

with cable operators' editorial discretion by compelling them to offer carriage to a certain minimum number of broadcast stations, the extent of the interference does not depend upon the content of the cable operators' programming. The rules impose obligations upon all operators, save those with fewer than 300 subscribers, regardless of the programs or stations they now offer or have offered in the past. Nothing in the Act imposes a restriction, penalty, or burden by reason of the views, programs, or stations the cable operator has selected or will select. The number of channels a cable operator must set aside depends only on the operator's channel capacity, see 47 U. S. C. §§ 534(b)(1), 535(b)(2)-(3) (1988 ed., Supp. IV); hence, an operator cannot avoid or mitigate its obligations under the Act by altering the programming it offers to subscribers. Cf. *Miami Herald Publishing Co. v. Tornillo*, 418 U. S., at 256-257 (newspaper may avoid access obligations by refraining from speech critical of political candidates).

The must-carry provisions also burden cable programmers by reducing the number of channels for which they can compete. But, again, this burden is unrelated to content, for it extends to all cable programmers irrespective of the programming they choose to offer viewers. Cf. *Boos, supra*, at 319 (individuals may picket in front of a foreign embassy so long as their picket signs are not critical of the foreign government). And finally, the privileges conferred by the must-carry provisions are also unrelated to content. The rules benefit all full power broadcasters who request carriage—be they commercial or noncommercial, independent or network-affiliated, English or Spanish language, religious or secular. (The aggregate effect of the rules is thus to make every full power commercial and noncommercial broadcaster eligible for must-carry, provided only that the broadcaster operates within the same television market as a cable system)

It is true that the must-carry provisions distinguish between speakers in the television programming market. But they do so based only upon the manner in which speakers transmit their messages to viewers, and not upon the messages they carry: Broadcasters, which transmit over the airwaves, are favored, while cable programmers, which do not, are disfavored. Cable operators, too, are burdened by the carriage obligations, but only because they control access to the cable conduit. So long as they are not a subtle means of exercising a content preference, speaker distinctions of this nature are not presumed invalid under the First Amendment.

That the must-carry provisions, on their face, do not burden or benefit speech of a particular content does not end the inquiry. Our cases have recognized that even a regulation neutral on its face may be content-based if its manifest purpose is to regulate speech because of the message it conveys. *United States v. Eichman*, 496 U. S. 310, 315 (1990) (“Although the Flag Protection Act contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government’s asserted *interest* is related to the suppression of free expression”) (emphasis in original) (internal quotation marks omitted); see also *Ward*, 491 U. S., at 791–792; *Clark v. Community for Creative Non-Violence*, 468 U. S., at 293; cf. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. \_\_\_, \_\_\_ (1993) (slip op., at 12–13).

Appellants contend, in this regard, that the must-carry regulations are content-based because Congress’ purpose in enacting them was to promote speech of a favored content. We do not agree. Our review of the Act and its various findings persuades us that Congress’ overriding objective in enacting must-carry was not to favor programming of a particular subject matter, viewpoint, or format, but rather to preserve access to free televi-

sion programming for the 40 percent of Americans without cable.

In unusually detailed statutory findings, *supra*, at 7-9, Congress explained that because cable systems and broadcast stations compete for local advertising revenue, §§2(a)(14)-(15), and because cable operators have a vested financial interest in favoring their affiliated programmers over broadcast stations, §2(a)(5), cable operators have a built-in "economic incentive . . . to delete, reposition, or not carry local broadcast signals." §2(a)(16). Congress concluded that absent a requirement that cable systems carry the signals of local broadcast stations, the continued availability of free local broadcast television would be threatened. *Ibid.* Congress sought to avoid the elimination of broadcast television because, in its words, "[s]uch programming is . . . free to those who own television sets and do not require cable transmission to receive broadcast television signals," §2(a)(12), and because "[t]here is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming." *Ibid.*

By preventing cable operators from refusing carriage to broadcast television stations, the must-carry rules ensure that broadcast television stations will retain a large enough potential audience to earn necessary advertising revenue—or, in the case of noncommercial broadcasters, sufficient viewer contributions, see §2(a)(8)(B)—to maintain their continued operation. In so doing, the provisions are designed to guarantee the survival of a medium that has become a vital part of the Nation's communication system, and to ensure that every individual with a television set can obtain access to free television programming.

This overriding congressional purpose is unrelated to the content of expression disseminated by cable and

broadcast speakers. Indeed, our precedents have held that “protecting noncable households from loss of regular television broadcasting service due to competition from cable systems,” is not only a permissible governmental justification, but an “important and substantial federal interest.” *Capital Cities Cable, Inc. v. Crisp*, 467 U. S. 691, 714 (1984); see also *United States v. Midwest Video Corp.*, 406 U. S. 649, 661–662, 664 (1972) (plurality opinion).

[The design and operation of the challenged provisions confirm that the purposes underlying the enactment of the must-carry scheme are unrelated to the content of speech.] The rules, as mentioned, confer must-carry rights on all full power broadcasters, irrespective of the content of their programming. They do not require or prohibit the carriage of particular ideas or points of view. They do not penalize cable operators or programmers because of the content of their programming. They do not compel cable operators to affirm points of view with which they disagree. They do not produce any net decrease in the amount of available speech. And they leave cable operators free to carry whatever programming they wish on all channels not subject to must-carry requirements.

Appellants and the dissent make much of the fact that, in the course of describing the purposes behind the Act, Congress referred to the value of broadcast programming. In particular, Congress noted that broadcast television is “an important source of local news[,] public affairs programming and other local broadcast services critical to an informed electorate,” §2(a)(11); see also §2(a)(10), and that noncommercial television “provides educational and informational programming to the Nation’s citizens.” §2(a)(8). We do not think, however, that such references cast any material doubt on the content-neutral character of must-carry. That Congress acknowledged the local orientation of broadcast program-

ming and the role that noncommercial stations have played in educating the public does not indicate that Congress regarded broadcast programming as *more* valuable than cable programming. Rather, it reflects nothing more than the recognition that the services provided by broadcast television have some intrinsic value and, thus, are worth preserving against the threats posed by cable. See 819 F. Supp., at 44 (“Congress’ solicitousness for local broadcasters’ material simply rests on its assumption that they have as much to say of interest or value as the cable programmers who service a given geographic market audience”).

The operation of the Act further undermines the suggestion that Congress’ purpose in enacting must-carry was to force programming of a “local” or “educational” content on cable subscribers. The provisions, as we have stated, benefit all full power broadcasters irrespective of the nature of their programming. In fact, if a cable system were required to bump a cable programmer to make room for a broadcast station, nothing would stop a cable operator from displacing a cable station that provides all local- or education-oriented programming with a broadcaster that provides very little. (Appellants do not even contend, moreover, that broadcast programming is any more “local” or “educational” than cable programming.) Cf. *Leathers v. Medlock*, 499 U. S., at 449 (state law imposing tax upon cable television, but exempting other media, is not content based, in part due to lack of evidence that cable programming “differs systematically in its message from that communicated by satellite broadcast programming, newspapers, or magazines”).

In short, Congress’ acknowledgment that broadcast television stations make a valuable contribution to the Nation’s communications system does not render the must-carry scheme content-based. The scope and operation of the challenged provisions make clear, in our

view, that Congress designed the must-carry provisions not to promote speech of a particular content, but to prevent cable operators from exploiting their economic power to the detriment of broadcasters, and thereby to ensure that all Americans, especially those unable to subscribe to cable, have access to free television programming—whatever its content.

We likewise reject the suggestion, advanced by appellants and by Judge Williams in dissent, that the must-carry rules are content-based because the preference for broadcast stations “*automatically* entails content requirements.” 819 F. Supp., at 58. It is true that broadcast programming, unlike cable programming, is subject to certain limited content restraints imposed by statute and FCC regulation.<sup>7</sup> But it does not follow that Congress mandated cable carriage of broadcast television stations as a means of ensuring that particular programs will be shown, or not shown, on cable systems.

As an initial matter, the argument exaggerates the extent to which the FCC is permitted to intrude into matters affecting the content of broadcast programming. The FCC is forbidden by statute from engaging in “censorship” or from promulgating any regulation “which shall interfere with the [broadcasters’] right of free speech.” 47 U. S. C. §326. The FCC is well aware of

---

<sup>7</sup> See, e.g., 47 U. S. C. §303b (1988 ed., Supp. IV) (directing FCC to consider extent to which license renewal applicant has “served the educational and informational needs of children”); Pub. L. 102-356, §16(a), 106 Stat. 954, note following 47 U. S. C. §303 (1988 ed., Supp. IV) (restrictions on indecent programming); 47 U. S. C. §312(a)(7) (allowing FCC to revoke broadcast license for willful or repeated failure to allow reasonable access to broadcast airtime for candidates seeking federal elective office); 47 CFR §73.1920 (1993) (requiring broadcaster to notify victims of on-air personal attacks and to provide victims with opportunity to respond over the air); *En Banc Programming Inquiry*, 44 F. C. C. 2d 2303, 2312 (1960) (requiring broadcasters to air programming that serves “the public interest, convenience or necessity”).

the limited nature of its jurisdiction, having acknowledged that it “has no authority and, in fact, is barred by the First Amendment and [§326] from interfering with the free exercise of journalistic judgment.” *Hubbard Broadcasting, Inc.*, 48 F. C. C. 2d 517, 520 (1974). In particular, the FCC’s oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations; for although “the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.” Network Programming Inquiry, Report and Statement of Policy, 25 Fed. Reg. 7293 (1960); see also *Commercial TV Stations*, 98 F. C. C. 2d 1076, 1091–1092 (1984), modified, 104 F. C. C. 2d 358 (1986), remanded in part on other grounds *sub nom. Action for Children’s Television v. FCC*, 821 F. 2d 741 (CADDC 1987).

Stations licensed to broadcast over the special frequencies reserved for “noncommercial educational” stations are subject to no more intrusive content regulation than their commercial counterparts. Noncommercial licensees must operate on a nonprofit basis, may not accept financial consideration in exchange for particular programming, and may not broadcast promotional announcements or advertisements on behalf of for-profit entities. 47 CFR §§73.621(d)-(e) (1993); see generally *Public Broadcasting*, 98 F. C. C. 2d 746, 751 (1984); *Educational Broadcast Stations*, 90 F. C. C. 2d 895 (1982), modified, 97 F. C. C. 2d 255 (1984). What is important for present purposes, however, is that noncommercial licensees are not required by statute or regulation to carry any specific quantity of “educational” programming or any particular “educational” programs. Noncommercial licensees, like their commercial counterparts, need only adhere to the general requirement that

their programming serve “the public interest, convenience or necessity.” *En Banc Programming Inquiry*, 44 F. C. C. 2d 2303, 2312 (1960). The FCC itself has recognized that “a more rigorous standard for public stations would come unnecessarily close to impinging on First Amendment rights and would run the collateral risk of stifling the creativity and innovative potential of these stations.” *Public Broadcasting, supra*, at 751; see also *Public Radio and TV Programming*, 87 F. C. C. 2d 716, 728–729, 732, ¶¶29–30, 37 (1981); *Georgia State Bd. of Ed.*, 70 F. C. C. 2d 948 (1979).

In addition, although federal funding provided through the Corporation for Public Broadcasting (CPB) supports programming on noncommercial stations, the Government is foreclosed from using its financial support to gain leverage over any programming decisions. See 47 U. S. C. §§396(g)(1)(D) (directing CPB to “carry out its purposes and functions and engage in its activities in ways that will most effectively assure the maximum freedom of the public telecommunications entities and systems from interference with, or control of, program content or other activities”), §398(a) (CPB operates without interference from any department, agency, or officer of the Federal Government, including the FCC).

Indeed, our cases have recognized that Government regulation over the content of broadcast programming must be narrow, and that broadcast licensees must retain abundant discretion over programming choices. See *FCC v. League of Women Voters of Cal.*, 468 U. S., at 378–380, 386–392 (invalidating under the First Amendment statute forbidding any noncommercial educational station that receives a grant from the CPB to “engage in editorializing”); *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U. S., at 126 (describing “the risk of an enlargement of Government control over the content of broadcast discussion of public issues” as being of “critical importance” to the

First Amendment). Thus, given the minimal extent to which the FCC and Congress actually influence the programming offered by broadcast stations, it would be difficult to conclude that Congress enacted must-carry in an effort to exercise content control over what subscribers view on cable television. In a regime where Congress or the FCC exercised more intrusive control over the content of broadcast programming, an argument similar to appellants' might carry greater weight. But in the present regulatory system, those concerns are without foundation.

[In short, the must-carry provisions are not designed to favor or disadvantage speech of any particular content. Rather, they are meant to protect broadcast television from what Congress determined to be unfair competition by cable systems.] In enacting the provisions, Congress sought to preserve the existing structure of the Nation's broadcast television medium while permitting the concomitant expansion and development of cable television, and, in particular, to ensure that broadcast television remains available as a source of video programming for those without cable. Appellants' ability to hypothesize a content-based purpose for these provisions rests on little more than speculation and does not cast doubt upon the content-neutral character of must-carry. Cf. *Arizona v. California*, 283 U. S. 423, 455-457 (1931). Indeed, "[i]t is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States v. O'Brien*, 391 U. S. 367, 383 (1968) (citing *McCray v. United States*, 195 U. S. 27, 56 (1904)).

## D

Appellants advance three additional arguments to support their view that the must-carry provisions warrant strict scrutiny. In brief, appellants contend that

the provisions (1) compel speech by cable operators, (2) favor broadcast programmers over cable programmers, and (3) single out certain members of the press for disfavored treatment. None of these arguments suffices to require strict scrutiny in the present case.

## 1

Appellants maintain that the must-carry provisions trigger strict scrutiny because they compel cable operators to transmit speech not of their choosing. Relying principally on *Miami Herald Publishing Co. v. Tornillo*, 418 U. S. 241 (1974), appellants say this intrusion on the editorial control of cable operators amounts to forced speech which, if not *per se* invalid, can be justified only if narrowly tailored to a compelling government interest.

*Tornillo* affirmed an essential proposition: The First Amendment protects the editorial independence of the press. The right-of-reply statute at issue in *Tornillo* required any newspaper that assailed a political candidate's character to print, upon request by the candidate and without cost, the candidate's reply in equal space and prominence. Although the statute did not censor speech in the traditional sense—it only required newspapers to grant access to the messages of others—we found that it imposed an impermissible content-based burden on newspaper speech. Because the right of access at issue in *Tornillo* was triggered only when a newspaper elected to print matter critical of political candidates, it “exact[ed] a penalty on the basis of . . . content.” 418 U. S., at 256. We found, and continue to recognize, that right-of-reply statutes of this sort are an impermissible intrusion on newspapers’ “editorial control and judgment.” *Id.*, at 258.

We explained that, in practical effect, Florida's right-of-reply statute would deter newspapers from speaking in unfavorable terms about political candidates:

“Faced with the penalties that would accrue to any newspaper that published news or commentary arguably within the reach of the right-of-access statute, editors might well conclude that the safe course is to avoid controversy. Therefore, under the operation of the Florida statute, political and electoral coverage would be blunted or reduced.” *Id.*, at 257.

Moreover, by affording mandatory access to speakers with which the newspaper disagreed, the law induced the newspaper to respond to the candidates’ replies when it might have preferred to remain silent. See *Pacific Gas & Electric Co. v. Public Utilities Comm’n of Cal.*, 475 U. S. 1, 11 (1986) (plurality opinion).

The same principles led us to invalidate a similar content-based access regulation in *Pacific Gas & Electric*. At issue was a rule requiring a privately-owned utility, on a quarterly basis, to include with its monthly bills an editorial newsletter published by a consumer group critical of the utility’s ratemaking practices. Although the access requirement applicable to the utility, unlike the statutory mechanism in *Tornillo*, was not triggered by speech of any particular content, the plurality held that the same strict First Amendment scrutiny applied. Like the statute in *Tornillo*, the regulation conferred benefits to speakers based on viewpoint, giving access only to a consumer group opposing the utility’s practices. 475 U. S., at 13, 15. The plurality observed that in order to avoid the appearance that it agreed with the group’s views, the utility would “feel compelled to respond to arguments and allegations made by the [the group] in its messages to [the utility’s] customers.” *Id.*, at 16. This “kind of forced response,” the plurality explained, “is antithetical to the free discussion the First Amendment seeks to foster.” *Ibid.*

*Tornillo* and *Pacific Gas & Electric* do not control this case for the following reasons. First, unlike the access

rules struck down in those cases, the must-carry rules are content-neutral in application. They are not activated by any particular message spoken by cable operators and thus exact no content-based penalty. Cf. *Riley v. National Federation of Blind of N.C., Inc.*, 487 U. S., at 795 (solicitation of funds triggers requirement to express government-favored message). Likewise, they do not grant access to broadcasters on the ground that the content of broadcast programming will counterbalance the messages of cable operators. Instead, they confer benefits upon all full power, local broadcasters, whatever the content of their programming. Cf. *Pacific Gas & Electric, supra*, at 14 (access “awarded only to those who disagree with appellant’s views and who are hostile to appellant’s interests”).

Second, appellants do not suggest, nor do we think it the case, that must-carry will force cable operators to alter their own messages to respond to the broadcast programming they are required to carry. See Brenner, *Cable Television and the Freedom of Expression*, 1988 Duke L. J., at 379 (“Other than adding new ideas—offensive, insightful or tedious—the [speaker granted access to cable] does not influence an operator’s agenda”). Given cable’s long history of serving as a conduit for broadcast signals, there appears little risk that cable viewers would assume that the broadcast stations carried on a cable system convey ideas or messages endorsed by the cable operator. Indeed, broadcasters are required by federal regulation to identify themselves at least once every hour, 47 CFR §73.1201 (1993), and it is a common practice for broadcasters to disclaim any identity of viewpoint between the management and the speakers who use the broadcast facility. Cf. *PruneYard Shopping Center v. Robins*, 447 U. S. 74, 87 (1980) (noting that the views expressed by speakers who are granted a right of access to a shopping center would “not likely be identified with

those of the owner"). Moreover, in contrast to the statute at issue in *Tornillo*, no aspect of the must-carry provisions would cause a cable operator or cable programmer to conclude that "the safe course is to avoid controversy," *Tornillo, supra*, at 257, and by so doing diminish the free flow of information and ideas.

Finally, the asserted analogy to *Tornillo* ignores an important technological difference between newspapers and cable television. Although a daily newspaper and a cable operator both may enjoy monopoly status in a given locale, the cable operator exercises far greater control over access to the relevant medium. A daily newspaper, no matter how secure its local monopoly, does not possess the power to obstruct readers' access to other competing publications—whether they be weekly local newspapers, or daily newspapers published in other cities. Thus, when a newspaper asserts exclusive control over its own news copy, it does not thereby prevent other newspapers from being distributed to willing recipients in the same locale.

The same is not true of cable. When an individual subscribes to cable, the physical connection between the television set and the cable network gives the cable operator bottleneck, or gatekeeper, control over most (if not all) of the television programming that is channeled into the subscriber's home. Hence, simply by virtue of its ownership of the essential pathway for cable speech, a cable operator can prevent its subscribers from obtaining access to programming it chooses to exclude. A cable operator, unlike speakers in other media, can thus silence the voice of competing speakers with a mere flick of the switch.<sup>8</sup>

---

<sup>8</sup> As one commentator has observed: "The central dilemma of cable is that it has unlimited capacity to accommodate as much diversity and as many publishers as print, yet all of the producers and publishers use the same physical plant. . . . If the cable system is

The potential for abuse of this private power over a central avenue of communication cannot be overlooked. See *Southeastern Promotions, Ltd. v. Conrad*, 420 U. S. 546, 557 (1975) (“Each medium of expression . . . must be assessed for First Amendment purposes by standards suited to it, for each may present its own problems”). The First Amendment’s command that government not impede the freedom of speech does not disable the government from taking steps to ensure that private interests not restrict, through physical control of a critical pathway of communication, the free flow of information and ideas. See *Associated Press v. United States*, 326 U. S., at 20. We thus reject appellants’ contention that *Tornillo* and *Pacific Gas & Electric* require strict scrutiny of the access rules in question here.

## 2

Second, appellants urge us to apply strict scrutiny because the must-carry provisions favor one set of speakers (broadcast programmers) over another (cable programmers). Appellants maintain that as a consequence of this speaker preference, some cable programmers who would have secured carriage in the absence of must-carry may now be dropped. Relying on language in *Buckley v. Valeo*, 424 U. S. 1 (1976), appellants contend that such a regulation is presumed invalid under the First Amendment because the government may not “restrict the speech of some elements of our society in order to enhance the relative voice of others.” *Id.*, at 48-49.

To the extent appellants’ argument rests on the view that all regulations distinguishing between speakers warrant strict scrutiny, see Brief for Appellants Turner

---

itself a publisher, it may restrict the circumstances under which it allows others also to use its system.” I. de Sola Pool, *Technologies of Freedom* 168 (1983).

Broadcasting System, Inc., et al. 29, it is mistaken. At issue in *Buckley* was a federal law prohibiting individuals from spending more than \$1,000 per year to support or oppose a particular political candidate. The Government justified the law as a means of “equalizing the relative ability of individuals and groups to influence the outcome of elections.” *Buckley*, 424 U. S., at 48. We rejected that argument with the observation that Congress may not “abridge the rights of some persons to engage in political expression in order to enhance the relative voice of other segments of our society.” *Id.*, at 49, n. 55.

Our holding in *Buckley* does not support appellants’ broad assertion that all speaker-partial laws are presumed invalid. Rather, it stands for the proposition that speaker-based laws demand strict scrutiny when they reflect the Government’s preference for the substance of what the favored speakers have to say (or aversion to what the disfavored speakers have to say). See *Regan v. Taxation with Representation of Wash.*, 461 U. S. 540, 548 (1983) (rejecting First Amendment challenge to differential tax treatment of veterans groups and other charitable organizations, but noting that the case would be different were there any “indication that the statute was intended to suppress any ideas or any demonstration that it has had that effect”). Because the expenditure limit in *Buckley* was designed to ensure that the political speech of the wealthy not drown out the speech of others, we found that it was concerned with the communicative impact of the regulated speech. See *Buckley, supra*, at 17 (“it is beyond dispute that the interest in regulating the . . . giving or spending [of] money ‘arises in some measure because the communication . . . is itself thought to be harmful’”) (quoting *United States v. O’Brien*, 391 U. S., at 382). Indeed, were the expenditure limitation unrelated to the content of expression, there would have been no per-

ceived need for Congress to “equaliz[e] the relative ability” of interested individuals to influence elections. 424 U. S., at 48. *Buckley* thus stands for the proposition that laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference.

The question here is whether Congress preferred broadcasters over cable programmers based on the content of programming each group offers. The answer, as we explained above, *supra*, at 19–28, is no. Congress granted must-carry privileges to broadcast stations on the belief that the broadcast television industry is in economic peril due to the physical characteristics of cable transmission and the economic incentives facing the cable industry. Thus, the fact that the provisions benefit broadcasters and not cable programmers does not call for strict scrutiny under our precedents.

## 3

Finally, appellants maintain that strict scrutiny applies because the must-carry provisions single out certain members of the press—here, cable operators—for disfavored treatment. See, *e.g.*, Brief for Appellant Time Warner Entertainment Co. 28–30. In support, appellants point out that Congress has required cable operators to provide carriage to broadcast stations, but has not imposed like burdens on analogous video delivery systems, such as multichannel multipoint distribution (MMDS) systems and satellite master antenna television (SMATV) systems. Relying upon our precedents invalidating discriminatory taxation of the press, see, *e.g.*, *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U. S. 221 (1987); *Minneapolis Star & Tribune Co. v. Minnesota Comm’r of Revenue*, 460 U. S. 575 (1983); *Grosjean v. American Press Co.*, 297 U. S. 233 (1936), appellants contend that this sort of differential treat-

ment poses a particular danger of abuse by the government and should be presumed invalid.

Regulations that discriminate among media, or among different speakers within a single medium, often present serious First Amendment concerns. *Minneapolis Star*, for example, considered a use tax imposed on the paper and ink used in the production of newspapers. We subjected the tax to strict scrutiny for two reasons: first, because it applied only to the press; and, second, because in practical application it fell upon only a small number of newspapers. *Minneapolis Star, supra*, at 585, 591-592; see also *Grosjean, supra* (invalidating Louisiana tax on publications with weekly circulations above 20,000, which fell on 13 of the approximately 135 newspapers distributed in the State). The sales tax at issue in *Arkansas Writers' Project*, which applied to general interest magazines but exempted religious, professional, trade, and sports magazines, along with all newspapers, suffered the second of these infirmities. In operation, the tax was levied upon a limited number of publishers and also discriminated on the basis of subject matter. *Arkansas Writers' Project, supra*, at 229-230. Relying in part on *Minneapolis Star*, we held that this selective taxation of the press warranted strict scrutiny. 481 U. S., at 231.

It would be error to conclude, however, that the First Amendment mandates strict scrutiny for any speech regulation that applies to one medium (or a subset thereof) but not others. In *Leathers v. Medlock*, 499 U. S. 439 (1991), for example, we upheld against First Amendment challenge the application of a general state tax to cable television services, even though the print media and scrambled satellite broadcast television services were exempted from taxation. As *Leathers* illustrates, the fact that a law singles out a certain medium, or even the press as a whole, "is insufficient by itself to raise First Amendment concerns." *Id.*, at 452. Rather,

laws of this nature are “constitutionally suspect only in certain circumstances.” *Id.*, at 444. The taxes invalidated in *Minneapolis Star* and *Arkansas Writers’ Project*, for example, targeted a small number of speakers, and thus threatened to “distort the market for ideas.” 499 U. S., at 448. Although there was no evidence that an illicit governmental motive was behind either of the taxes, both were structured in a manner that raised suspicions that their objective was, in fact, the suppression of certain ideas. See *Arkansas Writers’ Project*, *supra*, at 228–229; *Minneapolis Star*, 460 U. S., at 585. But such heightened scrutiny is unwarranted when the differential treatment is “justified by some special characteristic of” the particular medium being regulated. *Ibid.*

The must-carry provisions, as we have explained above, are justified by special characteristics of the cable medium: the bottleneck monopoly power exercised by cable operators and the dangers this power poses to the viability of broadcast television. Appellants do not argue, nor does it appear, that other media—in particular, media that transmit video programming such as MMDS and SMATV—are subject to bottleneck monopoly control, or pose a demonstrable threat to the survival of broadcast television. It should come as no surprise, then, that Congress decided to impose the must-carry obligations upon cable operators only.

In addition, the must-carry provisions are not structured in a manner that carries the inherent risk of undermining First Amendment interests. The regulations are broad-based, applying to almost all cable systems in the country, rather than just a select few. See 47 U. S. C. §534(b)(1) (1988 ed., Supp. IV) (only cable systems with fewer than 300 subscribers exempted from must-carry). As a result, the provisions do not pose the same dangers of suppression and manipulation that were posed by the more narrowly targeted regulations

in *Minneapolis Star* and *Arkansas Writers' Project*. For these reasons, the must-carry rules do not call for strict scrutiny. See *Leathers, supra*, at 449, 453 (upholding state sales tax which applied to about 100 cable systems "offering a wide variety of programming" because the tax was not "likely to stifle the free exchange of ideas" and posed no "danger of suppress[ion]").

## III

## A

In sum, the must-carry provisions do not pose such inherent dangers to free expression, or present such potential for censorship or manipulation, as to justify application of the most exacting level of First Amendment scrutiny. We agree with the District Court that the appropriate standard by which to evaluate the constitutionality of must-carry is the intermediate level of scrutiny applicable to content-neutral restrictions that impose an incidental burden on speech. See *Ward v. Rock Against Racism*, 491 U. S. 781 (1989); *United States v. O'Brien*, 391 U. S. 367 (1968).

Under *O'Brien*, a content-neutral regulation will be sustained if

"it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *Id.*, at 377.

To satisfy this standard, a regulation need not be the least speech-restrictive means of advancing the Government's interests. "Rather, the requirement of narrow tailoring is satisfied 'so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.'" *Ward, supra*, at 799 (quoting *United States v. Albertini*, 472 U. S. 675, 689 (1985)). Narrow tailoring in this

context requires, in other words, that the means chosen do not “burden substantially more speech than is necessary to further the government’s legitimate interests.” *Ward, supra*, at 799.

Congress declared that the must-carry provisions serve three interrelated interests: (1) preserving the benefits of free, over-the-air local broadcast television, (2) promoting the widespread dissemination of information from a multiplicity of sources, and (3) promoting fair competition in the market for television programming. S. Rep. No. 102-92, p. 58, (1991); H. R. Rep. No. 102-628, 63 (1992); 1992 Cable Act, §§2(a)(8), (9), and (10). None of these interests is related to the “suppression of free expression,” *O’Brien*, 391 U. S., at 377, or to the content of any speakers’ messages. And viewed in the abstract, we have no difficulty concluding that each of them is an important governmental interest. *Ibid.*

In the Communications Act of 1934, Congress created a system of free broadcast service and directed that communications facilities be licensed across the country in a “fair, efficient, and equitable” manner. Communications Act of 1934, §307(b), 48 Stat. 1083, 47 U. S. C. §307(b). Congress designed this system of allocation to afford each community of appreciable size an over-the-air source of information and an outlet for exchange on matters of local concern. *United States v. Southwestern Cable Co.*, 392 U. S. 157, 173-174 (1968); Wollenberg, *The FCC as Arbiter of “The Public Interest, Convenience, and Necessity,”* in *A Legislative History of the Communications Act of 1934* pp. 61, 62-70 (M. Paglin ed. 1989). As we recognized in *Southwestern Cable, supra*, the importance of local broadcasting outlets “can scarcely be exaggerated, for broadcasting is demonstrably a principal source of information and entertainment for a great part of the Nation’s population.” *Id.*, at 177. The interest in maintaining the local broadcasting structure does not evaporate simply be-

cause cable has come upon the scene. Although cable and other technologies have ushered in alternatives to broadcast television, nearly 40 percent of American households still rely on broadcast stations as their exclusive source of television programming. And as we said in *Capital Cities Cable, Inc. v. Crisp*, “protecting noncable households from loss of regular television broadcasting service due to competition from cable systems” is an important federal interest. 467 U. S., at 714.

Likewise, assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment. Indeed, “it has long been a basic tenet of national communications policy that “the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.”” *United States v. Midwest Video Corp.*, 406 U. S., at 668, n. 27 (plurality opinion) (quoting *Associated Press v. United States*, 326 U. S., at 20); see also *FCC v. WNCN Listeners Guild*, 450 U. S. 582, 594 (1981); *FCC v. National Citizens Committee for Broadcasting*, 436 U. S. 775, 795 (1978). Finally, the Government’s interest in eliminating restraints on fair competition is always substantial, even when the individuals or entities subject to particular regulations are engaged in expressive activity protected by the First Amendment. See *Lorain Journal Co. v. United States*, 342 U. S. 143 (1951); *Associated Press v. United States*, *supra*; cf. *FTC v. Superior Court Trial Lawyers Assn.*, 493 U. S. 411, 431–432 (1990).

## B

That the Government’s asserted interests are important in the abstract does not mean, however, that the must-carry rules will in fact advance those interests. When the Government defends a regulation on speech

as a means to redress past harms or prevent anticipated harms, it must do more than simply “posit the existence of the disease sought to be cured.” *Quincy Cable TV, Inc. v. FCC*, 768 F. 2d 1434, 1455 (CADC 1985). It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way. See *Edenfield v. Fane*, 507 U. S. \_\_\_, \_\_\_ (1993) (slip op., at 8–9); *Los Angeles v. Preferred Communications, Inc.*, 476 U. S., at 496 (“This Court may not simply assume that the ordinance will always advance the asserted state interests sufficiently to justify its abridgment of expressive activity”) (internal quotation marks omitted); *Home Box Office, Inc. v. FCC*, 567 F. 2d 9, 36 (CADC 1977) (“[A] ‘regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist’”) (citation omitted).

Thus, in applying *O’Brien* scrutiny we must ask first whether the Government has adequately shown that the economic health of local broadcasting is in genuine jeopardy and in need of the protections afforded by must-carry. Assuming an affirmative answer to the foregoing question, the Government still bears the burden of showing that the remedy it has adopted does not “burden substantially more speech than is necessary to further the government’s legitimate interests.” *Ward*, 491 U. S., at 799. On the state of the record developed thus far, and in the absence of findings of fact from the District Court, we are unable to conclude that the Government has satisfied either inquiry.

In defending the factual necessity for must-carry, the Government relies in principal part on Congress’ legislative finding that, absent mandatory carriage rules, the continued viability of local broadcast television would be “seriously jeopardized.” §2(a)(16). See Brief for Federal Appellees 31–32. The Government contends that this finding, though predictive in nature, must be accorded

great weight in the First Amendment inquiry, especially when, as here, Congress has sought to “address the relationship between two technical, rapidly changing, and closely interdependent industries—broadcasting and cable.” *Id.*, at 30.

We agree that courts must accord substantial deference to the predictive judgments of Congress. See, e.g., *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U. S. 94, 103 (1973) (The “judgment of the Legislative Branch” should not be ignored “simply because [appellants] cas[t] [their] claims under the umbrella of the First Amendment”). Sound policy-making often requires legislators to forecast future events and to anticipate the likely impact of these events based on deductions and inferences for which complete empirical support may be unavailable. See *FCC v. National Citizens Comm. for Broadcasting*, *supra*, at 814; *FPC v. Transcontinental Gas Pipe Line Corp.*, 365 U. S. 1, 29 (1961). As an institution, moreover, Congress is far better equipped than the judiciary to “amass and evaluate the vast amounts of data” bearing upon an issue as complex and dynamic as that presented here. *Walters v. National Assn. of Radiation Survivors*, 473 U. S. 305, 331 n. 12 (1985). And Congress is not obligated, when enacting its statutes, to make a record of the type that an administrative agency or court does to accommodate judicial review.

That Congress’ predictive judgments are entitled to substantial deference does not mean, however, that they are insulated from meaningful judicial review altogether. On the contrary, we have stressed in First Amendment cases that the deference afforded to legislative findings does “not foreclose our independent judgment of the facts bearing on an issue of constitutional law.” *Sable Communications of Cal., Inc. v. FCC*, 492 U. S. 115, 129 (1989); see also *Landmark Communications, Inc. v. Virginia*, 435 U. S. 829, 843 (1978). This obligation to

exercise independent judgment when First Amendment rights are implicated is not a license to reweigh the evidence *de novo*, or to replace Congress' factual predictions with our own. Rather, it is to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence. See *Century Communications Corp. v. FCC*, 835 F. 2d 292, 304 (CA DC 1987) (“[W]hen trenching on first amendment interests, even incidentally, the government must be able to adduce either empirical support or at least sound reasoning on behalf of its measures”).

[The Government's assertion that the must-carry rules are necessary to protect the viability of broadcast television rests on two essential propositions: (1) that unless cable operators are compelled to carry broadcast stations, significant numbers of broadcast stations will be refused carriage on cable systems; and (2) that the broadcast stations denied carriage will either deteriorate to a substantial degree or fail altogether.]

As support for the first proposition, the Government relies upon a 1988 FCC study showing, at a time when no must-carry rules were in effect, that approximately 20 percent of cable systems reported dropping or refusing carriage to one or more local broadcast stations on at least one occasion. See *Cable System Broadcast Signal Carriage Survey*, Staff Report by the Policy and Rules Division, Mass Media Bureau, p. 10, Table 2 (Sept. 1, 1988), cited in S. Rep. No. 102-92, at 42-43. The record does not indicate, however, the time frame within which these drops occurred, or how many of these stations were dropped for only a temporary period and then restored to carriage. The same FCC study indicates that about 23 percent of the cable operators reported shifting the channel positions of one or more local broadcast stations, and that, in most cases, the repositioning was done for “marketing” rather than

“technical” reasons. *Id.*, at 44 (citing Signal Carriage Survey, *supra*, at 19, 22, Tables 10 and 13).

The parties disagree about the significance of these statistics. But even if one accepts them as evidence that a large number of broadcast stations would be dropped or repositioned in the absence of must-carry, the Government must further demonstrate that broadcasters so affected would suffer financial difficulties as a result. Without a more substantial elaboration in the District Court of the predictive or historical evidence upon which Congress relied, or the introduction of some additional evidence to establish that the dropped or repositioned broadcasters would be at serious risk of financial difficulty, we cannot determine whether the threat to broadcast television is real enough to overcome the challenge to the provisions made by these appellants. (We think it significant, for instance, that the parties have not presented any evidence that local broadcast stations have fallen into bankruptcy, turned in their broadcast licenses, curtailed their broadcast operations, or suffered a serious reduction in operating revenues as a result of their being dropped from, or otherwise disadvantaged by, cable systems.)

The paucity of evidence indicating that broadcast television is in jeopardy is not the only deficiency in this record. Also lacking are any findings concerning the actual effects of must-carry on the speech of cable operators and cable programmers—i.e., the extent to which cable operators will, in fact, be forced to make changes in their current or anticipated programming selections; the degree to which cable programmers will be dropped from cable systems to make room for local broadcasters; and the extent to which cable operators can satisfy their must-carry obligations by devoting previously unused channel capacity to the carriage of local broadcasters. The answers to these and perhaps other questions are critical to the narrow tailoring step