, D.C., featuring former President Bill Clinton, June 12, 2006.

\$1 billion of the \$1.2 billion disaster relief total resulted from station efforts that were directly related to the events of September 11.⁸

Broadcasters then take such claims and use them in their lobbying. For example, here is NAB President Eddie Fritts testifying before the Senate Commerce Committee on proposed legislation concerning radio concentration:

While the industry continues to change, one thing has remained constant: radio's commitment to serving local communities. This attribute distinguishes us from all competitors -- from online music to satellite radio -- local service to the community is that which separates us from our competition.

Radio broadcasters are proud of their commitment to localism. A recent NAB study found that in 2001 alone radio stations contributed 7 billion dollars worth of public service to their communities. That number includes the value of Public Service Announcements, as well as monies raised for charities, disaster relief, and the needy.

.... And no dollar figure can account for radio's work following the events of 9-11. Stations across the country raised donations for rescue equipment and victims, organized blood drives, and overall, reassured and informed Americans during that dark time.⁹

Although the NAB's numbers are impressive, there are certain questions they don't answer. First, the numbers seem to imply that the NAB is actually contributing these dollars because they are mixed with other numbers, such as the value of public service announcements, that are based on the value of the broadcasters' advertising time donated to non-profits. In this case, however, the money summed up involves contributions from those *outside* the broadcast industry.

Second, it is not clear what percentage of the fundraising should be credited to the actions of local TV broadcasters versus others. Broadcasters typically serve to raise awareness for the fundraising activities of others such as charities and local retail establishments; that is, the fundraising is essentially a joint effort. Partners include such groups as Fry's Markets, First Mariner Bank, Kroger Stores, United Blood Services, Wal-Mart, Grand Ole Opry, American Red Cross, United Supermarkets, Salvation Army, and Papa John's.

Third, it is not clear how much fundraising would decline in the absence of the broadcasters' free publicity. There are other vehicles to publicize charitable activities, including via in-store promotions, concerts, sports events, direct mail, e-mail, churches, synagogues, newspapers, cable, satellite, and Internet. The charitable propensities of the American public could conceivably still be substantially exercised without the broadcasters' help.

⁸ National Report on Broadcasters' Community Service (National Association of Broadcasters: Washington, D.C., June 2006).

⁹ Written statement of Eddie Fritts, President, National Association of Broadcasters, on Media Ownership before the Senate Commerce, Science, and Transportation Committee, U.S. Senate, January 30, 2003.

Fourth, it is not clear to what extent broadcaster fundraising drives are actually costly to broadcasters. Broadcasters typically partner with local establishments that are also local advertisers. The free publicity for those advertisers cultivates goodwill that can help generate future ad sales. Broadcasters, like other local businesses, also find it in their business interest to cultivate a reputation for being a champion of the public interest. Fundraising during a disaster, when advertisers are often unwilling to advertise and viewers flip the channel to watch disaster programming on other channels as soon as they see an ad, may result in relatively little lost advertising revenue.

Although the broadcasters' claims might fall short of scholarly methodological rigor, I was unable to find a single instance in the public record of anyone questioning their claims. Undoubtedly, it would have been considered in poor taste and politically unwise to publicly question their claims, if only because broadcasters clearly did make a substantial contribution to relief efforts. Nevertheless, the inability of the Washington, D.C. policymaking community to engage in such rigorous questioning may degrade the quality of its policy work.

The Emergency Information Claim

Broadcasters have long touted their special role in providing emergency information to the public in times of crisis. In the words of NAB President Eddie Fritts, "Local broadcasters are the eyes, ears and voice to communities during times of disaster."¹⁰ Typical of the widespread acceptance of this view, the nation's emergency alert system was called, until 1997, "the emergency broadcast system." In the broadcasters' eyes, emergency alerts and broadcasting alerts were essentially synonymous. Here's a sampling of the broadcasters' claims:

National Association of Broadcasters, National Report on Local Broadcasters' Community Service, 2002:

Recognizing that Long Island was the home of many of the individuals and families directly affected by the September 11 attacks on the World Trade Center, WBLI-FM in West Babylon, New York dropped everything to help its local community in a time of need. Immediately after the attacks, the station shifted from its usual music format to a 24-hour news and talk format. WBLI staff weaved together network news feeds, live press conference coverage, listener phone calls and patriotic music into six days of commercial-free, community focused programming.¹¹

Within minutes of the September 11 attacks, WMAL-AM in Washington, D.C. had reporters at the Pentagon and other affected areas. The station provided up-to-the-minute information about school and business closings and traffic conditions,

¹⁰ Press release of Federal Emergency Management Administration with the National Association of Broadcasters, Announcing Disaster Preparedness and Relief Effort, August 10, 1998.

¹¹ National Report on Local Broadcasters' Community Service, April 2002, NAB, p. 18.

plus information about how listeners could help by donating dollars, blood and more.¹²

National Association of Broadcasters, National Report on Local Broadcasters' Community Service, 2006:

T]he *Los Angeles Times* called [WWL-AM in New Orleans] "a lifeline sent by airwave." In a similar article, *The Wall Street Journal* commended WWL and noted that the station's "ability to continue broadcasting was vital for stranded listeners." Before, during and after Katrina, WWL provided a constant stream of emergency news and information to the people of New Orleans and the Gulf Coast.¹³

Twelve hours before Katrina was projected to make landfall along the Gulf Coast, WMJY-FM in Biloxi, Mississippi went to wall-to-wall coverage and stayed that way for the duration of the crisis.... With WMJY as one of the only outlets for getting information to the public, the station's studio became a critical stopping point for business leaders trying to reach employees, government officials conveying storm updates and emergency information, and local residents looking for family members or friends who were out of touch.¹⁴

National Association of Broadcasters, FCC Comments, 2006:

Informing the public of national, state and local emergencies is the hallmark of broadcasters' public service. Through the use of live news coverage and EAS, broadcasters have invested millions of dollars to ensure that the local communities they serve have timely access to critical, and often life-saving, information. The most recent examples of this commitment to public service are the heroic efforts of broadcasters to stay on-air to deliver round-the-clock news coverage to their communities during Hurricanes Katrina and Rita.

As a universal and free-over-the air service, local broadcasters' television household penetration rates reach 98.2% of the approximately 112,232,500 American households.... Through their ability to reach virtually all Americans, broadcasters are keenly aware of the unique role they play in disseminating emergency information....

Although the Commission states that, due to the Internet's "inherent robustness," it should "serve an important role in the distribution of alerts and warnings," NAB cautions that during times of significant disasters, access to both electrical power and Internet services may be disrupted or completely cut-off. In fact, as MSRC recognized, "[e]mergency communications plans must take into account the

¹² National Report on Local Broadcasters' Community Service, April 2002, NAB, p. 22.

¹³ National Report on Broadcasters' Community Service, June 2006, NAB, p. 10.

¹⁴ National Report on Broadcasters' Community Service, June 2006, NAB, p. 10.

probability of widespread power outages when AM and FM radio is the *only way* to communicate to battery powered receivers in the community.”....

For delivery of emergency information from the media to the public, broadcasters continue to be the most reliable and robust means of distribution.¹⁵

Association of Maximum Service Television (MSTV), Congressional testimony, 2004:

Upon hearing news of the attacks on the World Trade Center, Americans huddled around television sets in schools, businesses, homes, and elsewhere to keep informed. On that chaotic day, local television broadcasters provided their communities with words of comfort and instruction not only from national political leaders, but also from their own governors and mayors. Lives were saved because television stations were able to disseminate critical information from government officials to the American public....

Local television broadcasters recognize that one of their most important functions is to provide critical "real time" information to viewers in times of emergencies, both manmade and natural. Unlike the pay television services, local broadcasters are able to reach nearly 100 percent of a local community. Television broadcasters are thus an essential part of emergency preparedness....

The significance of our role was confirmed by the FCC shortly after the September 11th attacks, when it created the Media Security and Reliability Council (MSRC) to develop a comprehensive national strategy for securing and sustaining broadcast and other video communications facilities throughout the United States during terrorist attacks, natural disasters and all other threats or attacks nationwide. As MSRC stated in its Final Report earlier this year, maintaining local mass media communications with the public is an essential part of a community's ability to cope effectively with emergency situations.... Similarly, Homeland Security Secretary Tom Ridge has stated that broadcast television and radio are "the first choice" for disseminating information to the public during a terrorist attack.¹⁶

National Association of Broadcasters, FCC Comments, 2003:

The value of the public's local broadcast service is even greater at a time when the nation's homeland security is at risk. Homeland Security Secretary Tom Ridge has stated that "obviously television and radio" are the "first choice" for disseminating information to the public during a terrorist attack.¹⁷

¹⁵ Comments of National Association of Broadcasters, in the Matter of Review of the Emergency Alert System, Docket 04-296, January 24, 2006, pp. 3, 5

¹⁶ Testimony of David L. Donovan, President, Association for Maximum Service Television, before the Senate Commerce, Science, and Transportation Committee, September 8, 2004.

¹⁷ Cited in Joint Comments of the National Association of Broadcasters, the Association for Maximum Service Television, Inc., and the Association of Public Television Stations in the Matter of Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, ET Docket No. 02-380, April 17, 2003, p. 18.

Surely, 9/11 and Katrina illustrated broadcasters' contributions to crisis communications. But from other perspectives they also illustrated how much the world had changed and marginalized the local TV broadcasters' terrestrial, over-the-air communications network.

9/11. All the major terrestrial, over-the-air TV stations in New York City, including ABC, CBS, NBC, and FOX, were located on top of the World Trade Towers. The World Trade Towers were the tallest point in New York City and thus the ideal place for a TV station transmitter because higher towers allow broadcasters to cover greater distances and thus expand their audience reach. All these TV stations were at least temporarily put out of service on 9/11 and wouldn't be restored to full service until four years later.¹⁸ One, CBS, had a backup transmitter on the Empire State Building and was able to quickly switch to it. But at 500 feet lower in elevation than the World Trade Center, the Empire State Building could not provide the same coverage. In short, in one of the greatest local disasters to befall a U.S. city, there was little or no terrestrial, over-the-air broadcast TV coverage at the time it was most needed.

Moreover, this was not an aberration. Terrestrial, over-the-air TV towers are a sitting duck for terrorists who might want to disrupt over-the-air broadcast communications. The towers are highly centralized and in a place nobody can miss. In the New York City TV market, the equivalent of a single conventional bomb was able to disrupt emergency broadcast communications to 35 million people. The pressure for broadcasters to congregate in one place is also great. It dramatically reduces the cost of building redundant towers and local opposition to building the TV towers (because building a 2,000 foot TV tower invites NIMBY opposition in most places). It also makes it easier for people on the outskirts of a TV market to improve their TV reception. When all the TV transmitters are clustered together, rooftop antennas can be pointed at that one spot to receive the strongest possible signal.

Yet the lack of terrestrial, over-the-air TV transmission proved not to be a major problem. By the time of 9/11, the TV world had undergone many changes since its early days. More than 90% of residents in the New York City TV market got their TV via cable or satellite.¹⁹ New York City, with its tall, dense buildings that block direct signals from a transmitter to a TV set, is especially inhospitable to terrestrial, over-the-air broadcast TV signals. In addition, many people were able to get emergency information via alternative media such as the Internet or broadcast radio. In other words, by 2001 terrestrial, over-

¹⁸ "N.Y.C. Broadcasters Back at Full Power 4 Years After 9/11," *Communications Daily*, September 6, 2005."

¹⁹ See Television Bureau of Advertising data on over-the-air viewers by TV market cited in Comments of the Association of Public Television Stations in the Matter of Media Bureau Seeks Comment on Over-the-Air Broadcast Television News, MB Docket 04-210, August 11, 2004. The specific figures were 730,257 of 7,376,330 household in the New York City DMA received their primary TV signal terrestrially, over-the-air. New York City TV broadcast lobbyists, represented by the Metropolitan Television Association, cited a 20% figure; e.g., see Ken Kerschbaumer, "Signal from the Feds: Report says NYC stations will get aid; but that's news to them," *Broadcasting & Cable*, December 31, 2001, p. 28. The 20% figure then stuck in the media; e.g., see "Broadcast," *Communications Daily*, May 14, 2003. Note also the Metropolitan Television Association's role in seeking DTS rights, mentioned elsewhere in this paper.

the-air broadcast TV was only one of multiple platforms for providing emergency information.

As for the content rather than the terrestrial, over-the-air delivery of local TV broadcasters' crisis communications, the same marginalization had occurred. New Yorkers could get up-to-the-minute information from any number of national TV networks such as CNN, FOX, and MSNBC as well as the websites of leading newspapers, magazines, and Internet search engines such as Yahoo, Google, and MSN. And the world of bloggers was just beginning. Indeed, 9/11 was such a high profile story that national TV networks often bumped off the programming of their own local TV affiliates.

A tragic twist is that the terrestrial, over-the-air broadcast TV stations, rather than saving lives, may have indirectly been responsible for the unnecessary loss of hundreds of lives. It is a common practice when there are fires in tall buildings for people to be evacuated via rooftop helicopter rescues. At least one city, Los Angeles, even requires that all tall buildings have helipads. During 9/11, hundreds of people tried to get to the roofs and numerous helicopters tried to provide rooftop rescues but were unable to.²⁰ Many factors outside broadcasters' control contributed to this result. But the existence of such valuable, high profile TV assets on the top of the World Trade Center meant that access to the roof had to be tightly secured; in this case, so tightly secured that no one was able to break the lock to get to the roof. The space taken up by the transmitters and the energy emitted by the transmitters also made it dangerous for helicopters to land on the roof. Helicopters are advised not to land on roofs with high power RF transmitters because the emissions can jam their vital radio equipment.²¹

Of course, none of this was intentional. It was just a byproduct of the very architecture of the terrestrial, over-the-air TV broadcasting system. The focus on the innocent loss of life resulting from 9/11 meant that the tower story that was emphasized in the broadcast industry trade press and subsequent FCC filings and congressional testimony was the tragic loss of six TV broadcast engineers who managed the TV towers and who apparently themselves were not able to reach the roofs.²²

Katrina. On August 29, 2005, Hurricane Katrina hit New Orleans. As with 9/11, there was no advance warning from the broadcasters' emergency alert system, which can partially be blamed on the fact that no local or state official asked the broadcasters to run such an alert.

²⁰ Paltrow, Scott J., and Queena Sook Kim, "No Escape: Could Helicopters Have Saved People From Trade Center? --- Police Choppers Hovered, But Roof Was Locked; Rescuers Feuded in Past --- A Daring Mission in 1993," *Wall Street Journal*, 23 October 2001, p. A1. See also Buncombe, Andrew, "Lack of Planning Undermined 9/11 Rescue," *The Independent* (London), May 19, 2004, p. 24.

²¹ Massey, Curtis S.D., "The facts and dangers of rooftop transmitters on high-rise buildings," *Firehouse Magazine*, April 1, 2005, p. 70.

²² E.g., Alleyne, P. Llanor, "They Loved Broadcasting: Engineers who died on 9/11 were dedicated to helping their stations on the air," *Broadcasting & Cable*, September 9, 2002, p. 30; and Testimony of David L. Donovan, President, Association for Maximum Service Television, before the Senate Commerce, Science, and Transportation Committee, September 8, 2004.

The most striking fact is that there is not a single report of a local TV station in New Orleans providing continuous over-the-air transmission throughout the storm period. For one reason or another, every one of the terrestrial, over-the-air TV towers in the New Orleans area was shut down at the time of greatest need. Moreover, even if the TV broadcasters had been able to transmit their signals over-the-air, the absence of electric power throughout the New Orleans area meant that very few people would have been able to receive their signals.

According to FCC data, on August 29, 2005, 17 local broadcast TV stations in states located on the Gulf Coast were knocked off the air, including 11 of 28 stations in Louisiana. No breakdown for the New Orleans TV market was provided.²³

The TV broadcasters were not unique in their communications breakdown. Cable TV, landline telephone, mobile telephone, public safety, and radio broadcast services also suffered widespread breakdowns.²⁴ What appears to be unique about the TV broadcast breakdown was the lack of industry and FCC data to confirm the TV outages in the New Orleans market. With other communications media, fairly precise data for outages in the New Orleans area were available. For example, we know that of 41 radio stations in the New Orleans area, three kept up continuous service and a fourth only suffered very brief downtime.²⁵ The press was also inundated with stories of the heroic efforts of one of the radio stations, WWL-AM, to provide news coverage of the catastrophe. But there was no mention of terrestrial, over-the-air broadcast TV in the immediate aftermath of the storm, and the NAB provided no public survey including such information. The FCC did provide aggregate figures for Louisiana stations downed in the storm. But this was qualitatively different information than the number of TV stations downed in the areas directly affected by the storm. For radio broadcasters, the FCC provided geographic maps with this localized information.²⁶

Contrast the absence of TV broadcasters' braggadocio to their statements just twelve months earlier concerning their performance with Hurricane Charley. Here is a filing they submitted to the FCC on August 17, 2004:

Broadcasters jumped into action and fulfilled their most important role – informing the public – as Hurricane Charley devastated Florida on Friday. Stations from Ft. Myers-Naples through Tampa-St. Pete had dropped regular

²³ Appendices to written statement of Kevin Martin, Chairman, Federal Communications Commission, Hearing on Public Safety Communications from 9/11 to Katrina: Critical Public Policy Lessons, before the Subcommittee on Telecommunications and the Internet, U.S. House of Representatives, September 29, 2005.

²⁴ Ibid.

²⁵ Report and Recommendations to the Federal Communications Commission of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, June 12, 2006, p. 12. See also NAB's collection of press accounts, *Snapshot of Broadcasters' Efforts to Stay on the Air During Hurricane Katrina*, September 2005, filed as an appendix to Comments of National Association of Broadcasters, in the Matter of Review of the Emergency Alert System, Docket 04-296, January 24, 2006.

²⁶ Ibid.

programming for full-time emergency information.... Most TV stations in all three markets continued wall- to-wall storm coverage well after the storm had passed. It appeared that most radio stations were running hurricane coverage as well. For NBC affiliates, general managers had to decide how to deal with the scheduled opening ceremonies of the 2004 Summer Olympics at 8:00 pm Friday while continuing to keep the public informed about the storm aftermath. "It was an easy decision," Waterman Broadcasting GM Steve Pontius told RBR/TVBR. "I am convinced that we saved the lives of a lot of people."²⁷

Perhaps the most ironic statement was made by Louisiana Senator David Vitter during a Congressional hearing just six weeks before Hurricane Katrina hit. The NAB was using its hurricane coverage to justify delaying the return of spectrum at the end of the digital TV transition for the use of public safety (see the discussion below). It also used it to support its argument for so-called cable multicast must-carry legislation. This legislation would require all cable companies to carry all broadcaster digital TV signals either free of charge or on the best possible terms a local TV broadcaster could negotiate. In an era when only 15% of Americans receive their primary TV signal terrestrially over-the-air, this is an extremely valuable right. Senator Vitter used the TV broadcasters past hurricane emergency information performance to support the broadcasters' position.

Louisiana is a relatively poor state. We have a much, much higher percentage of non- cable hookup sets, and so that, over-the-air broadcast is an absolutely essential component for public safety, particularly when we face regular threats on the Gulf from hurricanes. So making sure that every set gets this capability to remain operating is no trivial matter, and it's not merely a matter of convenience. It absolutely goes to the core of public safety. I'm concerned about first responders and homeland security and all of that. That's a legitimate concern essentially on the other side of the issue, pushing for quicker conversion, but in my part of the world, the dominant concern is the one I'm taking about with regard to weather and hurricane threats.²⁸

Ultimately, whatever problems terrestrial, over-the-air TV broadcasters might have had with their networks in the wake of the hurricane, NAB was able to claim a triumph, with NAB President Eddie Fritts telling his members one month later that Hurricane Katrina was "local broadcasting's finest hour."²⁹

However, the most important lessons of 9/11 and Katrina for the delivery of crisis information to the public might not turn out to be what the broadcasters emphasized in their lobbying campaigns.

²⁷ Citing an article in *Television Business Report (TVBR)* August 16, 2004, Ex Parte Comments of National Association of Broadcasters, in the Matter of Review of the Emergency Alert System, Docket 04-296, August 17, 2004.

²⁸ Comments of Senator David Vitter at the hearing on the Digital Television Transition before the Senate Commerce Committee, U.S. Senate, July 12, 2005.

²⁹ Anne Torpey-Kemph, "The Media Elite," *Mediaweek*, September 26, 2005.

Strikingly, broadcasters provided no evidence that the emergency information they provided was actually better or more pervasive than their competitors. For example, XM Satellite Radio devoted two channels of its 100+ channel lineup to 24/7 coverage of the Katrina crisis (the two channels were called “Emergency Alert Radio” and “Red Cross Radio”).³⁰ Broadcasters praised themselves frequently for cutting away from regular programming to provide emergency information. But was this a better approach than dedicating a certain percentage of channels to Katrina coverage? Similarly, did the broadcast networks and their local affiliates provide better coverage than non-broadcast channels such as CNN, MSNBC, and FOX News or Internet news services such as www.timespicayune.com (the website of the largest daily newspaper in New Orleans)?

Perhaps the most important lesson from these two crises is that the world of emergency communications to the public has evolved tremendously since the 1950s when terrestrial, over-the-air broadcasters were given pride of place in the country’s emergency broadcast system. The public now has a lot of alternative real-time information sources.

These crises demonstrated that the platform independent Internet was the most robust source of terrestrially delivered emergency information, and satellite the most robust source of broadcast delivered emergency information. The Internet was designed to survive a nuclear catastrophe by deploying a decentralized network that could instantly route around any bottlenecks, and satellite transmission was completely unaffected by the terrestrial based disruptions of 9/11 and Katrina. To the extent that people lacked electric power to run their satellite receivers, this was a problem that also affected other communications providers. Satellite radio can run on car power and batteries just like terrestrial radio, and some portable satellite radios are as small as an iPod. New York City Mayor Bloomberg captured the new mindset when he refused to allow local TV broadcasters to use Governor’s Island to build a new standalone 2,000 foot tower to replace the towers on the World Trade Center. Bloomberg wanted to use the island to expand the City University of New York and thought a 2,000 foot tower out of nowhere would damage the university while providing minimal disaster relief to New York City. Bloomberg’s argument was that 9/11 highlighted terrestrial, over-the-air TV broadcasters’ vulnerability to breakdown should another catastrophe occur.³¹

The FCC’s independent panel to review the impact of Hurricane Katrina on Communications Networks (“Panel”) concluded that satellite communications demonstrated surprising robustness in comparison to their terrestrial counterparts:

Satellite networks appeared to be the communications service least disrupted by Hurricane Katrina. As these networks do not heavily depend upon terrestrial-based infrastructure, they are typically not affected by wind, rain, flooding or

³⁰ See written statement of Tony Trujillo, Chairman, Satellite Industry Association, Hearing on Public Safety Communications From 9/11 to Katrina: Critical Public Policy Lessons, Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, United States House of Representatives, September 29, 2005.

³¹ Higgins, John M., and Ken Kerschbaumer, “Mayor Bloomberg says NY broadcasters’ planned 2,000-foot tower is not welcome on Governors Island,” *Broadcasting & Cable*, June 24, 2002, p. 34.

power outages. As a result, both fixed and mobile satellite systems provided a functional alternative communications path for those in the storm-ravaged region.³²

The Panel also concluded that the current broadcast-centric emergency alert system needed to be overhauled:

The Emergency Alert System (“EAS”) and its predecessor systems have long made use of broadcast radio and television stations as the principal tools for communicating with the public about emergencies and disaster situations. The Panel heard stories of heroic efforts by broadcasters and cable operators to provide members of the public impacted by Katrina with important storm-related information. However, there were also reports of missed opportunities to utilize EAS and limitations in existing efforts to deliver emergency information to all members of the public. New technologies may address some of these limitations by facilitating the provision of both macro- and micro-level information about impending disasters and recovery efforts.³³

FCC Chair Kevin Martin, in his testimony before Congress one month after Katrina, observed: “If we learned anything from Hurricane Katrina, it is that we cannot rely solely on terrestrial communications.”³⁴

One of the most important quantitative factual claims the broadcasters made in numerous public proceedings is that they, as emergency information providers, served virtually 100% of American households. This assertion helped make their argument that they not only were not emergency information dinosaurs; they were the most successful emergency information medium in the U.S. For example, as quoted above, the NAB claimed: “As a universal and free-over-the air service, local broadcasters’ television household penetration rates reach 98.2% of the approximately 112,232,500 American households.” Then it concluded its analysis: “For delivery of emergency information from the media to the public, broadcasters continue to be the most reliable and robust means of distribution.”³⁵

³² Report and Recommendations to the Federal Communications Commission of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, June 12, 2006, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518378566. See also written statement of Tony Trujillo, Chairman, Satellite Industry Association, Hearing on Public Safety Communications From 9/11 to Katrina: Critical Public Policy Lessons, Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, United States House of Representatives, September 29, 2005.

³³ *Ibid.*, p. 17.

³⁴ Written statement of Kevin Martin, Chairman, Federal Communications Commission, Hearing on Public Safety Communications from 9/11 to Katrina: Critical Public Policy Lessons, before the Subcommittee on Telecommunications and the Internet, U.S. House of Representatives, September 29, 2005.

³⁵ Comments of National Association of Broadcasters, in the Matter of Review of the Emergency Alert System, Docket 04-296, January 24, 2006, pp. 3; See also Comments of the Association of Public Television Stations in the Matter of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119, June 19, 2006, p. 3; and Testimony of David L.

Terrestrial, over-the-air broadcast TV does indeed in some sense “penetrate” close to 100% of households. However, unlike what is implied, the meaning and practical implications of such a statement are not self-evident. Only about 15% of primary TV sets now receive reception terrestrially over-the-air. The rest receive reception over cable and satellite. Some TV sets receive no external reception at all; they are used to play prerecorded media and attached to game players. Of the remaining 85%, most are not connected to households with rooftop antennas (an increasingly rare sight in America), and most cannot receive good reception indoors via a built-in TV antenna (which is why rooftop antennas are used in the first place). Many Americans live behind mountains or buildings that rule out over-the-air reception, regardless of whether they have any type of antenna. Most Americans with digital TVs did not purchase one with a built-in terrestrial, over-the-air tuner (such sets are technically called “TV monitors”) because most digital TVs are purchased to be connected to cable, satellite, or computer information sources, not terrestrial, over-the-air information sources. And of those digital TVs with such a tuner, many couldn’t pick up the over-the-air signals when the broadcasters made their claims because the great majority of broadcasters weren’t transmitting their digital signals at full power. (To receive their free digital spectrum, broadcasters were initially only legally obligated to transmit digital programming; they weren’t obligated to transmit at full power. And even when their deadline to transmit at full power arrived, many ignored it because the number of digital over-the-air tuners in use was too small to warrant the equipment and energy expense of operating at full power when the FCC did not police its power level rule.)

Nor did “penetrate” mean actual viewing audience, regardless of delivery platform, because the viewing audience for broadcast TV programming is less than 50% of the total TV viewing audience and a much smaller fraction of Americans’ overall consumption of media.

Nor did “penetrate” mean potential access to free TV because broadcast TV programming delivered via satellite or cable is not free and in the case of satellite TV is an optional, fee-only service.

The most favorable definition of penetrate is that, thanks to congressionally passed must-carry laws, all major competing delivery platforms for local broadcast TV, including cable and satellite, must give terrestrial, over-the-air broadcast TV the option of either carrying their programming for free or, depending on their bargaining power, whatever carriage fee the broadcasters can negotiate. In this highly restricted sense, broadcast TV programming has a near 100% penetration.

But even if 100% is defined in such a loose fashion, broadcasting is not unique in being able to make such a claim. Satellite TV covers 100% of America, so anyone could theoretically subscribe. Cable TV passes approximately 97% of TV households, so the

Donovan, President, Association for Maximum Service Television, before the Senate Commerce, Science, and Transportation Committee, September 8, 2004.

vast majority of Americans could also subscribe to that.³⁶ Satellite and terrestrial radio also both pass essentially 100% of Americans. And close to 100% of U.S. households are passed by telephone plant (although only about 94% actually subscribe to telephone service), so have potential access to some form of Internet service, even if only through a dialup service.

Perhaps even more relevant to public safety claims is the penetration rate that is likely to occur after rather than before a crisis hits. To this question there is no simple answer except that in New York City immediately after 9/11 and in New Orleans immediately after Katrina, the “penetration” of terrestrially delivered over-the-air broadcast TV programming was abysmal.

It’s true that, unlike cable or satellite, broadcast programming is an ad-supported service and thus doesn’t require a subscription fee. But the great majority of Americans who have access to “free” (i.e., ad-supported) broadcast TV nevertheless choose to pay a subscription fee for their TV because of the greater programming selection and higher quality reception offered by such services. Moreover, the primary reason that North America, unlike every other inhabited continent on the face of the earth, doesn’t have free local satellite programming is that both the terrestrial radio and TV broadcasting industries have fiercely lobbied against allowing the creation of such a service.

On the utter discrepancy between the stated commitments of policymakers to fostering free, local, and robust emergency communications and their actual behavior blocking such services via satellite, nothing is more illustrative than current satellite broadcast radio legislation being considered by Congress.³⁷

Terrestrial broadcasters have always fought tooth-and-nail to prevent satellite broadcasters from providing free (ad-supported), local service. Reports Scott Wooley in *Forbes*:

Existing stations thrive on an array of perks won by radio operators, including free use of the airwaves (XM and Sirius, by contrast, had to pay almost \$200 million combined for their spectrum) and an exclusive exemption from paying royalties to performers. But the NAB's real forte has been in the modes of attack and delay, persuading regulators and Congress to impose daunting restraints on the satellite rivals....

In waging a crusade to stop satellite radio, the Fritts forces exhorted the nation's radio station managers to contact their congressmen and tell the "truth about satellite radio." "They got broadcasters across the country to hammer like hell on the Congress and the FCC," says [an] ex-NABer. The NAB literature's central talking point was straightforward: "There is no need for 'more' radio service, no

³⁶ Sixth Annual Report: *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, FCC 99-418, January 14, 2000.

³⁷ See also the comments in the Matter of Petition Filed by the National Association of Broadcasters Regarding Programming Carried by Satellite Digital Audio Radio Services, Docket No. 04-160.

need for national radio service and no need for more competition in radio service."... Thus competition would leave consumers worse off, the NAB said in an Orwellian conclusion: "Adding a new service would likely decrease the overall service to the public."...

By the time the FCC approved the entry of XM and Sirius in 1995, victory was illusory. Regulators burdened them with an array of restraints that strengthened old radio's grip on advertisers and viewers. The FCC's license forbade free, advertising-supported satellite stations, instead requiring firms to sign up paying subscribers.... Worst of all the FCC rules made it illegal for the new satellite services to broadcast locally.³⁸

Satellite radio, however, has recently pursued two loopholes which would allow it to broadcast locally and attract local advertising dollars without violating the law. The first is to transmit local information nationally and then have local satellite radio receivers only play the relevant local information. Thus, folks in New York City and Los Angeles can tune into local weather reports even though the information is actually broadcast nationally. With the new generation of satellite radio receivers that can store and retrieve information, providing this type of "local" information becomes more feasible than ever before.

The second strategy is to acquire new spectrum that the FCC had designated as flexible use spectrum in keeping with its philosophy of eliminating "command and control" regulations, which are viewed as merely inefficient "red tape."

Using public safety as its excuse, the Congressional legislation proposes to close these two loopholes. H.R. 998, the "Local Emergency Radio Service Preservation Act of 2005," had 136 cosponsors by August 15, 2006, and a companion Senate Bill, S. 2418, had bipartisan support. The so-called findings of these bills include the following:

Local radio broadcasting is particularly important in times of emergencies or disasters when other means of communications may not be available....

There is substantial governmental interest in promoting the continued availability of free radio programming....

[T]he ability of local stations to continue to provide local news and other services and to ensure communications during emergencies could be jeopardized by a diversion of the listening audience away from local radio programming.

Based on such findings, the bills propose that

- 1) digital audio radio satellite service licensees shall not, using any capability either on a satellite or in a radio receiver, provide services that are locally differentiated or that result in programming being delivered to consumers in one geographic

³⁸ Woolley, Scott, "Broadcast Bullies," *Forbes*, September 6, 2004, p. 134.

- market that is different from the programming that is delivered to consumers in any other geographic market; and
- 2) digital audio radio satellite service repeaters shall be restricted to simultaneously retransmitting the programming transmitted by satellite directly to digital audio radio satellite service subscribers' receivers, and may not be used to distribute any information not also transmitted to all subscribers' receivers.

Whether or not these bills can get a majority of votes in their respective chambers may not ultimately matter. In 2000 the NAB sought to restrict competition from new Low Power FM stations. The legislation its advocates proposed to do this was highly controversial and never got a majority vote. But such a vote was unnecessary because the broadcasters got their preferred legislation attached at the last minute to a must-pass appropriations bill passed just days before the fall election.³⁹ Such a scenario could play out again with this legislation this fall.

Almost as amazing as the satellite broadcast radio bill in Congress is the satellite broadcast TV notice of proposed rulemaking issued by the FCC on June 23, 2006.⁴⁰ It proposes to double the current allocation of spectrum for satellite broadcast TV services such as currently provided by DirecTV and EchoStar. But nowhere does it explicitly propose to allow, let alone encourage, the formation of a free, local satellite broadcast TV service.

The Spectrum Claim

TV broadcasters have traditionally argued that terrestrial TV broadcasting represents an ideal use of the spectrum they occupy and that therefore is no opportunity cost to society of such use. Both 9/11 and Katrina threatened to undermine this claim by vividly demonstrating the value first responders placed on it.

Broadcasters' Beachfront Spectrum. Broadcasters occupy 402 MHz of low frequency spectrum, commonly characterized as "beachfront" spectrum because of its favorable propagation characteristics. Low frequency spectrum has longer waves that can easily pass through walls, people, precipitation, and foliage. Among other things, this makes it ideal for mobile, pervasive communications. Higher frequency spectrum can only be used for line-of-sight communications, such as direct links between two microwave towers. This makes it good for fixed communications such as direct links between two microwave towers or between a satellite in the sky and a fixed TV receiver dish on earth. However, fixed services have close wired substitutes, such as optical fiber, whereas mobile services do not (for example, it's not practical to connect a car to a wire), so to the extent that communicators value mobile, pervasive communications, low frequency spectrum is more valuable. Auction valuations reveal this to be the case. Low frequency

³⁹ Sasha Samberg-Champion "Rollback in Conference Spending Bill," *Television Digest*, October 30, 2000.

⁴⁰ Notice of Proposed Rulemaking in the Matter of The Establishment of Policies and Service Rules for the Broadcasting Satellite Service at the 17.3—17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.74-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Broadcasting Satellite Service Operating Bidirectionally in the 17.3-17.7 GHz Frequency Band, IB Docket 06-123, Released June 23, 2006.

spectrum such as the TV broadcasters occupy has gone for as much as a \$1 billion/MHz for national coverage. At much higher frequencies, auction valuations per MHz have been less than a thousandth as much.⁴¹

Many telecom analysts have argued that terrestrial over-the-air fixed broadcasting represents an extremely inefficient use of low frequency spectrum; fixed broadcasting service can be provided far more efficiently via cable TV using no spectrum or satellite TV using high frequency spectrum.⁴² Moreover, as customers want more choice and broadband Internet service becomes the primary medium for information services, they argue the broadcasting model of information delivery will continue to decline as a component of the overall communications system.

Nevertheless, these arguments had largely been politically ineffective. In the Telecommunications Act of 1996, Congress awarded local TV broadcasters a 2nd TV channel to migrate to digital TV. TV broadcasters were supposed to return one of their two channels at the end of the digital TV transition. Ken Ferree, Chief of the FCC's Media Bureau, characterized the broadcast industry's attitude as "They'd rather eat their children than give up this spectrum."⁴³

Of the returned channels, the Balanced Budget Act of 1997 set aside four, occupying 24 MHz, for public safety. But the Balanced Budget Act of 1997 also set no fixed date for the return of the channels, and many analysts thought it could be many decades, if ever, before it happened in the face of broadcaster opposition. 9/11 and Katrina helped to change that political dynamic by highlighting the opportunity cost to public safety of the broadcasters continued use of such a large swath of low frequency spectrum. Broadcasters quickly realized it was politically impossible for them to challenge the claims of the public safety community to the broadcast spectrum. Instead, they focused their efforts on winning a laundry list of pending pet proposals that they claimed would speed the DTV transition while incidentally strengthening their competitive position vis-à-vis other communications industries.

9/11: On the morning of September 11, 2001, planes struck the twin towers of the World Trade Center. A variety of first responders rushed to the scene. But key groups of first responders—police and fire personnel—were not able to communicate effectively with each other. And even within groups, such as fire personnel, communications were widely perceived to be inadequate. A widely publicized result was that many first responders in the World Trade Towers weren't able to get timely notice to evacuate the buildings

⁴¹ J.H. Snider, "Explanation of the Citizen's Guide to the Airwaves" (New America Foundation: Washington, D.C.; June 2003).

⁴² E.g., George F. Gilder, *Life after Television* (Knoxville, Tenn.: Whittle Direct Books, 1990); Thomas W. Hazlett, "The U.S. Digital TV Transition: Time to Toss the Negroponte Switch," (Washington, D.C.: AEI-Brookings Joint Center for Regulatory Studies, 2001); Bruce M. Owen, *The Internet Challenge to Television* (Cambridge, Mass.: Harvard University Press, 1999); J.H. Snider, *Speak Softly and Carry a Big Stick: How Local TV Broadcasters Exert Political Power*; Craig Moffett, "Cable and Satellite: Search Versus Browse," in Bernstein Research Call (New York City: Sanford C. Bernstein & Co., 14 July 2005).

⁴³ Halonen, Doug, "Broadcasters Vow to Fight Ferree Plan; Proposal Sets 2009 DTV Deadline," *Broadcasting & Cable*, April 19, 2004, p. 12.

before they collapsed. Consequently, hundreds of lives were needlessly lost. The families of the first responders took acute notice of this and the fact that first responders had been promised part of the returned TV broadcast spectrum to solve this problem, yet no fixed date for reallocating the TV broadcast spectrum to public safety had been set. The public safety community mobilized behind the need to return the TV broadcast channels to prevent another 9/11. And as orange alerts and fears of terrorist attacks became an almost daily occurrence for several years, politicians took great heed. Nobody wanted to be accused of causing the deaths of countless Americans because first responders couldn't communicate. The prevailing sentiment was captured in the widely distributed and highly influential 9/11 Commission Report, which described in detail the events on September 11, 2001 and called on Congress, in a list of recommendations, to set a fixed date for the end of the digital TV transition so public safety could get its needed spectrum.

Previous to this, many broadcasters had been confident of the so-called "granny rule," which somewhat hyperbolically stated that as long as one granny in a Congressional district continued to rely on "free, over-the-air broadcast TV," no member of Congress would dare to shut it off. In the mid-1990s, for example, the chair and ranking members of the House Telecommunications Subcommittee had both assured broadcasters that the granny rule held for them and that their spectrum was thus safe.

Katrina: Katrina represented yet another vivid reminder that first responders still couldn't communicate with each other and that the promise of the returned TV spectrum still hadn't been fulfilled. In Congressional testimony and lobbying, first responders repeatedly pointed this out to members of Congress.⁴⁴

In a series of Congressional hearings that reached a climax in 2005, no member of Congress dared to publicly come out against first responders' need for some of the broadcasters' spectrum as soon as possible. Senator McCain, Chair of the Senate Commerce Committee in 2004, led the attack:

Our nation can't wait any longer. Last month, I introduced S. 1268, the Spectrum Availability for Emergency Response and Law Enforcement to Improve Vital Emergency Services Act, which would provide our nation's first responders with additional spectrum by January 1, 2009. I wish the date could've been sooner....

Mr. Chairman, I hope that we can act and act quickly on this issue. If there is another national emergency, the first responders are unable to communicate with each other. I think one of the most disgraceful chapters in the history of this committee and congressional oversight is the way that the National Association of

⁴⁴ For examples of first responders testimony, see written statement of Chief Willis Carter, First Vice President, Association of Public-Safety Communications Officials, Hearing on Hurricane Katrina and Communications Interoperability before the United States Senate Committee on Commerce, Science, and Transportation, September 29, 2005; and written statement of Vincent Stile, President, Association of Public-Safety Communications Officials (APCO) on the Spectrum Needs of First Responders before the House Energy and Commerce Subcommittee on Telecommunications and the Internet, June 11, 2003.

Broadcasters has continued to block this transition and free-up this transition. If there's a national emergency before our first responders get this spectrum, they bear a heavy burden.⁴⁵

Panelist Eddie Fritts, NAB's President, immediately responded:

This past weekend, with the Florida hurricane, local Florida television stations kept the public informed, calm and safe. Yesterday the president of the American Red Cross commented on our stations, and I quote: "Time and again, Americans rely on local broadcasters to provide critical information that saves lives and offers hope in times of need," unquote. It's valuable services like these that will be strengthened and enhanced when the digital television transition is successfully completed.⁴⁶

At a hearing held one month to the day after Katrina hit New Orleans, the Chair of the House Commerce Committee, Joe Barton, made this opening statement:

How much progress has been made since the September 11th terrorist attacks exposed major gaps in communications among federal, state and local officials more than four years ago? Not much, it seems.

On September 11, 1996, five years to the day before the 9/11 terrorist attacks, the Public Safety Wireless Advisory Committee released a report which stated that "unless immediate measures are taken to alleviate spectrum shortfall and promote interoperability, public safety will not be able to adequately discharge their obligation to protect life and property in a safe, efficient, and cost effective manner." And yet here we are and public safety is still grappling with inadequate spectrum and radios that do not communicate with one another....

I have spent months working on a bill to enact a hard date for the digital television transition so that the broadcasters will return spectrum in the upper 700 MHz band that Congress promised to public safety in 1997. With this spectrum, first responders across the nation could share common channels on which multiple local, state, and federal agencies could coordinate emergency response.

We should not wait for another terrorist attack or natural disaster to remind us of the importance of giving public safety the tools they need to do their job.⁴⁷

Senator Barbara Boxer, at a Senate Commerce Committee hearing on the same day as the House Commerce Committee hearing—one month after Katrina—vividly captures the

⁴⁵ Comments of Senator John McCain at the hearing on the Digital Television Transition before the Senate Commerce Committee, U.S. Senate, July 12, 2005.

⁴⁶ Comments of Senator John McCain at the hearing on the Digital Television Transition before the Senate Commerce Committee, U.S. Senate, July 12, 2005.

⁴⁷ Hearing Statement of Chairman Joe Barton Subcommittee on Telecommunications and the Internet "Public Safety Communications from 9/11 to Katrina: Critical Public Policy Lessons" September 29, 2005

tone of the period when politicians feared they could be run out of office if yet another catastrophe struck without resolving the first responder communications problem:

We didn't learn our lesson after the 1993 World Trade Center bombing. Nor did we learn this lesson after September 11th. The wildfires raging in California almost two years ago didn't teach us, either. And now we have Hurricane Katrina.

First responders to all these disasters were so challenged by the lack of interoperable communications that hundreds of lives were unnecessarily and tragically lost.

Enough is enough. We don't need any more failures.⁴⁸

On February 13, 2006 President Bush signed legislation setting a fixed date for the end of the broadcasters digital TV transition and the allocation of the 24 MHz for public safety. This was arguably one of the worst defeats in the history of the TV broadcast lobby. Radio broadcasters had been able to double their spectrum without giving any back as part of their digital transition.⁴⁹ But the TV broadcasters, thanks in part to the political forces set in play by 9/11 and Katrina, were unable to do the same.

Policy Lessons

The primary policy lessons terrestrial, over-the-air TV broadcasters took from 9/11 and Katrina was that it was important to strengthen their own competitive position. This argument took two major forms. First, if the DTV transition needed to be speeded up to get more spectrum into the hands of public safety, then broadcasters' market power would need to be expanded to make this happen. Never mind that in the Berlin region of Germany the entire DTV transition took nine months and with few of the subsidies the broadcasters were asking for and even fewer of the subsidies they already had.⁵⁰ Specifically, the broadcasters asked for the following laws in the name of speeding the DTV transition to enhance public safety:⁵¹

Broadcast flag rules. The broadcast flag was technology that allowed broadcasters to prevent the copying and redistribution of their content without their permission and thus payment. This would protect their programming from piracy and allow them to provide more expensive programming, both economic forces that would allow them to provide better content and thus increase the

⁴⁸ Statement of Senator Barbara Boxer, Hearing on Hurricane Katrina and Communications Interoperability before the United States Senate Committee on Commerce, Science, and Transportation, September 29, 2005.

⁴⁹ See J.H. Snider, "The FCC's Imminent Radio Multicasting Vote: Will it be another broadcast industry giveaway?" March 24, 2006, available at jhsnider.net/telecompolicy under the category Docket 99-325.

⁵⁰ J.H. Snider and Michael Calabrese, "Speeding the DTV Transition" (New America Foundation: Washington, D.C., May 2004).

⁵¹ For example, see the concluding paragraphs of Testimony of David L. Donovan, President, Association for Maximum Service Television, before the Senate Commerce, Science, and Transportation Committee, September 8, 2004.

demand for digital TV sets. But the broadcast flag would also significantly restrict the scope of what used to be called “free TV,” one of the broadcasters’ claimed public interest obligations. As programming increasingly became time shifted, free TV would increasingly take on the attributes of pay TV.

Multicasting must-carry rules. Broadcasters currently had the right to demand free cable and satellite carriage for one of their DTV programming streams. They wanted the right to demand such carriage for all of their DTV programming streams.⁵² With new DTV compression technology, they could anticipate getting as many as twenty standard definition digital TV programming streams in the spectrum that previously could only transmit a single standard definition TV programming stream. This additional carriage would increase the demand for TV broadcast programming and thus the incentive for broadcasters to produce more DTV programming, which in turn would increase the incentive for consumers to purchase more DTV sets.

Settop Subsidies. Broadcasters wanted the government to subsidize consumers’ purchase of digital to analog converter boxes so no consumer’s TV set would lose access to over-the-air TV programming as a result of the DTV transition. Another consequence was that this would create more demand for their terrestrial, over-the-air delivered programming.

Unlicensed Spectrum in the Vacant Channels. After the DTV transition was over, there would be 49 channels allocated to TV broadcasting but the average TV market only used 7 (large TV markets such as New York City and Washington D.C. were assigned many more channels but even then used less than half the total). The empty channels had historically been needed as guard bands between analog channels but these guard bands were largely unnecessary in the digital world. This set off a scramble for rights to use the guard bands. Many leading high tech companies and influential public interest groups wanted to allocate the guard bands for unlicensed service such as an enhanced WiFi service. Broadcasters argued that such unlicensed devices could interfere with DTV reception and thus slow down the DTV transition.⁵³

⁵² For example, see Comments of Eddie Fritts, President of the National Association of Broadcasters, at the hearing on the Digital Television Transition before the Senate Commerce Committee, U.S. Senate, July 12, 2005.

Today, some 585 television stations across the country are using DTV to split their signal into multiple programming streams. This practice, called "multicasting", holds one of the great promises of the digital transition, namely, more free local programming options for the public.... We have said that we would be glad to engage with the committee, both here and in the House, to provide quantifiable public-interest obligations on these multicast channels.... And we agree with you that local television is so important, especially when you have so much hurricanes and tornadoes and bad weather that comes through, not just that, but on every-day local information. And we think the best way to do it is continue the must-carry regime....

⁵³ See Joint Comments of the National Association of Broadcasters, Association for Maximum Service Television, and Association of Public Television Stations in the Matter of Additional Spectrum for

Tuner Mandate. Broadcasters wanted a mandate that every TV set sold in the United States include a terrestrial, over-the-air broadcast TV tuner. Such a requirement, they argued, would enable “reception of news and public safety information in times of emergency.”⁵⁴ It would also, of course, boost viewership of their programming.

To preserve and enhance their own public service, including crisis communications, broadcasters also asked policymakers for new spectrum rights and other preferred treatment. These included:

Digital TV Distributed Transmission System Technology. This would allow broadcasters to transition from a broadcasting architecture with a single high power tower to a countless array of lower power towers; that is, switch from the traditional broadcasting architecture to a more modern cellular architecture. Broadcasters argued, among other things, that this would allow them to provide more robust emergency information to a larger audience.⁵⁵ As an additional benefit, broadcasters would win rights to huge amounts of unused spectrum that could otherwise have been used for unlicensed service. Ultimately, this new architecture of broadcasting would allow broadcasters to transition from a broadcasting to broadband based service.⁵⁶

Digital TV Translators in Rural Areas. The broadcast TV architecture in the U.S. distinguishes between TV service in metropolitan and rural areas. There are 210 local TV markets based in metropolitan areas. Stations in these markets can originate programming. In addition, there are about 5,000 TV translator stations that retransmit this programming in rural areas. The Telecommunication Act of 1996 only provided a second channel for broadcasters in metropolitan areas. Now broadcasters wanted a second channel in rural areas to provide the same type of public service that the metropolitan TV stations could. In addition, they wanted many new rights so they could eventually transition from broadcast to broadband services.⁵⁷

Unlicensed Devices Below 900 MHz and in the 3 GHz Band, ET Docket No. 02-380, April 17, 2003, p. 18.

⁵⁴ This position was endorsed by the FCC in its Report & Order implementing a tuner mandate. See In the Matter of Requirement for Digital Television Receiving Capability, *Report and Order*, ET Docket No. 05-24 (Nov. 8, 2005) at ¶ 25.

⁵⁵ E.g., See “Broadcast,” *Communications Daily*, August 8, 2006. For an example of how New York City broadcasters in particular seek to turn their 9/11 fiasco into a spectrum windfall from the Federal Government, see Josh Wein, “Test in N.Y. Seen Aiding Spread of Distributed Transmission,” *Communications Daily*, August 21, 2006.

⁵⁶ See “How the broadcast industry plans to enter the wireless broadband Internet industry with another \$100 billion gift from Uncle Sam,” available at jhsnider.net/telecompolicy under the category Docket 05-312; see also the comments and ex parte reply comments of the New America Foundation et al. in the Matter of Digital Television Distributed Transmission System Technologies, Docket 05-312, February 6, 2006 and April 18, 2006.

⁵⁷ See New America Foundation et al. Petition for Clarification or Modification in the Matter of Amendments of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power

Digital Radio. As in the TV broadcast band, there was a battle over the unused channels in the radio broadcast band. Radio broadcasters wanted to double their existing allocation of spectrum by acquiring empty adjacent channels so they could provide more public service. After acquiring this spectrum to transition to high definition radio, they wanted to win rights to multicast programming on this spectrum; that is, provide many programs where only one before was feasible. This, too, would allow them to enhance their public service.⁵⁸ Lastly, AM radio broadcasters wanted the right to provide FM translator service within their coverage areas so as to expand their public service, including emergency information.⁵⁹

New Standard for Digital TV Sets. The current broadcast digital TV standard was formally adopted in 1995 but essentially finished by 1993, when the Intel Pentium was still considered a state-of-the-art PC and the world wide web hadn't yet been commercialized. That TV standard is now more than a decade old and cannot support mobile communications over cellular networks. Broadcasters want to replace it with a new standard to fix its many deficiencies, even if that means making obsolete much of the functionality promised to current DTV set purchasers. Among other benefits, broadcasters argue that the new standard will allow for more robust reception of emergency alert information.⁶⁰

Satellite Radio. As we have seen, radio broadcasters sought to prevent satellite radio from providing local, free (i.e., ad-supported) programming. They argued that such competition would limit their ability to provide public service programming.

Different Policy Lessons

What other policy lessons could be taken from 9/11 and Katrina? Here are a few, some of which have already been implemented or are likely to be implemented.

Create a Platform Independent Emergency Alert System. Terrestrial broadcasting is increasingly less important as a source of information for Americans. One of the reasons for this decline is that it is based on an increasingly obsolete set of technologies for the

Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, Docket No. 03-185, December 29, 2004.

⁵⁸ See J.H. Snider, "The FCC's Imminent Radio Multicasting Vote: Will it be another broadcast industry giveaway?" March 24, 2006, available at jhsnider.net/telecompolicy under the category Docket 99-325.

⁵⁹ Petition for Rulemaking of the National Association of Broadcasters to Permit AM Radio Stations' Use of FM Translators, submitted to the FCC on July 14, 2006.

⁶⁰ Comments of National Association of Broadcasters, in the Matter of Review of the Emergency Alert System, Docket 04-296, January 24, 2006. See footnote 11:

The ATSC DTV standard was developed originally to provide service to fixed reception devices. More recent efforts have been targeted to develop transmission modes for reception under severe reception conditions. For example, the latest version of the ATSC DTV standard includes a robust mode called E-VSB that could be used to insure delivery of digital EAS information to small, portable DTV sets during challenging reception conditions.

delivery of both emergency and other information services. As a result, government should move away from an emergency information system that puts broadcasting into a class by itself and gives it special subsidies and regulatory protections.

Switch the Broadcast Band from Broadcast to Broadband Services. The government should reallocate spectrum from broadcast services to Internet based broadband services that are not only what consumers increasingly demand but are increasingly more efficient, flexible, and robust for emergency information services.

Eliminate Laws that Discriminate Against Free, Local Satellite Broadcasting. Satellites have become a highly efficient and robust mechanism for delivering local and ad-supported as well as national, fee-based programming. Wherever markets have been allowed to operate freely, satellite broadcasting has become a major source of “free” (ad-supported) programming to areas no larger than many of America’s TV markets. Accordingly, the government should legalize local, ad-supported satellite broadcast services. It should also either grant satellite radio broadcasters the performance right or ban it altogether. The performance right grants terrestrial but not satellite radio broadcasters free use of prerecorded music—the major operating cost for satellite and other radio stations. It also grants terrestrial radio broadcasters special discounted rates when they rebroadcast their programming over the Internet. With new spot beam satellites, it’s even more efficient for satellites to provide regional broadcasting service than it is for terrestrial broadcasters. For example, one small satellite can provide continent wide service to local markets whereas it has required hundreds of giant TV towers to provide the same service terrestrially.

Bypass the Middle Man in Sending Out Government Emergency Alerts. Traditionally, the government has used middle men such as broadcasters to get out its emergency alerts. This basic model is now being applied to cable, satellite, and other content providers. But another approach is to bypass the middle man entirely and provide direct alerts to citizens. Receiving the alerts would still be voluntary, except that in this case the citizen rather than the intermediary would make the decision whether to receive the signal. One way to do this would be to provide e-mail alerts to both wired and wireless devices. Many public school districts already do this to provide weather and other alerts to parents. Another variation on this idea would be to transmit emergency alerts via satellite signals that could be picked up anywhere in the U.S. An additional twist on this idea that I haven’t seen anywhere would be to require that cars and homes have a built-in receiver that could pick up this emergency alert signal. This could be combined with a receiver to pick up satellite delivered government GPS signals, which tell a receiver where it is located on the face of the earth with an accuracy of about ten feet.⁶¹ This would allow for geographically targeted emergency alerts to any site in the United States. In 2009 car manufacturers are expected to start including special receivers for the Intelligent Transportation System. Perhaps an emergency alert receiver should be integrated into that system.

⁶¹ This does not necessarily raise privacy concerns. GPS is a one one-way satellite to earth technology, so only the person at the receiver, not the transmitter, would know the receiver’s location unless the receiver chose to reply via another communications network with some type of e911 alert.

Although this proposal for an emergency alert system may come across as a radical idea and is not part of the current emergency alert discussion, we already have many public safety requirements that are part of our building and car manufacturing codes. Such a requirement could be thought of as a 21st Century analog to the mandatory smoke detector/fire alarm building requirements first introduced in the 20th Century.

Once such a system was in place, it could be extended in many different ways. For example, a nearby ambulance or police cruiser could activate it via a purely local transmission to alert drivers to clear a path for them. Currently, broadcasters refuse to allow public safety to use radio channels for such a purpose, even when public safety only wants to transmit alerts for a few hundred feet. Another option would be for the emergency alert to be integrated with a home or car communications system and preprogrammed to automatically turn on to a user's favored news channel based on the type of alert; e.g., a national news channel for a presidential alert and a local news channel for a mayoral alert. Another option might be for the user to program his communications network to automatically send out an e-mail alert to loved ones notifying them of his or her location and the nature of the alert received.

Other Industries' Use of Crisis Communications

Although I have been hard on the broadcasting industry's use of crisis communications for lobbying purpose, I in no way want to suggest that other telecommunications industries didn't attempt, and often with some success, to use crisis communications arguments as a pretext for lobbying agendas not necessarily in the public interest. A striking example is the mobile satellite industry, which won free rights to as much as twenty billion dollars worth of rights to spectrum in part by arguing that a strengthened satellite service could provide a robust source of information in times of crisis such as Katrina. These satellite operators may be right, but they could also have been required to bid for their spectrum rights at auction.⁶² Others have also attempted to use the public safety card with less apparent success to date. Vehicle location services in the largely unlicensed 902-928 MHz band, for example, have attempted to win free spectrum rights in the name of public safety that are worth billions of dollars.⁶³

Conclusion

Since the origins of broadcasting, broadcasters have recognized the importance of lobbying to their own long-term health as an industry. When major communication crises such as 9/11 and Katrina come to shape the public agenda, broadcasters—and other

⁶² See Jesse Drucker, "As Satellite Firms Move to Add Cellular Services, Critics Cry Foul," *Wall Street Journal*, February 9, 2006, p. A1.

⁶³ See various comments of Progeny LMS and Warren Havens in Progeny LMS, LLC Petition for Rulemaking to Amend Part 90 of the Commission's Rules Governing Location and Monitoring Service to Provide Greater Flexibility, RM-10403. In response, IEEE 802.18 commented, September 29, 2002, that the requests of the petitioners "represent an unabashed attempt to rewrite the long-established LMS rules... for the purpose of advancing their own financial interests under the guise of Public Safety and Critical Infrastructure." For additional background, see comments of New America Foundation et al. in the Matter of Amendments of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, Docket No. 06-49, May 30, 2006.

telecommunications lobbies—naturally adopt their lobbying strategies accordingly. But this may lead policymakers to suboptimal solutions to the communications crises they are trying to address. Whether that will happen in response to the most recent communications crises is too early to tell, as our nation's communications policies to deal with such crises are very much in flux.

For example, key FCC proceedings, such as its Notice of Proposed Rulemaking in the matter of Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, issued June 19, 2006, have yet to be decided.⁶⁴ And the President's Executive Order to investigate and update the country's Public Alert and Warning System, issued June 26, 2006,⁶⁵ will most likely take at least a year to complete. The fact that the order calls for striking the language of the "Emergency Broadcast System" for the "Emergency Alert System" is a hopeful start.

Still, Congress and the FCC have been sending out some very disturbing signals. For example, Congressional support for codifying the ban on local, ad-supported satellite radio in the name of enhancing our country's emergency communications is very disturbing. So is the FCC's pattern, established now in numerous proceedings, of giving the rights to the unused TV and radio channels to incumbent broadcasters. This is ostensibly being done so broadcasters can provide more broadcast programming, including emergency information, in the public interest. Instead, these unused channels, made usable by new digital technology, should be reallocated for broadband Internet services.

As long as the government continues to have jurisdiction over vital areas of information policy, it is likely that political actors will continue to use communications crises as a pretext to pursue their own long-standing information policy agendas. To the extent that political communication scholars care about the media infrastructure that shapes political discourse, they should keep an eye on how these communications crises may be used in self-serving ways at the expense of democratic discourse and the larger public interest.

⁶⁴ Notice of Proposed Rulemaking in the Matter of Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119, June 19, 2006. See also the Further Notice of Proposed Rulemaking in the Matter of Review of the Emergency Alert System, FCC Docket 04-296, released November 10, 2005. A related Congressional bill is the Warning, Alert and Response Network (WARN) Act, S. 1753, introduced September 22, 2005.

⁶⁵ Available at <http://www.whitehouse.gov/news/releases/2006/06/20060626.html>.