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First Come, First Served: Last One Standing
By Dirk Koning

Movement on the flickering black and white security monitor catches my eye. It's ten minutes before the center opens and there stands Ben again outside the door. This retired Air Force man greets us every morning at the media center the second we unlock the doors. He has time, money, interest, a supportive family, literacy skills and transportation. And our center is his, "home away from home". Ben benefits extraordinarily from our "First Come, First Served" policy.

April on the other hand is a single mother of two whose first language is Spanish. She lives on the south side of town and works two jobs. She came to our monthly orientation once and loved the idea of producing TV. While our orientation is free, it cost her 20 bucks for a sitter to watch her daughters. She had to hustle up a ride home when the class went longer than the last bus of the night. Our English only orientation was tough for her to follow. We haven't seen April since.

First Come, First Served -- Biased

Many Community Media and Community Tech Centers are struggling with the long practiced policy of "First Come, First Served." First Come, First Served is inherently biased. On the other hand, First Come, First Served (FCFS) is one of the best Constitutional defenses we have for PEG access channel validation. If the use of the channel is too narrowly defined or prejudiced toward a specific group or entity, the courts may very well dismiss the governmental interest in 'taking' the channel for the public good, and let the cable company have it back for commercial gain.

In *FCC v. Midwest Video Corp.* (571 F.2d 1025 (8th Cir. 1978) the court suggested that access requirements might violate the First and Fifth Amendments of the U.S. Constitution. The courts have been expanding First Amendment protection for commercial speech day by day.

Cable company attorneys argue that cable is a "telepublisher" and should have similar First Amendment rights as newspapers. For instance, the government can't make a newspaper give a free blank page of the paper to citizens to fill with copy and then make the newspaper deliver that message along with their own.

The last lines of the Fifth Amendment state, "nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Here the cable operators argue that if the government interest in depriving them of their property i.e. "taking" PEG channels can be substantiated, then we must pay for the channels taken. (Similar to your land being taken for the government interest of a super highway, the government may take the land but must compensate you at market rates).

Counter Arguments

We argue in the first case that they are not speakers in the sense of a newspaper. Cable television companies are essentially giant routers that pull distant signals in and package them for resale locally. Regarding the second argument, courts have supported the notion that communities can trade the value of the common rights-of-way for franchise fees and channel space. In other words, if you the cable company want access to our rights-of-way to deliver channels, we the community who owns that property want access to a sliver of your bandwidth to deliver our messages - PEG- channels.

If we abandon First Come, First Served practices and our channels and/or facilities become 'clubs' for use by those we favor, our Constitutional defense for these channels and facilities may unravel. We must provide access to facilities and channels for the common good. We must provide access in a non-discriminatory fashion, we must provide access in a fair and equitable fashion. Even time, place and manner restrictions must be content neutral. We must continue to provide channels and facilities to perpetuate the open marketplace of ideas. The best analogy may be a speaker in a public forum. If someone wants to reserve the city plaza for a rally, the city may allow them to use the plaza on a First Come, First Served basis. The city

may not ask to see what speeches will be delivered at the rally. The city may not schedule a group they don't like for really bad rally times (3:00 a.m.). The city has to provide the space for them to speak, but the city doesn't have to provide the amplification system.

Reconciling First Come, First Served

Can you say quandary? How do we reconcile these positions? Should we? Can we distinguish between our facilities/equipment access and channel access? If we stand on principle do we risk cutting off our nose to spite our face? Is it worth it to stand on principle and fall off the funding wagon? How slippery is the slope of editorial discretion? Are the channels worth saving if they aren't First Come, First Served? Is it really about who arrives first or about insuring non-discriminatory practices?

I know when it comes to channel programming, few of us truly practice FCFS. We often have regular series with fixed time slots. We program for convenience and logical flow for the audience. When it comes to facility and equipment access we probably do better on a pure FCFS model. Many centers don't allow folks to monopolize the equipment.

Obviously the desire for a First Come, First Served policy stems from a scarcity premise. We assume there will be more people attempting to access our services than we can accommodate. In an attempt to be fair, we determine that those "showing up first" will receive first access to a scarce commodity. Additionally we feel the best way to avoid accusations of discrimination or favoritism can be achieved by applying FCFS policies.

Other Models

If our main goal is to divvy up scarce resources (channel time and equipment) in a non-discriminatory fashion, what other models might we follow?

Benevolent Dictator: Some one or some group with the alleged interest of the "common good" at heart will attempt to distribute access to insure fairness on all levels. Yikes!

Lucky Lottery: Instead of rewarding those who arrive first with access, wait until all those wanting access arrive and then draw names from a fish bowl to see who gets access to what, when. Logistical nightmare?

Build It and Take It To Them: A twist to the build it and they will come idea, load up a van full of voice, video and data equipment and drive into needy neighborhoods on a schedule like a bookmobile and provide training and production access where 'they' are. Could be expensive.

U of M Admissions Policy: Based on an agreed upon history of unfair access, scarce resources (admission to law school) are mostly allocated on merit with special consideration afforded those who may be from a race or class that has been discriminated against in the past. Awaiting Supreme Court Decision.

Techno-Fix: Provide many places for people to "first come" for services and stick with the same policy. Web based registration for channel time, equipment and classes with Internet access computers broadly distributed.

Channel - Facility Dichotomy: Maybe we honor the FCFS approach regarding channel access and we decide to serve the "neediest" folks regarding equipment and facilities. We have people apply for classes and equipment and we totally discriminate toward those who are most deserving of access based on lack of income and power. You be the judge, how many Mercedes do you see parked in front of the Food Bank.

Join the Discussion

These suggested solutions are by no means exhaustive. This article is intended to spur the discussion of this dicey question. In fact, those of you attending the Alliance for Community Media conference in Houston, Texas in July of 2002 may want to attend the "White Paper" discussion to pick up where these comments leave off.

Under all circumstances keep one motive pure, Power to the People!

Author Note

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Manuscript Note

This article will be presented in a White Paper session at the 2002 national conference of the Alliance for Community Media in Houston.

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