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# HOUSE CONCURRENT RESOLUTION

URGING CONGRESS AND THE FEDERAL COMMUNICATIONS COMMISSION TO  
CODIFY A DEFINITION OF THE "PUBLIC INTEREST STANDARD" FOR  
THE BROADCASTING INDUSTRY.

1           WHEREAS, the so-called "public interest standard" has  
2 governed communications policy decision-making at the Federal  
3 Communications Commission for more than seventy years; however,  
4 there are questions as to whether this "standard" does indeed  
5 serve the public, or if it has instead served only the interests  
6 of regulators and companies that stand to gain from the  
7 regulatory process; and

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9           WHEREAS, ever since the passage of the federal Radio Act of  
10 1927, as amended, federal regulators were given broad authority  
11 and discretion to regulate in the name of communications  
12 consumers if the regulators found it was in the "public  
13 interest, convenience, or necessity"; and

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15           WHEREAS, on the other hand, the Radio Act of 1927, as  
16 amended, also banned the common carriage regime, thereby  
17 prohibiting non-licensees from having free speech rights in the  
18 broadcast medium except as authorized by the "public interest  
19 standard", and giving free speech rights in broadcasting only to  
20 licensees; and

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22           WHEREAS, the scarcity of access to the airwaves, which  
23 results in only a limited number of licenses granted by the  
24 Commission, is attributable to both the physics of the  
25 electromagnetic spectrum, which limits the number of broadcast  
26 stations that may operate without chaos resulting, and the  
27 prohibition of the common carriage regime, which tends to invite  
28 arbitrary divisions of spectrum space for particular reserved  
29 uses; and  
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1           WHEREAS, the scarcity of access to the airwaves also  
2 justifies the continuing application of the public interest  
3 standard to ensure that broadcasters serve as public trustees of  
4 the airwaves; and

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6           WHEREAS, however, it is precisely because Congress has  
7 never defined what exactly is "in the public interest" that the  
8 phrase lacks any definite meaning; furthermore, the many  
9 inconsistencies in Commission decisions have made it impossible  
10 for the phrase to acquire a definite meaning in the process of  
11 regulation; and

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13           WHEREAS, critics have recently pointed out that regulation  
14 "in the public interest" has come to mean whatever is in the  
15 interest of regulators to do at a given time; therefore, the  
16 standard is a non-standard because it has no fixed meaning; and

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18           WHEREAS, for many years, the chief legal vehicle for  
19 citizens to gain direct access to the airwaves, or hear diverse  
20 viewpoints on controversial public issues, was the fairness  
21 doctrine, which was once seen as a primary feature of the public  
22 interest standard, because a broadcaster's compliance with the  
23 fairness doctrine was considered a major performance criterion  
24 for the broadcaster to renew its federal broadcast license;

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26           WHEREAS, the fairness doctrine required broadcasters to  
27 devote a reasonable amount of time to cover controversial issues  
28 of public importance and provide a reasonable opportunity for  
29 the presentation of contrasting viewpoints; and

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31           WHEREAS, some broadcasters complained that the fairness  
32 doctrine had a "chilling effect" on their free speech by  
33 discouraging them from airing programming on some controversial  
34 issues; and

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36           WHEREAS, the Commission rescinded the fairness doctrine in  
37 1987 and now renews broadcast licenses with few exceptions, and  
38 requires broadcasters to submit little information on how they  
39 are fulfilling their public interest requirements, prompting  
40 critics to complain that the Commission has relied on market  
41 forces rather than the public interest standard when awarding  
42 initial or renewed broadcast licenses; and



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WHEREAS, codifying a definition of the "public interest standard" would promote fairness and objectivity in news reporting; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2018, the Senate concurring, that Congress and the Federal Communications Commission are urged to codify a definition of the "public interest standard" for the broadcasting industry; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Majority Leader of the United States Senate, Speaker of the United States House of Representatives, the members of the Hawaii congressional delegation, and the Chair of the Federal Communications Commission.

OFFERED BY:







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