

Meeting - Wednesday, April 9, 1969 - 4:00 p.m.

Vincent Wasilewski, President,
National Association of Broadcasters
Grover Cobb, Chairman of the Board

Thursday 5/29/69

12:00 Checked with Mr. Wasilewski's office --
told them that we had heard that NAB and
NCTA had reached a decision on the cable matter
and that it was being circulated.

Mr. Wasilewski's secretary said that it is still
at the staff level -- still requires approval of
both boards which will meet the middle of June --
but they feel they can live with it. On the basis
of that, she will send you a copy of the paper.
Mr. Wasilewski is making a speech today about it --
she will also send a copy of that.

Wednesday 5/28/69

4:55 Bob Guthrie said that NAB and NCTA have reached a decision on Cable matter and it is being circulated.

Thought you would want to know -- if you didn't already.

Call Wasilewski & tell
them we'd like
to see this.

293-3516

Staff level - still requires approval
of both Boards - Board meet middle of
June - but they think they can live
with it.

Will send - also copy of speech
6/4/69
Hes. memo 5/29/69

202 - 293 - 3500



VINCENT T. WASILEWSKI
PRESIDENT

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N STREET, NORTHWEST
WASHINGTON, D. C. 20036

MEMORANDUM OF INTERSTAFF COMPROMISE AGREEMENT
FOR CONSIDERATION BY BOARDS OF DIRECTORS, NCTA AND NAB

The National Association of Broadcasters and the National Cable Television Association have been made increasingly aware that constant conflict between the two industries which should have compatible interests does not serve the public interest. In consideration of this fact, the staffs of the two trade associations have evolved proposals for consideration by their respective Boards of Directors which, in the spirit of compromise, would allow both industries to move forward and establish an effective national broadcasting communications policy in the public interest.

The proposals which are set forth below would involve amendments to the copyright laws and changes in regulatory policies to be enacted as amendments to the Communications Act. However, in the event regulatory legislation cannot be enacted at this time, both industries express a desire that the FCC would lend its support to the effectuation of this compromise through its own regulatory authority.

I. COPYRIGHT: The copyright law would be amended to reflect the following:

A. CATV would be liable for copyright payments under the terms and conditions set out below:

1. CATV systems will have a compulsory license to carry all local television signals. Local broadcast signals are defined as Grade B contour signals or their equivalent.

2. The copyright statute would recognize the concept of "adequate" television service. Adequate service means that the CATV system shall have available to it the services of stations fully affiliated with each of the national TV networks plus the services of no more than three non-affiliated commercial TV stations. This means, for example, that in a market such as Philadelphia, which has stations fully affiliated with all existing national networks and three commercial TV stations not so affiliated, no importation of distant signals shall be permitted.

In the event that it is necessary to import a distant signal for the purpose of getting adequate service, the signals of the most proximate station in either category shall be the first to be imported. A CATV system, to the extent that it does not have a sufficient complement of local signals to compromise the signals of a full network station for each of the national television networks and the signals of three commercial independent stations, would have a compulsory license to receive signals of distant stations to bring them up to this adequate service concept; provided, however, that

the CATV system would be compelled to obtain the signals necessary to achieve this adequate service from television stations next most proximate to the CATV system. A distant television signal means the signal of a television broadcast station which is extended or received beyond the predicted Grade B contour of that station.

II. EXCLUSIVITY: CATV systems located in primary or secondary broadcast markets must recognize exclusive licensing of copyrighted material as follows:

1. As against "distant" signals imported into a "primary" television market, a CATV system, upon appropriate notice and request of a broadcast station within whose Grade A signal contour such system is located, must provide the same protection of copyrighted material as that which the broadcast station is afforded against other broadcasters in the same television market.

2. As against Grade B television signals carried in a "primary" television market, a CATV system upon appropriate notice and request of a broadcast station within whose Grade A signal contour such system is located, must protect the first run only syndicated showing of a copyrighted work.

3. As against distant signals imported into a "secondary" television market, a CATV system upon appropriate notice and request

of a broadcast station within whose Grade A signal contour such system is located, must protect the first run only syndicated showing of a performance or display of a copyrighted work.

4. For purposes of affording exclusivity protection, a CATV system will be deemed to be within the market of a commercial television station if the CATV system is located in whole or in part within 35 miles of the main post office or reference point of the community in which the commercial television station is located. The geographic coordinates of the main post offices and reference points will be those adopted by the Federal Communications Commission in Appendix B of Further Notice of Proposed Rule Making in Docket No. 18397, released May 16, 1969 (FCC 69-516).

5. A CATV system located within the 35 mile radius of a community listed by ARB as one of the top 50 television markets will be deemed to be located in a primary television market.

6. A CATV system located within the 35 mile radius of a community listed by the ARB as above the top 50 television markets will be deemed to be located in a secondary television market.

III. GRANDFATHERING: All CATV systems serving subscribers as of the date of the passage of this Bill would be grandfathered as to all existing service. They could continue to carry the signals that

they presently carry and would not have to provide any of the "exclusivity" set forth above.

This grandfathering would extend only to the franchise area in which each grandfathered system operates. In the case of a non-enfranchised CATV system, the grandfathering would extend to the boundary of the political sub-division in which the CATV system currently operates.

The grandfathering indicated in this section relates solely to signals currently carried. Should signals be changed or substituted, the new changes will reflect all exclusivity provisions for this agreement.

IV. REGULATORY CONSIDERATIONS: The NAB and the NCTA agree that the most efficient manner of effectuating the compromise in the public interest would be through the enactment of legislative amendments to the Communications Act. However, if this is not possible at this time, both organizations agree that since the FCC has the authority to implement these policies it will proceed to do so upon the enactment of copyright legislation.

1. Retain the carriage and nonduplication currently set forth in present Commission rules.

2. Originations - The FCC should promulgate rules that will permit CATV systems to originate, without any restrictions, sponsored programs on a single channel. There would no limit to the number of channels the CATV system could devote to either automated service or public service type programs. Advertising, however, would be limited to either the channel permitting unlimited originations of any type of programs or on those channels devoted to automated services.

V. INTERCONNECTIONS: Consistent with the spirit of compromise in the public interest, and conditioned upon the acceptance of the other portions of this agreement, recognition must be afforded to the necessity for the preservation of television broadcast services to all areas of the country. Accordingly, both organizations agree that CATV systems receiving broadcast programs would be prohibited from interconnecting for the purpose of distributing entertainment type programming. This prohibition could be waived on a case-by-case basis for good cause shown for contiguous CATV systems for the purpose of serving a local market area.

VI. COPYRIGHT PAYMENTS: CATV systems will pay reasonable copyright fees as determined by the Congress. Small and remote CATV systems should either be exempt from payment or should pay a nominal amount. The proposals set forth above are contingent on a fair and satisfactory statutory resolution of the matter of copyright payment.

May 27, 1969

REMARKS BY
VINCENT T. WASILEWSKI, PRESIDENT
OF THE
NATIONAL ASSOCIATION OF BROADCASTERS
BEFORE THE
FEDERAL COMMUNICATIONS BAR ASSOCIATION
MAY 29, 1969

I find it hard to regard this as a formal speech today. I am a member of the Federal Communications Bar, and have been for some twenty years. I believe I know a majority of the practitioners of the art of communications law who are here in the audience. Thus, this is more like a meeting between old friends in which I am being given the rare opportunity to dominate the conversation. Since that does not often happen in meetings with my fellow lawyers, I intend to make the most of it.

I am here today, frankly, as an advocate. I hope, of course, that NAB's views which I express will coincide with your own. If they do not, at least I hope to convince you that NAB's position is reasonable. Both NAB and the Bar should be striving for the same result in the best interests of broadcasting.

In that respect, I would like to see the FCBA become more directly concerned with some of the broad issues which affect the entire industry. Whether the FCBA could take positions on substantive matters as well as procedural, I don't know. The answer is, probably, that it could be more actively participatory on some issues while on others, because of a variance in the views of its members, it might be required to remain discreetly silent.

There is one area, however, in which I do believe the FCBA should be more active. When a Federal judgeship is open, the American Bar Association is a party-in-interest in the process of selecting a replacement.

Its role is advisory, but it is influential in determining whether candidates meet minimum professional and personal requirements to serve. FCC Commissioners fill a quasi-judicial role in a job of great importance to the general public. Could not the FCBA perform a similar role in recommending and evaluating potential candidates for the Commission? I do not expect that such a role would meet with enthusiastic welcome and immediate acceptance, for custom and political considerations are formidable obstacles.

What is needed is to build a tradition that the FCBA is advised and consulted and its voice heard. To win acceptance of such a role would take time and effort on the part of the FCBA's members. Yet it is not only a reasonable but a necessary long-range goal for those who are concerned with broadcasting to try to assure that intelligent, qualified people are appointed to the Commission which interprets the Communications Act. I would hope that you might give some attention as to how the voice of the FCBA might be heard at the time these decisions are being made.

Over the course of a year, our paths cross frequently; but they usually cross on specific cases -- cases in which you, as practitioners, are involved because one or more of your clients has an immediate interest.

Today, I would like to give you a brief overview of some of the major activities in which we at NAB are engaged in behalf of your clients.

First is the matter of pay television. Originally, the FCC announced that it would -- beginning in about two weeks -- accept applications for over-the-air pay television operations. Then just last week it announced that it would not act on these applications until 60 days after the court rules on the appeal of the National Association of Theater Owners challenging the authority of the FCC to permit pay television.

This means that the official government authorization of pay television will not take place in June as announced, but instead will be deferred until sometime this fall -- unless the FCC is restrained from taking this step.

NAB opposes pay television. I won't go into a long explanation of all of the reasons here. I am sure you've heard them many times before. Let me capsule our views, however, in a couple of sentences. First, the evidence indicates that wherever pay television has been tried it has not provided significantly different programs from those already available on free television. Second, if pay television gets established it will siphon away programs from free television and severely damage over-the-air broadcasting.

In its proposed rules to control pay television, the FCC has recognized the validity of those points. To try to prevent a Pay-TV take-over, the Commission proposes a group of complex, unwieldy and legally-questionable rules. If adopted, we believe they will offer no

long-range protection. We think they will be waived and whittled out of existence rather quickly. NAB believes that the only effective way to prevent a free television system from being converted into a pay television system in this country is to bar the introduction of pay television by legislation or by regulatory action.

Last week, we sent to commercial television stations -- to both NAB members and non-members -- a suggestion that they examine the facts and examine their consciences to see if they could support NAB's opposition to pay television through two specific actions:

1. By persuading the Congress that legislation is needed; and
2. By engaging in an over-the-air effort to generate viewer response.

On this latter point we included a strong caveat calling attention to the special responsibility that broadcasters have on this particular issue because of their strong personal and financial interest.

If you have an interest in a more detailed explanation, we have prepared a position paper on pay television which reflects NAB's views. We feel that this is an issue in which the broadcasters' interests are identical with the public's.

The status of license renewals is also a very pressing matter. The WHDH, Boston, decision by the FCC opened the door to a situation

in which every broadcasting station's license could be laid siege to at renewal time, and might well be lost if the promises -- spun, in many cases, out of thin air by those seeking to displace the licensee -- could be made to sound convincing enough.

To allow such a situation to continue is clearly wrong. The incumbent licensee has no real defense against the potential interloper, because the interloper can play the game of promises, promises, promises, without limitation.

It becomes a game of promissory one-upsmanship -- a game of "Can You Top This?" If the licensee devotes five percent of his broadcast time to news, the interloper can promise seven. If the licensee has three or four cultural or educational programs in a typical week, the interloper can promise five or six. There is really no defense for the incumbent licensee.

Here is an example of what is already happening. This is an advertisement from the classified section of the Wall Street Journal for Friday, May 16.

"Investors wanted who are interested in owning a T.V. station: You must have an impeccable social, business and political reputation in your market area. All necessary facility, management, administrative, sales and legal services will be supplied if you do not have adequate services available through your present business connections."
Box R-876, The Wall Street Journal

License renewal is the most important single fact of life for licensees. It transcends Pay-TV, CATV, cigarette advertising, or any other. It is the sine qua non of broadcasting.

The license renewal process is obviously, therefore, extremely sensitive. It is the most vulnerable pressure point for those who would like to bring broadcasting under government control. Unless the present situation is corrected, the license renewal process will almost inevitably become a device which -- deliberately or not -- results in the imposition of the Commission's collective tastes and preferences in programming, because individuals seeking to displace a licensee must inevitably tailor their promises to the type of programming which pleases the seven men sitting on the Commission. That puts the Commission squarely in the middle of programming and, in substance, violates the censorship prohibitions of the Communications Act.

Further, this situation is not in the public's long-run interest. Former FCC Commissioner Lee Loevinger, at our Convention this year, observed that he could not conceive of an arrangement which would more effectively result in a degrading of programming. A man who displaces a current licensee knows that he has three years before he will be vulnerable to being out-promised by the next man in line. In such a situation, he is hardly likely to pour his resources into long-term commitments, nor is it likely that he is going to spend any more money than he has to in order to maximize his profits over his three-year period.

The public's interest lies in the continuance of the station license in the hands of a good operator. Without reasonable assurance that his privilege as a licensee will continue if he gives good performance, the licensee has little incentive to build himself a long-term place in the city of license or to try to improve his facilities. Uncertainty imposes on him very difficult problems in such practical areas as hiring and training people which are -- one hopes -- long-term commitments, in signing a seven-year film contract, or in many other of the business dealings which he must perform in order to serve his community.

NAB does not contend that a current licensee owns in perpetuity the broadcast license. We do feel that it is in everyone's interest that speculation be barred and stability introduced in the license renewal procedure. We believe that the bills which have been introduced in Congress represent a reasonable approach to the problem. In the House of Representatives, more than 50 bills have been introduced, and in the Senate one bill has been introduced by a most important Senator -- Mr. Pastore -- who, in his position as Chairman of the Subcommittee on Communications, assumed a key role.

I have dwelt on this matter at some length today because I hope that all of you who have not yet rendered assistance on this matter will do so. I do not propose to suggest how you should do it; you should do it in your own way; but I would urge you to lend your support to this concept which will help to assure orderly license renewal procedures. I believe

it is in the public interest; it is in the broadcasters' interest; and it is in your own personal interest.

Now let me turn to the difficult, misunderstood, complex, and emotional subject of cable television. I will not bore you today with yet another recounting of NAB's position on CATV -- except to make this observation, which has been made many times before, but seems to have gone unnoticed in the almost two decades of squabbling which has occurred on the subject of CATV. That is this: NAB has never been against CATV. We have never sought to kill it or even to cripple it. We have always recognized, and publicly acknowledged on many occasions, the great value of CATV to thousands of American homes. The real question, as we saw it, was whether CATV, unbound by the restrictions that bind broadcasters -- and, in fact, unbound by any restrictions whatsoever -- would eventually cripple or even kill broadcasting.

At the Winter Board meeting in January, the NAB Board of Directors instructed the staff to undertake exploratory discussions with CATV representatives to see whether an accommodation could be reached which would reflect and protect the interests of both broadcasters and CATV operators and, of course, also serve the public interest.

Following that directive, a series of meetings were held between the staffs of NAB and NCTA to explore this possibility. In the beginning it was agreed that discussions were to be free and open, and that no one

was necessarily bound to any position that he might take in such discussion.

After several meetings, it was finally determined that a sufficient commonality of point-of-view existed so that we would take the next step and attempt to reduce the results of the discussions to writing. This was done successfully and resulted in a document which both NAB and NCTA felt worth consideration by their respective boards of directors. The document was presented to the NCTA Executive Committee and the NAB Executive Committee in separate meetings. After these separate discussions, each of the executive committees reached the conclusion that the document deserved broader consideration.

With the authorization of our Executive Committee, we have acquainted important government leaders with the contents of the document. There are many parties-in-interest, and it was felt that it would be wasted motion to present the document to the respective boards of directors unless there was agreement that the direction taken presented a reasonable possibility for an agreement.

The document covers the major historic points of contention between broadcasters and CATV operators. I will summarize these with the understanding that my summary necessarily oversimplifies, and that the joint document, not these remarks, must be regarded as controlling.

1. CATV would be liable for copyright payments as determined by Congress.

2. CATV systems would be permitted to carry all Grade B or better signals. If these do not result in a complement of three network affiliates and three independent commercial stations, then they may import sufficient signals to make up the six. Where stations are imported, the nearest stations shall be imported first.
3. CATV systems would provide protection for copyrighted material. Basically, protection for a television station in the top 50 markets would extend for the run of its contracts for programs. For distant signals imported into all other markets or Grade B signals carried in a primary market, protection would extend to the first syndicated run only.
4. Present CATV systems would be grandfathered.
5. The present carriage and non-duplication rules of the Commission should continue.
6. CATV systems would be able to originate sponsored programs on a single channel.
7. CATV systems would not be permitted to interconnect to distribute mass-appeal programming.

While all of us who have been actively engaged in these discussions believe that this represents a major forward step of accommodation on the part of both NAB and NCTA, we recognize that we have a long hard road ahead before a theoretical document becomes an operating fact.

Both the NAB and NCTA representatives regard this document as a package. The deletion or significant alteration of a major point, or the addition of other points, could well disturb the balance and render the document unacceptable to broadcasters or cable operators.

The acceptance and cooperation of several vital elements is essential if agreement is to be reached in any form. These elements are: The Boards of Directors of NCTA and NAB must, acting in behalf of their respective members throughout the Nation, determine whether such a document is workable and consistent with the interests of their members. Some points should be incorporated into the Communications Act, and thus the support of the Commerce Committees of the House and Senate is required. Some points must be incorporated into the Rules and Regulations of the Federal Communications Commission, and therefore that body is vitally concerned. Other sections must be incorporated in the Copyright Law, and thus the Subcommittee on Patents, Trademarks and Copyrights must be in accord.

Finally, of course, the Congress as a whole must be satisfied as to the equity and workability of the proposals.

We at the staff level at NAB and NCTA believe that we have carried the matter as far as we can carry it, and that now it must be thrown open for the consideration of all interested parties. The NAB and NCTA Boards of Directors will study this document, discuss it with their attorneys,

their respective constituent broadcasters and cable operators, and reach their own determinations.

Naturally, we at NAB as well as all members of our Board -- and I'm sure this goes as well for NCTA and its Board -- stand ready to receive comments from any and all interested parties so that when the vote is taken at our Board meetings, and when the matter is put before the FCC and the Congress, it will represent the best and most enlightened thinking of all who are involved in the issues.

CATV is a complicated and difficult issue. At this point, neither side can write its own ticket. A compromise which recognizes the integrity of both industries is indicated. We ask that broadcasters and CATV operators -- and you, their attorneys and advisors -- examine our progress to date with realism. If rules can be agreed upon which allow CATV and broadcasting to complement one another and to exist in harmony, we would all then serve the public better.

*Not known of
Broadcasters*

TELEVISION AND CATV

For some time there has been considerable controversy concerning the broadcast transmission system known as CATV or "Cable Television". Its merits and demerits have received widespread publicity and the controversy seems to have heightened since December 13, 1968, when the Federal Communications Commission proposed new rules to govern the future growth of CATV in America.

The National Association of Broadcasters would like to set forth briefly some basic thoughts which it believes should be considered in determining CATV's place in the American communications scene.

Television in the United States has grown and flourished under policies established by the Congress in the Communications Act. Under authority of that Act, and with full acquiescence of the Congress the Federal Communications Commission issued an allocation plan for television to insure a full and fair distribution of television channels so that all of the people would have the benefits of free off-the-air broadcast service.

In order to increase television service by wider use of the frequency spectrum, the Congress enacted the All Channel Receiver Law in 1962, which provides that all new television receivers must be capable of receiving both UHF and VHF signals. The result has been a steady increase in the number of new television stations with the consequent growth in services available to the public.

Community Antenna Television began a few years ago, as a means of providing better reception of television signals in towns remote from television stations or where reception was poor, owing to terrain barriers, such as high mountains. Through the use of a master antenna located atop a hill, broadcast signals were received and retransmitted by cable to subscribers for a monthly fee.

As equipment became more sophisticated, many CATV operators realized they could go into direct competition with the broadcasters by reaching out and importing signals from stations located hundreds of miles away. In many cases, these signals duplicated the programs of the local stations. More recently, an increasing number of systems are originating their own programming on the cable system itself.

Recognizing the potential of unregulated CATV to destroy local broadcast stations by bringing in large numbers of signals from the distant stations not licensed to the local area, the Federal Communications Commission has asserted jurisdiction over all CATV systems. This authority has been sustained by the Supreme Court.

CATV provides a valuable service to a segment of the American people. The broadcasting industry has no wish to harm -- indeed, every reason to help -- CATV as it grows in an orderly fashion as a supplement to free, over-the-air television. But some system operators have

sought to go into direct and unfair competition with broadcasters whose signals they receive free of charge. These are the people with whom broadcasters have their basic argument.

Because the CATV controversy is now before the Congress, a summary of some of the points at issue may be helpful.

1. CATV provides a valuable service when it acts as a supplement to free, over-the-air television.
2. Broadcast television programs are the indispensable ingredient for CATV operation. In short, there would be no CATV if there were no television. It is important that this be kept in mind when considering any question concerning the "rights" and "privileges" of a CATV system versus those of a television station.
3. Unregulated CATV growth has a dangerously destructive potential. The owners of most of the Nation's 60 million television receivers depend upon free over-the-air television service. CATV systems also depend upon this service from their principle ingredient to sell the public. It makes little sense, therefore, if -- to the detriment of both the public and the CATV industry -- the over-the-air system is debilitated or destroyed. Yet history demonstrates that unfair competition can be extremely destructive.

Television stations are licensed in the public interest but are operated as businesses. Like other businesses, the TV station requires a sound economic base. That base consists of the interrelationship of viewers, the station and the station's advertisers. When a CATV system, at no cost to itself, "imports" competing programs from dozens of distant stations into the local station's community, it competes with the local station for viewers. To the extent that it succeeds in siphoning off viewers in favor of distant stations, it destroys the advertising base that sustains the local station. Eventually, this can retard the station's ability to perform public service, news etc., which are usually unprofitable.

A second form of unfair competition is added when the CATV operator uses spare channels to originate competitive entertainment programming, thus siphoning even more viewers. It was to prevent destructive, unfair competition -- particularly for new and embryonic UHF stations -- that the FCC asserted its authority to regulate CATV systems.

4. It should be kept in mind that there is no CATV "out in the country". The high cost of cabling makes it uneconomical to wire up rural areas. People living outside the town or city and its suburbs must depend on broadcast television -- another good reason why CATV should not be permitted to damage broadcast television.
5. CATV costs subscribers money; money that many families cannot afford. Families typically pay \$5.00 or \$6.00 each

month for CATV service. They pay nothing for over-the-air service. Central city poverty-area families need free television service--another reason why CATV should not be permitted to damage free television.

6. CATV could become Pay TV. It is simple to "scramble" one or more CATV channels and levy a special per-program fee to "unscramble" them for viewing special programs. Assuming that CATV systems interconnect nationally, if today's three million subscribers would pay \$1.00 each for a professional football game on a pay channel, CATV could outbid free television. Pay TV, whether by wire or wireless, would thus siphon off the most popular features of free TV.

7. The FCC rules as proposed on December 13, 1968, represent an independent agency's, objective judgment as to how CATV can be a healthy complement to over-the-air broadcasting in America.

8. The rules proposed on December 13, 1968, will not maim or kill the CATV industry. CATV has, of course, not been given the carte blanche that some of its more ambitious leaders wish. However, it is estimated that 80 - 90 per cent of existing systems will be relatively unaffected by proposed rules unless origination of programs by CATV is required (which NAB opposes).

9. Under the Commission's proposed rules there is a healthy growth potential for both existing and new CATV systems.

Those broadcasters who, by the hundreds, have invested in CATV evidently share this belief. The Commission itself has encouraged a CATV structure compatible with free broadcasting in the public interest.

10. There is presently no requirement for Congressional action in the CATV-regulatory area.

National Association of Broadcasters
Washington, D. C.

FOR IMMEDIATE RELEASE

MARCH 25, 1969

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE
(Sheraton Park Hotel)

REMARKS OF THE PRESIDENT
TO THE NATIONAL ASSOCIATION OF BROADCASTERS
SHERATON HALL

(AT 1:25 P.M. EST)

Mr. President, all distinguished guests at the head-table, Mr. Pace, and all of the distinguished members of this audience:

As you know I am an added starter today, and I was just saying to Frank Pace that I would not infringe too much on his time, because I know he is your scheduled speaker.

I sometimes have been in the position where somebody else came and infringed on my time, and so I understand.

As I stand before you today, I have spoken in this room many times before, before many distinguished audiences. It isn't just because you are here, but only because it is a matter of fact and a statement of truth that this is without question one of the most powerful groups that I could address in the nation.

I speak both from an objective standpoint, as I analyze the great influence that your organizations can have on the thinking of the American people, and I speak from a personal standpoint. Certainly I am the world's living expert on what television can do for a candidate, and what it can do to a candidate.

Having spoken so much on television, I don't want to downgrade radio. We found it a very useful medium in the last campaign. While that is not the purpose of my remarks here today, I can only say that looking to the future I can only see growth and excitement in the tremendously interesting ventures in which you are engaged.

It occurred to me that what might be useful for you in brief remarks of this type would be for me to share some of the problems that a President has in attempting to run what we call an open Administration, and in attempting to be candid and honest with regard to great issues in which you are vitally interested.

I think if we were to pick one issue of all of the others that the American people have an interest in, it is Vietnam. On that issue, on television and radio and in the newspapers, day after day, we hear speculations. We read about what is happening in Vietnam, what is happening on the battlefield, but more important, what is happening at the negotiating tables.

MORE

(OVER)

I want you to know what my belief is about the conduct of this war, about the negotiations, and about the prospects. What I say will not give you, perhaps, as much hope as you might like to hear. But what I say, I believe, is in the best interest of the result, and the result is ending the war on a basis that will promote real peace in the Pacific.

I could stand before you today and talk rather optimistically about the prospect of bringing boys home from Vietnam at a time when a Communist offensive is at a high peak. I can tell you that it will be the objective of this Administration to bring men home from Vietnam just as soon as the military situation, the diplomatic situation and the training of the South Vietnamese forces will enable us to do so.

But I can also tell you that I think it is not in the interest of the nation or the President of the United States to stand before any audience and to raise hopes and then disappoint them. So I will only tell you today what our objective is.

I will tell you, looking toward the future, I think we are going to achieve that objective, of a peace that will be one that will not be just for the year or two years, but for the foreseeable future in the Pacific and in the world -- that kind of peace.

But in talking of what we do with regard to our troop strength there, I think all of you know that at this particular time as an offensive is going on, and as negotiations are beginning, it is vitally important that the United States maintain its position of strength until we have reason to believe that a reduction on our part would also have a major contribution in bringing about a reduction on their part.

So while I would like to make news here, while I would like to leave impressions that would go flagging out across the country about what is going to happen in a hopeful way, I can only say--and I do not say this in any partisan sense, because I have been one that has supported, as you know, as a Republican, the efforts of our nation in Vietnam--that I believe there has been too much of a tendency to speak of peace being just around the corner, the boys may be coming home in a matter of a few months, and thereby raising those optimistic feelings in the minds of people without justification, and then dashing them.

We shall not do this in this Administration. We may not meet the headlines of today, but what we are interested in are the results of tomorrow. I believe that is what you are interested in, and that is why we are going to follow this very candid and honest discussion.

Now, I realize that in this room are not the broadcasters and the reporters -- I mean by that the commentators and the reporters and all of the rest -- but you are the managers, the people on the business side of the great television and radio installations around the country. I think all of you will understand the next point that I will make particularly well.

MORE

Page 3

Two or three weeks ago, I noted considerable criticism of the Administration because we had not, at the time that I was in Paris, announced that we were starting private talks with the enemy in order to negotiate those areas of difference and bring the day of peace closer.

MORE

(OVER)

Now, let me be quite candid. As far as negotiated peace is concerned, it will come from private rather than public talks because where both sides -- and I am referring now particularly to the North Vietnamese and the South Vietnamese who have a problem of prestige and a problem of face among many others involved, that kind of negotiation cannot take place in a goldfish bowl with communication every day, because there the tendency is to speak to their people at home, but more than that to the people of the world, . . . to

Most of the progress that has been made today in bringing about talks in a public forum has come from private talks.

So, I can tell you that it is our conviction and our belief that it is through private talks with the North Vietnamese and others involved that real progress toward peace will be made.

But, if private talks are to be private, they must be private. Consequently, if I am asked, and this is true of the Secretary of State and it is true of the Secretary of Defense and my instructions to everybody in this Administration as to whether private talks should begin, as to what has occurred, we will say nothing. Because the moment we tell you, any of you -- and let me say the questions are always proper, sometimes the answers would not be appropriate on our part -- but I can only say that if we are to make progress in private talks they must be private.

Therefore, to disclose when, where and what and how in any degree would not serve the interests of peace. Now, again, I realize it would raise hopes. It would make a good headline, and a good first two minutes on the evening show, if I were to indicate that we were proceeding in private talks or what was going on.

But let me say that that would not serve the long-range interests of bringing peace. I can only assure you that there is no objective of this Administration that is higher -- and let me say this was also true of the other Administration, but we are proceeding in different ways -- ~~than to~~ to bring this war to a conclusion at the earliest possible time in a manner that will promote real peace.

We think we are on the right track but we are not going to raise false hopes. We are not going to tell you what is going on in private talks. What we are going to do is to do our job and then a few ~~months~~ from now, I think you will look back and say we did what was right. If we did what was wrong then it doesn't make any difference with the headline that we have made today. So, this will be our policy in that respect.

Again, I think that you as negotiators will recognize the validity of that position. Much as we want an open Administration, there are times when it is necessary to have those quiet conversations without publicity in which each side can explore the areas of difference and eventually reach an agreement which then, of course, publicly will be announced.

If Frank Pace will indulge me a little longer, I understand there has been some interest in the ABM Safeguard System which I have talked about. I am not here to twist your arms or to attempt to influence you one way or the other. All of you, as far as that system, the defense of the country, in all of these matters, must examine the evidence and then make your own decisions with regard to what is in the best interest of the Nation.

But I would like to share with you briefly the considerations that went into that decision. It is not an easy decision. An easy decision would have been not to make it. The easy decision would have been to put it off, to have research and development, or to indicate that there was no significant threat or that it wouldn't work or that it really didn't matter.

But I can tell you that these were the factors that we were confronted with and which we had to deal with, and which made it necessary for us to announce a hard decision rather than an easy one. We hope it is the right one. We think it is. That is for you to judge. It is for the American people to appraise.

I found when I came to office that in 1962, when the Cuban confrontation occurred, that the balance of power between the United States and the Soviet Union was approximately four or five to one in our favor. Because of that balance of power in our favor, the President of the United States in a very courageous decision was able to act in the best interest of the United States and avoid a missile installation 90 miles from our shore.

If :
If the United States had not had that kind of assurance -- not only the assurance of our power but also a recognition that those who threatened our security at that time, the Soviet Union, had a recognition on their part that we had that kind of strength -- if that had not been the case that decision might not have been made or it would have been much more dangerous to make.

Now, what has happened from 1962 to 1969? Since that time the Soviet Union has widened the gap in conventional weapons which they have always had in Western Europe. They have rapidly closed the gap in Naval strength, particularly in the Mediterranean, and they have substantially closed the gap in strategic weapons. So, we look at that situation today. And in describing it let me lay to rest one point of view that I saw expressed in some reaction to Secretary Laird's testimony, in describing that this is no cause for freight.

The United States is still infinitely strong and powerful. We are still able to meet any potential threat. But the problem that the President of the United States faces as the Commander in Chief and as the one who has the responsibility to see that our defenses are adequate to make peaceful diplomacy possible, the responsibility that he has is to examine not only what the situation is now but what it will be four or five years from now. And the decision that I made here and the decisions I will be making on all defense matters, I can assure you, will have one consideration only.

MORE

(OVER)

I do not believe that the United States should threaten any other Nation. We are not interested in aggression. I do believe, however, that without the power of the United States the great hundreds of millions of people who live in the free world would not have had the assurance of freedom that they have had. In other words, it is the power of the United States that has avoided a world war and a world confrontation.

And whether it is in my Administration or in the next, I never want the President of the United States, when he sits down at a conference table, to be in a second-rate position as far as the strength of the United States is concerned.

(Applause.)

I am not suggesting that that means we embark on an arms race. I am not suggesting that that means that we go forward in order to regain the four or five to one superiority that we once had. That will not happen. But I am suggesting that when we look at those facts, there are some limited actions that the United States, I think, should take.

One involves the ABM Safeguard System. What this system will do, first, is to provide some protection for our deterrent capability, our minutemen sites. That means our second strike capability. This was necessary because we found that the Soviet Union had developed new weapons with greater accuracy, the SS9, that could take out our hardened minutemen sites, and thereby reduce the credibility of our second strike capability.

The credibility of the American second strike is essential, diplomatically and also in the long range as far as preserving peace in the world. In addition to that, the ABM Safeguard System provides an area defense of the entire United States or any attack by the Chinese communists within the next ten years, or any other nuclear power which might acquire such weapons in that period.

Let me emphasize what Safeguard does not do. There is no way at this time that we can safeguard all of the American people through anti-ballistic missiles against an attack by a sophisticated major nuclear power like the Soviet Union. But we can increase the credibility of our second strike force by defending our minuteman sites.

On the other hand, when we look at a lesser nuclear power with fewer missiles it is possible to develop an area defense which will be effective. So, those were the two purposes of making that decision.

Now, many questions arise. First, will it work? Those in whom I have great respect, including perhaps beyond others the Under Secretary for Defense, Mr. Packard, an expert in this field, say that it will. As some indicate it must have some meaning because the Soviet Union has deployed 66 of this type of defense around Moscow and are now covering not only the threat from the West but also from Communist China.

But in order to guard against plunging into a program that would be a boondoggle, we have made the decision on a phase basis.

MORE

Every year we will examine this new system with the minimal appropriations for this year, which you are aware of, with three things in mind:

One, progress that may be made on arms talks.

Two, progress that may be made on the state of the art, whether or not it proves that it is something that we can do or that we cannot do.

And finally, we shall always examine this system in terms of the overall capability of the United States and our responsibilities in the world which I have described up to this time.

Let me conclude with this final thought: Any of you, and I know many of you have been exposed to briefings on the massive destructive power of nuclear weapons, must sometimes wonder why enough isn't enough.

As some of you put it, with regard to the potential of a Chinese threat, why should we be concerned, because assuming eight or ten years from now they have 60 or 70 or 80 missiles, and assuming that is the case, no rational man who was the leader of that country would launch an attack against the United States knowing that our immense retaliatory power would destroy half of the population of Communist China.

I agree with that analysis. But when we examine history, we find within the last third of a century that sometimes decisions by great powers, as well as small, are not made by rational men. Hitler was not a particularly rational man in some of his military decisions.

So it is the responsibility of the President of the United States not only to plan against the expected, and against what normal and rational men will do, but within a certain area of contingency to plan against the possibility of an irrational attack.

To do all of this, having in mind maintaining the necessary balance between security and freedom which is so essential, this we have tried to do. I think that the decision was a correct one.

In presenting it to you in this way today, as I have presented it previously, I can only say and repeat what I have said earlier, that all of us, whatever our partisan affiliations, have one primary goal in mind. That is peace in the world -- peace in the world which is the real peace that comes from the kind of security that only the United States can provide.

I have just met with the Canadian Prime Minister. I have just completed meetings with the heads of government of the major European powers. And I have been reminded again of this fundamental fact: Without the power of the United States of America, the rest of the world would be, in effect, at the mercy of potential diplomatic aggression, and that is really what is at stake here.

MORE

(OVER)

We have a responsibility. We have met it ever since World War II, and I believe that now it is our destiny to continue to meet it, while at the same time -- and I can assure you we are exploring this other road -- to pursue every path toward peace, and to pursue every path toward arms limitations, so that we can divert our resources to other areas than those of destruction.

Thank you.

END

(AT 2:00 P.M. EST)

MEMORANDUM

NAB

THE WHITE HOUSE

WASHINGTON

Ed Roth

NASA AT&T satellite multiple use.
appmt

Renewals

Pay TV

CATV compet OTA - poss of destructive compet.

Pro CPB

Anti Having 4% tax proposal.

TELEVISION AND CATV

For some time there has been considerable controversy concerning the broadcast transmission system known as CATV or "Cable Television". Its merits and demerits have received widespread publicity and the controversy seems to have heightened since December 13, 1968, when the Federal Communications Commission proposed new rules to govern the future growth of CATV in America.

The National Association of Broadcasters would like to set forth briefly some basic thoughts which it believes should be considered in determining CATV's place in the American communications scene.

Television in the United States has grown and flourished under policies established by the Congress in the Communications Act. Under authority of that Act, and with full acquiescence of the Congress the Federal Communications Commission issued an allocation plan for television to insure a full and fair distribution of television channels so that all of the people would have the benefits of free off-the-air broadcast service.

In order to increase television service by wider use of the frequency spectrum, the Congress enacted the All Channel Receiver Law in 1962, which provides that all new television receivers must be capable of receiving both UHF and VHF signals. The result has been a steady increase in the number of new television stations with the consequent growth in services available to the public.

Community Antenna Television began a few years ago, as a means of providing better reception of television signals in towns remote from television stations or where reception was poor, owing to terrain barriers, such as high mountains. Through the use of a master antenna located atop a hill, broadcast signals were received and retransmitted by cable to subscribers for a monthly fee.

As equipment became more sophisticated, many CATV operators realized they could go into direct competition with the broadcasters by reaching out and importing signals from stations located hundreds of miles away. In many cases, these signals duplicated the programs of the local stations. More recently, an increasing number of systems are originating their own programming on the cable system itself.

Recognizing the potential of unregulated CATV to destroy local broadcast stations by bringing in large numbers of signals from the distant stations not licensed to the local area, the Federal Communications Commission has asserted jurisdiction over all CATV systems. This authority has been sustained by the Supreme Court.

CATV provides a valuable service to a segment of the American people. The broadcasting industry has no wish to harm -- indeed, every reason to help -- CATV as it grows in an orderly fashion as a supplement to free, over-the-air television. But some system operators have

sought to go into direct and unfair competition with broadcasters whose signals they receive free of charge. These are the people with whom broadcasters have their basic argument.

Because the CATV controversy is now before the Congress, a summary of some of the points at issue may be helpful.

1. CATV provides a valuable service when it acts as a supplement to free, over-the-air television.
2. Broadcast television programs are the indispensable ingredient for CATV operation. In short, there would be no CATV if there were no television. It is important that this be kept in mind when considering any question concerning the "rights" and "privileges" of a CATV system versus those of a television station.
3. Unregulated CATV growth has a dangerously destructive potential. The owners of most of the Nation's 60 million television receivers depend upon free over-the-air television service. CATV systems also depend upon this service from their principle ingredient to sell the public. It makes little sense, therefore, if -- to the detriment of both the public and the CATV industry -- the over-the-air system is debilitated or destroyed. Yet history demonstrates that unfair competition can be extremely destructive.

Television stations are licensed in the public interest but are operated as businesses. Like other businesses, the TV station requires a sound economic base. That base consists of the interrelationship of viewers, the station and the station's advertisers. When a CATV system, at no cost to itself, "imports" competing programs from dozens of distant stations into the local station's community, it competes with the local station for viewers. To the extent that it succeeds in siphoning off viewers in favor of distant stations, it destroys the advertising base that sustains the local station. Eventually, this can retard the station's ability to perform public service, news etc., which are usually unprofitable.

A second form of unfair competition is added when the CATV operator uses spare channels to originate competitive entertainment programming, thus siphoning even more viewers. It was to prevent destructive, unfair competition -- particularly for new and embryonic UHF stations -- that the FCC asserted its authority to regulate CATV systems.

4. It should be kept in mind that there is no CATV "out in the country". The high cost of cabling makes it uneconomical to wire up rural areas. People living outside the town or city and its suburbs must depend on broadcast television -- another good reason why CATV should not be permitted to damage broadcast television.
5. CATV costs subscribers money; money that many families cannot afford. Families typically pay \$5.00 or \$6.00 each

month for CATV service. They pay nothing for over-the-air service. Central city poverty-area families need free television service--another reason why CATV should not be permitted to damage free television.

6. CATV could become Pay TV. It is simple to "scramble" one or more CATV channels and levy a special per-program fee to "unscramble" them for viewing special programs. Assuming that CATV systems interconnect nationally, if today's three million subscribers would pay \$1.00 each for a professional football game on a pay channel, CATV could outbid free television. Pay TV, whether by wire or wireless, would thus siphon off the most popular features of free TV.

7. The FCC rules as proposed on December 13, 1968, represent an independent agency's, objective judgment as to how CATV can be a healthy complement to over-the-air broadcasting in America.

8. The rules proposed on December 13, 1968, will not maim or kill the CATV industry. CATV has, of course, not been given the carte blanche that some of its more ambitious leaders wish. However, it is estimated that 80 - 90 per cent of existing systems will be relatively unaffected by proposed rules unless origination of programs by CATV is required (which NAB opposes).

9. Under the Commission's proposed rules there is a healthy growth potential for both existing and new CATV systems. Those broadcasters who, by the hundreds, have invested in CATV evidently share this belief. The Commission itself has encouraged a CATV structure compatible with free broadcasting in the public interest.

10. There is presently no requirement for Congressional action in the CATV-regulatory area.

National Association of Broadcasters
Washington, D. C.

TELEVISION AND CATV

For some time there has been considerable controversy concerning the broadcast transmission system known as CATV or "Cable Television". Its merits and demerits have received widespread publicity and the controversy seems to have heightened since December 13, 1968, when the Federal Communications Commission proposed new rules to govern the future growth of CATV in America.

The National Association of Broadcasters would like to set forth briefly some basic thoughts which it believes should be considered in determining CATV's place in the American communications scene.

Television in the United States has grown and flourished under policies established by the Congress in the Communications Act. Under authority of that Act, and with full acquiescence of the Congress the Federal Communications Commission issued an allocation plan for television to insure a full and fair distribution of television channels so that all of the people would have the benefits of free off-the-air broadcast service.

In order to increase television service by wider use of the frequency spectrum, the Congress enacted the All Channel Receiver Law in 1962, which provides that all new television receivers must be capable of receiving both UHF and VHF signals. The result has been a steady increase in the number of new television stations with the consequent growth in services available to the public.

Community Antenna Television began a few years ago, as a means of providing better reception of television signals in towns remote from television stations or where reception was poor, owing to terrain barriers, such as high mountains. Through the use of a master antenna located atop a hill, broadcast signals were received and retransmitted by cable to subscribers for a monthly fee.

As equipment became more sophisticated, many CATV operators realized they could go into direct competition with the broadcasters by reaching out and importing signals from stations located hundreds of miles away. In many cases, these signals duplicated the programs of the local stations. More recently, an increasing number of systems are originating their own programming on the cable system itself.

Recognizing the potential of unregulated CATV to destroy local broadcast stations by bringing in large numbers of signals from the distant stations not licensed to the local area, the Federal Communications Commission has asserted jurisdiction over all CATV systems. This authority has been sustained by the Supreme Court.

CATV provides a valuable service to a segment of the American people. The broadcasting industry has no wish to harm -- indeed, every reason to help -- CATV as it grows in an orderly fashion as a supplement to free, over-the-air television. But some system operators have

sought to go into direct and unfair competition with broadcasters whose signals they receive free of charge. These are the people with whom broadcasters have their basic argument.

Because the CATV controversy is now before the Congress, a summary of some of the points at issue may be helpful.

1. CATV provides a valuable service when it acts as a supplement to free, over-the-air television.
2. Broadcast television programs are the indispensable ingredient for CATV operation. In short, there would be no CATV if there were no television. It is important that this be kept in mind when considering any question concerning the "rights" and "privileges" of a CATV system versus those of a television station.
3. Unregulated CATV growth has a dangerously destructive potential. The owners of most of the Nation's 60 million television receivers depend upon free over-the-air television service. CATV systems also depend upon this service from their principle ingredient to sell the public. It makes little sense, therefore, if -- to the detriment of both the public and the CATV industry -- the over-the-air system is debilitated or destroyed. Yet history demonstrates that unfair competition can be extremely destructive.

Television stations are licensed in the public interest but are operated as businesses. Like other businesses, the TV station requires a sound economic base. That base consists of the interrelationship of viewers, the station and the station's advertisers. When a CATV system, at no cost to itself, "imports" competing programs from dozens of distant stations into the local station's community, it competes with the local station for viewers. To the extent that it succeeds in siphoning off viewers in favor of distant stations, it destroys the advertising base that sustains the local station. Eventually, this can retard the station's ability to perform public service, news etc., which are usually unprofitable.

A second form of unfair competition is added when the CATV operator uses spare channels to originate competitive entertainment programming, thus siphoning even more viewers. It was to prevent destructive, unfair competition -- particularly for new and embryonic UHF stations -- that the FCC asserted its authority to regulate CATV systems.

4. It should be kept in mind that there is no CATV "out in the country". The high cost of cabling makes it uneconomical to wire up rural areas. People living outside the town or city and its suburbs must depend on broadcast television -- another good reason why CATV should not be permitted to damage broadcast television.
5. CATV costs subscribers money; money that many families cannot afford. Families typically pay \$5.00 or \$6.00 each

month for CATV service. They pay nothing for over-the-air service. Central city poverty-area families need free television service--another reason why CATV should not be permitted to damage free television.

6. CATV could become Pay TV. It is simple to "scramble" one or more CATV channels and levy a special per-program fee to "unscramble" them for viewing special programs. Assuming that CATV systems interconnect nationally, if today's three million subscribers would pay \$1.00 each for a professional football game on a pay channel, CATV could outbid free television. Pay TV, whether by wire or wireless, would thus siphon off the most popular features of free TV.

7. The FCC rules as proposed on December 13, 1968, represent an independent agency's, objective judgment as to how CATV can be a healthy complement to over-the-air broadcasting in America.

8. The rules proposed on December 13, 1968, will not maim or kill the CATV industry. CATV has, of course, not been given the carte blanche that some of its more ambitious leaders wish. However, it is estimated that 80 - 90 per cent of existing systems will be relatively unaffected by proposed rules unless origination of programs by CATV is required (which NAB opposes).

9. Under the Commission's proposed rules there is a healthy growth potential for both existing and new CATV systems. Those broadcasters who, by the hundreds, have invested in CATV evidently share this belief. The Commission itself has encouraged a CATV structure compatible with free broadcasting in the public interest.

10. There is presently no requirement for Congressional action in the CATV-regulatory area.

National Association of Broadcasters
Washington, D. C.

T.W. Meeting
NAB
3/26
5:30

Wednesday 3/26/69

4:35 Grover Cobb's office called to say
that Charles Tower, Executive Vice President of
Corinthian Broadcasting of New York, will be
at the 5:30 meeting this evening also.

He is chairman of the NAB's TV Board.

Wednesday 3/26/69

11:50 They have changed the place of the reception tonight.
It will be in the Scandinavian Room of the International
Club, 1225 19th St., N. W. 5:30.

Will you want a W.H. car? Or do you plan to drive
there yourself?

Want a car for 5:15 _____

I will drive myself _____

Attached lists of those to attend tonight.

Tuesday 3/25/69

4:45 Grover Cobb called to confirm the reception
Wednesday (3/26) at 5:30 p.m. in the
Scandinavian Room of the International Club --
1225 19th St., N. W.

He has asked one from each of the networks,
four practitioners (very good people) in various
size markets, and also the President of the National
Association of Broadcasters, Executive Vice
President of CBS and Executive Vice President of
NBC.

They very much hope that Mr. Ellsworth can come
if only to get acquainted and say "hello" to the group.

Cobb will be sending over a little paragraph of
background material on each man tomorrow.

Grover C. Cobb
Vice President
Station KVGB
2007 17th Street
Great Bend, Kansas 67530

Chairman, Board of Directors, National Association of Broadcasters

Vincent T. Wasilewski
President
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Everett H. Erlick
Vice President and General Counsel
American Broadcasting Company
1330 Avenue of the Americas
New York, New York 10017

Richard W. Jencks
President, Broadcast Group
Columbia Broadcasting System
51 West 52nd Street
New York, New York 10019

Thomas Ervin
Executive Vice President, National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

John F. Dille, Jr.
President
The Communicana Group
Box 487
Elkhart, Indiana 46515

Former Chairman, Board of Directors, National Association of
Broadcasters

Clair McCollough
President
The Steinman Stations
8 West King Street
Lancaster, Pennsylvania

Former Chairman, Board of Directors, National Association of
Broadcasters

Robert W. Ferguson
Executive Vice President and General Manager
Station WTRF-FM and TV
1329 Market Street
Wheeling, West Virginia 26003

Chairman, Television Code Review Board, National Association
of Broadcasters

Monday 3/24/69

6:15 Abbott Washburn has talked with Grover Cobb, Chairman of the Board of National Association of Broadcasters, concerning the possibility of getting together with the key broadcasters who are convening here...to discuss communications and their problems. Grover Cobb is in a position to get this group together and will do so. Suggested Wednesday at the cocktail hour (5:30) at the International Club (1225 19th Street) -- Williamsburg Room. Or Thursday morning. Advised that you would be tied up Thursday.

Would Wednesday at 5:30 be all right with you?

from Grover Cobb
NAB

While the two Broadcasting Magazine editorials of February 17 and 24 which are attached set forth the principal problems in broadcasting today, I want to enlarge on some of them and touch on other matters which we did not have time to discuss fully. (Attached is Jack Gould's column in February 28 New York Times.)

There is a serious crisis in broadcasting today, a state of emergency spawned by a Federal Communications Commission either unwilling and/or unable to cope with the substantive issues of a national and international communications policy. The drastic change in telecommunications technology, particularly in satellite communications, requires prompt, constructive and well-reasoned decisions.

Instead of coming to grips with the urgent public interest problems, the Commission generally, under the prodding of Nicholas Johnson, has begun chasing windmills. It has recently moved into areas heretofore reserved for other administrative agencies or for the Congress.

There are numerous examples. One is an open-end inquiry into conglomerates and their broadcast interests. Another is the so-called "one-to-a-market" proposal in which the Commission questions whether an owner of a full-time broadcasting facility in any market should be permitted to own another facility in the same market. In other words, regardless of the size or location of the market or the number of services available, should an AM radio station be permitted to own an FM or TV station in the same market or area? If the broadcasting industry is to be

restructured, the Congress -- not the Commission -- should be the architect.

Always at issue, too, is whether a newspaper should be permitted to own a broadcasting property in the same market. A third proposal would ban cigarette advertising from radio and television without going into the public policy questions such as tobacco subsidies or a ban on cigarette advertising in toto. A fourth would authorize pay television despite a resolution from the House Commerce Committee directing the Commission to take no action pending further Congressional review. A fifth inquiry is directed at cable television and copyright and is already underway. Interim procedures have been drawn up, and they are unclear and unwieldy. Part and parcel of the CATV inquiry is the proposed divestiture by TV stations of ownership in any cable systems in its coverage area. The Commission proposes to consider comments on the prohibition of newspaper or radio station ownership of cable systems in their areas of coverage or circulation.

Even more disturbing, if possible, than any of these proposals is the Commission's revolutionary new action in approving a competitive application in Boston for the television channel operated by Station WHDH-TV for the past twelve years. Since this unprecedented action, no existing station in the country is safe from the threat of competitive applications every three years at renewal time. Already one has been

filed against KNBC-TV in Los Angeles, another against a second Boston station, WNAC-TV, and reliable sources indicate that similar "jump applications" will be filed elsewhere. If the Commission continues this radical policy of accepting competitive applications at renewal time, its hearing division will be clogged with thousands of comparative hearings requiring years and years to process and literally hundreds of appeal court cases. No one questions the Commission's right to designate a station's renewal application for hearing, and, upon a finding that the station has not operated in the public interest, revoke its license. Even without regard for the impact on the investment community and the station's borrowing ability, both of which would be materially affected, it seems ironic and unfair to consider the promises of competing applicants against the actual performance of the existing licensee. Only after the denial of a renewal or an actual revocation of a license should the Commission receive other applications for the channel or frequency. (Broadcasting Magazine article of March 10 attached.)

Attached is a draft of proposed legislation designed to correct this major deficiency in the Communications Act. Its wording is similar to an amendment proposed many years ago by Representative Oren Harris when he served as Chairman of the House Commerce Committee. Mr. Harris did not introduce the amendment upon assurance from the then Chairman of the FCC that competitive applications would not be considered

at renewal time until and unless the licensee had been denied a renewal through the Commission's hearing processes.

By and large, this is a pretty good broadcasting system in the United States today. It is free, competitive, viable, and responsive to the public interest. Its ability to educate, inform, and entertain is unexcelled. Certainly it has faults, but its few failures are overshadowed by its many accomplishments. Now, super-reformers on the Commission want to change the entire allocations plan by splitting ownerships, permitting competitive applications every three years, and using divide-and-conquer techniques to foist off other regulatory schemes under the guise of serving the public interest. (See the Notice of Inquiry adopted February 7 and Commissioner Robert E. Lee's well-reasoned dissent attached herewith.)

The orderly development of the past can be continued and improved by a Commission with the ability and intellectual capacity and vision to come to grips with the problems and challenges of a 20th century communications policy. A combination of reasonable men, sufficient expertise, and adequate research can and will insure better broadcasting consistent with the public interest.

The present Commission's flat rule approach to the myriad of problems is arbitrary and dangerous. Case-by-case consideration of all these matters must ultimately prevail. Otherwise the best

broadcasting system in the world is doomed. Split ownerships and three-year lives of corporate broadcast entities will shatter the industry and render it sterile.

There are two alternatives. One would be the creation of a new commission with a new name. It would administer the country's telecommunications and satellite communications policy. Conceivably a completely new five-man commission could be appointed by the President, and he could designate a chairman from among the commissioners. The President would have the option under this alternative of selecting the five men he wants, or he might choose to appoint five of the seven incumbents (three Republicans and two Democrats). Terms might be staggered from one to five years, with one term expiring each year.

The most apparent drawback to this alternative is the rocky legislative road through Congress. It might prove reminiscent of the FDR attempt to pack the Supreme Court.

The other alternative is to make swift and dramatic changes at the present Commission. For example, with Chairman Hyde retiring on June 30 and Commissioner Kenneth Cox a year later, perhaps a federal judgeship could be found for Mr. Cox. In the opinion of many, he would make an excellent federal judge. If other jobs could be found for Commissioners Bartley and Johnson the President would have a majority

of his own appointees on the Commission with moderates as incumbents. Commissioner Johnson is conceded to be the most arbitrary, divisive and controversial commissioner in modern times...perhaps in the Commission's history. If the allegation is true that he was removed from the Maritime Commission Chairmanship because of the mess he made there and then placed on the FCC with the thought that one vote in seven could not damage national communications policy, then the logic could not have been more faulty. His vote is consistently for turmoil and chaos, and his writings of frequent and lengthy dissents indicate a bias that precludes the open mind approach to problems expected of an official in a quasi-judicial capacity. Commissioner Johnson has proved terribly embarrassing to the administration which appointed him. He will be even more troublesome for our new administration.

One thing is certain. Broadcasting has enough legitimate problems and challenges confronting it today so as to make mandatory a sweeping change in the Commission in the best interests of this administration, the American people, and a dynamic industry. These problems cannot be dealt with realistically while this Commission is so divided, indecisive, and bent on punitive measures.

Draft of Proposed Amendment to the Communications Act of 1934

Section 309(a) shall be amended by adding the following after the final sentence thereof:

Notwithstanding any other provision of the Act, the Commission, in acting upon any application for renewal of license filed under Section 308, may not consider the application of any other person for the facilities for which renewal is sought. If the Commission finds that the public interest, convenience and necessity would be served thereby, it shall grant the renewal application. If the Commission determines that a grant of the application of a renewal applicant would not be in the public interest, convenience and necessity, it may set such application for renewal for hearing, and then, and only then, may applications for construction permits by other parties be accepted, pursuant to Section 308, for the broadcast services previously licensed to the renewal applicant whose renewal was set for hearing.

A brake on strike applications?

Key legislators deplore FCC role in challenges to incumbent licensees; Nick Johnson upbraided

FCC Commissioner Nicholas Johnson was told by the chairman of the Senate Communications Subcommittee last week to quit soliciting applicants to file against existing licensees at renewal time.

Mr. Johnson kept insisting he had not done so.

Senator John O. Pastore (D-R. I.), who was presiding over a hearing before the parent Commerce Committee, issued his rebuke after other senators had questioned Mr. Johnson about some of his writings and speeches.

"Apparently somebody has been agitating trouble," Senator Pastore said. "I don't think you accomplish good service by going out looking for trouble."

Although Mr. Pastore did not explicitly direct his remarks to Mr. Johnson, he made them after the commissioner had engaged in a pointed exchange with Senator Hugh Scott (R-Pa.) and had been interrogated on the same subject by Senator Howard W. Cannon (D-Nev.).

The dispute arose toward the end of day-and-a-half hearing in which the FCC was called to give an overview of its recent work and pending rule-makings. The next day the commission appeared in a shorter hearing before the Communications Subcommittee of the House.

Mr. Johnson's confrontation with the Senate started when Senator Scott said to Mr. Johnson: "You have indicated in speeches and articles that you yourself have made up your independent mind that large companies shouldn't own broadcasting stations, in effect by listing them in categories of undesirable licensees."

"BROADCASTING Magazine has made that allegation," Mr. Johnson said. "but I believe, like many of their statements, it fails to stand analysis. I have not prejudged any of these cases beyond those which have come before the commission in which I have written opinions. I have not written any magazine articles that refer to the merits of any cases that

are pending before us, although I have referred to cases that have been decided by the commission."

(A BROADCASTING editorial, in the Feb. 24 issue, cited a number of major broadcast owners that had been identified by name in an article written for *The Atlantic* by Mr. Johnson. The article constituted an attack on what he called "local and regional monopolies, growing concentrations of control of the most profitable and powerful television stations in the major markets, broadcasting-publishing combines, and so forth." The editorial also quoted a Johnson article in *Harper's* in which he commended, by name, a number of persons or groups that had filed protests or competing applications against existing licensees—several of which cases are still pending FCC action.)

Senator Scott then asked whether Mr. Johnson believed that commissioners should seek out rival applicants for licenses of existing stations.

"We have been precluded by Con-

gress from so doing in an amendment to the act," Mr. Johnson said at the beginning of a long reply.

(Legal authorities pointed out that the only amendment that might be in point was a 1952 change in Section 310[b] of the Communications Act, prohibiting the FCC from entertaining competing applications in transfer cases. The amendment makes no reference to license renewals.)

"Didn't you on a program on WRC solicit other applications for that license?" Senator Scott asked.

"That," said Mr. Johnson, "was another comment of BROADCASTING Magazine." He added that his version of what he had said on the station and in the *Harper's* article "was simply to make available to the public the information which the Senate has enacted into law and the FCC has enacted into legislation."

(According to a news story in BROADCASTING's Feb. 24 issue, Mr. Johnson, in an interview on WRC-TV Washing-

ton, volunteered that broadcast licenses, including WRC-TV's, in Washington, Virginia and Maryland expire Oct. 1. To the audience he said, according to the transcript of the program: "You can suggest they ought not to get their license renewed or you can apply for a license yourself.")

Senator Scott pursued the question: "Would you say that on this WRC program you did not encourage by your statements or seek to encourage people to become applicants for that station's license?"

Mr. Johnson replied: "The net result of education and information is often that actions will take place that would not otherwise have. To the extent that I made information available, that is, after all, public information to members of the public who were listening to that program.

"The net result of that may be that people who are now frustrated, who do not know how to turn or how they can effectuate their rights, will know infor-

mation of Commissioner Kenneth Cox who said that the law, by creating the opportunity for rival applicants to file, in a sense encourages them.

At that point Senator Pastore broke in. "I don't think any individual who has a responsible position should go out enticing or activating or stimulating trouble in order to give the public service."

A little later Mr. Pastore added: "If the commission is indulging in that sort of activity, then the commission is derelict. I am saying that.

"But I don't think you accomplish good service by going out looking for trouble. And you don't stimulate trouble. It strikes me that some of the tactics have been exactly that."

The four other commissioners present, in answer to the same question by Senator Cannon, emphatically stated opposition to the practice of soliciting applications. Chairman Rosel Hyde spoke of judicial entrapment and the awkwardness of sitting in judgment on an

knew of no solicitation of intervention "in a particular case" and that his public utterances had been intended to distribute information to the public.

Representative Springer wasn't satisfied. "This isn't an answer, but roaming all over the place. I want the reporter to repeat the question."

When the reporter did, Mr. Johnson answered: "No."

During the Senate committee hearings, which took all day Tuesday, March 4, and the afternoon of Wednesday, March 5, Chairman Hyde presented a comprehensive survey of the commission's recent work and numerous rulemakings. Other commissioners afterward added their own comments to the record.

Aside from the discussion of solicited applications, the principal development at the hearings was the institution of a study of TV violence by the U. S. surgeon general (see page 25).



Senator John O. Pastore (D-R.I.), chairman of the Senate Communications Subcommittee, presided over the parent

Commerce Committee's questioning of the FCC last week. He announced an investigation of violence on television.

mation that they did not know before and thus be in a position to take actions that they would not otherwise be able to take."

"In other words," said Senator Scott, "it is a very circuitous way to say yes."

"If you wish to so interpret it, it is your pleasure," said Mr. Johnson.

"I do," said Senator Scott.

It was later in the day that Senator Cannon reopened the subject. He asked whether Mr. Johnson thought it proper for the FCC to encourage others to apply for existing licenses.

"I believe, Senator Cannon," said Mr. Johnson, "that we have, of course, a responsibility to our licensees. I think we also have an obligation to the public at large, to viewers and licensees, to audiences that these stations serve."

Senator Cannon asked the same ques-

tion of Commissioner Kenneth Cox who said that the law, by creating the opportunity for rival applicants to file, in a sense encourages them.

At that point Senator Pastore broke in. "I don't think any individual who has a responsible position should go out enticing or activating or stimulating trouble in order to give the public service."

A little later Mr. Pastore added: "If the commission is indulging in that sort of activity, then the commission is derelict. I am saying that.

"But I don't think you accomplish good service by going out looking for trouble. And you don't stimulate trouble. It strikes me that some of the tactics have been exactly that."

The four other commissioners present, in answer to the same question by Senator Cannon, emphatically stated opposition to the practice of soliciting applications. Chairman Rosel Hyde spoke of judicial entrapment and the awkwardness of sitting in judgment on an

The case against Nicholas Johnson

A review of public utterances by FCC Commissioner Nicholas Johnson persuades us that he has disqualified himself from voting on a number of cases now pending before the agency. Not only that, we are convinced that many of the major broadcasters in this country are entitled to obtain his disqualification in any renewals or transfers of their licenses or acquisitions of new broadcast properties.

All of the licensees we have in mind have been publicly named by Mr. Johnson as occupying undesirable categories of broadcast ownership. All have been identified by him as vulnerable to the protests or the competing applications that he has repeatedly urged the public to file against existing licensees. In short, Mr. Johnson has so clearly prejudged so many cases in existing licensees' disfavor that he has disenfranchised himself from official proceedings involving any of their holdings.

In the June 1968 issue of *The Atlantic* Mr. Johnson's byline was on an article, "The Media Barons and the Public Interest," which constituted an attack on what he called "local and regional monopolies, growing concentrations of control of the most profitable and powerful television stations in the major markets, broadcasting-publishing combines, and so forth." Explicitly identified in that article were RKO General, Metromedia, Westinghouse, Storer, Avco, Rust Craft, Chris-Craft, Kaiser, Kerr-McGee, the Chicago Tribune Co. and the television networks. In the same piece he also referred to broadcast ownerships linked with the publishers of magazines "as popular and diverse as *Time*, *Newsweek*, *Look*, *Parade*, *Harper's*, *TV Guide*, *Family Circle*, *Vogue*, *Good Housekeeping* and *Popular Mechanics*." Thus by implication Mr. Johnson added Time-Life Broadcast, Post-Newsweek Stations, Cowles Broadcasting, Corinthian Broadcasting, Triangle stations, Hearst stations and WCCO-AM-FM-TV Minneapolis to his list of targets of the "sustained attack on concentration" that the article proposed.

In the September 1968 issue of the AFL-CIO *American Federationist*, Mr. Johnson's byline was on an article encouraging the public to intercede in license-renewal proceedings. The same theme was amplified in "What You Can Do to Improve TV," an article bearing Mr. Johnson's byline in the February 1969 issue of *Harper's*. In the *Harper's* piece Mr. Johnson commended the following: John Banzhaf for petitioning the FCC to invoke the fairness doctrine in cigarette advertising and for subsequently protesting the renewal of licenses of stations that failed, in Mr. Banzhaf's judgment, to comply; the United Church of Christ for opposing the license renewal of WLBT(TV) Jackson, Miss.; local groups for opposing the renewal of wxur Media, Pa.; the William Simon group for applying for channel 9, Los Angeles, now occupied by KHJ-TV, and the "good music lovers" in Chicago for opposing the transfer of WFMT(FM) Chicago to WGN Continental, associated in ownership with the *Chicago Tribune*.

Mr. Johnson's purposes were made the more explicit in his statement explaining why he voted with a three-member majority to give channel 5 in Boston, now occupied by the *Boston Herald-Traveler*, to a competing applicant. Mr. Johnson said the decision meant that "the door is thus opened for local citizens to challenge media giants in their local community at renewal time with some hope for success before the licensing agency where previously the only response had been a blind reaffirmation of the present license holder."

Here we have one of seven members of the FCC identify-

ing licensees that he regards as unworthy to retain their present properties and beseeching the public to initiate the actions that could lead to the divestitures that he has publicly stated he desires. Every licensee that he has cited has the legal right to seek his disqualification, in petitions to the commission or, those failing, to the courts.

If these licensees exercise that right, the FCC will be a six-man body on any number of cases—and that will raise the very substantial question of Mr. Johnson's suitability to go on drawing \$38,000 a year while ineligible to act as a full-time member of the commission.

About time

For the first time in months there's heartening news for the broadcaster. The top echelons of the three networks and of the National Association of Broadcasters are moving toward an emergency council to reverse the adverse regulatory and legislative tides.

As reported this issue, Vincent T. Wasilewski, NAB president, and the chief executives of each of the networks, will work together between now and March 11 in rallying 60 to 75 broadcasting leaders into immediate action. Dr. Frank Stanton, CBS Inc. president, with Mr. Wasilewski and NAB Government Affairs Vice President Paul Comstock, will dine in Los Angeles this Thursday with 20 to 25 West Coast broadcast executives. On March 6, the NAB executives and NBC President Julian Goodman, will have lunch in Atlanta with a second leadership group and in Chicago on March 11, Leonard Goldenson, president of ABC, will be the network participant at a similar luncheon session.

The sessions will precede the NAB convention in Washington, beginning March 24.

Just a year ago, in advance of the NAB convention in Chicago, the FCC dumped its proposed one-to-a-customer rule upon an already deeply troubled broadcasting profession. Since then there has been no let-up in the regulatory assault and, so far, there have been no tangible signs of any change under the new Republican administration.

The leadership counterattack is overdue. The need is for involvement, wise direction and wherewithal. If the broadcasters do not react quickly they might be in a different kind of business at convention time next year.



Drawn for BROADCASTING by Sid Hix
"After the general has pinned on all his ribbons and medals, you tell us the broadcast will be in black and white!"