
Legal Writing Samples

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These documents were written as a Legal Intern at America’s Public Television Stations during the summer of 2016 and shared with the General Counsel’s permission.

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Voice of America Licensing

Legal Memorandum prepared by Bobby Desmond

Question Presented:

Whether APTS's member stations can license locally-produced programming to be distributed for international broadcast on Voice of America through PBS Interconnection?

Brief Answer:

Yes, for some stations. Twenty or more stations currently have technology that allows them to deliver their locally-produced programming to PBS and peer stations via satellite.¹ There are no apparent legal prohibitions against airing locally-produced programming on Voice Of America's international broadcast, although stations would have to clear the rights with the production companies. For the many stations that do not have uplink capabilities, the current technology does not permit distribution to VOA. However, all PBS stations will soon have both uplink and downlink capabilities with the adoption of PBS Interconnection v6.

Facts:

In 1948, the Smith-Mundt Act barred Voice of America productions from being released in the United States. That legislative ban was repealed in the 2013 NDAA bill, and VOA productions can now legally be released to the American public.² Furthermore, the U.S. International Broadcasting Act of 1994 authorized the Broadcasting Board of Governors, an autonomous bipartisan government agency that oversees VOA, to produce programs for foreign audiences.³ There is no ban preventing locally-produced American programming from airing on VOA's international broadcasts.

Voice of America, an international public broadcaster, licenses three PBS programs that air as part of its satellite TV weekly schedules directed to Europe, Africa, Latin America, and Asia. These programs include: "Newshour", licensed by Newshour Productions LLC to air Monday through Sunday; "To the Contrary", produced by Persephone Productions to air during the weekends; and "White House Chronicle", produced by Llewellyn King to air Saturdays or Sundays. All three programs are produced in the Washington, D.C. area and are distributed to PBS stations across the nation via PBS Interconnection.⁴

The current PBS interconnection platform (v5) is a technology infrastructure that delivers programming from distributors to local stations. In other words, the system is a one-way street that allows stations to downlink (IE: receive) programming from PBS, American Public Television, the National Education Television Association, and 20 or more of their peer local

¹ Interconnection for Public Television: The Way Forward, (2015), <http://23g9r82i3f1d2a63qz3akhv1.wpengine.netdna-cdn.com/files/2016/01/CPB-Cognizant1.pdf>

² Facts About Smith-Mundt Modernization, <http://www.bbg.gov/smith-mundt/#q1>

³ International Broadcasting Act of 1994, <http://www.bbg.gov/wp-content/media/2012/01/BroadcastingAct.pdf>

⁴ Lonna Thompson's email with Bill Weber and Patrick Butler

stations. In addition, those 20 stations have bidirectional distribution capabilities that allow them to both uplink (IE: deliver) and downlink content through PBS Interconnection. For those 20 stations, the system is a two-way street.⁵

While PBS's long term goal is to allow both distributors and stations to deliver and receive programming amongst one another through Interconnection,⁶ a recent CPB-commissioned report called into question the need for PBS Interconnection to allow bidirectional distribution capabilities.⁷ The report pointed out that very few local stations currently provide programming for national or even regional broadcasts. In fact, 121 licensees produced no national programming at all, and 77% of all national broadcast productions come from the top four licensees in national broadcast production. These numbers seem to call into question the necessity of a universal bidirectional distribution function.

Furthermore, the study revealed that only 7 of 12 stations surveyed believed there was a need for bidirectional distribution capabilities. It is also important to note that two of these respondents are in the top five licensees with the highest number of production hours for national broadcast, which is not representative of the larger PTV landscape. These numbers suggest that most stations do not believe there is a need for bidirectional distribution capabilities; however, one station reported that it would share locally-produced content with other stations if the costs were not as preventative as they are now.

Due to station dissatisfaction with v5 and the impending expiration of satellite leases, work has begun on a new interconnection system (v6) which is a hybrid satellite-terrestrial system designed to be more reliable, cost efficient, and allow collaboration among stations. However, there is debate about whether an alternative Public Media Management system – which is supportive of universal cloud-based bidirectional distribution capabilities for non-real time programming – would be a more cost-effective and beneficial option.

Although stations disagree on what technological upgrades they want from the new system, the most commonly cited services are bidirectional distribution capability; universality of services, so all 170 PTV stations receive an equal level of service; joint master control; cloud-based editing, transcoding, and closed captioning; storage and archival; and a consolidated platform for PTV and public radio. PBS also wants a system that has enhanced emergency alerts and the ability to provide internet access to regions that do not currently receive service.

Discussion:

Considering Voice of America already licenses three PBS programs, there is good precedent for DC-produced public television programs being licensed by VOA for worldwide distribution; however, no member station's locally-produced programming has been licensed by VOA for worldwide distribution.

⁵ PBS Opens Request for Prequalification Process for Public Television's Interconnection System, (2016), <http://www.pbs.org/about/blogs/news/pbs-opens-request-for-prequalification-process-for-public-televisions-interconnection-system/>

⁶ Public Radio Satellite System joins PBS in testing IP-based interconnection, (2015), <http://current.org/2015/05/public-radio-satellite-system-joins-pbs-in-testing-ip-based-interconnection/>

⁷ Consultant's report favors cloud-based system for new public TV interconnection, (2016), <http://current.org/2016/01/consultants-report-favors-cloud-based-system-for-new-public-tv-interconnection/>

Licensing member stations' locally-produced programming to VOA would paint a portrait of America beyond the world of politics and public affairs, generate new revenue for stations, and advance PTV's mission of civic leadership and bipartisan appeal in an important way. Additionally, VOA's director, Amanda Bennett loves the idea and thinks it could be a cost-effective way to achieve one of her strategic goals.⁸

Is Interconnection still a one-way street?

The overwhelming majority of local stations cannot distribute their locally-produced programming to VOA via PBS Interconnection at this time. Currently, v5 is primarily a one-way street designed to allow distributors to deliver programming to stations, not the other way around. However, 20 stations can deliver and receive programming amongst each other (and should also have the technological capabilities to deliver programming to VOA.) In other words, v5 is a two-way street for those 20 stations.

PBS hopes that v6 will change this by ensuring that all stations have the capability to both deliver and receive programs to and from PBS and peer stations.

Which system will be adopted, PMM or v6?

There are strong arguments on both sides for which system should be adopted. It would be naïve to ignore the possibility that the report may have an impact on whether the alternative PMM station is chosen over v6. The report also may have an impact on whether or not universal bidirectional distribution capabilities remain an integral feature of v6 moving forward.

The argument that bidirectional distribution capabilities are unnecessary because so few stations produce national programming seems flawed. Logically, more local stations would have an incentive to produce and provide programming for regional and national broadcasts if there was a system in place with universal bidirectional functionality. This is not just conjecture. The study projected collaboration to increase if stations have the ability to easily transfer programming to peer stations. In fact, one station in the CPB-commissioned study specifically reported that it would like to distribute programming to peer stations but cannot because of the costs and technological problems inherent in the current v5 system.

However, the study also suggests that nearly half of stations currently see no need for bidirectional distribution capabilities. This could mean that those stations do not understand the benefits that bidirectional distribution capabilities could bring to their station. Conversely, this could mean that those stations do understand the benefits but genuinely believe they will not use the system to distribute content to peer stations.

It may be wise to do more research by reaching out to member stations to survey their opinions regarding bidirectional distribution capabilities. Do they know the potential benefits of those capabilities? Do they have any interest in utilizing those capabilities? Do they have any concerns about utilizing those capabilities? We truly do not know how many member stations actually have an interest in utilizing this technological capability.

⁸ Lonna Thompson's email with Bill Weber and Patrick Butler

PBS is moving toward universal bidirectional distribution capabilities, whether or not many stations intend to utilize the function. Both the v6 and proposed alternative PMM system hope to have the feature, though each approaches the matter in a different technological way. No matter which system is adopted, local stations will likely have the capability of uplinking their locally-produced programming to PBS, peer stations, and VOA soon.

Are there any other legal hurdles?

While the Smith-Mundt Act previously banned VOA productions from airing in the US, that ban has since been repealed by the 2013 NDAA bill.⁹ Neither the previous nor current law prevent local programming from airing on VOA.¹⁰ Additionally, the International Broadcasting Act of 1994 only prevents the BBG from producing programming for American audiences; it does not prevent PBS-produced programming from airing on VOA. In essence, the International Broadcasting Act of 1994 ensures that the BBG does not spend money on producing programs intended for American audiences, but instead focuses its efforts on reaching foreign viewers.

As far as I can tell, there are no legal prohibitions against local programming from airing on VOA's international broadcasts. Of course, local stations would need to individually negotiate with each of the production companies to ensure that they have the rights to distribute their programming to VOA for international broadcast in addition to their rights to air it locally.

Conclusion:

Twenty or more stations currently have the capability to deliver programming to peer stations. Other than negotiations over the rights to distribute locally-produced programming internationally, I can find no legal ramifications to member stations delivering their locally-produced programming to VOA through PBS Interconnection for international broadcast. This new programming opportunity may provide public television stations with a new source of revenue, while also providing people around the world with new American programming and advancing the civic leadership mission and bipartisan appeal of public television.

Unfortunately, the overwhelming majority of local stations do not have the technological capability to provide Voice of America with locally-produced programming through PBS Interconnection at this time. However, these stations will have the ability to do so soon.

With the potential implementation of v6 in 2016, PBS hopes to achieve universal bidirectional functionality that allows all stations to receive *and deliver* programming. At that point, all local stations will be able to provide VOA with locally-produced programming for international broadcast. In fact, one of the three primary purposes of the v6 upgrade is to allow such program sharing.

⁹ Smith-Mundt Act, https://en.wikipedia.org/wiki/Smith%E2%80%93Mundt_Act

¹⁰ National Defense Authorization Act for Fiscal Year 2013, <https://www.gpo.gov/fdsys/pkg/BILLS-112hr4310enr/pdf/BILLS-112hr4310enr.pdf>

Public Inspection File NPRM

Legal Memorandum prepared by Bobby Desmond

Question Presented:

Whether the FCC's Notice of Proposed Rulemaking on Revisions to Public Inspection File Requirements impact public television stations?

Brief Answer:

Yes. The second proposal, which eliminates the public inspection file requirement that cable operators maintain the location of its principal headend, will have an impact on PTV. Noncommercial stations must know where a cable system's principal headend is in order to find out if it qualifies as a must-carry station. The Commission says that, if the requirement is eliminated, it would adopt means for the information about a principal headend's location to remain available to PTV stations. Unfortunately, the Commission does not elaborate on how PTV stations will be able to determine a principal headend's location.

Facts:

The Commission proposes two changes to the public inspection file requirements: (i) it proposes to eliminate the requirement that commercial broadcast stations retain in their public inspection file copies of letters and emails from the public, and (ii) it proposes to eliminate the requirement that cable operators maintain for public inspection the designation and location of the cable system's principal headend.

Broadcast stations qualify as must-carry stations depending on how close they are to a cable system's principal headend. An NCE station is eligible for mandatory carriage on a cable system if it is either licensed to a principal community within 50 miles of the system's principal headend, while a low power station is eligible only if it is within 35 miles of the principal headend. These qualifications have not changed.

Discussion:

The first proposal has no impact on PTV stations. The correspondence file requirement applies only to commercial broadcasters; there is no similar requirement for noncommercial broadcasters.¹¹

The second proposal has an impact on how PTV stations can find out whether they are eligible for mandatory carriage on a cable system. PTV stations currently rely on finding the location of a cable system's principal headend through the FCC's online database or the cable system's local file. However, these rules propose to remove the requirement that cable systems retain this information online or in their local file.

If these rules are adopted, PTV stations may have trouble determining the location of a cable system's principal headend. This may, in turn, cause PTV stations to have trouble determining their must-carry eligibility. Fortunately, the Commission has foreseen this issue and

¹¹ See *Revisions to Public Inspection File Requirements*, Notice of Proposed Rulemaking, para. 4, http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0525/FCC-16-62A1.pdf

says it will “adopt means for this information to remain available to those entities that need it” including PTV stations.¹²

The Commission does not elaborate on how PTV stations will be able to find this information. Instead, the Commission proposes to require that cable operators provide information regarding the designation and location of the system’s principal headend to television stations. It also seeks comment on how cable system’s should provide the location of their principal headend to broadcast stations:¹³

“If we update our existing Form 322, 324, or 325 to include principal headend information, should we also provide a means for broadcasters to access that information for purposes related to their must-carry rights? What methods should we use to make the information accessible? Alternatively, should we require cable operators to provide this information to entities that need it upon request? If so, what requirements should we impose regarding the format of these requests and the format and timing of the cable system’s response? We note that our existing rules require cable operators to provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend. If we require that cable operators provide principal headend information upon request, should we require that this information be provided in writing by certified mail? Should we require any requests for that information also to be submitted in writing by certified mail? Should we instead permit the request and response to be made electronically? Should we require broadcast stations to keep information regarding the location of a cable system’s principal headend confidential, or do broadcasters have a valid reason at times to disclose this information, such as in pleadings related to a cable carriage dispute?”

Conclusion:

The proposal to eliminate the public inspection file requirement that cable operators maintain the location of its principal headend online or in their local file will impact how a PTV station finds out if it qualifies as a must-carry station. APTS should file a comment that answers the Commission’s questions about how a cable system should inform PTV stations about the location of its principal headend.

¹² *Id.* at para. 13

¹³ *Id.* at para. 16

Wireless Emergency Alerts Comment

EXECUTIVE SUMMARY

In accordance with its mission to serve local communities, public media is committed to improving the usefulness and reliability of the Emergency Alert System (“EAS”) and the Wireless Emergency Alerts (“WEA”) system.

The existing public media infrastructure allows highly reliable and resilient datacasting to deliver alerts with its digital programming, even during disasters or power outages. Datacasting is a cost-effective technique capable of high quality video and audio transmission without the congestion characteristic of other emergency alert systems. Further, datacasting can be broadcast to an unlimited number of authorized recipients or the content can be encrypted to target individuals and groups. Moreover, public television is hoping to advance these systems by migrating to the Advanced Television Systems Committee (ATSC) 3.0 digital standard, which brings numerous benefits including increased bandwidth and mobility.

Public television stations around the country are enacting public safety programs that may be used as a model in other communities. The Clark County School District’s system transmits blueprints and evacuation plans in the event of an active shooting. The Virginia Tidewater Consortium for Higher Education’s system increases security on college campuses. The U.S. Park Police and Massachusetts Emergency Management Agency have systems to distribute live video feeds via helicopter during large events like Fourth of July celebrations and the Boston Marathon. Using the state’s 12 public broadcast stations, the Ohio Digital EAS is a statewide system that can stream to nearly every one of Ohio’s 11.5 million residents. Groups in Houston and Chicago have tested datacasting with two way capability through band 14 integration. Minnesota’s Emergency & Community Health Outreach system reaches out to immigrants and refugees by translating alerts in multiple languages, as an extension of the traditional system which only broadcasts in English. While these examples clearly demonstrate public television’s dedication to innovation in the area of public safety communications, many other applications exist including disaster area coverage, backup operations centers, marine use, and more.

Public radio also plays an essential role in emergency communications as many people rely on battery-operated radios during power outages and car radios during evacuations. Alerts sent out over WUKY-FM are repeated on stations across Kentucky including automated stations that would not otherwise provide timely alerts. Oklahoma officials rely on KGOU-FM's statewide alert system for damage reports, evacuation routes, and shelter information during severe weather. With the help of local news departments, the Florida Public Radio Emergency Network distributes detailed local information around the clock and has a system that sends emergency text, audio, and video content at no cost to digital device users. WLTR-FM has a statewide system that alerts hospitals and aids in search and rescue efforts. These examples express public radio's devotion to innovation in the area of public safety communication. Moreover, the radio industry is working with AT&T, Sprint and T-Mobile to provide the public with a mobile alert system by activating the FM chips in smart phones.

CONCLUSION

Public media exists to serve local communities. From datacasting blueprints to law enforcement during a school shooting to exploring new applications in disaster areas and marine settings, public television is devoted to advancing public safety communications. With the adoption of the ATSC 3.0 digital standard, public television will receive the additional benefits of increased bandwidth and mobility. Public radio is also committed to expanding its public safety communication systems, from statewide severe weather alerts to the activation of FM chips in mobile devices. The existing public media infrastructure has the unique ability to cost-effectively deliver high quality video and audio to those who may be in danger, even during disasters or power outages. As such, public media is committed to improving the usefulness and reliability of EAS and the WEA system.

170MillionAmericans.net Cybersquatter

Legal brief prepared by Bobby Desmond

Two years ago, the 170millionamericans.net domain was not renewed after rebranding the initiative to Protect My Public Media. Instead of rerouting to a 404-not found page, someone purchased the domain and kept the 170 Million Americans files and content on the site. NPR contacted APTS to resolve this trademark issue, however APTS no longer has access to the site and the 170 Million Americans trademark is owned by American Public Media Group.

The current owner has many domains and hasn't changed the content on those sites. He appears to have registered under a fake name and address, but appears to use a real email address. It is likely this owner is cybersquatting, a fairly common hostage scenario where third-parties buy up trademarked domain names for profit. Cybersquatting is illegal under the Anticybersquatting Consumer Protection Act, and the Uniform Domain-Name Dispute-Resolution Policy is a set of international guidelines prohibiting the practice.

How should APTS respond to this trademark infringement?

1. File a [trademark complaint](#) with the domain registrar, GoDaddy.com
2. Send an email requesting the domain owner remove the trademarked material:
“The trademarked content on 170millionamericans.net is not yours. The content on the domain is registered under United States Federal Trademark Registration No. 3987432 and owned by American Public Media Group. This infringement is causing damage to American Public Media Group, America’s Public Television Stations, NPR, and Protect My Public Media. You must immediately cease using the mark by removing all content from the 170millionamericans.net domain. You may not use the mark in the future. You must transfer the domain back to the registered owner. If you fail to take the action demanded, appropriate legal action will be taken by our legal departments, including a claim for damages, a federal suit under the Anticybersquatting Consumer Protection Act, and/or an ICANN Uniform Domain Name Dispute Resolution Policy action.”
3. Pay whatever the hostage-taker demands or make a counter-offer.
4. Hire a lawyer to find the hostage-taker and send a cease and desist. This is the easiest, quickest, and cheapest legal option though you run the risk of not finding the domain owner, the domain owner not reading the letter, or the domain owner not complying.*
5. File with ICANN’s Uniform Domain-Name Dispute-Resolution Policy. This would involve filing a pricy complaint against the domain holder and coming to an agreement, court action, or arbitration before the registrar will cancel, suspend, or transfer a domain name.*
6. Alternatively, since this is may be a cybersquatting situation, American Public Media Group may be entitled to an expedited administrative proceeding that can be initiated by filing a ICANN complaint with an approved dispute-resolution service provider.*
7. Bring a federal suit under the Anticybersquatting Consumer Protection Act.*
8. To prevent this from happening again: (i) APTS should register all of the trademarks on each of its sites, and (ii) set up auto renewal for all of APTS domain names.

* Unfortunately, APTS and NPR can not resort to legal action as they are not the registered owner of the 170 Million Americans trademark. Only American Public Media Group, as the registered owner, is entitled to file a suit, complaint, or request for an expedited administrative proceeding.

Satellite Carriage Requirements Brief

FCC's Report to Congress on Designated Market Areas (MB Docket No. 15-43)

Currently, many satellite customers in rural and remote places like Wyoming and the Virgin Islands lack localized public television programming. Instead, the public television signal they receive via satellite is a retransmission of a national feed, if they receive any signal at all.

While Congress permits DBS operators (like DIRECTV and Dish Network) to carry state public television network signals, they are not required to do so. A legislative requirement that DBS operators carry state public television signals would increase localism and ensure that all satellite customers have access to local public affairs, emergency alerts, educational programming, and more. NAB also requested a requirement to carry local-into-local channels in all 210 DMAs.

The FCC has been hesitant to enact nation-wide carriage requirements, since only a select number of rural or remote places lack localized programming on satellite services. Instead, the FCC has suggested that a targeted solution may be preferable.

The FCC acknowledges that current statutory market modification provisions only apply to commercial stations and exclude local public television stations. To remedy this, the FCC has suggested expanding legislation to include noncommercial stations as well. However, this goal can only be achieved through legislative action by amending 17 U.S.C. Section 122(a)(4)(E).

Finally, the FCC acknowledges the specific circumstances that would be necessary to ensure that customers in the Virgin Islands receive a local public television signal via satellite service:

“The Virgin Islands Public Television System (VIPTS) filed comments requesting that Congress and the Commission reexamine the satellite carriage requirements with regard to the Virgin Islands and other U.S. territories. VIPTS states that its public service mission is frustrated by its inability to require carriage of its local broadcast station on DBS through the “carry one, carry all” requirement. VIPTS states that its situation results from the Commission having interpreted in the implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) that statutory language containing the phrase “State that is not part of the contiguous United States” was not meant to include U.S. noncontiguous territories and possessions. VIPTS also asks that Congress amend copyright law as needed to clarify that the Virgin Islands, and other territories as appropriate, fall within the compulsory copyright license granted to DBS carriers under Section 122 of Title 17 of the United States Code. As with the other proposed expansions of satellite carriage requirements discussed above, VIPTS’s requested changes would require new legislation to amend the aforementioned statutes.”

Necessary Legislative Action to Expand Satellite Carriage Requirements:

- Amend 17 U.S.C. Section 122(a)(4)(E) to require, not permit, DBS operators to carry state public television signals
- Require local-into-local channels in all 210 DMAs
- Amend Section 210 of SHVERA to include noncontiguous territories and possessions
- Amend Section 122 of Title 17 of the United States Code to include the Virgin Islands within the compulsory copyright license granted to DBS carriers