SUPREME COURT OF THE UNITED STATES

No. A–798

TURNER BROADCASTING SYSTEM, INC., ET AL. *v.*
FEDERAL COMMUNICATIONS COMMISSION ET AL.

ON APPLICATION FOR AN INJUNCTION

[April 29, 1993]

CHIEF JUSTICE REHNQUIST, Circuit Justice.

Applicants have asked me, as Circuit Justice for the District of Columbia Circuit, to enjoin enforcement of §§4 and 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102–385, 106 Stat. 1471–1481, which require cable operators to reserve a portion of their channel capacity for carrying local commercial and noncommercial educational broadcast stations. Applicants, cable operators and programmers, contend that these "must-carry" provisions violate the First Amendment because (1) they tell cable operators what speakers they must carry, thereby controlling the content of the operator's speech and shrinking the number of channels available for programming they might prefer to carry; (2) they inhibit the operators' editorial discretion to determine what programming messages to provide to subscribers; and (3) they give local broadcast "speakers" a preferred status. I herewith deny the application.

The 1992 Cable Act, like all Acts of Congress, is presumptively constitutional. As such, it "should remain in effect pending a final decision on the merits by this Court." *Marshall* v. *Barlow's, Inc.*, 429 U. S. 1347, 1348 (1977) (REHNQUIST, J., in chambers). Moreover, the Act was upheld by the three-judge District Court, and even the dissenting judge rejected the argument now urged by applicants—that Congress may not compel cable operators to carry the video signals of programmers they would otherwise choose not to carry. ___ F. Supp. ___, ___ (DC 1993). Unlike applicants, therefore, all three judges below would

recognize that the government may regulate cable television as a medium of communication. *Ibid.*

Equally important is the fact that applicants are not merely seeking a stay of a lower court's order, but an injunction against the enforcement of a presumptively valid Act of Congress. Unlike a stay, which temporarily suspends "judicial alteration of the status quo," an injunction "grants judicial intervention that has been withheld by the lower courts." *Ohio Citizens For Responsible Energy, Inc.* v. *NRC,* 479 U. S. 1312, 1313 (1986) (SCALIA, J., in chambers). By seeking an injunction, applicants request that I issue an order *altering* the legal status quo. Not surprisingly, they do not cite any case in which such extraordinary relief has been granted, either by a single Justice or by the whole Court.

The All Writs Act, 28 U. S. C. §1651(a), is the only source of this Court's authority to issue an injunction. We have consistently stated, and our own Rules so require, that such power is to be used sparingly. See, *e.g., Ohio Citizens For Responsible Energy*, *supra,* at 1313; this Court's Rule 20.1 ("The issuance by the Court of an extraordinary writ authorized by 28 U. S. C. §1651(a) is not a matter of right, but of discretion sparingly exercised"). "[J]udicial power to stay an act of Congress, like judicial power to hold that act unconstitutional, is an awesome responsibility calling for the utmost circumspection in its exercise. This factor is all the more important where, as here, a single member of the Court is asked to delay the will of Congress to put its policies into effect at the time it desires." *Heart of Atlanta Motel, Inc.* v. *United States*, 85 S.Ct. 1, 2, 13 L.Ed. 12 (1964) (BLACK, J., in chambers).

An injunction is appropriate only if (1) it is "necessary or appropriate in aid of [our] jurisdiction," 28 U. S. C. §1651(a), and (2) the legal rights at issue are "indisputably clear." *Communist Party of Indiana* v. *Whitcomb*, 409 U. S. 1235 (1972) (REHNQUIST, J., in chambers); *Ohio Citizens For Responsible Energy*, *supra,* at 1313. Without doubt, implementation of §§4

and 5 would not prevent this Court's exercise of its appellate jurisdiction to decide the merits of applicants' appeal. Nor is it "indisputably clear" that applicants have a First Amendment right to be free of the must-carry provisions. In *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241 (1974), we struck down Florida's right of reply statute, holding that the State may not compel "editors or publishers to publish that which reason tells them should not be published." *Id.*, at 256 (internal quotation marks omitted). Under *Tornillo*, Congress plainly could not impose the must-carry provisions on privately owned newspapers. In *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367 (1969), however, we upheld the Federal Communications Commission's requirement that broadcasters cover public issues, and give each side of the issue fair coverage. Noting that there is a finite number of frequencies available, we stated that "[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee." *Id.*, at 390. Although we have recognized that cable operators engage in speech protected by the First Amendment, *Leathers* v. *Medlock*, 499 U. S. ___, ___ (1991); *Los Angeles* v. *Preferred Communications, Inc.*, 476 U. S. 488, 494 (1986), we have not decided whether the activities of cable operators are more akin to that of newspapers or wireless broadcasters. *Id.,* at 494–495.

In light of these two lines of authority, it simply is not indisputably clear that applicants have a First Amendment right to be free from government regulation. The application for an injunction pending appeal to this Court is therefore denied.