

# QUESTIONS & ANSWERS ABOUT THE *OUR DEMOCRACY, OUR AIRWAVES ACT*

## What does the *Our Democracy, Our Airwaves Act* do?

The bill:

- ensures that television and radio stations, as part of the public interest obligation they incur when they receive a free broadcast license, air at least two hours a week of candidate-centered or issue-centered programming during the period before elections;
- enables qualifying federal candidates and national parties to earn up to \$750 million worth of broadcast vouchers that can be used to place political advertisements on television and radio stations in each two year election cycle. The system will be financed by a spectrum use fee of not more than one percent of the gross annual revenues of broadcast license holders;
- closes loopholes in the “lowest unit cost” provision in order to ensure that candidates receive the same advertising rates that stations give to their high-volume, year-round advertisers; and
- provides better disclosure of political advertising purchased by candidates.

The bill (introduced in the 107<sup>th</sup> Congress as S. 1497) is co-sponsored by Senators John McCain [R-Ariz.], Russell Feingold [D-Wisc.] and Richard Durbin [D-Ill.]. See our “Bill Summary” fact sheet for more specifics on the proposed legislation.

## Isn't this just a perk for politicians?

The vouchers are an effort to reduce the cost of campaign communication by providing qualifying candidates with a limited number of free ads. But candidates must earn these vouchers by raising small dollar contributions.

If anyone gets a “perk” from the *Our Democracy, Our Airwaves Act*, it's the public. Citizens get an electoral system in which ideas matter more than money. They get more information and a wider range of electoral choices.

**OUR DEMOCRACY, OUR AIRWAVES**

THE CAMPAIGN LEGAL CENTER, MEDIA POLICY PROGRAM  
1640 Rhode Island Avenue NW, Suite 650 Washington, DC 20036  
[www.ourairwaves.org](http://www.ourairwaves.org); tel 202.736.2200; fax 202.736.2222

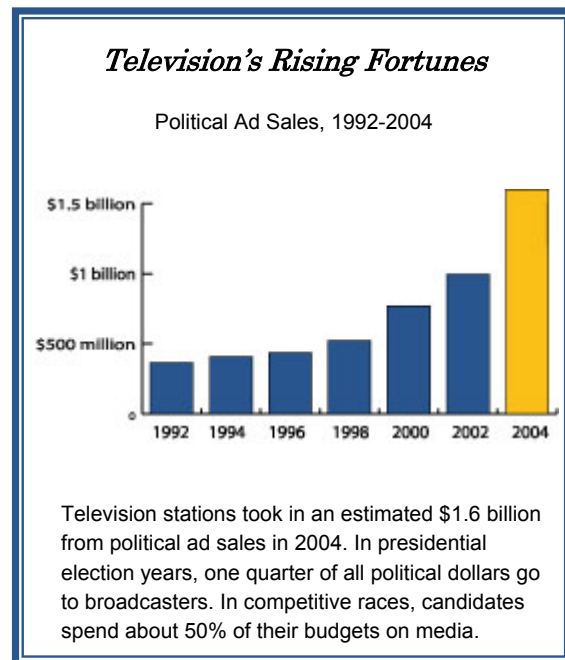


### **Won't vouchers for political ads mean more ads on the air at election time?**

For better or worse, candidates believe that 30-second ads are the best way to communicate their message to voters. Under the *Our Democracy, Our Airwaves Act*, more candidates will have an opportunity to place ads on the air. Under existing law, broadcasters are required to provide "reasonable" but not "unlimited" access to the airwaves to federal candidates who want to run ads. The finite nature of broadcasters' ad inventory will limit the increase in the number of political ads.

### **Don't candidates spend most of the money they raise on travel and staff salaries?**

In 2000, Senate candidates spent an average of 52 percent of their budgets on broadcast media. In *contested* House races the numbers are often very similar. In 2004, more than \$1.6 billion was spent on political advertising – double the amount spent in 2000. There is no doubt that the high cost of television advertising is the main reason behind the explosion in the costs of campaigns. It forces our elected officials to have to raise enormous amounts of money, makes it impossible for many potential candidates to compete and drives the public away from participation in the democratic process.



### **Why are broadcasters being singled out? Why not require newspapers to provide free ads and airlines to provide free flights?**

The broadcast industry is the only vendor to the political process that uses a publicly-owned asset – the electromagnetic spectrum – that it has been granted free of charge on condition that it serve the public interest. It receives unique benefits and under law can be asked to make good on unique obligations.



### **Isn't this a special tax on broadcasters?**

No. If the spectrum were to be auctioned off to television and radio broadcasters – the way it is to cell phone companies – it would generate more than \$367 billion for the public treasury, according to leading economists. Broadcasters have never paid a single penny for their exclusive rights to use our public airwaves. But they certainly enjoy the 30, 40 and even 50 percent profit margins they earn annually, according to a recent FCC study. No other industry receives such a perk. We certainly don't grant commercial logging companies free and exclusive rights to use our national forests for their profit. This is a sweetheart deal for the broadcasters, and a raw deal for the American public.

### **Is this bill constitutional? Would the “two-hour rule” violate broadcasters’ First Amendment rights? Would the vouchers constitute a “taking” of property without just compensation, a violation of the Fifth Amendment?**

More than 70 years of legislation, regulation and court rulings strongly uphold the constitutionality of the *Our Democracy, Our Airwaves Act*. In a landmark ruling in 1969, the Supreme Court held that when the government regulates access to the spectrum, it must balance the First Amendment rights of broadcasters against the First Amendment rights of the public, and that when these rights come into conflict, the rights of the public are “paramount.” The court reasoned that “it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas...rather than to countenance the monopolization of the market,” and thus, it is “the right of the viewers and listeners, not the right of the broadcasters, which is paramount.” As for the Fifth Amendment “takings” argument, the courts have long held that broadcasters have no “property interest” as a result of their licenses to use the airwaves, and thus there could be no takings. See our “Constitutional Arguments” fact sheet for more details on these court cases.

### **Does the public support free air time?**

There have been at least six independent polls taken since 1982 that demonstrate substantial public support for various types of free air time for candidates. A 2002 Pew Research Center poll found 73 percent of the public favors free air time for candidates to discuss issues. Also, in a series of 44 forums with more than 1,400 participants in 2001, the National Issues Forums found widespread support and enthusiasm for free air time for political



candidates. The citizen participants saw it as a way to “level the playing field” and give them an opportunity to hear directly from candidates.

### **Why was the level of vouchers set at \$750 million?**

During the 2002 election cycle, \$1 billion was spent on political advertising on television and radio; of this amount, approximately \$750 million was spent by candidates and parties.

### **Will a spectrum use fee set at between 0.5 percent and 1 percent of broadcasters’ gross annual revenues be sufficient to generate \$750 million in vouchers per two year cycle?**

Yes, according to the BIA Financial Network, Inc., television and radio license holders take in approximately \$60 billion a year in gross annual revenues, meaning that a fee of .625 percent would generate \$750 million per two year cycle.

### **Don’t broadcasters already air a lot of election coverage?**

In 2004, only eight percent of all newscasts contained a story about a local election; there was eight times as much coverage of accidental injuries on local news than coverage of local campaigns, according to the Norman Lear Center at the University of Southern California. Also in 2000, 48 percent of the election coverage on network nightly news discussed “horse race” poll numbers rather than campaign substance. Numerous other academic studies have detailed how little coverage of the candidates and issues can be found on local and network television.

Broadcasters have also been cutting back on their coverage of debates. During the 2000 primaries only two of the 22 presidential debates were aired on a network in prime time. Also in 2000, the Committee for the Study of the American Electorate found that just one-fifth of the gubernatorial, senatorial and congressional debates held were aired by a network-affiliated local television station.

### **What happens when candidates turn down offers to appear in debates or interviews?**

Both candidates and broadcasters want to control what voters see and hear about campaigns. The *Our Democracy, Our Airwaves Act* addresses both sides of this issue. Candidates are able to use their vouchers (which are earned by



raising small dollar donations) to buy ads on the broadcast stations of their choice. Broadcasters can use the format of their choice to air two hours per week of candidate or issue discussion.

It's true that risk-averse candidates — especially frontrunners — sometimes view television exposure as too important to be left to anything but their 30-second spots. But under the *Our Democracy, Our Airwaves Act*, broadcasters would go forward with the segments even if the frontrunner stays home. That should cut down on the number of no-shows.

### **What safeguards exist to ensure that broadcasters will use the time to cover all candidates fairly?**

Under the Equal Opportunity Rule, broadcasters have considerable latitude in deciding which “bona fide news events” (such as debates, mini-debates, candidate issue statements, interviews, etc) to cover. However, stations must have pre-established, clear, objective written criteria upon which to base those decisions. The criteria can include standing in the polls, the party's or candidate's track record in previous election, etc., and must be applied evenly to all candidates.

The decision to carry any news event must be the result of good faith news judgment and not based on partisan purposes. See our “Reasonable Access and Equal Opportunity Rules” fact sheet for more details on these issues.

### **Why doesn't the *Our Democracy, Our Airwaves Act* apply to cable?**

Cable operators do not use the scarce public airwaves and do not have broadcast licenses. Instead, they negotiate with and pay fees to state and local governments to provide cable programming. Often those deals include requirements that cable companies serve the community by providing public access channels. Television and radio broadcasters, on the other hand, have never paid for their free and exclusive licenses to use our public airwaves. Instead, they agree to use the airwaves to serve the public interest – which should certainly include providing information about candidates at election time.

Also, the slice of political advertising budgets that goes to cable, while on the rise, is still well below 10 percent. For the foreseeable future, most candidates who advertise will continue to want to reach the broad audience that only broadcast television delivers.