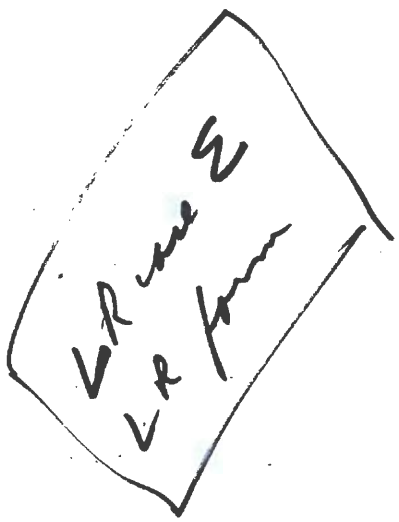
TABLE OF CONTENTS



A

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

March 13, 1973

DIRECTOR

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

I am submitting herewith for the consideration of the Congress, a proposed revision of section 307 of the Communications Act of 1934, as amended, which pertains to the term of broadcast station licenses.

The basic concept of the American system of broadcasting is that of localism. It means that broadcasting will be rooted in private enterprise at the community level, with many autonomous and independent local broadcasters throughout the country seeking to construct program schedules in accordance with the tastes, desires, needs, and interests of the public in the area which they serve. This principle reflects the American tradition of having a multitude of diverse local voices serving both local and national purposes in many communities and areas throughout the country.

The broadcast media, however, are unique among our many outlets for expression, in that only they are licensed by the Federal Government. Our system of broadcasting presents this country with a unique dilemma that goes back to the basic policy embodied in the Communications Act of 1934. On the one hand, the Act requires a government agency -- the Federal Communications Commission -- to grant applications for broadcast licenses only if the public interest, convenience, and necessity will be served thereby. This necessarily means that, to some extent, the government will be involved in passing judgment on the heart of that broadcast service, which is the broadcasters' programming. On the other hand, the First Amendment, which applies fully to radio and television broadcasting, denies government the power of censorship and the power to interfere with our most valued rights of free press, free speech, and free

expression. It is within the system of government licensing that these two somewhat contradictory objectives must be balanced. And, within the system of licensing, the most important aspect is the license renewal process. It is the pressure point of the system, because the manner in which renewals are treated goes to the core of the government's relationship to broadcasting.

The requirement to seek government permission to continue in business and the threat of nonrenewal affect the licensee throughout the license term not just at renewal time. Renewal procedures and the factors to be considered by the government at renewal time have a substantial impact upon the daily operations of broadcast stations and the manner in which broadcasters exercise their public responsibilities. Therefore, these procedures and factors could have a stifling effect on the free flow of information, which is so vital to the interests of a free society.

The First Amendment should guarantee broadcasters the right to disseminate ideas, popular and unpopular, and without regard as to whether they are consistent with the views of government. Yet, the role of the broadcasters, not as free agents, but as agents authorized to act only so long as they espouse views consistent with government views, is a possibility under current license renewal procedures. That danger exists when broadcasters, affected by the uncertainty and instability of their business and lacking assurance that they will be able to continue to exercise their local responsibilities, seek safety by rendering the type of program performance necessary to obtain renewal. If the government encourages this type of compliance by setting detailed criteria to determine such performance, the effect could be to turn broadcasters away from the communities that they are licensed to serve and to cause them to seek to serve the government that charts the course for them.

Counterbalancing the goal of stability in the renewal process, however, is the clear public interest mandate of the Communications Act and its prohibition against anyone acquiring a property right in the broadcast license. The license is and must continue to be a public trust; an opportunity to render service; and a privilege to use a scarce public resource to speak to and on behalf of the public. No licensee who fails to exercise the responsibility to his local audience can have any assurance of renewal. Accordingly, the threat of nonrenewal and the spur of competition in broadcasting are important parts of the overall statutory plan.

At present the license renewal process is conducted in an unstable environment. The bill submitted with this letter would restore balance and stability to the license renewal process and enable the private enterprise broadcasters, operating within the rights and the responsibilities of the First Amendment, to serve the public's paramount right in the broadcast media.

The Administration bill would change the present practice and procedures with respect to license renewals in the following four essential ways:

1. License terms for radio and television stations would be extended from three to five years. When the Communications Act was prepared in 1934, the relatively brief three-year license term was a reasonable precaution in dealing with a new and untested broadcast industry. A five-year term, however, seems to be more reasonable at this stage in broadcasting's development. It would inject more stability into broadcast operations and would allow more time for the licensee to determine the needs and interests of his local community, and plan long-range programs of community service.

2. The bill would eliminate the present requirement for an automatic, lengthy, and costly comparative hearing whenever a competing application is filed for the same broadcast service. The FCC would be able to exercise its independent judgment as to whether a comparative hearing is necessary. The renewal challenger would bear the burden of demonstrating that the renewal applicant has not met the criteria of the Act. If the incumbent licensee had performed in the public interest, he would be assured of renewal. A hearing would be required only if the Commission were unable to conclude that the broadcaster's performance warranted renewal.

3. The bill would preclude the FCC from restructuring the broadcast industry through the renewal process. Presently, the FCC can implement policies relating to broadcast industry structure -- such as a policy restricting newspaper ownership of broadcast stations -- through the criteria it uses to decide renewal hearings. This allows for the restructuring of the broadcast industry in a haphazard, highly subjective, and inconsistent manner. The bill would establish that if these industry-wide policies affecting broadcast ownership are imposed or changed, only the general rulemaking procedures of the FCC would be used, with full opportunities provided to the entire broadcast industry and to all interested members of the public to participate in the proceeding.

4. The license renewal bill would also forbid FCC use of predetermined criteria, categories, quotas, formats, and guidelines for evaluating the programming performance of the license renewal applicant. There has been an increasing trend for the FCC to dictate to the broadcasters as to what "good" or "favored" program performance is from the government's point of view. The bill, therefore, would halt this trend toward an illusory quantification of the public interest in broadcast programming and would remove the government from the sensitive area of making value judgments on the content of broadcast programming. The bill would make the local community the touchstone of the public service concept embodied in the Communications Act. Serving the local communities' needs and interests instead of the desires of government would become the broadcasters' number one priority.

The Office of Management and Budget advises that enactment of the proposed legislation would be in accord with the program of the President.

A similar letter is being sent to the President of the Senate.

Sincerely,

Clay T. Whitehead

Enclosure

A BILL

To amend the Communications Act of 1934 to provide that licenses for the operation of a broadcast station shall be issued for a term of five years, and to establish orderly procedures for the consideration of applications for the renewal of such licenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 307 of the Communications Act of 1934 shall be amended by striking subsection (d) of said section, and inserting in lieu thereof the following:

"Sec. 307(d) (1) No license granted for the operation of any class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for an additional term of not longer than five years, if the Commission finds that the public interest, convenience, and necessity would be served thereby.

(2) With respect to any application for the renewal of a broadcasting license, the Commission shall grant such application if it finds that the applicant is legally, financially, technically, and otherwise qualified to hold such a license under the provisions of this Act and the rules and regulations of the Commission, and that the applicant:

(A) is substantially attuned to the needs and interests of the public in its service area, and demonstrates, in its program service and broadcast operations, a good faith effort to be responsive to such needs and interests; and

(B) affords reasonable opportunity for the discussion of conflicting views on issues of public importance;

Provided, however, that in applying subparagraph (A), the Commission shall not consider any predetermined

performance criteria, categories, quotas, percentages, formats, or other guidelines of general applicability respecting the extent, nature, or content of broadcast programming; and that in applying subparagraph (B), the Commission shall consider only the overall pattern of programming provided by the applicant on particular public issues.

(3) Notwithstanding any other provision of this Act, the procedure to be followed in the event that an application for the renewal of a broadcasting license is challenged by a petition to deny or by a competing application for the same broadcast service is as follows:

(A) The petitioner or party filing such competing application shall make specific allegations of fact sufficient to show that grant of the application for renewal would be prima facie inconsistent with paragraph (2) of this subsection. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant for renewal shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

(B) If the Commission finds on the basis of the application, the pleadings filed, and other matters which it may officially notice, that there are no substantial and material questions of fact and that a grant of the application to renew the license would be consistent with paragraph (2) of this subsection, it shall grant such application, terminate the proceeding, and issue a concise statement of the reasons for its findings. If a substantial and material question of fact is presented, or if the Commission for any reason is unable to find that grant of the application would be consistent with paragraph (2) of this subsection, it shall proceed with the hearing

provided in subsection 309(e) of this Act to determine whether grant of the application would be consistent with paragraph (2) of this subsection. If, in such hearing, the Commission finds that a grant of the application would be consistent with such paragraph, it shall grant such application, terminate the proceeding and issue a concise statement of the reasons for its finding. If the Commission for any reason is unable to make such a finding, it shall either deny the renewal application or consider it together with any competing application or applications for the same broadcast service, then on file or later timely filed, and shall grant the application that will best serve the public interest, convenience and necessity.

(4) In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings. Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to Section 405, the Commission shall continue such license in effect. Consistently with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, public interest, convenience, or necessity would be served by such action."

EXPLANATION AND SECTIONAL ANALYSIS

REGULATORY BACKGROUND

Twelve years ago, the Federal Communications Commission (FCC), in its "Report and Statement of Policy Re: Commission En Banc Programming Inquiry," 20 P&F Radio Reg. 1901 (1960), sought a delicate balance between the public interest performance of broadcast licensees and minimal governmental interference with program decisions. In doing so, the Commission stressed the same principle that underlies the proposed legislation, namely the separation of government from broadcasting.

This principle is consistent with the intent of the Communications Act of 1934 and Congress' continual refusal to impose, or to permit the FCC to impose, affirmative programming requirements or priorities. For example, in the face of "persuasive arguments" that the Commission require licensees to present specific types of programs, the Commission stated that:

> "[W]e are constrained to point out that the First Amendment forbids governmental interference asserted in aid of free speech, as well as governmental action repressive of it. The protection against abridgement of freedom of speech and press flatly forbids governmental interference, benign or otherwise."

Id. at 1907.

The Commission noted that, while it may inquire of licensees what they have done to determine community needs, it cannot impose its own notions of what the public should see and hear, stating:

> "Although the Commission must determine whether the total program service of broadcasters is reasonably responsive to the interests and needs of the public they serve, it may not condition the grant, denial or revocation of a broadcast license upon its own subjective determination of what is or is not a good program."

Id. at 1907.

Finally, in summarizing the obligations and responsibilities of broadcast licensees, the Commission stated that:

> "The confines of the licensee's duty are set by the general standard 'the public interest, convenience or necessity.' The initial and principal execution of that standard, in terms of the area he is licensed to serve, is the obligation of the licensee. The principal ingredient of such obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area. If he has accomplished this, he has met his public responsibility."

Id. at 1912.

Yet, during the past decade, there has been a trend toward a more expansive view of the government's power to require licensees to present certain types of programs. Recently, this has led the Commission to propose various quantitative criteria for such program types.

It is, therefore, appropriate that the Congress reaffirm its views regarding the relationship between government and the broadcast media that it must license. The proposed revision of section 307(d) of the Communications Act of 1934 enables the Congress to reaffirm the independence, freedom and responsibility of the broadcast licensee by making the following changes in the Communications Act, which would apply to all pending and future broadcast license renewal applications.

DISCUSSION OF THE PROPOSED LEGISLATION

A. Section 307(d)(1): License Term

The proposed legislation would lengthen the term of broadcast licenses from three to five years; thereby reducing the frequency of government intervention and enhancing the free enterprise character of the broadcast media.

In 1934, when the Communications Act was enacted, a three-year license term was a reasonable precaution in dealing with a new industry. A five-year license at this

stage in the development of broadcasting, however, is reasonable since the longer term enables licensees to render high quality service, by injecting more stability into the license renewal process.

The Commission's power to protect the public by use of forfeitures, "early" renewal applications, and license revocations is in no way diminished by the extended license term. Moreover, the longer term would enable the Commission to give closer scrutiny to each renewal application, since the number of renewal applications to be processed annually would be reduced from 2,700 to 1,600. Further, this closer scrutiny would allow the Commission to resolve problems without deferring the grant of as many renewal applications as is now the case. Curent estimates, for instance, are that some 140 applications are in deferred status.

It should be noted that this provision would apply prospectively to any original broadcast license or to any existing license which the FCC renews after the enactment of the bill.

B. Section 307(d)(2): Renewal Standards

The proposed legislation clarifies the Communications Act's broad "public interest" criterion as it applies to renewal applications.

As a starting point, the proposed legislation specifies that the renewal applicant must be qualified, under the Act and the rules and regulations of the Commission, to hold a license. This requirement goes beyond minimal legal, technical and financial qualifications. The applicant's broadcast record must be free of serious deficiencies in compliance with the Act and with the rules and regulations of the Commission, such as a pattern of failure in making sponsorship identification announcements, violation of the equal employment opportunity rules, fraudulent practices in keeping logs or in reporting changes in owership information, and the like.

However, with the exceptions noted below, policies developed by the Commission could not be enforced against the applicant at renewal time unless reduced to rules.

Thus, Commission policies applicable to initial licensing, such as local ownership, integration of ownership and management, and diversification of media control, would not be applicable to renewal applicants, unless the Commission had decided that the applicant did not satisfy the renewal criteria of the proposed subsection 307(d)(2) (see p. 12 infra). The proposed legislation, however, would not prevent these or similar industry structure policies from becoming rules that would be applicable to all licensees on an industry-wide basis.

Some policies, however, could not be reduced to rules, since they would fall within the category of predetermined performance criteria prohibited by the proviso contained in paragraph (2) of section 307(d). Such current policies as the over-commercialization policy would fit within this category, since it substitutes a government-imposed quota for the judgment of the licensee as to what limits on commercial matter would best serve his community's needs, as well as his own needs. In addition, any future policies regarding statistical program performance criteria, such as those being considered in the pending Commission proceeding on license renewals (Docket No. 19154), would also fall within this forbidden category.

The only policies that would apply directly to the renewal applicants without having been reduced to rules would be the ascertainment and fairness policies incorporated in subsections (A) and (B) of section 307(d)(2). The overall fairness policy would include attendant rules, such as the personal attack and editorial endorsement rules, and policies such as the Cullman doctrine (free time to respond to controversial issues) and the Zapple ruling ("quasi-equal" time to respond to an authorized spokesman of a political candidate). The Commission would be free to determine which aspects of its ascertainment or fairness policies would best be reduced to rules; however, whether in the form of rules or not, they would be applicable to renewal applicants directly through operation of the proposed subsections (A) and (B).

In addition to acknowledging that a renewal applicant must comply with the requirements of the Communications Act and the general rules and regulations of the Commission, the proposed legislation sets out two criteria for evaluating past and proposed programming performance of the incumbent licensee. These criteria in turn are based upon the two

critical obligations of the broadcaster in serving his local public. They are the responsiveness of the licensee to the needs and interests of the public in the communities and areas served by the broadcast station (ascertainment obligation), and the licensee's performance in affording reasonable opportunity for the discussion of conflicting views on issues of public importance (fairness obligation).

As noted above, these two obligations are of long standing. The enactment of the proposed legislation would amount to an explicit confirmation by the Congress that the Commission has authority to review and evaluate the programming performance of the renewal applicant. But, consistent with the First Amendment and with the anti-censorship provision of the Communications Act (section 326), the Commission's role would be limited to an evaluation and review of the licensee's good faith and reasonableness in meeting the community needs and interests, conducting his broadcast operations, and providing a program service.

As the Commission has stated:

> "In short, the licensee's role in the area of political broadcasts is essentially the same as in the other programming areas -- to make good faith judgments as to how to meet his community's needs and interests."

1963

"Obligation of Licensees to Carry Political Broadcasts," 25 P&F Radio Reg. 1731, 1740 (1963) (emphasis added).

A similar standard applies specifically with respect to the Commission's review of the licensee's performance under the fairness obligation:

> "In passing on any complaint in this [fairness] area, the Commission's role is not to substitute its judgment for that of the licensee...but rather to determine whether the licensee can be said to have acted reasonably and in good faith."

1964

"Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance," 2 P&F Radio Reg. 2d 1901, 1904 (1964) (emphasis added).

The Commission's review of licensee programming performance under the proposed subsections (A) and (B) would be similar to an appellate court's review of an administrative agency. The FCC would not decide the facts anew from its own perspective and substitute its own judgment, but would simply determine whether the licensee's determinations were reasonable and made in good faith.

1) Section 307(d)(2)(A): Ascertainment

The public interest standard of the Act requires licensees to make a "diligent, positive, and continuing effort...to discover and fulfill the tastes, needs and desires of [the]...community or service area, for broadcast service." "Report and Statement of Policy Re: Commission En Banc Programming Inquiry," 20 P&F Radio Reg. 1901, 1915 (1960). This has been explained as consisting in part of eliciting information concerning the community's needs, interests, problems and issues. Ascertainment, which is a continuing process through the license period, requires the broadcaster to consult with a representative range of community leaders and members of the general public. The broadcaster must not only seek out and determine the nature of significant public issues, he must respond to them specifically. In television, this most usually means news, public affairs discussions, and other informational programming.

The ascertainment standard in the proposed bill incorporates this FCC precedent, although it would require the present renewal application to be changed, since the present application relates ascertainment only to the applicant's proposed programs and not his past program service. With this change in the form and evidence of a continuing

record of ascertainment and programming responsive to that ascertainment, the Commission would have sufficient information before it to hold the applicant to a so-called "promise v. performance" test. This means nothing more than the Commission holding the licensee to the programming standards he sets himself, based on his objective judgment as to the nature of community needs and interests.

The term "substantially attuned" to the public's needs and interests as used in subsection (A) of section 307(d)(2), is the same term that was used in the FCC's "Policy Statement On Comparative Hearings Involving Regular Renewal Applicants," 18 P&F Radio Reg. 2d 1901 (1970); i.e., the renewal applicant must show that its service during the preceding license period "has been substantially attuned to meeting the needs and interests of its area." In the context of the proposed legislation, however, there is special emphasis on ascertainment.

Moreover, the proposed legislation would require that the applicant demonstrate a "good faith" effort to be responsive to the needs, interests, problems and issues he ascertains. The "good faith" standard is an objective standard of reasonableness as it is often used in the law. It is also the standard that the Commission usually uses to describe the essential responsibility of the licensee (i.e., "to make good faith judgments as to how to meet his community's needs and interests").

As a rule of reason, the standard would not obligate the licensee to present programs to deal with every problem or issue facing the public, or meet every need or interest. In responding to the significant matters that have been ascertained, the broadcaster may take into account the composition of his audience; the other stations serving the community, a factor especially relevant in radio; and his own judgments as to his programming format. Thus, this objective standard of reasonableness would allow flexibility for the FCC to recognize the need for differences in treatment between radio and television stations, AM and FM radio stations, VHF and UHF television stations, profitable and unprofitable stations, and similar reasonable distinctions among classes and types of broadcast stations.

This standard would in no way preclude the Commission from using its authority under the Communications Act, including the full extent of its experimental authority under section 303(g), to deregulate radio broadcasting. If, however, the FCC and the Congress were to decide that the virtually total deregulation of radio would be in the public interest, this proposed legislation, along with many other existing provisions of the Act, would have to be amended accordingly.

2) Section 307(d)(2)(B): Fairness

The "fairness" obligation is a statutory policy relating to the broadcaster's programming performance and is a necessary corollary to the ascertainment standard of subsection (A).

Use of the fairness obligation as a standard for license renewal is fully consistent with the law and the established practice of the Commission. The Supreme Court, in the Red Lion case, specifically stated:

> "To condition the granting or renewal of licenses on a willingness to present representative community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgment of freedom of speech and freedom of the press."

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 394 (1969).

Inclusion of the fairness obligation in the renewal standards would also serve as a Congressional expression of intent as to the preferred method for fairness obligation enforcement. The obligation was initially enforced by reviewing the overall performance of the licensee at renewal time. For example, the 1960 "Programming Inquiry" report stated that:

> "This responsibility usually is of the generic kind and thus, in the absence of unusual circumstances, is not exercised with regard to particular situations but rather in terms of operating policies of stations as viewed over a reasonable period of time. This, in the past, has meant a review, usually in terms of filed complaints, in connection with the applications made each three-year period for renewal of station licenses."

1960

20 P&F Radio Reg. 1901, 1910 (1960) (emphasis added).

By the mid-1960's, however, the Commission began to assess the performance of this obligation on an issue-by-issue basis. It undertook to inquire, with respect to each issue, whether various sides were presented; and effectively to compel adjustment or redress when it determined that a particular point of view was inadequately represented. As this method of enforcement -- or the Fairness Doctrine -- has escalated, the government has been injected with increasing frequency into the licensee's responsibility to make reasonable fairness judgments.

Although the proposed legislation does not eliminate issue-by-issue enforcement of the fairness obligation, there is a need for the Congress to clarify that the appropriate way for the government to evaluate what is essentially a journalistic and private responsibility is by overall review of licensee fairness performance at renewal time.

Here again, the rule of reason would apply, in that the broadcaster would not jeopardize his license by occasionally failing to achieve perfect "fairness" and "balance," as long as he had made good faith efforts to cover issues in a balanced manner, and, when appropriate, selected responsible spokesmen for conflicting viewpoints, and offered them reasonable amounts of time with respect to problems and issues dealt with by the broadcaster.

3) Section 307(d)(2): Proviso

The proviso makes clear that, in applying subsection (A)'s ascertainment standard, the Commission may not consider any predetermined performance criteria, categories, quotas, percentages, formats, or other such guidelines of general applicability with respect to the licensee's broadcast programming. Thus, the legislation would establish the local community as the point of reference for evaluating a broadcaster's performance. In effect, it would place the responsibility and incentive for superior performance in the hands of the local licensee and the public he undertakes to serve, without the convenient crutch of government specifications as to the kind of program performance that will satisfy the statutory standard.

At present, the Commission's programming policy categorizes programming by type (i.e., agricultural, entertainment, news, public affairs, religious, instructional and sports) and by source (i.e., local, network and recorded, which means only non-local non-network). Although enforcement of program standards, quotas and the like is not made explicit or formal, broadcasters, especially television broadcasters, are expected to provide a "well-rounded" program service consisting of programming in each of the categories, which respectable showings in the most favored categories of news and public affairs.

Moreover, the Commission has proposed the establishment of program quotas in certain categories as representing a prima facie showing of "substantial service" to be used in evaluating a television applicant's program performance in the context of a comparative renewal hearing.*/

*/"With respect to local programming, a range of 10-15% of the broadcast effort (including 10-15% of the prime-time period, 6-11 p.m., when the largest audience is available to watch).

"The proposed figure for news is 8-10% for the network affiliate, 5% for the independent VHF station (including a figure of 8-10% and 5%, respectively in the prime-time period).

"In the public affairs area, the tentative figure is 3-5% with, as stated, a 3% figure for the 6-11 p.m. time period."

Notice of Inquiry in Docket No. 19154, 2 Current Service P&F Radio Reg. 53:429,431 (1971).

Although the percentage quotas are expressly limited to use in such hearings, it is only the foolhardy broadcaster who does not treat them as minimum standards in creating his program service and preparing his renewal application.

Government guidelines respecting the extent and content of television programs are inappropriate to the statutory scheme for broadcasting. The existence of such guidelines changes the character of the broadcast license. Instead of reflecting a public trust to be carried out by an independent, private licensee, the license merely becomes a government contract, under which the licensee performs in accordance with government specifications regarding the quantity and content of program service. Thus, the proviso would take from the FCC's hands the authority to create and enforce such specifications. It would stress that the proper role for government in the program area is as arbiter in the ascertainment and programming dialogue between the broadcaster and the public, without injecting its own judgments into this dialogue. (court of appeals)

Accordingly, under the proposed legislation, the Commission's review of program performance would be based upon considerations such as:

(1) the mechanics, quantity and quality of the applicant's ascertainment efforts;

(2) an evaluation of the applicant's past, present, and proposed programming in light of the ascertained needs, interests, problems and issues, i.e., the community's standards of program performance and not the FCC's program standards;

(3) the "promise v. performance" aspects of the broadcaster's programming showing; and

(4) various "content neutral" aspects of the applicant's programming, such as programming expenditures; equipment and facilities devoted to programming; policies regarding preemption of time to present special programs; and the like.

In addition, the proviso also makes clear that, in applying the "fairness" standard of subsection (B), the Commission may consider only the overall pattern of programming on particular public issues, as explained above.

C. Section 307(d)(3): Procedure for Competing Applications

The proposed legislation would not change the current procedures for Commission consideration of petitions to deny license renewal applications.

FCC records show that during fiscal year 1972, 68 petitions to deny were filed against the renewal applications of 108 broadcast stations. Most petitions were filed by minority and special interest groups in the broadcasters' communities and contained allegations directed toward the licensees' ascertainment efforts, programming for minority groups, and employment practices. Nothing in the proposed legislation would adversely affect the ability of these groups to file such petitions.

The proposed bill, however, would change the procedures for dealing with competing applications for the same broadcast service. It would require the competing applicant to show that a grant of the renewal application would be inconsistent with the legislation's criteria for renewal. If this burden could not be met, the Commission would grant the renewal application and dismiss the competing application. If, however, the Commission were unable to make the requisite finding, or if there were a material factual question presented, the renewal application would be set for hearing.

The first issue to be resolved in the hearing, with the full participation of the competing applicant, would be whether the renewal applicant has, in fact, met the criteria set out in section 307(d)(2). If so, the hearing would be terminated, the renewal application granted, and the competing application dismissed. If it is found, however, that the renewal applicant does not meet the criteria, the Commission would have the choice of dismissing the renewal application, or, if appropriate, entering the second phase of the hearing by considering it together with the competing application or applications. The criteria to be used in such an eventuality would be based upon the showings of all the applicants with respect to the section 307(d)(2) standards

307(e)?

i.e., the applicants' qualifications and their programming proposals, as well as the standard comparative issues.

This change in the competing application procedures is needed because a licensee seeking renewal should not be put to the same tests used for applicants seeking original licenses. An incumbent licensee should not be deprived of the broadcasting privilege unless clear and sound reasons of public policy demand such action. This does not give the incumbent an unfair advantage solely by reason of its prior operations. The proposed legislation would simply require the FCC to exercise its independent judgment on the question of whether the incumbent licensee has rendered meritorious service. The legislation would thus balance the interest of using renewal process to spur licensee performance with the equally important interest of injecting more predictability and stability into broadcast operations.

The goal of fostering competition in broadcasting is fundamental to the Communications Act, but the present procedures for competing applications are not the most appropriate means of serving this goal. The competition fostered by current procedures is not competition in the marketplace of programming and services offered to the public. It amounts to no more than one applicant vying with another before a government agency for the license privilege. It does not result in a net increase in competition in the offering of community broadcast services, but simply operates to substitute one licensee for another. There is a need for increased competition among broadcasters, but this need should be met by government policies that expand broadcast outlets and reduce economic concentration among existing broadcasters.

D. Section 307(d)(4): Miscellaneous Provisions

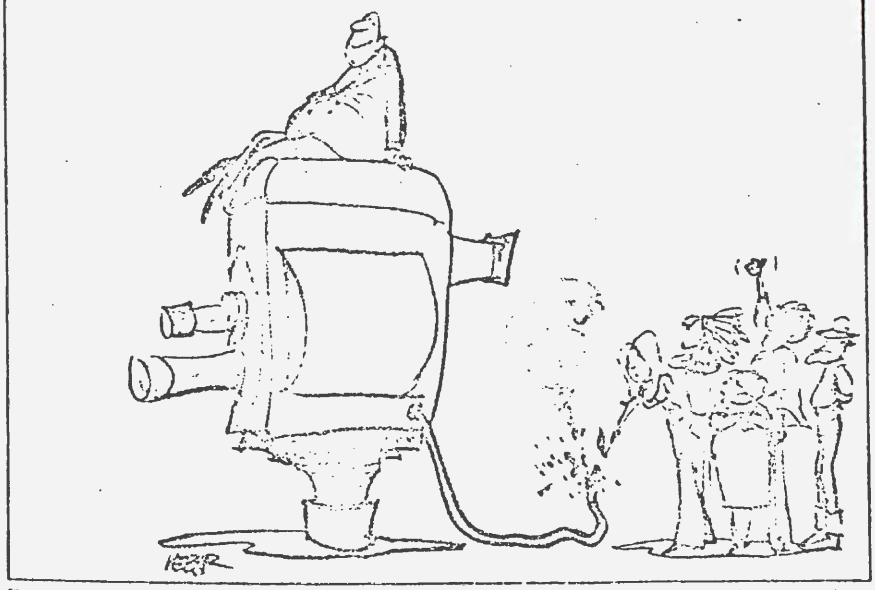
This section of the proposed legislation simply incorporates the portions of the present section 307(d) that would remain unchanged by the bill.

B

The Challengers

They are terrorizing local broadcasters for a variety of reasons, some honest, some not

First of Three Parts
By Martin Mayer



Though there hasn't been much evidence of it on the screen, the broadcasting industry during the last half-dozen years has lived through a series of earthquakes that has left many of its leaders trembling with fear that their world is coming to an end. The very foundation of their business, the license to use the airwaves, has been shaken by the Federal courts and, to a lesser extent, the Federal Communications Commission, which have opened the doors for anyone who lives within range of a station's signal to challenge the station's right to continue in operation.

Given the temper of the times, this invitation was sure to be taken up by all sorts of people, and it has been. In New York, Los Angeles, Philadelphia, San Francisco, Albuquerque, Columbia (S.C.), and at least 20 other cities, stations are operating on licenses which may be in jeopardy because someone has challenged them.

Petitions have been brought by blacks, Chicanos, American Indians, Chinese-Americans, women's libbers, conservationists, individual crusad- →

continued

ers, extortionists. Most petitioners accuse the stations of discriminating against minority groups in employment, and charge bias or neglect in programs.

There are earnest advocates of simple causes. One has brought petitions against stations that refuse to carry countercommercials to fight the sale of Chevron gasoline with F-310.

'. . . proposing that for $1000 a month . . . he could guarantee against a petition from any black group.'

There are crooks. One went around to all the television stations in a fairly large Midwestern city a year or so ago, proposing that for $1000 a month (from each) he could guarantee against a petition from any black group. There are more imaginative crooks, like the group that suggested to another TV station that it could avoid a challenge to its license by being the angel for a season of plays it wanted to present.

There are even clowns. When the San Francisco licenses were up for renewal in 1971, the San Francisco Bay Guardian, that city's semiunderground paper, gave its front page to a feature entitled "How to Terrorize Your Local Broadcaster for Fun and Profit."

But there are also—and this is a point the broadcasters often omit from the discussion—people who are honestly and unselfishly seeking better television service for their communities, and have grabbed for a legal weapon because in fact they have no other way to make the local broadcasters take them seriously.

Nobody can own a television channel. The air is free; the equipment that generates high-frequency electrical signals is easily built. In the early days of radio, lots of people broadcast words and music as they pleased. Signals interfered with each other until it became necessary for the Government to step in. But awarding a piece of the public air to a private party, for his exclusive use, was quite a step for the Government to take. The compromise was a "license" given by the Federal Government for a limited length of time. Under the Federal Communications Act, that time is three years. Every three years a man broadcasting on a radio frequency or television channel must come back to the Federal Communications Commission and get his license renewed.

For years the FCC treated these applications for license renewals the way a state motor-vehicle bureau treats renewals of drivers' licenses. A man who uses his car in bank robberies or gets convicted of drunk driving is denied a license renewal; a man who used his broadcasting license to swindle advertisers or corrupt the audience could be denied his renewal. But it almost never happened. Licensees of broadcasting channels began to behave as though they did own the air. Channels were bought and sold for 20 times what the physical equipment was worth, because the man who bought the station also bought a license he could reasonably consider permanent. Increasingly, big national companies became the owners of what were supposed to be local stations.

A church leader decided to take a hand.

Meanwhile, in another part of the forest, the civil-rights movement was changing the face of America but not the face of television. In the South, especially, some broadcasters were giving the movement and its leaders a very hard time, portraying them as Communists, criminals and sex perverts. Some of the ministers involved in Martin Luther King's Southern Christian Leadership Conference had been or-

dained in the United Church of Christ. They took their complaints about what the broadcasters were doing to them to the director of the Office of Communications of that church. He is the Rev. Everett Parker, a rather small man with diminishing sandy hair and a quizzical grin, who mixes cynicism and earnestness in a highly personal combination.

Parker, a product of the Divinity School at the University of Chicago, had gone to Washington to work for the New Deal immediately after graduation in the 1930s. His first job was in the press department of the Works Progress Administration. "My father," he recalls, "was a rich businessman and didn't approve; when his friends would ask what I was doing, he'd say I was on relief."

Experiences in Government had given Parker no very high opinion of Federal agencies. He thought the best pressure point the church would have in fighting unfairness by Southern broadcasters was the industry itself. Parker set up a network of churchmen, students and civil-rights workers around the South to monitor the performance of local broadcasting stations, and took his evidence of race prejudice to LeRoy Collins, the former governor of Florida who was then head of the National Association of Broadcasters. Parker asked the NAB to issue a policy statement calling for all members to give blacks a fair shake in programs and in employment practices.

"Collins was friendly but noncommittal," Parker recalls. "It's an interesting fact that all the troubles the broadcasters have with their license renewals came about because the directors of the NAB were such reactionaries. If they'd given us our statement, we probably wouldn't have gone further." Frustrated at the NAB's failure to issue any statement on guidelines, Parker and the lawyers who worked for the church went looking for some way to compel Southern broadcasters to behave. They decided the only pressure point they had was the license-renewal system, and they helped residents of Jackson, Miss., file a "petition to deny" renewal of the license of WLBT-TV, which the Martin Luther King group considered the worst station in the country.

The FCC threw out the petition on the grounds that the citizens' group lacked "standing"—they had no *financial* interest in the operations of the station. Only people whose business interests were affected, the Commission ruled, had the right to intervene in a license renewal proceeding. Parker and his lawyer, Earle K. ("Dick") Moore, an erect but casual Wall Street aristocrat, took an appeal to the Circuit Court of Appeals for the District of Columbia, which ordered the FCC to hold hearings on the petition. The viewers' stake in how a broadcaster conducted himself, the court ruled, was at least as great as any advertiser's stake.

The FCC delayed biting the bullet in a Southern case.

At the hearings, Parker's group produced convincing evidence of misbehavior in WLBT's news broadcasts, and of failure to carry national public-affairs programs that presented favorable comment on the civil-rights movement. The Commission still refused to bite the bullet. Accepting the licensee's claim that he was now a reformed character, the Commission renewed his license anyway. Again, Parker and Moore went to the Court of Appeals, and in his last opinion before President Nixon appointed him Chief Justice, Judge Warren Burger ordered the FCC to find a new licensee for WLBT.

No other petition to deny has yet cost a television station a renewal (though several still are pending, some of them in big cities). The most effective challenges have come in situations where →

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owners were trying to sell their stations to others. The FCC must approve all transfers of licenses, and anyone in the station's coverage area can object to the transfer, which will delay the sale until the objection is dismissed—not just by the Commission, but by the courts on appeal. Meanwhile, of course, economic conditions may change, and the stations may become more valuable or less valuable than they were on the day when one man agreed to sell and another to buy. At best, all the terms have to be renegotiated; at worst, the deal falls through.

Two of the largest sales in recent years were completed only because the buyers made expensive concessions to community groups that had petitioned the FCC to deny the license transfers. The first, in 1971, involved the media conglomerate Capital Cities Broadcasting and channels in Philadelphia; New Haven, Conn.; and Fresno, Cal. To get the "coalitions" of minority groups to withdraw their petitions, Capcities pledged that members of minorities would be hired for a number of on-camera and executive jobs, and set up a fund of a million dollars to be used to make and air programs suggested and approved (and, if they wished, produced) by "advisory councils" drawn from the challenging groups.

'We thought getting out of the courts was worth the price.'

In the second challenged sale, last spring, McGraw-Hill gave up one of the five stations it had planned to purchase from Time-Life, and agreed to produce, among other things, a series of 18 special programs on Spanish-speaking Americans, which would be broadcast during prime time. The McGraw-Hill settlement, written out in contract form, also required the publisher to meet certain quotas in employment of black and Spanish-speaking persons over the next three years.

Interestingly, McGraw-Hill made the deal with its challengers after having won on all counts before the FCC. The coalition had filed an appeal, which produced an automatic stay of the sale of the stations. Most people in broadcasting feel McGraw-Hill simply capitulated, a judgment McGraw-Hill would not necessarily dispute. "We were buying the Time-Life stations," says Ted Weber, a McGraw-Hill spokesman, "because we wanted to be in the broadcasting business. Twenty months after we signed the contract, we were still in the courts, not in the broadcasting business. We thought getting out of the courts was worth the price. Remember, a lot of the things in that settlement are things we would have wanted to do anyway."

A free-swinging young man named Marcus Garvey Wilcher, self-appointed head of a small and shrinking San Francisco Bay "coalition," has negotiated the most spectacular of these settlements based on a third party's ability to stop a sale by challenging the transfer of a license. Here the property that had been sold was a radio station, and the buyer was Starr Broadcasting, in which conservative columnist William F. Buckley has a substantial interest.

Wilcher got Starr to set up a separate board of directors for the station, with three of its seven members nominated by his Community Coalition. He also got jobs for a Community Liaison Director and an East Bay News Director to be nominated by himself. "Our concern is that these people be truly black and brown," Wilcher says, reclining on pillows in the Berkeley apartment that doubles as offices for the Coalition. "If you let these stations pick people on their own, they'll hire oreos and ticky-tacos." What is meant by "truly →

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Rogers of Taft Broadcasting told a meeting last spring that a year after his Cincinnati station was challenged "many of the members of the coalition had either left town or gone to jail." Another executive complains that when he sent a letter to the group that challenged his station it was returned addressee unknown, and when he made a phone call he was told the phone had been disconnected.

Some of the complaints made in petitions to deny are almost funny. In Philadelphia, a petition by a group called Concern Communicators cited as proof of discrimination the station's standard form letter replying to an employment application: "Your letter and resume regarding employment with our station have been reviewed. While we have no positions available at the present time for someone of your qualifications, we will retain your resume in our files for consideration in the event of a future opening." The station was accused of bigotry because it sent this letter to black as well as white applicants.

And some "demands" are a little extreme. "The stations," Wilcher says in San Francisco, "must undertake to teach the white middle-class community that controls this society, teach them about racism and how much it costs them. They must tell the 18-year-old, if your mother and father move to the suburbs to get away from blacks, vote for Richard Nixon and his Southern strategy or for Ronald Reagan who uses racism, it means you're going to fight in another Vietnam and get killed. We've asked the FCC to come out and investigate the entire media. We made charges; they wrote and said, give us some data on your changes. Well, data's hard to get . . ."

Nevertheless, even Schneider's WCBS-TV signed an agreement with a petitioning group from New Jersey. The group complained that New Jersey's chunk of the coverage area of the New York stations (New Jersey houses more than a quarter of those tuned to New York stations) was getting little or no attention on the local news and demanded that the New York stations establish New Jersey bureaus. (The stations agreed to hire correspondents, but not to establish bureaus.) And the mostly Chicano group that blocked the McGraw-Hill purchase stuck on an issue of law in which none of them had any stake at all. Among the many FCC guidelines adopted in recent years is one that forbids a single company to buy more than two VHF channels in the top 50 markets. The rule does not affect existing ownerships, and permits exceptions on a showing of "compelling public interest." Even after McGraw-Hill had made what everyone admitted was an unexpectedly generous offer in the areas of employment and programming, the Chicanos insisted that there was no "compelling public interest" behind McGraw-Hill's acquisition of three licenses in the top 50 markets, and forced the elimination of one of the stations in the package.

"We are very sensitive," says Dick Moore, who represented the Chicano groups as part of his work for the United Church of Christ, "to the criticism that this is a rip-off, just a way to get some jobs for minorities. We take the position that when issues are raised they must be dealt with, not used as a lever for extortion. In the McGraw-Hill case, these Chicanos were defending the whole society. They were very proud to take that role."

Everett Parker added, "You bet they were. They had made the Government do its job. That's the whole purpose of our work—to make the Government do its job."

[Next week: What happens when a license is challenged.]

continued

black and brown" in this context, of course, is friends and allies of Marcus Garvey Wilcher.

Groups that have filed petitions to deny license renewals do not have as much leverage available as groups which are actually blocking a sale. The latter's threat, at bottom, is that they can force the station into an FCC hearing process immensely expensive for the defendants. Howard Monderer, NBC's assistant general attorney in Washington, says that the network would have to budget at least half a million dollars to oppose at hearings a petition to deny renewal for any of the network's five owned stations. If that kind of money can be saved by promising to hire a few people and air a few programs, many station ownerships will be tempted to go along whether or not they are convinced that the petitioners can make a case. Rather than contest petitions against their New York properties, both ABC and NBC signed contracts with a black group, promising to train and promote black executives, increase black exposure on air, and so forth.

CBS decided to stand and fight. As the flagship station of an alert and sophisticated corporation, WCBS-TV was confident that both its employment and its programming practices could stand any scrutiny a hearing might involve. Fourteen per cent of its employees, including four of 19 "on-air personnel" were black. "Hell," said Jack Schneider, president of the CBS Broadcast Group, "the highest-rated news show in New York is our weekend news, and the anchor man of that show is Vic Miles, who not only *is* black, he *looks* black.

"I am not," Schneider added, warming to his task, "prepared to let outsiders tell me how to run my business. There's a cruelty involved in this effort to ascertain and supposedly meet what are called community demands. We go out to a guy in Bedford-Stuyvesant who runs one or two day-care centers. A representative of Channel 2 comes around and says, 'How's it going? What can we do to help?' But in fact it's not part of our charter, not part of our function, to reach into neighborhoods and promote self-help groups. It becomes one more time this poor man has been double-crossed by the white community. He's been promised better housing, and it hasn't happened. He's been promised better schools, better garbage collection, better police protection. Now it seems to him that he is being promised that this enormous social weapon is to be put at his disposal—and that won't happen either. Our rule is: Don't ask for advice you're not ready to accept. The question is: Have we run this station well and served this community? I say the answer is yes."

'Many of the challenging groups are evanescent and trivial, and some are worse.'

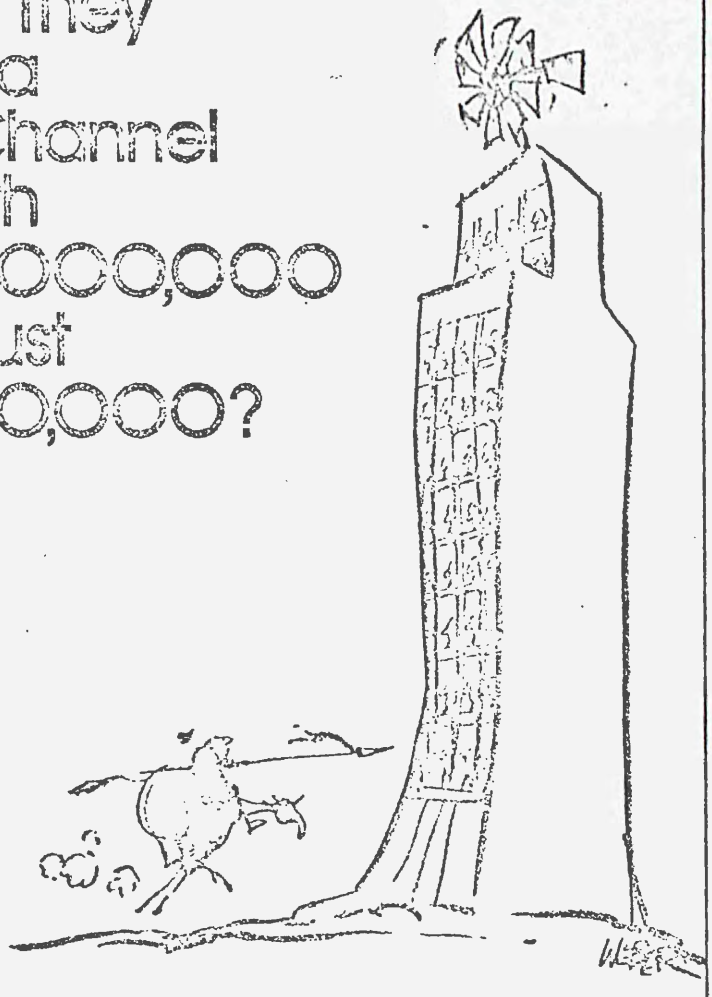
Schneider is a handsome, aggressively bright man in a well-known CBS pattern, and he likes to talk. "People tell us," he added, "that what holds these coalitions together is a common enemy. All you have to say is, 'You've won,' and they fall apart. In Chicago, NBC gave up at the start, and afterwards could never find the group that had threatened to challenge them. We fought, held a public meeting, announced it on the air, rented a hall for Sunday afternoon at 3, and about 125 people came. We arranged two private meetings with the group that was petitioning. At one of them, nobody showed up. At the other, one person showed up."

There is no doubt that many of the challenging groups are evanescent and trivial, and some are worse. Lawrence →

THE CHALLENGERS

Second of Three Parts
By Martin Mayer

Can They Get a TV Channel Worth $60,000,000 for Just $400,000?



WCAU-TV in Philadelphia is one of the most cherished jewels in the CBS crown. It was with WCAU Radio that the CBS network first began, 40-odd years ago. While the network was not the original licensee of the television channel, which was first awarded (to the Philadelphia Bulletin) during the time when the CBS management thought television would never make money, CBS has had it since 1958. An educated guess would be that the station makes profits in the range of $6 million a year: CBS would surely miss Philadelphia's Channel 10 if anyone took it away. And right now a variously distinguished and well-financed group of Philadelphians is attempting to →

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do just that.

What gives them their chance is the expiration of the CBS license to operate on Channel 10. Under the law, all such licenses must be renewed by the FCC every three years. Until recently, these license renewals were more or less automatic, but in the mid-1960s the courts ruled that the Commission must consider complaints from viewers in determining whether a broadcaster's performance entitled him to continued use of the channel. As noted in TV GUIDE last week, the result of these court decisions has been a great rash of "petitions to deny," by which minority groups and others who feel themselves oppressed or contradicted have intervened in renewal proceedings in an attempt to force stations to give their members more jobs, or air time, or (occasionally) a little personal spending money. Obviously, if the FCC can deny renewal to the broadcaster currently operating on the channel, it can then award that channel to someone else. In opening the door for petitions to deny, the courts kept it open for "competitive applications."

To date, the Commission has not in fact refused to renew a regular three-year license at the request of a group which wanted to take over the channel. Boston's Channel 5 was taken away from the Herald-Traveler (killing the newspaper) and awarded to a new company headed by MIT professor Leo Beranek, but the fact is that Channel 5 had been operating for 14 years on a temporary license, the original allocation having been tainted by a corruption that was by no means unusual at the FCC in the 1950s.

Pending before the Commission, however, is a hearing examiner's report that recommends award of Channel 9 in Los Angeles to a group that challenged RKO-General for the license, and in New York another hearing examiner is winding up more than two years of testimony and other proceedings in a competitive application for that city's Channel 11. Other challenges are in various stages of processing for other channels in Boston and New York, and for channels in Norfolk, Va.; Jacksonville, Fla., and Las Vegas.

Most of these competitive applications are being handled by one law firm, Welch & Morgan of Washington, D.C., who are also counsel to the group that has set its sights on Philadelphia's Channel 10. In fact, Edward P. Morgan is one of the stockholders as well as the lawyer for the new company. "I'm in it," he says, "because I believe in it—believe in what a television station can *do* for a city like Philadelphia."

'Anybody with a pencil and paper can file a petition to deny.'

Anybody with a pencil and paper can file a petition to deny, but the FCC will entertain competing applications only from groups that can demonstrate a financial, technical and professional capability to run a station. Morgan, a handsome, white-maned Washingtonian with a resonant voice, denies published reports that his firm charges a flat fee of $150,000 to mount and carry through such a challenge: like all corporate lawyers, he charges according to the time the job takes, and that may mean more than $150,000. ("Though sometimes," he says, "if the estimate runs more than $150,000, we as lawyers might absorb some of it. And if the costs run over the estimate, the lawyer, as we say, eats it.") In the Philadelphia challenge, the budget is $300,000, and the group has been capitalized for $100,000 over that, to leave a margin for contingencies. That's a lot of money to gamble on an application for a television license, but the odds are right: if CBS were to sell WCAU-TV to a buyer, the price would be in the neighborhood of $60 million.

Most observers cannot see how →

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First Delaware Valley Citizens Television, as the new group calls itself, can hope to displace CBS on Channel 10. Challenging KHJ in Los Angeles, Morgan could rest his case that his clients would do a better job on the argument that it was almost impossible to do a worse job: KHJ had filled its schedule with old movies and reruns of discarded network series. Going after WPIX in New York, public-relations executive Lawrence K. Grossman could work up personal anger about a station that "had cornered the children's market—making all that money off kids and giving nothing back to the city." But whatever its faults, CBS does not run cheapjack operations. WCAU-TV general manager Gordon French can point to a news staff of 60, two hours a day of local news programs, two hours a week of locally originated children's programming, several talk-interview shows, a minority program called *Right On*, a regularly scheduled local public-affairs show called *Eye on Philadelphia*, even a show for farmers including film shot on a minifarm behind the studios, operated by the station itself. First Delaware proposes to keep virtually all the existing staff if the FCC awards it the license to the channel.

But the fact is that the challengers can make a case, though perhaps not quite so strong a case as one might gather from Donald Barnhouse, president of the new company, who says that "I don't see how we can lose." At the heart of the case is the argument that local television licenses were never intended to become the financial support of a nation-wide conglomerate corporation, with the profits siphoned out of the community to buy, for example, the New York Yankees and the Steinway piano company.

There are two legal arguments that Morgan likes—one, that the FCC has a policy against concentration of media ownership and CBS already has both an AM and an FM radio license in Philadelphia; the other, that the networks are under attack for antitrust violations, which if proved might disqualify CBS from holding a broadcast franchise. There is a technical argument, that the signals from WCAU-TV in Philadelphia and WCBS-TV in New York overlap in an area north of Trenton, N.J., and the FCC forbids any one company to own two television stations serving the same area. And there is a factual argument, to be proved or disproved at hearings, about the way the station is run: Barnhouse insists that promising ideas for local Philadelphia shows have been vetoed by CBS headquarters because they would cut into the profits, and his group would simply be less greedy: "We wouldn't use the station as a money pump."

One of the challengers is an ex-employe of a station under attack.

Barnhouse himself is a nervous, florid man with an unusually intellectual background for television work—he has a degree in mathematics from Harvard, and studied theology at Princeton. He worked as a writer and on-camera news analyst for WCAU-TV up to early 1972, when management decided he lacked the genial temperament now considered necessary for news shows and, in effect, fired him. As president and putative general manager, he provides First Delaware with the professional background the FCC demands from an applicant for a license.

Financial capability is guaranteed by Harold E. Kohn, an extremely successful corporate lawyer who, with industrialist Solomon Katz, is putting up three-fifths of the money. Kohn is a liberal Democrat active in the Civil Liberties Union (and the project to take over WCAU-TV started in conversations at the CLU), but his challenging group includes men of other political persuasions, among them a leader in the →

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local Republican machine and a public-relations man who handled the Nixon campaign in Philadelphia. Other originating stockholders include a Catholic nun, a labor leader, and a black woman lawyer who has been a civic leader in the city for half a century. Ten per cent of the stock ownership is black, and with blacks making up 18 per cent of the population in the tri-state area served by the station, Kohn hopes to boost the proportion of local black ownership to 20 per cent before their application goes to hearing. The contrast of this mixed community group against ownership by CBS in its New York skyscraper is vivid enough to make for interesting discussions in Washington.

Hearings, however, may be a long way off. Though the law gives a competing applicant a right to a hearing, it does not give him priority in the assignment of hearing officers by the FCC, and there are literally hundreds of petitions to deny, each demanding a hearing, piled up on the Commission's desks. Just as the trial courts have to hope that criminal defendants will plead guilty and victims of auto accidents will settle with the insurance company, the FCC has to hope that broadcasters and their challengers can somehow make peace without formal proceedings. "For somebody who doesn't know about the television business," says Chairman Dean Burch, "a hearing sounds reasonable—what could be fairer than holding a hearing? But it costs the station, and the United States Government, hundreds of thousands of dollars."

It takes years to complete a hearing.

Even if dozens of new hearing examiners were hired, the Commission could not hope to complete hearings on a challenge to a license expiring this month until after the end of the three-year term for which the incumbent seeks renewal. And the Commission will not hire dozens of new examiners, partly because the Office of Management and Budget would never approve such a budget request and Congress would never appropriate the money; partly because the FCC has no great desire to be bigger than its current 1700 employees. "Contrary to what most people say about bureaucrats," says Benjamin L. Hooks, the newest Commissioner (and the first black one ever), "this agency has had a tendency not to want to grow. It may be because the chairmen come and go and have no interest in building a power base. And we're not comfortable with these cases. There's no way seven men sitting here in Washington, none of us from Dallas, can know what the public in Dallas wants."

Once the hearings start, the station being challenged (which continues its normal operations) can find almost limitless ways to delay the conclusion. Morgan's challenge to KHJ in Los Angeles was filed in November 1965, and the report of the hearing examiner reached the stage of formal argument before the Commission in October 1972. The case has now gone on more than seven years without a decision. Larry Grossman and Forum Communications filed for New York's Channel 11 in March 1969, and as 1973 arrived, the hearings were still in progress. The costs to Forum, which runs lean with one young lawyer, have reached $300,000; the costs to WPIX, with large law firms to feed in Washington and New York, have probably passed the $1-million mark.

"There have been literally *thousands* of pleadings in this case," Grossman says. "There are 15,000 pages of testimony from 53 witnesses, and another 10,000 pages of exhibits. The station keeps petitioning to add new issues. Our interviews with community lead- →

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ers are now more than three years old; they made us update our community survey. Inflation has caught up with our projected budget; nothing can proceed till we supply a new budget. We said we would have our antenna on the World Trade Center; now it looks like all the New York antennas may stay on the Empire State Building; they say our application should be thrown out because we didn't properly specify where the antenna would be. The legal procedure, the maze of administrative law, is an incredible disaster; and if you make a single slip, you run the danger of losing the whole battle. The longer the hearings drag on, the more issues can be raised; the more issues can be raised, the longer the hearings drag on. It's Catch 22. And if the examiner should die before reaching a decision . . . . It's a nightmare."

The hearing examiner's decision, moreover, takes the form of a recommendation to the Commission. FCC staff members then have to review the case, and the commissioners themselves are supposed to learn something about it before granting or refusing the renewal or awarding the channel to the challenger. Three of the seven years in the KHJ case came between the decision of the hearing examiner and formal consideration by the commissioners.

'The loser can appeal to the courts.'

Once the Commission has moved, the loser can appeal to the courts, which may involve another year or two before the Court of Appeals produces a decision, and then another couple of years for possible rehearings on that level and appeals to the Supreme Court. Even then, the court decisions often do not entirely dispose of the case: they state the law the FCC is to apply. After the FCC has applied it, the loser can continue to delay matters by taking a new appeal to the courts. . . . "In litigation," says Commissioner Richard S. Wiley, quoting an ancient bit of folk wisdom, "only the lawyers win."

Early in 1970, trying to dig itself out of this morass, the FCC established a rule that any broadcaster who could show "substantial" performance during the course of his three-year license would be entitled to more or less automatic renewal. Judge J. Skelly Wright of the Court of Appeals forbade the Commission to apply such a rule, insisting that only "superior" performance could convey even the shadow of such a right. In the rolling phrases of Ed Morgan, "The incumbent has the obligation and the burden of establishing meritorious stewardship."

CITIZENS COMMUNICATIONS CENTER

Meanwhile, the Nixon Administration has announced that it will sponsor legislation to extend license terms to five years and place on a challenger the legal as well as the practical burden of proof. In the same speech in which he proposed these new protections for incumbents on a channel, Administration spokesman Clay T. Whitehead also warned station owners that they could lose their licenses if they failed to balance in their own programming what he called "ideological plugola" from New York.

Commissioner Nicholas Johnson has argued that when a license expires, the incumbent and a challenger should be given equal chances for the next time around. But in fact, of course, the situations of the two parties are very different: the challenger can promise to do all sorts of great things that it may or may not really be prepared to do, while the incumbent is stuck with the reality of the record. Commissioner Hooks cuts through the legalisms: "If a man tries to do his job, there's no question in my mind his license will be renewed."

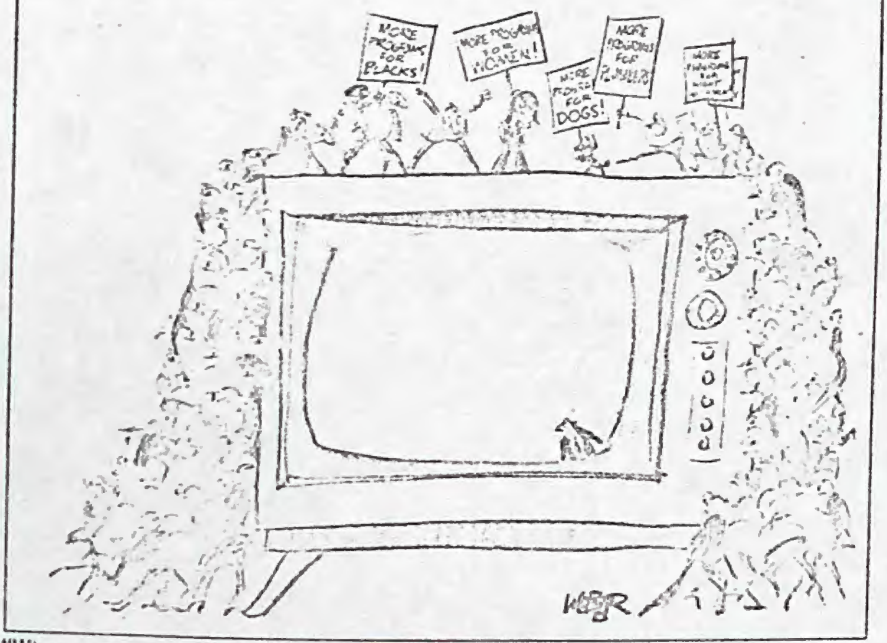
Next week: Can minority challenges bring about better television?

THE CHALLENGERS

Last of Three Parts

By Martin Mayer

Has the Public Benefited from "Public Participation"?



"When you see a full hour of Cantonese on a network television station," said Don B. Curran (then general manager of San Francisco's ABC-owned KGO-TV), looking at what was on his office screen one afternoon last summer, "you've got to know that somebody's hit a button." The program he was watching was a tear-jerker about an aged Chinese immigrant kicked out of his job by a vicious Caucasian capitalist but finding comfort in the thought that if all the proletarians of the world would unite they would have nothing to lose but their chains. No harm in it, so far as one could tell from reading the English-language titles: anybody simple-minded enough to take it seriously would have all his opinions changed by somebody else next day, anyway. But the process by which that show got on the air is something new in broadcasting, and whether its results will be good or bad is a question to which nobody knows the answer.

The program had been produced by the Chinese Media Committee in San Francisco and paid for by KGO-TV in

production and presentation had been guaranteed by the station as part of negotiations between management and the committee about what the station would have to do to keep this segment of the Chinese community from petitioning the Federal Communications Commission to deny ABC a renewal of its three-year license to broadcast on Channel 7. Other groups that came around waving similar weaponry included a Barrio Coalition, two delegations of Japanese-Americans, an American Indian group and a coalition of Filipinos, plus a university-based Committee for Children's Television, Friends of the Earth, the National Organization for Women and an assortment of black protesters.

ABC having decided that if humanly possible it did not wish to have its San Francisco license challenged, Curran and his staff gave over more than half their time, every day, four and five nights a week, to meetings with community groups, written or tacit agreements to hire here and program there, carry "public-access" one-minute spots in prime time, make resources available for various community purposes. It was an exhausting and vastly irritating experience for everyone who worked at the station.

Once KGO had made its deals, Curran looked upon his problems philosophically. "My time settled down," he said. "I learned that if you attract people and pull them into responsible positions, they are willing to—anxious to—help you. The guys we hired in the news areas kept us in touch; we had top-notch people who got us the stories that developed in these communities. Then there are always people in the communities who don't like the stories, and you never get thanked for what you do—but it was good for us as broadcasters."

To secure a quick FCC approval of its purchase of three stations in March 1971 Capital Cities Broadcasting had to promise cooperation with minority advisory councils to be established in Philadelphia, Fresno and New Haven, had to allocate a budget of $1 million over the three years to produce shows suggested by and approved by these committees. In Fresno, the committee machinery has worked well, churning out hours of public-affairs programs, but elsewhere the internal politics of the committees has been bloody. The New Haven committee insisted on doing its own production, and turned out exactly one show—an attack on the local police. The Philadelphia group has failed to get a single documentary on the air—one was completed and scheduled, but withdrawn at the last minute when cooler heads on the committee decided that a half-hour attack on the mayor, tough ex-cop Frank Rizzo, was not a very intelligent way to launch this project.

"But the contacts we have engineered through the committee," says general manager Eugene McCurdy of WPVI-TV in Philadelphia, "have enabled us to do programming on our own. We are on a first-name basis with the power figures in the minority communities. Our relationship gets our documentary unit into the Puerto Rican community. One member of the board is the deputy commissioner of welfare, and we've developed at least two program features through her. And because we're looking for minority employees, we've found some very talented youngsters coming out of the communications program at Temple University."

In some places, for some purposes, the rash of challenges to license renewals that has broken out in the last few years has made stations take good medicine—has served what FCC Chairman Dean Burch calls "the purpose of public participation: for a better broadcasting industry, not for one or two people to disrupt proceedings for what they can get out of it." Speaking for a unanimous Supreme Court in the →

continued

Red Lion case, Justice Byron R. White insisted that stations must regard themselves as "proxies for the entire community, obligated to give suitable time and attention to matters of great public concern." Challengers have pushed broadcasters to live up to what the Court required.

Certainly, challenges and petitions have produced jobs for members of minority groups all over the country. Field work for the United Church of Christ, which brought the lawsuit that opened up the license-renewal process to public intervention, is done mostly by Jane Goodman, a matter-of-fact blonde lady who works for the National Presbyterian Center in Washington. "These groups have moved mountains, when you consider what they had to work with," she says. "I travel a hundred thousand miles a year, and I watch TV; over the last few years there has been a big change in the number of black faces, and ethnic faces, and women on TV."

How much benefit the larger public has derived from this "public participation," however, is a more arguable question. Lawrence Grossman, whose Forum Communications has been challenging the Daily News for New York's Channel 11, has claimed that his group is entitled to an Emmy for having done the most "to improve the quality of local television"—and in fact Channel 11 became a much more lively and alert operation after Grossman's group filed their application. Jane Goodman insists that "often the complaints the minority groups have are no different from the complaints of the public as a whole." But often they are different. A very senior executive at one of the networks says, "It's romantic to think that these petitions will make a broadcaster run a better station. All he'll do is put more grease on the wheel that makes the loudest squeaks."

To avoid becoming the tool of narrowly based groups, the United Church of Christ and the Citizens Communications Center (a Washington public-interest law firm) both insist that the petitioners form a coalition to represent everybody who wants to press a grievance. Albert Kramer, who heads CCC, is the busiest lawyer in this business—he has about 20 petitions pending at any one time, and helps other groups. He worries about some of the people who come to him: "One of the problems about opening up a regulatory process to democratization," he says, "is that you get in *unseemly* groups." But a strong belief in a basic cause can override even Kramer's scruples about the clients he wants to represent. His cause is simply stated: "to get these groups access to the decision-making process on the programming that people see."

For reasons of FCC convenience, all the licenses in an area come up for renewal on the same day, and many of the petitioning groups challenge all of them—there could be 103, radio and television, in the Los Angeles area, for example. The FCC does not have the manpower to hold hearings on large numbers of petitions, and since these "shotgun challenges" typically produce identical charges against all stations, the Commission has a good excuse to throw out all the challenges, even though some of them may be soundly based.

The problem is that getting specific information to buttress a challenge against a single station takes a great deal of hard work, by people who make their living doing something else and can take only so much time to monitor television programs. Denouncing everybody in sight as a racist, however, takes no work at all, and may yield equivalent emotional satisfactions. And until recently it seemed possible that the courts would force the FCC to hold hearings that would be fishing expeditions for the petitioners, and would force the stations to spend so much

STONE V FCC

money defending themselves that they would make almost any deal to get the petitions withdrawn.

These hopes (from the broadcaster's point of view, fears) were dashed last June by a Court of Appeals decision in the case of WMAL-TV in Washington. Citing a section of the Communications Act that permits the FCC to issue licenses without a hearing if there "are no substantial and material questions of fact," the court upheld the Commission's finding that the petition against WMAL had been too general.

The petitioning group here had been unusually arrogant and perhaps even stupid, insisting that because the "city of license" was 70 per-cent black, WMAL was obligated to make its programming 70 per-cent black; and the argument obviously annoyed the court. But bad cases, like good cases, can make important law, as Kramer stressed when he advised these petitioners at the outset not to push their 70 per-cent claim. Since June, in any event, the FCC has had greater freedom to refuse to hold hearings on a petition to deny; and as a result the scores of groups that file these petitions have less bargaining power.

In the long run, it may be that these tiny sections of "the public" will make their greatest contribution by forcing the stations to open their books and reveal much more information about themselves than they are now willing to publish. Edward P. Morgan, the communications lawyer who represents most of the commercially minded groups who are trying to take over somebody else's channel, points out that "broadcasting is the only industry fraught with public interest that is *not* subject to rate regulation." In a sense, insistence that broadcasters devote some of their time to unprofitable programs, to serving various minority audiences, is a form of rate regulation. Public participation in this sort of rate-setting requires public knowledge of just how profitable stations are, and how much it costs to offer programs not aimed at common denominators of the audience.

A company that owned nothing but one television station would have to provide this sort of information to the public to be allowed to sell its stock; because stations are owned in groups or by conglomerates, they can refuse to reveal how well they are doing out of their use of the public air. If a public agency can require the power-and-light company to rescind a rate increase because profits are high enough without it, it is argued that some public agency might be empowered to make television stations "reinvest" part of their earnings in programming. In a recent dissent from a decision to renew a batch of licenses in California, Commissioner Nicholas Johnson printed a table of how each of the stations involved (identified only as Station "A" or "B") had spent its money in the preceding two years. In one of the years, a station that showed more than 50 per cent of its receipts taken as profits had spent less than 5 per cent of its receipts on programs. People who disagree about the meaning of "public interest" could unite behind a statement that this sort of performance does not "serve the public interest."

Under the impact of the WMAL rebuff, the "public interest" petitioners may turn their attention to the less emotional and more universal issue of whether a local station spends enough on local programming.

Broadcasters would not necessarily be much happier if the focus of their trouble shifted from challenges against their licenses to challenges against high profits. But even the antics of professional protesters might become more tolerable if their result was to force the local television stations to spend more money on more carefully planned, better-produced and more varied local programming. END

C

WPIX-WPIX, Inc.

WPIX: Channel 11 in New York City

Challenge: Competing application filed by a business group, Forum Communications

Issues: WPIX's news coverage (falsification and supervision), ascertainment; Forum's financial qualifications.

History: WPIX's renewal was challenged by Forum in 1969. Defects were alleged in WPIX's news and ascertainment efforts. Financial qualifications of challenger Forum were disputed. Comparative hearing was commenced and is still going on.

OTP Bill: Forum's application could not be considered until and unless WPIX's had first been denied. Issues raised against WPIX could be raised under OTP Bill; but only if WPIX lost on those issues could Forum's application be entertained.

Note: (1) Impression is that WPIX did a sloppy job and laid itself open to challenge;

(2) If so, this is an example of competitive spur to licensee performance which OTP Bill would retain.

WPIX-WPIX, Inc.

-- 17 RR 2d 782 (10/28/69) designated for comparative hearing

-- 22 RR 2d 595 (8/3/71) financial issue against Forum modified

-- 24 RR 2d 59 (3/31/72) ascertainment issue added against Forum

-- 25 RR 2d 176 (8/25/72) WPIX's motion to enlarge issues denied

KFBC- TV -- Frontier Broadcasting (FBC)

KFBC:	The only TV in Cheyenne. FBC also owns the only full time AM, CATV, and newspaper in town, and one of the two only FM's as well. FBC also has broadcast and newspaper interests in 4 and 5 nearby communities (respectively).
Challenge:	Petition to deny filed by business group wanting to operate a CATV system and to reduce FBC's competitive position; "petition for a hearing" filed by Justice on grounds of undue concentration of control.
Issue:	Undue concentration of control.
History:	(1) License came up for renewal and was challenged as described above; (2) FCC adopted rules in Docket 18397 banning CATV-TV cross ownership; (3) In view of new rules, FBC offered to divest itself of KFBC in such a way as to avoid cross ownership with CATV, but unclear as to whether cross ownership with newspaper will continue; (4) FCC has ordered periodic reports on divestiture, which is evidently in progress.
OTP Bill:	Result could be same if cross-ownership and multiple ownership policies had been set down in rules.
Note:	(1) KFBC a highly unusual situation where concentration of control is extremely aggravated.

KFBC-TV

-- 18 RR 2d 521 (2/26/70). FCC designates renewal application for hearing.

-- 19 RR 2d 245 (6/8/70). (Procedural) leave granted to participate.

-- Docket 18397 decided on 7/24/70.

-- 21 RR 2d 133 (2/16/71). Frontier ordered to submit divestiture plan.

-- 21 RR 2d 1187, 29 FCC 2d 480 (5/24/71). Frontier ordered to report periodically to FCC on divestiture.

WLBT--Lamar Life Broadcasting Company

WLBT: VHF located in Jackson, Mississippi. Case originated at height of race crisis in Mississippi in early 1960's.

Challenge: Petitions to deny filed by United Church of Christ and black leaders.

Issues: Fairness Doctrine, access, misrepresentation to FCC--all primarily re coverage of racial crisis and issues of race.

History: (1) May 1965. FCC grants a probationary one year renewal; disallows church from participating in proceeding.

(2) March 1966. D.C. Court rules that FCC must allow church to participate.

(3) June 1968. FCC allows church to participate, but grants renewal nevertheless.

(4) June 1969. D.C. Court overturns FCC, ruling that WLBT did not live up to Fairness Doctrine, was discriminatory in providing access; orders FCC to invite competing applications (and to consider them along with WLBT's).

(5) Consideration of applications is apparently still in process; station is being operated under temporary authorization to one of the new applicants.

OTP Bill: Outcome could be same.

Note: (1) Involvement of court here is most significant in area of legal standing, which is not dealt with in OTP Bill.

(2) Misrepresentation issue would be same under OTP Bill, since it would go to question of applicant's character qualifications.

WLBT - Cites

-- 5 RR 2d 205 (5/20/65) renewal granted for one year only.

-- 7 RR 2d 2001 (3/25/66 DC Court of Appeals orders Commission to grant standing to church.

-- 7 RR 2d 445 (5/26/66) renewal application designated for hearing.

-- 11 RR 2d 457 (10/17/67) initial decision grants renewal.

-- 13 RR 2d 769 (6/28/68) FCC affirms initial decision, grants renewal.

-- 16 RR 2d 2095 (6/20/69) DC Court of Appeals vacates FCC grant of license, remands to FCC to invite completing applications (to be considered along with LBT's in comparative hearing).

-- 18 RR 2d 274 (2/2/70) FCC denies WLBT petition for reconsideration.

-- 20 RR 2d 167 (9/8/70) FCC grants interim authority to a different applicant (Communications Improvement, Inc.).

-- 22 RR 2d 377 (7/7/71) character issue against civic added.

KAYE--KAYE Broadcasters, Inc.

KAYE:	Located in Puyallup, Washington
Challenge:	Petition to deny filed by the Anti-Defamation League, local community groups; numerous complaints from diverse groups concerning personal attacks.
Issues:	FD, personal attack rules, ascertainment, past and proposed programming, truthfulness in communications with FCC.
History:	(1) July 1970. Renewal application set for hearing.
	(2) June 1971. Hearing examiner recommends denial of renewal application.
	(3) April 1972. FCC hears oral argument.
	(4) December 1972. Hearing examiner dismissed application for failure to prosecute. Appeal pending.
OTP Bill:	Outcome could be same.

KAYE

--25 FCC 2d 96 (7/30/70). Designated for hearing.

--20 RR 2d 639 (11/6/70). Burden of proof placed on KAYE

-- (6/1/71). Initial decision recommending denial

-- (5/2/72). Remanded by FCC to examiner for rebuttal.

--24 RR 2d 772 (6/27/72). Petition to disqualify hearing examiner denied.

WQAD--Moline Television Corporation (MTC)

WQAD: Channel 8 in Moline, Illinois; an ABC affiliate. MTC won original license, in a hotly debated comparative hearing commenced in 1958 and terminated in 1962. Has always been in trouble since then--on ascertainment, misrepresentation to the FCC, and on claim of attempting to use license solely for resale purposes (trafficking).

Challenge: Competing application filed by Community Telecasting Corporation (CTC).

Issues: Misrepresentation as to programming and participation of principals, financial qualifications, trafficking.

History: (1) June 1958. MTC and CTC, among others apply for Channel 8, comparative hearing is set

(2) April 1960. Hearing examiner recommends award to CTC

(3) May 1962. FCC reverses examiner, awards license to MTC

(4) January 1968. CTC challenges MTC's renewal

(5) February 1969. Hearing examiner recommends renewal

(6) August 1971. FCC affirms examiner, awards renewal to MTC on grounds that meritorious local programming overcome deficiencies in promise v. performance.

OTP Bill: Outcome could be same. Bill makes no change in ability of FCC to make "promise v. performance" test, or to judge applicant's financial and character qualifications.

WQAD

--11 FCC 2d 592 (1/31/68). Renewal and competing application designated for hearing. Summary of chronology.

-- (2/20/69). Initial decision in favor of Moline.

--22 RR 2d 745 (8/20/71). FCC grants renewal to Moline.

WMAL-TV--Evening Star Broadcasting Company

WMAL: Channel 7 in D.C.; ABC affiliate. Licensee Evening Star Broadcasting (ESB) also owns newspaper, AM and FM in Washington, an AM/TV in Lynchburg, and a TV in Charleston, South Carolina.

Challenge: Petition to deny filed by 16 D.C. community leaders, mostly black.

Issues: Ascertainment, misrepresentation, adequacy of programming for black community, employment discrimination, concentration of control.

History: (1) September 1969. Renewal of term beginning October 1, 1969 challenged

(2) February 1971. FCC considers renewal application and petition to deny under procedure set out in §309(d) and (e) and rules that no material question of fact is presented, that therefore no hearing is required, and renews the license

(3) June 1972. D.C. Court of Appeals, in Stone v. FCC affirms the FCC ruling

OTP Bill: Same potential result, assuming that employment and concentration issues are reduced to rules.

Note: (1) One big issue in this case was the definition of WMAL's "service area." Petitioners wanted it confined to 70% black inner city, which would have significant effects on programming and employment. FCC, supported by court, ruled that service area included white suburbs. This issue not included in OTP Bill; would be up to FCC and courts.

(2) Another big issue in case was sufficiency of petitioner to deny allegations--i.e., whether they put into controversy a "material question of fact" which could only be resolved in a hearing. In effect, this goes to the ease or

difficulty with which a petitioner can force a licensee to a costly and time-consuming hearing simply by putting down charges on paper. The question of sufficiency of allegations is not dealt with by the OTP Bill, which retains the exact language of the current Act. These FCC and court rulings would therefore be unchanged.

WMAL

--19 RR 2d 1072 (8/17/70). Amendment of application allowed

--20 RR 2d 1311 (2/5/71). Petition to deny dismissed, renewal granted

--24 RR 2d 2105 (6/30/72). In Stone v. FCC, D.C. Court of Appeals affirms FCC

--25 RR 2d 2003 (9/1/72). Court of Appeals ruling on reconsideration

KHJ-TV - RKO General

KHJ: In L.A. RKO is a multiple owner of licenses in L.A., Washington, Boston, and at one time Hartford. RKO is a sub of General Tire. In 1967, Justice charged General and RKO with violating the Sherman Act by engaging in coercive reciprocal dealings. The suit was settled in 1970 by consent decree.

Challenge: Competing application filed by Fidelity Television, Inc.

Issues: Concentration of control.

History: (1) June 1966. FCC designates renewal application for comparative hearing.

(2) March 1967. U.S. files anti-trust suit.

(3) August 1969. Hearing examiner recommends Fidelity.

(4) Anti-trust suit settled.

(5) October 1971. FCC holds oral argument.

(6) Currently case is still pending.

OTP Bill: RKO would have to be adjudged unqualified for renewal before Fidelity could be considered. Issues of RKO's character qualifications could certainly be considered under OTP Bill; specific problems emanating from anti-competitive behavior might if set down in rules. Consequently, outcome could be similar.

KHJ

--22 RR wd 600 (8/2/71) procedural

--22 RR 2d 796 (9/20/71) d.o.

--22 RR 2d 1051 (9/28/71) d.o.

-- (10/12/71) oral argument held

WXUR--Brandywine--Main Line Radio, Inc.

WXUR: AM/FM combination, only broadcast station in Media, Pennsylvania. Operated by Faith Theological Seminary, of which Carl McIntire is President.

Challenge: 1966 renewal challenged in a joint petition to deny by 19 groups (labor, church, civic). Investigation requested by five others, including Pennsylvania House of Representatives.

Issues: Violation of personal attack rules, misrepresentation to FCC in original application to obtain license in transfer from previous owner.

History: (1) December 1968. FCC Hearing Examiner found in favor of WXUR

(2) July 1970. FCC reverses Hearing Examiner on grounds that WXUR violated Fairness Doctrine

(3) September 1972. D.C. Court of Appeals in a 2-1 decision upholds Commission. Bazelon dissents on grounds that FD in the instant case may have decreased, rather than increased, number of voices on air.

OTP Bill: Outcome could be same.

Note: (1) Attached correspondence between CTW and McIntire

(2) Emphasize misrepresentation aspect of case rather than fairness aspect. OTP Bill retains misrepresentation issue, which goes to question of applicant's character qualifications.

WXUR--Cites

--4 RR 2d 697 (3/17/65) transfer to Seminary approved

--9 RR 2d 126 (/67) renewal application designated for hearing on 8 issues

--14 RR 2d 1051 (12/13/68) initial decision favoring WXUR

--19 RR 2d 433 (7/7/70) FCC reverses initial decision

--21 RR 2d 22 (2/11/71) FCC denies WXUR petition for reconsideration

--25 RR 2d 2011 (9/25/72) D.C. Court of Appeals affirms FCC

INTERNATIONAL COUNCIL
OF CHRISTIAN CHURCHES

of God, and for the testimony of Jesus Christ." Rev. 1:9

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EXECUTIVE SECRETARIAT

October 24, 1972

President Richard M. Nixon
The White House
Washington, D. C.

IF AND WHEN RECEIVED ITEM WI
FORWARDED TO YOUR OFFICE WITH
COPY OF THIS LETTER.

MAIL ROOM

Dear Mr. Nixon:

You were in Philadelphia, at Independence Hall, last Friday, and so was Congressman John Schmitz of the American Party, who was at a dinner that evening. Here in Philadelphia, the radio station which carries many of our religious and Christian programs has been ordered off the air. A group of liberals in our area, headed by the Greater Philadelphia Council of Churches, which includes the various church groups with which we have had an issue through these years, complained to the Federal Communications Commission against the station. My own church here in Collingswood, the Bible Presbyterian Church, separated from these groups years ago. Here, on the religious level, these other groups have virtual monopoly of all the radio time made available to religion, and no stations in the area were willing to carry our type of programs. Faith Theological Seminary, of which I am the chairman of the Board, purchased WYUR so that these programs could be aired and the public could hear that which they were currently denied. These groups, therefore, then objected, and at the time of the station's renewal they alleged that the station was not keeping the Fairness Doctrine and asked that its license not be renewed. The Boardcast Bureau of the FCC joined them in this request. A hearing was held and an Examiner, provided by the FCC, spent 14 months on the case. His 116-page decision gave the decision to the station.

Then the FCC in a unanimous action headed by Dean Birch, whom you had earlier appointed, reversed the entire decision. The station then appealed to the District Court, which on the 25th of September sustained the FCC. Already our religious groups have spent more than $200,000 on the case, and we have been seeking to raise the funds necessary to get the case on up to the Supreme Court. It has been a very difficult task, but our people do love to hear the Gospel and have made tremendous sacrifices.

What is so serious, Mr. President, is that the Fairness Doctrine has become a formula whereby a man's opponents in the religious field can make accusations against him before the Federal Communications Commission, get the station involved in all manner of litigation, which no station of a small nature can afford. The result is that in order to stay clear of the Federal Communications Commission, stations simply will not carry 'objectionable' programs. This is a form of repression and suppression of religion and speech. The FCC, to which Bureau you appoint members, makes these regulations, administers them, enforces them, becomes the prosecutor and the judge, and we find ourselves under the rule of men and not the rule of law.

The recent decision in the Circuit Court makes it clear that every three years the station will have to give a full account of its observing of what is called the Fairness Doctrine; and also that in the matter of questions of a controversial nature there has to be balanced programming. And since the programs that WXUR has been carrying of a religious nature are now by the Court included in the area of controversial questions of public importance, contrary programs have to be carried, and that free, so there will be very few religious programs left on the air from now on. A formula has been devised whereby, through pressures, station managers will simply drop any responsibilities in areas where there may be questions or troubles with the Federal Communications Commission. This situation already exists.

Last Friday night, Congressman Schmitz electrified his audience when he announced that, if he were President, he would see that religious programs, the Christian Gospel, would not be eliminated from the air in the United States, and that WXUR would remain on the air. The audience responded with an electric enthusiasm. These religious questions go very deep. It is my view, Mr. President, that when a religious minority is suffering repression and the Government is responsible for these restrictions of speech, that the first man in the country who should note it, rebuke it, and promise remedy for it should be our First Citizen, the President. Already I can tell you that there are people who were intending to vote for you just to keep McGovern from being elected but they are switching to Schmitz. I call upon you to make some statement before Election Day. The Fairness Doctrine is so complicated, so involved, with so many subjective and unknown factors, that it is impossible for radio station operators to know what the FCC will do, or what may be the mind of the FCC. Here is a case where their own Examiner, after 14 months, gave the decision to the station, yet the FCC unanimously reversed it. This difference was within the FCC itself. The Examiner turned out to be in favor of the station; the Broadcast Bureau was a prosecutor of the station; and the FCC itself reversed it all. The consequences are that religion is being restricted and suppressed, freedom of speech is being denied. I am enclosing the last three issues of our own paper, which give more of the details as they have been reported to our people.

You have our earnest prayers. The burdens you bear are more than any human can stand. But I do appeal to you as our President to make a clear and plain statement to the whole country. Our Christian people are sacrificing. Many of them have been weeping. They do not want to see the Gospel put off the air and programs which they love to hear denied them because there are elements in the community that do not like them and have an instrument which they can use to silence a station.

Very truly yours,

Carl McIntire

cm.h
encls.

NOV 15 1972

The Reverend Carl McIntire
International Council of
Christian Churches
756 Haddon Avenue
Collingswood, New Jersey 08108

Dear Mr. McIntire:

The President has asked me to reply to your letter of October 24, 1972, in which you raise several questions concerning application of the Fairness Doctrine to Station WYUR in Philadelphia. The President has long been concerned with many of the problems that broadcast licensees are experiencing with the growth of the FCC's Fairness Doctrine. As you point out, the Doctrine has many flaws: it is highly subjective, works financial and administrative hardship on small stations, contributes to an environment of uncertainty and instability, and fosters conditions under which there is a disincentive to engage in controversial programming.

We have urged that the FCC make a complete review of its practice in this area, and modify the Fairness Doctrine so as to correct as many flaws as possible. I am enclosing a number of speeches on this subject in which these views are set out in greater detail.

You can be sure that this Administration will do all in its power to preserve and strengthen free, robust, and vigorous broadcasting--including religious broadcasting--and will continue to press for the minimum government controls over the electronic media.

Sincerely,

Clay T. Whitehead

Enclosures

DO Records
DO Chron
GC Subject
GC Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 22, 1972

MEMORANDUM FOR: CLAY T. WHITEHEAD

FROM: JOHN McLAUGHLIN

SUBJECT: Attached Letter from Carl McIntire

Dr. McIntire requests a meeting with the President, and discusses WXUR's treatment by the FCC.

In responding to this, I can formulate denial language for the proposed visit. May I request that you route this to someone who can draft a few comments regarding the other matter.

Thanks so much for your attention to this.

INTERNATIONAL COUNCIL OF CHRISTIAN CHURCHES

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137
John McLaughlin

November 10, 1972

President Richard M. Nixon
The White House
Washington, D. C.

Dear Mr. Nixon:

May I see you at your convenience? I am enclosing a copy of the decision of the Chief Judge of the U.S. Circuit Court, Judge Bazelon. He is the only one, thus far, who has been able to see the situation that has confronted us in this matter of freedom of religion. He points out that this concerns every broadcaster in the Country.

I am also enclosing a page from the Examiner's decision, which was in favor of WXUR, and that gives the testimony showing how radio stations have restricted the information that the people are permitted to have. The FCC unanimously overruled all of this. We are suffering.

The worst part about it is that the whole Fairness Doctrine, as it is operated here, has given our opponents the weapon which they needed to get us removed from the air. It has cost our church people thousands of dollars. We spent over $200,000 alone, and now we just do not have the money to go to the Supreme Court. The poor and the small religious groups just do not have a chance, Mr. President. The cost is too great. We are doing our best to raise what we can, but this entire Federal Communications Commission is a bureau, Mr. President, which makes the rules, administers them, enforces them, judges them, and then has the power to kill. The suffering has been heaped upon us. Freedom of speech and the free exercise of religion are too precious to us all for the matter to be treated this way.

I believe that you, as our President, not only need to be fully advised of what has happened but also you are in a position to do something, especially in relation to the FCC, directly. I want to see you badly. I trust that you will grant our request.

You have our earnest prayers that God will keep you and guide you.

Yours sincerely,

Carl McIntire

"Now, our policy, since this area has been somewhat nebulous, and I am certain, has been to try to go completely over and eliminate any possibility and just ask people to appear whenever these questions are raised of any kind. That has been my policy on WXUR and on my program."

138. With the codification of the Fairness Doctrine in the rules in August of 1967, the whole matter became much more than an academic question to Dr. McIntire. Many of the stations which had been carrying his program suddenly felt that their licenses might be in jeopardy or that they might be subject to a forfeiture of up to $10,000 for any infraction of the personal attack rules. WXUR placed in evidence a good many letters which McIntire had received from station managers all over the country and which showed the prevailing mood of apprehension. The following selected letters are typical:

WRIB, Providence, Rhode Island, September 20, 1967: (WXUR Ex. 207-7)

"According to the 'fairness doctrine' I must notify all those which are attacked on your program or any other, within 7 days, following the broadcast, and allow them time in which to answer charges.

"Failure to comply with the above is subject to a $10,000 fine.

"In order to stay away from what I consider unnecessary trouble, I must ask that you refrain from mentioning names on all future broadcasts."

WMEN, Tallahassee, Florida, September 21, 1967: (WXUR Ex. 207-8)

"Cancel shipment of tapes to WMEN Radio here in Tallahassee. We are off the air due to a change in station ownership. The new owners have stated that your program does not fit their type of broadcasting.

"I am trying to get the program on one of the other stations, but it seems that the management is frightened about the new doctrine of the FCC, in that any party that is criticized in a broadcast must be notified two weeks in advance. These people here are afraid to do anything that might upset the FCC. The stations are aware of your popularity here, and realize that the program would be an asset, but I am yet unable to get a commitment for radio time."

WUNS, Lewisburg, Pennsylvania, September 8, 1967: (WXUR Ex. 207-9)

"It is with regret that we at WUNS have to announce the discontinuation of the program 'Twentieth Century Reformation Hour.' Our relationship has continued amiably for nearly six years, and we are sorry to have to terminate your broadcasts.

"However, in view of the fact of the recent FCC ruling, which causes many, many man-hours of work over and above the regular weekly chores of an already understaffed small radio station, we find we have no alternative. The ruling about which we speak, of course, is the one regarding equal time."

139. In an effort to present viewpoints other than his own, Dr. McIntire has invited individuals and representatives of many organizations, offering them time on the 20th Century Hour at no cost to themselves. He has also made it a practice to notify any individual whom he discussed on the air in an abundance of caution, to be sure that he complied with the personal attack portion of the Fairness Doctrine. The list of names is extremely lengthy but the following will be sufficient to indicate the variety of viewpoints and individuals invited: Dr. Eugene Carson Blake, NCC; former FCC Chairman E. William Henry; FCC Chairman Rosel H. Hyde; President Lyndon B. Johnson; Dr. Franklin C. Fry, United Lutheran Church of America; Vice President Hubert H. Humphrey; Reverend Edwar A. Dowey, Princeton Theological Seminary; Alfred Zack, AFL-CIO; Drew Pearson, Syndicated Newspaper Columnist; U. S. Senator Gale McGee; Joshua Eilberg, Majority Leader of the Pennsylvania House of Representatives and principal sponsor of Resolution No. 160 and to other sponsors of the Resolution; Reverend Francis Hines and Reverend Carpenter, Greater Philadelphia Council of Churches; Louis Cassels, United Press International; Wes Gallagher, Manager, Associated Press; Milton Shapp, Democratic candidate for Governor of Pennsylvania; Samuel R. Seeman, Christian Social Relations Department of the Diocese of Pennsylvania; U Thant, Secretary-General, United Nations; Gus Hall, head of U. S. Communist Party; Institute for American Democracy; U. S. Post Office Department; Norman J. Brugher, General Brotherhood Board, Church of the Brethren; John W. Gosnell, Church of the Brethren.

140. It has also been Dr. McIntire's practice to read statements of opponents on his program. Such statements have frequently contained attacks on Dr. McIntire or organizations with which he is sympathetic. (BB Exs. 1-B, page 29; 1-C, page 31; 1-D, pages 20 and 24; and WXUR Ex. 82.) Much of the McIntire correspondence concerning invitations to appear on the 20th Century Hour was placed in evidence but it would be repetitious to quote extensively from it. A typical situation occurred in connection with Mr. Albert J. Zack, Public Relations Director, AFL-CIO. On November 1, 1965, Dr. McIntire wrote to Zack with the information that he had read two issues of certain labor union journals and was reporting certain stories therein to his radio audience. Evidently the articles had made reference to McIntire's religion in a derogatory fashion and McIntire invited Zack to appear on the November 15th program to discuss the question. He said "You will have full freedom and all our stations will be available to you without cost." (WXUR Ex. 62) Zack replied, declining the invitation and concluding, in part, as follows: (WXUR Ex. 62a)

> "Day after day, program after program, you expound a point of view which is not only contrary to mine, and to that of most Americans, but which grossly offends the basic concepts of Christian ethics. You now propose to set everything right by asking me to come to Collingswood and speak in reply to anything you may say concerning me.
>
> "It simply will not do, Dr. McIntire. This not only does not meet the legal definition of 'fairness'; it does not meet the far more significant standards set by the conscience of men."

5 DEC 1972

MEMORANDUM FOR

Mr. John McLaughlin
The White House

Mr. Whitehead asked me to respond to your memo concerning Dr. McIntire's letter.

On November 15, we replied to a previous letter Dr. McIntire sent to the President and discussed the issue of WXUR's treatment by the FCC. A copy of the letter is attached.

I think your response to the present letter should be along the same general lines, stressing our recognition of the defects in the Fairness Doctrine, and our stated position in favor of revising it to allow more freedom of expression and less government involvement with programming decisions made by the broadcaster. You might find our November 15 letter useful in formulating specific language. I would not get involved in the merits of the WXUR case, since it is still pending in the courts.

Signed

Henry Goldberg
Acting General Counsel

Attachment

DO Chron
DO Records
Mr. Whitehead
Eva ✓
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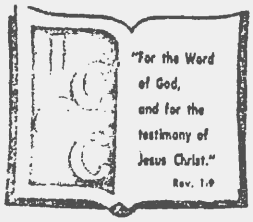
INTERNATIONAL COUNCIL OF CHRISTIAN CHURCHES



756 HADDON AVENUE, COLLINGSWOOD, N. J. 08108, PHONE (609) 858-0700 • FREDERIKSPLEIN 24, AMSTERDAM-2, THE NETHERLANDS PHONE 248271

Cable addresses: INTCOUNCIL, COLLINGSWOOD • INTCOUNCIL, AMSTERDAM

President Rev. Carl McIntire, D.D. - Collingswood, N. J. U.S.A.

General Secretary Rev. J. C. Maris - Amsterdam-2, The Netherlands

November 28, 1972

Mr. Clay T. Whitehead, Director
Office of Telecommunications Policy
Executive Office of the President
Washington, D.C. 20504

Dear Mr. Whitehead:

Thank you for your letter of November 15 which came while I was in the Far East. If there is sentiment amongst you such as you indicate here, why can't the President take care of this in the reshuffling of his administration?

Enclosed is a clipping that has just reached me. We're too poor to go to the Supreme Court. The little man doesn't have much of a chance any more. Our efforts to get assistance from NBC and the major interests have been unsuccessful. You will be interested in the enclosed from NBC. ?

The question, Mr. Whitehead, basically is political. For us to have had the Examiner give us the decision after 14 months, and then for a unanimous reversal by the Commission just didn't happen. If the Administration is going to do all in its power to preserve freedom, I need more evidence than words and so does our constituency. It is really the free exercise of religion which is at stake and already gospel programs have been eliminated all over the country. We have suffered now for seven years.

Judge Bazelon's opinion should be listened to. The injustice of two judges accusing a religious institution of fraud when even the FCC did not do that, and when there was no evidence of fraudulent intent, and the Examiner recognized this, means that there must be tremendous pressures to silence our voice in this country. Such aggravated injustice plus the repression of a religious minority surely ought to speak to somebody. The President should take this matter in hand immediately and it is our prayer that he will do it.

Very truly yours

Carl McIntire

rt

FCC Head Hints at Future 'Deregulation'

SAN ANTONIO (AP) — The Federal Communications Commission is serious about "re-regulation" which would cast aside some rules to which broadcasters are now bound, the chairman of the FCC said Tuesday.

"It excites a lot of people that we are going to regulate ourselves out of business," said Dean Burch before a meeting of the National Association of Broadcasters.

Burch said such complete optimism may not be warranted.

But he added "a step in the right direction" is shown by the fact that sofe of the FCC personnel are "excited" about regulation, a move which presumably would cost them their jobs someday if it were successful.

Re-regulation, or "deregulation," as Burch once referred to it, is a process in which the FCC is re-evaluating and possibly may discard some of the rules which control broadcasting.

Burch said FCC staffers are asking if some rules do not just create "paper shuffling."

Burch said of one long-standing rule that "nothing would excite" him more than to drop the Fairness Doctrine in a particular area for three years, as an experiment.

He quoted a recent opinion by a Washington, D.C., federal appeals judge, who Burch described as a "liberal."

The judge, said Burch, now thinks the Fairness Doctrine did not "increase democracy" in the case of the Rev. Carl McIntyre, but rather "stifled it."

The judge accused the FCC and the courts of killing "gnats with a sledgehammer" when they used the Fairness Doctrine to take away the license of McIntyre's WXUR AM-FM in Media, Pa.

The Fairness Doctrine was intended to give a variety of viewpoints adequate access to airwaves, meaning broadcasters are required "in the public interest" to give time in their programming schedule to all such viewpoints.

Burch noted the McIntyre license denial was upheld and now is on its way to the U.S. Supreme Court with claims being made that free speech provisions of the U.S. Constitution have been violated.

CBS Seeks Restrainer On Mass Picketing

NEW YORK (AP) — The Columbia Broadcasting System applied in state Supreme Court in Manhattan Tuesday for a restrainer to limit picketing and bar intimidation of working employes in a strike of engineers, technicians and cameramen that began Nov. 3.

DEC 26 1972

The Reverend Carl McIntire
International Council of
Christian Churches
756 Haddon Avenue
Collingswood, New Jersey 08108

Dear Mr. McIntire:

Thank you for your letter of November 28, 1972.

You raised the possibility of the President taking care of certain of the current problems of the broadcasting industry by reshuffling his Administration. I deeply appreciate your concern for freedom of expression in broadcasting, but the problem is a more fundamental and complex one, and not solvable by a reshuffling. It derives from the underlying structure of the broadcasting industry and the system of regulation that has grown up around it. To improve broadcasting we must modify this underlying structure.

Last Monday I proposed such a modification. I submitted a bill for clearance through the Executive Branch which would provide new criteria and procedures for license renewals. Under the terms of the proposed bill, an application for renewal would be granted if the applicant met the various statutory qualifications and if, in addition, it was responsive to community needs and interests and provided a reasonable opportunity for the discussion of conflicting views on important public issues. The bill is designed to narrow the focus of renewal proceedings before the FCC, and to place more responsibility and autonomy in the hands of the local broadcaster.

I think this will give you and your constituency ample assurance that this Administration's commitment to freedom of expression goes beyond words.

Sincerely,

Clay T. Whitehead

DO Records
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GC Subject
GC Chron
Mr. Whitehead
Eva
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WHDH

- 1969 FCC transferred channel 5, Boston, from WHDH, Inc., subsidiary of Boston Herald-Traveler, to Boston Broadcasters, Inc., following 15 years of FCC and court proceedings.

- Decision interpreted as setting aside the rule in Hearst Radio (WBAL) (1951)-- that licensee's past performance be given weight at renewal-- for a standard giving weight to a performance record only "if it exceeds the bounds of average performance".

- On reconsideration FCC spoke of WHDH case as sui generis, unique, complicated by licensee's history of ex parte contacts, etc.; local media concentration not stated as basis for decision. WHDH's operating authority ceased March 19, 1972.

Result under OTP bill:

- WHDH probably would not have lost its license, but difficult to be sure due to peculiarity of facts in case.

History

- 1954-- 4 applications filed for channel 5, Boston.

- 1957-- FCC granted WHDH construction permit, station went on air that year.

- 1958-- D.C. Court of Appeals: Massachusetts Bay Telecasters v. FCC -- orders FCC to reconsider 1957 action in light of alleged ex parte contacts between WHDH principal (Robert Choate) and FCC Chairman. Supreme Court declines to review case.

- 1960-- FCC confirms WHDH's temporary operating authority but reopens comparative hearing into intial CP grant.

- 1962-- FCC grants second CP to WHDH, but operating authority for only 4 months.

- 1963-- WHDH renewal of operating authority designated for comparative hearing.

° 1964-- D.C. Court of Appeals: Greater Boston Television Corp. v. FCC) -- orders the FCC to take into account the death of WHDH principal accused of ex parte contacts, Robert Choate.

° 1966-- FCC hearing examiner recommends WHDH renewal. [record in case was closed prior to 1965 Policy Statement on comparative renewal procedures]

° 1969-- FCC reverses hearing examiner, in part, for not following 1965 Policy Statement. [Relevant portions, highlighted are attached]
vote: Bartley with Wadsworth (majority opinion) with Johnson concurring.
Three commissioners not participating (Hyde,Cox,& Rex Lee)
Robert E. Lee, dissenting.

° 1969-- FCC, on rehearing , affirms, but states: "unique events and procedures ... place WHDH in a substantially different posture from the conventional applicant for renewal..." , and tries to limit case to one involving ex parte matters ("inroads made by WHDH upon the rules governing fair and orderly adjudication")

° 1970-- D.C. Court of Appeals: Greater Boston Television Corp. v. FCC ["Greater Boston II"]-- affirms FCC.

° 1971-- FCC authorizes WHDH to continue operation pending outcome of various appeals.

° June,1971 Supreme Court denied WHDH's appeal, and reaffirmed in October.

° January,1972-- FCC orders WHDH to cease operating March 19, 1972: Burch concurs, but feels an "unconscionable injustice" has been done [Burch concurring statement attached].

owned, civically active opponents, each integrated to a different degree but more than it is, and proposing managerial direction by fairly experienced persons, WHDH's prognosis would be poor unless it could rely for a clincher on its operating record unabated by any substantial "character" or other defects.

With regard to WHDH's past broadcast record, Examiner Sharfman concluded ultimately that as a whole such record is favorable. The superiority of WHDH's claims to renewal against those of its competitors for initial authorization, the examiner stated, rests on a basis of achievement, theirs on promises, often glittering, but of relatively uncertain and unestablished validity.

18. In our judgment, the examiner's approach to this proceeding places an extraordinary and improper burden upon new applicants who wish to demonstrate that their proposals, when considered on a comparative basis, would better serve the public interest. In fairness to the examiner, it should be pointed out that he followed what he understood to be the Commission's policy in proceedings of this nature, as expressed in *Hearst Radio, Inc.* (*WBAL*), 6 R.R. 994 (1951), and *Wabash Valley Broadcasting Corporation* (*WTHI-TV*), 35 FCC 677, 1 R.R. 2d 573 (1963). Thus, in "Hearst" the determining factor in the Commission's decision was "the clear advantage of continuing the established and excellent service * * * [of the existing station] when compared to the risks attendant on the execution of the proposed programing of * * * [the new applicant] excellent though the proposal may be." The Commission also gave serious consideration to the high degree of probability of continuation of existing desirable performance as against paper proposals which, on the basis of that record, the Commission was not convinced could be fulfilled. "Wabash" stands for essentially the same propositions.

19. With the experience gained from deciding comparative proceedings in the years subsequent to both the "Hearst" and "Wabash" cases, we determined in 1965 that the issuance of a policy statement on comparative broadcast hearings would serve a significant purpose as a distillation of our accumulated experience. As noted earlier herein, the policy statement is applicable to this proceeding. This being so, a different approach from that formerly employed is required when we consider a past broadcast record, whether that record relates to a new applicant with some past broadcast experience, or to a renewal applicant. That factor is of substantial importance in ascertaining which of several applicants offers the best practicable service to the public, which is one of the two primary objectives toward which the comparative process is directed. As the policy statement indicates, a past record within the bounds of average performance will be disregarded, since average future performance is expected; and emphasis will be given to records which, because they are either quite good or very poor, give some indication of unusual performance in the future. Thus, while a renewal applicant must literally run on his record and such record is the best indication of its future performance,[11] that record is meaningful in the comparative context only if it exceeds the bounds of average performance. We believe that this approach is sound,

[11] *Office of Communication of the United Church of Christ v. Federal Communications Commission*, 123 U.S. App. D.C. 328, 359 F. 2d 994, 7 R.R. 2d 2001 (1966).

for otherwise new applicants competing with a renewal applicant would be placed at a disadvantage if the renewal applicant entered the contest with a built-in lead arising from the fact that it has a record as an operating station. More importantly, the public interest is better served when the foundations for determining the best practicable service, as between a renewal and new applicant, are more nearly equal at their outset.

A. *Past Broadcast Record*

20. As the policy statement states, past records are considered to determine whether the record shows: (i) unusual attention to the public's needs and interests, such as special sensitivity to an area's changing needs through flexibility of local programs designed to meet those needs, or (ii) either a failure to meet the public's needs and interests or a significant failure to carry out representations made to the Commission. In the latter connection, the Commission stated that the fact that such representaions have been carried out does not lead to an affirmative preference for the applicant, since the Commission expects, as a matter of course, that a licensee will carry out representations made to the Commission.

21. Considering the record of WHDH–TV in this light, it is clear from the examiner's findings of fact that the only valid conclusion which can be reached is that the record is one within the bounds of average performance. In short, WHDH–TV's record does not demonstrate unusual attention to the public's needs or interests. This determination is also consistent with the examiner's conclusion that as a whole the record of WHDH–TV is favorable. Yet, we also agree with the examiner that the quality of this overall performance is lessened to some degree by WHDH's failure, on occasion, to provide for the discussion of certain controversial problems of local interest, and by its failure to editorialize.

22. Charles River and BBI assert in their exceptions that WHDH is to be charged with a failure to match performance with promise because many of the programs proposed by it when it first submitted a non-network proposal were not carried when it revised its entire program schedule so as to accommodate its affiliation with a network, shortly after the grant of its application for construction permit in 1957. As the examiner's findings indicate, few programs were retained from the original program proposal, and changes were made in these to reflect the network operation. However, we agree with the examiner's disposition of this matter. As he stated, when WHDH received its original award it did not receive a preference for either its program policies or its proposed program service. At the time of the original grant in 1957, the Commission knew of WHDH's possible network operation, and when WHDH filed its application for license in late 1957, it advised the Commission that it was going to be a network affiliate and carry network programs. It filed no new program schedule with the license application, nor was it requested to do so. Thus, as the examiner held, the mere fact of departure from the particulars of its non-network schedule proposals, required as it was by the practicalities of network operation, cannot be held against WHDH. Indeed, this

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record does not present a clear opportunity to compare WHDH's promises with its performance inasmuch as the record does not contain a program proposal, based upon network affiliation, which can be compared with the renewal showings.

23. In view of the foregoing, the past broadcast record of WHDH will not enter into the comparative evaluation.

24. The past broadcast record compiled by Mr. Jones of Charles River is available for consideration inasmuch as he has an ownership interest in Charles River and is the majority stockholder (as well as the president, treasurer, general manager and a director) of Charles River Broadcasting Co. which is the licensee of stations WCRB–AM and FM in Waltham, Mass. Although that licensee wholly owns the stock of another corporation which is the licensee of an FM station (WCRQ–FM) in Providence, R.I., no findings were made with regard to the record of the latter station, and no exceptions were taken to this omission.

25. Based upon his extensive findings in this connection, the examiner concluded that "WCRB is preeminently a 'good music' station—and its record in its specialty is excellent—with considerable news and some other non-musical programs. It is and thinks of itself as a regional station, but pays some attention to Waltham, its location." While WCRB's record in its specialty may be excellent, this characterization is not the same as saying that on an overall evaluation of its record such record is unusually good because it shows particular attention to the public's needs and interests, such as special sensitivity to an area's changing needs through flexibility of local programs designed to meet those needs. This latter consideration is the one which, under the policy statement, takes a past record out of the bounds of average performance. Viewed in this light, we think that it is as reasonable to conclude from the examiner's findings that WCRB's past record is only within the bounds of average performance. While WCRB as a regional station has an obligation to meet the needs generally of its entire service area, it should at the same time endeavor to meet the needs of the community of its location. This obligation may increase when, as here, the stations are the only ones assigned to the community. The examiner's findings regarding the past record of WCRB warrant the conclusion that WCRB's past record does not demonstrate unusual attention to the public's needs and interests, particularly those of the city of Waltham. Thus, although a listener survey was conducted, in keeping with WCRB's view that its service area is larger than just Waltham, that survey was not classified to segregate the responses of Waltham residents. Nor was any particular class of Waltham residents contacted in a formal survey which was conducted, except for some Waltham ministers regarding religious programs. In addition, the findings show that little time is devoted to discussion and talks programing, and that no time is devoted to agricultural programing. Moreover, in its publicity WCRB identifies itself with Boston and only incidentally with Waltham. The foregoing findings buttress our conclusion that WCRB's past record is within the range of average performance only.

26. In view of the foregoing, the past broadcast record of Mr. Jones will not enter into the comparitive evaluation.

13 R.R. 507). On the second round, in light of certain changed circumstances, I cast my vote for WHDH, Inc. (see 33 FCC 449, 24 R.R. 255). This is now the third round and it is no less difficult for me to choose among these competing applicants.

In view of my previous participation and finally the fact that my vote is not essential to resolution of the matter, I have simply abstained.

DISSENTING STATEMENT OF COMMISSIONER ROBERT E. LEE

I dissent to the grant of a construction permit to Boston Broadcasters, Inc., for channel 5 in Boston and vote to renew the application of WHDH, Inc., for this channel. This is a comparative proceeding between a renewal applicant and three new competing applicants. My major disagreement with the majority is the basis for comparing these four applications. This comparative evaluation is likewise the basic reason assigned by the majority for disagreeing with the Hearing Examiner's conclusion that WHDH, Inc., should be preferred.

The Commission's *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 5 R.R. 2d 1901, specifically holds that such policy is to apply to new applications and "not with the somewhat different problems raised where an applicant is contesting with a licensee seeking renewal of license." Chairman Hyde summed up the difficulties in applying this policy to renewals and competing applicants in his dissent to the *Policy Statement* as follows:

> * * * The filing of a new application—organized accordingly to formula—to challenge a renewal applicant could lead to a facile but in many instances unfair and arbitrary decisional process. Is the Commission now ready to read out established broadcasters, not locally owned, but otherwise without blemish in favor of the locally-owned applicants? Is the Commission now ready to read out established broadcasters who are without blemish, except that they utilize competent personnel who do not have an ownership interest, in favor of applicants who propose to operate the facilities personally? Is the Commission ready to accept a new applicant formed to meet this preconceived mold in preference to an existing broadcaster who does not fit into such mold regardless of other circumstances?

I reluctantly concurred in the policy statement and stated then, and still believe, that the preferred applicant could be one with newspaper and CATV interests. For this reason, I specifically reserved my right as to the weight to be assigned to the various criteria in a given case. This is such a case. Subsequent decisions of the Commission [1] have further defined the policy with respect to renewals versus competing applications but only with respect to the admissibility of evidence pursuant to the policy but not the weight to be afforded such evidence. The majority here holds in effect that the weight to be afforded the comparative factors in a renewal application is the same as a new application. I believe that the weight to be given such evidence is substantially reduced in view of the renewal applicant's existing track record. To hold otherwise would permit a new applicant to submit a "blue sky" proposal tailor made to secure every comparative advantage while the existing licensee must reap the demerits of hand-to-hand

[1] *Seven (7) League Productions, Inc.*, 1 FCC 2d 1597 (1965) and *RKO General, Inc.* (KHJ–TV), FCC 66–503.

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I support, in principle, the polic
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WHDH, Inc. has a renewal of
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MISSIONER ROBERT E. LEE

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combat in the business world, and the community it serves, in which it is virtually impossible to operate without error or complaint, if for no other reason than there are insufficient hours in the broadcast day with which to satisfy all the desires of the public. A real question is raised in my mind whether the new applicant in this situation is seeking to satisfy the needs of the community or the policy of the Commission.

One further comment is required on a renewal applicant which is unlike the case where all applicants are initially seeking an outlet. Vast expenditures for facilities and goodwill have been made which it would be inequitable to declare forfeited unless the licensee has operated against the public interest.

As with the majority, I too accept the Hearing Examiner's findings of fact. In addition, with several minor exceptions, I also accept his conclusions.

The majority assigns comparative decisional significance to the diversification and integration criteria with some minor demerit to WHDH, Inc. for unauthorized transfer of control.

The record shows that all of the WHDH, Inc. stock is owned by the Boston Herald-Traveler Corp. The Herald-Traveler publishes two daily and one Sunday newspaper. Five other newspapers are published in Boston, including the Christian Science Monitor and none of the other newspapers have an ownership interest in an AM, FM or TV station. After the record was closed, the Boston Globe acquired a 50-percent interest [2] in the New Boston Television, Inc., channel 38, in which Kaiser Broadcasting Co. also has a 50-percent interest. WHDH–FM is one of 12 FM stations in Boston and the immediate vicinity. WHDH–AM is one of three 50-kw stations, and 8 other AM stations with power up to 5 kw, which includes 3 daytime-only stations, in Boston and vicinity. Boston has 3 commercial VHF–TV stations, including WHDH–TV, 2 UHF commercial stations [3] and a VHF educational station. The Herald-Traveler's average combined daily circulation was 23 percent of the market and the paper is ranked first in display linage. Herald-Traveler also has a 50-percent ownership of Entron, Inc., which concern manufactures CATV equipment and has substantial ownership in 5 systems all of which are completely removed from the Boston market.

I support, in principle, the policy that an applicant's interest in other mass communications media must be considered in our comparative analysis. The comparative weight to be assigned such evidence drops sharply where a healthy competitive situation exists from a number of other nonaffiliated media in the same market. To hold otherwise would mean that certain categories of applicants (such as newspapers) would be automatically precluded.

WHDH, Inc. has a renewal of license application before us. This license was granted without condition (except for the 4-month period) and, of necessity, was found qualified under all applicable sections of our act and rules. It was further clear that, as a renewal applicant,

[2] This 50-percent interest was further reduced to 20 percent on October 21, 1968 (File No. BTC–5702).
[3] The record reflects one UHF station. Official notice of our files shows 2 UHF stations—WSBK–TV, ch. 38, Boston and WKBG–TV, ch. 56, Cambridge-Boston.

WHDH, Inc. could continue to operate the station until this proceeding is terminated under the Administrative Procedure Act. This being the case, weight must also be given "to the clear advantage of continuing an established and excellent service of the existing station" *Hearst Radio, Inc.* (WBAL), 6 R.R. 994 (1951); *Wabash Valley Broadcasting Corporation* (WTHI–TV), 35 FCC 677, 1 R.R. 2d 573 (1963). The policy statement must be interpreted in the light of these holdings particularly when it is recognized that the policy statement sets forth procedures of a general nature which "cannot dispose of all problems or decide cases in advance."

A similar weighing process must also be applied to the preference the majority awards to BBI on integration. While on paper, BBI shows up better than WHDH, Inc. on integration, this must be weighed in the light of the record which shows that WHDH, Inc. has done an above-average job in the past. This, to me, is a more accurate gage of the future than the theory, which I recognize as valid for new applicants, that an owner-manager who spends full time at the station should provide better public service than the absentee owner or one who devotes only part time to the station.

The majority does find some blemish on the WHDH, Inc., record and other matters are referred to but not resolved. The majority opinion does refer to ex parte contacts but this issue is not resolved. This nevertheless leaves a disparaging connotation as WHDH, Inc. is now in the position of being charged with a serious offense but its guilt or innocence is forever left in limbo. Both Special Examiner Horace Stern and Hearing Examiner Herbert Sharfman have reviewed the issue of alleged WHDH, Inc. ex parte contacts. Hearing Examiner Stern, without reservation, resolved this issue in favor of WHDH, Inc. Hearing Examiner Sharfman concluded that the ex parte matter was no longer a comparative factor. Reference is made to WHDH's failure to editorialize. We have no rule which requires a station to editorialize. Rather this responsibility ultimately devolves upon the individual licensee, *Commission Policy on Programing*, 20 R.R. 1901, FCC 60–970.

The majority has refused to consider the WHDH past broadcast record because there is no clear way to compare promise vs. performance. This is so because the station obtained a network affiliate before it went on the air in 1957 and the network programing was not shown in the application. I have reviewed the programing of WHDH–TV as shown in the record and I find it above average: for example, 22 percent local live programing. However, assuming the WHDH–TV past programing is average, as found by the majority, the new application programing is not found to be above average. In such a case, preference should be given to the known past rather than speculative future promises.

The majority places some significant emphasis on a news scoop of the Herald-Traveler which was not given to WHDH–TV and the fact that in the 1954 hearing Herald-Traveler testified that it would not withhold news from WHDH–TV just because it published a newspaper. The record is also clear that the Herald-Traveler Board of Directors is not a center of de facto or actual control over WHDH, Inc.

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Rather than this incident demonstrating the evil of newspaper-TV station ownership, it could be concluded on this record that the newspaper and TV station, for all operational purposes, were independent of each other.

I agree with the majority in its conclusion that a de facto [4] change of control of WHDH did take place. There was no attempt to mislead or deceive the Commission and this violation is not the type which should be considered either as an absolute or comparative disqualification.

Based on all the above, and the entire record in the proceeding, I find that the weight to be given the facts in this case, which both the majority and this dissent accept, dictate a grant of the renewal to WHDH, Inc.

I am very much afraid that this decision will be widely interpreted as an absolute disqualification for license renewal of a newspaper owned facility in the same market. Competing applications can be anticipated against most of these owners at renewal time.[5]

Channel 5

[In the matter of WHDH, Inc. * * * docket No. 8739, et al.]

Concurring Statement of Commissioner Nicholas Johnson

This case has a long and unfortunate history. We are essentially reconsidering matters that were first addressed by this Commission years before I came. Normally I would not participate in such a case. In this instance, however, my participation is necessary to constitute a working majority for decision. Accordingly, I concur in today's decision.

I feel no passion about the selection of the ultimate winner. As the opinion makes clear, a weighing of the merits of Charles River Civic Television, Inc., and Boston Broadcasters, Inc., is not overwhelming. And, as I have indicated elsewhere, I do not believe the comparative hearing process an especially useful device for disposing of matters of this significance. *Farragut Television Corp.*, 8 FCC 2d 279, 285 (1967).

But this case is significant for other reasons. In America's 11 largest cities there is not a single network-affiliated VHF television station that is independently and locally owned. They are all owned by the networks, multiple station owners, or major local newspapers. The decision to not award channel 5 to the Herald-Traveler is supported by good and sufficient reasons beyond the desire to promote diversity

[4] Both the Hearing Examiner and the majority find that de jure control of WHDH, Inc. was unchanged.

[5] The 81st Congress and the 82d Congress considered a so-called "Newspaper Amendment" to the Communications Act. The then chairman of the FCC indicated at the hearing on this bill that "The principal intent of the section is, of course, to outlaw the possibility of any rule excluding newspaper owners from owning radio stations. There is no objection to this section." (Hearings before Subcommittee of Committee on Foreign and Interstate Commerce on S. 1973, 81st Cong., 1st sess. (1949), pp. 20–21.) The proposed amendment was not adopted because "It should be distinctly understood that in eliminating this section the committee has done so solely because the Commission is now following the procedure which was outlined in the section, has testified that it intends to follow that procedure, and that it is of the opinion that it has no legal or constitutional authority to follow any other procedure. (S. Rept. 751, 81st Cong., 1st sess. 2 (1950).)

January 21, 1972.

CONCURRING STATEMENT OF CHAIRMAN BURCH

Because this case was decided before I came on the Commission, I have not participated in previous actions and would not normally have participated now, at this late stage. However, it is desirable that action be taken by a quorum of four Commissioners (see Section 4(h) of the Communications Act of 1934, as amended), and therefore I have voted. Because this is my first -- and in view of the duration of this administrative Jarndice v. Jarndice hopefully my last -- opportunity to express my views, I shall do so, but only briefly in light of one overriding consideration: I enter the case when the agency no longer has any discretion on the action it can take; all the views have been threshed out before the Courts, and the Court's mandate must be followed. See 402(h) of the Communications Act. Therefore, as part of the quorum, I fully recognize that the action taken today is compelled by the Court's decision.

In the circumstances, it would serve little purpose for me to discuss at length how in my view, the case should have been handled. But I do think that some brief comment would be useful, because we must all learn from the past, and this case can teach us.

First, the very basis of the majority decision appears flawed. The decision, we are now told, turned on the fact of ex parte presentations, and that because of such presentations, WHDH was not to be treated as the usual renewal applicant; this, in turn, resulted in heightened importance of the factor of diversification of media in mass communications. But if the ex parte background were the critical consideration, you would think that the majority opinion would so state, at some point in its lengthy discussion. There is no reference to this crucial point anywhere in the opinion of January 22, 1969. See WHDH, Inc., 16 FCC 2d 1, (1969). Rather, the opinion makes clear that the majority believed it was dealing with the general renewal - new applicant comparative situation, and not some sui generis case. Thus, the discussion (16 FCC 2d at pp. 7-10) concludes that the 1965 Comparative Policy Statement as to new

applicants is generally applicable to the renewal comparative case, and specifically to this case, even though the case began in 1963, and the hearing record was closed before the adoption of the 1965 Policy Statement. And the concurring opinion of one of three members making up the majority trumpets this point. That opinion argues that the law of the decision is generally applicable and is an invitation to challenge media concentration in other cities (see 16 FCC 2d at pp. 27-28 -- see attached quote).

On reconsideration, the Commission again ignored this crucial ex parte point until the very last paragraph (par. 40) of its opinion where it simply recited the prior history and cryptically called the situation "unique." See WHDH, Inc., 17 FCC 2d 856, 872-73 (1969). When one remembers that this is a most valuable and important channel -- and that this proceeding is the culmination of years of litigation -- surely such handling of what is now regarded as the crux of the majority action (i.e., a cryptic, throw-in last paragraph on reconsideration) is wholly deficient.

Diversification was the main factor against WHDH. When one considers the main factor in favor of BBI -- integration of ownership and management (16 FCC 2d at p. 19) -- the opinion is again seriously flawed. This factor does not stand in a vacuum: It is to be related to better service to the public. But in this very case, the majority found that rather being so related, BBI's integrated efforts had led to a local live proposal of 36% that was "insufficiently supported" and could not be credited. Therefore, on the heart of its proposal -- local live service to its public, BBI received "a slight demerit." (16 FCC 2d at p. 16). In this connection, it was further held that the ascertainment efforts of BBI's integrated team had not had "any appreciable effect upon its program proposals" (17 FCC 2d at p. 865).

I simply do not understand how an applicant can be given a major preference on integration -- because he is thus more likely to be attuned to his area's needs -- when in fact the Commission has already found that this very applicant's efforts to serve those needs were not supported, not related to its ascertainment efforts, and deserved a demerit. Further, when

the Commission finds unsupported an applicant's local live proposals, that is no "slight" matter. Such programming is the heart of service to the area, and thus, when it is cut adrift, there is no foundation to the applicant.

I will not go on with further analysis. The foregoing is, I fear, sufficient to make my point. The matters I have raised are not "nit-picking." They are crucial to the decision. They are not nuances of judgment. They represent irrational decision-making. Nor are they buried. They stand out, stark and obvious. That being so, I am puzzled how they passed muster, first with the Commission and later upon review before the Court. Process so rent with glaring error does not commend itself.

Finally, I note that the integration picture does not end with the above, serious at it is. In the last year, a substantial question has been presented concerning BBI's largest stockholder, very significant to its integration showing. Because this is the most recent episode and was the subject of the Court's last opinion, I shall not go into it further. But I cannot help but feel, against the above background, that contrary to the holding of the opinion (Sl. Op. 43) an "unconscionable injustice" has been done here.

D

Revocations and Denials of Renewal, 1934-1969

Station and Location	Revocation (R) or Denial (D)	Principal Allegations	Date of Order	Date of Deletion	Citation	
					FCC Reports	Pike & Fischer
1. KGIX, Las Vegas, Nev.	D	Technical violations.	7-31-34	5-14-35	1 FCC 142	———
2. KPJM, Prescott, Ariz.	D	Technical violations: misrepresentations; failed to appear at hearing.	10-15-35	12-16-35	2 FCC 158	———
3. KGBZ, York, Neb.	D	Financially incapable; false, fraudulent and misleading advertising.	5-21-36	7-28-36	2 FCC 559	———
4. KWEA, Shreveport, La.	D	No evidence in support of application.	7-2-36	8-1-36	3 FCC 124	———
5. KWTN, Watertown, S.D.	D	Unauthorized transfer of control; technical violations.	5-25-38	11-6-39	5 FCC 514	———
6. KGDY, Watertown, S.D.	D	Technical violations.	5-25-38	6-24-38	5 FCC 514	———
7. WHEF, Kosciusko, Miss.	D	No evidence in support of application.	10-25-38	11-14-38	6 FCC 867	———
8. KUMA, Yuma, Ariz.	R	False statements of control.	2-20-39	2-1-40	———	———
9. WSAL, Salisbury, Md.	R	Misrepresentation in application; misrepresentation to Commission.	10-24-39	3-31-40	8 FCC 34	———

10. KGCA, Decorah, Iowa	D	No evidence in support of application; failed to appear at hearing.	11-4-40	11-24-40	8 FCC 273	———
11. KIDW, Lamar, Colo.	D	No evidence in support of application.	9-22-42	9-22-42	9 FCC 157	———
12. WOKO, Albany, N.Y.	D	Misrepresentations to Commission.	3-27-45	11-9-47	11 FCC 1124	3 RR 1061
13. WORL, Boston, Mass.	D	Unauthorized transfer of control.	4-23-47	5-31-49	11 FCC 1057	3 RR 979
14. WWPN, Middlesboro, Ky. (CP only)	R	Misrepresentations to Commission.	10-16-47	2-27-48	12 FCC 686	4 RR 113
15. KGAR & KGAR-FM, Garden City, Kans.	R	Misrepresentation in application.	2-27-48	5-19-49	12 FCC 1090	4 RR 116
16. WJBW, New Orleans, La.	D	Technical violations.	4-22-48	8-14-49	12 FCC 902	3 RR 1887
17. WPBP, Mayaguez, P.R.	R	Technical violations.	12-22-48	5-2-49	———	4 RR 1087
18. WIBK, Knoxville, Tenn.	D	Unauthorized transfer of control; misrepresentations; character qualifications of applicant were in question.	8-10-49	11-17-52	14 FCC 72	4 RR 463
19. KWRZ, Flagstaff, Ariz.	D	Unauthorized transfer of control; terminated operation.	8-18-49	6-22-50	13 FCC 777	5 RR 747
20. KCRO, Englewood, Colo.	R	Misrepresentation to Commission.	10-14-49	8-9-50	15 FCC 11	6 RR 530
21. KWIK, Burbank, Calif.	R	Unauthorized transfer of control; misrepresentation to Commission.	12-14-49	5-15-51	14 FCC 378	5 RR 1050b

Revocations and Denials of Renewal, 1934-1969—Continued

Station and Location	Revocation (R) or Denial (D)	Principal Allegations	Date of Order	Date of Deletion	Citation	
					FCC Reports	Pike & Fischer
22. KXXL, Reno, Nev.	D	Unauthorized transfer of control.	12-27-49	2-28-50	14 FCC 545	5 RR 1206
23. KPAB, Laredo, Tex.	R	Unauthorized transfer of control.	1-26-50	2-14-51	15 FCC 670	6 RR 1137
24. WXLT, Ely, Minn.	R	Unauthorized transfer of control; misrepresentation in application.	5-23-50	3-28-51	15 FCC 800	6 RR 378
25. KFMA, Davenport, Iowa (CP only)	R	Character qualifications.	6-21-50	4-2-51	15 FCC 800	6 RR 433
26. KSFE, Needles, Calif.	D	Terminated operation during hearing.	8-4-50	8-4-50	———	———
27. KENE, Belen, N.M.	D	Failed to present evidence in support of application at hearing.	1-10-51	1-31-51	15 FCC 530	———
28. KALA, Sitka, Alaska	R	Unauthorized discontinuance of broadcast operations.	5-21-52	8-6-52	———	———
29. WSHA-TV, Sharon, Pa. (CP only)	R	Misrepresentations to Commission.	10-27-54	8-31-55	———	———
30. KOTO, Albuquerque, N.M. (CP only)	R	Misrepresentations to Commission; failed to appear at hearing.	6-22-55	11-9-55	25 FCC 742 (footnote)	———
31. KHCD, Clifton, Ariz.	R	Technical violations; unauthorized transfer of control.	7-23-58	1-27-59	———	———

32. KLIQ, Portland, Ore.	D	Unauthorized transfer of control; failed to appear at hearings; abandonment.	4-24-57	5-27-57	22 FCC 921	13 RR 881
33. WGAV, Amsterdam, N.Y. (CP only)	R	Technical violations; character and financial qualifications; censorship of political material.	9-25-57	4-28-59	25 FCC 1387	17 RR 163
34. KAKJ-TV, Reno, Nev. (CP only)	R	Misrepresentation to Commission.	6-3-59	7-7-59	26 FCC 576	16 RR 952
35. KBOM, Bismarck-Mandan, N.D.	R	Unauthorized transfer of control; misrepresentation in application.	11-30-60	3-3-63	33 FCC 893	23 RR 628
36. KLFT, Golden Meadow, La.	R	Technical violations; misrepresentation to Commission.	1-19-61	6-25-62	32 FCC 599	22 RR 237
37. WIOS, Tawas City, Mich.	R	Misrepresentation; character qualifications.	.3-20-61	1-13-62	———	22 RR 801
38. WREA, East Palatka, Fla.	D	Technical violations; improperly prepared application; abandonment.	7-19-61	2-12-62	———	22 RR 619
39. KPSR-FM, Palm Springs, Calif.	R	Unauthorized transfer of control; technical violations; misrepresentations to Commission.	7-19-61	8-16-62	33 FCC 391	23 RR 1179
40. WLOV-FM, Cranston, R.I.	R	Technical violations; misrepresentations to Commission; financial qualifications.	11-1-61	1-30-63	———	24 RR 959

Revocations and Denials of Renewal, 1934-1969—Continued

Station and Location	Revocation (R) or Denial (D)	Principal Allegations	Date of Order	Date of Deletion	Citation	
					FCC Reports	Pike & Fischer
41. WITV-TV, Ft. Lauderdale, Fla.	D	Financial qualifications; failed to appear at hearing.	7-27-61	9-18-61	31 FCC 625	17 RR 303
42. KCPA-FM, Dallas, Tex.	R	Technical violations; failed to appear at hearing; financial qualifications.	2-12-62	6-27-62	———	———
43. WGRC, Green Cove Springs, Fla.	R	Unauthorized transfer of control; failed to appear at hearing.	2-20-62	6-27-62	———	———
44. KCKY, Coolidge, Ariz.	D	Unauthorized transfer of control; technical violations; character qualifications.	2-23-62	12-10-62	33 FCC 855	23 RR 735
45. KCLF, Clifton, Ariz.	D	Unauthorized transfer of control; technical violations; character qualifications.	2-23-62	12-10-62	33 FCC 855	23 RR 735
46. KGLU, Safford, Ariz.	D	Unauthorized transfer of control; technical violations; character	2-23-62	12-10-62	33 FCC 855	23 RR 735

47. KVNC, Winslow, Ariz.	D	Unauthorized transfer of control; technical violations; character qualifications.	2-23-62	12-10-62	33 FCC 855	23 RR 735
48. KZOW, Globe, Ariz.	D	Unauthorized transfer of control; technical violations; character qualifications.	2-23-62	12-10-62	33 FCC 855	23 RR 735
49. KWJB-FM, Globe, Ariz.	D	Unauthorized transfer of control; technical violations; character qualifications.	2-23-62	12-10-62	33 FCC 855	23 RR 735
50. KRLA, Pasadena, Calif.	D	Fraudulent contests; log alterations; unauthorized transfer of control; misrepresentations to Commission.	3-15-62	8-1-64	32 FCC 706	22 RR 699
51. WDKD, Kingstree, S.C.	D	Misrepresentations to Commission; indecent and vulgar material broadcast; overcommercialization (lack of control over programming).	7-25-62	2-1-65	33 FCC 250	23 RR 483
52. KWK, St. Louis, Mo.	R	Fraudulent contests.	5-27-63	3-1-66	34 FCC 1039	25 RR 577
53. WBMT, Black Mountain, N.C.	R	Unauthorized transfer of control; misrepresentations to Commission.	6-26-63	9-1-63	———	25 RR 771

Revocations and Denials of Renewal, 1934-1969—Continued

Station and Location	Revocation (R) or Denial (D)	Principal Allegations	Date of Order	Date of Deletion	Citation	
					FCC Reports	Pike & Fischer
54. WSPN, Saratoga Springs, N.Y.	D	Misrepresentations to Commission; violations of duopoly rule; surrendered authorization.	8-9-63	3-3-64	37 FCC 721	3 RR 2d 671
55. WIXI, Irondale, Ala.	D	Unauthorized transfer of control; misrepresentation to Commission; character qualifications.	9-11-63	10-30-64	35 FCC 331	24 RR 1033
56. WMOZ, Mobile, Ala.	D	Character qualifications; misrepresentation to Commission.	1-29-64	8-3-66	36 FCC 202	1 RR 2d 801
57. WELF-FM, Glen Ellyn, Ill.	R	Abandonment; Commission deleted channel assignment; failed to appear at hearing.	3-11-64	3-11-64	———	2 RR 2d 1695
58. WELG-FM, Elgin, Ill.	R	Abandonment; Commission deleted channel assignment; failed to appear at hearing.	3-11-64	3-11-64	———	2 RR 2d 1695
59. WWIZ, Lorain, Ohio	D	Unauthorized transfer of control; technical violations; misrepresentation	3-31-64	7-14-67	36 FCC 561	2 RR 2d 169

60. WGMA, Hollywood, Fla.	D	Misrepresentations to Commission; character qualifications.	4-17-64.	Later allowed to assign	36 FCC 701	6 RR 2d 973
61. WCLM-FM, Chicago, Ill.	R	Broadcast of horse race information; failure to file ownership reports; departure from promised programming.	9-27-64	8-28-66	37 FCC 379	3 RR 2d 477
62. WHZN, Hazleton, Pa.	D	Character qualifications; misrepresentation.	1-19-65	4-6-65	———	4 RR 2d 322
63. WLEV-TV, Bethlehem, Pa.	D	Abandonment.	6-16-65	8-25-65	———	5 RR 2d 582
64. WBPZ-TV, Lock Haven, Pa.	D	Abandonment.	6-16-65	8-25-65	———	5 RR 2d 582
65. KSHO-TV, Las Vegas, Nev.	D	Unauthorized transfer of control; misrepresentations to Commission.	7-28-65	6-9-67	1 FCC 2d 91	5 RR 2d 811
66. WKSB, Milford, Del.	D	Technical violations; misrepresentations to Commission.	5-5-65	6-20-66	4 FCC 2d 169	———
67. KMRE, Anderson, Calif.	D	Technical violations; misrepresentations to Commission; failed to appear at hearing; unauthorized transfer of control.	6-2-65	9-15-65	———	———

Revocations and Denials of Renewal, 1934-1969—Continued

Station and Location	Revocation (R) or Denial (D)	Principal Allegations	Date of Order	Date of Deletion	Citation	
					FCC Reports	Pike & Fischer
68. KABE, Westwego, La.	D	Unauthorized transfer of control; financial qualifications; misrepresentations to Commission.	6-6-66	6-6-66	1 FCC 2d 361	
69. WSRA, Milton, Fla.	R	Technical violations; fraudulent contest; misrepresentation to Commission.	7-26-67	8-17-67	9 FCC 2d 644	10 RR 2d 970
70. WEKY, Richmond, Ky.	R	Unauthorized transfer of control; double billing; misrepresentations to Commission.	2-8-67	Later allowed to assign	6 FCC 2d 733	9 RR 2d 601
71. WHHL, Holly Hill, S.C.	R	Failure to file financial and ownership reports; misrepresentation to Commission.	5-17-67	7-12-67	8 FCC 2d 244	10 RR 2d 32
72. WPFA, Pensacola, Fla.	R	Character qualifications; misrepresentation to Commission.	5-11-66	Later allowed to assign	36 FCC 202	1 RR 2d 801
73. KSFV-FM, San Fernando, Calif.	R	Unauthorized transfer of control; technical violations	10-27-67	3-28-68	13 FCC 2d 788	13 RR 2d 964

74. WNJR, Newark, N.J.	D	Technical violations; misrepresentations to Commission.	11-26-68	7-20-71	15 FCC 2d 120	14 RR 2d 813
75. WHDH-TV, Boston, Mass.	D	Awarded to competing applicant because of superiority under diversification and integration criteria.	1-22-69	3-19-72	16 FCC 2d 1	15 RR 2d 411
76. KVIN, Vinita, Okla.	D	Misrepresentations to Commission; character qualifications.	4-8-69	4-20-72	32 FCC 2d 501	15 RR 2d 1223
77. KWLG, Wagoner, Okla.	D	Misrepresentations to Commission; technical violations; violations of political broadcast rules.	4-8-69	8-25-72	" " "	15 RR 2d 1223
78. WHMC, Gaithersburg, Md.	D	Misrepresentations to Commission; technical violations.	6-10-69	litigation		16 RR 2d 583
79. WCFV Clifton Forge, Virginia	D	irresponsibility; absentee ownership	5-28-71	7-1-71	29 FCC 2d 822	
80. KDSJ-TV Deadwood, S.D.	D	history of tech. violations	11-1-71	3-6-73	32 FCC 2d 196	
81. KRSD-TV Rapid City, S.D.	D	" " "	11-1-71	3-6-73	32 FCC 2d 196	
82. KDOV Medford, Ore.	D	misrep; hidden ownership; unauth. TC	5-10-72	6-29-72	34 FCC 2d 989	
83. WEBY Milton, Florida	D	viol. fairness doctrine	5-24-72	litigation		
84. WLUX Baton Rouge, Louisiana	D	misrep.	9-20-72	litigation		

MATERIALS AND INFORMATION ON
BROADCAST LICENSE RENEWAL

4. Competing applications filed for broadcast licenses

Fiscal Year	Number Filed
1962	0
1963	1
1964	1
1965	2
1966	2
1967	4
1968	1
1969	12
1970	12
1971	1
1972	9
1973 (to date)	8

5. Petitions to deny filed against applications for renewal of broadcast licenses

Fiscal Year	Number of Petitions	Number of Stations Filed Against
1962	No Record	
1963	"	
1964	"	
1965	"	
1966	"	
1967	2	2
1968	3	3
1969	2	2
1970	15	16
1971	38	84
1972	68	108
1973 (to date)	24	98

GROWTH IN BACKLOGS OF RENEWAL APPLICATIONS

Fiscal Year	Renewal Applications Pending End of Year	Change From Previous Year
62	945	--
63	985	+40
64	1257	+272
65	856	-401
66	964	+108
67	1262	+298
68	981	-281
69	1048	+67
70	1578	+530
71	1334	-244
72	1455	+121
73 (EST)	1648	+193

Average Change From Previous Year: +64

GROWTH IN RENEWAL APPLICATIONS
(AM, FM, TV) DESIGNATED FOR HEARING

Fiscal Year	Disposed Without Hearing	Designated For Hearing	Total	% Designated For Hearing
62	2200	12	2212	.54
63	2180	11	2191	.50
64	2233	7	2240	.31
65	2823	16	2839	.56
66	2566	11	2577	.43
67	2592	5	2597	.19
68	2969	15	2984	.50
69	2806	14	2820	.50
70	2743	13	2756	.47
71	3518	19	3537	.54
72	3128	20	3148	.64
73 (EST)	3432	23	3455	.67
TOTAL	33190	166	33356	.50

E

SUMMARY OF FCC'S PROPOSED RULEMAKING (DOCKET 19153)

I. Notices to the Public.

A. Rationale

The FCC has taken notice that many of the complaints and objections contained in petitions to deny and license challenges concerned conduct of licensees or incidents which occurred in the past -- in some cases as far back as two or three years. The Commission feels that these problems should, as often as possible, be taken up with the licensees when the complaints arise. Community disaffection, in other words, should not simply appear at the time for renewal of the incumbent's license. Many of the problems -- such as hiring or employment practices -- could be brought to the attention of the licensee (and hopefully resolved) during the license period.

In order to ensure that licensees remain attuned to community needs and problems during the licensing period and also to lend as much impetus as possible to community-licensee resolution of problems as they arise (rather than through Commission inquiry), the FCC proposed the following rules:

B. Proposed rules

1. Notices be broadcast to the public by commercial licensees every fifteen days throughout the license period informing them of the public's interest in station performance and of the appropriate manner in which to express their satisfaction or complaints with the licensee's performance.

a. During the five months preceding the broadcast deadline for filing petitions to deny and competing applications, the announcement would have to note that the renewal applications is to be -- or has been -- filed, that the public many inspect a copy and submit comments on the station's performance to the FCC. The present requirement that the notice of the renewal application be published in the newspaper would be ended.

2. All written comments and suggestions received by the licensee concerning operation of the station would be maintained in a local file, available for inspection by the public.

a. Licensees would be required to separate written comments by subject categories to facilitate inspection by members of the public (various subject categories are suggested by the FCC).

II. Revisions in Filing Time Requirements for Renewal Applications, Challenges, and Petitions to Deny.

A. Rationale

Under present practice, there is a cutoff date after which license challenges and petitions to deny cannot be filed. This date is the end of the first day of the last full calendar month of the incumbent licensee's term. Since the renewal application must be filed 90 days before the expiration date of the license, this provides challenging groups 60 days to file their papers.

Prior to June 1969 such petitions could be filed right up to the time of a renewal grant or a designation of the application renewal for a hearing. In June 1969, however, the FCC felt that a cutoff date would provide for more orderly and timely processing of renewal applications. By having a certain date, before the expiration of the renewal period, after which no further challenges or petitions to deny would be accepted, the interests of both the FCC and the incumbent in having a modicum of stability in their operations would be furthered.

Since June 1969, however, the Commission has found that 60 days was apparently not enough time for the challenging groups. Many of the community groups do not have legal counsel, and many members of such groups are employed during daytime hours and can only prepare the necessary papers on a part-time basis.

B. Proposed Rules

1. The time set for filing applications for renewal is set back one more month making it a full four calendar months before expiration. As a result, the cutoff date for filing mutually exclusive license applications and petitions to deny -- based on the present formula of the end of the first day of the last full calendar month of the expiring license term -- would change the deadline for these applications from 60 to 90 days.

2. In the case of late-filed applications for renewal, the cutoff date for filing challenging petitions and petitions to deny will be the 90th day after the FCC gives public notice of acceptance for filing of the application.

3. The present ten days which renewal applicants have to file oppositions to petitions to deny is lengthened to thirty days. Likewise, the present five days for reply to such oppositions by the challenging parties is extended to twenty days after the time for filing the oppositions has expired.

III. Revisions to License Renewal Form.

The revisions proposed in this section would eliminate the present IV-B of the renewal form replacing it with the following:

1. An annual programming report (television only) detailing the amount of time -- both in minutes and percentages of total broadcast time -- that the licensee devoted to news, public affairs, and "other" programming (exclusive of entertainment and sports) during the preceding year. The information would be required on a composite week basis. The report will also require the licensee to disclose the amount of locally-oriented programming as a percentage of all programming as well as a breakdown between entertainment and other types of shows.

2. These annual reports will be available to the public at the FCC. According to the trade press, the agency is also trying to work out a plan for publishing the information each year in a form that, without identifying individual licensees, will rank them in certain programming categories according to the size of the market they serve.

3. Licensees (television only) in addition would also have to compile annually and file with the FCC at renewal time a list of their communities' most significant needs, and of the programs they carried to meet them in each preceding twelve months period. The list would be on public file at the station.

a. Television and radio licensees would continue to be required to ascertain community needs in accordance with the guidelines laid down in the ascertainment primer. Television licensees, however, would not be required to report on the details of their ascertainment process to the FCC; instead they would be asked to certify in their renewal applications that they followed the FCC guidelines in conducting their surveys etc.

F

ANALYSIS OF PENDING LICENSE RENEWAL BILLS

As of March 22, 1972, there were 203 license renewal bills pending before the Congress. The vast majority of these bills fall into two major categories:

I. The bills supported by the National Association of Broadcasters, e.g., Rooney-Broyhill bill;

II. The bills similar to the one introduced by Senator John Pastore in 1969.

The other pending bills reflect one of these two types, with a few variations. The following chart analyses these two types of bills, as well as the OTP bill, according to their most important provisions.

VARIATIONS:

(A) Variations of the Pastore-type bills

The only variation of this type of bill is the bills extending the license term from three to six years. Bills introduced by a host of members would accomplish this extension. Congressman Collins, a member of the MacDonald subcommittee, has four bills--all with many co-sponsors--bearing this variation.

(B) Variations of the NAB-supported bill

(1) The Rooney (Pennsylvania) bill (H.R. 1066) differs from the NAB bill in its provision applying the five-year extension of the renewal period only to radio licensees, the term for TV licensees remaining of three years. Congressman Rooney, in addition, is co-sponsor with Congressman Broyhill and 72 other House members (as of March 9) of the NAB bill. Congressmen Rooney and Broyhill testified on behalf of the NAB-supported bill on the first day of the hearings.

(2) The only other variations of the NAB-supported bill are those containing simply the five-year renewal extension provision.

(C) Other Significant Bills

(1) Placement of the Procedural Burdens in the Hearing Process

Section 309(e) of the 1934 Act states that when a license is designated for a hearing on a petition to deny or a comparative challenge, the placement on the parties involved of the burden of proceeding with the introduction of evidence (i.e., evidence as to the incumbent licensee's past and proposed performance) and the burden of proof (i.e., burden of proving that renewal would (or would not) be in the public interest) shall be left up to the Commission's discretion.

There are a number of bills pending that would remove from the Commission's discretion the placement of these burdens and secure to the licensee some procedural advantages in the hearing.

H.R. 1864 (Congressman Rogers), H.R. 3636 (Congressman Haley), H.R. 565 (Mr. Gibbons), and S. 849 (Senator Hollings) all contain a provision which, while not as favorable as the above NAB, OTP, and Pastore-type bills, would afford the licensee some protections against license challenges. These bills provide that in a hearing on either a petition to deny or a comparative challenge, if the incumbent makes an initial prima facie showing that his broadcast service during the period:

(1) has reflected a good faith effort to serve, and demonstrated a responsiveness to, the needs and interests of its area, and

(2) that the operation of the station has not otherwise been characterized by serious deficiencies, then the burden of proof, that is, the burden of proving whether renewal of the incumbent's license would be in the public interest, shifts to the competing applicant (or the petitioner to deny).

This provision, therefore, takes away from the Commission its discretion in placing the burden of proof. The incumbent would still have the burden of proceeding with the introduction of evidence--which would be satisfied by a showing that he has fulfilled the two criteria spelled out above; and if he is able to make such a showing, then the second burden, the burden of proof, shifts to the opposing party.

The bills do not specify what procedures are to govern the renewal process up to the time of the designated hearing and, therefore, do little to provide a way for the licensee to avoid these challenges altogether. Nevertheless, the provision would secure some advantages to the licensee in that if he is able to make the prima facie showing, specified in the two criteria, then the Commission would be prohibited from placing the subsequent burden of proof also on him. The burden of proving that renewal would not be in the public interest would shift to the opposing party.

The Hollings bill also contains a provision specifying the standard for weighing the evidence to be applied by the Court of Appeals if a decision of the Commission denying the incumbent's renewal is reviewed. The action of the Commission "shall be set aside unless the court finds such action was supported by a preponderance of the evidence in the records before the Commission."

(2) The Tower Bill (S. 851)

The Tower bill is concerned primarily with revising the comparative hearing procedures. The bill contemplates a two-step process:

(1) The Commission first determines whether any applicants should be excluded on "citizenship, character, financial, technical, or other qualification grounds."

(2) Surviving applicants then proceed to a hearing on the single comparative issue of which will provide the superior program service.

During this entire process, a renewal applicant is treated like all others except that

(a) his past operating record is taken as the most reliable indicator of future performance and,

(b) his application cannot be denied unless there is a finding that the new applicant will provide "substantially superior" program service.

Type	Length of License Term	Criteria for Evaluation of Licensee's Performance	Procedure for Handling Competing Applications
OTP	Five Years	Applicant has to show that it: (1) has been substantially attuned to community needs and interests, and has demonstrated, in its program service and broadcast operations, a good-faith effort to be responsive to such needs and interests (ascertainment obligation) (2) has afforded reasonable opportunity for the discussion of conflicting views on issues of public importance (fairness obligation)	Two step process: (1) Renewal applicant is considered under specified criteria and obtains renewal if he meets them; (2) If, however, a substantial and material question of fact concerning the licensee's performance is presented, or if the FCC for any reason is unable to find that grant of the renewal application would be consistent with the specified criteria, then a comparative hearing--in which the applicant and all license challengers participate---is designated.
I	Five Years	Applicant has to show that it: (1) has reflected a good-faith effort to serve the needs and interests of its community, and (2) has not demonstrated a callous disregard for law or the Commission's regulations.	Unclear -- bill only states that failure to make such a showing or demonstration shall be weighed against the renewal applicant in the comparative hearing.

Type	Length of License Term	Criteria for Evaluation of Licensee's Performance	Procedure for Handling Competing Applications
II	Three Years	Public interest, convenience and necessity.	Two step process: (1) Renewal applicant is considered under the public interest standard and obtains renewal if he meets it; (2) If the incumbent fails to meet the public interest standard, and if the FCC after a hearing determines that a grant of the renewal application would not be consistent with the standard, it may deny the application and then accept license applications from other interested parties.

G

Remedies Available to the Commission other than Denial

It might be asserted that increasing the license term to five years reduces the opportunity of the community to voice complaints or obtain redress against a station operating in some objectionable manner. This is not the case: the Act provides the Commission a number of remedies other than denial of a renewal application. Specifically, the Commission at any time can:

-- revoke a license (Section 312);
-- suspend a license (Section 303);
-- issue orders to cease and desist (Section 312);
-- impose fines or forfeitures (Sections 501, 502, 503, 510).

Furthermore, there is no requirement that the term of a license be five years; the Commission can, under Section 307(d), grant short-term renewals where past performance has been questionable.

Finally, under Rule 1.41, requests for Commission action can be submitted informally, thus obviating any requirement for vast legal expertise on the part of the complainant.

Though some of the remedies mentioned above are used seldom or not at all (Sections 303, 501, 502, and 510), or primarily for technical violations, others (revocation under 312, forfeitures under 503) are used not infrequently, and quite stringently, in response to the sorts of behavior that offend community groups (as opposed to technical violations).

While it could be argued that these mechanisms are not as handy or as fruitful as the petition to deny, it is quite likely that the petition to deny has been the course most often sought by complainants simply because an opportunity to do so comes up every three years. If the term were lengthened to five years, there is no reason to believe that any avenues are closed to the aggrieved or offended citizen or community group; all that is required is the use of a slightly different mechanism. Perhaps most significantly, Section 312(a)(2) provides for revocation "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit an original application." Thus, any information pertinent to a petition to deny is just as applicable at any time during the term of the license.

Pertinent excerpts from the Act, and examples of the use of Commission powers other than denial, are attached.

COMMUNICATIONS ACT OF 1934
Remedies for Violations

Section 303. General Powers

"Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest or necessity requires, shall --

...(m)(1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee --

...(D) Has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning....

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act...."

Section 312. Administrative Sanctions

"(a) The Commission may revoke any station license or construction permit --

(1) for false statements knowingly made... in the application...;

(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on original application;

(3) for willful or repeated failure to operate substantially as set forth in the license;

(4) for willful or repeated violation of, or willful or repeated failure to observe, any provision of this Act or any rule or regulation of the Commission...;

(5) for violation or failure to observe any final cease and desist order issued by the Commission under this section;....

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy."

(b) Where a person has failed to operate substantially as set forth in license, or has violated the Act or rules, Commission may issue order to cease and desist.

Section 501. General Penalty

1 year, $10K, or both for willful violation of Act.

Section 502. Violation of Rules, Regulations, and so forth

$500/day each day offense occurs, over and above other penalties provided by law.

Section 503. Forfeitures

"(b)(1) Any licensee or permittee of a broadcast station who --

(A) willfully or repeatedly fails to operate such station substantially as set forth in his license or permit;

(B) willfully or repeatedly fails to observe any of the provisions of this Act...;

(C) fails to observe any cease and desist order...;

(etc.)...;

shall forfeit to the U.S. a sum not to exceed $1000." (Each day is a separate offense; i.e., $1K/day.)

Section 510.

Provides for $100 fines for willful and repeated violations of certain rules and regulations (operating without a license, interfering with distress calls, using excess power, failing to respond to official FCC communications, using unauthorized frequency, etc.).

FCC Rules §1.41.

"Informal requests for Commission action. -- Except where formal procedures are required under the provisions of this chapter, requests for action may be submitted informally. Requests should set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions (if any) pursuant to which the request is filed and under which relief is sought, and the interest of the person submitting the request."

License Revocations under Section 312

Station KWK (St. Louis) license revoked on grounds of 312(a)(2)and 312 (a)(3) (willful or repeated failure to operate substantially as set forth in license). Station had conducted two treasure hunts which constituted deliberate fraud on the public. Revocation affirmed by U.S. Court of Appeals, D. C., 6/11/64. 2 RR 2d 2071. On appeal from 34 FCC 1039, 25 RR 51, 35 FCC 561, 1 RR 2d 457.

WCLM-FM (Chicago), Carol Music Inc., license revoked 2/24/64 (FCC 63 D-104) in accordance with 312(a)(2), (3), and (4). Shortly after renewal, licensee changed program format to storecasting operation directed at supermarket customers (also failed to furnish info. to FCC, failed to report lease of one sub-carrier frequency). Docket 14743 3 RR 2d 477 (1964).

Station WPFA (Pensacola) license revoked 5/28/62, when it was determined that licensee had provided false information (Annual Financial Report, programming logs, news/public service programming policy) on the renewal application for another station the licensee owned (WMOZ). Section 308(b) requires information as to character of applicant; 312(a)(2) provides for revocation because of conditions coming to FCC attention which would justify denial of original application. Docket 14228; FCC 64-57 45329 36 FCC; 1 RR 2d 801 (1964).

Short-Term Renewal under Section 307(d)

WLBT and WJDX (Jackson, Miss.), Lamar Life, were granted short-term (1-year) renewals on fairness grounds (racial integration matters) after petitions by United Church of Christ and Mississippi AFL-CIO 5/19/65 FCC 65-436 67810 5 RR 2d 205

Forfeitures under Section 503

WUHY-FM (Philadelphia), Eastern Educational Radio, forfeited $100 for broadcasting a program containing indecent language on January 4, 1970. In an hour-long taped interview from 10:00 to 11:00 p.m., guitarist Jerry Garcia of "The Grateful Dead" repeatedly used "f---," "s---," and other egregious epithets and expletives. (NOTE: this is not a particularly attractive example, inasmuch as neither the FCC nor the station received a single complaint; rather, the FCC was monitoring the station at the time. However, the Commission was monitoring as a result of a number of previous complaints about similar behavior in the same time slot.) 18 RR 2d 860 (1970)

WIYN radio forfeited $1,000 for broadcasting in April 1971 a personal attack on the Institute for American Democracy without notifying the IAD of the attack or providing a reasonable opportunity to reply. The attack consisted of attempting to link the IAD with Communist subversive activity. FCC 72-464 79068 24 RR 2d 505 (1972)

KSLA-TV (Shreveport) agreed to allow KLTV (Dallas) to rebroadcast blacked-out Dallas Cowboys home games (after KLTV complained) rather than suffer forfeiture. FCC 64-942 57756 3 RR 2d 680 (64)

WALT (Tampa), Eastern Broadcast Corp., forfeited $10,000 for phony prize contest. 6/21/67 FCC 67-742 1374 10 RR 2d 393 (67)

KORK (Las Vegas), S'Western Broadcast Corp., forfeited $1,000 for failure to identify sponsor of announcements on local political issue. FCC 67-900 2927 10 RR 2d 917 (1967)

KENO (Las Vegas), Lotus Broadcast Corp., forfeited $1,000 for failure to identify sponsor of announcements on local political issue. FCC 67-901 2928 10 RR 2d 921 (1967)

KLAS-TV (Las Vegas), Las Vegas TV Inc., (same as KENO and KORK). FCC ¢& 67-902 2929 10 RR 2d 941 (1967)

KLYD (Bakersfield), Kern County Broadcasting, forfeited $3,000 in 1968 for rigging a contest. FCC 68-837 19782 13 RR 2d 1191

H