
CHAPTER 1

Local Independent Board Governs WPTV

Currently, the Legislature does not have a means to guide WPTV.

Wyoming Public Television (WPTV) is a statewide program governed by a local, independent community college board with little guidance from the state level. We found that this governance arrangement has not restricted the scope of WPTV's coverage or offerings; the station has, in fact, developed a statewide network. Nevertheless, as additional state monies are invested in WPTV for conversion to digital broadcasting, the Legislature may wish to consider alternative governance structures for WPTV. A state level entity, the Community College Commission (Commission), requests funding for WPTV and includes WPTV in its strategic plan. However, the Commission cannot set policies or guide WPTV operations. Additionally, the Legislature does not have a means to convey its priorities for WPTV.

Federal Communications Commission Regulates Public Television

The FCC regulates broadcasting, but is not involved in programming.

This chapter focuses primarily on WPTV's governance at the state and local level. However, any state or local entity that governs public television stations must adhere to Federal Communications Commission (FCC) rules and regulations. The FCC regulates all television stations and issues operating licenses; consequently, a license holder must comply with FCC regulations or risk losing the license. While the FCC regulates broadcasting, it is not involved in programming. Programming decisions are left to the licensee (license holder).

Central Wyoming College Governs WPTV

The Central Wyoming College (CWC) board of trustees is the licensee as well as the governing body for WPTV. CWC acts as the fiduciary for WPTV by approving purchases, handling finances, and providing payroll and human resource services.

All decisions not made by WPTV managers are made by CWC's president or board. Additionally, the board is responsible for the station's operations and through the president, hires the station's general manager and provides for an annual audit.

High level of station autonomy is typical.

WPTV Retains Considerable Autonomy

While CWC is the licensee, WPTV retains a great deal of autonomy. Decisions about programming, production, personnel, expansion, and seeking grants are all made within WPTV, not by CWC or the Commission. We found this type of station autonomy to be typical in other states, and WPTV managers emphasized the importance of such independence.

National organizations emphasize the importance of editorial integrity.

National organizations contend that public television stations, as licensees of the FCC, operate in the constitutionally protected area of public speech. Congress founded public television with the belief that its expansion and development depend on freedom and imagination at the local and national levels. The Public Broadcasting System (PBS) and the National Association of Public Television Stations agree that editorial integrity in public broadcasting is of the utmost importance.

CWC reserves the right to set WPTV policies.

Community College Commission's Role Is Limited

The Commission's role in governing WPTV is limited to presenting the station's budget to the Legislature and reporting on WPTV's progress towards meeting its mission, goals and objectives. WPTV keeps the Commission informed of its operations but does not turn to the Commission for approval of operational decisions. Further, CWC reserves the right to set WPTV policies. In 1996, CWC objected to the Commission's attempt to do so and agreed only to establish the proposed policies as joint goals. These goals are currently in the Commission's strategic plan, but the Commission cannot unilaterally alter them.

WPTV Evolved from CWC Project to Statewide Network

As WPTV coverage expanded, CWC determined it should not fund WPTV out of the college's budget.

WPTV, licensed as KCWC in 1983, was initially a CWC distance education and instructional program serving the Fremont County area. Its evolution into a statewide network occurred gradually, as station managers responded to public requests for service by extending the broadcast into other parts of the state. Within five years of licensing KCWC, CWC determined that since the station was providing services outside of the CWC service area, it was not appropriate for CWC to fund it out of the college's budget.

In 1991, statutory changes assigned the Commission responsibility for requesting funding.

The Legislature amended statutes to reflect this concern in 1991, assigning the Commission responsibility for requesting funding for the public television project separately from funding for CWC and the other community colleges. In 2000, the Legislature officially acknowledged the station's broader scope by establishing it in statute as *Wyoming Public Television* (see Appendix B).

MOU Describing Governance Arrangement Is Outdated

MOU does not reflect current governance structure.

In 1988, CWC and the Commission entered into a Memorandum of Understanding (MOU) that defined the relationship between CWC and the Commission. This is the only document we identified that attempts to delineate governance for WPTV, but it is no longer relevant. The MOU is 13 years old and does not reflect the current governance structure, in which the Commission has a very limited role. Not all parties involved in the governance of WPTV refer to the MOU on a regular basis or were even aware of its existence. Finally, some aspects of the MOU are not followed. For example, the MOU depicts a model in which all colleges participating in public television will share in its costs, but such cost-sharing is not occurring.

WPTV not in Statute, but CWC Has Responsibility

Although WPTV is not authorized in statute, the Legislature appropriates its funding biennially. The only specific mention of WPTV is in the Commission's statute, where it is authorized to request funding for WPTV. However, according to CWC, a general provision in statute gives the college responsibility for

CWC believes state and federal statutes limit its ability to delegate WPTV responsibility.

WPTV. W.S. 9-2-1026.1 (b) (v) reads, “Any public broadcasting service operating in the state shall be responsible for its operational services and federal licensing.” (See Appendix A for statutes.) Consequently, as the licensee, CWC believes the operating and fiscal responsibility for WPTV cannot be delegated to another agency under state law. Furthermore, CWC claims that federal law also restricts CWC’s ability to delegate responsibility to another entity.

Local Board Has Ultimate Control of a Statewide Resource

WPTV is owned and operated by the CWC Board of Trustees

Funding for WPTV is appropriated by the Legislature, but WPTV is owned by and operated under the auspices of a local board. The CWC board is a locally controlled, independent board elected by the constituency of one community college district of the seven in the state. By statute, the board prescribes and enforces rules for governing the community college under its jurisdiction.

CWC owns the station’s equipment and makes decisions about WPTV resources.

As the licensee, the board has control and responsibility for WPTV, a statewide program. Not only does CWC own all equipment bought for or by WPTV, but it also makes decisions about the license and the use of WPTV resources. For example, WPTV has used its production resources to produce classes for CWC. Additionally, CWC has used WPTV resources for its Stars Schools Project, a multi-state consortium that, in Wyoming, provides a distance education service to schools in the CWC service area. The relationship between WPTV and CWC has been mutually beneficial: with Star Schools, WPTV was able to extend its signal into Jackson as well as begin digital conversion.

CWC has the power to sell WPTV license.

While CWC has not indicated a desire to sell the WPTV license, as the licensee it has the power to do so. This ability was recently demonstrated by the University of Northern Colorado’s attempt to sell the license for KUNC, a public radio station. Eventually, supporters of KUNC raised enough money to purchase the license from UNC, but the incident demonstrates the control a licensee can have over a station.

With conversion, WPTV may be able to offer services of interest to the Legislature.

With Digital Conversion, Stakes Are Higher

As technology continues to evolve and additional state funding is required, the Legislature may wish to establish a greater state role in the governance of WPTV. The current governance structure has not prevented WPTV from extending its service area or fulfilling its mission. However, as technology evolves, WPTV will be in a position to offer services that may be of interest to the Legislature as well as various state agencies. For example, with digital television enhancements, WPTV may be able to generate up to four streams of broadcasting; also, it might be able to provide rural high speed internet service, or even generate revenue from excess bandwidth.

Surrounding states have state level boards to govern public television.

Some States Guide Public Television Stations

Several surrounding states have established state-level functions to govern public television. Montana, North Dakota, Idaho, and Nebraska have some version of a state level board to govern their public television stations. North Dakota has a state-level board dedicated to public broadcasting, including public radio. In Nebraska, the Nebraska Educational Telecommunications Commission is responsible for governing public television (see Appendix E).

Nebraska lays out specific priorities for public television in statute.

While we found it typical for stations to maintain editorial integrity and some autonomy, some states establish statutory priorities for public television. By creating intent language, a state legislature has an opportunity to guide the direction of public television in that state. Idaho Public Television, along with the Idaho State Board of Education, recently reaffirmed the station's autonomy in programming, while still adhering to legislative intent. Additionally, Nebraska lays out specific priorities for public television in statute.

Conclusion: In order to clarify WPTV's governance, the Legislature can choose from several options.

Under the current governance structure, the Legislature funds WPTV's operations, but otherwise cannot guide its direction. Should the Legislature wish to leave this governance

arrangement in place, we suggest several steps that can be taken to clarify relationships between WPTV, CWC, and the Commission. Or, if the Legislature desires an enhanced state role with regard to WPTV guidance or governance, we identify several options for consideration.

To bring clarity to governance, CWC should take the lead in updating the MOU.

Status Quo With an Updated MOU

If the Legislature decides the current governance structure is appropriate, the MOU between the Commission and CWC should be updated. The existing MOU is outdated and does not reflect the reality of present-day working relationships between CWC, WPTV, the Commission, and the other community colleges. CWC should take the lead in updating the MOU to bring clarity to the role of each with regard to governing WPTV.

Currently, the Legislature could cripple WPTV by not funding it.

Status Quo With Authorization in Statute

If the Legislature determines that it wants to continue a state-funded public television station in Wyoming, it could specifically authorize WPTV in statute. Doing so would provide more stability for WPTV. Currently, the Legislature could significantly cripple WPTV simply by not funding it, whereas statutory authorization would acknowledge the long-term funding commitment necessary to maintain a public television station.

The Legislature could set priorities for the use of WPTV resources.

Status Quo with Legislative Intent

Placing legislative intent language in statute would give the Legislature an opportunity to declare how it envisions WPTV contributing to the state's well-being. While editorial integrity and some autonomy would remain with the station, the Legislature could set priorities for the use of WPTV resources. For example, some states have targeted K-12 educational efforts as a focus for their public television stations. WPTV, with guidance from CWC and the Commission, is dedicating 13 percent of its programming to higher education telecourses. While this is a beneficial use of resources, it may not reflect overall state priorities.

Options for Governance Require Careful Study

Should the Legislature wish to consider a change in WPTV's governance structure, we identified several options. The Legislature could create a state-level board specifically dedicated

Without agreement from CWC, making changes in governance will be difficult.

to public television, or it could give responsibility for WPTV to an existing state-level entity. For example, the Commission could perform that role, but it would need to be given explicit statutory authority.

Nevertheless, any change in the governance structure of WPTV will require careful study and consultation with an attorney specializing in FCC regulations. Only FCC can transfer a license, and even then, a transfer must have the consent of the licensee. Without agreement from CWC, making changes to governance will be difficult, if not impossible.

Separating WPTV from CWC will require additional funding from the state.

Additionally, any changes in governance that involve separating WPTV from CWC would require additional financial support from the state. At a minimum, the state would need to invest an additional \$400,000 per biennium. CWC's current in-kind contribution to WPTV is approximately \$400,000 per biennium, and should CWC and WPTV sever relations, this in-kind contribution from CWC would likely disappear.

Choices A Matter of Policy For Legislature

Two states commissioned studies to explore the consequences of a change in governance.

With the exception of updating the MOU, all of the choices outlined above are policy choices for the Legislature and require careful study and planning. When contemplating governance changes, two states (Wisconsin in 1997 and Idaho in 2001) commissioned studies, one from a broadcasting industry consultant and the other from a public broadcasting commission. They did this to become informed about the many organizational, financial, and legal issues that arise from any change of governance involving FCC licensees.

The first step for any governance change is for all interested parties to present their views.

If the Legislature has an interest in examining the potential for changing WPTV's governance structure, it must first provide an opportunity for all interested parties to present their views. This could be accomplished through an interim study process. At the end of that process, if interest in changing governance persists, the state would need to comply with FCC regulations in changing the governance. Doing so would require specialized telecommunications expertise.

CWC could develop a plan allowing wider participation in WPTV governance.

Should the Legislature want to see an expanded role for the Commission or some other state-level entity in WPTV governance, there are alternative means to achieving this. For example, the Legislature could request that CWC develop a plan that allows for wider participation in WPTV governance. This could be done without the extensive study a license transfer would require.